



Advocacy Centre for Tenants Ontario
Centre ontarien de défense des droits des locataires



Centre for Equality Rights in Accommodation
Centre pour les droits à l'égalité au logement

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

Fifth Periodic Review of Canada

October 17, 2005

INTRODUCTION

A. Who Are We?

ADVOCACY CENTRE FOR TENANTS ONTARIO (ACTO)

The **Advocacy Centre for Tenants Ontario (ACTO)** is a provincial legal clinic opened in 2001 with funding from Legal Aid Ontario. ACTO's mandate is to undertake legal and law reform advocacy with the goal of broadening the legal rights of low-income persons in respect of their need for adequate and affordable housing.

ACTO's work has included litigation and law reform advocacy aimed at achieving legal and policy reform in four key areas:

- Ending evictions without a hearing and without consideration of risk of homelessness;
- Increasing the provincial social assistance shelter allowances to reflect actual average rents faced by vulnerable households in their communities;
- Giving human rights claimants a right of access to a human rights tribunal; and
- Addressing homelessness through a comprehensive national strategy.

ACTO also operates a Tenant Duty Counsel Program in communities across Ontario, offering legal advice and representation to low-income tenants facing eviction at the Ontario Rental Housing Tribunal. **ACTO** serves approximately 15,000 tenants facing eviction from their housing each year.

CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION (CERA)

The **Centre for Equality Rights in Accommodation (CERA)** is a non-profit organization established in 1987 to help ensure that human rights protections with respect to housing are effective for low-income and other disadvantaged communities.

For the past eighteen years, **CERA** has challenged housing-based discrimination and worked to remove the barriers that keep disadvantaged individuals and families from accessing and retaining the housing they need. **CERA** is the only organization in Canada with a mandate focused on using human rights legislation to challenge housing insecurity and homelessness.

CERA also works to ameliorate discrimination through public advocacy, public education and participation in human rights organizations and litigation. These efforts aim at raising general awareness of discrimination in housing, advising individuals of their rights and making housing providers and governments aware of their obligations under human rights legislation. **CERA** has also been participating in United Nations (UN) human rights treaty monitoring review processes, and has made submissions to the UN Human Rights Committee at the Fourth Periodic Review of Canada under the ICCPR in 1999,

CERA's clients come from extremely disadvantaged communities. They include single parents, youth, newcomers to Canada, people with disabilities, vulnerable seniors, persons of colour, and people receiving social assistance.

B. Outline of ACTO and CERA Submission

ACTO and **CERA** will address four issues:

1. The failure of residential tenancies legislation to require a hearing before eviction, and to require consideration of the tenant's vulnerability to homelessness;
2. The failure of governments to reverse cuts in social assistance levels, and to address the discriminatory impact of inadequate shelter allowances;
3. The failure of the federal government, and several provincial governments, to remove the statutory authority of human rights commissions to veto the right of a claimant to a hearing before an adjudicative tribunal; and
4. The failure of Canadian governments to take positive measures, including the development of a national affordable housing strategy, to address the on-going crisis of homelessness.

Issues 2, 3 and 4 were the subject of recommendations in the Concluding Observations of the Human Rights Committee in April 1999.¹ Notwithstanding the strong expression of concern in each of these areas by this Committee, the Canadian federal, provincial and territorial governments have failed to take any significant action to address the Committee's recommendations.

¹ 1999 Concluding Observations, HRC ¶20, ¶ 9 and ¶12.

In fact, in filing their Fifth Periodic Report, the various governments have almost uniformly failed to even address the issues of social assistance cuts, lack of access to a human rights hearing and homelessness.

Our first issue – eviction without a hearing and eviction into homelessness – is raised in response to the report on Measures Adopted by the Province of Ontario, in the Fifth Periodic Report filed by the Government of Canada.² The report from Ontario emphasizes the efficiency of the eviction process, but fails to advise the Committee that the result is an eviction order without a hearing for over 30,000 tenant households every year.

SUBMISSIONS ON FOUR ISSUES

A. Failure of Residential Tenancies Legislation to Require a Hearing before Ordering Eviction and to Require Consideration of the Tenant’s Vulnerability to Homelessness

In Ontario, **over 30,000 renter households are ordered evicted without a hearing** each year by the Ontario Rental Housing Tribunal (pursuant to the *Tenant Protection Act, 1997*) ..

An additional 18,000 or more eviction applications go to a hearing in Ontario every year, but there is no legislative requirement that the adjudicator consider the risk of homelessness before ordering a household out of their housing.

The Committee on Economic, Social and Cultural Rights, in its December 1998 Concluding Observations, called on Canadian governments to improve security of tenure for tenants.³ Perhaps with that in mind, the Ontario government, in its Fifth Periodic report to this Committee, has reported on its tenancy legislation.

Ontario states that “the *Tenant Protection Act, 1997*, has offered greater access to justice for both landlords and tenants in Ontario and has provided them with a quick result to their judicial disputes.”⁴ **The “quick result” is, in approximately 60% of eviction applications, an eviction order without a hearing or mediation.**⁵ Given the predominance of low-income households in the tenant population⁶, and the acknowledged speed with which eviction applications

² Fifth Periodic Report, Canada, October 27, 2004, ¶ 377 and 418.

