



BACKGROUNDER AND FACT SHEET

THE RIGHT TO HOUSING IN CANADA AND THE NATIONAL HOUSING STRATEGY ACT

MAY 2019 // THE RIGHT TO HOUSING CAMPAIGN

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WHO WE ARE

On August 14, 2018 advocates released an open letter to Prime Minister Trudeau, signed by over 170 organizations and prominent Canadians, urging him to make good on his commitment to the Right to Housing by enshrining that right in National Housing Strategy legislation. Since then, a diverse community of [over 1,100 individuals](#) and organizations from across Canada joined the call.

- ➔ Campaign 2000: End Child & Family Poverty in Canada
- ➔ Amnesty International Canada
- ➔ Canada Without Poverty
- ➔ Canadian Medical Association
- ➔ Canadian Nurses Association
- ➔ Canadian Housing and Renewal Association
- ➔ Canadian Alliance to End Homelessness
- ➔ Centre for Equality Rights in Accommodation
- ➔ Lived Experience of Homelessness Network
- ➔ ACORN Canada
- ➔ Native Women's Association of Canada
- ➔ Egale Canada Human Rights Trust
- ➔ [+ 1,100 more individuals and organizations](#)

The National Housing Strategy (NHS) introduced on November 22, 2017 promised rights-based legislation to implement the government's commitment to the progressive implementation of the right to housing, as guaranteed in the International Covenant on Economic, Social and Cultural Rights. The National Housing Strategy promised the creation of infrastructure to implement a "rights-based approach," including a Housing Advocate, a Housing Council and support for community-based tenant initiatives.

In support of this historic commitment, the first of its kind, we prepared draft legislation outlining how it could be done, based on the announced elements of the National Housing Strategy. The draft was based on core principles described in our open letter to Prime Minister Trudeau, signed by over 1,100 organizations and individuals.

After the National Housing Strategy Act was introduced on April 8 in the Budget Implementation Act, 2019, we put forward further amendments pressing for a stronger commitment to the right to housing and to add appropriate rights-based accountability mechanisms.

Amendments to the National Housing Strategy Act were tabled on May 29 at the House of Commons Standing Committee on Finance and on May 31 in the House of Commons. These amendments are essential to ensure Canada has a clear, decisive and unambiguous commitment in legislation to the right to housing with the necessary rights-based accountability mechanisms in place.

OVERVIEW

On April 8, 2019 the Government of Canada introduced the *National Housing Strategy Act* in the *Budget Implementation Act, 2019*. This historic legislation requires governments to “develop and maintain a national housing strategy” and to “further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.” Amendments have now been proposed to the National Housing Strategy Act to clarify the commitment to housing as a fundamental human right and to provide important elements of a workable, rights-based accountability framework.

The Act with the proposed amendments brings Canada in line with international standards which require the right to housing to be ensured not only through policies and programs but also through independent monitoring and access to hearings and effective remedies. It does so through a unique model that does not rely on courts but on alternative, accessible and participatory mechanisms that give a meaningful voice and role to rights-holders and provide for investigation, hearings and recommendations to ensure compliance with the commitment to the progressive realization of the right to housing.

The legislation, with the proposed amendments, will create a vibrant human-rights culture and a space for multi-stakeholder engagement around a shared commitment to reducing and eliminating homelessness and reclaiming housing as a fundamental human right.

The legislation affirms that the government’s housing policy is based on the recognition of the right to housing as it is understood in international human rights law. This means recognizing that all people have the “right to live somewhere in security, peace and dignity,” according to the United Nations. It requires government to implement reasonable policies and programs to ensure the right to housing for all within the shortest possible time.

It also means priority must be given to vulnerable groups and those in greatest need of housing. Across Canada, over 235,000 Canadians are experiencing homelessness every year and hundreds of thousands more experience severe housing inadequacy and many are in housing need, living in homes that are inadequate or unaffordable.

THE RIGHT TO HOUSING IN CANADA

In the *National Housing Strategy Act* in [Bill C-97](#) (*Budget Implementation Act, 2019*) tabled on April 8 and amended on May 29 and 31, Canada has recognized its commitment to the right to housing in federal legislation for the first time in its history.

The amended legislation recognizes that housing is a fundamental human right 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.

