

Canada's Rights-Based National Housing
Strategy: Principles and Mechanisms
for Rights-Based Participation
of Those with Lived Experience

An ideas paper

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Canada's Rights-Based National Housing Strategy: Principles and Mechanisms for Rights-Based Participation of those with Lived Experience is an ideas paper to stimulate discussion about the National Consultation on a Human Rights-Based Approach to Housing. Reflecting on feedback to this draft, the author will produce a subsequent paper that develops these ideas into a submission to the consultation.

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Contents

A. Housing, homelessness, and human rights	4
B. Applying a rights-based analysis to housing policies and programs . . .	5
1. Recognizing the right to adequate housing	5
2. Housing rights are indivisible from other human rights	5
3. The right to housing within a substantive equality framework.	6
C. Rights-based participation	7
1. Beyond consultation: Meaningful participation	8
2. Addressing barriers in participatory settings	9
3. Infrastructures for participation and accountability	10

A. Housing, homelessness, and human rights

“Canada ends at the doorstep of the shelters. When you’re outside, it’s Canada. When you go in, it isn’t. When I go in the door I know I’ve left Canada behind. When I say Canada, I mean everything – the values, the principles, what they stand for, everything.”¹

This powerful statement by an older, racialized, immigrant woman in Toronto gives voice to the profound betrayal represented by homelessness. Certainly, homelessness is the result of a life-threatening failure of Canada’s social security systems to protect us at our moments of greatest vulnerability; but it also constitutes a betrayal of Canada’s fundamental values of rights and human dignity. People facing homelessness² and their allies have long called for Canada to address inadequate housing and homelessness as a matter of human rights.³

With its National Housing Strategy, the Government of Canada has responded to this call, committing to “progressively develop and implement a human rights-based approach to housing in Canada.”⁴ This commitment has broad implications. As recognized in the government’s discussion paper, it engages the obligations set out in the International Covenant on Economic, Social, and Cultural Rights, such as the right to adequate housing as a component of an adequate standard of living. At the same time, a human rights-based approach to housing engages other areas of rights: fundamental human rights, including human dignity and self-determination; civil rights, such as security of the person and freedom of expression; equality rights, including the right to equal benefit of the law regardless of race, gender, national origin, faith, age, disability, sexual orientation, gender identity and other intersecting factors; and, finally, political rights to inclusion and democratic participation. A recent report by the UN Special Rapporteur on adequate housing⁵ affirms that each of these areas must be taken into consideration in states’ housing strategies.

- 1 Participant in a Toronto focus group for mid-life and older single women facing homelessness, quoted in Paradis, E., Bardy, S., Cummings Diaz, P., Athumani, F., & Pereira, I. (2011). *We’re not asking, we’re telling: An inventory of practices promoting the dignity, autonomy, and self-determination of women and families facing homelessness*. Toronto: The Canadian Homelessness Research Network Press. www.homelesshub.ca/Library/View.aspx?id=55039
- 2 Homelessness is a temporary experience, not an identity or permanent trait. People facing homelessness may move between different points on a continuum of housing circumstances, from absolute homelessness to adequate housing.
- 3 A recent example is *Tanudjaja v. Canada (Attorney General)*, a Charter challenge on the right to housing.
- 4 Government of Canada. (2018). *Discussion paper: A human rights-based approach to housing*, p. 2. <https://www.placetocallhome.ca/pdfs/NHS-Human-Rights-Approach-to-Housing-en.pdf>
- 5 See UN Human Rights Council, 37th Session (26 Feb – 23 March 2018). Report of the 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. A-HRC-37-53, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/007/65/pdf/G1800765.pdf?OpenElement>

B. Applying a rights-based analysis to housing policies and programs

“Homelessness and poverty are not just about inadequate housing and incomes. More fundamentally, they are about exclusion.”⁶

A rights-based approach to the National Housing Strategy (NHS) will require the application of each of these areas of rights in the design, implementation, and evaluation of initiatives under the Strategy. Progressive realization of these rights includes a duty to dedicate the maximum available resources, and incorporates immediate obligations to address urgent violations, as well as longer-term responsibilities to show progress over time.⁷ The Strategy must demonstrate immediate impacts for those who are most vulnerable, and expand over time to address the needs of all for whom adequate housing is unattainable through Canada’s private market-dominated housing system.

