

**Submission Regarding the Development of a  
Provincial Long-Term Affordable  
Housing Strategy**

**Presented To Minister Jim Watson,  
Minister of Municipal Affairs and Housing**

**December 23, 2009**

**Presented By Hamilton's Community Legal Clinics**

## **INTRODUCTION**

The Hamilton Community Legal Clinics are non-profit legal clinics funded through Legal Aid Ontario to provide free legal advice and representation to low-income residents of the City of Hamilton and surrounding areas. The Clinics have operated in Hamilton since 1978.

Among our many services, we regularly provide advice to clients on rental housing issues and represent them in eviction applications before the Landlord and Tenant Board ('LTB'). We also provide Tenant Duty Counsel services at the Hamilton and St. Catharines locations of the LTB. As such, we have expertise in the *Residential Tenancies Act*. In addition, many of our clients live in social housing, so we have developed an expertise in the *Social Housing Reform Act* ('SHRA') as well. We also advise and represent members of co-operative housing facing eviction applications at the Superior Court of Justice.

The clients we serve are persons living in poverty and are thus in need of accessing and/or maintaining affordable housing. Our clients include persons with physical and mental disabilities, families headed by single parents, and new Canadians, among other groups. When our clients approach us for assistance, it is because they are facing homelessness through eviction or are experiencing other serious legal issues with their housing. Through our front-line experience in providing legal services to these groups, we are able to offer some informed and practical recommendations on law reform to improve access to and maintenance of affordable housing in Ontario.

### **Endorse ACTO and HNO Documents**

The Hamilton Community Legal Clinics endorse the submissions of the Advocacy Centre for Tenants Ontario and the Housing Network of Ontario. In addition, we wish to highlight some issues that particularly affect the tenants that we serve in Hamilton and the surrounding areas.

### **Housing is a Right**

Affordable housing includes housing that is not only low-cost, but also well-maintained, accessible, safe and secure.

In addition, we believe that a long-term affordable housing strategy should address the need for access to justice for low-income tenants facing eviction from their homes. Many of these tenants currently face barriers to achieving justice in their disputes and eviction proceedings by their landlords. Achieving justice in these matters involves not only granting tenant's substantive rights, but also procedural rights. In our view, greater procedural fairness for tenants is needed to ensure fair decision-making by a housing provider, service manager, tribunal or court (as the case may be).

The issue of human rights in housing must also be addressed in the development of this strategy. Human Rights with regard to housing can be described by two broadly defined categories:

- 1) The Right to Housing which clearly places positive obligations on government and civil society to realize that right

and

2) the right to non-discrimination with regard to accommodation and to live free from harassment.

Canada has ratified the United Nations International Covenant on Economic, Social & Cultural Rights which contains a 'right to housing' within the broader right to an adequate standard of living as enunciated in Article 11 of the Covenant (which reads in part):

*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing**, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. (Bolding ours)*

Hamilton's Income Security Working Group wrote a report to the United Nations Committee on Economic, Social and Cultural Rights entitled "**The Right to An Adequate Standard of Living in Hamilton**". The report was submitted in 2006 in anticipation of the Committee's periodic review of Canada with regard to the Covenant.<sup>[1]</sup> Subsequently, in its most recent periodic review of Canada's compliance with the International Covenant, the United Nations Committee characterized the state of homelessness and inadequate housing as a "national emergency."<sup>[2]</sup>

What follows is based on the premise that everyone in our society has a right to an adequate standard of living and a right to adequate housing.

## **HOUSING AFFORDABILITY**

Housing affordability is a relationship between the costs of housing and the income of an individual or family.

In the absence of rent control, rents have skyrocketed. In the 10 year period from 1997 to 2007 rent increases in Hamilton<sup>2</sup> have outpaced inflation by 30%.<sup>3</sup> Unfortunately, real incomes have been relatively stagnant<sup>4</sup>, and for those on social assistance real incomes have actually decreased significantly.<sup>5</sup> This situation is exacerbated by the economic downturn as the social assistance caseloads continue to increase substantially.<sup>6</sup>

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<sup>[1]</sup> The report can be found at <http://www.ohrc.on.ca/en/issues/housing/overview>.

<sup>[2]</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights, Canada (E/C.12/CAN/CO/4, E/C.12/CAN/CO/5), para. 62.

<sup>3</sup>Communities Speak: A Summary of the 2009 Provincial Housing Consultations", by the Housing Network of Ontario, November 2009.

