

Final Summer Fellowship Report

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Overview

A summer in housing law proved to be more rewarding than I could have ever anticipated. Serving as an International Human Rights Fellow for the Centre for Equality Rights in Accommodation (CERA), I was exposed to the pervasive, systemic housing issues that plague not only Toronto but Canada at-large. Housing security is one of the most pressing human rights issues affecting Canadians, yet is one of the least to receive attention from the public eye.

At CERA, I was tasked with drafting a communication to the United Nations Human Rights Committee (UNHRC). This communication was meant to be a spiritual and legal successor to the complaints filed against the Canadian government in *Tanudjaja v Canada*. The goal was to seek the UNHRC's help in pressuring Canada to recognize housing as a human right, encouraging the federal and provincial governments to ensure adequate housing for all within its borders. Following the trailblazing linkages between housing insecurity and the right to life made by the UN Special Rapporteur on Adequate Housing, Leilani Farha, we argued that failure to provide adequate housing was a violation of the right to life, as enshrined under Article 6 of the International Covenant on Civil and Political Rights.

2016 is poised to be a potentially impactful year in Canada's housing evolution. The current Federal government is hoping to address the housing crisis by establishing a National Housing Strategy. Being an active member of the Right to Housing Coalition in Toronto, I helped prepare submissions to the federal government for its consultations. I also arranged meetings with politicians to better understand the aims and objectives of the proposed legislation, and to articulate the concerns of the Right to Housing coalition.

No matter the day, the work at CERA was always engaging and informative. I learned a great deal from my driven colleagues, and am humbled to have had the opportunity to work on an issue that constitutes one of the key foundations of Maslow's hierarchy of needs: shelter.

Introduction

Homelessness and housing insecurity is one of the major 'sleepers' issues affecting Canadians today. As a nation propounding the highest standards of respect for human rights and bearing the medallion of moral righteousness, the housing situation in Canada is an embarrassment.

In the 1960's and 70's the federal government of the day launched a variety of housing developments to meet the need for affordable social housing for low-income families. A great number of affordable houses were built all across the country, to the tune of 30,000 houses per year at one point. However, the governments that followed began to make cuts to housing developments, and commenced the process of transferring housing responsibility to the provinces, who then transferred increasing responsibility to municipalities.

Fast forward to 2016, and we find that the number of affordable homes being built are at a meagre and embarrassing 1500 units per year. There are 160,000 low-income families on the waitlist for affordable social housing across Canada - with 90,000 applications in Toronto region alone. The sheer demand for affordable homes is staggering; unfortunately, the supply of social housing stock is severely limited. In Peel Region alone,

the average wait time for affordable housing is a shocking and nearly unbelievable 20 years. Eschewing ownership, even the cost of rent has also skyrocketed to nearly 50% of the monthly budgets of low to middle income families. This high cost, coupled with the low vacancy rates in Canada's urban centres (1.6% in Toronto and less than 1% in Vancouver), have resulted in an astounding shortage of rental properties.

The progressive decline of housing initiatives is not a recent concern. Since 1999, the United Nations Human Rights Committee (UNHRC) and consecutive Special Rapporteurs on Adequate Housing have highlighted the perplexing nature of homelessness in Canada. Despite being a wealthy country, Canada has failed to make housing a priority. The UNHRC has urged Canada to recognize housing as a human right in its legislation, and to implement a host of recommendations aimed at providing housing to the most vulnerable and marginalized segments of society. The particular needs of Aboriginal communities have also been repeatedly highlighted in several UNHRC reports, to little effect.

Unfortunately, most of the UNHRC's recommendations have been largely ignored. The lack of social housing remains an issue that receives little to no attention from the media, or from decision-makers. The approaches to address housing insecurity have been varied and disorganized. Some municipalities in Quebec decided to deal with the problem by implementing policies that ban sleeping in park benches and public spaces. Such policies make homelessness an invisible issue, with those in need being shunned from support and experiencing further marginalization. Other communities have opted to invest heavily in transient shelters and halfway homes, and have used the presence of empty beds as indicators of success. Regrettably, the focus on short-term shelters has done little to address the inter-generational, long-term, poverty-related causes of housing insecurity.

Affordable housing continues to be a hot potato issue for all levels of government. A recent report by the Mayor of Toronto's Task Force on Housing lamented the current availability of social housing, and the struggles of the Toronto Community Housing Corporation to cater to growing demand. The cost to provide adequate housing for the most vulnerable populations is far beyond the means of municipalities, and is also unlikely to be satisfied by provincial coffers alone. Coordination and collaboration between all three levels of government is required to address a multi-billion dollar issue.

