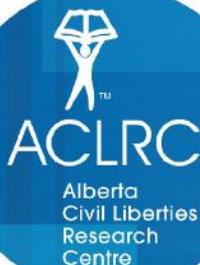


TEACHING ABOUT CHARTER RIGHTS THROUGH THE EXAMINATION OF THE RIGHT TO HOUSING UNDER CANADIAN LAW

by the

Alberta Civil Liberties Research Centre

ACLRC



Teaching about *Charter* Rights Through Examination
of the Right to Housing under Canadian Law

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I. INTRODUCTION

This publication is intended to assist educators in background information about the right to housing and the *Charter*. It is part of a larger package of materials and video resources prepared by ACLRC and available on our website: [Using Debates on Homelessness to Teach About Human Rights.](#)

The right to housing is a human right protected under international human rights laws that Canada has ratified as a member of the United Nations (UN).

This paper begins with an examination of the nature of human rights – inalienable rights that we possess simply because we are human. Housing rights belong to the category of rights classified as economic and social rights. We examine the nature of such rights.

International human rights law recognizes everyone’s right to an adequate standard of living. Adequate housing was recognized as part of the right to an adequate standard of living in the 1948 *Universal Declaration of Human Rights*¹ (or UDHR) and in the 1966 *International Covenant on Economic, Social and Cultural Rights*² (or ICESCR). Other international human rights treaties have since recognized or referred to the right to adequate housing or some elements of it, such as the protection of one’s home and privacy. Canada has ratified several international treaties referring to adequate housing and thereby committed itself to protecting the right to adequate housing.

However, Canada’s record of protecting housing rights in accordance with its obligations under international human rights treaties is poor. Canadian governments have spent less on housing programs, cut housing programs altogether, and allowed affordable housing to be financialized resulting in the displacement of people living in that housing because they can no longer afford it. Failing to address widespread homelessness and inadequate housing in a prosperous country like Canada is a violation of its international human rights obligations.

Canadian law protects some rights to housing consistent with its obligations under international human rights law. Canadian human rights legislation prohibits governments and private parties from discriminating against vulnerable groups in the area of tenancy,

¹ *Universal Declaration of Human Rights*, GA Res 217(III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948) 71 [UDHR], online: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>].

² *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 999 UNTS 3, Can TS 1976 No 46, 6 ILM 360 (entered into force 3 January 1976, accession by Canada 19 May 1976) [ICESCR], online: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>].

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employment, statements and publications, membership in unions and employer's associations and in the provision of goods, services, facilities and accommodation customarily available to the public. Canadian law also imposes obligations on governments to provide protection from arbitrary eviction, and from fire, health, and safety risks. These protections are implemented through a range of municipal, provincial, territorial, and federal legislation and are enforceable by administrative bodies and the courts. They do not, however, ensure effective responses to systemic issues like homelessness, or require governments to establish the necessary programs and policies to actually make the right to housing a reality for people.

This has led to the enactment of the 2019 federal *National Housing Strategy Act*³ (or NHSA). The Act recognizes for the first time under Canadian law that housing rights are human rights. A human rights approach to housing is guided by an internationally recognized framework and requires governments to undertake specific types of activities. In order to comply with international human rights law, housing strategies must satisfy a number of criteria. They must be developed with meaningful engagement of affected groups; set clear and reasonable goals and timelines for the reduction and elimination of homelessness and for ensuring adequate housing; establish mechanisms to independently monitor progress and recommend corrective action and provide access to effective remedies so that emerging challenges can be addressed as they arise. Strategies must also be transparent and participatory, so that people can access information and be involved in developing the policies and programs that will affect their lives. They must also address the multitude of policies and decisions that impact the overall housing system. The newly enacted NHSA is, for the most part, consistent with Canada's obligations under international human rights law. It does not enshrine an individual right to housing but does provide for systemic issues of inadequate housing to be addressed.

*The Canadian Charter of Rights and Freedoms*⁴ (or the *Charter*) embodies civil and political rights protected under international human rights law but does not, for the most part, specifically protect economic and social rights, including housing rights. Given this lack of explicit protection under the *Charter* or elsewhere in Canadian law, it has been argued that the human right to housing is protected under other provisions of the *Charter* and other domestic

³ *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313, online: [<https://laws-lois.justice.gc.ca/eng/acts/N-11.2/FullText.html>].

⁴ *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, online: [<https://laws-lois.justice.gc.ca/eng/const/page-15.html>].

law. At least some components of the right to adequate housing have been claimed under the *Charter* section 7 right to ‘life, liberty and security of the person’ and under *Charter* section 15 equality rights. Canadian courts have affirmed that Canada’s international human rights commitments are an important factor in determining the scope of the broadly framed rights and freedoms in the *Charter*. However, while Canadian courts have ruled that municipal bylaws preventing homeless people from creating temporary shelters in parks violate *Charter* sections 7 and 15, they have generally otherwise refused to find that the *Charter* protects economic and social rights granted under international human rights laws ratified by Canada, including the right to adequate housing.

II. CANADIAN HOUSING STATISTICS

Canada Without Poverty reports on poverty in Canada and cites the following statistics:⁵

- Basic statistics about poverty in Canada:
 - 1 in 7 (or 4.9 million) people in Canada live in poverty.
 - In Edmonton, 1 in 8 individuals is currently living in poverty.
 - Poverty costs Canada billions of dollars annually.
 - Precarious employment has increased by nearly 50% over the past two decades.
 - Between 1980 and 2005, the average earnings among the least wealthy Canadians fell by 20%.
 - Over the past 25 years, Canada’s population has increased by 30% and yet annual national investment in housing has decreased by 46%.
- Marginalized Communities are particularly susceptible to the effects of poverty including:
 - People living with disabilities
 - Children with disabilities
 - Single mothers and fathers
 - Indigenous Peoples (including First Nations, Metis, and Inuit peoples)
 - Racialized families, in particular racialized women

⁵ Canada Without Poverty, *Just the Facts*, online: [<https://cwp-csp.ca/poverty/just-the-facts/>].

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- Elderly single individuals and seniors
- Children and youth under 18 are particularly vulnerable to conditions of poverty.
- People in poverty experience more food insecurity, including not having enough food or having limited access to nutritious and healthy food.
- People in poverty experience more health problems.

Canada Without Poverty notes that people in poverty are also more at risk of experiencing lack of housing and that while homelessness is the most obvious expression of poverty's effect on housing, the following factors also shed light on housing instability and homelessness in Canada:

- [3 million](#) Canadian households are precariously housed (living in unaffordable, below standard, and/or overcrowded housing conditions).
- An estimated 235,000 people in Canada [experienced](#) homelessness in 2016, with roughly 35,000 people being homeless on any given night.
- Almost [1 in every 5](#) households experience serious housing affordability issues (spending over 50% of their low income on rent) which puts them at risk of homelessness.
- Three-quarters of Yukon's population live in [Whitehorse](#) where the average price of housing increased 80% over six years.
- Estimates place the number of homeless individuals living with a disability or mental illness as high as [45%](#) of the overall homeless population.
- In Toronto, there were [5,219 people](#) who were homeless in 2013 (the latest available data). Roughly half of the homeless population were on waitlists for affordable housing during the same period.
- Canada Mortgage and Housing Corporation predicts that its major national housing program funding will fall from [\\$3.04 billion \(2010\) to \\$1.68 billion by 2017](#) — a \$1.36 billion difference.
- According to new research, [spending \\$10 on housing](#) and support for high-need chronically homeless individuals resulted in almost \$22 of savings related to health care, social supports, housing, and the justice system.
- Youth aged 16-24 make up about [20%](#) of the homeless population

- The number of older adults and seniors experiencing homelessness is rising, making up a combined [4%](#) of shelters users in 2016.

III. WHAT ARE HUMAN RIGHTS?

A. INTRODUCTION

The universal human rights movement, which extends human rights to all individuals, emerged largely as a response to the injustices and abuses of the second world war.⁶ The adoption of the *Charter of the United Nation*⁷ in 1945 founded the UN and tasked it with promoting human rights for all.

The UN describes human rights as universal, inalienable, and indivisible: all human beings are entitled to human rights without discrimination and they are therefore *universal*; they are *inalienable* meaning that States have an obligation to protect human rights regardless of their political, economic, and cultural systems and cannot take them away, except in accordance with due process; the fulfillment of one right supports achievement of the others, while denial of one right negatively impacts the others, making them *interrelated, interdependent, and indivisible*.⁸

The UN has been the principal source of public international human rights laws. Though it did not define the term “human rights”, it emphasised non-discrimination.⁹

B. CATEGORIES OF HUMAN RIGHTS

Human rights fall into two broad categories: civil and political rights; and economic, social and cultural rights.¹⁰

Civil and political rights include rights such as freedom of personal conscience and expression, freedom of movement and association, freedom to vote and run for public office,

⁶ John H Currie et al, *International Law: Doctrine, Practice and Theory*, 2d ed (Toronto: Irwin Law, 2014) (Currie) at 585.

⁷ *Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7, online: [<https://www.un.org/en/about-us/un-charter>].

⁸ *United Nations - Office of the High Commissioner for Human Rights* (OHCHR) “What are human rights?”, online: [<https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>].

⁹ Currie at 599.

¹⁰ Brian Orend, *Human Rights, Concept and Context* (Ontario: Broadview Press, 2002) (Orend) at 110. Orend also articulates a “third generation” of human rights, which includes national self-determination, economic development, a clean environment, affirmative action programs, language, parental leave benefits, and various minority group rights.

reliable legal protection against violence, and rights to due process. They are frequently referred to as “first generation” human rights.¹¹

Economic, social and cultural rights include the right to subsistence levels of income, basic levels of education and health care, clean air and water, equal opportunity at work and the right to an adequate standard of living *which includes the right to adequate housing*.¹²

IV. INTERNATIONAL STANDARDS RECOGNIZING THE RIGHT TO HOUSING

A. SOURCES OF INTERNATIONAL HUMAN RIGHTS LAW

International human rights law can be understood as a body of law that governs a State’s (nation’s) behavior in respect to human rights. International law can be defined as the rules and principles that govern the relationship between Nation-States, as well as the rights and obligations States have vis-à-vis Non-States actors, such as individuals and organizations. There are several sources of international human rights law dealing with the right to housing.

1. Treaties

Treaties are one of the most important sources of international human rights laws. Unlike domestic law, there is no central governing body in the international sphere with exclusive law-making authority. Rather, States agree to be bound by international human rights laws by entering into agreements with one another, which are referred to as treaties, also known as a covenant, protocol, or agreement. As an analogy, treaties function a bit like international “contracts”.

The *Universal Declaration of Human Rights* declared for the first time the fundamental human rights to be universally protected under international law. The UDHR specifically proclaims the right to adequate housing as part of the right to a standard of living adequate for health and well-being. Subsequent to the proclamation of the UDHR, seven key international treaties have been adopted containing provisions encompassing a human right to housing. These

¹¹ Orend at 30.

¹² Orend at 30.

treaties are identified below with a focus on the *International Covenant on Economic, Social and Cultural Rights*.¹³

2. United Nations Committee General Comments

United Nations Committees or treaty bodies have been established to monitor States' compliance with international human rights treaties. The Committees generate a number of important references, including "General Comments" that are published to assist States to interpret the scope and meaning of the rights enshrined in the treaties.¹⁴

3. Special Rapporteur (or Special Procedures) Communications, Recommendations, Guidelines and other Publications

The Office of the Human Rights Council (HRC), a body within the UN system comprised of 47 member States, has established "special procedures" to monitor States' compliance with international treaties. Special Procedures are human rights experts in specific fields and may be individuals, called "special rapporteurs" or "independent experts", or five-member working groups. They work independently of the UN but report to the HRC annually.¹⁵

The UN has established the office of the *Special Rapporteur on the right to adequate housing*; the full name is *Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*.¹⁶

The Special Rapporteur on the right to adequate housing produces a number of publications on the right to housing including:

- a. Annual Thematic Reports, for example, its latest report, *COVID-19 and the right to adequate housing*.¹⁷

¹³ UN Treaties can be accessed at OHCHR *UN Treaty Body Database*, online: [\[https://tbinternet.ohchr.org/SitePages/Home.aspx\]](https://tbinternet.ohchr.org/SitePages/Home.aspx).

¹⁴ OHCHR, *Human Rights Treaty Bodies - General Comments*, online: [\[https://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx\]](https://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx).

¹⁵ OHCHR, *Special Procedures of the Human Rights Council*, online: [\[https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx\]](https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx).

¹⁶ OHCHR, *Special Rapporteur on the right to adequate housing*, online: [\[https://www.ohchr.org/en/issues/housing/pages/housingindex.aspx\]](https://www.ohchr.org/en/issues/housing/pages/housingindex.aspx).

¹⁷ OHCHR, *Annual thematic reports of the Special Rapporteur on adequate housing*, online: [\[https://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx\]](https://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx).

- b. Communications - Letters sent by the Special Rapporteur to governments and others in which the Rapporteur presents allegations of human rights violations and requests clarifications, requests the concerned authorities to take action to prevent or stop the violation, investigate it, bring those responsible to justice and/or make remedies available to the victims.¹⁸
- c. Reports from country visits - Special Rapporteurs make country visits and publish reports to assess the situation of human rights at the national level. Specific institutional, legal, judicial, administrative and *de facto* human rights situations are examined.¹⁹

4. Universal Periodic Review Reports

Under a process known as the “Universal Periodic Review”, all States in the UN must submit periodic reports declaring the actions they have taken to improve the human rights situations in their countries and to overcome human rights challenges. At the completion of the review, an “outcome report” is published which provides a summary of the actual discussion and consists of the questions, comments and recommendations to the country under review, as well as the responses by the reviewed country. These reports include information on the laws enacted and other actions the reviewed country has taken or failed to take to satisfy its human rights obligations.²⁰

Based on the foregoing human rights norms, the Special Rapporteur on the right to adequate housing and other UN human rights experts have also developed specific guidelines on development-based evictions, on security of tenure and for the implementation of the right to adequate housing.²¹

¹⁸ Communications of the Special Rapporteur on the right to adequate housing can be found at the OHCHR *Communication and Report*, online: [<https://spcommreports.ohchr.org/TmSearch/Mandates?m=29>].

¹⁹ OHCHR, *Your Human Rights > Housing > Country visits - Adequate housing*, online: [<https://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx>].

²⁰ OHCHR, *Universal Periodic Review, Basic Facts*, online: [<https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>]. Also see Appendix C for summary of Core Human Rights Treaties and related provisions granting Housing Rights.

²¹ OHCHR, *International standards on the right to housing, Guiding Principles and Guidelines*, online: [<https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#guidelines>].

Country-specific human rights information emanating from international human rights mechanisms in the UN system, the Treaty Bodies, the Special Procedures and the Universal Periodic Review (UPR), can be found in the Universal Human Rights Index.²²

International humanitarian law, international criminal law, international labour standards, and Guidelines of the World Health Organization also contain housing rights and protections. In addition, several regional human rights Charters, Conventions and other standards include explicit housing rights or have been interpreted to include housing rights, including the *African Charters of Rights*; the *America Convention on Human Rights*; several Inter-American Conventions; and European and European Union Charters and Conventions.²³

B. KEY UNITED NATIONS HUMAN RIGHTS TREATIES GRANTING HOUSING RIGHTS

1. Introduction

The UN first recognized housing rights in the *Universal Declaration of Human Rights*. It subsequently reaffirmed housing rights in other core treaties, seven of which are identified below. Some of the treaties are supplemented by optional protocols dealing with specific concerns, including procedures by which complaints of violations of the treaties can be brought forward.

Three core instruments, the *Universal Declaration of Human Rights* and two of the seven core UN treaties, the *International Covenant on Civil and Political Rights*²⁴ (ICCPR), and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) were intended to constitute an International Bill of Rights that would form the basis of freedom, justice and world peace following the second world war. This Bill of Rights was intended to create a new world order based on indivisible human rights.²⁵

²² OHCHR, *Universal Human Rights Index Database*, online: [<https://www.ohchr.org/EN/HRBodies/Pages/UniversalHumanRightsIndexDatabase.aspx>] or [<https://uhri.ohchr.org/en/>].

²³ See Appendix B, *Other International Standards Encompassing Housing Rights*

²⁴ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47, 6 ILM 368 (entered into force 23 March 1976, accession by Canada 19 May 1976) [ICCPR] online: [<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>].