The legislation as first introduced included several key elements for a rights-based approach:

- ➔ Affirms a commitment to the progressive realization of the right to housing as recognized under international human rights law;
- ➔ Requires future governments to adopt and maintain a national housing strategy; and
- ➔ Establishes a National Housing Council and a Federal Housing Advocate.

Amendments introduced by the government were necessary to clarify and enhance the rights-based approach. They reflect many of the recommendations made by a broad range of civil society organizations and housing experts as well as by United Nations human rights bodies.

The proposed amendments:

- ➔ Declare that it is the housing policy of the Government of Canada to recognize housing as a fundamental human right.
- ➔ Establish that the National Housing Council will monitor progress and advise the Minister regarding the progressive realization of the right to housing.
- ➔ Strengthen the federal Housing Advocate who will:
 - assess and advise the Federal Government on the implementation of the housing policy;
 - initiate inquiries into incidents or conditions in a community, institution, industry or economic sector;
 - monitor progress in meeting goals and timelines of the housing policy;
 - receive and investigate submissions from affected groups;
 - issue opinions about compliance with the right to housing; and
 - refer key systemic issues for accessible hearings before a Review Panel.
- ➔ Provide for a Review Panel, made up of three members appointed from the National Housing Council, to hold hearings into selective systemic issues and submit reports and remedial recommendations to the designated federal Minister.
- ➔ Require the Minister to respond to recommendations within 120 days.

This innovative model does not give rise to legally binding orders from a court or an official tribunal, but it creates meaningful accountability and access to justice for the right to housing through other means. Issues of compliance with the right to housing can be submitted to the Housing Advocate for investigation, opinions and recommendations. **Rights holders will have access to accessible hearings into key systemic issues**, before an expert panel with at least one representative of affected communities. The legislation ensures that reports and recommendations will not be ignored by governments and must be responded to in a timely and meaningful fashion.

QUESTIONS AND ANSWERS

What is the right to housing in the Canadian context?

The legislation recognizes housing as a “fundamental human right” as it is defined under international human rights law. The right to housing was recognized in the 1948 Universal Declaration of Human Rights. Canada formally recognized the right to housing under international human rights law in 1976 when it ratified the International Covenant on Economic, Social and Cultural Rights.

The right to housing under international human rights law is understood as the right to a safe and secure home in which to live in security, peace and dignity, meeting standards of adequacy, including standards relating to legal security of tenure, affordability, habitability, availability of services, accessibility, location and culture.

The National Housing Strategy Act does not entrench the right to housing as an individual right that can be enforced in courts, but rather commits the government to the progressive realization of the right to housing through a rights-based housing strategy and ensures meaningful participation of rights-holders in identifying systemic issues and appropriate remedies.

What does progressive realization of the right to housing mean?

International human rights law recognizes that governments in most countries cannot be expected to ensure that everyone has access to adequate housing immediately. It recognizes that inadequate housing and homelessness are complex, structural and systemic problems that must be addressed and solved over time, through comprehensive strategies with achievable goals and timelines, engaging multiple levels of government and other actors. International law also requires that priority be given to vulnerable groups and those in greatest need of housing.

The legislation is based on this understanding. It requires that the housing strategy establish national goals, timelines and outcomes relating to housing and homelessness consistent with the commitment to the progressive realization of the right to housing; ensures that housing barriers or systemic issues related to access to housing will be identified through the Housing Advocate, National Housing Council and Review Panel by engaging meaningfully with affected groups and communities; and requires that these issues will be addressed in an ongoing process to fully implement housing as a human right.

Across Canada, an estimated 235,000 people experience homelessness each year, 35,000 experience homelessness on any given night.

The amended legislation will ensure that the housing strategy is responsive to the structural causes of homelessness and inadequate housing as well as to emerging issues and challenges moving forward.

Will this legislation create meaningful change or is it just a policy goal or aspiration?

International human rights law does not treat the right to housing as a mere policy goal or aspiration. It imposes serious obligations on governments to move toward the fulfillment of the right to housing “by all appropriate means” and applying “the maximum of available resources.” In other words, it requires governments to address inadequate housing and homelessness not just as policy issues but as human rights violations requiring urgent and concerted action. What is transformative about this legislation is that it affirms this understanding of the right to housing based on international human rights.