In an effort to seek change and to encourage reforms in the administrative approach to housing, a member of the Dream Team - a group of activists with lived experiences of homelessness - and the Right to Housing Coalition in Toronto took the Canadian government to task in *Tanudjaja v Canada* (2014). Although the litigation was ultimately dismissed on procedural issues, the merits of the claim - that the Canadian government has failed its obligations to provide adequate housing to its people - have remained unaddressed.

As a member of the Right to Housing Coalition, CERA sought to continue the good fight by appealing to the UNHRC for support in pressuring the Canadian government. Under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), individuals of member states can file a communication to the UNHRC, which then considers the matter and issues its views.

Although the right to adequate housing is not explicitly recognized under the ICCPR, the recent discourse around housing and health has attempted to link the right to adequate housing to the right to life. Indeed, Studies at the University of Toronto have linked the chronic lack of stable housing to reduced life expectancy, and numerous health and housing experts have identified the role of pervasive, intergenerational poverty in contributing to the likelihood of homelessness. As such, CERA aimed to champion this interpretation of the right to life, arguing that governments did indeed have a positive obligation under the ICCPR to provide adequate housing in order to protect the right to life of its people.

The Organization

Founded in 1987, CERA is the only non-profit in Ontario that advocates for tenants facing a violation of their housing rights. CERA's rights-based approach to housing involves supporting its clients as they seek recourse through the Human Rights Tribunal and the Landlord Tenant Board. The majority of CERA's work involves working with clients who call through a hotline with a complaint related to a discrimination or equality issue either in their current housing or in their attempts to procure housing.

Client management takes up the majority of CERA's resources, and involves communicating with landlords, legal representatives and housing institutions on the client's behalf. CERA also advises on housing law and policy, providing client-specific recommendations on strategies to ameliorate their housing concerns.

Apart from working with clients, CERA works with other non-profits and government bodies on public legal education projects, in order to raise awareness and educate the public - and those who assist them - on housing rights. This work often involves collaborations with youth, Aboriginal, women's and other marginalized groups.

The third aspect of CERA's operations involves researching housing law, producing advisory documents and making policy recommendations to decision makers. Since CERA is a registered charity, it is limited in its ability to engage politically. However, its research and policy recommendations can be utilized by other rights-based organizations in the pursuit of their respective aims.

Despite its limited political involvement, CERA has historically been a leader in advocating for more accessible, affordable housing and the rights of those seeking accommodation in their housing situation. With other members of the Right to Housing Coalition, CERA relays its findings to the appropriate decision-makers in Canada. CERA has also testified in front of the UN Human Rights Committee and other international venues on the right to housing, and has offered its unique perspective on housing discrimination to bodies of international jurisprudence.

More information on CERA can be found at <http://www.equalityrights.org/cera/>

The Work

Being part of Canada's only non-profit that deals with discrimination in accessing housing has certainly been a thrilling experience, to say the least. My main task was to help draft a communication to the UN Human Rights Committee on behalf of a complainant who had experienced chronic homelessness.

I began by researching the existing UN jurisprudence around the right to life (Article 6 of the ICCPR), and any cases where housing had been a central issue. Although there were numerous cases involving the right to life, the vast majority of those pertained to torture, violence, unlawful detention, refugee claims and executions. Very few cases that had gone before the UN Human Rights Committee dealt with housing and the right to life. The majority of housing cases involved Article 17 - interference with the home and privacy - where families had been forcefully evicted from their homes.

Only in one communication did the UNHRC find that the lack of secure housing would violate the right to life. This case involved a single mother who experienced difficulty in finding stable housing for her family in Italy; the UNHRC decided that deportation back to Italy would violate the right to life of her family, and recommended that the government of Denmark ask her to stay.

I was then asked to review housing rights jurisprudence in international regional adjudicative bodies, including the European Human Rights Commission, the Arab Human Rights Court and the African Court on Human and People's Rights. The review yielded a few promising judgments that supported the right to housing and right to life connection. Several cases also outlined the positive interpretation of the right to life.

In order to receive guidance on the structure and flow of a communication, I sought the help of Stewart Istvanffy, a lawyer in Montreal who had successfully argued several communications at the Human Rights Committee. Mr. Istvanffy was kind enough to send me the drafts of his earlier communications, which were useful in understanding how arguments were presented.

I compiled my legal research in a series of memos for the Executive Director of CERA, providing an overview of current case law as well potential persuasive arguments. I also reviewed the affidavits of the expert witnesses in *Toussaint v Minister of Citizenship and Immigration* (2012) and *Tanudjaja* to find evidence linking the right to health and the right to housing to the right to life. The affidavits proved to be invaluable in providing information on the state of housing, and in particular, provided the unique perspective of doctors, social workers, housing advocates, Aboriginal community workers, youth workers and nurses.

