

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**JENNIFER TANUDJAJA, JANICE ARSENAULT, ANSAR MAHMOOD,
BRIAN DUBOURDIEU, CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION**

Applicants

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
ATTORNEY GENERAL OF CANADA and
ATTORNEY GENERAL OF ONTARIO**

Respondents

*APPLICATION UNDER Rule 14.05(3)(g.1) of the Rules of
Civil Procedure, R.R.O. 1990, O. Reg. 194 and under the
Canadian Charter of Rights and Freedoms*

AFFIDAVIT OF MICHAEL SHAPCOTT

1. I am the Director, Affordable Housing and Social Innovation, at the Wellesley Institute, an independent research and policy institute, where I have led the Wellesley Institute's affordable housing practice for six years. Prior to this, I was Co-ordinator of the Community-University Research Partnerships Unit at the University of Toronto's Centre for Urban and Community Studies. I have managed government relations and communications for the Ontario Region of the Co-operative Housing Federation of Canada. I developed 525 units of supportive housing through the Rupert pilot project for adults who had a history of homelessness. In 2009, I was project lead in a partnership between the Wellesley Institute and several Aboriginal housing

and service providers in the greater Toronto on a detailed initiative to identify Aboriginal housing and homelessness needs and propose effective solutions. I have been engaged in housing and homelessness policy and practice for 25 years. I co-chair both the Housing Network of Ontario and the National Housing and Homelessness Network – which provides me with direct contact with housing issues and housing solutions in communities across the country. I am a founding member of the Canadian Homelessness Research Network – an academic and community partnership that operates The Homelessness Hub, an on-line portal.

2. I was the project lead in developing the Wellesley Institute's *Precarious Housing in Canada 2010*, which is the most comprehensive and current research and policy overview of affordable housing issues and solutions at the national level. I was also the project lead for the Wellesley Institute's *2006 Blueprint to End Homelessness in Toronto*, which analyzed local housing and homelessness issues and set out a detailed series of practical and pragmatic solutions. I am co-author, with Jack Layton, of *Homelessness: The Making and Unmaking of a National Crisis* (Penguin Canada, 2008); and co-editor, with Prof. J David Hulchanski, of *Finding Room: Policy Options for a Canadian Rental Housing Strategy* (CUCS Press, University of Toronto, 2004). I have authored numerous chapters on housing and health in scholarly and trade books on housing and related issues, including *Social Determinants of Health, Canadian Perspectives* (Dennis Raphael, editor, CSPI, 2010); *Persistent Poverty: Voices from the Margins, Between the Lines*. I have been project lead and author of a number of technical reports to specialized bodies, including the United Nation's Human Rights Commission. Among my areas of recognized expertise are affordable housing issues and policies; homelessness issues and policies; the intersection of housing and health; housing and poverty; equity issues affecting housing and homelessness; and planning and zoning issues. I have provided policy support to a variety of

Wellesley Institute-funded research projects including work on the health status of homeless people, the interaction of income and health, inclusionary housing policies and practices in the United States and Canada, the impact of supportive housing on people living with HIV/AIDS, access to housing and homelessness programs and services by people from specific populations, including various gender identities. I have attached my *Curriculum Vitae* as **Exhibit A**.

3. In this affidavit, I set out the links between poor health and poor housing, and good housing and good health. Housing is a fundamental social determinant of health and a necessary requirement for life itself. I outline federal housing and homelessness programs and funding, and the erosion of federal funding and support over the past two decades. Using federal government databases, I set out housing and homelessness funding and initiatives in recent years, and also set out the scale and dimension of housing need. Using federal and provincial information, I set out housing and homelessness funding, legislation and programs at the provincial level in Ontario – and the erosion of provincial funding and roll-back of key legislative initiatives. In making this affidavit, I acknowledge my duty as an expert witness. A copy of this acknowledgement in Form 53 is attached as **Exhibit B**.

Overview

4. Affordable housing is one of the most fundamental determinants of individual and population health. Simply put, a good home is necessary for a long and healthy life. Research commissioned by the Wellesley Institute, and research from academic and community-based researchers that we monitor and have synthesized into research compendiums, draws the links between poor housing and increased morbidity (poor health) and premature mortality (early death). The research demonstrates that these links are influenced by a series of variables that include low

income, inability to engage in proper health practices, constant moving, poor physical standards in buildings, overcrowding, unaffordable rents / ownership costs and socio-economic circumstances. These variables are, in turn, influenced by a series of variables including gender, gender orientation, health status, racial identity, immigration status and age. The relationship between these variables is both complex and dynamic – and has been the focus of considerable scholarly inquiry and a wide variety of housing and homelessness services and practices. The Wellesley Institute's *Precarious Housing in Canada* 2010 includes a synthesis of current and recent research on the links between housing and health. I have attached the Precarious Housing report, including the research compendium and an analysis of the many and complex variables, as **Exhibit C**.

5. A good home has long been recognized as a fundamental requirement for a healthy life, and effective participation in the social and economic life of the community and the country. The links between housing and health are complex and dynamic. For instance, a home provides a physical place for people to achieve the biological necessities of life – adequate sleep, proper nutrition, safety and security. Substandard housing can trigger biological hazards, such as damp and mould, that affect human health. Over-crowded, substandard, unaffordable housing – or the absence of housing (homelessness) – can lead to chronic stress, clinical depression and other mental health issues. These, in turn, can lead to cognitive impairment. Stable housing is necessary to provide a foundation to secure a good job. Poor housing can compromise health, which can, in turn, affect the ability of an individual to maintain employment. People who lose their homes often lose their jobs. For youth and students, a good home is essential to allow for full participation in education and training opportunities. TD Economics, the Canadian Chamber of Commerce, and other business organizations have recognized that good housing is not only sound social and health policy, but good housing is essential to building and sustaining a strong and prosperous economy.

The TD Economics Report, *Affordable Housing in Canada: In search of a new paradigm*, and the text of the resolution adopted by the Canadian Chamber of Commerce calling for a national plan to end homelessness are attached as **Exhibits D and E**.

6. The World Health Organization's Ottawa Charter recognizes the fundamental importance of housing as a social determinant of health. WHO's Social Determinants of Health Task Force identifies access to healthy and affordable housing as not only a fundamental human right, but also a basic human need. Research studies, such as the Wellesley Institute-funded Street Health Report, document the links between homelessness and poor health. The Ottawa *Charter for Health Promotion* is attached as **Exhibit F**, *Closing the Gap in a Generation: Health Equity Through Action on the Social Determinants of Health* is attached as **Exhibit G** and the *Street Health Report 2007* is attached as **Exhibit H**.

7. In 1973, as the federal government introduced amendments to the *National Housing Act* to create a national housing plan for Canada, the government stated that housing is a social right of every Canadian. A comprehensive national housing plan provides the legislation, programs and funding to address the range of housing needs in Canada. This includes an adequate supply of housing to meet the current and future housing needs; a repair strategy to ensure that housing is maintained to a healthy standard; programs to prevent and end homelessness; health and social supports to assist people with special needs to access and maintain their housing; and affordability measures to close the gap between real housing costs and the amount that low and moderate income households can afford to pay. Canada has had, at various times over the past six decades, funding and programs that have addressed all of these elements of a national housing plan. Some of the funding has been delivered through direct spending (grants) and some has been tax expenditures and other indirect spending. Tenant protection, rent regulation and rental housing

protection laws typically are within the constitutional jurisdiction ('property rights') of the provinces. There is an uneven patchwork of initiatives on the regulation of rental housing across the country. The Province of Ontario has introduced relatively robust tenant protection, rent regulation and rental housing protection laws – only to roll back these laws.

8. Strategies to prevent and end homelessness are directed at the key “pathways” to homelessness. Research studies demonstrate that economic issues (high cost of housing, relative lack of affordable housing, low incomes, inadequate income assistance programs) are the main pathways to homelessness – accounting for up to half of all homelessness, on average. Physical and sexual violence (mainly experienced by women and youth) accounts for more than one-quarter of homelessness, according to pathways research. Mental health issues, including substance use, account for the smallest share of the distinct pathways to homelessness – despite the perception that addictions or serious mental health are primary causes of homelessness. The Toronto Pathways study, *Mental Illness and Pathways into Homelessness*, is attached as **Exhibit I**.

9. Rent banks and related eviction prevention strategies are successful in allowing tenants to remain in their housing, and avoid economic eviction and homelessness. The Ontario government has provided funding to municipal service managers for rent and energy banks as part of its homelessness strategies, but there has been no provincial assessment of whether the funding is sufficient to meet the community need. The Ontario government, as part of its most recent affordable housing policy, requires municipalities to develop long-term housing and homelessness plans, and the province is negotiating with municipal service managers for increased flexibility in the allocation of existing funding, but no new funds have been allocated to this purpose. More discussion on the Ontario housing and homelessness strategies and governmental responses is available in subsequent paragraphs.

10. Housing first – sometimes called rapid re-housing – has been recognized in research literature and in community practices in a growing number of US and Canadian cities as the most effective response to homelessness. Housing first, most simply, aims move people who are homeless into appropriate housing as soon as possible. Housing first was pioneered in New York City and is widely used in many US cities. A primer on housing first from the US National Alliance to End Homelessness, *Housing First: A New Approach to Ending Homelessness for Families*, is attached as **Exhibit J**.¹

11. Funding and programs aimed at preventing and ending homelessness are poorly funded and scattered among a number of departments and agencies. Lack of co-ordination limits the potential effectiveness of the programs. While the US government adopted a detailed strategy one year ago to prevent and end homelessness, and is tracking results, Canada has no national plan to prevent and end homelessness. At the provincial level, Alberta has a housing and homelessness plan that was developed in conjunction with seven municipalities. Ontario does not have a housing and homelessness plan.