³ CESCR, Concluding Observations, December 1998, ¶46.

⁴ Fifth Periodic Report, ¶418

⁵ See Ontario Rental Housing Tribunal Workload Reports, 1998 to 2004; this figure is also cited in a recent decision of the Tribunal: ORHT File No. TNL-68501-SA.

⁶ The median income of tenant households in Ontario is less than half that of homeowner households: Ottawa: Statistics Canada, May 13, 2003. 2001 Census of Canada. Cat. # 97F0021XCB01010 and 97F0021XCB01011.

Tenant households comprise 68.8% of the lowest income quintile in Ontario: Survey of Household Spending 2003; Dwelling Characteristics and Household Equipment by Household

produce an eviction order, eviction into homelessness is a risk in thousands of evictions each year.

Here is what Ontario's Ombudsman said about the eviction process in his 2003/2004 Annual Report:⁷

“ the default eviction process has resulted in large numbers of individuals being evicted without mediation or a hearing on the merits. I am particularly concerned that **such evictions may have disproportionate and oppressive consequences for vulnerable tenants: seniors, single parents with small children, individuals with disabilities and those for whom English is a second language.**

I noted a number of problems with the current *Tenant Protection Act*, 1997 including the time frame for disputing eviction applications, which is extraordinarily brief when one considers the **severe consequences eviction can have on individuals and families.** **there should be greater scope for the exercise of discretion in the context of tenant evictions**, cautioning that eviction should not be allowed to become a mechanical exercise devoid of human consideration. While the *Tenant Protection Act*, 1997 may have effected **greater administrative efficiencies** than the [predecessor] *Landlord and Tenant Act*, I am concerned that this may have been **at the expense of fair process.** “

Tenants in Ontario are evicted for relatively small amounts of rent, generally less than one month's rent. The most recent data (for 2002) shows that the median amount of rent owing in eviction orders was \$961 in the City of Toronto.⁸

One of the most startling aspects of the speedy no-hearing eviction process in Ontario is that thousands of tenant households are evicted every year for rent debt even though, at the time the eviction order is issued, the tenant actually owes no rent, and is very often owed rent by the landlord. This occurs because there is no hearing and no requirement on landlords to advise the Tribunal of rent payments made after service of the eviction application. According to a study by the City of Toronto of Ontario Rental Housing Tribunal decision records, in over

Income Quintile, Ontario, 2003. Statistics Canada, Income Statistics Division, custom tabulation* (December 16, 2004)

⁷ Ombudsman Ontario, *Annual Report, 2003-2004*, "Ombudsman's Message", (Government of Ontario: June 17, 2004), p.1.

⁸ Linda Lapointe, *Analysis of Evictions under the Tenant Protection Act in the City of Toronto* (Toronto: March 31, 2004) p.81. Figures for the rest of the province would be lower due to lower rent levels.

10% of all evictions for rent arrears, the tenant owes no money or is owed money from the landlord at the time of eviction.⁹

Notwithstanding the report of the Ontario Ombudsman finding that there should be “greater scope for the exercise of discretion in the context of tenant evictions”, the Ontario government, in its report to this Committee, has suggested that discretion is “often” exercised to avoid homelessness. The comments also noted that adjudicators hearing eviction applications at the Ontario Rental Housing Tribunal have discretion to refuse an eviction application “if there is a compassionate or other reason to retain the tenancy”.¹⁰

The above comments to this Committee are not in keeping with the experience of our organizations which assist tens of thousands of tenants facing eviction every year. In particular, ACTO’s Tenant Duty Counsel Program provides legal advice and services each year to approximately 15,000 low-income tenants facing eviction before the Ontario Rental Housing Tribunal (ORHT). In addition, ACTO works with over 70 community legal clinics across Ontario who together provide legal services and advice in response to almost 50,000 requests from tenant households each year.¹¹

Based on this collective experience, we can report that we are aware of **very few decisions in which adjudicators have considered refusing an eviction application because a tenant household is facing homelessness.** The Ontario Rental Housing Tribunal has issued over 200,000 decisions since 1998, over 80% of which are for eviction.¹² However, the Tribunal’s decisions are not published, making it difficult to test the veracity of the claim that discretion is “often” exercised.

Legal clinics in Ontario have created their own database containing almost 5000 Tribunal decisions. A **search of this database revealed only 11 decisions since 1998 in which homelessness was even considered as an issue in ordering eviction.**¹³

In three cases, vulnerable tenants were evicted notwithstanding a finding that the tenant would likely become homeless.¹⁴ In a fourth decision, the adjudicator found that a tenant was “an elderly man, in poor health, living on a disability pension”, but held that there were “no special circumstances that warrant postponement of enforcement of the eviction” beyond a two-week delay.¹⁵ In

⁹ Data compiled by the City of Toronto, based on Ontario Rental Housing Disposition Records for 2001 and 2002.

¹⁰ ¶377

¹¹ Legal Aid Ontario, Quarterly Service Report, 2004 and 2005.

¹² Ontario Rental Housing Tribunal Workload Reports, 1998 to 2005.

¹³ Search conducted by Paul Rapsey, Researcher, Legal Aid Ontario, October 2005.

