



The Canadian Observatory on
Homelessness' Submission to the
National Consultation on a Human
Rights-Based Approach to Housing

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About the COH

The Canadian Observatory on Homelessness (COH) is a non-partisan research and policy partnership between academics, policy and decision makers, service providers and people with lived experience of homelessness. Housed at York University, the COH evolved out of a 2008 Social Sciences and Humanities Research Council funded project called the Canadian Homelessness Research Network. Led by Dr. Stephen Gaetz, CEO & President, the COH collaborates with partners to conduct and mobilize research that contributes to better, more effective solutions to homelessness.

In an effort to bridge the gap between research, policy and practice, the COH goes beyond the mandate of a traditional research institute. As the largest homelessness-dedicated research institute in the world, we support service providers, policy makers, and governments to improve their capacity to end homelessness. Our philosophy is simple: through research, evaluation and design, we can develop evidence-based solutions and together, solve homelessness.

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Introduction

As the details of the National Housing Strategy roll out, the Government of Canada continues to make its intentions clear: the forthcoming housing strategy will be rooted in a human rights-based approach. The Canadian Observatory on Homelessness lauds this commitment.

During this consultation phase, we offer our perspective on how the government can develop, implement and most importantly, guarantee a right to housing. To do so, they must go beyond a human rights approach. To see an end to homelessness in Canada — and access to safe, affordable housing for all — the Government of Canada must make an explicit, actionable and judiciable commitment to housing as an inalienable human right.

Toward this effort, we make the following recommendations. These recommendations are formed in consultation with A Way Home Canada, the Canadian Alliance to End Homelessness and other knowledgeable stakeholders. We draw heavily from the recommendations made by Leilani Farha, UN Special Rapporteur on the Right to Adequate Housing. The strategies set forth by the Special Rapporteur provide a strong, principled foundation from which to build the National Housing Strategy on.



Ending homelessness is a priority

1

Homelessness is a violation of human rights law. A rights-based approach to housing can only be realized through an explicit, time-bound and measureable commitment to prevent and end homelessness.

The foundation of the right to housing legislation and policy must recognize all instances of homelessness as the most egregious violation of the right to housing. Recognized as such, Canadian governments must take immediate action to eliminate homelessness across the country. The Government of Canada's commitment to reduce chronic homelessness by 50% is not aligned with its own vision for a rights-based approach to housing. As the [CAEH notes](#), chronic and episodic homelessness accounts for less than 15% of the people experiencing homelessness; thus, a 50% reduction of chronic homelessness falls well short of the government's obligations.

Thus, the National Housing Strategy should articulate a commitment to ending homelessness in Canada by 2030. As recommended by the [Advisory Committee on Homelessness](#), this commitment must include a roadmap for coordinated federal action; a basis for better-targeted investments; and a vehicle for collaboration with provinces, territories, local governments and Indigenous leadership.



Declaring a right to housing

2

The Government of Canada must embrace the “Ten Principles of Rights Based Housing Strategy” [outlined](#) by the UN Special Rapporteur on the Right to Adequate Housing, Leilani Farha, at the 37th Session of the UN Human Rights Council (2018).

We recognize and endorse the Special Rapporteur’s principles of a rights-based housing strategy. Together, they provide a clear, effective and actionable roadmap to implementing a rights-based approach. We urge the Government of Canada to take leadership, and all levels of government to take action, by declaring accountability to these principles.

[Ten Principles of a Rights Based Housing Strategy](#)

Principle 1

based in law and legal standards

- Is there legislation to give the housing strategy legal effect?
- Does it recognize the primacy of the right to housing as a legal right subject to effective remedies?
- Does it map a process for its realization, identifying both immediate and progressive obligations consistent with maximum of available resources?

Principle 2

prioritize those most in need and ensure equality

- Does the strategy prioritize those most in need, ensure substantive equality and respond to the particular circumstances of groups facing discrimination?
- Are the effects of colonization addressed in a manner consistent with the United Nations Declaration on the Rights of Indigenous Peoples?



Principle 3

comprehensive and whole-of-government

- Is the strategy comprehensive, including all dimensions of the right to housing and addressing all relevant issues, policies, groups and regions?
- Does it engage all levels and spheres of government?

Principle 5

accountable budgeting and tax justice

- Does the strategy ensure the allocation of maximum available resources?
- Does it include measures to address inequalities and injustices in the tax system, including tax avoidance, and does it ensure that taxation promotes the realization of the right to housing?

Principle 7

accountability and monitoring

- Does the strategy provide for an independent monitoring body with jurisdiction to address systemic issues directly with Governments and in a variety of forums?

Principle 9

clarify the obligations of private actors and regulate financial, housing and real estate markets

- Does the strategy clarify the obligations of private actors and ensure regulation of financial, housing and real estate markets, consistent with all aspects of States' obligations, including the obligation to fulfil the right to housing?