<sup>4</sup> "Incomes and Poverty in Hamilton" by Mark Fraser and Sara Mayo, Social Planning & Research Council, April 2009 at pp. 6-7

<sup>5</sup> Ibid at pp. 20-23

<sup>6</sup> See "City Adds 3000 cases to Soaring Welfare Load", by Denise Davy, The Hamilton Spectator, 19 November 2009

More generally, there is an affordability problem across the City as approximately 44% of renter households are spending more than 30% of their income on rent, while approximately 20% of renter households are spending more than 50% of their income on rent.<sup>78</sup>

- ***Social Assistance Shelter Allowance***

Currently the shelter allowance portion of provincial social assistance is an arbitrary rate that is usually inadequate to maintain rental housing in Hamilton. This is particularly true for the Ontario Works program (generally referred to as ‘welfare’) where the shelter allowance portion regularly falls hundreds of dollars below actual vacant market rents in the City. While the shelter allowance under the Ontario Disability Support Program (generally referred to as ‘disability’) is higher, it remains less than what is often required to obtain and maintain a rental unit in the City of Hamilton.

The effects of this situation are dire for our community. The inadequacy of rates means that the vast majority of persons accessing foodbanks in our community are actually in receipt of provincial social assistance. In the 2007 Hunger Count report, Greater Hamilton Foodshare reports that about 72% of those accessing Hamilton’s foodbanks are in receipt of Ontario Works or Ontario Disability Support Program benefits.<sup>9</sup> About 42% of those depending on the foodbanks at that time were children. The situation has gotten worse since that time as the economic outlook has declined considerably. Community hunger hit record levels in March 2009, with nearly 20,000 accessing Hamilton’s foodbanks that month (up almost 30% from 2008).<sup>10</sup>

Sadly, due to cuts in the mid 1990s, current shelter allowance rates for Ontario Works are substantially less in unadjusted dollars than they were in the early 1990s.

This situation is critical for our community as many individuals and families are forced to rely on below-subsistence levels of social assistance.

Individuals and families face repeated economic evictions through the Landlord & Tenant Board because their social assistance cheque is not enough to pay the rent.

Children go to school hungry because their families cannot afford enough food. That child’s education is further handicapped from the start as s/he is forced to change schools regularly throughout elementary school as the family faces repeated economic evictions.

Women leaving abusive situations are often forced to choose between staying with an abuser or living in dire poverty.

The consequences for the future of our community are no less worrying. The rate and depth of poverty for those on social assistance will significantly affect individual and public health in the future and x education levels and crime rates as well.

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<sup>7</sup> Personal communication with the Social Housing and Homelessness Division at the City of Hamilton.

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<sup>9</sup> See “Hamilton Hunger Count 2007” by Greater Hamilton FoodShare, 2007. at page 2

<sup>10</sup> See “Emergency Help For Struggling Foodbanks”, by Dana Brown, The Hamilton Spectator, June 18, 2009

## **Recommendations**

1. The Ministry of Housing should work closely with the Ministry of Community and Social Services to ensure that the shelter allowance is raised immediately and that a system of evidence-based social assistance rates is implemented as soon as possible.
2. Establish an expert arms-length panel to recommend on an annual basis, evidence-based social assistance rates. The shelter allowance portion should vary between municipalities and should be determined based on the actual costs of rent and other shelter costs in communities across Ontario.
3. Rates should immediately be increased to 85% of average CMHC market rents. As there would be some lag time in implementing an evidence-based system of setting social assistance rates.
4. The government should immediately implement a \$100 healthy food allowance for individuals and couples without children. While this benefit may reduce reliance on food banks, it should also help prevent some evictions for these persons who did not benefit from the introduction of the Ontario Child Benefit.

- **Housing Allowances**

Ontario provides a patchwork of housing subsidy programs including at least two rent supplement programs. Unfortunately, the scarce nature of these resources means that many in our community are unable to access any assistance with their rent.

## **Recommendation**

5. Create a universal housing benefit available to all low-income Ontarians. The monthly benefit would pay 75% of the difference between actual rent paid and 30% of the recipient's income.

- **Utility Arrears Program**

The City of Hamilton currently provides utility arrears assistance well in excess of the money made available for this purpose by the Government of Ontario.

## **Recommendation**

6. The Government of Ontario should fully fund utility arrears programs across Ontario based on the Hamilton model where significant assistance is provided up to an annual maximum.

- **Rent Banks**

The Province of Ontario currently provides funding to a number of Rent Banks across the Province, including the Ontario Loan Fund operated by the Housing Help Centre in Hamilton.

Unfortunately, the demand for this program far outstrips the resources available and clients regularly report that the program is unable to assist them due to lack of funds.