²⁵ For further discussion of the formation and rights in the International Bill of Rights, see United Nations, Fact Sheet No.2 (Rev.1) (1996), online: [<https://www.ohchr.org/documents/publications/factsheet2rev.1en.pdf>]. This joint OHCHR/UN-Habitat Fact Sheet is the second in a series of joint publications by the Office of the United Nations High Commissioner for Human Rights with other United Nations partners to focus on economic, social and cultural rights. The first was the Fact Sheet on the Right to Health.

The ICCPR and ICESCR contain the measures of implementation required to ensure the realization of the rights and freedoms set out in the UDHR. States that have acceded to or ratified the Covenants accept a legal as well as a moral obligation to promote and protect human rights and fundamental freedoms contained in the Covenants. Canada ratified the ICCPR and ICESCR in 1976.

The idea of human rights has gained ever-increasing global recognition, resulting in a number of other international treaties explicitly securing human rights. The status of countries' ratification of 18 key UN treaties and their Optional Protocols, including the foregoing treaties establishing a right to housing as a human right, can be verified at the Office of the United Nations High Commissioner for Human Rights (OHCHR), *Status of Ratification Interactive Dashboard*.²⁶

2. Universal Declaration of Human Rights (UDHR)

In 1948, the UN General Assembly proclaimed the UDHR, a milestone document in the history of human rights. It was a Canadian, John Humphrey, who led the drafting along with representatives with different legal and cultural backgrounds from all regions of the world. The declaration affirms civil, political, economic, social, and cultural rights as essential to the dignity and worth of every person, regardless of the domestic laws that do or do not exist in individual countries. The UDHR sets out for the first time under international law the fundamental human rights to be universally protected. The UDHR as adopted and proclaimed by the General Assembly proclaims the UDHR:

...as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among, the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

The UDHR consists of a preamble and 30 articles, setting forth the human rights and fundamental freedoms to which all people, everywhere in the world, are entitled, without discrimination.

²⁶ Office of the United Nations High Commissioner for Human Rights, *Status of Ratification Interactive Dashboard*, online: [<https://indicators.ohchr.org/>].

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Article 1, which lays down the philosophy on which the UDHR is based, reads:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 sets out the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms, forbidding "distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Articles 3 to 21 declare the right to civil and political rights. Article 3 proclaims the right to life, liberty and security of person as a right essential to the enjoyment of all other rights. Articles 4 to 21 proclaim the right to the other civil and political rights including: freedom from slavery and servitude; freedom from torture and cruel, inhuman or degrading treatment or punishment; the right to recognition everywhere as a person before the law; the right to an effective judicial remedy; freedom from arbitrary arrest, detention or exile; the right to a fair trial and public hearing by an independent and impartial tribunal; the right to be presumed innocent until proved guilty; freedom from arbitrary interference with privacy, family, home or correspondence; freedom of movement and residence; the right of asylum; the right to a nationality; the right to marry and to found a family; the right to own property; freedom of thought, conscience and religion; freedom of opinion and expression; the right to peaceful assembly and association; and the right to take part in the government of one's country and to equal access to public service in one's country.

Articles 22 to 27 declare the right to economic, social and cultural rights. These rights are characterized as indispensable for human dignity and the free development of personality. They include the right to social security; the right to work; the right to equal pay for equal work; the right to rest and leisure and the right to a standard of living adequate for health and well-being.

Article 25.1 of the UDHR specifically proclaims the right to adequate housing as part of the right to a standard of living:

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

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Articles 28 to 30, recognize that everyone is entitled to a social and international order in which the human rights and fundamental freedoms set forth in the UDHR may be fully realized, and the duties and responsibilities which each individual owes to his community. Article 29 states that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". It states that human rights and fundamental freedoms may not be exercised contrary to the purposes and principles of the UN.

Article 17 and Article 30 of the UDHR have been interpreted to form a part of the social and economic rights found in the ICESCR.

Article 17 of the UDHR states:

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 30 of the UDHR states:

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

3. International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is the main international instrument protecting civil and political human rights. It entered into force in March 1976. Canada ratified the ICCPR in 1976. Articles 6, 12 and 17 of the ICCPR have been interpreted as encompassing housing rights.

Article 6 1. of the ICCPR states:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 12 of the ICCPR states:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.

Article 17 of the ICCPR states:

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1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

The *Optional Protocol to the International Covenant on Civil and Political Rights* provides that if a State has ratified both the ICCPR and the Protocol, parties who claim their rights under the ICCPR have been violated by that State can have their claims considered and determined by the Human Rights Committee, the Committee responsible for monitoring compliance with the ICCPR. The claimant must first have exhausted all available domestic remedies before submitting a claim. Canada ratified the Protocol in 1976.

The *Second Optional Protocol to the International Covenant on Civil and Political Rights* abolishes the death penalty. Canada ratified it in 2005.

The Human Rights Committee, also known as the Committee on Civil and Political Rights (CCPR), has elaborated on housing-related obligations of States in relation to the right to life and the protection of privacy, family, home and correspondence under the ICCPR under General Comments 16, 19 and 36:²⁷

The CCPR General Comment No. 16 - Article 17 right to be protected against interference with privacy, family, home or correspondence states:

The term “home” [...] as used in article 17 of the Covenant, is to be understood to indicate the place where a person resides or carries out his usual occupation. (para. 5)

Even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis. [...] Searches of a person’s home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. (para. 8)

States parties are under a duty themselves not to engage in interferences inconsistent with article 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons. (para. 9)

The CCPR General Comment No. 19 - Article 23 protection of family states:

The right to found a family implies, in principle, the possibility to procreate and live together. [...] Similarly, the possibility to live together implies the adoption of

²⁷ OHCHR, UN Treaty Database, Committee on Civil and Political Rights, online: [https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11].

appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons. (para. 5)

During marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets.” (para. 8)

The CCPR, General Comment No. 36 - Article 6 right to life states:

The duty to protect the right to life requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk ... They may also include children, especially children in street situations (para. 23)

The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include [...] homelessness. - measures called for ...include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health-care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions, such as [...] social housing programmes.” (para. 26)

4. International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR is the main international instrument protecting economic, social and cultural rights. It entered into force and Canada ratified it in 1976.

In 2008, the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* came into force.²⁸ It establishes an individual complaint mechanism for the ICESCR. Parties who have ratified the ICESCR and its Protocol agree to recognize the competence of the UN Human Rights Committee to consider complaints from individuals who claim their rights under the Covenant have been violated. Canada has not ratified the Protocol.

The Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the ICESCR and its Optional Protocol by State parties. The ICESCR Articles

²⁸ OHCHR, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, online: [<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>].

2 and 11 are the primary ones providing for housing rights. The CESCR's General Comments 3, 4, 7, 9, 20 and 24 are the primary comments elaborating on Articles 2 and 11.²⁹

4.1 *Nature of the Right to Adequate Housing*

Article 11(1) of the ICESCR states:

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.

The characteristics of the right to adequate housing are clarified mainly in CESCR General Comment No. 4, *The Right to Adequate Housing (art 11 (1) of the Covenant*³⁰ and summarized in OHCHR, Fact Sheet No. 21.³¹

Comment No. 4 provides that the right to housing is not to be interpreted narrowly, for example, as having a roof over one's head, nor should it be treated exclusively as a commodity. Rather, it should be interpreted as the right "to live somewhere in security, peace and dignity". It is integrally linked to other human rights and the fundamental principles upon which the ICESCR is premised and should therefore be ensured to all persons irrespective of income or access to economic resources.

Comment No. 4 also provides that Article 11 (1) of the ICESCR must be read as referring not just to housing but to adequate housing. A number of conditions must be met before shelter can be considered "adequate" and they are just as fundamental as the basic supply and availability of housing. Adequate housing must, at a minimum, meet the following seven criteria:³²

²⁹ See Appendix C, International Covenant on Economic, Social and Cultural Rights - Summary of ICESCR Articles and Committee on Economic, Social and Cultural Rights General Comments.

³⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 4, *The Right to Adequate Housing (art 11 (1) of the Covenant)* online: [https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11].

³¹ OHCHR, Fact Sheet No. 21, *The Human Right to Adequate Housing*, November 2009, Fact Sheet No. 21/Rev.1 [*OHCHR Fact Sheet No. 21*] online: [https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf].

³² Committee on Economic, Social and Cultural Rights, General Comment 4, Paragraph 8 - arguably the most widely accepted definition of "adequate housing" online: [<https://www.refworld.org/pdfid/47a7079a1.pdf>].

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1. Security of tenure: housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats.
2. Availability of services, materials, facilities and infrastructure: housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal.
3. Affordability: housing is not adequate if its cost threatens or compromises the occupants' enjoyment of other human rights.
4. Habitability: housing is not adequate if it does not guarantee physical safety or provide adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards.
5. Accessibility: housing is not adequate if the specific needs of disadvantaged and marginalized groups are not taken into account.
6. Location: housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centres and other social facilities, or if located in polluted or dangerous areas.
7. Cultural adequacy: housing is not adequate if it does not respect and take into account the expression of cultural identity.

4.2 *States' Responsibilities for the Provision of Adequate Housing*³³

States that have ratified UN human rights treaties are required to give effect to the rights in those treaties within their jurisdictions.

4.2.1 *Categories of State Responsibility*

States' responsibilities fall into three categories: the obligation to respect, protect and fulfil.³⁴

The obligation to *respect* requires States to abstain from acting in a manner that hinders or interferes with the attainment of human rights. OHCHR Fact Sheet No. 21 explains at p 33:

For example, States should refrain from carrying out forced evictions and demolishing homes; denying security of tenure to particular groups; imposing discriminatory practices that limit women's access to and control over housing, land and property; infringing on

³³ The commentary under this sub-heading is excerpted from OHCHR, Fact Sheet No. 21, *The Human Right to Adequate Housing*, November 2009, Fact Sheet No. 21/Rev.1 [*OHCHR Fact Sheet No. 21*] online: [https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf].

³⁴ OHCHR, "What are human rights?", online: [<https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>].

the right to privacy and protection of the home; denying housing, land and property restitution to particular groups; or polluting water resources.

The obligation to *protect* means that States must prevent third parties from interfering with the right to adequate housing. OHCHR Fact Sheet No. 21 states at p 33:

States should adopt legislation or other measures to ensure that private actors—e.g., landlords, property developers, landowners and corporations—comply with human rights standards related to the right to adequate housing. States should, for instance, regulate the housing and rental markets in a way that promotes and protects the right to adequate housing; guarantee that banks and financial institutions extend housing finance without discrimination; ensure that the private provision of water, sanitation and other basic services attached to the home does not jeopardize their availability, accessibility, acceptability and quality; ensure that third parties do not arbitrarily and illegally withdraw such services; prevent discriminatory inheritance practices affecting women's access to and control over housing, land and property; ensure that landlords do not discriminate against particular groups; ensure that private actors do not carry out forced evictions.

The obligation to *fulfil* requires States to take positive action to promote the achievement of human rights obligations. OHCHR Fact Sheet No. 21 states at p 33 – 34:

The obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing. States must, for instance, adopt a national housing policy or a national housing plan that: defines the objectives for the development of the housing sector, with a focus on disadvantaged and marginalized groups; identifies the resources available to meet these goals; specifies the most cost-effective way of using them; outlines the responsibilities and time frame for the implementation of the necessary measures; monitors results and ensures adequate remedies for violations. Under the obligation to fulfil, States must also, progressively and to the extent allowed by their available resources, prevent and address homelessness; provide the physical infrastructure required for housing to be considered adequate (this would include taking steps towards ensuring universal and non-discriminatory access to electricity, safe drinking water, adequate sanitation, refuse collection and other essential services); or ensure adequate housing to individuals or groups unable, for reasons beyond their control, to enjoy the right to adequate housing, notably through housing subsidies and other measures.

4.2.2 *Obligations take effect immediately or progressively*³⁵

4.2.2.1 *State Obligation to Progressively Realize Housing Rights*

State obligations to respect, protect and fulfil housing rights may be realized progressively. The requirement to provide adequate housing requires States to achieve the full realization of economic, social and cultural rights “progressively” over time ‘by all appropriate means’ using the “maximum of their available resources.” OHCHR Fact Sheet No. 21 states at p 30:

While not all aspects of the right to adequate housing can or may be realized immediately, States must, at a minimum, show that they are making every possible effort, within available resources, to better protect and promote housing right. Available resources refer to those existing within a State as well as those available from the international community through international cooperation and assistance.

At the least, States must provide the minimum essentials of housing rights. Where any significant number of individuals are deprived of essential foodstuffs, primary health care, basic shelter and housing, or of the most basic forms of education, the State is considered to have, prima facie, failing to discharge its obligations. If a State cannot do so, it must demonstrate that it has made every effort to use all available resources to satisfy this obligation as a matter of priority. Measures to implement the right to adequate housing will vary from State to State, and therefore international treaties do not prescribe what measures should be taken but only that the full realization of the rights be achieved through “all appropriate means, including particularly the adoption of legislative measures.”

4.2.2.2 *State Obligation to Immediately Realize Housing Rights*

Some State obligations to respect, protect and fulfil the right to housing must be taken immediately: preventing discrimination; ensuring, at the very least, the provision of minimum essential levels of housing rights; preventing forced evictions and guaranteeing legal security of tenure; monitoring the housing situation; and providing effective legal or other appropriate remedies for violations of housing rights.

The non-discrimination obligation requires States to immediately guarantee that the rights enunciated in the ICESCR will be exercised without discrimination of any kind as to “race,

³⁵ The discussion under this sub-heading is summarized from OHCHR, Fact Sheet No. 21, *The Human Right to Adequate Housing*, November 2009, Fact Sheet No. 21/Rev.1 [*OHCHR Fact Sheet No. 21*] online: [https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf].

colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (Article 2(2)). States must eliminate discrimination both formally and substantively. Eliminating formal discrimination requires States to ensure that their constitution, laws and policy documents do not discriminate on prohibited grounds. Eliminating substantive discrimination requires “paying sufficient attention to groups of individuals which suffer historical or persistent prejudice and immediately adopting the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination.” For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.

States must take immediate action to prevent forced eviction. The CESCR General Comment 7 (1997) gives direction on the right to be protected from forced eviction which is defined as the “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”³⁶

States have an immediate obligation to monitor the housing situation in their countries to ascertain the full extent of homelessness and inadequate housing.

The State obligation to provide effective legal and other appropriate remedies for violation of housing rights requires States to incorporate the rights under the ICESCR immediately within their domestic legal systems and housing plans to allow individuals to seek enforcement of their rights before national courts and tribunals and be granted effective remedies when their rights are violated. Remedies are effective if provided by a judicial or administrative body which takes account of the requirements of the ICESCR in its decision-making. Administrative remedies should be accessible, affordable, timely and effective and their decisions should be subject to judicial appeal.

4.2.3 *State Obligation to adopt specific measures to prevent discrimination against specific groups*³⁷

³⁶ OHCHR, Fact Sheet No 21; see also the OHCHR, *Basic principles and guidelines on development-based evictions and displacement* developed under the mandate of the Special Rapporteur on adequate housing, online: [<https://www.ohchr.org/en/issues/housing/pages/forcedevictions.aspx>].

³⁷ OHCHR, Fact Sheet No 21, p 16 – 29.

States are required to pay attention to the specific situation of individuals and groups, particularly those living in vulnerable situations, by adopting positive measures to ensure that they are not discriminated against in purpose or effect. This involves tailoring housing laws and policies to those most in need rather than merely targeting majority groups. Groups to be considered include women, children, slum-dwellers, homeless persons, persons with disabilities, displaced persons, migrants and Indigenous peoples.

5. Convention on the Elimination of All Forms of Racial Discrimination³⁸

Article 3 states: “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

Article 5 (e) (iii) obliges States “to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... (e) ... (iii) the right to housing”.

6. Convention on the Rights of Persons with Disabilities³⁹

Article 2 of the Convention gives the following definition: “Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”

Article 5.3 states that: “In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.”

³⁸ *Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660 UNTS 195 art 5 (entered into force 4 January 1969) online: [<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>].

³⁹ *Convention on the Rights of Persons with Disabilities*, 13 December 2006, 2515 UNTS 3 art 28 (entered into force 3 May 2008) online: [<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>].

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Article 9.1 (a) states that: “To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, (...). These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces.”