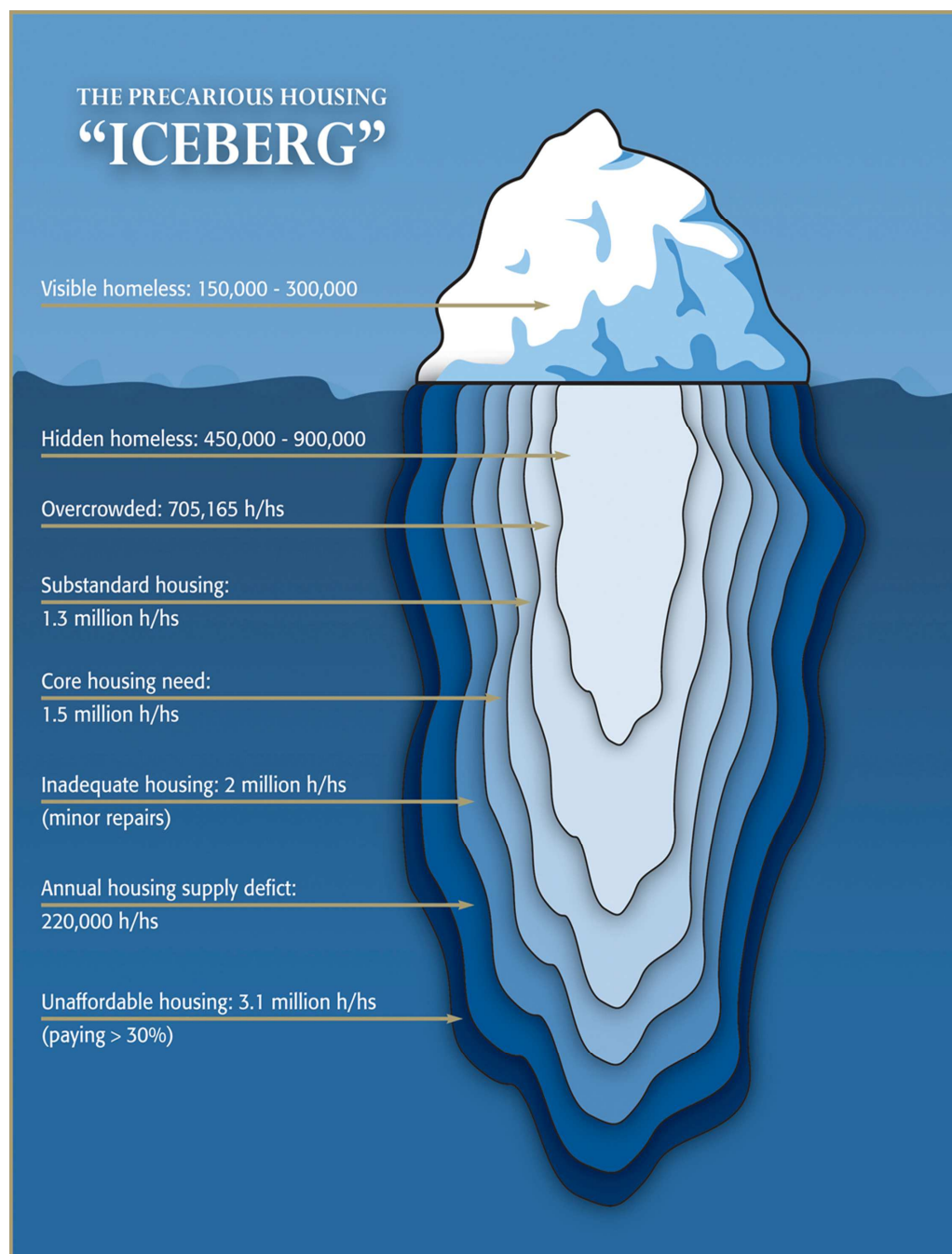
12. In addition and unlike most other developed countries, Canada does not have an official definition of homelessness, there is no reliable national count of the number of people who experience homelessness, and Canada collects a relatively small number of housing need indicators compared to other developed countries, such as United States, United Kingdom, New Zealand and others. In its *Precarious Housing in Canada* 2010 report (Exhibit C), the Wellesley Institute included a chart using the latest available numbers to illustrate the dimensions of housing need.

¹ An on-line resource of Canadian housing first practices is available at <http://www.homelesshub.ca/Topics/Housing-First-209.aspx>.

13. The chart uses the iceberg image to illustrate that many housing needs are “hidden” from public view. Hundreds of thousands of Canadian households are among the “hidden homeless” – people without secure housing who stay temporarily with family or friends. Sometimes this is referred to as “couch-surfing”. Many other households live in housing that is over-crowded based on National Occupancy Standards. An estimated 1.3 million households report that their housing is substandard – i.e. a serious health or safety issue in their housing. Another two million households report that their housing is in need of minor repairs.

14. The United Nations Special Rapporteur on the Right to Adequate Housing submitted a formal report to the UN Human Rights Council in 2009 following his official fact-finding mission to Canada on the invitation of the Canadian government. He noted the lack of a comprehensive range of housing measures in order to allow Canada to properly assess the range of housing needs, allocate the appropriate level of resources, and measure for accountability. The final *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, is attached as **Exhibit K**.

15. The BC Auditor General, in a review of that province’s housing and homelessness programs, has made a similar observation. The BC Auditor General report, *Homelessness: Clear Focus Needed*, is attached as **Exhibit L**. The Wellesley Institute commissioned national housing expert Steve Pomeroy to prepare a discussion brief on housing indicators – using the extensive range of indicators in Britain as a comparison. The brief is being used to encourage an informed discussion on housing measures. The brief by Steve Pomeroy, *Are we making any difference?*, is attached as **Exhibit M**.



16. People who are visibly homeless represent the smallest number of Canadians who are experiencing housing insecurity. By far the biggest group are the 3.1 million households that are paying 30% or more of their monthly income on housing (the official threshold for housing in affordability) – which is roughly one-in-four Canadian households. Approximately 1.5 million

Canadian households (more than one-in-ten of all Canadian households) are in core housing need, the federal government's definition of the most precariously housed households. These statistics, which are drawn from Statistics Canada and the Canada Mortgage and Housing Corporation, are cited in detail in the *Precarious Housing* report (**Exhibit C**).

17. A number of Canadian cities conduct counts of the number of people who experience homelessness using a variety of methodologies, including point-in-time counts and service utilization surveys. The common experience among Canadian cities is that there was a rise in mass homelessness in Canada in the 1990s that coincided with the federal decision in 1993 to stop funding new affordable housing development. In addition to significant increases in the overall number of people experiencing homelessness, there was a significant change in the type of people experiencing homelessness. Families with children, youth, women and seniors all are bearing a heavier burden of homelessness in recent years.

18. While Canada does not have the same robust range of housing need indicators as other developed countries, the available data demonstrates deep and persistent housing insecurity and homelessness. Housing insecurity and homelessness has grown worse as federal housing and homelessness programs and funding have eroded since the late 1980s.

Eroding federal housing and homelessness initiatives and investments

19. In this section, I will be reviewing the specifics of federal housing and homelessness initiatives and funding. Federal funding and programs for housing were significantly increased with the introduction of amendments to the *National Housing Act* in 1973. Over the following two decades, the federal government funded more than 600,000 affordable homes across the country. By the late 1980s, the federal government began – as a deliberate policy – to cut

funding for new housing supply and, by 1993, had cancelled all funding for new housing development. In 1996, the federal government announced plans to transfer most federal housing programs to the provinces and territories – prompting housing experts to observe that Canada was the only major country in the world without a national housing plan. The rise in mass homelessness, and the growth in precarious housing, starting in the 1990s prompted the federal government to launch a series of short-term housing and homelessness initiatives starting in 1999. While the dollars committed were substantial, none of them was sufficient to reverse the steady erosion of federal housing programs and investments over the past two decades.

20. At the same time that the federal government was cutting housing and homelessness initiatives, it was also cutting other social and health programs, including the Canada Assistance Plan. The range of cuts had a negative impact on the ability of low-income households to access and maintain healthy and affordable housing.

21. Canada's housing system is sustained by financial investments. Canada's affordable – or social housing – sector requires financial investments to fund the development of new homes, pay for the repair of substandard housing, provide income subsidies to cover housing costs for lower-income households, and provide personal, social and health supports for those people who require additional help. The private sector has been involved in some elements of the affordable housing sector – including providing financing, development and construction expertise and, in some cases, owning and managing the housing stock. The non-profit sector has also played a key role in fundraising and financing, development, delivery and management of affordable housing. However, in Canada, as in every other national jurisdiction, government has played a key role in the funding of affordable housing policies and delivery of affordable housing programs.

22. Canada's national housing plan – which emerged following amendments to the *National Housing Act* in 1973 – mainly relies on community-based organizations (municipal governments, non-profit housing corporations and co-operative housing corporations) to manage the housing. The federal and Ontario governments, in a variety of initiatives, have supported the community sector through funding for development, operating funding, repair funding, mortgage financing and other forms of assistance.