It is further our understanding that the Ministry has recently directed that individuals and families in subsidized housing are prohibited from accessing assistance through loans funded through the Ontario Rent Bank Program. This policy change will have disastrous effects for many of our clients in social housing, many of whom find themselves in substantial arrears of rent after a retroactive calculation of their housing subsidy. These clients often represent some of the most vulnerable tenants in our community, and an eviction from social housing will often lead directly to absolute homelessness.

### ***Recommendation***

7. The Government of Ontario should substantially increase funding to the Rent Bank Program and that program should be made available to tenants of subsidized housing.

## **SOCIAL HOUSING REFORM ACT**

The Social Housing Reform Act was put in place in 2000. The Act approved the download of Ontario's social housing stock to municipalities and legislated an administratively complex set of rules and regulations. We believe some of these regulations should be amended or repealed.

- **Discretion Regarding Suitability**

Housing Providers are currently given too much discretion regarding accepting tenants based on their "suitability"

Section 18 of Regulation 339 of the SHRA allows housing providers to refuse to offer a unit to a household if "the housing provider has reasonable grounds to believe based on the household's rental history that the household may fail to fulfill the obligation to pay rent for the unit in the amount and at the times it is due."

We have found that housing providers are relying on this section to deny eligibility to low-income applicants in need of RGI assistance due to their poor credit, arrears owing to previous landlords and lack of landlord references. This section creates barriers for low-income persons in need of RGI assistance. Many low-income persons have arrears owing from their previous market rent units due to financial hardship in paying market rents. Low-income persons may also have rent arrears from former social housing providers due to retroactive recalculations of rent.

It must be noted that many low-income people lack landlord references for legitimate reasons, such as women leaving abusive spousal relationships and new Canadians who do not have a rental history in this country.

## Recommendation

8. Section 18 of Regulation 339 of the SHRA should be repealed in full.

- **Time period for Reporting Changes and Requesting Internal Reviews**

The current 10-day deadline for reporting changes in circumstances and for requesting an internal review is very onerous. Households often do not have enough time to seek legal advice regarding the internal review process and often do not have sufficient time to submit their documents verifying changes in circumstances or to respond to a decision about their RGI assistance.

## Recommendation

9. Section 10(1) of Ont. Reg. 298/01 should be amended to allow households 30 days to report a change in a document or information. Section 57(4) of Ont. Reg. 298/01 should be amended to allow households 30 days to request an internal review of a housing provider's decision affecting RGI assistance. Housing providers should maintain their discretion to extend time beyond these deadlines.

- **Retroactive rent calculations being treated as rent arrears**

Sometimes, households require retroactive rent recalculations due to changes in income (not amounting to material misrepresentation of income).

The SHRA is unclear regarding whether housing providers can treat an amount owed by the household due to retroactive rent calculation as rent owing under the tenancy agreement (i.e. as rent arrears). Some housing providers attempt to evict tenants at the LTB based on arrears that have arisen due to re-calculations of rent. It is very difficult for low-income households to pay large lump sum amounts in a short period of time in order to avoid eviction.

## Recommendations

10. Amend the SHRA to include a provision stating that the amount of rent owing by the tenant due to retroactive rent recalculation should be recovered by payment agreement within a maximum recovery rate of 5% of income and not treated as rent arrears.

11. Also amend the RTA to include a provision that prohibits housing providers from treating an amount owed by the household due to retroactive rent calculation as rent arrears (i.e. that would give the housing provider grounds to evict the household under the RTA). A province-wide policy should state that recovery of the overpayment should occur through a 5 to 10 per cent increase in the household's monthly rent until the overpayment is recovered.

- **Internal Reviews**

The internal review process is intended to give social housing tenants an opportunity to challenge an adverse decision about their eligibility for rent-geared-to-income or special needs housing. The current process for internal reviews permits limitless discretion to housing providers and lacks procedural fairness for tenants. Tenants find themselves at the mercy of the subsidized housing provider rather than in a forum where they can assert their rights and present their case to an impartial body.

**Recommendation**

12. Part VIII of the *Social Housing Reform Act* should be amended to include the following:

(a). A requirement that the housing provider must supply the household with comprehensive and specific reasons for a decision affecting the tenants' subsidy so that they know the case they must meet. For example, the housing provider should provide disclosure of the tenant's file; refer to particulars of incidents/documents/witnesses being relied on for decisions affecting subsidies.

(b) Where there are new grounds for a decision, a new decision should be issued. The housing provider should not be able to use the new grounds to justify an old decision.