Article 9.2 states: “States Parties shall also take appropriate measures to: (a) develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public; (b) ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities. [...].”

Article 19 states that: “States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that: (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement. (b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community; (c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”

Article 22.1 states that: “No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.”

Article 28.1 states that: “States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take

appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.”

Article 28.2 (d) states that: “States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:… (d) To ensure access by persons with disabilities to public housing programmes.”

7. Convention on the Rights of the Child⁴⁰

Article 16 (1) of the Convention states that “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

Article 27 provides:

1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

8. Convention on the Elimination of All Forms of Discrimination Against Women⁴¹

The following Articles of the Convention protect housing rights:

⁴⁰ *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 art 27 (entered into force 2 September 1990) online: [<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>].

⁴¹ *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 UNTS 13 art 14 (entered into force 3 September 1981) online: [<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>].

Article 14 (2):

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

[...]

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Article 15 (2):

States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

9. **International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families**⁴²

Article 43.1 of the Convention states that: “Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to ... (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents.

V. ENFORCEMENT OF INTERNATIONAL COMPLIANCE WITH UN TREATIES

The UN has established several processes to monitor and enforce parties’ compliance with their treaty obligations.

A. SPECIAL PROCEDURES (HUMAN RIGHTS EXPERTS)

The Office of the Human Rights Council (HRC), a body within the UN system comprised of 47 member States, has established “special procedures” to monitor and strengthen human rights. Special procedures are human rights experts in specific fields and may be individuals, called “special rapporteurs” or “independent experts” or five-member working groups. They work independently of the UN but report to the HRC annually.

⁴² *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 45/158, 18 December 1990, online: <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>].

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The OHCHR, *Special Procedures of the Human Rights Council* states that Special Procedures:

- undertake [country visits](#);
- act on individual cases of reported violations and concerns of a broader nature by sending [communications](#) to States and others;
- conduct annual thematic studies, seek information from calls for input and convene expert consultations;
- contribute to the development of international human rights standards; and
- engage in advocacy, raise public awareness, and provide advice for technical cooperation.

The *Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context* was established in 2000 and was recently renewed in 2020 by the HRC.

The Special Rapporteur on the right to adequate housing is mandated to promote housing as a human right through various means including carrying out country visits, raising public awareness, developing housing rights standards, and advising the UN and member States.

As noted, the Committee on Economic, Social and Cultural Rights also publishes its interpretation of the provisions of the CESCR, known as [general comments](#).

B. UNITED NATIONS HUMAN RIGHTS TREATY COMPLAINT PROCEDURES

One important complaint procedure for monitoring and enforcing compliance with UN treaties is to bring a complaint to the specific UN treaty body established to monitor compliance with the treaty. Each major human rights treaty developed under the UN has an equivalent body responsible for evaluating the performance of State parties and making recommendations.

As noted above, the treaty monitoring body overseeing States' compliance with the ICESCR is the UN Committee on Economic, Social and Cultural Rights (CESCR). Under the [Optional Protocol to the International Covenant on Economic, Social and Cultural Rights](#), which entered into force on 5th May 2013, the Committee is given authority to receive and consider [communications](#) from individuals claiming that their rights under the ICESCR have been violated. The CESCR may also, under certain circumstances, undertake inquiries on grave or systematic violations of any of the economic, social and cultural rights set forth in the ICESCR, and consider inter-State complaints. Canada has not ratified the Optional Protocol, which means that parties cannot use this process to file complaints against it.

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As part of the monitoring process, there is a mandatory reporting system whereby States must submit periodic reports detailing the measures they have put in place to meet their commitments. The monitoring bodies' functions include reviewing the periodic reports submitted by States, investigating violations, making recommendations, and reviewing petitions made against a State by other states or individuals.⁴³

State parties must report to the CESCR every five years. However, this is a review process only, and not adjudicatory in nature.

C. UN HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW PROCESS⁴⁴

As part of the monitoring process, there is a mandatory reporting system whereby States must submit periodic reports detailing the measures they have put in place to meet their commitments.

Under the UPR process, States must provide a written report indicating which recommendations they accept and which they do not.

The UPR involves assessing States' human rights records and addressing human rights violations. States must report what actions they have taken to improve the human rights situations in their countries. Reviews are conducted by the UPR Working Group and other UN Member States can take part in the "discussion/dialogue with the reviewed States". Each State review is assisted by groups of three States, who serve as rapporteurs.

As with the treaty bodies' recommendations, there are few legally enforceable results from this process.

D. ICESCR OPTIONAL PROTOCOL TO THE COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

In 2008, the ICESCR added the *Optional Protocol to the Covenant on Economic, Social and Cultural Rights*. This new protocol contains an adjudicative mechanism which allows for

⁴³ Mark Freeman & Gibran van Ert, *International Human Rights Law* (Toronto: Irwin Law, 2004) notes that the *Concluding Observations include positive aspects of implementation, principal subjects of concern and suggestions and recommendations. The authors also note that they are not legally binding and there is no method for enforcement.*

⁴⁴ UN Human Rights Council, *Universal Periodic Review*, online: [<https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>]; see also UN Human Rights Council, *Universal Periodic Review – Canada*, online: [<https://www.ohchr.org/EN/HRBodies/UPR/Pages/CAIndex.aspx>].

individual communications about States' violations of the Covenant. However, Canada has refused to sign on to this Protocol, and has thus not permitted Canadians to utilize this mechanism to address economic, social and cultural rights issues.

VI. ISSUES REGARDING THE ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN CANADA

A. IMPORTANCE OF EACH CATEGORY OF HUMAN RIGHT

A distinction is often drawn between civil and political rights, compared to economic, social and cultural rights. It has been suggested that making a distinction has created barriers in implementing and protecting these “second generation” rights.

Louise Arbour, former United Nations High Commissioner for Human Rights and former Justice of the Supreme Court of Canada refuted this:

A renewed focus on economic, social and cultural rights is crucial ... In spite of the constant reaffirmation of the interdependence of all human rights, many of our strategies are still based on an unhelpful categorization of rights—between civil and political on the one hand and economic, social and cultural on the other. This categorization of rights has skewed the implementation of human rights, to the detriment of those rights labelled economic, social and cultural and to the wider development and security agendas. The reaffirmation of economic, social and cultural rights as human rights ... will help to redress the unbalanced approach of the past ... providing an opportunity to move beyond simplistic categorization of rights towards an understanding of human rights that focuses on people—their security and development—and their capacity to claim the totality of their rights.⁴⁵

Elizabeth McIsaac and Bruce Porter, *Housing Rights - Ottawa takes a historic step forward* explain how the civil and political rights and economic, social and cultural rights came to be viewed in terms of their importance:⁴⁶

During the Cold War, particularly the 1950s and '60s, human rights became politicized. Civil and political rights came to be associated with capitalist freedom from government

⁴⁵ Statement by Ms. Louise Arbour, High Commissioner for Human Rights to the third session of the Open-Ended WG OP ICESCR, online: United Nations High Commissioner for Human Rights [<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/B662E58D469FACE2C1257111003E5BC1?opendocument>].

⁴⁶ Elizabeth McIsaac and Bruce Porter, *Housing Rights - Ottawa takes a historic step forward*, Literary Review Canada, November 2019, [McIsaac 2019] online: [<https://maytree.com/publications/housing-rights-ottawa-takes-a-historic-step-forward/>].

interference, and economic and social rights were linked to socialism. The unified set of rights in the UDHR was divided into two covenants, the International Covenant on Civil and Political Rights, or ICCPR, and the International Covenant on Economic, Social and Cultural Rights, or ICESCR.

B. ENFORCEABILITY OF EACH CATEGORY OF RIGHT

In addition to the categorization of human rights into first and second generations, civil and political rights are often considered more enforceable than socio-economic rights.

For example, there is a mechanism within the ICCPR that allows individuals to complain directly to the UN Human Rights Committee, which issues statements about States that do not respect human rights. In contrast, the ICESCR did not have such a body until very recently, but instead had only a review committee that reviewed States' compliance every few years.

C. INDIVISIBILITY

As noted above, human rights are described as interrelated, interdependent, and *indivisible*. Fulfilling one right helps achieve other rights, while denying a right negatively impacts other rights. In this sense, economic, social and cultural rights are intended to be indivisible from civil and political rights. Nevertheless, in Canada (and other countries in the world), civil and political rights have enjoyed a place of priority over economic and social rights. As a result, the right to housing has been treated as secondary to other human rights.

During the drafting of the UDHR, Canada was openly opposed to the inclusion of economic, social and cultural rights. Its position was based on the idea that this moved the UDHR beyond human rights to defining governmental responsibilities.⁴⁷ Canada joined such western powers as the United States, the United Kingdom and France in their opposition to the ideological stance of the Soviet bloc, other socialist States, and various third world nations. As a result, the concept of indivisibility as originally envisioned was compromised and two covenants were created: one addressing civil and political rights and the other economic, social and cultural rights.⁴⁸ In short, civil and political rights became more important and needed to be implemented

⁴⁷ William Schabas, "Freedom from Want: How Can We Make Indivisibility More Than a Mere Slogan?" (1999-2000) 11 National Journal of Constitutional Law 189 [Schabas 2000] at 194.

⁴⁸ See Schabas 2000, and Audrey Chapman and Sage Russell (eds) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (New York: Intersentia, 2002) 185 – 214 [Chapman and Russell] and Matthew Craven, *International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press, 1995).

immediately. On the other hand, economic, social and cultural rights appeared to have weaker requirements.

D. JUSTICIABILITY

An important obstacle to the domestic implementation of the obligations under the ICESCR is the issue of whether these rights are justiciable. The concept of *justiciability* refers to whether an issue is capable of being decided before the courts.

The CESCR, General Comment No. 9 addresses the issue of justiciability and the provision of legal remedies. General Comment No. 9 rejects the commonly held belief that social and economic rights are unsuitable for judicial enforcement:

In relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential. Regrettably, the contrary assumption is too often made in relation to economic, social and cultural rights. This discrepancy is not warranted either by the nature of the rights or by the relevant Covenant provisions...The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.

As discussed above, General Comment No. 9 requires States to provide for legal remedies through consistent interpretation of domestic law and through the enactment of legislation and the provision of legal remedies for violations of rights granted under ICESCR. It specifically provides that courts and administrative tribunals with jurisdiction to hear such claims should take ICESCR rights into account in their decisions.

An important factor that impacts justiciability is whether it is more appropriate for the issue in question to be decided by judges, who make up the judicial branch of government, or by elected politicians, who make up the executive branch of government.

In addition to the hierarchy of rights discussed in the previous section, rights can be divided into positive and negative obligations. Negative rights are honoured when States refrain from interfering with them. For example, the “right to liberty and security of the person” under the *Canadian Charter of Rights and Freedoms* (discussed below) requires governments to abstain from imprisoning individuals without due process. By contrast, positive rights require that action be taken by States to fulfill them. For example, the right to housing may require that

governments supply subsidized housing and emergency shelters or enact legislation to help reduce homelessness.

Civil and political rights are often understood as negative rights whereas social and economic rights are often seen as positive rights. State intervention often requires that governments allocate public funds. This creates a link between positive rights and government expenditures. However, decisions on State spending are the purview of the executive branch of government, not the judiciary. As such, it is often thought that matters of economic and social rights should be left to elected officials and not to judges.

Many scholars reject the notion that economic and social rights are distinguishable from civil and political rights on the basis of spending and justiciability. Scholar William Schabas is clear:

Even such a basic ‘civil’ right as the right to a fair trial, and one that nobody would claim is unenforceable before the courts because it is not justiciable, may require that the State spend money – on legal aid attorneys, on interpreters, on translators, even on judicial salaries. Moreover, there are several rights in the Economic and Social Covenant that, according to the *Committee on Economic, Social and Cultural Rights*, can be invoked directly before the Court and are fully justiciable.⁴⁹

On the other hand, Scholar Barbara Arneil thinks that the cost of implementing economic and social rights is significant. She states:

The fact is that the difference in the size of expenditures of implementing the economic/social set of rights versus implementing the political/legal set of rights is enormous. If you take the federal and provincial governments’ expenditures on health, education, housing, pensions, and social assistance and services together (all of which contribute to upholding the social and economic rights of the Declaration), you have the bulk of public expenditures.⁵⁰

VII. CANADA’S RECOGNITION OF HOUSING RIGHTS

A. CANADA’S INTERNATIONAL RANKINGS

Canada is a wealthy country, but people living in Canada still experience poverty. How does Canada compare to other countries around the world? UNICEF rated Canada 17th out of 29

⁴⁹ Schabas 2000 at 202.

⁵⁰ Barbara Arneil, “The Politics of Human Rights” (1999) 11 *National Journal of Constitutional Law* 213 at 218.

wealthy countries due to the number of children living in poverty in Canada and 26th out of 35 wealthy countries for overall child inequality.⁵¹

B. CANADA'S HISTORIC RECORD ON HOUSING RIGHTS

In the 1950s and 1960's, human rights commissions were established in Canada and all Canadian jurisdictions now guarantee equal treatment without discrimination.

Landlord and tenant laws have been enacted which set out the rights of tenants and landlords and protect tenants from unlawful eviction and unsafe housing.

In 1966, the *Canada Assistance Plan Act* was enacted requiring provinces to help anyone in need meet certain basic requirements, including food, shelter, and clothing, as a condition of federal funding. Individual recipients could seek public-interest standing to challenge inadequate rates in court. The Canada Assistance Plan was repealed in 1995 and the federal government abandoned its role in creating social housing for the next twenty years.

In 1982, the *Canadian Charter of Rights and Freedoms* became part of the Canadian constitution. The *Charter* guarantees the civil and political rights protected under international human rights treaties ratified by Canada. Other sections can be interpreted to include economic, social and cultural rights. In particular, *Charter* section 7 guarantees the “right to life, liberty and security of the person” protected under article 3 of the UDHR. *Charter* section 15 guarantees “equality rights” that include the equal “benefit” of the law. These protections align with Canada's obligations under international treaties which it has ratified.

Elizabeth McIsaac and Bruce Porter, in *Housing Rights - Ottawa takes a historic step forward*, Literary Review Canada, (2019) describe the state of housing rights in Canada in the period leading up to the 2015 election of the federal Liberal government:⁵²

Leading up to the 2015 election, the sense of urgency had been growing across the country and across the income spectrum. Middle-income earners were feeling priced out of home ownership, particularly in Vancouver and Toronto. But the sharp end of this reality was the growing crisis of homelessness, felt most acutely in big cities but experienced in many communities. Increasing numbers of households were defined as being in “core housing need” — meaning that they would have to spend 30 percent or more of their before-tax income to pay the median rent of appropriate shelter. One in six households in Vancouver and Toronto were in core housing need. Further, purpose--built rental stock was in a state of disrepair. And by 2015, federal operating agreements with

⁵¹ A Road Map To Eradicate Child And Family Poverty, Campaign 2000 Report Card on Child & Family Poverty in Canada, 2016, online: [<https://campaign2000.ca/wp-content/uploads/2016/11/Campaign2000NationalReportCard2016Eng.pdf>].

⁵² McIsaac 2019.

social housing providers and co-ops were winding down. A public policy response was urgently needed.

Finally, in November 2017, the federal government introduced the National Housing Strategy, with a commitment “to progressively implement the right of every Canadian to access adequate housing.” It promised to reduce homelessness by 50 percent within a decade and to introduce legislation that would require future governments to implement rights-based strategies. This commitment to a legislated housing strategy based on the right to housing was unprecedented. As discussed below, this culminated in the enactment of the federal *National Housing Strategy Act*.

C. CANADA’S UNIVERSAL PERIODIC REVIEWS (UPR)

Under the UN’s UPR process, Canada must report on and have its human rights record periodically reviewed.

Canada has appeared before the UN Human Rights Council’s Review Working Group several times to be evaluated by other member States on the fulfillment of its human rights obligations. Several economic issues, such as addressing poverty and homelessness, have been brought to Canada’s attention.

In Elizabeth McIsaac and Bruce Porter, *Housing Rights - Ottawa takes a historic step forward*, the authors state:⁵³

As early as 1993, the UN Committee on Economic, Social and Cultural Rights commented on the state of homelessness in Canada. In its 1998 review, the committee again expressed alarm that “such a wealthy country as Canada has allowed the problem of homelessness and inadequate housing to grow to such proportions that the mayors of Canada’s ten largest cities have now declared homelessness a national disaster.” In 2016, housing groups and human rights activists, including people with lived experience of homelessness, made submissions and engaged directly with the committee, which continued to admonish Canada for not acting on its recommendations. In March 2017, Leilani Farha, the UN special rapporteur on the right to housing and a Canadian human rights activist, submitted a formal letter to the federal government. Her concerns prompted parliamentary debate and direct conversation with the minister.