23. The federal government began to scale back its affordable housing funding in the 1980s, cancelled almost all funding for new affordable homes in 1993, transferred the administration of most federal housing programs to provinces and territories in 1996, and amended the *National Housing Act* in 1998 to reduce the role of Canada Mortgage and Housing Corporation in supporting affordable housing.

24. By the end of the 1990s, there was no national housing plan and federal housing investments began a long-term erosion that is accelerating in the first two decades of the 21st century.

25. As mass homelessness began to emerge in a number of Canadian cities in the 1990s, the federal government, often in partnership with other orders of government, announced a series of short-term housing and homelessness investments. These time-limited investments (typically two years) have funded new housing and other initiatives at the community level, but they have not changed the overall downward trajectory of federal housing investments.

26. Canada's federal government makes a variety of investments in affordable housing and homelessness initiatives through a number of departments and agencies. Historically, the single largest set of investments are delivered through Canada Mortgage and Housing Corporation, the

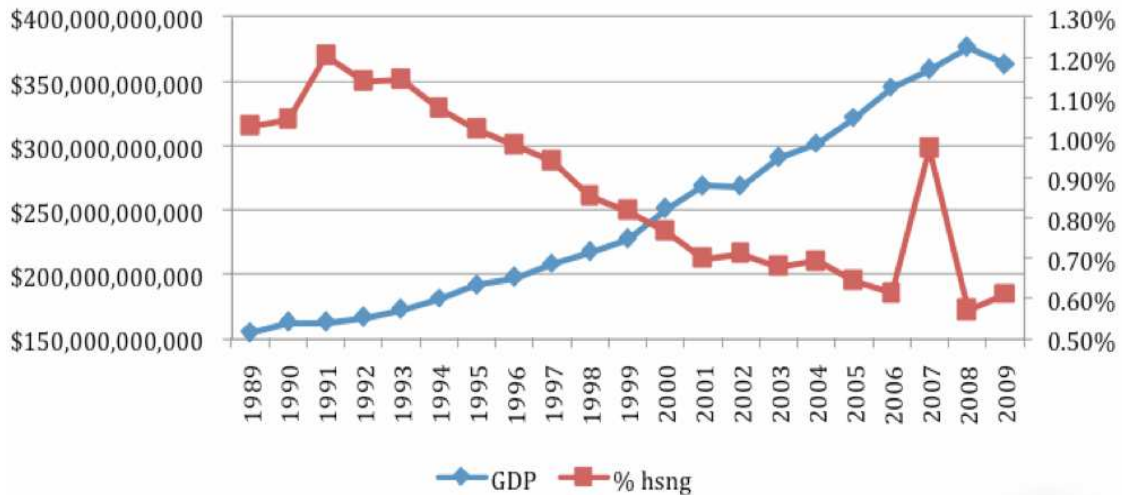
federal government's national housing agency. In 1999, as part of its national homelessness initiative, the federal government grouped a number of initiatives aimed at homelessness under the authority of the federal Department of Human Resources and Social Development. The various programs are not reported in a single source, and several of the investments use different accounting bases over time and in different departments, making an overall assessment difficult.

27. Until the end of the fiscal year 2009, the Government Revenues and Expenditures (GRE) database maintained by Statistics Canada reported annually on housing expenditures at the federal, provincial, territorial and municipal levels. The database was discontinued by Statistics Canada along with a series of other reporting mechanisms in 2010.

28. The GRE database shows that federal housing investments were \$1.6 billion in 1989 and were \$2.2 billion in 2009 – a 39% increase. Over that same period of time, the Bank of Canada reports that inflation (CPI) rose by 54%. Adjusting for inflation, federal housing investments in 2009 were \$250 million less than the amount required to match federal investments in 1989. The housing expenditure and GDP numbers in the graph below are drawn from Statistics Canada databases, and the graph was created by the Wellesley Institute.

Declining housing investments as GDP rises

(source: Statistics Canada)

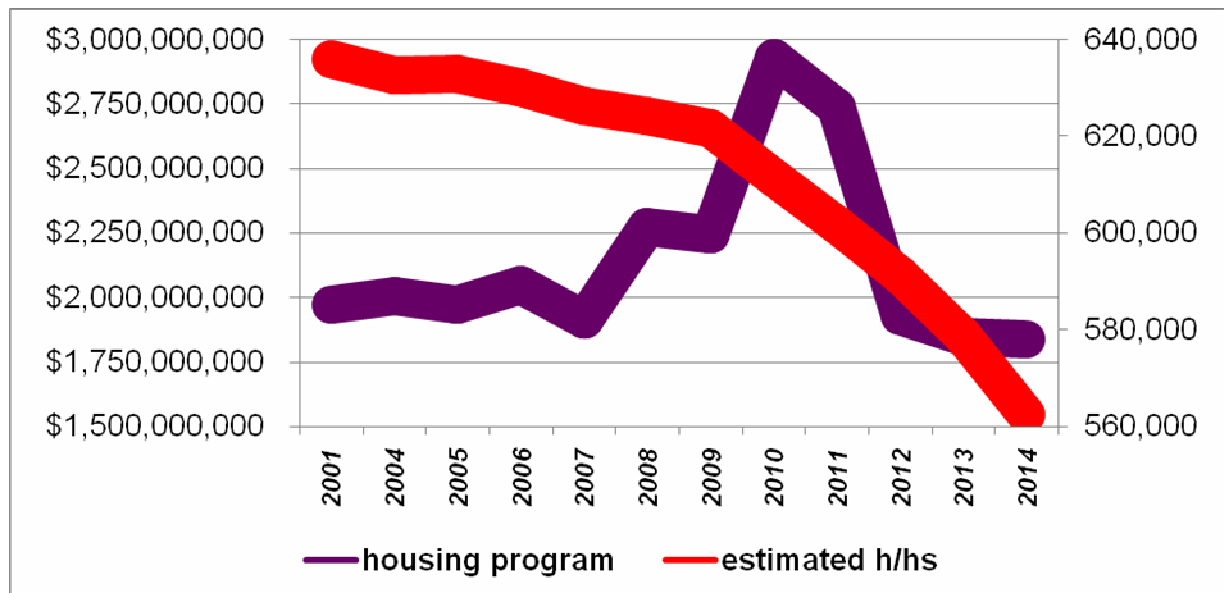


29. The Organization for Economic Co-operation and Development, along with other economists, measures expenditures over time by comparing them as a percentage of a country's Gross Domestic Product. Canada's federal housing investments (using GRE numbers) were 0.24% of GDP in 1989 and had fallen to 0.15% of GDP by 2009 – a drop of 38%.

30. Canada Mortgage and Housing Corporation, the federal government's national housing agency, delivers the largest amount of federal housing investments. The CMHC 2011 annual plan reports on three years of actual performance (2007 to 2009), estimates performance in 2010, and sets out the official plan for the years 2011 to 2015. CMHC reports that its main affordable housing investment program has increased from \$1.9 billion in 2007 to \$3.0 billion in 2010 as the federal government's short-term housing stimulus spending is allocated. Housing investments are scheduled to be cut to \$2.1 billion in 2011 and then be cut even further to \$1.7 billion by 2015. From 2007 to 2015, federal housing investments will shrink by 8.5% reduction. Federal housing investments in the five-year period from 2010 to 2015 will be cut by 43%.

31. The federal government has funded the largest share of subsidized affordable homes under a variety of programs since the late 1940s. The bulk of the more than 600,000 housing units were funded under federal housing programs authorized under the *National Housing Act* from 1973 to 1993. Most of these projects were funded under long-term operating agreements with the federal government (typically 30 to 35 years). The federal government began a process of transferring administration of many of these projects to the provinces and territories starting in 1996, but it continues to have financial responsibility for the operating agreements. For units that have been transferred to another order of government, the dollars are transferred. As the operating agreements expire, the federal government ‘steps out’ of its financial obligations to the affordable housing providers. The expiry of operating agreements has already begun, but will accelerate rapidly in the coming decade. The expiry of operating agreements and the loss of federal funding is a serious challenge for hundreds of thousands of federally funded non-profit and co-operative housing units – whose residents may face significant rent increases, and possibly economic eviction, as subsidies disappear. Canada Mortgage and Housing Corporation reports that it was assisting 626,300 households in 2007. CMHC estimates that the number of assisted households will fall to 540,800 by 2015 – a loss of 85,500 subsidized homes, or 14% of the total federally-supported affordable housing stock. The rate of loss of subsidized homes will increase after 2015. The graph that follows uses the latest corporate plan of Canada Mortgage and Housing Corporation to chart the decrease in the number of subsidized households and the decrease in federal housing investments projected to 2014.