¹⁴ ORHT File No. SOL-12758, May 2, 2000; ORHT File No. TSL-51597, May 14, 2004; ORHT File No. EAL-28252 and EAT-03647, June 20, 2002.

¹⁵ ORHT File No. SOL-29889, March 13, 2002.

another case, a single mother of two children, just abandoned by her husband, was allowed to retain possession of the premises for one month before issuance of the eviction order.¹⁶

In the last four decisions, a mentally disabled tenant or a single parent household was not evicted in part because of a risk of homelessness.¹⁷ In the most recent of these four cases, one of ACTO's tenant duty counsel argued successfully that the process of evicting without a hearing had a discriminatory impact on single mothers, persons with disabilities and other vulnerable persons.¹⁸

It is surprising that the Ontario government would claim that discretion is exercised generously in favour of tenants facing eviction, given that the **legislation does not require (even in evictions from government-subsidized housing) that adjudicators consider whether the tenant is a member of a vulnerable group or is likely to be homeless as a result of eviction.**

The Interpretation Guidelines of the Ontario Rental Housing Tribunal include a chapter on the exercise of discretion in evictions. The publication is intended to guide adjudicators in their interpretation of the legislation, and to assist parties in understanding the law. The guideline does not suggest that adjudicators should consider "compassionate" reasons for denying an eviction, as has been suggested to this Committee. With reference to possible homelessness, the guideline recommends ordering a delayed eviction:

"Eviction may appear to be unfair if no other accommodations is available to the tenant (e.g. a social housing tenant)" Ordinarily, the tenant's lack of resources will be considered as a reasons to **delay** [emphasis in original] an eviction, not to refuse it."¹⁹

The City of Toronto recently did a study of evictions in its area.²⁰ The study put a "human face" on the eviction statistics, and demonstrates that low-income families are disproportionately hurt by the eviction process:

- **Almost half (48%) of tenants facing eviction were families with children.**
- 39% of tenants facing eviction faced a short term financial crisis – loss of job; temporary lay-off, reduced hours; irregular pay; change of employment.
- **Almost one-fifth of tenants facing eviction reported that medical problems or expenses had resulted in arrears.**

¹⁶ ORHT File No. EAL-25624-SA, December 24, 2001

¹⁷ ORHT File No. TSL-46253, June 18, 2003; ORHT File NO. TEL-51896 , August 3, 2005; ORHT File No. TNL-64119, March 30, 2005.

¹⁸ ORHT File No. TNL-68501-SA

¹⁹ Ontario Rental Housing Tribunal, *Interpretation Guidelines*, "Relief from Eviction: Refusing or Delaying an Eviction, June 29, 1998.

²⁰ Linda Lapointe, *Analysis of Evictions under the Tenant Protection Act in the City of Toronto*(Toronto: March 31, 2004).

- **45% of tenants facing eviction are immigrants.**
- Most tenants in the post-eviction survey had never been evicted before.
- The vast majority of evicted tenants reported that the eviction process had a very negative impact on their lives and that of other family members.
- The **financial impact of eviction** – including moving costs, first and last month's rent, storage of possessions, hydro deposits – placed an additional financial burden on households already in difficult financial circumstances.
- Tenants reported increased family emotional stress, including **negative impacts on children** who had to leave their schools and often had to live separately from one or more parent while the family found new housing.

Recommendation:

That this Committee call on the Ontario government to:

- **repeal the provisions in the *Tenant Protection Act, 1997* that allow evictions without a hearing;**
- **amend the *Act* to require the Tribunal to consider granting relief from eviction in every eviction, including consideration of whether the tenant household is facing homelessness and is disadvantaged, in the circumstances of the case, by family status, disability, or other factors recognized under human rights legislation; and**
- **amend the legislation to provide that eviction is an extraordinary remedy of last resort that should not be ordered if there are other reasonable alternatives and remedies.**

B. Failure to Address Shortfall in Social Assistance Article 6 - Right to Life

This Committee's 1999 Concluding Observations expressed concern about "the very high poverty rate among single mothers" and concern that **"programme cuts in recent years have exacerbated these inequalities and harmed women and other disadvantaged groups"**. The Committee recommended "a thorough assessment of the impact of recent changes in social programmes" and further recommended that "action be taken to redress any discriminatory impacts of these changes".²¹

This December 1998 Concluding Observations of the CESCR also expressed specific concern about cuts to provincial social assistance.²² The CESCR recommended that governments address homelessness by "increasing shelter allowances and social assistance rates to realistic levels."²³ The Committee noted the **harsh impact of the cuts on vulnerable groups, including single mother families, low-income tenants and women fleeing abusive relationships**, among others.

Notwithstanding the strong commentary from both Committees, none of the provincial Fifth Periodic reports include a response to this issue. In the case of Ontario at least, the silence on this point may be an indication that the province is aware that it has not fulfilled its responsibility. The 21.6% cut in welfare rates²⁴ for single mothers and other non-disabled recipients in 1995 has effectively resulted in a real decrease of 40% when cost of living increases are considered. A recent 3% increase does not begin to restore the lost income of households on welfare, particularly as average rents across Ontario rose 27% from 1995 to 2004.²⁵

The relationship between rents and the welfare shelter allowance, from 1994 to 2004, in the larger Toronto metropolitan area²⁶ is illustrated by the chart below:

²¹ Concluding Observations, HRC, (1999) ¶ 20;

²² Concluding Observations, CESCR (1998) at ¶ 23-25.