⁵³ McIsaac 2019.

VIII. CANADIAN LAW ON HOUSING RIGHTS

A. CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Canada does not have social and economic rights explicitly enshrined in its Constitution, with the exception of minority language education rights under *Charter* section 23 and *Constitution Act*, 1982⁵⁴ section 36 (discussed below).

The *Charter of Rights and Freedoms* is a bill of rights that forms part of Canada's constitution. It protects individual rights and freedoms from unreasonable and unjustified government action. The *Charter* is different from provincial and territorial human rights statutes, discussed below, which protect individuals from discrimination by the government and private actors. The *Charter* does not contain any explicit right to housing.

The essential *Charter* rights that are engaged by those making claims that their right to housing is protected under the Charter, are Sections 1, 7, and 15.

1. Charter Section 1

The following sections are excerpts from the Alberta Civil Liberties Research Centre website, *Know Your Rights*, which states:⁵⁵

There are two stages that must be satisfied before finding that your *Charter* right was unjustly breached:

- One of my *Charter* rights or freedoms has been breached (view the framework for each right and/or freedom [here](#));
- The government's interference with my right or freedom was not reasonably justified in a free and democratic society.

The first question requires you to determine if the action you have complained of falls within the meaning or content of a *Charter* right or freedom. By analyzing both the law and the right or freedom, the Court can determine if the government action has infringed a *Charter* right or freedom (a detailed discussion of the most commonly invoked *Charter* rights and freedoms are located here).

If the answer to question one is yes, the Courts move on to stage two: Was the breach justified?

⁵⁴ *The Constitution Act, 1982*, being Schedule B to the [Canada Act 1982 \(UK\), 1982, c 11](#).

⁵⁵ A more in-depth discussion can be accessed under the Alberta Civil Liberties Research Centre website under [Do I have a Charter claim?](#)

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Charter rights and freedoms are not absolute – the government is permitted to impose reasonable limits on them. In all *Charter* cases, the government is given the opportunity to justify any breach through a mechanism known as the "proportionality test". The proportionality test is a function of s. 1 of the *Charter*, which states:

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Section 1 permits a balancing of individual rights and freedoms against valid government objectives and policies. This balancing act is commonly known as the proportionality test. It seeks to locate “reasonable limits” that can be “demonstrably justified in a free and democratic society.”

This has serious implications for any person pursuing a *Charter* claim. Practically speaking, if you have established that one of your *Charter* rights have been breached, this is not the end of the story. The government is permitted to justify its actions by relying on section 1. The government successfully justifies its actions in approximately 40% of *Charter* cases.

Before applying the proportionality test, the Court first assesses the government’s objective in enacting the legislation (i.e., the problem the government wants to solve or the reason the government has enacted a particular law). This objective must be sufficiently important (i.e., pressing and substantial) to permit overriding a *Charter* right or freedom. The more serious the infringement, the more important the objective has to be.

Once this has been determined, the proportionality test is assessed. This has three stages:

1. Is there a “rational connection” between the government’s objective (their goal) and what they have done to achieve that objective? In other words, the government action has to be connected to its objective.
2. Does the government action impair *Charter* rights as little as possible?
3. Is the effect of limiting the *Charter* right proportional to the valid objective the government is pursuing?

If the government passes the proportionality test, then the government action is permitted, despite the fact that it infringes on a *Charter* right. While the burden to satisfy the s. 1 test always lies with the government, you must always expect to deal with the proportionality test if you are pursuing a *Charter* case.

3. Charter Section 7

The following sections are excerpts from the Alberta Civil Liberties Research Centre website, *Know Your Rights*,⁵⁶ which states:

Section 7 of the *Charter* states:

s. 7: Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

There are two questions that must be asked in order to determine if there has been a violation of section 7:

Has your right to life, liberty, or security of the person been interfered with?

If yes, was the interference done in accordance with the principles of fundamental justice?

Life means the basic right to be alive. The right to life has historically been treated as more important than many other rights, including security of the person, bodily control, and liberty of choice. This is, however, an area of constant development and change.

Liberty means the freedom to make personal choices and to move without physical restraint. This is most often brought up in the context of imprisonment.

Security of the person protects your right to the health and privacy of your body. This does not just apply to physical integrity. Any claims of psychological integrity must be serious, must be able to be assessed objectively, and must be more than just stress.

Your rights under section 7 can only be violated if the violation is in accordance with the principles of fundamental justice. The principles of fundamental justice protect the core values of our justice system and set out the minimum standard that must be met if government action or legislation is going to interfere with your section 7 rights. There are both procedural and substantive principles of fundamental justice.

Procedurally, you are entitled to:

- fairness in legal proceedings and hearings,
- unbiased treatment, and
- laws that are not unnecessarily vague

Substantively, you are entitled to a legal system that is not:

- arbitrary;
- overbroad; and/or
- grossly disproportionate

⁵⁶ A more in-depth discussion can be accessed under [the right to life, liberty, and security of the person](#).

3. Charter Section 15

The following sections are excerpts from the Alberta Civil Liberties Research Centre website, *Know Your Rights*,⁵⁷ which states:

The right to equality in s 15 of the *Canadian Charter* and the right to ‘life, liberty and security of the person’ in s 7, derived directly from Articles 2 and 3 of the *Universal Declaration of Human Rights*.

3.1 Equality Rights

Equality, dignity, freedom and personal autonomy are the underlying values of section 15. This section of the *Charter* protects your equality rights. It recognizes four different types of equality:

- Equality before the law refers to equality in the administration of justice. It means that everyone should obey the same laws as everyone else.
- Equality under the law refers to equality in the substance of the law. It means that laws are written so that everyone is subject to the same result.
- Equal protection of the law means that everyone’s dignity and autonomy is equally protected by the law.
- Equal benefit of the law means that any benefit given by a law will be enjoyed by everyone across society.

3.2 Freedom from Discrimination

Section 15 also recognizes the right to be free from discrimination. Discrimination occurs when an individual or a group suffers a distinction, whether intentional or not, based on a personal, unchangeable characteristic, the purpose or effect of which denies a benefit or puts a burden on such individual or group (*Canadian National Railway Co v Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114 at para 33).

3.3 Enumerated vs. Analogous Grounds of Discrimination

Section 15(1) contains nine “enumerated grounds”—race, national or ethnic origin, colour, religion, sex, age, and mental or physical disability. These grounds are personal and unchangeable characteristics. Laws that discriminate based on enumerated grounds violate section 15.

These are not, however, the complete list of actionable grounds. Enumerated grounds are merely examples of the types of characteristics that a discrimination claim can be based

⁵⁷ A more in-depth discussion can be accessed under [the right to equal treatment before and under the law \(s. 15\)](#); and [the right to equal protection and benefit of the law without discrimination \(s. 15\)](#).

upon. Other grounds of discrimination that are not enumerated in s. 15(1) are called “analogous grounds”.

As with the enumerated grounds, analogous grounds generally have to be difficult or impossible to change. Sexual orientation, marital status, and citizenship have all been found to be analogous grounds. Employment status, marijuana/drug use, and membership in the military have not been found to be analogous grounds.

3.4 *Intentional vs. Adverse Effects Discrimination*

While a law or government action that purposely discriminates will violate s. 15(1), discrimination does not have to be intentional to be actionable.

Sometimes, a government action or legislation may appear to be neutral and non-discriminatory, but it causes a certain group of people to be excluded anyway. In this situation, the law is said to create an “adverse effect”.

For example, legislation providing medical services may be neutral on its face, in that it provides all people certain medical services free of charge. Nevertheless, failing to provide sign language interpreters renders deaf people unable to benefit from the legislation to the same extent as hearing persons. The failure to provide sign language interpretation created an adverse effect on the basis of physical disability (*Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 at para 60).

3.5 *Ameliorative Programs*

Section 15(2) allows the government to implement programs for the benefit of certain disadvantaged groups without facing a discrimination claim. These programs are not considered discriminatory because their purpose is to combat and reduce existing discrimination.

These programs are sometimes attacked as constituting “reverse discrimination”. Therefore, the government must be able to prove that the program has an ameliorative purpose (designed to improve situations for a disadvantaged group based on an enumerated or analogous ground). If the government can demonstrate this, the program can stand.

3.6 *The Test*

There are three questions that must be asked to determine if there has been a violation of section 15:

- Does the government action or legislation create a distinction based on an enumerated or analogous ground?
- If yes, is the government action or legislation part of an ameliorative program aimed at improving situations for a disadvantaged group? The Court must be satisfied that the following conditions are met.

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- There is a correlation between the program and the disadvantage experienced by the particular group.
- The purpose of the program is genuine.
- The distinction generally serves or advances the goal of the ameliorative program.

If these conditions are met, there is no violation of section 15. If not, the analysis continues, and we must ask:

- [Does the impugned law impose burdens or den[y] a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage?]⁵⁸

4. *Constitution Act, Section 36*

Section 36 of the *Constitution Act, 1982* has implications for Canada's social and economic rights under international human rights law. Section 36(1) provides:

36. (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to
- (a) promoting equal opportunities for the well-being of Canadians;
 - (b) furthering economic development to reduce disparity in opportunities; and
 - (c) providing essential public services of reasonable quality to all Canadians.

Scholars argue that at least some of the provisions in section 36 are framed in a manner that could be adjudicated by courts. Jackman and Porter⁵⁹ argue that since the UN has adopted the Optional Protocol to the ICESCR, Canada's commitment to provide public services of a "reasonable quality" allows section 36 to be interpreted in a manner that gives effect to our governments' obligations to adopt 'reasonable measures' to realize the right to an adequate standard of living as guaranteed under the ICESCR.

B. PROVINCIAL AND FEDERAL HUMAN RIGHTS LEGISLATION

Human Rights laws protect individuals from discriminatory treatment by the government and the private sector. This differs from the *Charter*, which protects various rights and freedoms from government action only.

⁵⁸ *Fraser v Canada (Attorney General)*, 2020 SCC 28 (CanLII) at para. 27.

⁵⁹ Martha Jackman & Bruce Porter, *International Human Rights and Strategies to Address Homelessness and Poverty in Canada: Making the Connection Working Paper* (Huntsville, ON: Social Rights Advocacy Centre, September 2011) [Making the Connection] at 41-45].

The following sections are excerpts from the Alberta Civil Liberties Research Centre website, *Know Your Rights* under [Human Rights Law in Alberta](#):

1. Alberta Human Rights Act (AHRA)

Each province has a provincial body that protects individuals against discrimination. In Alberta, this is the Alberta Human Rights Commission (AHRC). The Alberta Human Rights Commission is an administrative body responsible for administering the *Alberta Human Rights Act* (AHRA). The AHRA applies to the actions of the provincial government, and the private sector in Alberta.

The AHRA protects individuals from discrimination that occurs on certain grounds, in connection with specific activities. These grounds and activities are as follows:

Grounds: age, race, colour, ancestry, place of origin, religious beliefs, gender, gender identity, gender expression, physical disability, mental disability, marital status, family status, source of income, and sexual orientation.

Activities: notices (including newspaper ads, posters, publications, etc.); goods, services, accommodation or facilities customarily available to the public; employment practices or employment advertising; tenancy; and membership in a trade union.

The AHRA also sets out defences that a party accused of discrimination can rely on. For instance, an employer is permitted to impose restrictions that are a bona fide occupational requirement for the job. In addition, a person who discriminates may be able to prove that the discrimination was reasonable and justifiable under the circumstances (AHRA, s. 11).

Employers, shop owners and landlords are obligated to adapt or adjust facilities, services or employment requirements to meet the needs of an individual or a group protected by human rights laws (known as the duty to accommodate). For example, certain restaurants and shops may be required to make their facilities wheelchair accessible. However, the person's right to not be discriminated against must be balanced against the service provider's right to conduct business in a safe and cost-effective manner. If this person can establish that accommodating the needs of another person would result in undue hardship, the service provider would be able to rely on the defences outlined above.

Unlike Canada's criminal law, which has punishment as a purpose, the AHRA is not meant to punish offenders; it is intended to provide relief for victims of discrimination. Since the AHRA is not meant to punish, large monetary awards are not usually made. For example, in a case of sexual harassment, the Human Rights Tribunal may order the employer, landlord or service provider to: apologize, establish a sexual harassment policy, post notices which say sexual harassment is illegal, pay an individual for lost wages and psychological harm, and/or reinstate an employee to a position.

2. Federal Human Rights Law

You would launch your complaint with the Canadian Human Rights Commission (CHRC) if the treatment you complain of was caused by the federal government or a federally regulated business (including federal departments, agencies and crown corporations; chartered banks; airlines; television and radio stations; interprovincial communication and telephone companies; buses and railways that travel between provinces; first nations issues; and other federally regulated industries).

The CHRC is established by the *Canadian Human Rights Act* and operates similarly (but not identically) to the AHRC.

Like the AHRC, the CHRC is limited in that it protects people from discrimination on particular grounds in association with specific activities including:

- Grounds: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Activities: goods, services, accommodation or facilities customarily available to the public; tenancy; employment practices or employment advertising; membership in employee organizations; notices (including newspaper ads, posters, publications, etc.); harassment; retaliation.

Also, like the AHRC, a party accused of discrimination has certain defences available to them. An employer is permitted to impose restrictions that are a bona fide occupational requirement, and a person who discriminates may be able to demonstrate that the discrimination was reasonable and justifiable in the circumstances.

While employers, shop owners and landlords are obligated to adapt or adjust facilities, services or employment requirements to meet the needs of an individual or a group protected by human rights laws, this accommodation is limited if it would cause undue hardship.

The CHRC grants remedies in a way similar to the AHRC. Instead of large monetary awards, remedies are geared to providing relief and correcting the discriminatory behaviour. The CHRC may order a discriminating party to:

- change its policies or practices, or create human rights policies,
- pay you for lost wages or give you your job back,
- take human rights awareness training, or pay you for pain and suffering up to a maximum of \$20,000, and any losses caused by the discrimination,
- pay you up to a maximum of \$20,000 for reckless or wilful discrimination.

C. FEDERAL NATIONAL HOUSING STRATEGY ACT

In 2019, Canada enacted the *National Housing Strategy Act* recognizing for the first time in its history its commitment to the right to housing. The Act recognizes that “the right to adequate housing is a fundamental human right...essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities” and commits the government of Canada to the progressive realization of the right to housing as guaranteed in international human rights law ratified by Canada.

It stops short of subjecting the government to legally binding court or tribunal decisions. Claims of non-compliance with the government’s commitments under the Act are rather to be submitted to the Housing Advocate for investigation and recommendations. Rights holders also have rights to accessible hearings into key systemic issues, before a panel with expertise in human rights and housing with at least one representative of affected communities. Findings and recommendations from the Housing Advocate and the Review Panel must be responded to by the federal government in a timely manner. In particular, the *National Housing Strategy Act*:

- Declares that it is the housing policy of the Government of Canada to recognize housing as a fundamental human right and to progressively realize this right in accordance with international human rights law
- Requires future governments to develop and maintain a national housing strategy to further this policy commitment, taking into account key principles of a human rights-based approach
- Establishes a National Housing Council to further the commitment to the right to housing and advise the Minister on the effectiveness of the Housing Strategy
- Establishes a Federal Housing Advocate, supported by the Canadian Human Rights Commission to:
 - assess and advise the federal government on the implementation of its commitment to the right to housing, particularly with respect to vulnerable groups and those who are homeless
 - initiate inquiries into incidents or conditions in a community, institute, industry or economic sector
 - monitor progress in meeting goals and timelines
 - receive and investigate submissions on systemic issues from affected groups
 - submit findings and recommended action to the designated Minister to which the Minister must respond within 120 days, and
 - refer key systemic issues for accessible hearings before a Review Panel.

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- Provides for a Review Panel, made up of three members appointed by the National Housing Council to hold hearings into selective systemic issues affecting the right to housing and submit its findings and recommended measures to the government through the designated federal Minister and
- Requires the Minister to respond to findings and recommendations within 120 days.

The NHSA does not address individual housing rights, which still must be must addressed through the courts or tribunals.

