

Canada's Response to Questions from the Special Rapporteur on Adequate Housing

The Special Rapporteur on Adequate Housing, Ms. Leilani Farha, is seeking answers to the following questions to develop a thematic report to the United Nations Human Rights Council in March 2016, and to fashion follow-up strategies to address homelessness.

In responding to these questions, Canada is highlighting examples of how Canada strives to address issues of adequate housing and homelessness at the federal, provincial, territorial and municipal levels through a variety of laws, policies, programs and strategies.

I. Questionnaire

1. Please explain how your government defines homelessness in various contexts, for example, when measuring the extent of homelessness or determining eligibility for programmes and services. Please explain why the definition was chosen, and whether it is formally referred to in laws, policies or programmes.

Recognizing the multiple, complex factors that contribute to homelessness in different contexts, the Government of Canada does not have a single definition of homelessness. Federal homelessness programming is supported by a community-based approach to identify priorities whereby funding is invested in homelessness priorities identified by communities through an inclusive planning process. Across Canada, some municipalities, provinces and territories have their own definitions of homelessness, which address the reality of the situation in those places. To address the range of issues, some Government of Canada programmes focus on specific facets of homelessness.

Under the Government of Canada's Homelessness Partnering Strategy (HPS) Housing First approach, the priority has been to move individuals who are chronically or episodically homeless from the streets or homeless shelters directly into permanent housing. Chronically homeless refers to individuals, often with disabling conditions (e.g. chronic physical or mental illness, substance abuse problems), who are currently homeless and have been homeless for six months or more in the past year (i.e. have spent more than 180 nights in a shelter or place not fit for human habitation). Episodically homeless refers to individuals, often with disabling conditions, who are currently homeless and have experienced three or more episodes of homelessness in the past year (episodes are defined as periods when a person would be in a shelter or place not fit for human habitation for a certain period, and after at least 30 days, would be back in the shelter or place).

In 2012, the Canadian Observatory on Homelessness (formerly the Canadian Homelessness Research Network), a non-profit, independent research organization focused on homelessness and related issues, developed a Canadian definition and typology of homelessness that may be used by stakeholders, with the intent of providing a common language to clarify the scope of the issue.

2. How is homelessness measured in your country? What criteria and indicators are used and how is data collected and systematically updated for this purpose? Please provide available data over a period of time on the extent of homelessness in general and among particular groups (for example: children and youth, women, indigenous peoples, persons with disabilities, and others).

In Canada, emergency shelter use, measured over a period of years, currently serves as the best available indicator for understanding baseline trends in the size and composition of the homeless population.

Using consistent data gathered from emergency homeless shelters, primarily through the Homeless Individuals and Families Information System software, the Government of Canada's National Shelter Study (2012) represented the first national analysis over an extended period of time to establish a baseline count and description of the characteristics of the homeless population in Canada. The Study used a stratified cluster sample to produce national estimates of the annual number of emergency shelter users between 2005 and 2009. The Study was based on information from more than 655,000 client stays at over one quarter of Canada's emergency homeless shelters.

The Study revealed that approximately 150,000 people use the emergency shelter system in Canada every year. During the Study period, the average age of adults staying at shelters was 37 years of age and 73 percent of adult shelter users were male. Youth aged 16 to 24 accounted for 20 percent of shelter users, while just 1.7 percent of shelter users were over 65 years of age.

In 2009, almost 9,500 children under 16 years of age spent a night in an emergency shelter, representing an increase of 50 percent from 2005. The highest increase in shelter use occurred at family shelters, where there was a nearly 40 percent increase in bed nights used from 2008 to 2009, which corresponds with the growing number of children using shelters.

An update to the Study is currently underway for the period 2010 to 2014. This update is based on a larger sample size of 70 percent of emergency shelter beds in Canada and approximately 4 million client stays.

Most recently, the Government of Canada developed a standard approach for conducting Point-in-Time (PiT) counts in consultation with a working group of community representatives and national stakeholders with relevant expertise. A PiT count is used to measure sheltered and unsheltered homelessness. It aims to enumerate individuals in a community who are, at a given time, staying in shelters or "sleeping rough" (e.g. on the street, in parks), providing a "snapshot" of homelessness in a community. The PiT counts include a survey that can provide communities with information on the characteristics of their homeless population (e.g. age, gender, Veteran status, Aboriginal identity). This information can be used by communities to direct resources to areas of greatest need, and to connect individuals with specific backgrounds to targeted supports to help them achieve stable housing. When completed in subsequent years, it can also be used to track changes in the homeless population over time and measure progress in reducing it.