²³ Ibid. ¶ 46

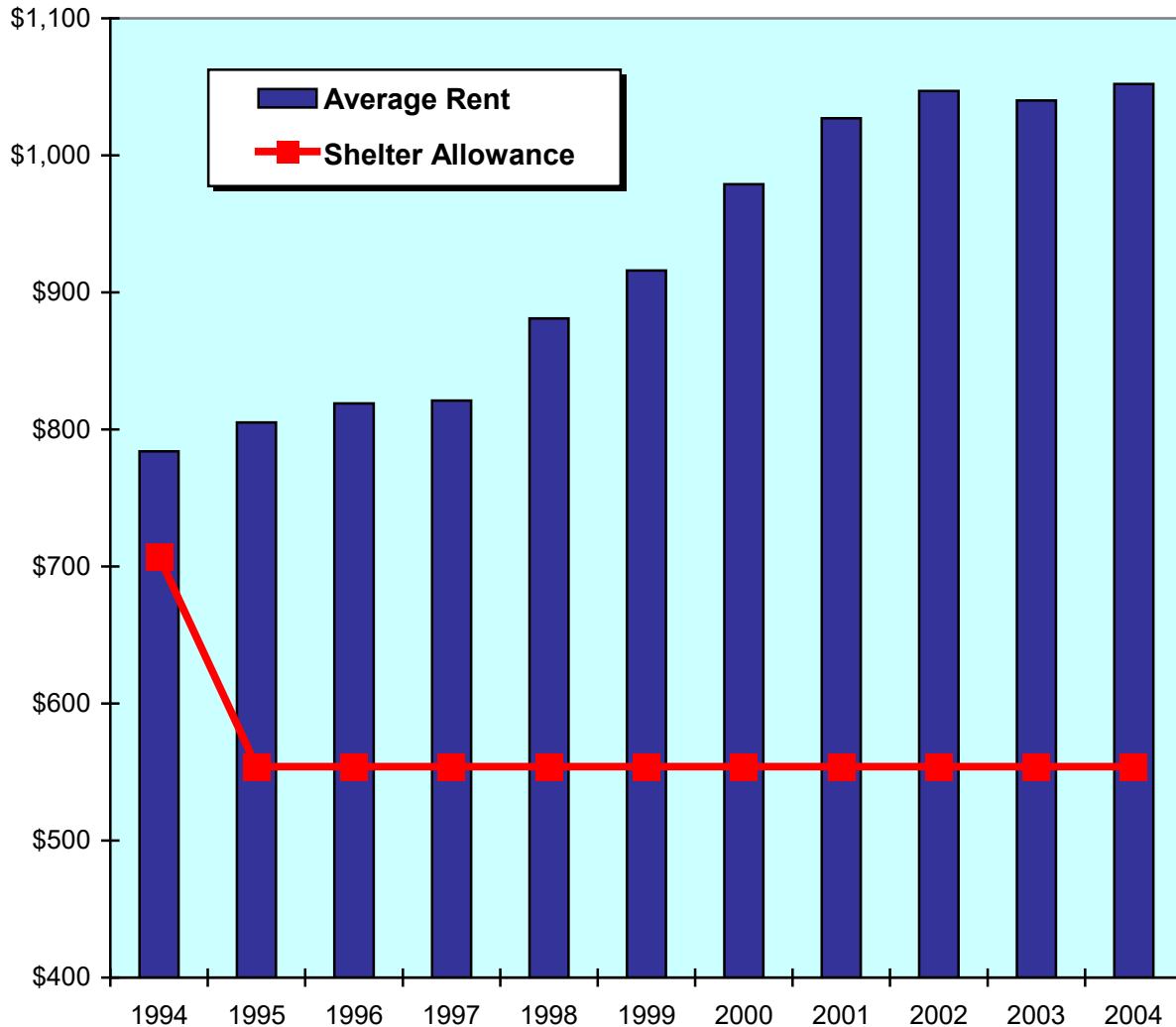
²⁴ *Making Welfare Work: report to taxpayers on welfare reform. Ontario Ministry of Community and Social Services, 2000, page 5.*

²⁵ CMHC - Ontario vacancy rates and rents, Oct. 1995 to Oct. 2004; Statistics Canada, Consumer Price Index (CPI), Ontario from CANSIM Table 326-0002, 2001 basket content, annual (Index, 1992=100)

²⁶ For Statistics Canada purposes, the Toronto area is referred to as the Toronto Census Metropolitan area ("CMA"). Rents from CMHC, Annual Rental Market Survey.

**Comparison of Rent to Shelter Allowance
Toronto CMA, 1994-2004**

Single + 2 Children, 2 Bedroom Apartment



In **2004**, a mother with two children received a maximum **shelter allowance of \$554**, but the **average cost of a two-bedroom apartment was \$1,052** in the Toronto-region (where 45% of all Ontario renter households live) and \$898 on a province-wide basis. ²⁷

²⁷ *Rental Market Report – Ontario Highlights and Rental Market Report – Toronto CMA*, Canada Mortgage and Housing Corporation, October 2004. Social assistance rates were increased by 3% in 2005, average rents for 2005 will not be known until late 2005.