{c} All Internal Reviews should be heard orally and the tenant should be given the right to make a full answer and defence to the allegations, present evidence, call witnesses and have access to interpreters and counsel. The housing provider must accommodate a tenant's disabilities in accessing the internal review hearing in accordance with the housing provider's obligations under the *Ontario Human Rights Code*.

- **Appeals**

All too often tenant advocates and clinic workers come across the situation where a tenant, whose income and eligibility for subsidized housing has not changed, has lost their subsidy due to a minor technicality such as failing to submit income information by a certain deadline. They are then required to pay market rent. If they fail to pay market rent, because they cannot afford it and their situation has not changed;, they are evicted on the basis of the arrears of market rent. Currently, there is no means of challenging a subsidy revocation and rent calculation in an eviction proceeding at the Landlord and Tenant Board.

**Recommendation**

13. Repeal Section 203 of the *Residential Tenancies Act* removing the prohibition on the Landlord Tenant Board from making determinations or reviewing decisions of subsidized housing providers concerning eligibility for subsidized housing and the amount of rent. This section should be replaced with a section making explicit that the Board has jurisdiction to determine the lawful rent even when that rent is subsidized through a government program.

- **Outstanding Charges for Repairs, Damages, and Arrears**

Presently outstanding charges to households for repairs to the unit and arrears claims are determined by the housing provider and referred to collection agencies for debt collection.

Unfortunately, the household can then be found ineligible for social housing if they owe a debt to a social housing provider, and it is often the case that households are required to enter into a repayment agreement for an unsubstantiated claim in order to get their name on the waiting list for social housing. This situation effectively turns the social housing waiting list into a collection agency for social housing providers, who are not required to prove their debt. It is assumed that these outstanding charges are correct putting a reverse onus on the tenant to disprove the subsidized housing provider's claims. Even where tenants do disprove the arrears/charges the housing provider has the discretion to move forward to collection and put the tenants' eligibility for social housing into question without ever having to prove the debt at a Tribunal or in a court of law. Anecdotally it seems that many of these claims are made after tenants move out in order to subsidize the costs of the housing provider's regular maintenance obligations under the *Residential Tenancies Act*.

## Recommendations

14. Amend the *Social Housing Reform Act* and Regulations to require the housing provider to prove on a balance of probabilities its claims for damages or repair charges and outstanding arrears before a fair and competent adjudicative authority such as the Landlord and Tenant Board or the Small Claims Court. The landlord should not be able to enforce any claims for outstanding repair or damage charges and arrears unless they are ordered by such an adjudicative authority.

15. Amend the *Social Housing Reform Act* to include a provision to permit housing providers to deny subsidized housing to tenants who have repairs/damage charges or rent arrears only when confirmed by order of a court or tribunal of competent jurisdiction.

## CO-OPERATIVE HOUSING REFORM

Persons living in subsidized units in co-operative housing formed under the *Co-operative Corporations Act* face additional barriers in challenging eviction applications. Co-op evictions proceed through an application to Superior Court (rather than through the Landlord and Tenant Board). The Superior Court is a much less accessible forum for unrepresented tenants due to the formality and rules arising from the Court's *Rules of Civil Procedure*. Low-income tenants are significantly deterred from defending such applications due to the legitimate fear of a substantial cost award being ordered against them if they are unsuccessful in their defence. There have been many cases where unrepresented parties have been ordered to pay several thousands of dollars (or more) in costs for the co-op's legal bills. For example, in the case of *Cornerstone Co-Operative Homes Inc .v. Spitchuk*, 2004 CanLII 4798 (S.C.J.) (J.W. Quinn J.), the unrepresented members were ordered by the Court to pay \$49,400 in costs to the co-op.

Members of co-ops also face barriers in asserting their rights to good maintenance and reasonable enjoyment of their units and the residential complex. Although members can raise these issues at meetings of the membership, the only way to enforce such rights is through a proceeding in Small Claims Court or in the Superior Court of Justice. Such proceedings are costly and generally more formal and complex than tribunal proceedings. In our experience, members are not pursuing such claims for these reasons.

### **Recommendations:**

16. Co-op evictions should be adjudicated at the Landlord and Tenant Board so that tenants have an accessible and less risky forum to challenge evictions. Such adjudication should be based on the grounds for eviction set out in the *Residential Tenancies Act*. Adjudication should include a hearing de novo to ensure fair and unbiased decision-making.