3. What population groups are most affected by homelessness in your country? How have their experiences been documented and by whom (whether officially by national or

subnational governments, National Human Rights Institutions, or by non-governmental or other organisations, charities, etc.)? If studies exist, please indicate or share a link, a reference or a copy.

In many communities, Aboriginal people are disproportionately affected by homelessness. Research suggests that 1 in 15 Aboriginal people in urban centers are homeless compared to 1 in 128 for the general population. This means that urban Aboriginal people are 8 times more likely to experience homelessness compared to the general population.

For more information, refer to the following study:

Aboriginal Homelessness in Canada: A Literature Review (Canadian Observatory on Homelessness, 2012):

<http://homelesshub.ca/sites/default/files/AboriginalLiteratureReview.pdf>

As demonstrated by the Mental Health Commission of Canada's (MHCC) *At/Home Chez Soi* research demonstration project, individuals experiencing mental health illnesses are also over-represented in the homeless population.

For more information, refer to the following study:

At Home/Chez Soi Final Report (2014):

http://www.mentalhealthcommission.ca/English/system/files/private/document/mhcc_at_home_report_national_cross-site_eng_2.pdf

4. Please provide information and details on the primary systemic and structural causes of homelessness in your country and explain how these are being addressed.

Research suggests that the causes of homelessness reflect an interplay between structural factors (such as poverty, lack of affordable housing), systemic causes (such as people being discharged from mental health facilities, corrections or child protection services into homelessness), and individual circumstances (such as family conflict and violence, mental health and addictions).

The Government of Canada has taken a multi-pronged approach in helping individuals break free from the cycle of homelessness and to assist individuals to achieve greater self-sufficiency and an improved quality of life. The Government of Canada has put in place funding for its Housing Partnership Strategy, which privileges housing as an essential first step in addressing the range of issues typically facing homeless persons. Canada Mortgage and Housing Corporation has programs in place to provide funding to help reduce the number of Canadians in housing need.

5. Please provide any information available about discrimination and stigmatization of people who are homeless, including laws or policies that may be used to remove homeless persons from public spaces or to prohibit activities in public spaces such as sleeping, camping, eating, sitting, or asking for money. Please explain whether such discrimination is prohibited by law at national and/or local levels.

Protection against various forms of discrimination is provided through a number of instruments and mechanisms in Canada, described in part in the response to question 7 of the present

questionnaire. Governments in Canada have tended to focus their policy efforts on enabling homeless persons to access safe and healthy shelter options and to obtain assistance in addressing the issues these individuals face. With regard to laws and policies governing the use of public spaces, these exist in several Canadian cities and provinces. These laws and bylaws apply to everyone and they can affect activities engaged in by certain homeless persons. For example, some city bylaws prohibit the erection of temporary overhead shelters in parks, except during the overnight hours. In another example, the Ontario *Safe Streets Act* imposes limits on panhandling and restricts the use of public spaces.

6. Has homelessness been recognized as a human rights violation by courts or by national human rights institutions in your country, and if so, on the basis of which human rights (for example: right to adequate housing, right to life, etc.)?

Canada currently addresses issues of adequate housing through a wide range of federal, provincial and territorial laws, policies and programs, including its obligations under ICESCR. The *Canadian Charter of Rights and Freedoms* (the *Charter*) does not expressly recognize a free-standing right to adequate housing nor expressly protect against homelessness. Courts and the Canadian Human Rights Commission (Canada's national human rights institution) have not, to date, recognized homelessness as a violation under the *Charter* or the *Canadian Human Rights Act*. The equality rights protection under section 15 of the *Charter* is an important part of the domestic framework that ensures equal access to adequate housing in Canada. To date, section 7 of the *Charter*, which protects against state deprivation of the right to life, liberty and security of the person, has not been interpreted by the courts to protect against homelessness.

The following are some recent examples of cases in which our courts have considered these issues.

In *Victoria (City) v. Adams* (2009), the Court of Appeal for the province of British Columbia considered the rights under section 7 of the *Charter* in a case that dealt with challenges to a city bylaw that prohibited homeless persons who were legally sleeping in parks from erecting temporary overnight shelters on public property without securing a permit. The Court upheld the lower court's finding that the bylaw violated the claimants' section 7 rights, stating that homeless persons have the right to cover themselves with temporary overhead shelter while sleeping overnight in parks when the number of homeless persons exceeds the number of available beds in homeless shelters in the City of Victoria. The decision therefore established that, in specific circumstances where there is no practicable shelter in the city for homeless persons, homeless persons are exposed to a risk of serious harm, including death, and that this risk of harm is an interference with their rights to life, liberty and security of the person.