The **dollar gap** between actual average market rents for a two-bedroom apartment in the Toronto metropolitan area and the shelter allowance portion of the social assistance cheque for a single parent with two children **increased by 547%** from \$77 in 1994 to \$498 in 2004.

The cut to *Ontario Works* welfare levels is felt most keenly by households that do not live in subsidized housing; fully 80% of beneficiaries rent housing in the private rental market²⁸. These households must use a significant portion of their food money to pay rent and frequently make use of food banks to feed their families.. A study of food bank clients in Toronto demonstrated that the majority of food bank clients are on some form of social assistance and renting private market housing.²⁹ The study found that 38% of children whose families use food banks are living in over-crowded and unhealthy housing.³⁰

In February 2003, a number of social assistance recipients in Ontario (assisted by ACTO and CERA) filed human rights complaints alleging that the shortfall in the shelter allowance prevented them accessing adequate housing for themselves and their children. The claimants, most of whom were young single mothers, filed written statements documenting the difficulty of finding adequate and affordable housing and their need to use the food portion of their social assistance to cover their shelter costs in the private rental market. The claimants had applied for subsidized housing, but given current waiting lists³¹, could not expect to be offered a subsidized unit for several years.

The Ontario Human Rights Commission dismissed the complaints on March 17, 2004,³² thereby denying the claimants any access to adjudication or to a remedy before the Human Rights Tribunal of Ontario. The claimants have applied for reconsideration of the dismissal of their complaints.

Recommendation:

That this Committee call on provincial and territorial governments to:

- **reverse the cuts in social assistance levels, as recommended in the 1999 Concluding Observations; and**

²⁸ Statistics and Analysis Unit, Social Assistance and Employment Opportunities Division, Ministry of Community and Social Services – June 2005 quarterly report of OW/ODSP cases and beneficiaries by accommodation types

²⁹ Daily Bread Food Bank, Research and Education, *Somewhere to Live or Something to Eat*, (Toronto:August 2004), p. 6 and 13.

³⁰ *Ibid.*, p.6

³¹ There are 124,785 households on the active waiting lists for subsidized housing in Ontario: Ontario Non-Profit Housing Association, *2005 Assessment of Waiting List Statistics For All Service Manager Areas in Ontario*, July 2005, p.4

³² Unreported, Ontario Human Rights Commission, File No. JWIS-5JUR3L, 17 March 2004.

- ensure that social assistance shelter allowances are tied to average actual rents faced by recipients in their communities.

C. Failure of Human Rights Legislation to Give Claimants Access to a Hearing

Article 2 - The Right to an Effective Remedy

While human rights legislation in Canada, at both the federal and provincial level, is among the most comprehensive in the world, it is in violation of the ICCPR in one critical aspect. Those who allege discrimination have no guarantee that they will have access to either a court or a competent tribunal in which their claim can be adjudicated and a remedy granted.

Human rights commissions in most Canadian jurisdictions³³ have a statutory 'veto' power to decide, on an administrative, discretionary basis, whether a complaint will be permitted to go forward to the adjudicative tribunal. The majority of complaints alleging discrimination, if not settled or abandoned, will be blocked from proceeding to a hearing by the exercise of the commission's veto. Complainants have no independent right of access to adjudication and to an ordered remedy for discrimination.

The ability of human rights commissions to block a claimant's access to a hearing offends the right to effective remedies for discrimination in Articles 2, 3 and 26. Notably, the absence of a right to adjudication and to effective remedy is also a violation of at least one of the *Effectiveness Factors*³⁴ that have been developed by the UN Centre for Human Rights to support the *Paris Principles*.³⁵ The *Effectiveness Factors* recognized "accessibility" as a necessary feature of an effective human rights system. **When claimants have no independent right of access to an adjudicated remedy, a human rights system cannot claim to be accessible.**

The Human Rights Committee, in its 1999 Concluding Observations, expressed concern with the "inadequacy of remedies" for rights violations in Canadian human rights systems³⁶ and recommended that "the relevant human rights legislation be amended as to guarantee access to a competent tribunal and to an effective remedy in all cases of discrimination".³⁷

³³ With the exception of Quebec and British Columbia, discussed below.

³⁴ Centre for Human Rights, United Nations, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion of Human Rights*, Professional Training Series No. 5 (New York and Geneva: UN, 1995 Ch.II (a) at 66.

³⁵ Adopted by the UN General Assembly on December 20, 1993 to strengthen human rights commissions and agencies.

³⁶ Particular reference was made to violations of articles 2,3 and 26 of the Covenant.

³⁷ ¶¶9

The Committee on Economic, Social and Cultural Rights, in its December 1998 Concluding Observations, also called for legislative amendments, at the federal and provincial level, to allow access to an adjudicative tribunal for human rights claimants, “with the provision of legal aid to vulnerable groups.”³⁸

As is apparent from the Fifth Periodic Report filed by Canada and the provinces,³⁹ the recommendations of the two Committees have not been acted upon. The Canadian government, in its report to this Committee, does not respond specifically to the issue of access to a hearing, but instead refers to its establishment, in 1999, of an independent panel to review possible reforms to its legislation. The independent panel, the Canadian Human Rights Act Review Panel, issued its report in June 2000, strongly recommending that the human rights process be changed to allow claimants to have direct access to a hearing, with provision for appropriate legal assistance and support in taking claims forward.