Declining federal housing investments, declining # of subsidized households



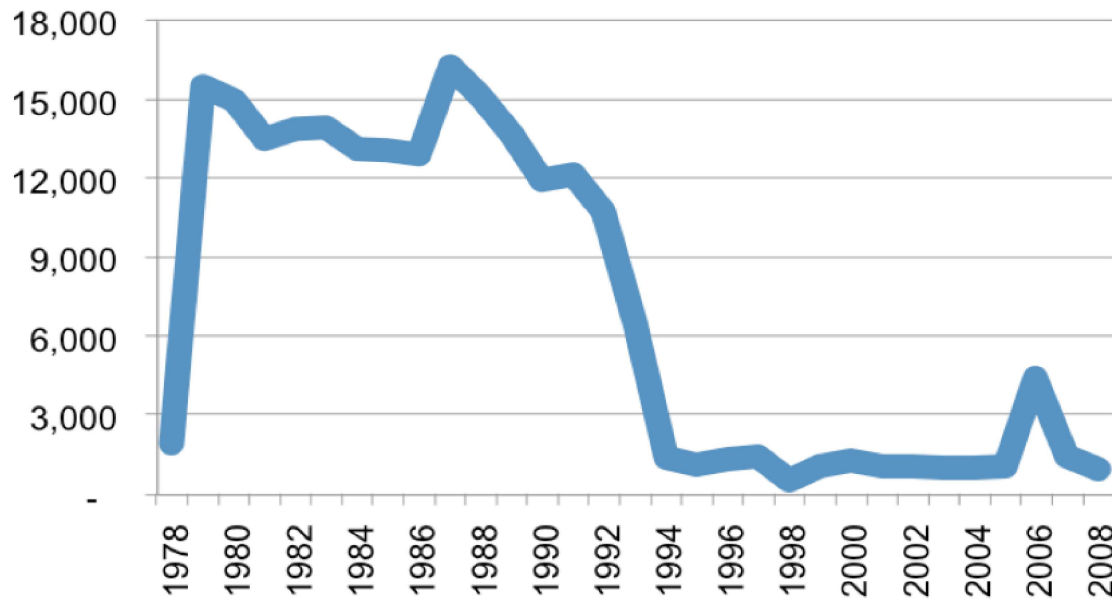
32. Canada Mortgage and Housing Corporation generates a substantial and growing amount of revenue, mainly through its mortgage insurance business. The national housing agency's net income was \$667 million in 2003, and it is estimated to be almost two billion dollars by 2015. The significant annual surplus from housing-related activities is not targeted for re-investment in housing initiatives. Instead, the surplus is returned to the general treasury of the Government of Canada. The table below is drawn from the latest corporate plan of Canada Mortgage and Housing Corporation.

Canada Mortgage and Housing Corporation – rising net income

Corporate Results	2010 Plan	2011 Plan	2012 Plan	2013 Plan	2014 Plan
Total Assets (\$M)	321,200	331,419	337,237	317,852	301,014
Total Liabilities (\$M)	311,261	320,334	324,779	303,941	285,038
Total Equity (\$M)	9,939	11,085	12,458	13,911	15,976
Total Revenue (\$M)	15,359	16,248	16,324	16,609	16,143
Total Expenses (\$M)	14,091	14,697	14,553	14,763	13,509
Total Operating Expenses (\$M)	494	521	520	531	542
Net Income (\$M)	911	1,137	1,330	1,387	1,980
Other Comprehensive Income (\$M)	42	9	43	66	85
Comprehensive Income (\$M)	953	1,146	1,373	1,453	2,065
Reserve Fund (\$M)	17	(14)	(28)	(48)	(59)

33. As part of its annual Canadian Housing Statistics (CHS) series, Canada Mortgage and Housing Corporation releases an accounting of expenditures and activities called Public Funds and *National Housing Act* (Social Housing). The federal affordable housing program that spanned 1973 to 1993 had its most productive years from 1980 to 1988, when as many as 20,000 new affordable co-op and non-profit homes were funded annually. Federal cutbacks led to a decrease in the number of new units in the late 1980s and early 1990s, and in 1994 – the year after the federal government ended almost all funding for new affordable homes – the number of new units fell to 1,348 homes. In 2010, the federal government supported 1,054 new non-profit homes across the country, and no new housing co-ops. CHS Public Funds also reports that federal investment in the renovation of low-income housing fell from \$138.9 million in 2006 to \$129.4 million in 2010. This supports the renovation of about 17,000 homes annually. The chart below draws from Canadian Housing Statistics – *National Housing Act*, published annually by Canada Mortgage and Housing Corporation.

Declining federal investments in affordable housing



34. The fiscal 2011-2012 federal expenditure estimates from the Treasury Board report a 39% cut in one year to federal housing investments, from \$3.9 billion in fiscal 2010-2011 to \$1.9 billion in fiscal 2011-2012. This includes a 95% cut to the federal housing affordable initiative due to the “scheduled termination” of federal housing stimulus investments, a 94% cut to the federal housing repair and renovation program, and a 70% cut to federally-assisted housing. All three of these funding envelopes are targeted to low and moderate-income households, including transitional housing for people leaving homelessness.

35. In December of 1999, the federal government launched its national homelessness initiative. Initially, the federal government announced that it wanted to use the program to coordinate a variety of federal homelessness initiatives that were scattered over a number of departments. By December of 1999, the program had several distinct funding streams, including housing for homeless shelters, supports and services for the homeless, transitional housing to

assist people moving from shelters to permanent housing, and housing research. The program was originally called the Supporting Community Partnerships Initiative, but its name was changed to the Homelessness Partnering Strategy with the election of a new government in 2006. Funding is typically announced for a short term cycle (often one or two years). While the annual funding has been renewed from time to time since 1999, the funding envelope of \$135 million has remained fixed from the start, with no adjustment for inflation or growing need. Approximately 80% of the federal homelessness funds go to ten large communities, with most of the remainder to 51 medium-size communities. Smaller communities, remote and rural areas receive virtually no federal homelessness funding.

36. SUMMARY: There is no single measure of federal housing investments, but the variety of indicators measuring various dimensions of federal investments all point to eroding spending and a shrinking number of affordable homes that are funded. This trend started in the late 1980s and is projected to continue over the coming decade as the federal government continues to “step out” of its housing obligations. Since 1999, the federal government has made a series of high-profile housing and homelessness announcements. A single initiative may be announced on several occasions, and it may be announced nationally and then in a series of provincial and local announcements. Despite a considerable number of media releases in the past decade, the overall trend remains the same as the previous decade: A steady withdrawal of federal financial investment. The federal media strategy often includes a press release when funding for a project is announced, a second release when work on a project is commenced, another release when the work is completed, and a fourth release when the project is officially opened. On major funding announcements, the government– as part of its media strategy – may announce and re-announce the same funding on a number of occasions. While this strategy ensures that there is a significant

amount of media attention, it leads to the perception that there is more funding, and more activity than is actually occurring.

Federal housing and homelessness landscape

37. Overall, federal housing funding has been eroding since the mid-1980s. The steady downward trend has been slowed, or somewhat reversed, with the allocation of short-term funding in 2005 and again in 2009, but the overall trend continues.

38. From 1984 to 1993, the federal government made total cuts to national housing investments of \$1.8 billion, including \$217.8 million in cuts to housing development and rehabilitation funds in November of 1984.

39. In 1993, the federal government cancelled virtually all funding for new affordable homes under the *National Housing Act*. This led to a sharp drop in the number of new non-profit homes funded under federal programs from 6,526 new homes in 1993 to 1,348 new homes in 1994. No new housing co-operatives have been funded under the NHA since 1993.

40. In its 1996 budget, the federal government announced plans to transfer administration of most federally-funded housing projects to the provinces and territories. The federal government agreed to continue to provide annual funding as per long-term operating agreements. But the 1996 decision set in place the federal “step-out” of its affordable housing commitments. By the third decade of the 21st century, federal housing investments are scheduled to shrink to zero.

41. In 1998, the federal government introduced amendments to the *National Housing Act* that reduced Canada Mortgage and Housing Corporation’s affordable housing obligations, and enhanced its commercial operations, including the sale of mortgage insurance. The amendments

were passed by Parliament early in 1999, and set in place the current trend at Canada's national housing agency, in which net income (surplus) is increasing annually and the number of subsidized homes that are supported is shrinking annually.

42. In December of 1999, the federal government announced the first of a series of short-term national homelessness initiatives. The Supporting Community Partnerships Initiative (later re-named the Homelessness Partnering Strategy) was funded at a total of approximately \$135 million annually. While it has been renewed regularly since then, the funding has stayed the same even though the Bank of Canada reports that inflation has risen by 30% over that time – eroding the purchasing power of the dollars. This initiative pays for health and social supports for people who are experiencing homelessness, or at risk of homelessness; and provides some support for transitional (short-term) housing for people seeking to leave homelessness.

43. The federal funding flows directly to a community entity (either a municipal government or a community coalition), which administers the federal funding under the terms of a community plan that has been approved by the federal government. In recent years, agreements have been signed with the Quebec and other provincial / territorial governments, but the national homelessness program is not co-ordinated or linked to other federal housing initiatives.

44. In November of 2001, the federal, provincial and territorial governments signed the Affordable Housing Framework Agreement. The federal government agreed to provide \$680 million over five years (which would be divided among the provinces and territories on a rough, per-capita basis), and the provinces and territories agreed to match the federal funds. The federal framework agreement is attached as **Exhibit N**. Unlike the 1973 national housing plan, the 2001 agreement only covers a fraction of the development costs of a new housing unit. Initially the

federal cap was \$25,000 on a housing unit that may cost \$150,000 or more. Subsequent modifications over the years moved the federal cap upwards, but the federal funds provided under the 2001 agreement never amounted to more than one-third of the development costs – which left the community housing provider with the challenge of raising the remaining funding through fundraising, other grants and subsidies, or through traditional private sector financing.

