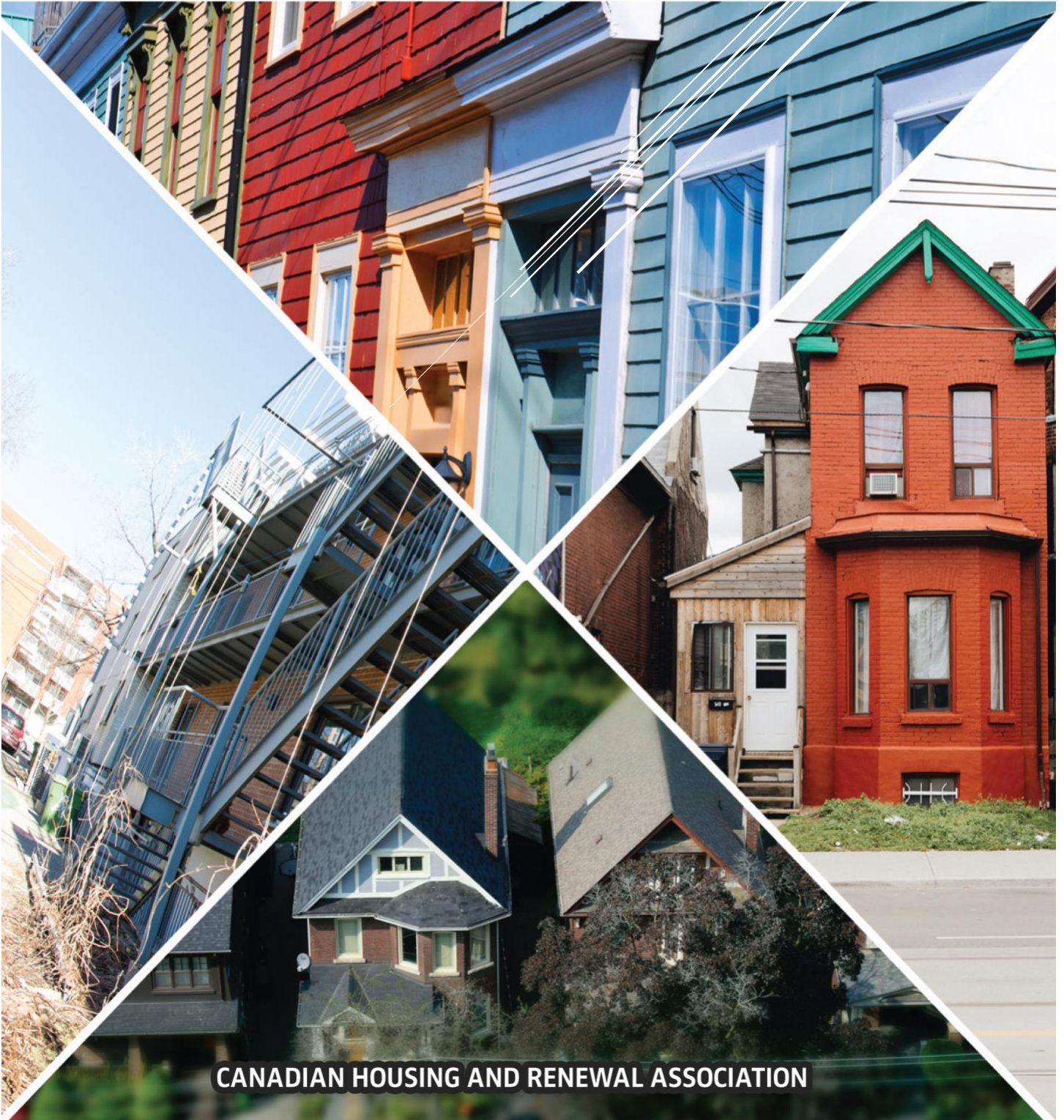




CONSULTATION SUBMISSION
**A PROGRESSIVE
HUMAN RIGHTS-BASED
APPROACH TO HOUSING**
MAY 2018



CANADIAN HOUSING AND RENEWAL ASSOCIATION

CHRA Submission to the Consultation on A Progressive Human Rights-Based Approach to Housing

May 2018

Introduction

On 22 November 2017, the federal government unveiled “Canada’s National Housing Strategy”, a 10-year, \$40 billion plan intended to reinforce and strengthen access to housing for Canada’s most vulnerable peoples. A key component of the National Housing Strategy (NHS) was a commitment to introduce legislation that would progressively implement the right of every Canadian to access adequate housing. This was a commitment that is in line with Canada’s obligations under the International Covenant on Economic, Social and Cultural Rights, and the United Nations Declaration on the Rights of Indigenous Peoples. The NHS identified key characteristics of the forthcoming legislation, including a commitment to report publicly on NHS implementation, a commitment to legislatively require the federal government to maintain a Housing Strategy, and the introduction of a new Federal Housing Advocate and National Housing Council in order to enhance accountability.