More recently, the Court of Appeal for the province of Ontario considered in *Tanudjaja v. Canada (A.G.)* (2014), the applicants' assertion that the actions and inaction of the governments of Canada and Ontario have resulted in homelessness and inadequate housing, contrary to their sections 7 and 15 rights under the *Charter*. The majority found that these issues are not justiciable, noting at paragraph 33 that: "[...] there is no judicially discoverable and manageable standard for assessing in general whether housing policy is adequate or whether insufficient priority has been given in general to the needs of the homeless. This is not a question that can be

resolved by application of law, but rather it engages the accountability of the legislatures. Issues of broad economic policy and priorities are unsuited to judicial review. Here the court is not asked to engage in a “court-like” function but rather to embark on a course more resembling a public inquiry into the adequacy of housing policy.” The appellants’ leave to appeal to the Supreme Court of Canada was denied.

7. What legal or administrative procedures are available to challenge actions or inaction by governments or private actors on the grounds that they lead to or fail to address homelessness?

Housing-related protections and benefits in Canada are set out in extensive federal, provincial, territorial and municipal legislation, policies and practices. The following are some examples of redress mechanisms that are available to persons alleging that these laws or policies have been violated:

- Provincial and territorial legislation shield individuals from arbitrary eviction from rented premises. Landlords are required to follow a legislated process in order to effect an eviction. Tenants have the opportunity to dispute the grounds for eviction at hearings, and in some provinces the landlord must establish that the eviction falls within the stated permitted grounds for eviction.
- Filing a complaint under federal, provincial or territorial human rights legislation. This legislation provides protection against discrimination in the private sector as well as by governments. At the federal level, the *Canadian Human Rights Act* provides, among other things, protection from discrimination on various grounds in regard to accommodation that is customarily available to the general public in areas of federal jurisdiction. While social condition or socio-economic status is not currently a prohibited ground of discrimination under the Act, discrimination in relation to the provision of accommodation, which may relate to social and economic rights, is prohibited. The prohibited grounds of discrimination include race, national and ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Human rights legislation in several provinces in Canada recognizes source of income, being in receipt of social assistance or social condition as a prohibited ground of discrimination. This has been an important avenue for vulnerable groups wishing to challenge discrimination in housing and housing-related matters. For example, courts and tribunals have recognized that certain eligibility criteria for rental housing (e.g. rent-to-income ratio) or for receiving social assistance can discriminate indirectly on the basis of intersecting grounds such as race, gender, source of income, marital status, age and others and must therefore be revised¹.

¹ see for e.g. *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.) (<http://canlii.ca/t/1d27w>), appeal to Supreme Court of Canada discontinued ([2002] S.C.C.A. No. 297), and *Kearney v. Bramalea Ltd (No. 2)* [(1998), 34 C.H.R.R. D/1], upheld in *Ontario (Human Rights Commission) v. Shelter Corp.*, [2001] O.J. No. 297 (Sup. Ct.) (QL).

- The administration of statutory schemes for housing-related programs can be reviewed by administrative tribunals and ultimately by courts. An individual could bring a claim before a tribunal or court if he/she has not been given a benefit provided for by law. For example, there are administrative and judicial recourses if an individual has been denied housing assistance but meets the legal criteria.
- Filing an action with the courts to seek a remedy for a violation of the equality rights guarantee under section 15 of the *Charter*. The equality guarantee of the *Charter* requires federal, provincial and territorial legislation, programs and administrative actions respecting housing to be developed and applied on an equal basis to all in Canada.

8. Please provide information about any strategies or legislation in place at the national, sub-national or local levels to reduce or eliminate homelessness, explain any goals or timelines that have been adopted for this purpose, describe how progress is monitored and provide information on results to date.

In 1999, the Government of Canada introduced the National Homelessness Initiative (NHI). The NHI was renewed on April 1, 2007, as the Homelessness Partnering Strategy (HPS) – a strategy aimed at preventing and reducing homelessness in Canada. The HPS has provided direct financial support to 61 urban communities, as well as Aboriginal, and rural and remote communities across Canada, to help them address their local homelessness needs. This approach has provided communities with the flexibility to invest in proven approaches that reduce homelessness at the local level. The HPS has funded local priorities identified by communities through a comprehensive community planning process involving officials from all levels of government, community stakeholders, and the private and voluntary sectors.