Elizabeth McIsaac and Bruce Porter, *Housing Rights - Ottawa takes a historic step forward* comment on the impact of the NHSA:⁶⁰

The *National Housing Strategy Act* is a novel and creative piece of legislation. It focuses on the government's overarching obligation under the ICESCR to the "progressive realization" of the right to housing. This is significant. But what does it actually mean?
...

On its own, the National Housing Strategy Act does not "achieve" housing as a human right. Rather, it provides a platform from which to launch a renewed commitment to a right that has been long recognized by Canada internationally but has languished at home. It provides a framework to guide policy makers toward a new approach.

Whatever the outcome of the 2019 election, the new government must work to develop, maintain, and invest in policies and programs that support the right to housing. Many advocates question whether the funding commitments made by the federal government in 2017, before the passing of the Act, are sufficient to make meaningful progress. Indeed, this is something that we must continue to monitor, using the Act's accountability mechanisms. Nonetheless, policy makers and civil society have a strong foundation upon which to advocate for further action and investment and for the progressive realization of our rights.

The new legislation meets most of these criteria. It requires the development and maintenance of a rights-based strategy that sets out a long-term vision and establishes goals, priorities, initiatives, timelines, and desired outcomes. It provides for participatory processes to ensure the inclusion and engagement of civil society, stakeholders, vulnerable groups, and persons with lived experience of housing need and homelessness. It does this through mechanisms such as the National Housing Council, which is intended to advise the government and will be made up of a diverse membership.

⁶⁰ Elizabeth McIsaac and Bruce Porter, *Housing Rights - Ottawa takes a historic step forward*, Literary Review Canada, November 2019, online: [<https://maytree.com/publications/housing-rights-ottawa-takes-a-historic-step-forward/>].

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The Act also creates the role of federal housing advocate, supported by the Canadian Human Rights Commission, to monitor progress, receive submissions on systemic issues and barriers faced by vulnerable groups, and initiate studies into conditions that affect the system...

What the legislation does not do is create a right to housing that an individual may claim before a court. Rather, it carves out a middle ground between a hard law and softer commitments. It provides access to hearings and other mechanisms to hold the government accountable for its international obligations without relying on binding court orders. This model creates a supplementary, parallel process for rights claiming and adjudication. It does not, however, replace the need for an ultimate recourse to courts, which international law obliges Canada to ensure. There's more work to be done.

The Centre for Equality Rights in Accommodation (CERA) and National Right to Housing (NRHN) is currently presenting a submission to the federal government under the NHSA addressing the systemic issue of unaffordable rent and accumulated arrears or debt among residential tenants as a result of the pandemic. The proposal is for a “Federal Government Retroactive Residential Tenant Support Benefit” for low- and moderate-income tenants who have faced heightened rent affordability challenges because of income loss during the pandemic. The benefit will provide what amounts to a retroactive rent subsidy to ensure that rent would make up the same percentage of income in 2020 as in 2019, prior to the pandemic. For tenants in arrears, some or all of the benefit can be directed to their landlord.⁶¹ This is one of the first tests of the government's commitment to address systemic housing issues under the new Act.

D. CANADIAN CASE LAW

It has been widely acknowledged by scholars that the economic and social rights recognized in international human rights treaties ratified by Canada and the rights that are explicitly included in the Canadian *Charter*, such as the Section 7 right to life, liberty and security of the person and the Section 15 right to equality, are overlapping and interdependent.⁶²

Canadian courts have considered the application of *ICESCR* in claims alleging violations of housing rights as well as social assistance, health care and employment rights violations.

⁶¹ Centre for Equality Rights in Accommodation (CERA) and National Right to Housing, *Proposal for a Federal Government Retroactive Residential Tenant Support Benefit*, online: [<http://www.socialrights.ca/2021/RTSB-Submission.pdf>].

⁶² Jackman, Martha and Porter, Bruce, *Rights Based Strategies to Address Homelessness and Poverty in Canada: The Charter Framework* (2014). *Advancing Social Rights in Canada*, eds Martha Jackman & Bruce Porter, Toronto: Irwin Law, 2014: pp 65-106: Available at SSRN: [<https://ssrn.com/abstract=2696250>].

Supreme Court of Canada decisions appear to support the justiciability of social and economic rights under the *Charter*. However, lower courts in Canada have, for the most part, interpreted the *Charter* narrowly, finding that economic and social rights are not justiciable. These conclusions are bolstered by arguments that the obligation to grant such rights is solely within the purview and expertise of governments.⁶³

Arguments for the right to housing are primarily based on *Charter* sections 7 and 15. They have been more successful in shielding homeless individuals who have been charged with bylaw offences or removed by officials from sleeping or living in parks or on other public property, than providing a right to adequate housing.

The following decisions summarize certain key Supreme Court of Canada decisions and other Canadian court decisions in which the courts have considered whether the *Charter* protects the right to housing. These decisions and others are discussed in the Alberta Civil Liberties Research Centre publication *No Place to Sleep: The Right to Housing in Canada*,⁶⁴ and it should be consulted for a more comprehensive discussion of the issues.

1. Supreme Court of Canada Decisions

The following decisions summarize the key cases in which the Supreme Court of Canada, although not deciding the issue, has refused to exclude economic and social rights from protection under the *Charter*. It also discusses an early Nova Scotia Court of Appeal decision in *Sparks*, a landmark decision on the protection of economic and social rights.

In *Irwin Toy Ltd. v Quebec (Attorney General)*⁶⁵ (1989), the Supreme Court distinguished ‘corporate-commercial economic rights’ which were deliberately excluded from the *Charter*, from ‘such rights, included in various international covenants, as rights to social security, equal pay for equal work, adequate food, clothing and shelter’.⁶⁶ It cautioned that “rights to social

⁶³ A discussion of some of these cases can be found in the Ontario Human Rights Commission, *Human Rights Commission and Economic and Social Rights* Research Paper, (October 2001) online: [\[http://www3.ohrc.on.ca/sites/default/files/attachments/Human_rights_commissions_and_economic_and_social_rights.pdf\]](http://www3.ohrc.on.ca/sites/default/files/attachments/Human_rights_commissions_and_economic_and_social_rights.pdf).

⁶⁴ Linda McKay-Panos and Kristyn Stevens, *No Place to Sleep: The Right to Housing in Canada*, 2nd ed (Calgary: Alberta Civil Liberties Research Centre, 2013); the publication is currently being updated.

⁶⁵ *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989] 1 S.C.R. 927 [*Irwin toy*].

⁶⁶ *Irwin Toy*, 1989, at 1003–1004).

security, equal pay for equal work, adequate food, clothing and shelter” should not be excluded from section 7 at such an early stage of *Charter*:

As a general proposition, persons who qualify for public housing are the economically disadvantaged and are so disadvantaged because of their age and correspondingly low incomes (seniors) or families with low incomes, a majority of whom are disadvantaged because they are single female parents on social assistance, many of whom are black. The public housing tenants’ group as a whole is historically disadvantaged as a result of the combined effect of several personal characteristics listed in s. 15(1).

The Court also concluded that the s. 15 violation was not justified under s. 1 of the *Charter* as the policy objective could have been achieved with a lesser impairment of rights. The Court considered the disadvantaging effect of the provision on members of enumerated or analogous groups under s. 15. It is important to note that the plaintiff produced empirical evidence as to the typical characteristics of public housing tenants, including sex and racial composition.

In *Slaight Communications Inc v Davidson*, (1989) which addressed workers’ rights, the Supreme Court affirmed that the *Charter* should be presumed to provide at least the same level of protection as the international human rights laws that Canada had ratified.⁶⁷

In *Schachter v Canada* (1992), the Supreme Court of Canada held that adequate maternity and parental benefits should be provided without discrimination.⁶⁸

In *Dartmouth/Halifax County Regional Housing Authority v Spark* (1993), a landmark equality rights case, the Nova Scotia Court of Appeal found that public housing tenants constitute a protected class analogous to those enumerated in s. 15 of the *Charter*.⁶⁹ The Court struck down two sections of the *Residential Tenancies Act*, which treated public housing tenants differently from other tenants, as being unjustifiable infringements of s. 15 of the *Charter*. The Court found that the plaintiff, a black sole support mother, had been placed at a disadvantage due to this differential treatment. The Court identified poverty as a characteristic shared by all residents of public housing and noted that single mothers “are now known to be the group in society most likely to experience poverty in the extreme. It is by virtue of being a single mother

⁶⁷ *Slaight Communications Inc v Davidson*, [1989] 1 SCR 1038; see also *R v Advance Cutting and Coring Limited*, [2001] 3 SCR 209, at para 12 [*Davidson*].

⁶⁸ *Schachter v Canada*, [1992] 2 SCR 679 [*Schachter*].

⁶⁹ *Dartmouth/Halifax County Regional Housing Authority v Sparks* (1993), 101 DLR (4th) 224 (NSCA) [*Sparks*].

that this poverty is likely to affect the members of this group.” The Court recognized that discrimination is the combined effect of multiple factors, including poverty.

In *Miron v Trudel* (1995), the Supreme Court of Canada identified a number of factors to assist in determining whether an analogous ground (such as poverty or homelessness) should be recognized under section 15(1).⁷⁰ These include whether:

- the proposed ground may serve as a basis for unequal treatment based on stereotypical attributes;
- it is a source of historical social, political and economic disadvantage;
- it is a ‘personal characteristic’;
- it is similar to one of the enumerated grounds;
- the proposed ground has been recognized by legislatures and the courts as linked to discrimination;
- the group experiencing discrimination on the proposed ground constitutes a discrete and insular minority; and
- the proposed ground is similar to other prohibited grounds of discrimination in human rights codes.

The Court also noted that while discriminatory group markers often involve personal characteristics that are immutable, they do not necessarily have to.

In *G (J)* (1997), the court rejected an exclusive negative rights orientation to section 7.⁷¹ The Supreme Court of Canada held that this section (as well as section 15) places positive as well as negative obligations on the state. The Court of Appeal had dismissed a section 7 challenge by the government to the denial of funding for legal aid in a child custody case on the basis that it was not the responsibility of the courts to effectively create programmes designed to further social justice and equality. The Supreme Court disagreed, holding that there are positive constitutional obligations on government to provide counsel in those cases when it is necessary to ensure a fair hearing. The financial issues were addressed under section 1 of the *Charter*: the estimated cost of less than \$100,000 dollars to provide state-funded counsel, in these

⁷⁰ *Miron v Trudel*, [1995] 2 SCR 418 [*Miron v Trudel*]; see also *Egan and Nesbit v Canada*, [1995] 2 SCR 513 [*Egan*]; and *Thibaudeau v Canada*, [1995] 2 SCR 627 [*Thibaudeau*].

⁷¹ *New Brunswick (Minister of Health and Community Services) v G(J)*, (1997), 187 NBR (2d) 81; overturned in *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46.

circumstances was found to be “insufficient to constitute a justification within the meaning of section 1.”

In *Eldridge v British Columbia (Attorney General)* (1997),⁷² the Supreme Court considered a claim that the failure of the British Columbia Government to provide interpreter services for the Deaf and Hard of Hearing in the provision of healthcare was a breach of the equality rights under *Charter* section 15. The Court adopted a ‘substantive’ approach to the interpretation of the right to equality which includes positive obligations to provide resources sufficient for disadvantaged groups to enjoy the equal benefit of government programs and to protect fundamental dignity interests, stating:

[T]he respondents and their supporting interveners maintain that s 15(1) does not oblige governments to implement programs to alleviate disadvantages that exist independently of state action. They assert, in other words, that governments should be entitled to provide benefits to the general population without ensuring that disadvantaged members of society have the resources to take full advantage of those benefits. In my view, this position bespeaks a thin and impoverished vision of s 15(1) [equality rights]. It is belied, more importantly, by the thrust of this Court’s equality jurisprudence (*Eldridge v British Columbia (Attorney General)*, 1997, at 677-678).

In *Vriend v Alberta* (1998),⁷³ the Supreme Court of Canada reaffirmed the concept of substantive equality, finding that provincial governments have a positive obligation to include protection for gays and lesbians from discrimination because of sexual orientation in human rights legislation. The Court read into Alberta’s human rights legislation a prohibition of discrimination because of sexual orientation in order to preserve the constitutionality of the legislation, ruling that “...the *Charter* will be engaged even if the legislature refuses to exercise its authority’.

In *Baker v Canada (Minister of Citizenship and Immigration)* (1999),⁷⁴ the Supreme Court of Canada considered the status of the *Convention on the Rights of the Child* (CRC). The majority of the Court held that while it is true that the provisions of the CRC and other human rights treaties have no direct application in Canadian law, they nevertheless will have considerable interpretive effect. The Court found that international human rights contain ‘the

⁷² *Eldridge v British Columbia (Attorney General)* [1997] 3 SCR 624 [*Eldridge*].

⁷³ *Vriend v Alberta*, [1998] 1 SCR 493 [*Vriend*].

⁷⁴ *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 [*Baker*].

values that are central in determining whether a decision or an exercise of discretion is ‘reasonable’:

[T]he legislature is presumed to respect the values and principles contained in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred (*Baker v Canada*, 1999, at para 70).

In *R v Ewanchuk* (1999),⁷⁵ the Supreme Court of Canada found sections 7 and 15 of the *Charter* are of particular importance in giving domestic effect to international human rights because these rights ‘embody the notion of respect of human dignity and integrity’.

In *Dunmore* (2001),⁷⁶ the Supreme Court of Canada dealt with the issue of whether excluding agricultural workers from the labour relations scheme infringed their rights under *Charter* section 2(d) (freedom of association). The Supreme Court noted that ordinarily the *Charter* does not oblige the state to take affirmative action to safeguard or facilitate the exercise of fundamental freedoms. The Supreme Court stressed that it is more usual for cases dealing with under-inclusion to be examined under *Charter* section 15(1). However, where history has shown that the posture of government restraint will expose people to harm (e.g., unfair labour practices), the *Charter* may impose a positive obligation on the state to extend protective legislation to unprotected groups. Thus, excluding individuals from a protective regime may contribute substantially to the violation of protected freedoms. The Supreme Court grounded the claim in fundamental *Charter* freedoms rather than in access to a particular statutory regime. The Court also noted that the doctrine expressed in the case does not, on its own, oblige the government to act where it has not already legislated in a particular area. To be clear, if the state chooses to legislate in a particular area, it must do so in a way that is consistent with *Charter* section 15(1), and this would mean that unprotected groups should be included.

In *Auton v (Guardian ad litem of) v British Columbia (Attorney General)* (2004),⁷⁷ a group of parents argued that the government’s refusal to fund a particular program for their preschool-aged children with autism constituted discrimination on the basis of disability. They argued that the government discriminated against their autistic children because it provided non-

⁷⁵ *R v Ewanchuk*, [1999] 1 SCR 330 at para 73 [*Ewanchuk*].

⁷⁶ *Dunmore v Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 SCR 1016 [*Dunmore*].

⁷⁷ *Auton v (Guardian ad litem of) v British Columbia (Attorney General)* 2004 SCC 78 [*Auton*].

autistic children with medically necessary services. The Supreme Court of Canada rejected the claimants' proposed comparator groups—children without disabilities and adults with mental illness—and found that the correct comparator groups were persons without disabilities or persons suffering from a disability other than a mental disability, seeking or receiving funding for non-therapy that was important for their present and future health and which was emergent and only recently recognized as medically necessary. This application of the comparator analysis posed a significant obstacle for the claimants as it implicitly affirmed the formal equality and similarly-situated analysis, which is not currently preferred. This formalistic approach effectively prevents the imposition of positive obligations on government, because with a substantive equality approach one can recognize the importance of positive action for accommodating the different needs of people with disabilities.

In *Chaoulli v Quebec (Attorney General)* (2005),⁷⁸ a majority of the Supreme Court of Canada held that Quebec's failure to ensure access to health care of a reasonable quality within a reasonable time engaged the right to life and security of the person and thus triggered the application of *Charter* section 7 (and the equivalent guarantee in Quebec's *Charter of Rights and Freedoms*). While the dissenting justices agreed that there could be a risk to life and security of the person in some cases, they disagreed with the majority that the Province's ban on private health insurance was arbitrary.

In *Health Services and Support — Facilities Subsector Bargaining Assn. v British Columbia* (2007),⁷⁹ the Supreme Court of Canada reaffirmed that the *Charter* should be presumed to implement protection that is at least as great as that found in similar provisions in international human rights law.