1. Recognizing the right to adequate housing

The NHS must work toward Canada’s obligations to respect, protect, and fulfill the right to adequate housing as a component of an adequate standard of living. The right to adequate housing includes, among others, components of affordability, legal security of tenure, habitability, and accessibility. In Canada, each of these is the purview of different actors; for example, provincial landlord-tenant law governs security of tenure, while municipal licensing and standards regulate habitability. The role of a national strategy does not replace these; instead, it provides leadership and coordination, establishes a set of common rights-based criteria for adequacy, and implements mechanisms for the enforcement of those criteria.

2. Housing rights are indivisible from other human rights

At the same time, human rights principles of indivisibility, interdependence, and interrelatedness⁸ insist that measures to provide adequate housing must also uphold other human rights and freedoms, including security of the person and human dignity. In other words, the provision of material supports such as housing and income is not sufficient, if these are provided in a way that violates human dignity and undermines the inherent worth of recipients.

6 Jarrett, H. (2016). Nothing about us without us: Lived experience leaders from across the country call for inclusion in the design of Canada’s National Housing Strategy. Homeless Hub. <http://homelesshub.ca/blog/nothing-about-us-without-us-lived-experience-leaders-across-country-call-inclusion-design>

7 UN HRC, see above at note 4, para 17.

8 The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies. <http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>

In Canada, as in many states, this entails a culture shift away from what Order of Canada member Jean Swanson terms “poor bashing”⁹ in social services. The UN Special Rapporteur on extreme poverty and human rights has pointed to the need for state social provision systems to transform their understanding of beneficiaries “from undeserving poor to rights holder.”¹⁰ In the Canadian context, this means that affordable housing projects don’t meet human rights obligations if their residents are subjected to surveillance and control of their private lives. Likewise, provincial social assistance programs are unacceptable if their administrative procedures expose recipients to “rituals of degradation.”¹¹

This is of particular importance in measures to address homelessness, because those who experience it face a degree of stigma and dehumanization so extreme that scholars refer to it as “social death.”¹² When policies and programs for social provision reinforce stigma through their depiction and treatment of people facing homelessness, they violate recipients’ rights even as they fulfill material needs.

3. The right to housing within a substantive equality framework

Programs and policies to fulfill the right to adequate housing must also provide equal benefit to equity-seeking groups, including Indigenous peoples, members of racialized communities, women, persons with disabilities, immigrants and refugees, members of LGBTQ2S communities, and others. A rights-based approach applies a substantive equality analysis, to ensure that programs and policies are equitable not only in intent, but in effect. The government’s commitment to Gender-Based Analysis Plus within the NHS must be coordinated and aligned with the rights-based approach, not seen as separate from it.

A Canadian example can be found in the implementation of Housing First as federal policy. Housing First, a service model in which people facing homelessness are provided with immediate access to housing of their choice with no preconditions, represents an important paradigm shift in Canada’s homelessness services system, re-orienting it towards ending homelessness rather than managing it.

Proponents of the model have argued that it is a rights-based intervention. With its core principles of providing access to adequate housing, consumer

9 Swanson, J. (2001). *Poor bashing: The politics of exclusion*. Toronto: Between the Lines.

10 Sepulvéda, M. (2014). *From undeserving poor to rights-holder: A human rights perspective on social protection systems*. Oxford: Development Pathways.

11 Herd, D., Mitchell, A., & Lightman, E. (2005). Rituals of degradation: Administration as policy in the Ontario Works programme. *Social Policy and Administration*, 39(1), 65-79.

12 Liggett, H. (1991). Where they don’t have to take you in: The representation of homelessness in public policy. *Journal of Planning Education and Research*, 10 (3), 201-208.

choice, and self-determination, Housing First indeed embodies a rights-based approach in many respects.

But when the Government of Canada adopted it as policy, it imposed criteria that have led to inequitable outcomes. Service managers in major centres funded through the federal Homelessness Partnering Strategy (HPS) were required to dedicate 65 per cent of their HPS funds to Housing First programs serving people with a mental health diagnosis who met the definition of “chronic homelessness.” These criteria, however, do not reflect the diverse manifestations of homelessness for specific populations, in particular women and families, young people, racialized immigrants and refugees, and Indigenous people.

Further, as a model, Housing First does not meet the needs of many women experiencing homelessness, including those fleeing violence.¹³ Accounts from service providers in the women’s sector have suggested the HPS requirement that communities dedicate 65 per cent of their funds to Housing First programs addressing “chronic homelessness” has resulted in the reduction or elimination of supports for other groups whose experience of homelessness differs from this definition. Paradoxically, this policy has compromised the housing security of women and other groups.