Progressive realization has been interpreted in international human rights law as requiring that “reasonable” measures must be adopted, recognizing that there may be a variety of policy options that are available. It requires that reasonable goals and timelines be set out for achieving identified goals for the progressive realization of the right to housing.

The legislation as amended is a practical, concrete approach that recognizes that the key to solving the housing crisis in Canada is to recognize it as a human rights crisis, give a meaningful voice to rights holders and engage with multiple stakeholders and identify and address systemic problems and develop practical solutions through meaningful engagement with communities. This will occur through the National Housing Council, the submissions and hearings process through the Federal Housing Advocate and through many other rights-based processes in a range of housing and program areas.

How does the legislation implement a participatory rights-based approach?

The legislation requires ongoing inclusion and engagement of civil society, stakeholders, vulnerable groups and persons with lived experience of housing need, as well as those with lived experience of homelessness in all aspects of the housing strategy, with diverse membership on the National Housing Council and participation of persons with lived experience in hearings.

It ensures that the circumstances of vulnerable groups will be brought to light through effective participation and prioritized in policy responses. At the same time, it will ensure that policies and programs adequately address broader systemic issues that affect housing markets that make housing unaffordable for low- and middle-income people.

The legislation’s proposed amendments will also ensure rights-based participation by:

- ➔ Hearing from those who are affected by the housing crisis, to better understand the problems they are facing;
- ➔ Ensuring their meaningful engagement with decision-makers in both the public and private sectors, facilitated by the Housing Advocate.

This participatory rights-based approach will take good faith on all sides. It will be based on the right to housing as a shared value and commitment in Canada that requires active engagement by civil society, different levels of government, tenants, housing providers and other stakeholders.

Doesn't recognizing housing as a human right mean the government must provide everyone with housing?

The right to housing under international human rights law does not mean that the government must provide everyone with housing. It recognizes that all people have the “right to live somewhere in security, peace and dignity” and that governments must implement reasonable policies and programs with the ultimate goal of ensuring that everyone has access to adequate housing by one means or another. The National Housing Strategy Act, as amended, affirms that that this commitment must guide housing policy and programs, prioritizing those in the greatest need.

Under international human rights law, the right to housing means that governments must, among other things:

- ➔ Refrain from actions that violate the right to housing, such as criminalizing those who are homeless or discriminating against particular groups;
- ➔ Protect the right to housing through appropriate legislation and regulation;
- ➔ Implement housing policies and programs focused on those most in need as well as on progressively ensuring access to housing for all; Address systemic barriers to access to housing facing women, racialized groups, persons with disabilities, young people, LGBTQ, elderly people, and other groups; and
- ➔ Fulfil the right to housing over time through rights-based housing strategies and programs.

Many of these aspects of the right to housing are already protected in provincial, territorial or federal legislation in Canada. The National Housing Strategy Act does not affect existing protections of security of tenure, non-discrimination property standards or planning law. It simply affirms a strategic commitment by the federal government to the progressive realization of the right to housing, through a new model of rights-based participation and accountability.

Does this legislation interfere with provincial or territorial jurisdiction over housing?

This legislation is a statement of a federal government housing policy based on the commitment to the right to housing and establishes mechanisms to promote that policy. It does *not* interfere or encroach on any areas of provincial/territorial jurisdiction in relation to housing.

The legislation responds to the need for more effective federal leadership in promoting compliance with the commitment to the right to housing under international human rights law.

It offers a rights-based process that hopefully provinces, territories and local government will affirm and join, since the right to housing under international human rights law also applies to provinces, territories and municipalities in Canada. We anticipate that the federal commitment to the right to housing will be translated in federal negotiations and expectations in future agreements under the National Housing Strategy.

There is no legal requirement in the legislation that provinces, territories or municipalities respond to the recommendations from the Federal Housing Advocate or the Review Panel. It is hoped, however, that these recommendations will be considered by all levels of government, and that provinces and territories will choose to participate in a meaningful, multi-stakeholder engagement for the progressive realization of the right to housing, in a collaborative effort across jurisdictions. It is also expected that the rights-based model implemented by this legislation will give rise to similar initiatives and legislation in provinces, territories and municipalities.

How do these amendments change the Housing Advocate's role?