45. The 2001 federal-provincial-territorial housing agreement was not a new national housing plan. It simply provided a partial subsidy to housing providers. The program was not coordinated with other federal, provincial, territorial or municipal housing initiatives, did not include funding for housing subsidies or support services, and funded only a fraction of the number of units that were generated under the 1973 to 1993 national housing plan. The provinces that achieved the best results under the 2001 agreement were Quebec and British Columbia, which already had a relatively strong affordable housing infrastructure. Ontario had dismantled its provincial affordable housing program in 1995 and has reported that it was only able to develop a small number of new affordable homes under the 2001 agreement.

46. As part of the 2001 agreement, the federal government signed a series of bilateral agreements with each province and territory. The Ontario-federal *Affordable Housing Program Agreement* is attached as **Exhibit O**. The bilateral agreements with other provinces were similar in content, but the funding and targets were specific to each jurisdiction – on a rough per capita basis. The bilateral agreement set out an accountability protocol that required each province or territory to submit an annual audited financial statement providing details on housing investments, and also a performance report that set out details on the new housing that was created. The bilateral housing agreements also included a communications protocol that set out

accountability requirements. Despite repeated requests from researchers and housing advocates, no performance reports or audited statements have been released.

47. In 2003, the federal government topped up its contribution to the 2001 agreement with an additional \$320 million (bringing the federal total to \$1 billion), extended the original five-year term of the 2001 agreement, and negotiated more flexible rules with the provinces and territories that allowed the federal dollars to be used for more than simply a partial payment of development costs.

48. Under the terms of the 2001 agreement, the federal housing dollars flow to the provinces and territories, where they are supposed to be matched with provincial and territorial dollars before being allocated to particular housing projects. Some provinces and territories administer the housing dollars directly, but Ontario passes the dollars to 47 municipal service managers (upper tier municipalities in the southern part of the province, and a combination of a number of municipalities in the northern part of the province) for allocation. The provinces and territories are entitled, under the terms of the 2001 agreement, to count municipal contributions, and the contributions from non-profit or private developers, as provincial matching funds. The provinces and territories are also entitled to use existing funds allocated to housing programs as matching funds, in certain cases.

49. The lack of public reporting, and the complicated financial relationships, means that it is very difficult to track the federal housing investments. For instance, in 2009, the Ontario Auditor General, in his review of provincial housing programs, reported that the Ontario government was unable to account for at least \$300 million in federal housing dollars that were transferred to the

province. Chapter 3 of the Ontario Auditor General report, entitled *Social Housing* is attached as **Exhibit P**.

50. The 1973 to 1993 national housing plan was administered by the Canada Mortgage and Housing Corporation through its regional offices, and the national housing agency was able to provide some measure of oversight and accountability. The 2001 agreement does not allow for any effective oversight or accountability.

51. In the minority Parliament of 2005, the New Democratic Party was able to negotiate with the Liberal government for amendments to the 2005 federal budget that included an allocation of \$1.6 billion for affordable housing, including a specific amount to be assigned to off-reserve Aboriginal housing. The opposition Conservatives opposed the budget measure, but it was adopted by Parliament and duly authorized. However, the minority Liberal government was defeated in the following winter before it had allocated the housing funding. Early in 2006, the new minority Conservative government announced that it would partially honour the previous Parliamentary authorization and it allocated \$1.4 billion in a one-time payment to the provinces and territories for affordable housing, including the off-reserve Aboriginal component.

52. While there was no requirement for matching provincial or territorial funding, the 2005 budgetary allocation was flowed through the same mechanism as the 2001 agreement. As with the 2001 agreement, there was no effective oversight or accountability and there has been no public release of either financial statements or performance reports regarding the 2005 dollars.

53. Housing experts have expressed a concern that some provinces may have used the federal housing dollars to replace provincial housing dollars – which would mean no net increase in funding for affordable housing. While this practice would be contrary to the spirit of the 2001

and 2005 funding arrangements, there is no practical mechanism to unravel the flow of funding through two or more orders of government.

54. Three days before the launch of the fall, 2008 federal election, the minority Conservative government announced a five-year extension of funding for the national homelessness program and for two other federal housing initiatives (the national housing repair program and the national affordable housing program – a small program that funds some new housing). All of these programs were due to expire at the end of fiscal 2008/2009. The federal government announced that the programs would be extended in their current form for two years, and that there would be a review process to determine the funding flow for the final three years.

55. With the onset of the recession in the fall of 2008, which was triggered by the US sub-prime mortgage crisis, the federal government launched a series of housing-related initiatives. It created the \$125 billion Insured Mortgage Purchase Program, which provided financial stability to Canada's banks and other mortgage lenders. Over the next two years, the federal government allocated a total of \$66 billion under this program to the banks.

56. The federal budget of 2009 – which was called the “stimulus” budget, or “Canada's Economic Action Plan” – included a series of measures targeted at housing. Approximately \$2 billion over two years was targeted to low, moderate and middle-income households, with about half going to repairs of Canada's aging social housing stock. The remaining amount was divided among initiatives aimed at low-income seniors, people with disabilities, First Nations' housing, and Northern housing. The 2009 budget also included a larger amount - \$2.5 billion – to be invested in a Home Renovation Tax Credit for middle and upper-income home owner households. As with the 2001 and 2005 federal housing initiatives, the 2009 affordable housing

investments were mostly to be allocated to provinces and territories, who were responsible for administration.

57. While the \$1 billion affordable housing boost in fiscal 2009 and fiscal 2010 increased overall federal housing investments by more than one-third, and it provided a temporary reversal of the two-decades-long withdrawal of federal housing investments, the “scheduled termination” of the stimulus funding meant that by fiscal 2011, federal housing investments once again resumed their steady downward trend.

58. The renewal of the national homelessness program, the national home repair program and the limited national affordable housing initiative, for five years starting in 2008 means that this funding will expire in 2014. That is also the same year that the Canada Social Transfer, which funds a variety of social expenditures, is also due to expire and is slated for possible re-negotiation.

59. The steady withdrawal of federal housing investments since the mid-1990s is due to several key policy decisions. First, the federal government stopped funding of new affordable housing in 1993. Second, over the past two decades, the federal government has gradually reduced funding for key initiatives. Third, federal housing and homelessness investments have not been indexed to inflation, which means that the purchasing power is eroded over time. Fourth, the federal government has replaced its comprehensive and co-ordinated national housing plan of 1973 to 1993, which provided capital and operating subsidies that covered all or most of the cost of affordable housing for low and moderate-income households, with a series of short-term initiatives that typically offer only partial capital subsidies and no operating support, which makes it harder for affordable housing developers to complete projects. Fifth, the

confusing and complicated programs in which federal housing dollars cross two or more governmental jurisdictions means that effective oversight and accountability is nearly impossible, limiting the ability to ensure that federal funds are being used effectively and efficiently. Sixth, the “step-out” by the federal government of its obligations under operating agreements with individual housing providers – launched in 1996 – is accelerating and means that fewer federal dollars are flowing to affordable housing. Seventh, the “scheduled termination” of the limited and short-term housing and homelessness initiatives since 1999 means that federal housing investments are time-limited.

Constitutional jurisdiction on housing and homelessness

60. The federal housing plan of 1973 to 1993 set out a key leadership role for the federal government. Provinces, territories, municipalities and other stakeholders (First Nations, community housing providers, private developers) can and did partner with the federal government in various programs under the national housing plan over the years, but the federal government played a key role both in terms of funding and also in administration. Following the cost-cutting of the 1980s and 1990s, and the federal decision to transfer administration of most of its housing programs to the provinces and territories in 1996, a number of federal and provincial officials began to assert that the federal government had no constitutional jurisdiction in housing programs and policies. A key feature of almost every federal housing program post 1999 is that the federal government provides funding and some overall program guidance, and the provinces and territories are responsible for administration. There has been a *de facto* transfer of housing responsibilities from the federal government (pre-1996) to the provinces and territories (post-1999). This amounts to constitutional change by stealth, as there was no formal process to change Canada’s Constitution.

61. The *British North America Act of 1867* does not include reference to housing. This is not unusual, as in 1867 Canada was a predominantly rural country and most Canadians built their own homes. Many activities that are today considered necessary and vital governmental functions were not identified as either federal or provincial responsibilities in the 1867 Constitution. “Property and civil rights” are assigned as an exclusive provincial jurisdiction, but this clearly refers to the legal regime around tenure and property rights, and not the separate issue of the funding and development of affordable and supportive housing.

62. The consolidation of the *BNA Act* with the new *Charter of Rights and Freedoms* into the *Constitution Act of 1982* is similarly silent on the question of affordable housing.

63. The Charlottetown Accord of 1992 formally assigned housing as an exclusive provincial jurisdiction – the first time that housing is mentioned in constitutional discussions in Canada. However, the accord was rejected in a pair of referendums by Canadians and therefore never became a formal part of Canada’s Constitution.

64. In 2005, a provincial and territorial housing ministers meeting at White Point, in Nova Scotia, formally adopted a statement that has become known as the White Point Principles that asserted that housing was a provincial responsibility. The White Point Principles also asserted that the federal role was that of funder. The federal government of the day indicated general support for the White Point Principles, but the document was never formally adopted by the federal government. The White Point principles, *An Approach to Guide Housing in Canada*, are attached as **Exhibit Q**.