A Housing First approach under the HPS has involved moving individuals from the streets or homeless shelters directly into permanent housing, focusing on those who are chronically or episodically homeless. Permanent housing has been complemented by the provision of services to assist clients to sustain their housing and work towards recovery and reintegration into the community.

The implementation of the Housing First approach has built on the outcomes of the Mental Health Commission of Canada's *At Home/Chez Soi* research demonstration project, as well as outcomes in several other Canadian communities. The *At Home/Chez Soi* research demonstration project was funded by the federal government at \$110 million over five years and established pilots in five cities (Vancouver, Winnipeg, Toronto, Montreal and Moncton). The project – the largest of its kind – ended in March 2013 and provided strong evidence that Housing First is an effective way to reduce homelessness.

In Canada, the Housing First strategy has now been widely accepted and implemented at the provincial, territorial and municipal levels. Provincial and territorial governments have adopted a variety of additional measures in relation to housing and homelessness that reflect regional and local realities. Such examples include, but are not limited to: British Columbia's (BC) Housing Matters strategy that is providing safe, secure and culturally-appropriate housing for youth,

women, elders and those struggling with addictions; as well as Nunavut's Long-Term Comprehensive Housing and Homelessness Strategy, which aims to address the territory's housing needs. In addition to the Housing First strategy, twelve communities across the province of Alberta are increasing efforts to support youth at risk as part of Alberta's new strategy, "Supporting Healthy and Successful Transitions to Adulthood: A Plan to Prevent and Reduce Youth Homelessness".

The implementation of Housing First represented a shift for communities and was phased in over two years, with graduated funding targets, taking into account varying capacity and resources among communities. The largest HPS communities have been required to implement a Housing First approach more quickly, investing at least 65 percent of HPS funding in Housing First activities starting April 1, 2015.

From 2007 to 2014, the HPS results include the following: creating 5,977 new permanent shelter beds to address immediate needs; placing 82,380 people in more stable housing; helping 35,641 Canadians pursue education or training opportunities; assisting 17,256 people to find full-time work and 17,187 to find a part-time job; and leveraging \$2.43 from external partners for every dollar invested by the HPS.

Another Government of Canada initiative, through the Canada Mortgage and Housing Corporation (CMHC), has been mandated to provide funding, to provinces and territories to meet the continuum of affordable housing needs through the Investment in Affordable Housing (IAH) initiative. Provinces and territories cost-match the federal investment, and are responsible for the design and delivery of affordable housing programs to address their local housing needs and priorities. The IAH has required provinces and territories to allocate a minimum amount of the federal investment of \$1.9 million each year toward accommodations for victims of family violence. Between April 2011 and March 2014, joint contributions under the IAH were delivered to support 1,422 households that were victims of family violence.

For Canadians living in First Nations communities, CMHC offers the Shelter Enhancement Program. This program provides financial assistance for the repair, rehabilitation and improvement of existing shelters on reserve for women and their children, youth and men who are victims of family violence. The Shelter Enhancement Program also provides for the acquisition or construction of new shelters and second stage housing on reserve where needed.

II. Submission of Responses

Kindly, please identify links or provide copies of any law, regulation, policy or other document related to your answers.

The Homelessness Partnering Strategy:

<http://www.edsc.gc.ca/eng/communities/homelessness/index.shtml>

The National Shelter Study (2012):

http://homelesshub.ca/sites/default/files/Homelessness%20Partnering%20Secretariat%202013%20Segaert_0.pdf

At Home/Chez Soi Final Report (2014):

http://www.mentalhealthcommission.ca/English/system/files/private/document/mhcc_at_home_report_national_cross-site_eng_2.pdf

Canadian Definition of Homelessness (Canadian Observatory on Homelessness, 2012):

<http://homelesshub.ca/sites/default/files/COHhomelessdefinition.pdf>

Aboriginal Homelessness in Canada: A Literature Review (Canadian Observatory on Homelessness, 2012):

<http://homelesshub.ca/sites/default/files/AboriginalLiteratureReview.pdf>

Victoria (City) v. Adams, BCCA 563 (2009):

<http://canlii.ca/t/26zww>

Tanudjaja v. Canada (A.G.), ONCA 852 (2014):

<http://canlii.ca/t/gffz5>

Falkiner v. Ontario (Ministry of Community and Social Services), 59 O.R. (3d) 481 (C.A.) (2002):

<http://canlii.ca/t/1d27w>

Supporting Healthy and Successful Transitions to Adulthood: A Plan to Prevent and Reduce Youth Homelessness:

<http://humanservices.alberta.ca/documents/plan-to-prevent-and-reduce-youth-homelessness.pdf>