In March 2018, the federal government announced a consultation process designed to provide Canadians with the opportunity to share their thoughts on the rights-based legislation and its key attributes.

As the voice of the social, non-profit, and affordable housing sector in Canada, the Canadian Housing and Renewal Association (CHRA) was pleased to provide input to the federal government on the design of the legislated right to housing prior to its release in November 2017. In meetings with senior government officials, CHRA advocated strongly for a rights-based approach within the NHS, and captured core characteristics of a rights based approach in a letter to Minister Duclos in September 2017. CHRA is pleased to continue the conversation with the federal government on a legislated right to housing approach through this submission, and through ongoing formal and informal engagement opportunities over the coming months.

The discussion paper released in conjunction with the public consultation in March 2018 outlines five elements of the human-rights based approach to housing. CHRA is pleased to provide comment on each of these elements, as well as additional observations and recommendations in order to assist the federal government in developing meaningful rights-based legislation.

Indigenous Right to Housing

CHRA believes that any progressive right to housing legislation must acknowledge a distinct right to housing for Canada’s Indigenous peoples, including Indigenous peoples living in urban, rural, metropolitan, and northern settings. This is not only desirable, but legally necessary. As pointed out in a recent legal brief prepared by Miller Titerle + Company in May 2018, Canadian courts have consistently acknowledged the federal government’s legally enforceable fiduciary relationship with the Crown across various situations, particularly when there is a right involved. In addition to this legal fiduciary obligation, Canada is a signatory to the *United Nations Declaration on the Rights of Indigenous Peoples*, which CHRA believes should be referenced in the legislation. In addition, the federal government has been clear that it views the Reconciliation process as a key commitment that the Government of Canada

has made to Canada's Indigenous peoples that underline an Indigenous right to housing, and therefore it should be a key motivating factor.

CHRA is recommending that an Indigenous lens needs to be applied to every component of the legislative content. For instance, with regard to reporting requirements, separate indicators need to be developed addressing Indigenous housing. Within the office of the Federal Housing Advocate, resources need to be devoted to address Indigenous housing concerns and issues. For the Public Engagement Campaign, a distinct Indigenous campaign addressing stigmatization and discrimination faced by urban and rural Indigenous tenants, people experiencing homelessness, and those in precarious housing conditions, needs to be created. In addition, the mechanisms and policies impacting Indigenous peoples through the NHS must be developed and designed by Indigenous peoples themselves.

For each of the subsequent recommendations in this submission, it should be clearly understood that a parallel Indigenous component is being recommended.

Canada's International Human Rights Obligations

Canada has signed onto and ratified a number of international human rights treaties that recognize access to adequate housing as a fundamental human right, including the *United Nations Universal Declaration of Human Rights*, and the *International Covenant on Economic, Social and Cultural Rights*, and has committed to the United Nations Sustainable Development Goals [the 2030 Agenda].

The NHS states that Canada's progressive implementation of the right of every Canadian to access adequate housing **"will contribute to the United Nations Sustainable Development Goals and affirm the *International Covenant on Economic, Social and Cultural Rights*."**

CHRA is recommending that the legislation explicitly affirm the right of every Canadian to access adequate housing as it has been committed to under international human rights law, and reference the existing international commitments to define the obligations of the whole of government in Canada in progressively realizing the right to housing. CHRA is also recommending that the federal government is held accountable to achieving progressively the full realization of the right to housing as per the international human rights treaties it has signed onto.

Setting An Aspirational Tone

By its very definition, the right to housing is meant to be an inherent right – meaning that through the legislation, the federal government is sending a clear signal of its intent that every person living in Canada has access to safe, affordable, decent housing. Although this intent may be implied through the introduction of the legislation, CHRA is recommending that the legislation clearly state the government's overall intentions for the National Housing Strategy – put another way, the legislation should set an aspirational tone indicating the desired objective of the government and the Strategy is that every person living in Canada has access to safe, affordable housing through the elimination of homelessness, the increase of social and affordable housing, the removal of households from housing need, etc.

The objective of the legislation and the accompanying tools and policies contained in the Strategy should be to achieve that one goal.