65. Canada’s Constitution allows the federal government to deal with all matters that are not assigned exclusively to the provinces. Since housing is not assigned exclusively to the provinces,

there is no Constitutional barrier to the federal government taking a leadership role in affordable housing policies and programs.

Eroding Ontario housing and homelessness investments

66. In this section, I review Ontario housing and homelessness initiatives. The Ontario government introduced rent regulation and tenant protection laws in 1975, and progressively strengthened those laws over the years. The principal laws, and regulations, that were enacted and amended in the period from the early 1970s to the late 1990s included the *Landlord and Tenant Act* and the *Rent Control Act*. Ontario enacted the *Rental Housing Protection Act* (RSO 1990, Chapter R24 – repealed 1998) in 1990 to restrict the demolition or conversion of affordable rental housing to other uses. The province's first affordable housing development funding was included in programs launched in 1985, and strengthened considerably in the following decade. However, the affordable housing supply programs were cancelled by the provincial government in 1995, and administration and funding of provincial affordable housing programs was downloaded to municipalities starting in 1998. With the introduction of the *Tenant Protection Act, 1997, c.24*, in 1998, the province's tenant protection and rent regulation laws were eroded. The *TPA* introduced vacancy decontrol and a much faster eviction process through a tribunal rather than the courts. The rental housing protection law was abolished with the passage of the *TPA*.

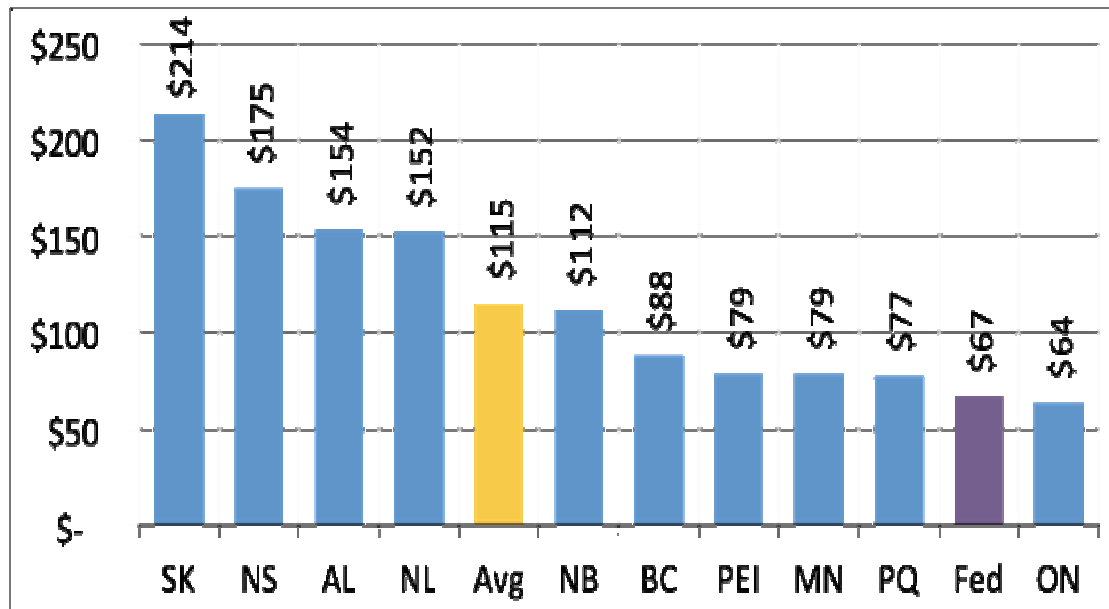
67. The rapid erosion of Ontario housing and homelessness initiatives in the 1990s mirrored similar policy moves at the federal level. In addition, other Ontario cuts to income assistance programs – including shelter allowances to welfare recipients – had a negative impact on the ability of low income households to access and maintain healthy and affordable housing.

68. As with the federal government, the Ontario government began to add new short-term housing and homelessness initiatives over the past decade – but, overall, provincial housing investments have substantially eroded over the past two decades.

69. While the exact amount varies from year to year, more than three quarters of the affordable housing operating funding reported in the Public Accounts of Ontario originates with the federal government. A significant portion of the affordable housing capital funding in Ontario also originates with the federal government. Ontario does cost share a small portion of the federal affordable housing dollars. Changes in the federal funding of affordable housing have a significant impact on Ontario's affordable housing spending.

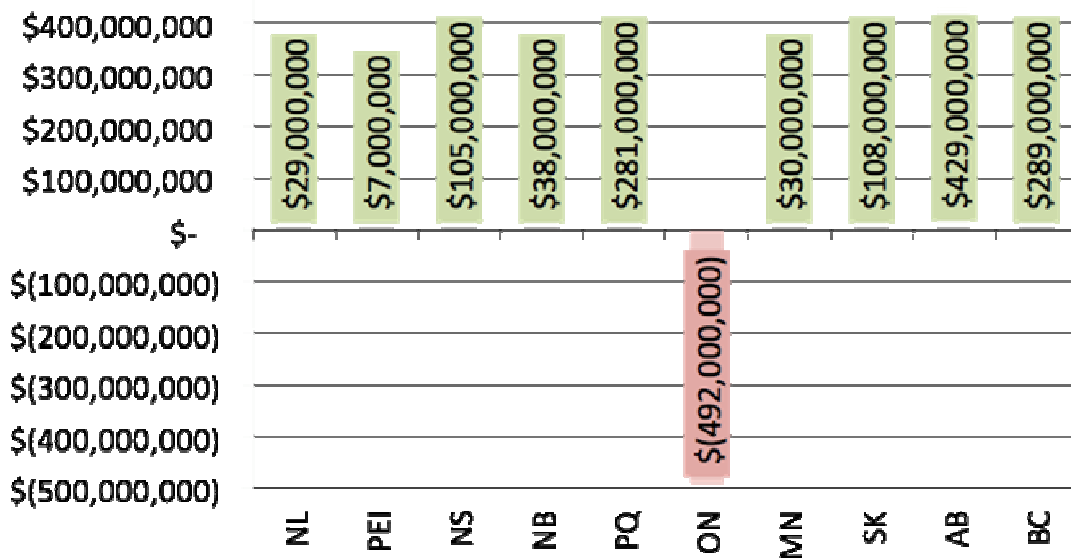
70. The Statistics Canada Government Revenues and Expenditures database (which has been discontinued) provides an accounting of affordable housing spending for Ontario and other provinces, as well as for the federal government. The GRE database shows that in 2008, Ontario affordable housing investments on a per capita basis were \$64 – the lowest in Canada. The federal government was \$67. The average among federal and provincial governments was \$115. The Province of Saskatchewan spend \$214 – almost four times the Ontario per capita investment. The following graph uses statistics from the Statistics Canada Government Revenues and Expenditures database, and population figures from Statistics Canada. The calculation and the creation of the graph are by the Wellesley Institute.

Per capita investment in affordable housing across Canada



71. In the decade from 1998 to 2008, as the federal government was continuing with substantial erosion of federal housing investments, every province in Canada increased provincial affordable housing investments, except for Ontario, according to the GRE database. As Ontario began the process of downloading the administration and financing of affordable housing programs to municipalities in the late 1980s, the Ontario government cut \$492 million from affordable housing spending. Every other province increased housing investments, ranging from an increase of \$7 million in Prince Edward Island to an increase of \$289 million in British Columbia. The following graph draws on statistics from the Statistics Canada Government Revenues and Expenditures database.

Ontario only province to cut affordable housing investments



72. The Ontario government elected in June of 1995 announced, within days of being elected, that it would cancel all funding for new affordable housing and would cancel contracts for housing that was under development. Approximately 20,000 units of housing that had been approved for development were identified as subject to cancellation. Approximately 3,000 units were allowed to proceed after a political campaign was launched to save those homes, and the Ontario government cancelled the development contracts for 17,000 units. The Ontario government proclaimed that it was “out of the housing business” and ended a decade of provincial affordable housing development activities under two previous administrations. Details of the changes in Ontario housing policies are set out in a technical paper published by the Canadian Centre for Policy Alternatives, *Made-in-Ontario Housing Crisis*, and attached as **Exhibit R**.

73. Based on affordable housing production trends in the decade leading up to the halt in new housing production in 1995, Ontario would have funded an additional 141,000 new truly affordable homes from 1995 to 2010 if the program had not been cancelled by the government. The loss of affordable housing from the provincial government cuts in the 1990s is quantified in the first edition of *Where's Home?*, which is attached as **Exhibit S. *Where's Home? A Picture of Housing Needs in Ontario*** has been published regularly since 1999 and is the most comprehensive ongoing examination of housing trends in dozens of Ontario communities.² Following the federal decision in 2006 to transfer administration of most national housing programs to provincial and territorial administration, the Ontario government commenced its own housing download in 2008. While the federal transfer included operating dollars to sustain long-term contracts between the housing providers and the government, the provincial download included a unilateral termination of housing contracts. Municipalities were expected to take up the operating costs, and were also required to assume hundreds of millions of dollars in capital repair shortfalls. Much of the former Ontario Housing Corporation stock was built in the 1950s, 1960s and 1970s and was in need of considerable repair and upgrade. Much of the provincial housing stock included electric heating and water heating – which is relatively cheap to install but increasingly expensive to operate. In making the download, the Ontario government required municipalities to take on all the operating costs (including rent-geared-to-income subsidies) and all the capital liabilities, including the significant repair issues. Affordable housing, including both capital subsidies to build or repair housing and rent-geared-to-income subsidies to make

² The full series is available at http://www.onpha.on.ca/AM/Template.cfm?Section=Where's_Home and charts the deep and persistent housing and homelessness need in many parts of Ontario.

housing affordable to low and moderate-income households, is very expensive. At the time of the download to municipalities, many municipal officials and policy experts opposed the move, saying that an income-distributive program such as housing would over-burden the local property tax base. Municipalities rely on a combination of property taxes, grants and transfers and user fees to fund programs and services. Municipalities do not have access to sales or income taxes, which represent a more robust tax base to fund income-distributive programs such as housing.