Five years later, the federal government has not only failed to implement the Review Panel recommendations, but it has yet to make any formal response to the specific recommendations. In its report to this Committee, the government offers only that it has undertaken “a cost analysis of various structural models”; no assurance is given that it will bring forward legislative amendments to meet the concerns raised in the 1999 Concluding Observations.

Indeed, the Fifth Periodic Report indicates that, in one important respect, the **government has moved in the opposite direction from what was recommended by this Committee in 1999**: the Commission now refers some cases to the hearings tribunal without providing any legal representation or support to the claimant. In the past, although only a small percentage of complaints were referred to the Tribunal for a hearing, the Commission provided legal representation to every claimant referred to the Tribunal.

In their reports to this Committee, the provinces of Ontario, Alberta, Manitoba, Nova Scotia, Saskatchewan⁴⁰, Prince Edward Island and Newfoundland, as well as the Territorial governments, do not respond to the issue of “guaranteed access to a competent tribunal” and to an “effective remedy” in human rights claims, notwithstanding its inclusion in paragraph 9 of your *List of Issues*.

In the case of Ontario, the latest figures on complaint resolution offered by the government to this Committee were for 2002/2003, when 1,776 new complaints

³⁸ ¶51

³⁹ The right of access to a hearing was in place in Quebec prior to 1999, and has remained. The province of British Columbia has revised its legislation – see discussion below.

⁴⁰ Saskatchewan has a system that could be described as a split gatekeeper model. The Commission acts as gatekeeper to its own services in litigating human rights cases before the adjudicative tribunal. A complainant whose case is not taken up by the Commission can apply to the tribunal on his/her own, retaining private counsel. However, the tribunal acts as gatekeeper to its own hearing process and may decline to hear the complaint.

were filed at the Commission and the average age of complaints in the same period was 11.5 months. The Ontario government does not report that in the same year, only 58 complaints were referred to a hearing, comprising 2.97% of all complaint files closed in that fiscal year. Although a somewhat higher number of complaints were taken forward in the following year, hundreds of complaints were again dismissed without a hearing.⁴¹

The Ontario Ministry of the Attorney General is currently conducting discussions on possible reforms to the complaint resolution process, including consideration of changes that would allow claimants to have direct access to the Human Rights Tribunal of Ontario. Advocacy groups for groups designated under the Ontario *Human Rights Code* have emphasized two points to the Attorney General that were also noted in the Concluding Observations of this Committee in 1999 and the Committee on Social, Cultural and Economic Rights in 1998:

- The need for guaranteed access and prompt determination before a competent tribunal; and
- The need for the provision of legal services to claimants.

It will be useful if this Committee can again emphasize these fundamentals to the Ontario government, as well as to all governments at provincial, territorial and federal levels.

British Columbia is the only province that has made legislative changes to the claim resolution process since 1999. The province has enacted new legislation granting a right of access to a hearing tribunal, but at the same time, abolishing the human rights commission that formerly was responsible for investigation of human rights violations, public education and policy development.

The new British Columbia human rights regime fails to meet the standards set by the *Paris Principles* in that there is no longer a provincial institution responsible for the following responsibilities delineated therein:

- reporting on rights issues and violations;
- preparing reports and opinions on the protection and promotion of human rights;
- reviewing new legislation and administrative decisions;
- promoting ratification of international human rights instruments;
- participating in research and teaching of human rights; and
- publicizing efforts to combat discrimination, particularly racial discrimination, through education and media.

⁴¹ In 2003/2004, the Commission referred 89 new matters to the Tribunal for a hearing, including a group of several related complaints that were combined and referred as one proceeding.

Notably absent under the new British Columbia regime are two positive features of the former legislation:

- a Commission with the capacity to investigate possible human rights violations, either on its own initiative or upon receipt of a complaint; and
- full legal representation available to complainants at every stage of their interaction with a Tribunal.

Also because shorter time limits for filing complaints were imposed, and complaints can be dismissed on preliminary motions for technical reasons, most complaints do not proceed to hearings on the merits. This new British Columbia model, although appearing to guarantee a hearing of claims, has actually resulted in roughly the same number of hearings on the merits as under the previous system that featured a Commission veto over hearing access.⁴²

Recommendation:

That this Committee call upon Canadian federal, provincial and territorial governments to take positive measures to reform the human rights enforcement process to include:

- **the removal of the human rights commission veto over hearing access, so that claimants have the ability to take their claims directly to a hearing on the merits;**
- **the enhancement of the capacity of human rights commissions, including their policy and public education functions and their capacity to conduct investigations into possible violations, upon receipt of a complaint or on their own initiative; and**
- **the provisions of appropriate legal supports for claimants to take claims forward to a hearing without representation by a human rights commission.**

⁴² Conversation with Shelagh Day, Editor of the Canadian Human Rights Reporter, which publishes the full text of all human rights, decisions in Canada.