In *United States of America v Anekwu*, (2009),⁸⁰ the Supreme Court of Canada indicated that in interpreting domestic legislation, courts should arrive at a construction that conforms with Canada's international law obligations.

In conclusion, the *Charter* does not contain “express words” protecting the human right to housing similar to those in Article 11.1 of the ICESCR which provides a “right to adequate food, clothing and housing”. Based on the Supreme Court of Canada's analysis in the above

⁷⁸ *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 (CanLII), [2005] 1 SCR 791 [*Chaoulli*].

⁷⁹ *Health Services and Support - Facilities Subsector Bargaining Assn. v British Columbia* [2007] 2 SCR 391 [*Health Services and Support*].

⁸⁰ *United States of America v Anekwu* 2009 SCC 41, [2009] 3 SCR 3 [*Anekwu*].

cases, it could be argued that international treaties ratified by Canada should be considered when interpreting Canadian legislation. While economic and social rights such as rights to housing have not been directly enacted into the *Charter*, there may be some room in the future to argue that such rights are widely recognized and Canadian laws (including the *Charter*) should be interpreted to recognize this.

2. Canadian Housing Rights Decisions

Gosselin v Québec (Attorney General) [2002] 4 SCR 429 (*Gosselin*)

In this case, the Supreme Court of Canada heard its first case dealing with whether sections 7 and 15 of the *Charter* include components of the right to an adequate standard of living, including adequate housing. Québec passed a Social Aid Regulation lowering the rate of assistance for employable recipients under the age of 30 not enrolled in workfare or training programs. Ms. Gosselin fell under the regulation. Her evidence was that in trying to survive on the lower rate, she was frequently homeless and forced to sleep in shelters or on the street and, when she found housing, it was grossly inadequate, lacking heat and being infested with bugs. She argued that the inadequacy violated her right to ‘security of the person’ under *Charter* s 7 and her right to freedom from discrimination because of age under s 15 of the *Charter*. She also relied on the right ‘to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living’ in section 45 of the *Québec Charter*.

The trial court in *Gosselin* found that there is no justiciable right to adequate financial assistance either under the Québec *Charter* or the Canadian *Charter*, finding that the right in Article 11 of ICESCR is subject to ‘progressive realization’ and ‘signifies a mere intent’ or ‘policy objective’ of government rather than an enforceable human right (*Gosselin v Québec (Procureur Général)* [1992] RJQ 1647, at 1676–1677). The Québec Court of Appeal upheld the trial court decision.

A slim majority (5:4) of the Supreme Court of Canada held that the lower rate imposed on employable young people under the age of 30 did not discriminate on the basis of age because this ‘incentive’ was designed to help young people avoid the trap of welfare dependency.

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Chief Justice Beverley McLachlin, writing for the majority, found that the “evidence of actual hardship [was] wanting” and left for future cases the question of whether governments are obliged to address poverty or homelessness when they threaten life or security of the person. Justice Louise Arbour, who later became the UN High Commissioner for Human Rights, supported by Justice Claire L’Heureux-Dubé, wrote a dissenting judgment ruling that section 7 of the *Charter* does impose a positive obligation on governments to ensure access to basic necessities. Conspicuously absent from the majority decision was any endorsement of the reasoning that had prevailed in earlier decisions of lower courts in Canada suggesting that adjudicating social rights claims related to poverty or the right to housing is beyond the proper role or competence of courts.

Victoria v Adams, 2009 BCCA 563 (Adams)⁸¹

This is one of the most notable successes in homeless litigation. A group of activists challenged a municipal bylaw that prohibited persons from creating overnight shelters in public parks. While this bylaw technically applied to everyone, it was clearly targeted at the “tent cities” of homeless persons sleeping in Victoria’s parks. The British Columbia Court of Appeal held that the bylaw infringed section 7 of the *Charter* because it deprived people of their life and security of the person (people can die when sleeping outside without adequate protection); and the bylaw was overbroad and therefore, not in accordance with the principles of fundamental justice (less invasive options would be available to accomplish its societal interests).

In examining the right to life, liberty and security of the person under *Charter* section 7, the court cited a number of international human rights instruments and reports that provide for the right to adequate housing and noted that these instruments could be used as an aid to interpret the scope of section 7 of the *Charter*, relying on a number of Supreme Court of Canada decisions to this effect. In the end, however, the court did not make much use of these international instruments because this was a case involving government action as opposed to inaction. There was no need, therefore, to determine whether section 7 of the *Charter* imposes a positive obligation on the state to provide adequate housing, since the alleged violation in this case was the City’s prohibition of certain activities and the impact of those prohibitions and their associated penalties on homeless persons in Victoria. The government’s argument that “the

⁸¹ *Victoria (City) v Adams 2008 BCSC 1363*, affirmed 2009 BCCA 563 [*Adams*].

Bylaws do not cause the Defendants to be homeless; hence, the condition in which they find themselves is not the result of state action” was therefore rejected.⁸²

***Johnston v Victoria (City)*, 2011 BCCA 400⁸³**

The City of Victoria had previously enacted a bylaw that prohibited the erection of temporary shelters in city parks and public spaces. This bylaw had been earlier challenged in the *Adams* case where the court held that the bylaw violated s. 7 of the *Charter*. Following that decision, the city amended the bylaw, so it was only in force during daylight hours. The appellant in this case – Johnson – and other homeless individuals set up shelters in a park during daylight hours and were convicted under by-law.

At the trial and superior courts, Johnson’s *Charter* argument failed as there was no proven shortage of daytime shelters for homeless people. Johnson appealed the decision, relying on the *Adams* decision to assert his point that the new bylaw was violating his section 7 right by not allowing him to erect a temporary shelter during daylight hours.

The Court of Appeal disagreed with Johnson’s position, emphasizing that the decision in *Adams* – where the Court found that the city’s bylaw outlawing the erection of temporary shelters at night violated homeless persons’ *Charter* rights – did not give homeless people a “freestanding constitutional right to erect shelters in public parks” (*Adams* at para 74) but rather a right “to be free from a state-imposed prohibition on the activity of creating or utilizing shelter, a prohibition which was found to impose significant and potentially severe health risks on one of the City’s most vulnerable and marginalized populations.” (*Adams* at para 100). The Court of Appeal reiterated that the decision in *Adams* allowed for homeless people to erect temporary shelters at night when there is a shortage of homeless shelter spaces but not during the day. Johnson could not provide evidence to the Court that there was a shortage of homeless shelter spaces during the day that would make the erection of a shelter during daylight hours necessary. As a result, the Court found that the bylaw did not violate Johnson’s or other homeless individuals’ *Charter* rights and was therefore upheld.

⁸² For further commentary on this decision, see Margot Young, “Rights, the Homeless, and Social Change: Reflections on *Victoria (City) v. Adams (BCSC)*” (2009-2010) 164 BC Studies 103, online: [https://commons.allard.ubc.ca/fac_pubs/359/].

⁸³ *Johnston v Victoria (City)*, 2011 BCCA 400 [*Johnston*].

***Tanudjaja v Canada (Attorney General)* 2014 ONCA 852⁸⁴**

This case was brought to Court by four individuals who were either homeless or in precarious housing situations and the Centre for Equality Rights in Accommodation (CERA), which is a non-profit organization which provides direct services to low-income tenants and the homeless on human rights and housing issues. The applicants argued that the actions and inaction of the Canadian and Ontario governments resulted in the homelessness and inadequate housing of the applicants. They argued that this violated their section 7 and section 15 rights under the *Charter*. (Para 9). The applicants argued that Canada limited access to affordable housing by:

- (a) cancelling funding for the construction of new social housing;
 - (b) withdrawing from administration of affordable rental housing;
 - (c) phasing out funding for affordable housing projects under cost-sharing agreements with the provinces; and
 - (d) failing to institute a rent supplement program comparable to those in other countries.
- (para 11)

They also argued that the Ontario government reduced access to affordable housing by:

- (a) terminating the provincial program for constructing new social housing;
- (b) eliminating protection against converting affordable rental housing to non-rental uses and eliminating rent regulation;
- (c) downloading the cost and administration of existing social housing to municipalities;
- (d) failing to implement a rent supplement program comparable to those in other countries;
- (e) downloading responsibility for funding development of new social housing to municipalities which lack the tax base to support such construction; and
- (f) heightening insecurity of tenancy by creating administrative procedures that facilitate evictions. (para 12).

They also listed the Canada and Ontario governments diminished income support programs and the deinstitutionalization of persons with disabilities as additional reasons to support their position.

⁸⁴ *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 [*Tanudjaja*].

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At trial, the judge dismissed the applicant's application on the basis that the applicants had not listed or named a specific piece of legislation or policy that violated their section 7 or section 15 rights, and had thereby not identified a cause of action. The judge also found that there was no *Charter* obligation that required the Canadian and Ontario governments to provide affordable or accessible housing. (para 17). The Judge also found that with regard to section 15 of the *Charter*, homelessness and inadequate housing were not analogous grounds under section 15. (para 17).

The applicants appealed the decision to the Court of Appeal. At the Court of Appeal, the Court agreed with the trial judge's decision. The Court of Appeal stated that in *Charter* cases, a challenge to a particular law or application of law is usually required for the Court to decide a *Charter* challenge (para 22). Without a specific law or application of law, the Court could not make a decision on the justiciability of the claim.

***Abbotsford (City) v Shantz, 2015 BCSC 1909*⁸⁵**

In this case, the organization, Drug War Survivors (DWS), argued that certain city bylaws were unconstitutional and infringed upon various rights of the homeless under the *Charter*, including section 7.

The impugned bylaws prohibited sleeping in parks overnight and erecting shelters without permits. The DWS argued that the bylaws effectively worked to displace the homeless population from public parks and prevent them from obtaining the "basic necessities of life including survival shelter, rest and sleep, community and family, access to safer living spaces, and freedom from the risks and effects of exposure and sleep deprivation." (para 25).

The events that led to the action began when City employees spread chicken manure on a homeless campsite to prompt the homeless population to vacate the site. Following this, Shantz and others created a tent camp in Jubilee Park without permission from the City. Some of the occupants of the tent camp moved into a wooden structure in the parking lot of Jubilee Park. The City obtained a court order for the occupants of the tent camp to vacate Jubilee Park. For some time, the homeless population moved from space to space, after receiving either verbal or written notice to vacate each premises. After some time, the group set up a tent city near their original camp.

⁸⁵ *Abbotsford (City) v Shantz, 2015 BCSC 1909 [Shantz]*.

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The DWS argued that the city bylaws in question conflicted with the principles of fundamental justice because they displaced the City's homeless population and excluded their presence from public spaces. As a result of this continuous displacement, homeless people were denied the ability to "obtain the basic necessities of life, including survival, shelter, rest and sleep, community and family, access to safer living spaces, and freedom from the risks and effects of exposure and sleep deprivation".

The DWS argued that there was a lack of accessible shelter for the City's homeless population and that homeless people face several barriers in accessing shelter and housing. The City made the claim that the homeless are sleeping out-of-doors in camps because they are choosing not to follow the rules set out for all members of the public. The court rejected the assertion that homelessness is a choice, emphasizing that this perspective ignores factors such as poverty, low incomes, lack of work opportunities, limited public assistance, a lack of affordable housing, addictions and other health issues (para 81).

The DWS also argued that the City failed to provide adequate housing for the homeless. The court's position on the duty of the City to develop housing for the homeless was to reiterate that this falls within the scope of the legislature to decide rather than that of the court, emphasizing the perspective that courts do not create positive social obligations (para 123). The court concluded that "homelessness is a risky, but legal activity and enforcement of the impugned bylaws heightens the health and safety risks that the City's homeless face" (para 145). Ultimately, the court found that the bylaws, to the extent "they apply to the City's homeless and prohibit sleeping or being in a City park overnight or erecting temporary shelter without permits violate s.7 of the *Charter*, and are of no force or effect, and are not saved by s. 1 of the *Charter*." (para 279).

APPENDIX A

Core Human Rights Treaties and related provisions granting Housing Rights; United Nations and Canadian Ratification Dates; Treaty Monitoring Bodies and Treaty Monitoring Body Articles and related General Comments

	International Instrument	Treaty Monitoring Body⁸⁶¹	UN Ratification	Canada Ratification	Articles & General Comments (GC)
1. ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination CERD	21 Dec 1965	1970	Article 3; and Article 5
2. ICCPR	International Covenant on Civil and Political Rights	Committee on Civil and Political Rights CCPR Also the Human Rights Committee	23 Mar 1976	1976	Article 17, GC 16; Article 23 GC 19; Article 6; GC 36
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights	CCPR	23 Mar 1976	1976	
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	CCPR	11 July 1991	2005	
3. ICESCR	International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights CESCR	3 Jan 1976	1976	Article 2: GC 3; 9; 20; and Article 11: GC 4; 7
4. ICESCR-OP	Optional Protocol to the Covenant on Economic, Social and Cultural Rights	CESCR	10 Dec 2008	N/A	

¹ OHCHR, *The Core International Human Rights Instruments and their monitoring bodies*, online; [<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>].

Core Human Rights Treaties and related provisions granting Housing Rights; United Nations and Canadian Ratification Dates; Treaty Monitoring Bodies and Treaty Monitoring Body Articles and related General Comments					
	International Instrument	Monitoring Body	UN Ratification	Canada Ratification	General Comments
5. CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	Committee on Elimination of All Forms of Discrimination against women CEDAW	18 Dec 1979	1981	Articles 14 & 15
OP- CEDAW	Optional Protocol to the Convention on the Elimination of Discrimination against Women	CEDAW	10 Dec 1999	2002	
6. CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee Against Torture CAT	10 Dec 1984	1987	
OP- CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment SPT	18 Dec 2002	N/A	
7. CRC	Convention on the Rights of the Child	Committee on the Rights of the Child CRC	20 Nov 1989	1991	Articles 16 & 27
OP- CRC-AC	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	CRC	25 May 2000	2000	

Core Human Rights Treaties and related provisions granting Housing Rights; United Nations (UN) and Canadian Ratification Dates; Treaty Monitoring Bodies and Treaty Monitoring Body Articles and related General Comments					
	International Instrument	Monitoring Body	UN Ratification	Canada Ratification	General Comments
OP-CRC-SC	Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	CRC	25 May 2000	2005	
OP-CRC-IC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure	CRC	19 Dec 2011	N/A	
8. ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Committee on Migrant Workers CMW	18 Dec 1990	N/A	Article 43.1
9. CPTD	International Convention for the Protection of All Persons from Enforced Disappearance	CED Committee on Enforced Disappearances ³	20 Dec 2006	N/A	
10. CRPD	Convention on the Rights of Persons with Disabilities	CRPD	13 Dec 2006	2010	Articles 2, 5, 9, 19, 22.1, 28,
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities	CRPD	12 Dec 2006	2018	

³ Committee on Enforced Disappearances, online:
<https://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx>.

APPENDIX B

OTHER INTERNATIONAL STANDARDS INCORPORATING HOUSING RIGHTS¹

International Humanitarian Laws incorporating housing standards include the [Convention Related to the Status of Refugees](#) and the [Geneva Convention Relative to the Protection of Civilian Persons in Times of War](#).²

International Criminal Law sets out States' obligations to protect and fulfil the right to adequate housing in effect during armed conflict. A State's failure to do so may amount to a crime against humanity or to a war crime under international criminal law. Deportation or forcible transfer of people when an armed conflict is imminent may also constitute a crime against humanity.³

Regional Charters, Conventions and other standards either explicitly or have been interpreted to include housing rights including the *African Charters of Rights*; the *America Convention on Human Rights*; several Inter-American Conventions; and European and European Union Charters and Conventions.⁴

Non-binding international UN Declarations adopted by the UN General Assembly also recognize the human right to housing.⁵ The *United Nations Declaration on the Rights of Indigenous Peoples* sets out the rights to housing of indigenous peoples.⁶ The 2030 Agenda for Sustainable Development includes Sustainable Development Goal 11 to make cities and human settlements inclusive, safe, resilient and sustainable. Under SDG target 11.1 States have declared to ensure “by 2030, [...] access for all to adequate, safe and affordable housing and basic

¹ OHCHR, *International Standards on the Right to Housing*, online: [\[https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#\]](https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#).