17. Grant co-op members the right to enforce their rights through tenant applications at the Landlord and Tenant Board.

## **REFORM OF THE RESIDENTIAL TENANCIES ACT**

### **• The Lack of Procedure to Set Aside Eviction Orders**

On occasion, a tenant will miss an eviction hearing for a valid reason, such as illness, family emergency, inclement weather, or other extenuating circumstances. In addition, a tenant may not have been aware of a hearing if the landlord did not serve them with hearing documents. Currently, a tenant who has missed a hearing must file a Request for Review with the Landlord and Tenant Board. Such a request costs a tenant \$50.00 to file. This fee is prohibitive for many low-income tenants, particularly those who are living on social assistance. As such, the current Review process is a barrier to access to justice for tenants at imminent risk of homelessness due to an eviction order.

### **Recommendation:**

18. Amend the RTA to allow a tenant to bring a motion to set aside an eviction order within 10 days of the order being issued. Such a motion should automatically stay an eviction order pending the hearing of the motion.

### **• The Lack of a Fee Waiver Mechanism**

Tenants are provided with many protections under the RTA, such as a right to good maintenance of their unit and the residential complex. However, we have found that many low-income tenants are deterred from enforcing their rights due to the costs involved with filing an application at the Board. For instance, to file an Application about Maintenance, a tenant must pay \$45.00. Although this may not seem like a substantial amount of money, this amount is unaffordable for many of the tenants living on social assistance, on a fixed pension income, or for the working poor. In contrast to all of the courts in Ontario, there is no fee waiver mechanism at the LTB. This is a serious barrier to access to justice for tenants and it negatively impacts the quality of their housing.

### **Recommendation**

19. The LTB should develop and implement a fee waiver application and policy for tenants intending to file applications at the LTB. The financial eligibility criteria for such a policy could be modelled from the Ontario courts criteria for fee waivers.

## HUMAN RIGHTS IN HOUSING

The Hamilton Community Legal Clinics endorse the Ontario Human Rights Commission's *Policy on Human Rights and Rental Housing*.

Discrimination in rental housing is a common and recurring issue for our client group interfering with tenants' maintenance of affordable housing.

At particular risk of eviction are tenants with disabilities whose disabilities may cause behavioural issues when landlords fail to accommodate such disabilities. This is particularly true for tenants with psychiatric disabilities. For instance, a landlord will apply a seemingly neutral requirement that tenants not interfere with the landlord's or other tenants' reasonable enjoyment of the premises. However, if their behaviour is a symptom of their psychiatric disabilities, the application of this requirement to these tenants will adversely affect them and amount to constructive discrimination under the *Human Rights Code*.

The eviction of a tenant should be a landlord's remedy of last resort. Much of the alleged "substantial interference" can be remedied if landlords proactively explore options to accommodate the tenants' disabilities. In some cases, landlords may not know that a particular tenant's disability is causing the impugned conduct. However, we often find that, particularly in social housing units, the landlords are aware of the tenant's disabilities, yet do not take any meaningful steps to accommodate the disabilities prior to initiating eviction proceedings. The landlords, thereby, fail to accommodate a tenant's disabilities to the point of undue hardship as required under the *Human Rights Code*. The Landlord and Tenant Board has the authority to make findings that a landlord has violated the *Code* and refuse eviction of the tenant. However, we have found that the Board's approach to these issues has been inconsistent. In our opinion, many Members do not truly understand the extent of the Landlord's duty to accommodate the tenant to the point of undue hardship.

### Recommendations

20. The Ministry should pro-actively educate landlords and demand that they comply with their duties to accommodate tenants' disabilities to the point of undue hardship.

21. The Ministry should insist that each social housing provider develop a human rights policy regarding their application of the RTA and SHRA to their tenants. Such a policy should set out an action plan when a tenant may be at risk of eviction due to conduct that is linked to their disability (or other protected ground under the *Code*). The policies should include anti-discrimination and anti-harassment policies, as well as a complaint procedure. Social housing providers should also conduct reviews of this policy and work towards the removal of barriers to accessibility for person protected under the *Code*.

To develop such a policy, the Ministry should suggest that parties consult community agencies and disability organizations about how appropriate accommodation can occur. The Ministry should also encourage housing providers to consult the Ontario Human Rights Commission's *Guidelines on Developing Human Rights Policies and Procedures* and their *Policy on Human Rights and Rental Housing*.

22. Ongoing education and training for Members of the Landlord and Tenant Board regarding *Human Rights Code* issues should be provided.

## **CONCLUSION**

Hamilton's Community Legal Clinics appreciate the opportunity to comment on the Minister of Housing's affordable housing strategy. We have submitted a report which includes twenty two recommendations based on over thirty years of experience working with tenants in Hamilton.

Respectfully submitted,

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