74. In the fall of 1995, the provincial government launched plans for a 22% cut in Ontario welfare rates, including the housing allowance portion of the welfare payment that is supposed to cover rent. Estimates suggest that more than 80% of social assistance recipients live in private rented accommodation, according to a calculation from a housing policy analyst that is widely accepted by housing experts. Welfare recipients faced a sharp drop in their housing assistance at the same time that private market rents were continuing to increase, often faster than the rate of inflation in most parts of Ontario.

75. The Ontario government also moved to make significant changes in rent regulation and tenant protection laws that mainly affected tenants living in private rented accommodation. Most of the province's population that are in core housing need – the official federal definition of severely inadequate housing – live in the private rented sector. Among the changes to rent regulation laws was the introduction of vacancy decontrol, which allowed a landlord to set any rent they wanted on a vacant unit. This new rule provided an incentive to landlords to empty existing rental housing in order to raise the rent as quickly as they wanted, according to housing advocates. The government also transferred legal jurisdiction for tenancy issues from the courts to a quasi-judicial tribunal and created timelines and incentives to significantly decrease the

amount of time between an application for termination of a tenancy, and the eviction. The Ontario government also removed the modest protections against the conversion of affordable rental housing to luxury residential and non-residential uses. The *Rental Housing Protection Act* gave municipalities certain powers to restrict the demolition or conversion of affordable rental housing, and that act was ended with the changes in tenant protection laws in the late 1990s.

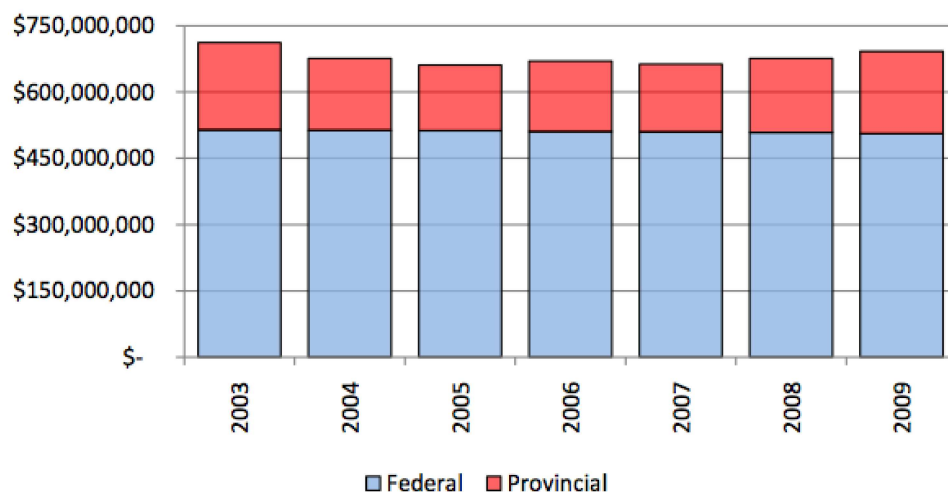
76. The combination of no new affordable housing supply, significant cuts to welfare housing allowances, and changes to tenant protection and rent regulation rules led to a significant increase in the number of Ontario households that faced eviction starting in 1998 and with a steady increase in the years since then. A post-eviction study by the City of Toronto reported that one-third of the households who were part of the research cohort ended up in homeless shelters after being evicted, and another one-third became ‘hidden homeless’ – staying temporarily with family or friends. A summary of the research, *Analysis of Evictions Under the Tenant Protection Act*, is attached as **Exhibit T**.

77. The limited statistics that are publicly available showed an increase in homeless shelter usage, an increase in the use of food banks (as welfare recipients and working poor faced larger rent bills, they were required to divert larger portions of their household income to rent and forced to rely on food charities), and an increase in the waiting lists for affordable housing. The Daily Bread Food Bank, in its latest report on hunger in the Greater Toronto Area, notes that the high cost of housing was the key reason for the more than one million visits to food banks in the GTA in the previous year. The links between hunger and housing are set out in **Exhibit U**, *Who’s Hungry, Fighting Hunger: 2011 Profile of Hunger in the GTA*.

78. The Public Accounts of Ontario report a significant decrease in provincial affordable housing operating investments from \$1.1 billion in the fiscal year ending March 31, 2002; to \$651 million in the fiscal year ending March 31, 2010. Housing operating funding provides dollars for the operating costs of existing affordable housing, including rent-geared-to-income subsidies for low-income households. The federal portion of Ontario operating dollars fell from \$550 million in fiscal 2002 to \$483 million in fiscal 2010 – reflecting on the ongoing federal ‘step-out’ of its responsibilities under national housing programs that were transferred to provincial administration. The provincial portion of Ontario operating dollars fell from \$577 million in fiscal 2002 to \$169 million in fiscal 2010 – reflecting both the provincial downloading of housing financing to municipalities, and also annual cuts to provincial affordable housing programs.

Ontario affordable housing operating spending to fiscal 2009

(source: Public Accounts of Ontario)

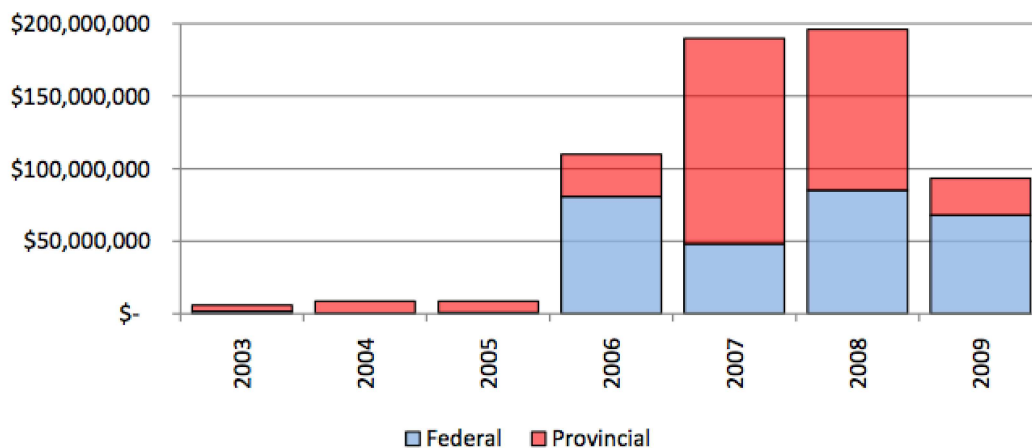


79. The Public Accounts of Ontario report a significant increase in provincial affordable housing capital investments in recent years, mainly as the Ontario government cost-shares a variety of new federal housing initiatives. Overall, Ontario capital investments in affordable

housing (mainly to cover new development and capital repair issues) has risen from \$6 million in fiscal 2003 to \$663 million in fiscal 2010. The provincial contribution has risen from \$4.4 million in fiscal 2003 to \$347 million in fiscal 2010. The capital dollars are expected to remain at a similar level in fiscal 2011 as the second year of the federal housing stimulus dollars work through the provincial accounts, but will drop sharply by fiscal 2012 – likely down to pre-2006 levels of less than \$10 million annually.

Ontario affordable housing capital spending to fiscal 2009

(source: Public Accounts of Ontario)



80. In 2001, the Ontario government joined with all the other provinces and territories to sign the federal-provincial-territorial affordable housing framework agreement. Under this deal, the federal government agreed to invest \$680 million over five years in new affordable housing, and the provinces and territories agreed to match the federal dollars. The federal government added \$320 million in 2003. Under the terms of the agreement, the provinces and territories could include a variety of funding as part of the required provincial/territorial contribution, including funding provided by municipalities and non-profit housing developers. The provinces were also allowed to credit some portion of existing housing spending as a provincial contribution to match

federal dollars. The framework agreement included an accountability and communications protocol, and required provinces and territories to submit annual audited financial statements and performance reports, which were supposed to be made public. There has been no formal release of any audited financial statements or performance reports.

81. In order to release the federal dollars, each province and territory was required to sign a bilateral housing agreement with the federal government. The Ontario government signed an agreement in 2002 – however, it proposed that virtually the entire provincial share of the cost-shared program should come from municipalities and affordable housing developers. Cash-strapped municipalities and affordable housing developers declined to participate, so there was very little new housing development in Ontario despite the federal dollars on offer.

82. In the spring of 2005, the Ontario government signed a new bilateral housing agreement with the federal government that allowed for a more significant provincial contribution. As previously noted, the federal-Ontario bilateral agreement is attached as **Exhibit O**. Almost four years after the original framework agreement was signed by the Ontario government, the housing investments started to flow in significant numbers. Under the 2005 agreement, the province and the federal government announced that they had funded 4,899 housing units (either new homes or rent supplements for existing housing) as of 2005, and that another 14,661 would be developed over the following four years for a total of 20,560 units of housing. As of September, 2011, the Ontario government reports that 15,058 units have been developed under the program.