Reporting Requirements

The NHS stated that the new legislation will “**require the federal government to maintain a National Housing Strategy and report to Parliament on housing targets and outcomes**” (emphasis added). CHRA previously recommended, and therefore fully supports, the idea of developing appropriate targets and measures, and requiring the federal government to report on these measures. This requirement will serve as a “measure of success”, and will identify where gaps in the Strategy’s implementation are present, and where additional resources will need to be targeted. In developing these reporting mechanisms, CHRA is recommending the following:

- Measurement targets and indicators be developed in conjunction with provinces/territories, housing providers, Indigenous providers, municipalities, and other key stakeholders. The question of which indicators will be reported on is a fundamental choice, and therefore it will be important that the federal government consult on which indicators and measures of success should be used. As stated previously, separate indicators need to be developed to address Indigenous housing, particularly in an urban, rural, and northern setting.
- In addition to consulting on the choice of indicators, CHRA is recommending that the federal government work with the provinces and territories to standardize data. Presently, F/P/T governments collect different data sets, which are not standardized, and therefore cannot be aggregated or used in a national sense. By standardizing data sets, it will be easier for the federal government to obtain and report on the data used in its measurement indicators.
- Within the standardization process, CHRA recommends that data collection processes be simplified. For many housing providers, particularly smaller housing providers, excessive data reporting requirements represent a burden on the resources of housing providers.
- During the face to face consultation meetings held in mid April 2018, CMHC officials suggested that reporting would be conducted on a three-year basis. A three-year time frame for reporting is lengthy, and would not adequately capture new data trends, nor provide the opportunity for timely responses and changes in the NHS to address gaps or shortcomings identified by the data. CHRA is recommending that the reporting timeframe be annual.

Ongoing Requirement for a National Housing Strategy

In the National Housing Strategy, it was clearly stated that a key objective of the legislation would be to “**require the federal government to maintain a National Housing Strategy**”. Such a requirement would make it difficult for a future federal government to repeal the Strategy without amending or repealing the legislation.

In order to strengthen the rationale for the legislation and prevent any future repeal, the legislation should refer heavily to Canada’s international obligations, and reference the legislation as a key response to those international human rights treaties and obligations that Canada has ratified. By linking the legislation to Canada’s international human rights obligations, it may open the door for a constitutional and/or Charter of Rights challenge in the courts of any future repeal attempt.

New Federal Housing Advocate

The National Housing Strategy identified the role of the new Federal Housing Advocate as follows:

“Through the creation of a new Federal Housing Advocate, vulnerable groups, low income Canadians and people with lived experience of housing need will have the opportunity to raise systemic issues or barriers they face in accessing adequate housing. The Federal Housing Advocate will provide advice to CMHC and the responsible Minister, identifying potential corrective actions to these systemic barriers”.

CHRA welcomes the announcement of a new Federal Housing Advocate. We envision that the Advocate position will serve as a key accountability mechanism to ensure that the federal government is maintaining its overall commitments contained in the NHS, and will identify where additional or corrective action must be taken in order to ensure the collective right to housing CHRA’s recommendations for the Advocate position include the following:

- The new Advocate should report to Parliament, and not any particular Minister or government department. Reporting to Parliament would ensure the independence and autonomy of the Advocate.
- The office of the Federal Housing Advocate must be properly resourced to ensure that the Advocate is able to properly fulfil his/her mission.
- The legislation must clearly define the roles and responsibilities of the Advocate, but also provide a degree of latitude that will allow the Advocate to investigate systemic issues, policies or programs that are identified over the course of the Advocate’s work.
- The office of the Advocate must have a mechanism that will allow all Canadians to engage and communicate with the Advocate on issues that impede the collective right to housing. The general public must be able to use the office of the Advocate as a quasi-ombudsman, whereby systemic and/or collective housing barriers or gaps can be brought to light and acted upon.
- Following the release of every report or recommendation by the Advocate, the federal government would be required to issue a public response. This response would delineate how the federal government plans to respond to the recommendations developed by the Advocate; in addition, the response would include a rationale for the federal government’s decision to either accept or reject the recommendation(s). The requirement for a public response would prevent the Advocate’s ideas from merely “sitting on a shelf”, and would strengthen the evolution of the NHS.
- Given that housing is a multi-jurisdictional sector, involving the provinces/territories, municipalities, and Indigenous representatives, it will be difficult for the Advocate to make recommendations or identify collective concerns that fall solely within federal jurisdiction. In its negotiations with these additional orders of government, CHRA encourages the federal government to ask these orders of government to respect and follow-through on advice or direction provided by the Advocate. We understand that some jurisdictions may not be interested in engaging with what could be viewed as a federal institution. However, without interaction and involvement with provinces, territories, municipalities, and Indigenous groups, the Advocate’s ability to identify and address systemic and/or collective barriers will be diminished.