Principle 4

rights-based participation

- Does the strategy ensure rights-based participation through specific mechanisms?
- Is meaningful participation guaranteed in the design, implementation and monitoring of the strategy, and is support provided for the participation of marginalized groups?

Principle 6

human rights-based goals and timelines

- Does the strategy include reasonable goals and timelines that are based on human rights indicators and subject to rigorous monitoring and enforcement?

Principle 8

ensuring access to justice

- Does the strategy ensure effective claiming mechanisms for the right to housing through courts and other means, including where violations result from failures to progressively realize the right to housing?

Principle 10

implement international cooperation and assistance

- Does the strategy incorporate international cooperation and assistance and engage international financial institutions so as to address global challenges to the right to adequate housing?

A vision for housing

3

The legal category of ‘housing’ referenced in ‘Right to Housing’ legislation and policy must, at minimum, refer to affordable, accessible, safe and good quality housing.

4

Choice, voice, and self-determination must remain paramount in the implementation of a Right to Housing. Age, disability, background, or any other characteristics must not preclude the protection of any individual’s self-determination with respect to their right to housing.

The state’s burden to protect a person’s right to housing is not met for those who are residing within shelters or drop-ins, or are residing within buildings which are overcrowded, inaccessible, lack access to clean water and sanitation, or are of poor quality.

Moreover, we strongly [agree with the CAEH](#) that the federal government should adopt the UN’s more comprehensive definition of adequate housing. It includes considerations for: legal security of tenure; accessibility, location; availability of services to support health, security, comfort and nutrition and expectations that housing must enable the expression of cultural identity and diversity of housing.

We will not end homelessness until we can prevent it from happening. To do so, we must provide more than a roof, but the opportunity for individuals to live with security, peace and dignity. Only then will we prevent experiences of homelessness driven by factors such as unsafe living conditions, violence, alienation and discrimination.



Promoting equity and inclusion

5

Within the National Housing Strategy, and ensuing legislation, there must be acknowledgement that groups such as Indigenous Peoples, youth, women, racialized minorities, people living with disabilities, seniors and LGBTQ2S identified, face systemic and structural barriers to obtaining and maintaining housing.

Ensuring the protection of the right to housing for some of the most vulnerable people in Canada (e.g., victims of human trafficking with precarious legal status) should be paramount, and will require creativity, innovation, and a community-based approach. In particular:

4.1 Supporting Youth The Canadian government should adopt a tailored approach to protecting children and youth’s right to housing. To do so, we reiterate A Way Home Canada’s recommendations on building an approach to housing that recognizes and champions the rights of youth. We are mindful that Canada is currently not living up to its obligations as a signatory to the Convention on the Rights of the Child (CRC), which clearly outlines the economic and social rights of children (up to the age of 18) to housing, an adequate standard of living, food, work, education and health. The obligations of government are further outlined in [Youth Rights Right Now: Ending Youth Homelessness, A Human Rights Guide](#).

The Government of Canada and all provinces/territories:

- Should establish a Child and Youth Housing Advocate who assesses the Canadian government’s progression towards the realization of all children and youth’s right to housing.
- Ensure youth is a priority in strategies and systems plans to address homelessness by all orders of government, and that there be a stronger emphasis on prevention
- Meaningful participation by youth in developing programs
- Educate young people on their rights



4.2 Newcomers Housing is a universal right, afforded to all humans regardless of citizenship, race, gender, age, or sexuality. Thus, the legal right to housing in Canada must not be dependent upon Canadian citizenship. As we see [a rise in homelessness](#) among refugees and refugee claimants, it is imperative that the government takes positive, demonstrable measures to ensure the right to housing for everyone in Canada.

In so doing, we must not create additional risks of deportation for these individuals or their families. Major urban centres with high rates of migration should adopt sanctuary city policies to meet this growing need.

6 *Adjudication and assessment of Canada's progress towards implementing a human right to housing must adopt a highly inclusive and participatory approach to assessment, placing those most directly affected at the table with decision makers.*

Engagement with those most effected must occur at every stage of process, including the implementation and assessment of a right to housing. We strongly endorse the recommendations made by [Dr. Emily Paradis in Canada's Rights-Based National Housing Strategy: Principles and Mechanisms for Rights-Based Participation of those with Lived Experience](#). Dr. Paradis urges that the government create a framework for meaningful participation from people with lived experience.

[Lived Experience Advisory Council: Seven Principles for the Leadership & Inclusion of People with Lived Experience of Homelessness](#)

1. Bring the perspective of our lived experience to the forefront.
2. Include people with lived experience at all levels of the organization.
3. Value our time and provide appropriate supports.
4. Challenge stigma, confront oppression, and promote dignity.
5. Recognize our expertise and engage us in decision-making.
6. Work together towards our equitable representation.
7. Build authentic relationships between people with and without lived experience

Self-determination, reconciliation and respect

7

Reconciliation and respect for Indigenous sovereignty, self-determination, and governance must be embedded within the implementation of a right to housing in Canada.