² OHCHR, *International Standards on the Right to Housing, International Humanitarian Law*, online: [\[https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#humanitarian\]](https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#humanitarian)

³ OHCHR, *International standards on the right to housing, International Criminal Law*, online: [\[https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#criminal\]](https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#criminal)

⁴ OHCHR, *International standards on the right to housing*; see “Regional Human Rights Law”, online: [\[https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx\]](https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx)

⁵ OHCHR, *International standards on the right to housing, Declarations of the United Nations*, online: [\[https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#declarations\]](https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#declarations)

⁶ *United Nations Declaration on the Rights of Indigenous Peoples*, Ga Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/Res/61/295 (2007) 1; for a summary of specific sections applicable to the right to housing see OHCHR, *International standards on the right to housing, Declarations of the United Nations*, “United Nations Declaration of the Rights of Indigenous Peoples (2007)”, online: [\[https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#declarations\]](https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#declarations)

services and upgrade slums” and “by 2030, [...] access for all to adequate, safe and affordable housing and basic services and upgrade slums”.⁷

Housing standards are also recognized in International Labour Standards;⁸⁷⁸ and in the Guidelines of the World Health Organization.⁹

⁷ OHCHR, *International standards on the right to housing, Declarations of the United Nations, “2030 agenda for sustainable development (2015)”*, online:

[<https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#agenda>]

⁸ OHCHR, *International standards on the right to housing, International Labour Standards*, online:

[<https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#labour>]

⁹ OHCHR, *International standards on the right to housing, Guidelines of the World Health Organization*, online:

[<https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#guidelineswho>]

APPENDIX C

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR) - SUMMARY OF ICESCR ARTICLES AND COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR) GENERAL COMMENTS

ICESCR – ARTICLE 2(1)

Article 2(1) of the ICESCR requires all levels of government to use the “maximum of its available resources” with a view to “achieving progressively” the full realization of the rights contained in the Covenant “by all appropriate means including particularly the adoption of legislative measures:⁸⁸

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

- CESCR, General Comment No. 3: The nature of States parties’ obligations (art. 2, para. 1, of the Covenant).

General Comment No. 3 clarifies what it means that economic, social and cultural rights, including the right to adequate housing, are subject to progressive realization under Article 2, para. 1 of the Covenant:

Para 3 states that “... while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”

Para 9 states: “The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. [...] Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be

⁸⁸ ICESCR, art 2(1).

misinterpreted as depriving the obligation of all meaningful content. [...]. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”

Para 10 states: “...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. [...]In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”

- **CESCR, [General Comment No. 9](#): The domestic application of the Covenant**

Para 4 states: “In general, legally binding international human rights standards should operate directly and immediately within the domestic legal system of each State party, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals.

Para 9 states: “The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate. [...]”

Para 14 states: “Within the limits of the appropriate exercise of their functions of judicial review, courts should take account of Covenant rights where this is necessary to ensure that the State's conduct is consistent with its obligations under the Covenant. Neglect by the courts of this responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations.”

- **CESCR General Comment No 20: Non-discrimination in economic, social and cultural rights (art.2 (2)):**

Para 7 states that: “discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the

prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights”

Para 8 states that States must eliminate discrimination both formally and substantively. Eliminating formal discrimination requires ensuring that a State’s constitution, laws and policy documents do not discriminate on prohibited grounds. “Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination. For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.”

Para. 9 states: “In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved.”

Para. 11 states: “Discrimination is frequently encountered in families, workplaces, and other sectors of society. For example, actors in the private housing sector (e.g. private landlords, credit providers and public housing providers) may directly or indirectly deny access to housing or mortgages on the basis of ethnicity, marital status, disability or sexual orientation while some families may refuse to send girl children to school. States parties must therefore adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.”

Para. 25 states: “Property status, as a prohibited ground of discrimination, is a broad concept and includes real property (e.g. land ownership or tenure) and personal property (e.g. intellectual property, goods and chattels, and income), or the lack of it. The Committee has previously commented that Covenant rights, such as access to water services and protection from forced eviction, should not be made conditional on a person’s land tenure status, such as living in an informal settlement.”

Paras. 28-35 state that the prohibition of discrimination in relation to economic social and cultural rights, includes as well discrimination on the grounds of disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, and economic and social situation.

Para. 28 states: “The denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability”

Para. 34 on discrimination based on place of residence states: “The exercise of Covenant rights should not be conditional on, or determined by, a person’s current or former place of residence; e.g. whether an individual lives or is registered in an urban or a rural area, in a formal or an informal settlement, is internally displaced or leads a nomadic lifestyle.”

Para. 35 on discrimination based on economic or social status states: “Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person’s social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places.”

ICESCR - ARTICLE 11(1)

Article 11(1) of the ICESCR is the key provision protecting a right to housing:

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.”¹

- **CESCR General Comment No. 4: Detailed understanding of what is considered adequate housing under Article 11, para (1):**

Para. 1 “Pursuant to article 11 (1) of the Covenant, States parties 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”.² By drawing this distinction, the committee makes it clear that mere shelter will not suffice to meet the right to housing set out in the ICESCR.

Para. 7 “In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This “the inherent dignity of the human person” from which the rights in the Covenant are said to derive requires that the term “housing” be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic

¹ ICESCR, art 11(1).

² Committee on Economic, Social and Cultural Rights, *Report on the Sixth Session*, OHCHR, 1992, Supp No 3, UN Doc E/1992/23, 114 at 115.

resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing...”

Para. 8 A number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute “adequate housing” for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups; (Paraphrasing: regardless of the type of housing or tenure, every individual should have legal protection from forced eviction or other threats that could jeopardize their access to adequate housing.)

(b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services (paraphrasing: adequate housing must possess facilities for “health, security, comfort and nutrition.” In addition, access to basic resources such as “safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services” should be readily available);

(c) Affordability. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials (paraphrasing: the cost of adequate housing should not be so high as to compromise any person’s ability to attain other basic needs. This includes protection from unreasonable rent increases);

(d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical

safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates; (paraphrasing: adequate housing must be structurally sound and have enough space to accommodate its inhabitants. It must also offer sufficient protection from the elements, and other risks to health.)

(e) **Accessibility.** Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement; (paraphrasing adequate housing should be easily accessible, with particular attention to disadvantaged groups and those with special needs. States should also work towards increasing access to land.)

(f) **Location.** Adequate housing must be in a location which allows access to employment options, health care services, schools, childcare centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants; (paraphrasing, schools, childcare centres and other social facilities” are accessible. Further, housing should not be close to polluted areas.)

(g) **Cultural adequacy.** The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured. (paraphrasing, housing should be built to allow for the expression of cultural identity. Modernization and the use of new technologies should not sacrifice the cultural integrity of housing.)

Para. 9 “As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. ...the concept of human dignity... the principle of non-discrimination...the right to freedom of expression, ...freedom of association (such as for tenants and other community based groups), ...freedom of residence and the right to participate in public decision making... is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not

to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing."

Para 10. "Regardless of the state of development of any country, there are certain steps which must be taken immediately. ...many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof."

Para. 11 "States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. ...external factors can affect the right to a continuous improvement of living conditions, and ... in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its general comment No. 2 ...despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. ...a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant."

Para. 12 "While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, ... "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost effective way of using them and sets out the responsibilities and time frame for the implementation of the necessary measures" ...such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant."

Para. 13 "Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction." ... including ... "homeless persons and families, those inadequately housed and without ready access to basic

amenities, those living in “illegal” settlements, those subject to forced evictions and low-income groups.”

Para. 14. “Measures designed to satisfy a State party’s obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of “enabling strategies..., should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.”

Para. 15 “Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (paras. 6 67) has drawn attention to the types of measures that might be taken in this regard and to their importance.”

Para. 16 “...the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical significance of such an approach.”

Para. 17 “...many elements of the right to adequate housing are at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

Para. 18 “...instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”

Para. 19 “Finally, article 11 (1) concludes with the obligation of States parties to recognize “the essential importance of international cooperation based on free consent”. ...States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the

right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

- **CESCR [General Comment No. 7](#): Housing rights in the context of forced evictions under Article 11, para 1 of the ICESCR:**

Para 3 states that forced evictions are “defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”

Para 4 states: “forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.”

Para 9 states that “it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies.”

Para 11 states: “Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.”

Para 12 states: “Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.”

Para 13 states: “States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are

affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure “an effective remedy” for persons whose rights have been violated and the obligation upon the “competent authorities (to) enforce such remedies when granted”

Para 14 states: “In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.”

Para 15 states: “Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”

Para 16 states: “Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”

Resources

Louise Arbour, High Commissioner for Human Rights to the third session of the Open-Ended WG OP ICESCR, online: United Nations High Commissioner for Human Rights, online; <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=6011&LanglD=E>

Summary: This website demonstrates the statement made by the then Commissioner, Ms. Louise Arbour during the third session of the Open-Ended Working Group established by the Commission on Human Rights to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights.

Barbara Arneil, “The Politics of Human Rights” (1999) 11 National Journal of Constitutional Law 213

Canada Without Poverty, *Just the Facts*, online: <https://cwp-csp.ca/poverty/just-the-facts/>

Summary: “Just the Facts” dives into detail on the issue of Poverty in Canada by providing detailed facts and statistics on Poverty. In particular, Canada Without Poverty focuses on statistics and demographics of people living in poverty in Canada. They also discuss the various impacts of poverty, some of which are:

- Health
- Food Insecurity
- Housing

Centre for Equality Rights in Accommodation (CERA) and National Right to Housing, *Proposal for a Federal Government Retroactive Residential Tenant Support Benefit*, 2021 online: <http://www.socialrights.ca/2021/RTSB-Submission.pdf>

Summary: This is a proposal presented to the Federal Government under the National Housing Strategy Act (NHSA) that seeks to amend the systemic issue of unaffordable rent and accumulated arrears or debt among residential tenants because of the pandemic. This proposal relies on consultations with rights-holders, stakeholders, and experts regarding what “measures are required from the federal government to address this systemic issue and to further the progressive realization of the right to housing as required under international human rights law.” Some of the statistics that are relied on for this proposal are:

- Statistics Canada has found that 46 percent of tenants in Canada don’t have enough money to pay their next month’s rent unless they keep working
- In March 2020, women accounted for two-thirds (63 percent) of all job losses and among workers aged 25 to 54 years, women represented 70 percent of all job losses.
- 1.5 million women lost jobs over March and April, a 17 percent drop in employment from February levels.

Teaching the *Charter* Through Right to Housing Under Canadian Law

- Income loss and job losses have been disproportionately experienced by women and lower income workers who predominantly rely on rental housing.

In attempts of explaining the Systemic Issue, this proposal focuses on 3 areas:

- The eviction and arrears facing the tenants from coast to coast
- The urgent need for Federal Government Action
- International comparisons to ensure consistency in comparing Canada's placement in the International Human Rights

Upon portraying the lack of incentive taken by Canadian Government to protect residential tenants, this proposal proposes A Federal Government Residential Tenant Support Benefit. This proposal sets out the calculations in detail and lists their findings from each province. It also lists the responsibility of provinces and territories in protecting residential tenants and recommends that Government take action to help residential tenants by implementing the Support Benefit Program.

Committee on Economic, Social and Cultural Rights, General Comment 4, Paragraph 8, which is arguably the most widely accepted definition of "adequate housing"; summarized in OHCHR, *Fact Sheet No. 21, The Human Right to Adequate Housing*, November 2009, Fact Sheet No. 21/Rev.1, online:

https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

Summary: This paper is published by the Office of the United Nations High Commissioner for Human Rights. This publication discusses the importance of the right to adequate housing and the link between adequate housing and other human rights. It lays out the effects of not having adequate housing and the impact this has on specialized groups such as: Women, Children, Slum-dwellers, Homeless persons, Persons with disabilities, Displaced persons and migrants. Some of the impacts heightened are as follows:

- Discrimination against women in the housing sphere can be caused through discriminatory laws; gender-neutral laws and policies that fail to take into account women's special circumstances
- The abundant presence of children on the streets in various parts of the world, speaks to the impact of lack of adequate housing to this group, as it is likely to impact their nutrition, schooling and childhood growth
- While there is no consensus on the definition of "homelessness", it is apparent that homeless persons may be deprived of a whole range of other human rights. Actions such as laws that criminalize homelessness, sleeping rough, along with street cleaning operations to remove homeless people from the streets, have a direct impact on their physical and psychological integrity.

The publication also discusses obligations on the state and in particular finds that State obligations fall into three categories, namely the obligations to respect, protect and fulfil. This paper recommends the need to hold states accountable and suggesting that more action is needed by third parties.

Communications of the Special Rapporteur on the right to adequate housing can be found at the OHCHR Communication and Report Search, online:

<https://spcommreports.ohchr.org/TmSearch/Mandates?m=29>

Summary: This link gathers all relevant communications on the topic of Right to adequate housing. It provides a summary of each communication and categorizes it further by Country and mandates for simplicity.

Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249 UNTS 13 art 14 (entered into force 3 September 1981).

Summary: On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. The Convention explicitly acknowledges that "extensive discrimination against women continues to exist" and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in article 1, discrimination is understood as "any distinction, exclusion or restriction made on the basis of sex...in the political, economic, social, cultural, civil or any other field". The Convention covers three dimensions of the situation of women: Civil Rights, Legal status and Cultural factors on gender relations with a focus of human reproduction. It is concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs. The implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW).

Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 UNTS 195 art 5 (entered into force 4 January 1969).

Summary: The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is a United Nations convention. This convention is a human rights instrument which commits its members to the elimination of racial discrimination and the promotion of understanding among all races.

Convention on the Rights of Persons with Disabilities, 13 December 2006, 2515 UNTS 3 art 28 (entered into force 3 May 2008).

Summary: The Convention on Rights of Persons with Disabilities was adopted on 13 December 2006 at the United Nations Headquarters in New York. This convention was intended and created as a human rights instrument with a focus on social development dimension. "It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for

persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced”.

Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3 art 27 (entered into force 2 September 1990).

Summary: This is an international human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. This is also the most widely ratified human rights treaty in history. human beings and individuals with their own rights. The Convention says, “childhood is separate from adulthood, and lasts until 18; it is a special, protected time, in which children must be allowed to grow, learn, play, develop and flourish with dignity”.

John H Currie et al, *International Law: Doctrine, Practice and Theory*, 2d ed (Toronto: Irwin Law, 2014).

John Currie, “International Human Rights Law in the Supreme Court’s Charter Jurisprudence: Commitment, Retrenchment and Retreat – in No Particular Order” in Sandra Rodgers & Sheila McIntyre, eds, *The Supreme Court of Canada and Social Justice: Commitment, Retrenchment or Retreat?* (Markham: LexisNexis, 2010) 458 [Rodgers & McIntyre, Supreme Court and Social Justice]

Jackie Dugard, Bruce Porter, Daniela Ikawa, and Lilian Chenwi. *Research Handbook on Economic, Social and Cultural Rights as Human Rights*. Cheltenham, UK: Edward Elgar Publishing, 2020, online:
<http://www.socialrights.ca/2020/Research%20Handbook%20on%20ESCR.pdf>

Summary: This Handbook is highly recommended source to be read in its entirety. It was published in 2020 and co-authored by Bruce Porter, Executive Director of the Social Rights Advocacy Centre, and a leading Canadian and international expert on the right to housing. It provides an overview of the economic, social and cultural rights systems, cases and challenges around the world, including:

Part I of the Handbook discusses and analyzes THE HUMAN RIGHTS FRAMEWORK FOR ESCR, in particular: the international human rights system (Chapter 1); the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and its Optional Protocol (Chapter 2); the African system (Chapter 3); the European system (Chapter 4); and the Inter-American System (Chapter 5).

Part II of the Handbook discusses the content of each of the rights granted under the ICESCR, including the Right to Adequate Housing (Chapter 10).

Part III of the Handbook discusses the ICESCR minimum core and reasonableness standards (Chapter 13); ICESCR Progressive realization using maximum available resources: the accountability challenge (Chapter 14); the Interdependence of human rights (Chapter 15); Advancing economic and social rights through national human rights institutions (Chapter 16); Economic policy and human rights (Chapter 17); The 2030

Agenda for Sustainable Development: opportunity or threat for economic, social and cultural rights? (Chapter 18); The climate crisis: litigation and economic, social and cultural rights (Chapter 19).

Mark Freeman & Gibran van Ert, *International Human Rights Law* (Toronto: Irwin Law, 2004).