Shortly after I began my term, I had the opportunity of working under Bruce Porter, the Director of the Social Rights Advocacy Centre who then began to direct me towards specific points of research. Under his direction I reviewed the UNHRC's General Comments, as well as the jurisprudence of all treaty bodies - including the Covenant on the Elimination of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD) - for supportive arguments. By doing so, I learned a great deal about human rights discourse and development at the UN level, particularly in the last two decades.

While my main duties pertained to the development of the draft communication, I also had several opportunities to learn about CERA's case work by attending case meetings. I received training on the case management system, as well as a workshop on human rights in the context of housing. At times, the phone would not stop ringing with clients calling to seek assistance in dealing with landlords or neighbors who were not providing the accommodation necessary for a basic quality of life. CERA's letters to landlords, although not binding by any means, were persuasive in informing the landlord of their duties under the Human Rights Code. Indeed, CERA's public education sessions for landlords have been well-received by those who inadvertently create barriers for their tenants.

Apart from learning about casework, I participated in a staff retreat, where we brainstormed CERA's objectives and branding. As CERA's outreach methods become more sophisticated, it is important both CERA employees and clients know what needs and niche the organization aims to fill, in order to manage expectations and set achievable goals. Consequently, I am more educated about non-profit strategy, brand development and general management.

Mid-summer, the Ontario Court of Appeal released its judgment in *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 47, where the majority of tenants with disabilities in the building filed a complaint against their landlord due to their only elevator being out of service for a significant portion of the year. This case caught CERA's attention as it pertained to the landlord's responsibility in ensuring elevators were provided for tenants without unreasonable interruption. The Court of Appeal upheld the Divisional Court and Landlord Tenant Board's decisions, stating that the landlord had indeed acted reasonably, and had undertaken significant personal expense to provide alternatives to the tenants. After reviewing the redacted LTB decision, I wrote a case comment on CERA's website and summarized the issue for CERA's newsletter. Our main concern with the decision was the lack of focus on the human rights element of the tenants' complaint; that access to an elevator was indeed a necessary and integral part of their residence akin to a utility, requiring continuous, uninterrupted provision.

In addition, I was able to attend the Right to Housing Coalition's meetings that took place in the summer. This way, I had the privilege of meeting the members of the Dream Team, as well as other leaders in housing

advocacy in Toronto. The experiences and knowledge of these individuals was instrumental in developing my own views on the housing crisis.

In the latter part of the summer, the federal government began to solicit input on the proposed national housing legislation. A sub-committee of the Right to Housing coalition was struck to prepare a submission on behalf of the coalition. CERA took a lead role in the preparation of this submission and hosted meetings at its office. I prepared a memo summarizing the UN's earlier recommendations on Canada's national housing strategy, which was disseminated to coalition members. I prepared the minutes of the sub-committee's meetings and assisted one dream team member with the printing of their own letter.

Deeming it prudent to seek the help of decision-makers, I arranged meetings with two MP's who would be able to provide insight into the federal government's intentions, and to rally their support. One of the MP's recommended that CERA send a report to them so that it could be discussed at the Liberal's fall retreat. I prepared this report and sent it to the MP's office, in the hopes that it would persuade them to consider housing as a human right. The meeting with the other MP was more informative, but also more disheartening. We learned that instead of a sophisticated national housing strategy with measures and accountability mechanisms centered around human rights, the federal government was planning a simple transfer system with no oversight on how provinces chose to allocate the funding. Essentially, the housing legislation would not embody the UN's main recommendations, and seemed to be a restart of the housing programme of the 1970's. Armed with this information, CERA's submission sub-committee adopted a more appropriate approach to ensure that funding was allocated responsibly with checks and balances, and that the input of individuals with lived experiences was taken into account into setting goals and measures.

Conclusion and Next Steps

I will never forget my time at CERA, and the people I had the privilege of working with. Although I was unable to see the deliverance of the communication in the brief tenure of the fellowship, I am grateful to have learned such a great deal about an issue that is remarkably absent from public scrutiny. Perhaps I will be given the opportunity to continue working on housing rights, particularly in remote communities where access to justice is far more limited.

Plenty of work remains in ensuring Canadians have access to adequate housing. I hope to utilize my knowledge and experiences about Canada's housing regulations, as well as the United Nation's adjudicative decisions and mechanisms to continue the struggle for human rights and equality in the future. Whether the proposed national housing legislation will result in significant improvements remains to be seen. Till then, let us not forget that we are fortunate to witness the future from the comfort of our homes.