New National Housing Council

Another key accountability mechanism that the legislation will introduce is a new National Housing Council. The NHS and the consultation discussion paper have been fairly vague in terms of describing the mandate of the Council, other than to say it will **“be established to promote participatory and**

evidence-based analysis to support the National Housing Strategy". The NHS states that the Council will be comprised of representatives from **"CMHC, provincial and territorial governments, municipalities, housing experts, researchers, practitioners, Indigenous people, newcomers to Canada, and Canadians who have lived experience with housing need and homelessness"**. Given these fairly vague descriptors, CHRA offers the following recommendations on the role and purpose of the National Housing Council:

- Like the Advocate position, the legislation needs to clearly delineate the roles, mandate and purpose of the Council. It also needs to be properly resourced so that it can adequately do its work.
- In terms of membership on the Council, CHRA agrees with an open public competition. However, we have concerns over CMHC solely deciding on membership. CHRA would instead prefer an all-of-government selection approach, where CMHC would not be the sole organization or body deciding on Council membership.
- In terms of its role, we see the Council and the Advocate position working in tandem. As a more fulsome representative body, we envision that the Council can bring issues or policies of concern to the Advocate's attention in order that they can be addressed. We also see the Council providing input and feedback into the work of the Advocate. The Council can also provide oversight and direction into other initiatives related to the NHS, for example the Public Engagement Campaign.

CHRA looks forward to further discussions with stakeholders on additional potential roles for the Council.

Community-Based Tenant Initiative

The March 2018 discussion paper states that the purpose of a Community-Based Tenant Initiative will be **"to provide funding to local organizations that help people in housing need. The funding will also be available to local organizations that help tenants access information on their housing options, participate in on-site consultations for major new developments or improve financial literacy"**.

Although CHRA is supportive of any assistance that can be offered to tenants, people with lived experience, and local housing organizations to increase their ability to participate and engage in policies that affect them, CHRA is concerned that the Terms of Reference for this initiative are still rather opaque, and therefore leave a great deal of interpretation as to what this funding can be used for. CHRA believes that this Fund should be directed to local housing organizations, and their tenants and clients, to be used to remove barriers to the full participation of housing organizations, tenants and clients in decision making and policy setting opportunities, as well as providing access to research and policy setting events. Examples of eligible funding opportunities would include funding to attend government and NGO policy consultation events on housing, funding to develop research and undertake consultations, and funding to attend research and policy conferences.

This initiative should not only be geared towards tenants but as stated in the NHS, **"Equally important is ensuring that those in housing need have the ability to participate in decision that affect them"**. **"Those in housing need"** extend beyond tenants to people who are experiencing homelessness, in precarious housing situations, or anyone else who is not technically a tenant; as such, the word "tenant" should be removed from this initiative's name.

Public Engagement Campaign

The discussion paper released in March 2018 states that the purpose of a Public Engagement Campaign will be to: **“inform public views about the different types and tenures of affordable housing that exist today, and support the development of more socially-inclusive housing projects in vibrant neighbourhoods. This will help to reduce or eliminate stigmatization and discrimination of low-income housing”**.

There is no question that stigmatization of social, affordable and non-profit housing exists in Canada, and that “NIMBYism” has been a barrier in several communities to providing access to housing for vulnerable populations. CHRA fully supports the development and execution of a public engagement campaign at combating stigmatization, which needs to include a distinct campaign aimed at addressing the discrimination faced by urban Indigenous housing providers and tenants.

In order to draw upon the ideas and experiences faced by people with lived experience, who know better than anyone the impact of stigmatization, CHRA is recommending that oversight of the public engagement campaign lie with the National Housing Council, and that CMHC work with people with lived experience on the kind of messages that this campaign needs to communicate.

Whole-of-Government Approach

As Minister Duclos’ message in the discussion paper states **“A human rights-based approach to housing...is integrally linked to other essential issues Canadians are facing today, like homelessness, poverty and the need to create opportunities for all Canadians to thrive.”** As such, the implementation of a rights-based approach to housing is not only critical to the National Housing Strategy’s success but also as a driver of success for the federal government’s Poverty Reduction Strategy and Homelessness Partnering Strategy. The federal government needs to ensure that the rights –based approach is comprehensive and does not become the responsibility of one department, but rather that the whole of government complies with and is engaged in the right to housing.

Conclusion

A legislated right to housing is an important step forward in implementing Canada’s National Housing Strategy. It will hold the federal government accountable for the implementation of a National Housing Strategy, and will provide the tools for Canadians to address systemic barriers in accessing safe and affordable housing. CHRA looks forward to participating in a robust Parliamentary process to ensure that this legislation is implemented appropriately, and with the core objective of ensuring access to safe and secure housing for all people living in Canada.



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