Sarah E Hamill, “Caught Between Deference and Indifference: The Right to Housing in Canada”, 2018 7-1 *Canadian Journal of Human Rights* 67, 2018 CanLII Docs 108, online; <http://www.canlii.org/t/29z4>

Summary: This article focuses on two recent cases in Canadian jurisprudence that discuss the topic of right to housing. The two cases are: *Tanudjaja v Canada* and *Abbotsford v Shantz*. This article utilizes these cases to establish housing rights to property rights. This article also discusses the relation between individualism of property, the current Charter jurisprudence and social housing in Canada. The article explores how individualism affected and influenced cases involving the right to housing. Hamill mentions that mention of property law is apparent in discussions about the right to housing. The article concludes stating, for the right to housing to be achievable in Canada, the preference for encouraging private ownership needs to be abandoned as a societal level.

International Bill of Rights, see United Nations, *Fact Sheet No.2* (Rev.1) (1996), <https://www.ohchr.org/documents/publications/factsheet2rev.1en.pdf>

Summary: This joint OHCHR/UN-Habitat Fact Sheet is the second in a series of joint publications by the Office of the United Nations High Commissioner for Human Rights with other United Nations partners to focus on economic, social and cultural rights. This provides a description of some major documents that were initiated by the United Nations. It also provides the influence of these documents on the world stage. The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. The first was the Fact Sheet on the Right to Health.

International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47, 6 ILM 368 (entered into force 23 March 1976, accession by Canada 19 May 1976) [ICCPR].

Summary: The International Covenant on Civil and Political Rights, ICCPR is a key international human rights treaty, providing a range of protections for civil and political rights. The Covenant compels governments to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy. Countries that have ratified the Covenant are obligated “to protect and preserve basic human rights... [and] are compel[ed] to take administrative, judicial,

and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.”

International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 999 UNTS 3, Can TS 1976 No 46, 6 ILM 360 (entered into force 3 January 1976, accession by Canada 19 May 1976) [*ICESCR*].

Summary: The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966.

It obliges states parties to undertake steps using the maximum of their available resources and by all appropriate means to realise economic, social, and cultural human rights.

It is important to note that the ICESCR Committee’s Concluding Observations are not legally binding and there is no method for enforcement. However, the Committee has stated that for a State party to ignore the views contained in the Concluding Observations would be to show bad faith in implementing Covenant-based obligations.

Martha Jackman and Bruce Porter, *Rights Based Strategies to Address Homelessness and Poverty in Canada: The Charter Framework*, 2014, Advancing Social Rights in Canada, Toronto: Irwin Law, 2014: pp 65-106, online: <http://socialrightscura.ca/documents/book/J&P-Strategy.pdf>

Summary: This publication explores the extent and limits of the Canadian constitutional framework for a rights-based approach to housing and anti-poverty strategies in Canada. It also compares the situation in Canada with international human rights law and jurisprudence. This publication analyzes four Canadian constitutional provisions in detail to establish the need for changes in the “housing as a right” topic. The four areas that are discussed in detail are:

- 1) section 36 of the *Constitution Act*, 1982;
- 2) section 7 of the *Canadian Charter of Rights and Freedoms*;
- 3) section 15 of the *Charter*;
- 4) section 1 of the *Charter*, to balance and limit rights in a manner that is reasonable and demonstrably justifiable.

Elizabeth Mclsaac and Bruce Porter, *Housing Rights - Ottawa takes a historic step forward*, Literary Review Canada, November 2019, online: <https://maytree.com/publications/housing-rights-ottawa-takes-a-historic-step-forward/>

Summary: This article demonstrates the importance of Housing Rights and describes the development over the years. This article explains that in June 2019, five years after the Court of Appeal’s decision, Parliament adopted a new law that grants what the courts denied in *Tanudjaja v Canada*. The National Housing Strategy Act affirms, for the first

time in Canadian law, that “the right to adequate housing is a fundamental human right. . . essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities.” While Ottawa has committed Canada to “the progressive realization of the right to adequate housing, the legislation passed with little fanfare”. The article explains that this confirms that “our government must actively work toward ensuring that people have not just the rudiments of shelter but decent and adequate homes”.

Linda McKay-Panos, *Charter of Rights and Homeless Persons*, LawNow, 2018, online: <https://www.lawnow.org/category/specialreport/42-4-poverty-and-homelessness/>

Summary: The article begins by outlining some statistics surrounding poverty and homelessness in Canada. The article dives deeper into the issue of homelessness by an analysis of cases such as *Victoria v Adams and Abbotsford (City) v Shantz*, to show the use of the Charter in cases involving homelessness. The article concludes by stating that while the Charter “may be successfully used to shield homeless persons from the adverse effects of parks and streets bylaws, much work needs to be done if we seek to rely on the Charter to argue for a right to adequate housing”.

Office of the United Nations High Commissioner for Human Rights, *Status of Ratification Interactive Dashboard*, online: <https://indicators.ohchr.org/>

Summary: The status of countries’ ratification of 18 key UN treaties, including the foregoing treaties establishing a right to housing as a human right, can be verified at this website.

OHCHR, Annual thematic reports of the Special Rapporteur on adequate housing, online: <https://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx>

Summary: This website holds a collection of Annual thematic reports of the Special Rapporteur on adequate housing. These reports are further categorized by years and sessions. Each report speaks to issues of adequate housing or recommendations and guidelines for areas of concern related to housing rights.

OHCHR, Human Rights Committee, online <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>

Summary: The Human Rights Committee is a body of independent experts that monitor implementations of the International Covenant on Civil and Political Rights by its State parties. It also reviews the reports and makes recommendations to state parties on matters of Human Rights.

OHCHR, *Human Rights Treaty Bodies - General Comments*, online: <https://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>.

Summary: Each of the treaty bodies publishes its interpretation of the provisions of its respective human rights treaty in the form of “general comments” or “general recommendations”.

OHCHR, International Covenant on Civil and Political Rights, online
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

Summary: The United Nations International Covenant on Civil and Political Rights (ICCPR) was established for the protection of civil and political rights. It was adopted by the United Nations’ General Assembly on December 19, 1966 and came into force on March 23, 1976. The ICCPR acknowledges the natural dignity of everyone and undertakes to promote conditions to allow the enjoyment of civil and political rights. Countries that have ratified the Covenant are required “to protect and preserve basic human rights... [and] compel[ed] to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.”

OHCHR, International standards on the right to housing, Guiding Principles and Guidelines, online:
<https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#guidelines>

Summary: This document sets out all the relevant laws for internally displaced persons and addresses the grey areas and gaps. These were developed as a result of two-volume study which showed that the existing law provided broad protection for the rights of internally displaced persons, but there were also certain grey areas and gaps in coverage. These results called “Guiding Principles on Internal Displacement” was presented to Commission on Human Rights in 1998. “These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.”

OHCHR, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, online: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>

Summary: The Optional Protocol to the International Covenant on Civil and Political Rights is an international treaty establishing an individual complaint mechanism for the International Covenant on Civil and Political Rights (ICCPR). The Optional Protocol sets up a mechanism by which individuals can file complaints with the Human Rights Committee against states (which have ratified the optional protocol) for non-compliance with the provisions of the International Covenant on Civil and Political Rights (ICCPR).

This mechanism is available to all "individuals subject to the jurisdiction" of the State party rather than only citizens.

OHCHR, *Special Procedures of the Human Rights Council*, online:
<https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

Summary: The United Nations (UN) Human Rights Council serves several functions, one of which is to promote and monitor human rights worldwide through the establishment of Special Procedures. Special procedures are individual independent human rights experts, or groups of such experts, who report and advise on human rights issues. Special procedures mandate holders serve in their personal capacities, meaning they are not UN staff, are not paid a salary for their work, and do not represent their countries of citizenship. Each mandate holder may serve for a maximum of six years. This independent status is intended to allow these experts to carry out their functions with impartiality.

OHCHR, *Special Rapporteur on the right to adequate housing*, online:
<https://www.ohchr.org/en/issues/housing/pages/housingindex.aspx>

Summary: Special Rapporteurs covering a particular topic are appointed by the Human Rights Council for a period not exceeding six years. The mandate was established in the year 2000 and has since then regularly be renewed by the UN Human Rights Council. The task of the Special Rapporteur is to work with rights-holders, States, local Governments, civil society, international organizations, and other actors to:

- promote the full realization of adequate housing as a component of the right to an adequate standard of living.
- identify practical solutions, best practices, challenges, obstacles and protection gaps in relation to the right to adequate housing; and
- identify gender-specific vulnerabilities in relation to the right to adequate housing and land.

OHCHR, UN Treaty Database, Committee on Civil and Political Rights, online:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11

Summary: This database collects communications and updates regarding all treaties. It includes status and full text of all multilateral treaties deposited with the United Nations - even those that have not been published yet. The United Nations Treaty Collection also has bilateral and multilateral treaties registered with and published by the UN.

OHCHR, Universal Human Rights Index Database, online:
<https://www.ohchr.org/EN/HRBodies/Pages/UniversalHumanRightsIndexDatabase.aspx>

Teaching the *Charter* Through Right to Housing Under Canadian Law

Summary: The Universal Human Rights Index provides access to country specific human rights information. This tool raises awareness of human rights recommendations from the various United Nations systems: the Treaty Bodies, the Special Procedures and the Universal Periodic Review (UPR). This assists the States and its partners with implementation. This tool also acts as tool to find out about human rights issues worldwide, and to see how the legal interpretation of international human rights law has evolved over the past years.

OHCHR, *Universal Periodic Review, Basic Facts*, online:

<https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

Summary: This link provides detailed information about the purpose and processes about the Universal Periodic Review. Universal Periodic Review was established in 2006 for the improvement of the human rights situation in every country with significant consequences for people around the globe. “The UPR is designed to prompt, support, and expand the promotion and protection of human rights on the ground”. The Universal Periodic Review assesses States’ human rights records and addresses human rights violations wherever they occur. It also aids States and improves their capacity to deal effectively with human rights challenges.

OHCHR, *Your Human Rights > Housing > Country visits - Adequate housing*, online:

<https://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx>

Summary: This website provides an updated list of recent country visits as they are an essential component of the mandate of the Special Rapporteur. These visits help survey the growth and remaining barriers in the understanding of the right to adequate housing.

Ontario Human Rights Commission, *Human Rights Commission and Economic and Social Rights Research Paper*, (October 2001) online:

[http://www3.ohrc.on.ca/sites/default/files/attachments/Human rights commissions and economic and social rights.pdf](http://www3.ohrc.on.ca/sites/default/files/attachments/Human%20rights%20commissions%20and%20economic%20and%20social%20rights.pdf)

Summary: This paper is a research document prepared by staff of the Ontario Human Rights Commission and is not a Commission approved policy statement. This paper discusses and reflects on the emerging role of human rights commissions in the 21st century. Over the years, human rights commission has been increasingly under pressure to respond to government changes, newer mandates, issues of globalisation and the growing role and expectations of civil society. These developments impact human rights and human rights commissions. This paper highlights how these developments have impacted Canada. It particularly focuses on “Canada’s international obligations, international concerns about Canada’s record in implementing social and economic

rights, and problems that have been encountered in attempts to litigate social and economic rights claims before Canadian courts to punctuate the need for human rights commissions to do more". This research also discusses the struggle in meeting the right to adequate housing for many Canadians. It makes various proactive suggestions that can be taken to improve social and economic rights. Such measures could include:

- conducting education campaigns to combat prejudice and discrimination against low-income persons within the public at large but also specific groups such as landlords;
- engaging in policy development in areas related to socio-economic interests
- ensuring policy development in all areas is consistent with and recognizes Canada's international human rights commitments and taking policy positions that, as much as possible, promote social and economic interests;
- reviewing both private programs and government action to ensure they are respectful of social and economic rights and raising concerns as appropriate;
- undertaking research and surveys in relation to social and economic rights.

Brian Orend, *Human Rights, Concept and Context Ontario*: Broadview Press, 2002.

Bruce Porter, *Homelessness Human Rights Litigation and Law Reform: A view from Canada, 2004*, Australian Journal of Human Rights, 10:2, 133-164, online:[[10.1080/1323238X.2004.11910785](https://doi.org/10.1080/1323238X.2004.11910785)].

Summary: This publication stresses that there is a persistent gap between International commitments and domestic reality in Canada on the topic of housing as a human right. Porter discusses the role of the Charter of Rights and Freedoms in advancing this right but concludes with the need to align international and domestic values alike on this topic.

Bruce Porter and Martha Jackman, *International Human Rights and Strategies to Address Homelessness and Poverty in Canada: Making the Connection*, (September 1, 2011). Huntsville, ON: Social Rights Advocacy Centre Working Paper, September 2011, online: <https://ssrn.com/abstract=2319186>

Summary: The paper reviews various international sources of law that are significant to poverty reduction and housing strategies. It describes how numerous organizations have identified and contested the inequality and deprivation for Canadians in poverty. This paper utilizes the international human rights framework as a comparative tool to conclude that Canada needs better procedures. Porter and Jackman conclude that there needs to be domestic policies that hold all levels of government accountable to implement policies regarding the right to adequate housing and the right to an adequate standard of living in Canada.

***A Road Map to Eradicate Child And Family Poverty, Campaign 2000 Report Card on Child & Family Poverty in Canada, 2016*, online:**

<https://campaign2000.ca/wp-content/uploads/2016/11/Campaign2000NationalReportCard2016Eng.pdf>

Summary: This report demonstrates the findings from a project “Campaign 2000: End Child and Family Poverty”. It discusses the statistics of poverty in Canada in the year 2016 and examines the effects of these statistics in Children and Families. The report also explains the method used to measure poverty. The significance of the report lies in the recommendations suggested to eliminate poverty in Canada. Some of the recommendations include:

- The Government of Canada ensure that its federal action plan to eradicate poverty includes both targets and timelines and is developed in consultation with provincial and territorial governments, Indigenous governments and organizations, non-governmental organizations and people living in poverty.
- Making proactive changes to eliminated employment inequality in both public and private sectors.
- Targeting affordable housing to be set for specific populations, including low-income families and others with high levels of core housing need.
- Extending maternity and parental leave
- Enhancement of EI to expand access, duration, and levels of benefits
- Adoption of Internationally recognized Low Income Measure

William Schabas, “Freedom from Want: How Can We Make Indivisibility More Than a Mere Slogan?” (1999-2000) 11 National Journal of Constitutional Law 189 [Schabas 2000].

United Nations - Office of the High Commissioner for Human Rights (UN OHCHR) “What are human rights?”, online:

<https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

Summary: This article by the United Nations Human Rights (Office of the High Commissioner) defines Human Rights to be “universal rights are **inherent** to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status”. Some characteristics of human rights are:

- Universal and Inalienable
- Indivisible and Interdependent
- Equal and non-discriminatory

Universal Declaration of Human Rights, GA Res 217(III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948) 71: <https://www.un.org/en/universal-declaration-human-rights/>

Summary: This is the actual Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 December 1948. It sets out fundamental human rights which was to be universally protected thereafter. This Declaration is known to have paved the way for adoption of several other human rights treaties.

Ryan van den Berg, *A Primer on Housing Rights in Canada*, Publication No. 2019-16-E 21 June 2019, Economics, Resources and International Affairs Division Parliamentary Information and Research Service, online:

https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201916E

Summary: This publication focuses on the housing rights of Canadians. In discussing this topic, it relies on International Treaties and its implementation in Canada. This publication describes how Canadians' housing rights are defined and upheld. To do so, it discusses the process of complaints and how these rights are implemented at every level of government. Van der Berg also mentions the roles of each level of government in this process. The paper concludes stating that Canada is expected to implement housing rights progressively and should recognize housing rights according to the standards in international law.

Margot Young, "*Rights, the Homeless, and Social Change: Reflections on Victoria (City) v. Adams (BCSC)*" (2009-2010) 164 BC Studies 103, online:

https://commons.allard.ubc.ca/fac_pubs/359/

Summary: This article discusses how the Canadian courts have "routinely excluded basic social and economic rights from protection under the Canadian Charter of Rights and Freedoms". To make this point, the article focuses on a recent judgment of the BC Supreme Court (*Victoria City v Adams*), where two City of Victoria bylaws were found to have infringed the section 7 rights of the homeless individuals. This case commentary focuses on 3 characteristics of the judgement:

1. negative and positive rights
2. the Court's interpretation and implementation of underlying sociological issue of homelessness
3. the implications of the case on potential expansion of the Charter