



Hamilton

INFORMATION REPORT

TO:	Chair and Members Emergency & Community Services Committee
COMMITTEE DATE:	May 12, 2014
SUBJECT/REPORT NO:	Housing and Human Rights (CES14023) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Jennie Vengris (905) 546-2424 ext. 7801
SUBMITTED BY:	Joe-Anne Priel General Manager Community and Emergency Services Department
SIGNATURE:	

Council Direction:

On December 9, 2013, the Emergency and Community Services Committee approved Hamilton's 10-year Housing and Homelessness Action Plan. Also at that meeting, staff were provided direction as follows:

"Based on the fact that the security of a person and the right to equality is entrenched in the charter and that this challenge itself is now being fought by the federal and provincial governments, have staff report back on the charter challenge and the significance that the challenge plays ultimately in assisting in having a national strategy or opposing it. And address whether the federal and provincial governments are on board with...putting together a plan".

Information:

Summary

In a 2013 Ontario Superior Court case *Tanudjaja v. Canada (Attorney General)* involving a Charter challenge by the Centre for Equality Rights in Accommodation, both the Federal and Provincial governments set out their respective positions on whether there is a "right to housing".

In 2010, the Centre for Equality Rights in Accommodation (CERA) worked with four individuals experiencing homelessness or housing insecurity to file an Application to the Ontario Superior Court, challenging Federal and Provincial government policy on the right to housing. They claimed that the Provincial and Federal governments do not have adequate policies in place to meet Section 7 and Section 15 of the Canadian Charter of Rights and Freedoms. According to the Social Rights Community-University Research Alliance (CURA), "the claim does not challenge a particular legislative provision or government action but rather the failure of two levels of government to develop and implement housing strategies to effectively address homelessness" (The

Social Rights CURA, *Charter Challenge to Homelessness and Violations of the Right to Adequate Housing in Canada*, 2012) . Among the various arguments put forth in its Application, CERA appealed to both levels of governments' international treaty obligations suggesting that "the Ontario and Canadian governments have failed to respond to repeated and urgent recommendations from United Nations human rights bodies, human rights commissions and a range of experts urging these governments to implement comprehensive housing strategies..."

The Application was never heard as the Provincial and Federal governments were successful in their motion to dismiss it for failing to disclose a reasonable cause of action. Their motion was heard in late May 2013. The province contended that neither Section 7 nor Section 15 of the Charter could be used in the way the Right to Housing challenge indicated and that the remedy the Application was seeking is not available under the law. The Federal government challenged the claim citing that a challenge related to Section 7 and Section 15 in the Charter had 'no reasonable prospect of success' and that the court is an inappropriate place for policy-making processes.

In a decision of the Ontario Superior Court, dated September 6, 2013, Justice Thomas Lederer allowed the motion and dismissed the case. According to a synopsis of the case by the Ontario Non-Profit Housing Association (ONPHA), the ruling was based on the following rationale:

- 1) the case did not make the legal arguments required under subsections seven and 15 of the Charter;
- 2) the issue of housing and homelessness should be before the legislature and not the courts; and,
- 3) the remedy being sought, a national housing strategy, is too broad and cannot be ordered by a court" (ONPHA, "*Housing as a human right*" Charter challenge dismissed, 2013) .

With this decision, the Ontario Superior Court is following other domestic courts in refusing to cross institutional boundaries into policy areas that are reserved strictly for legislatures.

The concept of housing as a human right, however, has a strong foundation in international law, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR) which is a human rights treaty adopted by the United Nations General Assembly in 1966. The ICESCR sets out a series of fundamental rights to self-determination, work, social security, adequate living standards, health and freedom from discrimination. Canada became party to the covenant in 1976.

In 1993 and 1998 the UN Committee on Economic, Social and Cultural Rights (the body that monitors the Covenant) recommended ways for Canada to come into alignment with the ICESCR. In 2006, it acknowledged that those recommendations were never implemented. The ICESCR is not enforceable by domestic courts unless the elements of the Covenant have been included in Federal or Provincial which they have not.