The proposed amendments clarify that the role of the Housing Advocate is to promote and ensure compliance with the government's policy commitment to the progressive realization of the right to housing. The Advocate will assess and advise the Federal Government on the implementation of the housing policy; initiate inquiries into incidents or conditions in a community, institution, industry or economic sector; and monitor progress in meeting goals and a timeline.

Most importantly, the Housing Advocate will not simply prepare and submit reports but will ensure a meaningful voice and role for affected individuals and communities. The Advocate will receive submissions identifying systemic housing issues and measures necessary for compliance with the right to housing, conduct investigations, adopt opinions and make concrete recommendations to relevant parties about how to address identified problems.

Where appropriate, the Advocate can also refer systemic housing issues to a three-person review panel, which will hold hearings and make recommendations to the Minister. The members of the panel will have expertise or experience in human rights and housing matters and at least one member must be representative of communities directly affected by homelessness and inadequate housing. Hearings will be public and conducted in an open and accessible manner.

Through the processes clarified in the proposed amendments, the Housing Advocate will be able to ensure that information is brought to light about systemic issues faced by vulnerable groups, as well as their lived experience. The Advocate will also draw on other experts and the results of investigations and research in order to put forward practical, evidence-based recommendations to deal with specific problems as they emerge.

The rights-based approach put in place through the Housing Advocate is oriented around solving problems, making policies and programs more effective and responsive, engaging meaningfully with those affected and working collaboratively with multiple stakeholders.

What is the role of the National Housing Council and why do we need one?

The National Housing Council will further the National Housing Strategy and the right to housing by monitoring progress and providing advice to the federal Minister.

The council will include two co-chairpersons, the Housing Advocate, the Deputy Minister of housing, the Deputy Minister of Indigenous Services, and the President of the Canadian Mortgage and Housing Corporation. The appointment of other members by the federal Minister must consider representation of vulnerable groups, people with lived experience of housing need as well as homelessness. Three of the members of the Housing Council will also be members of the review panel to hold hearings into systemic housing issues identified by the Housing Advocate.

This puts affected people into a position where they will not only be heard but can build momentum toward the progressive realization of the right to housing. The Council should make certain that housing policies and programs are consistent with the commitment to the progressive realization of the right to housing, building a new human rights culture into housing policy and ensuring that rights-based approaches are embedded in all programs.

Won't the review panel be overwhelmed by cases? What cases will be heard?

The review panel will only hear selected systemic issues regarding the progressive realization of the right to housing as referred by the Housing Advocate. It will not hear individual complaints about housing rights. It will hold hearings that offer the public, particularly members of affected communities and groups with expertise and experience in human rights and housing, an opportunity to participate and contribute effectively to more responsive and effective housing policy and programs.

After a hearing into a particular issue is completed, the panel will prepare a report for the federal Minister that states the panel's conclusions and its remedial recommendations. The Minister must then provide a response within 90 days, outlining what will be done to address the systemic housing issues and potential solutions, which then must be tabled to the Senate and House of Commons.

This innovative approach to rights claiming is designed to be efficient and targeted to the most important systemic issues, giving a meaningful voice to rights holders in identifying the most critical issues and the appropriate responses.

How does this help people who are homeless or living in inadequate or unaffordable housing?

The rights-based approach put in place by amended legislation helps people in several important ways:

- ➔ It requires the federal government to maintain a National Housing Strategy based on the recognition of housing as a human right. This prevents housing issues from being ignored and ensures a coordinated and comprehensive approach.
- ➔ It commits the government to implement reasonable policies and programs aimed at ensuring the right to housing for all. This commitment will be subject to ongoing, effective monitoring and accountability.
- ➔ It means priority in housing policy must be given to vulnerable groups and those in greatest need of housing, recognizing homelessness as a violation of human rights and committing to addressing it as a human rights violation, eliminating it in the shortest possible time.
- ➔ It gives affected groups a voice and a role in the policy process and a means to get action in response to their circumstances.
- ➔ It creates accountability and independent oversight for the National Housing Strategy so that it will be constantly adjusted and altered to be made more effective and responsive to emerging issues.
- ➔ It will provide a basis for participatory and evidence-based decision-making that will make programs and policies more effective at addressing housing need.