C. Rights-based participation

“Researchers, politicians, and service providers may be coming from good intentions, but most lack first-hand knowledge of what it is like to have insecure housing. In order to be effective, the NHS must be inclusive to and led by those directly affected by poverty and homelessness, including Indigenous people, women, families, single men, survivors of violence, people with disabilities, people who have been criminalized, and illicit drug users.”¹⁴

The Government of Canada has committed to the core principles of accountability, participation, non-discrimination, and inclusion as the foundation for its rights-based approach. These principles will be operationalized through mechanisms including legislation, a Federal Housing Advocate, a National Housing Council, a Community-Based Tenant Initiative, and a public relations campaign. In order to uphold the human right to housing and the interdependent rights to dignity and equality as described above, these mechanisms must enable rights-based participation and effective accountability.

¹³ YWCA Canada. (2013). Housing First, women second? Gendering Housing First: A brief from the Homes for Women campaign. YWCA Canada, <http://ywcacanada.ca/data/documents/00000382.pdf>

¹⁴ Jarrett, see above at note 6.

1. Beyond consultation: Meaningful participation

“People with lived experience are often put on committees for our expertise, and to bring reality to the group, but how often are we really listened to.”¹⁵

The UN Special Rapporteur distinguishes between consultation—in which governments solicit input but make decisions without considering constituents’ contributions—and rights-based participation, which “emerges from community action and is led by rights holders who identify what is lacking and what needs to change. Governments must respond accordingly.”¹⁶ She calls for meaningful participation by people and communities directly affected, in the planning, implementation, and monitoring of national housing strategies.

Similarly, an account of a People’s Commission on Rooming Houses conducted in Montréal points to the contrast between state-led urban renewal processes in which participation is a means to implement a pre-set agenda for economic and social development, versus bottom-up organizing among urban inhabitants. The authors conclude that, in order to fulfill its democratic function, participation must respect the rights and input of all social groups directly affected by policies, and give priority to those who have been silenced, marginalized, and excluded.¹⁷

In that spirit, the Lived Experience Advisory Council (LEAC), a network of leaders with lived experience of homelessness from across Canada, outlines seven principles for the leadership and inclusion of people facing homelessness in all efforts to end it:

1. Bring the perspective of our lived experience to the forefront.
2. Include people with lived experience at all levels of the organization.
3. Value our time and provide appropriate supports.
4. Challenge stigma, confront oppression, and promote dignity.
5. Recognize our expertise and engage us in decision-making.
6. Work together towards our equitable representation.
7. Build authentic relationships between people with and without lived experience.¹⁸

15 Lived Experience Advisory Council. (2016a). *Nothing about us without us: Seven principles for leadership & inclusion of people with lived experience of homelessness*. Toronto: The Homeless Hub Press. <http://www.homelesshub.ca/NothingAboutUsWithoutUs>

16 UN HRC, see above at note 4, para 62.

17 Gagné, J. & Despars, M. (2011). Participation citoyenne et intervention communautaire: la Commission populaire pour la sauvegarde des maisons de chambres. *Nouvelles pratiques sociales* 23 (2), 65-82.

18 Lived Experience Advisory Council, see above at note 16.

Canadian policy processes—and even international human rights settings¹⁹—all too often invite service and advocacy organizations to stand in for direct participation by people with lived experience. And yet, as Jarrett emphasizes above, these organizations cannot speak on behalf of the interests, perspectives, and experiences of people directly affected. Rights-based participation entails the re-orientation of these processes and settings to engage rights holders directly.

2. Addressing barriers in participatory settings

“Plan to include a ‘critical mass’ of diverse lived experience leaders and participants in your event. People with lived experience should make up a large portion of attendees for visibility, comfort, and to feel included, and to have influence on the atmosphere and content of the event.”²⁰

Any setting in which policies and programs on housing and homelessness are being determined must include a significant proportion of people with lived experience among its participants. Further, lived experience delegates should reflect diversity along a range of axes including gender, race, Indigenous identity, place of origin, dis/ability, and experience of inadequate housing and homelessness. Policy settings must accommodate the participation of persons with lived experience; but, as the above quote suggests, they must also be transformed by this participation.

