

HOUSING AS A HUMAN RIGHT

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STATUS OF “RIGHT TO HOUSING” IN CANADA

The right to housing, specifically “adequate housing” is not considered a human right in Canada, it is not included within the Charter of Rights and Freedoms. The result of this is that “there is no direct manner of enforcing the right to adequate housing” within the Canadian domestic legal system.

Canada has ratified several non-binding international documents including the UN Universal Declaration of Human Rights.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Adequate housing includes: Security of tenure, Availability of services, Affordability, Habitability, Accessibility, Location, Cultural Adequacy.



HOUSING FROM AN INTERNATIONAL PERSPECTIVE

- The right to housing has been recognized as a central feature of human life by both the Universal Declaration of Human Rights (Article 25.1) and the International Covenant on Economic, Social and Cultural Rights (Article 11(1)).
- International Human Rights Law recognizes adequate housing (having secure tenure) as a freestanding right of humans.
- A number of other international treaties also recognize adequate housing as a fundamental instrument of human life.



RIGHT TO HOUSING ...

Canada has recognized that adequate housing is a fundamental human right by ratifying the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.

Judicial reluctance and legislative silence serve to perpetuate homelessness.

Housing as a Charter right-

In *Tanudjaja v Canada (Attorney General)*, 2013 ONSC 5410, the Ontario Supreme Court rejected “homelessness” and “inadequate housing” as analogous grounds pursuant to Section 15 of the Charter. The Court further went on to conclude that Section 7 of the Charter “does not provide a positive right to affordable, adequate, accessible housing and places no positive obligation on the state to provide it.” The Ontario Court of Appeal has upheld the decision (*Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852). The Supreme Court has recently in 2015 denied the leave to appeal (2015 CanLII 36780 (SCC)).

Housing as a human right-

Provincial human rights codes could be interpreted to include housing as a fundamental human right. For example,

- The Centre for Equality Rights in Accommodation argues that a substantive equality approach to Section 2 of the Ontario Human Rights Code can be interpreted as “providing protection against discriminatory treatment in applying for and living in housing, and a right to adequate housing without discrimination on the listed grounds”.
- In Alberta, sources of income as a ground under its human rights legislation can be applied.
- In Ontario, recent change in the Ontario Human Rights Code that includes someone who is using public assistance is protected against discrimination in occupying accommodation.



TYPES OF HOUSING THAT INTERSECT WITH HUMAN RIGHTS

- Affordable housing options
 - Lodging Houses (aka Boarding houses)
 - Secondary Suites
 - Cohousing with multiple owners
- Care facilities
 - Group Homes
 - Transitional housing
 - Emergency shelters
 - Addiction treatment and recovery
 - Permanent Supportive Housing



CHALLENGES AND BARRIERS TO HOUSING

- Minimum Separation Distances
- Direct Control District requirements (emergency shelters in Calgary)
- Restrictions on secondary suites (in parts of Calgary)
- [Social Housing Moratorium \(Pause\) neighbourhoods in Edmonton](#)
- Seeing different ways that councils/communities are making it harder for certain use classes to be applied.
 - Overly restrictive parking requirements
 - Disallowing secondary suites where they are most wanted
 - Licensing
- Uncertainty of residential or industrial use classes.
 - Extreme group homes
- Lack of political and administrative will
 - Consequences when politicians try to advocate for affordable housing and are not re-elected
 - Administrations moving very slowly, or just a facade that they are moving on projects
- Judicial reluctance to recognize housing as a human right



EDMONTON-SPECIFIC CHALLENGES

- De Facto minimum separation distances:
 - Density thresholds for group homes, limited group homes, boarding houses in Edmonton.
 - Maximum of 2 special residential facilities per block
 - Maximum of 3 special residential facilities per 1000 people
- Pause Neighbourhoods
- Definition of congregate living - households
- Zoning Restrictions:
 - Group homes, Lodging Houses are discretionary in RF1
 - Limited group homes, secondary suites are permitted in RF1
- 10-year Plan to End Homelessness
 - Homeless still persists



CASE LAW ON HOUSING

- **Abbotsford (City) v Shantz**, 2015 BCSC 1909
 - homeless have a constitutionally protected right under Section 7 of the Charter to erect a temporary shelter and sleep overnight in parks
- **Alcoholism Foundation of Manitoba v. Winnipeg (City)**, [1990] M.J. No 212 (C.A.)
 - a zoning bylaw that restricts the location of group homes for older persons, people with disabilities, persons recovering from addictions and discharges penal inmates to a limited number of zones, and requires minimum separation distances violates Section 15 of the Charter
- **Children's Aid Society of the Region of Peel v. Brampton (City)**, [2002] O.J. No. 4502 (S.C.J), aff'd [2003] O.J. No. 2004 (C.A.)
 - a bylaw that restricts the number and location of foster and group homes with four or more foster children contravenes the Planning Act because it distinguishes between related and non-related persons
- **The Neighbourhoods of Windfields Limited Partnership and the Corporation of the City of Oshawa v. Ronald Death et al**, 2009 ONCA 277
 - the Ontario Court of Appeal found that the term “single housekeeping unit” in the context of a zoning bylaw typically means a single family unit that is fundamentally inconsistent with the use of a building as “rooming houses” and “student housing” and that 35(2) of the Planning Act which prohibits “distinguishing persons who are related and persons who are unrelated in respect of the occupancy or use of a building” does not prohibit the Superior Court from considering as a relevant factor how the renters related amongst themselves on determining whether they constituted a “single housekeeping establishment”.



CONNECTING SUPPORTIVE HOUSING AND HUMAN RIGHTS

Considering that poverty should be seen as another ground for discrimination because being in a state of poverty is often a result of ongoing or historical discrimination from multiple sources and most often impacts charter protected groups.