D. Failure to Address Homelessness

Article 6 - Right to Life

In its 1999 Concluding Observations, the Committee expressed concern that homelessness in Canada “has led to serious health problems and even to death”. The Committee recommended that Canada “take positive measures required by article 6 to address this problem”.⁴³

The Committee on Economic, Social and Cultural Rights in its 1998 Concluding Observations, also expressed concern about “homelessness and inadequate housing as a national emergency”, urging Canada to “implement a national strategy for the reduction of homelessness and poverty”.⁴⁴

In the Fifth Periodic Report, Canada has reported on a series of post-1999 funding announcements and federal/provincial agreements designed to address homelessness and the shortfall in affordable housing.⁴⁵ However, despite repeated announcements of projected spending of almost \$1 billion by 2008/2009, the reality is that very few new homes have actually been delivered.

Homelessness continues to be a very visible and pressing problem in Canada. Although it is not possible to accurately count the homeless,⁴⁶ estimates range from 100,000 to 250,000 persons.⁴⁷

The health impacts of homelessness are severe and life-threatening. A 2001 study published in the Canadian Medical Association Journal, found “homeless people have a greatly increased risk of death” and “suffer from a wide range of medical problems”. For example, compared with the general youth population of Quebec, mortality rates among street youth in Montreal are 9 times higher for males and 31 times higher for females. Among men using shelters for the homeless in Toronto, mortality rates are 8.3 times higher than the mean for 18–24 year olds, 3.7 times higher than the mean for 25–44 year olds and 2.3 times higher than the mean for 45–64 year olds.⁴⁸

A second 2004 study collected data on the homeless population in two Canadian cities, Toronto and Montreal, and compared data from studies in five other non-Canadian cities. **The risk of death among homeless women in Canada was**

⁴³ 1999 Concluding Observations, HRC ¶¶ 12.

⁴⁴ CESCR, Concluding Observations, December 4, 1998, ¶¶24, 28, 34, 46.

⁴⁵ Fifth Periodic Report, Canada, ¶¶35-40.

⁴⁶ For example, the group of homeless is comprised of the individuals sleeping outside ,as well as individual who sleep in shelters and church basements, in cars and on other people’s floors and couches, and people at risk of homelessness. These are referred to as the absolute houseless , the concealed homeless and the at risk population: David Hulchanski, *A New Canadian Pastime? Counting Homeless People*, (Toronto: CUCS U. of T. , Dec. 2000)

⁴⁷ See for example: David Hay, *Housing, Horizontality and Social Policy*, (Ottawa, Canadian Policy Research Networks Inc., March 2005).

⁴⁸ Stephen Hwang, “Homelessness and Health”, *Canadian Medical Association Journal*, January 23, 2001: 164(2), p.230.

greater than that among women in the general population by a factor of 4.6 to 31.2 in the younger age group and 1.0 to 2.0 in the older age group.⁴⁹

In the face of this critical problem, what have Canadian governments done to address homelessness? What “positive measures” have been taken in response to recommendation 12 of the Committee’s Concluding Observations in 1999?

Canada’s Periodic Report gives projected spending figures under housing programs, particularly the new Affordable Housing Program, launched in 2001, but gives no numbers on new affordable housing units delivered. Ontario is the only province that has released audited reports, revealing that **only 63 new units were actually built in Ontario** under the new program between January 1, 2001 and March 31, 2004.

Moreover, even if the Affordable Housing Program is fully delivered in Ontario, it will not meet the needs of low-income households because “housing affordability” continues to be defined primarily as rents at or below average rent in a community, as determined annually in the CMHC private rental survey.

The shortage of new affordable housing has put pressure on the waiting lists for subsidized housing. In Ontario alone, there were 124,785 low-income households on the active municipal waiting lists for subsidized housing at year-end 2004.⁵⁰ In the City of Toronto, where 34% of Ontario’s tenants live, 49,329 households were on the active waiting list.⁵¹ Applicants in Ontario often wait for three to ten years before they are placed in subsidized housing, especially families who make up the greatest proportion (42%) of households on the subsidized housing waiting lists.⁵²

Canada’s national housing agency, Canada Mortgage and Housing Corporation (CMHC) reports that **1.7 million households were in core housing need**⁵³ in

⁴⁹ Cheung, Angela M. and Hwang, Stephen W., “Risk of death among homeless women: a cohort study and review of the literature”, *Canadian Medical Association Journal*, April 13, 2004; 170(8), p. 1243

⁵⁰ Ontario Non-Profit Housing Association, *2005 Assessment of Waiting List Statistics For All Service Manager Areas in Ontario*, July 2005, p 2.

⁵¹ *Ibid*, p.4.

⁵² *Ibid*, p.6.

⁵³ Canadian households are considered to be in **core housing need** if they do not live in and could not access **acceptable housing**. **Acceptable housing** refers to housing that is affordable, in adequate condition, and of suitable size.

- Adequate dwellings are those reported by their residents as not requiring any major repairs.
- Suitable dwellings are not crowded, meaning that they have enough bedrooms for the size and make-up of the resident households, according to National Occupancy Standard (NOS) requirements.
- Affordable dwellings cost less than 30% of before-tax household income.