Accommodation entails a number of practical changes in how these settings and processes are planned and carried out. To equitably engage persons who are living in poverty and with disabilities requires first that barriers be addressed: travel costs, for example, must be covered directly; locations must be accessible and close to needed amenities; people’s embodied needs for rest and nutrition must be taken into account. Because these settings have traditionally been planned by, for, and with professionals, class-based assumptions are embedded in mundane procedures. For example, an email for attendees of the very meeting for which this paper is being prepared, informs participants that “The hotel will require your credit card at check-in for any incidentals.” Assumptions such as these pose a very real material barrier to persons living in poverty. More profoundly, though, they communicate an exclusionary message about who does and does not belong in policy processes, and to whom those processes belong.

Accordingly, rights-based participation requires not only a change in procedures, but a change in the professionalized, bureaucratic culture of

19 Paradis, E. (2015). Do us proud: Poor women claiming adjudicative space at CESCR. *Journal of Law and Social Policy*, 24, 109-134.

20 Lived Experience Advisory Council. (2016b). Checklist for planning inclusive and accessible events. Toronto: The Homeless Hub Press. <http://www.homelesshub.ca/NothingAboutUsWithoutUs>

policy settings. This entails a range of nuanced shifts in communication: from speaking about people facing homelessness to speaking with them; from taken-for-granted racial and gendered hierarchies of whose voice is accorded authority, to intentional and equitable distribution of speaking time; from presumed professional “objectivity” to a recognition that all participants’ perspectives are informed by their lived experience—including those with experiences of privilege.

In addition, settings must be trauma-informed, holding space for the powerful emotions that accompany discussion of experiences of homelessness. Finally, they must make room for what legal theorist Lucie White has referred to as “subordinated speech,” that is, class-, race-, and gender-coded forms of self-expression that have been traditionally devalued and invalidated in bureaucratic settings.

Different stakeholder groups may also require different forms of preparation in order to engage productively with participatory policy processes. While those with lived experience may need information on how policies and programs are developed, government officials and other professionals may require anti-oppression training and exposure to the realities of homelessness.

The best way to ensure that settings are appropriate and accessible, LEAC points out, is to engage people with lived experience in their planning and implementation. Importantly, lived experts should be equitably compensated for their contributions to policy settings, whether as planners or participants.

Also critical is to engage lived experts on equal footing with other participants. For example, if most participants in a process are expert advocates representing organizations, delegates with lived experience should likewise be representing organizations. This raises a dilemma, because there are few funded organizations representing persons with lived experience. One response to this dilemma is to ensure that policy-making happens via a variety of settings and processes that invite a range of forms of participation, from broad popular input to expert policy advice. But just as important is the creation of funded infrastructures for representation and accountability of people facing homelessness, so that these constituencies can be appropriately represented at all levels of the policy process—including in the rarefied settings where the real decisions get made.

3. Infrastructures for participation and accountability

“Decades of top-down research, service provision, and policy-making have not ended homelessness, because ending homelessness requires fundamental changes to our economic and social system. These changes

will only be possible if our priorities and insights are brought to the forefront.”²¹

The companion ideas paper submitted to this consultation by Bruce Porter outlines a proposed architecture for the rights-based elements of the NHS, including the Federal Housing Advocate, National Housing Council, and Community-Based Tenant Initiative. Key proposals include:

- That the Office of the Housing Advocate be mandated to undertake investigations into systemic problems, issue communications on these concerns to the responsible government officials and private actors, and support affected communities in bringing complaints to hearing before an adjudicative body;
- That the National Housing Council independently monitor progress of initiatives under the NHS to ensure accountability; and
- That the Community-Based Tenant Initiative provide resources and support to affected communities to educate and organize on the right to housing, and bring forward systemic issues to the Housing Advocate and Council.

While maintaining the core elements already defined in the government’s discussion paper, this architecture would improve accountability through the creation of a monitoring and enforcement mechanism, and the provision of support to affected communities to participate in it.

A critical feature of this proposed architecture is the engagement of people with lived experience at all levels: not only as rights claimants in enforcement processes, but also as members of community initiatives, the National Housing Council, and the adjudicative body. A further enhancement would be to use the Community Tenant Initiative to fund local organizations created by and for people facing homelessness and inadequate housing. These organizations would constitute an infrastructure for capacity-building, and ensure grounded accountability to local communities. They could also provide a representational structure that would name members to the Housing Council and adjudicative body.

If grounded in the principles outlined above, this architecture would infuse the planning, implementation, monitoring, and enforcement of the National Housing Strategy with the unique insights of lived experience, and empower communities to demand the systemic changes necessary to ensure the right to adequate housing for all.

21 Lived Experience Advisory Council, 2016a, see above at note 15.