In 2007, Miloon Kothari (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living) visited Canada to understand the current housing situation. His 2010 report praises Canada for ensuring that the vast majority of its citizens meet their housing needs through the private market but identified significant concerns regarding homelessness, women and adequate housing and the situation of Aboriginal people and housing insecurity.

As of 2014, there has been no response from the Federal government to the concerns raised in Mr. Kothari's report.

In December 2013, City Council endorsed Hamilton's 10-year Housing and Homelessness Action Plan. This 10-year plan focuses on 54 strategies that will improve the situations of homelessness and housing insecurity in our community. While the Action Plan does not explicitly state that housing is a human right, a rights perspective is clear in the report. The Equity section of the Action Plan acknowledges that "people do not have the same degree of access to goods and services and some people may need different or more supports to gain that access".

A significant element of the implementation of the Action Plan is the development of a Government Relations Strategy. The Action Plan acknowledges that the municipality alone cannot achieve success in the complex arena of housing. Hamilton requires the Provincial and Federal governments to commit to sustained adequate funding over the long term, and to partner effectively so that all of the issues that intersect with housing can be managed (i.e. health, planning, income security, etc.).

There is extensive research showing the importance of safe, secure and affordable housing as a critical element in peoples' lives, leading to better outcomes in other areas such as health, education, employment and social inclusion. Housing is also known to lead to public cost savings in other areas (corrections, emergency services, health, etc.). Given that municipalities have a more limited tax base (property tax) than senior levels of government, Hamilton on its own cannot afford the significant costs of addressing affordable housing and homelessness to meet the identified need. As such, senior levels of government must be partners in a sustained and adequate funding strategy for housing. The *concept* of housing as a right can be a focal point for these discussions.

The Federal and Provincial Governments' Stated Priorities

From a policy perspective, the Provincial Government is clear in its role in housing in Ontario. The Ministry of Municipal Affairs and Housing (MMAH) describes its housing focus as follows:

The Ministry works to strengthen Ontario communities by promoting a housing market that serves the full range of housing needs, protects tenants and encourages private sector building, while supporting the creation of affordable housing for working families and Ontario's most vulnerable households.

The Ontario Housing Policy Statement (2011) is broad in its scope, focusing on ending homelessness, supporting non-profit housing providers, recognizing the important role of the private sector in housing development, coordinating across sectors and the importance of environmental sustainability related to housing development.

The Long Term Affordable Housing Strategy - LTAHS (2011) is the mechanism by which the Provincial government proposes to meet the intent of the policy statement and proposes some changes and new directions. The LTAHS outlines the current Provincial financial commitment for housing and introduces a change to the legislation that guides the delivery of social housing. Additionally, the province mandated Service Managers (municipalities) to develop 10-year housing and homelessness plans. In December 2013, Hamilton City Council endorsed the Housing and Homelessness Action Plan, thus fulfilling that requirement.

In Canada, 95% of households meet their housing needs through the private market. The Federal government's role in housing is primarily through influencing that private market with "legislation that defines such things as banking and mortgage lending practices, tax and regulatory measures affecting building materials, professional practices (for example, real estate transactions), subsidy programs and incentive patterns for average households" (Hulchanski, *What Factors Shape Canadian Housing Policy?*, 2006). The Federal government does provide funding for homelessness programs through its Homelessness Partnering Strategy and partners with Provincial governments to fund the Investment in Affordable Housing program, but its primary focus is in the private market.

It is important to note that there is a long standing call for a National Housing Strategy in Canada. Hamilton's City Council endorsed the Federation of Canadian Municipalities' motion calling on the Government of Canada to "to increase housing options for Canadians and to work with all orders of government to develop a long-term plan for Canada's housing future". Strategy 1.1 of Hamilton's Housing and Homelessness Action Plan advocates for the development of such a national plan.