2001⁵⁴, comprising 15.8% of Canadian households. This incidence of core housing need is higher than the rate a decade earlier: in 1991, core housing need households comprised 13.6% of Canadian households.⁵⁵

Nearly one in three renter households (30.4%) were in core housing need in 2001, while the incidence among owners was only 8.6%.⁵⁶ The actual number of households in core housing need increased between 1996 and 2001 in three provinces: Alberta, Ontario and Nova Scotia.⁵⁷

The impact of the shortage of affordable housing is felt disproportionately by vulnerable groups including low-income households. The 2001 data shows that the incidence of core housing need amongst Aboriginal people living off-reserve (25%) and recent immigrants (33%) is considerable higher than for the general population.

Looking specifically at renter households, the incidence of core housing need amongst lone parents and Aboriginals is very high at 42% and 38% respectively. Seniors are also disproportionately affected: approximately 53% of seniors over 65 or living alone in rental housing are in core housing need.⁵⁸

The discriminatory impact of the failure of government initiatives to address homelessness and affordability is also demonstrated by an examination of poverty levels in designated groups. Women, female lone-parent families, people with disabilities⁵⁹, Aboriginal people and new immigrants⁶⁰, all of whom are over-represented in the population living below the poverty line.

For example, the 2001 Canadian census revealed that some 31% of Aboriginal households were classified as low-income, compared to only 12% of non-Aboriginal households.⁶¹ Aboriginal persons are over-represented in Canada's homeless population by a factor of 10.⁶²

⁵⁴ 2001 Census Housing Series: Issue 2 – *The Geography of Household Growth and Core Housing Need, 1996-2001*. Canada Mortgage and Housing Corporation, February 2004.

⁵⁵ Ibid.

⁵⁶ 2001 Census Housing Series: Issue 3 – *The Adequacy, Suitability and Affordability of Canadian Housing*. Canada Mortgage and Housing Corporation, April 2004.

⁵⁷ Carter and Polevychok, *Housing is Good Social Policy*, Canadian Policy Research Networks Inc., Dec. 2004, p.10.

⁵⁸ Ibid., p.10.

⁵⁹ 27.9% of working-age adults with disabilities lived below the Low -Income Cut-Offs, as compared to 12.7% in the non-disabled population: Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development, 2003) at 34

⁶⁰ Low-income rates for new immigrants rose from 25% to 36% between 1980 and 2000, while low-income rates for native-born Canadians fell from 17% to 14.9% during the same period: Garnett Picot and John Myles, *Poverty and Inclusion: Income Inequality and Low Income in Canada* Policy Research Initiative 7:2 (Dec. 2004), online: Policy Research Initiative <http://policyresearch.gc.ca/page.asp?pagenm=v7n2_art_03>

⁶¹ Statistics Canada, *Census 2001*, Topic-based Tabulations, Aboriginal Peoples of Canada, Cat.No. 97F0011XCB2001047

Women are also disproportionately affected by the lack of adequate, affordable housing. In 2002, 51.6% of single mothers, 41.5% of unattached women over sixty-five and 35% of unattached women under sixty-five were living below the poverty line.⁶³ The situation of single mothers has deteriorated: the percentage who are poor rose to 52% in 2003 from 44.5% in 2001.⁶⁴

The failure of Canadian governments to introduce a comprehensive and effective national strategy to address homelessness and the affordable housing crisis is particularly discouraging when considered in light of the very healthy financial surpluses enjoyed by the federal government in recent years. The federal government has been sitting on eight consecutive years of surplus budgets, while not spending adequately on social programs that could significantly reduce poverty and inequalities in Canada.⁶⁵

The reality is that the federal government can well afford to make an ongoing serious commitment to rebuild social programs and affordable housing programs to address homelessness with a comprehensive national strategy.⁶⁶

Recommendation:

That this Committee call on the Canadian government, in co-operation with the provinces, to:

- **develop a comprehensive national strategy to address homelessness and the affordable housing crisis;**
- **revise affordable housing supply programs to reflect real poverty levels of households in need.**

(available online: <http://www12.statcan.ca/English/census01/home/Index.cfm>).

⁶² Individuals of Aboriginal origin account for 35% of the homeless population in Edmonton, 18% in Calgary, 11% in Vancouver and 5% in Toronto, but only 3.8%, 1.9%, 1.7% and 0.4% of the general population of these cities respectively: Stephen Hwang, "Homelessness and Health" (2001) 164(2) CMAJ (online: e;CMAJ <<http://www.cmaj.ca/cgi/content/full/164/2/229>>

⁶³ Canadian Feminist Alliance for International Action, "A Decade Of Going Backwards, Canada in the Post-Beijing Era, Response to UN Questionnaire on Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly" (2000), [Http: /www.fafia-afai.org/docs/B10_shadow_10CCE6.doc](http://www.fafia-afai.org/docs/B10_shadow_10CCE6.doc) (date accessed: 12 October 2005).

⁶⁴ <http://www40.statcan.ca/l01/cst01/famil41a.htm>

⁶⁵ *Alternative Federal Budget 2005: Budget in Brief*. Canadian Centre for Policy Alternatives, February 17, 2005.

⁶⁶ Russell, Ellen. *Debunking the U-shaped Budget Surplus*. Canadian Centre for Policy Alternatives' Behind the Numbers: economic facts, figures and analysis, Volume 7, Number 1, February 22, 2005.