The human right to housing is indivisible from, and interdependent on, all other human rights. This means that in order to guarantee a right to housing, the Canadian government must also ensure all other civil, political, economic, social, and cultural rights. As such, the Canadian government must fulfill its obligations as a signatory of the UN Declaration on the Rights of Indigenous Peoples. This includes:

- Recognizing Indigenous Peoples as distinct Peoples who should not be subjected to genocide or other acts of violence, including forcibly removing children
- Indigenous Peoples have a right to improve their economic conditions without discrimination, including education, employment, housing, health, sanitation, etc.
- Indigenous Peoples have the right to determine priorities and strategies for their own development and administer programs through their own institutions
- States are obligated to ensure Indigenous Peoples have the highest standard of physical and mental health.

8

The rights outlined above must be realized within a framework of reconciliation. The Truth and Reconciliation's Calls to Action provide tangible actions that must be completed in order to address the legacy of residential schools. Many of the 94 calls to action are directly related to a right to housing, including:

- Fully adopting the UN Declaration on the Rights of Indigenous Peoples
- Fully implementing Jordan's Principle
- Eliminate educational and employment gaps between Indigenous and non-Indigenous Canadians, including ending the backlog of First Nations students seeking post-secondary education
- Recognize and provide adequate funding to address the unique health needs of Indigenous Peoples, including sustainable support for Indigenous healing centres
- Eliminate the over-representation of Indigenous Peoples in the criminal justice system, including young people in custody

Actionable and enforceable

9

Access to justice must be a cornerstone of the implementation of a right to housing in Canada.

As identified in the UN Special Rapporteur on the Right to Adequate Housing's 10 principles of a rights-based housing strategy, access to justice is often a missing component in housing strategies. In the context of the right to housing, is essential that the Canadian government ensure equitable access to justice, particularly given that poverty and homelessness often create barriers to effective legal support and representation. Providing the Canadian public with knowledge about their legal right to housing, access to free legal clinics, and access to free legal representation, will all be key components of ensuring the right to housing is protected for all people in Canada. The Canadian government must particularly ensure that communities who often face barriers to accessing justice (e.g., poor communities) are provided with these tools.

10

The right to housing in Canada must be accompanied by a commitment to ensuring this right is judiciable. This means that the Canadian government must not merely assert a right to housing – it must provide accessible, equitable, and effective mechanisms through which Canadians can pursue legal remedies, should their right to housing be violated.

To ensure a judiciable right to housing in Canada, the Canadian government must develop a system capable of assessing and remedying violations of individuals and families' housing rights. Such a system, and adjudicative bodies within it, must:

- Remain independent of government and be appointed by Parliament
- Be developed in partnership with affected communities and Peoples, including Indigenous Peoples and people experiencing poverty or homelessness
- Ensure that legal remedies offered are time sensitive and take into consideration individuals' and families' socioeconomic status and unique needs, experiences, and preferences
- Ensure that one's background, home community, identity, language, experiences (e.g., criminal justice involvement), or demographic characteristics (e.g., age) does not affect one's access to effective and timely legal remedies
- Be rigorously reviewed on a regular basis to ensure equity, accessibility, and efficacy are maintained across the system
- Be grounded in a respect for Indigenous Peoples autonomy and self-determination, and negotiate with Indigenous Peoples on a nation-to-nation basis on how best to implement this system in partnership with Indigenous Peoples

11

In order to ensure the judiciability of the right to housing, the right to housing must be accompanied by a 'Duty to Assist' on the part of the Canadian government.

A Duty to Assist means there is a statutory requirement to offer people who are at risk of, or experiencing homelessness housing-led supports that address the underlying issues, which make individuals and families vulnerable. It means that communities are provided with necessary resources and supports by higher levels of government to enable them to fulfill the requirement of providing information, advice and assistance to people who are vulnerable to homelessness in a reasonable amount of time. Such assistance should not be designed to simply direct people to low barrier emergency shelters or day programs, but rather, should result in people being housed. A Duty to Assist, then, means that supports are offered in a practical way which help an individual or family avoid homelessness, or minimally make that experience as short as possible.

Within respect to this obligation, all people should be able to challenge the Canadian state to support their human right to housing, as many times as needed. The state's prior protection of an individual or family's right to housing does not preclude the state from subsequent obligations – the Canadian government has an ongoing obligation.

As an example, the concept of Duty to Assist has been put in practice in Europe with the [Housing \(Wales\) Act of 2014](#), which articulated a comprehensive and rights-based approach to homelessness prevention. Under this legislation, the state has a legal obligation to ensure the prevention of homelessness for individuals and families within a 60-day period.