83. While there have been no audited financial statements or performance reports released publicly, one set of performance reports for Ontario affordable housing projects for the fiscal 2008 year were informally released and the document shows that the bulk of the new housing

that was created was not affordable to low and moderate-income households. The data in the informal release of the performance reports was confirmed by the Ontario Auditor General in his review of provincial housing programs in 2009 (**Exhibit P**). The new “affordable” homes are not truly affordable to low and moderate-income households because of the loose definition of affordability in the federal-Ontario bilateral housing agreement (**Exhibit O**). Affordable housing is defined using a market measure – affordable housing is defined as housing that is at or close to the average market rents charged by private landlords. However, market rents are not necessary affordable to low and moderate income households because, as noted in tables and text in the *Precarious Housing* report (**Exhibit C**), renter household incomes have been stagnant or declining as private market rents have been increasing in recent years. The “affordable” definition used by the federal-provincial agreement, which ties affordability to average market rents and ownership costs, left many units with housing costs that were much higher than a level affordable for households in the bottom two income quintiles. The so-called “affordable” housing costs in the federal-provincial program were much less affordable than the benchmarks that the provincial government used in its Provincial Policy Statement 2005 to direct municipalities to create truly affordable housing for the bottom income quintiles.

84. At the time of the sweeping changes to provincial housing programs in the post-1995 era, the government of the day promised that it would replace housing supply programs with a comprehensive housing supplement.

85. In 2009, the Ontario Auditor General released an audit of the provincial government’s affordable housing programs (**Exhibit P**). The Auditor General reported that it was unable to fully account for all of the \$4.8 billion that the federal government transferred to the province from 2000 to 2008 for housing programs. The Auditor General reported that \$3.8 billion was

passed through to municipal housing service managers. Some of the remaining federal dollars were allocated to provincial and municipal housing programs – confirming a concern among housing advocates that the loose arrangements of the 2001 housing agreement might allow the province to substitute new federal housing dollars for existing provincial housing dollars – leaving no net gain in terms of investments. The Auditor General also reported that it was unable to account for two significant amounts of federal housing investments - \$330 million that Ontario set aside for “provincial constraint” and another \$132 million designated for housing purposes. The Auditor General report notes that the lack of accountability for certain funds raises serious concerns about whether significant portions of federal housing investments may have been diverted by the Ontario government to non-housing purposes (what the government calls “provincial constraint”) or for uses other than those set out in various federal-provincial agreements.

86. In the 2009 audit of Ontario housing programs, the Auditor General also raised several other significant concerns: The Auditor General noted that the Ontario government has no plan to deal with the expiry (“step-out”) of federal funding for affordable housing; the Auditor General noted that rents and housing costs in the federal-provincial affordable housing program meant that the new homes were “unaffordable for households on waiting lists, or eligible to be on lists”; the Auditor General noted that poor program design in the rent supplement program led to low participation; and the Auditor General noted that the Ontario government has no comprehensive long-term affordable housing strategy with measurable goals and performance outcomes.

87. In late 2010, the Ontario government released *Building Foundations: Building Futures* Ontario’s Long Term Affordable Housing Strategy. The strategy is attached as **Exhibit V**. There

was no new funding for affordable housing, and no measurable goals or performance outcomes. In 2011, the Ontario government released the Ontario Housing Policy Statement, which – among other matters – requires that municipalities have in place housing and homelessness plans that prevent homelessness, are based on a housing first approach, support innovative measures to address homelessness, and address the health and social support needs of vulnerable tenants. The Ontario Housing Policy Statement is attached as **Exhibit W**. There are no additional funds accompanying the housing policy statement, no provincial targets, timelines or measures for accountability. The Ontario Long Term Affordable Housing Strategy was welcomed by housing experts, including the Wellesley Institute, as providing the ‘scaffolding’ for a comprehensive provincial housing plan, but lacking the specific funding, measures and targets that are necessary for a plan that can address the province’s acute housing needs. An analysis of the provincial housing strategy, *Ontario puts up scaffolding for long-term affordable housing plan*, is attached as **Exhibit X**.

88. The Ontario government, starting in 1995, embarked on a radical experiment to “get out of the housing business” by cutting direct investments in affordable housing, significantly reducing the housing allowances paid to welfare recipients, eroding rent regulation and tenant protection laws, and downloading the cost and administration of housing programs to municipalities. These initiatives led to a significant increase in housing insecurity and a marked increase in the number of economic evictions, and a rise in homelessness among seniors, families with children and others. See: **Exhibit R**, *Made-in-Ontario Housing Crisis*.

89. Hundreds of US cities and several states have adopted a variety of inclusionary housing mechanisms that combined local zoning and planning rules and other measures to require a percentage of affordable and/or supportive housing in all new privately-sponsored housing

developments. The Wellesley Institute has published case studies that examine leading practices in a number of US cities.³

90. Municipalities in Canada are considered creatures of the provinces under the Constitution, and cannot adopt mandatory inclusionary housing programs without explicit provincial authority. An inclusionary housing scheme adopted by the City of Burlington was struck down by the Ontario Municipal Board (OMB) in 1991 for lack of provincial authority, and municipalities have been reluctant to take further action in this area. The OMB decision, *Reemark Holdings No. 12 Inc. v. Burlington* is attached as **Exhibit Y**.

91. While the Ontario government's Provincial Policy Statement of 2005 requires municipalities to make long-term housing plans, and this requirement is strengthened in the 2011 provincial Housing Policy Statement, the municipality's authority to enact inclusionary housing practices remains uncertain. A private member's bill was introduced in the Ontario Legislature two years ago to amend the *Planning Act* to give municipalities the authority to enact inclusionary housing plans, but the bill did not receive the requisite legislative approval.

92. There are a variety of inclusionary housing mechanisms in the US, but they share common features: The rules set out minimum requirements for affordable housing in an overall development, the mechanisms ensure that private developers continue to make a profit from their projects (typically by offering bonuses in exchange for the mandatory affordable housing), and the long-term operation of the affordable housing is typically done by a non-profit or government

³ The case studies and extensive background information on inclusionary housing is published by the Wellesley Institute at the Inclusionary Canada web site at <http://www.inclusionaryhousing.ca/>.

agency. Ontario's planning laws allow municipalities to negotiate project-by-project bonuses through s. 37 of the *Planning Act*, but this voluntary arrangement has produced very little affordable housing.

93. The Planning Commissioners of Ontario, which represents senior planning officials in the province's upper tier municipalities, have been requesting that the province grant municipalities explicit authority to enact inclusionary housing policies for several years, but the provincial government has not moved in this area. The 2011 provincial Housing Policy Statement requires municipalities to adopt the housing first approach to homelessness, and calls on municipalities to enact specific plans to end homelessness and create adequate amounts of affordable housing, but the provincial government has not given municipalities the funding, the legislative or regulatory authority, or programs to assist them in realizing the provincial requirements.

94. Some municipalities have used planning and zoning powers granted to them by the province to restrict the development of new affordable and supportive housing, homelessness shelters or other supports and services. Some municipalities use planning and zoning rules and practices, including public hearings, to add extra requirements to new affordable and supportive housing or other services. Local opponents are able to use these discriminatory rules and practices to slow or block entirely the development of new affordable housing or other services. In a recent ruling regarding a municipal bylaw in Kitchener that sought to restrict new supportive housing in a particular neighbourhood, the Ontario Municipal Board ruled that such discriminatory practices need to be reviewed in the light of internationally-recognized housing rights such as the International Covenant on Economic, Social and Cultural Rights – which Canada has ratified. The Kitchener OMB ruling is attached as **Exhibit Z**. The Ontario Human Rights Commission has also cautioned that discriminatory zoning and planning practices may

run afoul of provincial human rights codes. The extensive policy document from the OHRC, *Policy on Human Rights and Rental Housing*, is attached as **Exhibit AA**.

95. Some municipalities use local bylaws or federal and provincial laws to criminalize activities associated with insecure housing and homelessness, including panhandling or “camping” in public places. In an October 2008 ruling, the British Columbia Supreme Court struck a bylaw in Victoria that banned camping and that was used against people who are homeless, based partly on human rights grounds. Research reports show that the Ontario government’s *Safe Streets Act*, which outlaws “aggressive panhandling” has been used extensively against people who are precariously housed or homeless. See, for instance, *Can I see your ID? The Policing of Youth Homelessness in Toronto*, is attached as **Exhibit BB**.

Measuring the housing / homelessness need / assessing the impact

96. There is an extensive and growing body of research at the international, national and local level that documents the negative impact of housing insecurity and homelessness on increased morbidity (illness) and increased mortality (premature death). The Wellesley Institute’s *Precarious Housing in Canada 2010* (**Exhibit C**) provides a compendium of recent and current research that links poor housing and poor health. The complex set of links includes alarming rates of mental health issues (especially clinical depression and anxiety and other forms of psychiatric morbidity); chronic diseases; negative housing conditions (poor ventilation, damp and mould, infestations) leading to respiratory and infectious diseases; contextual factors (including over-crowding and isolation) which confound health issues. Particular populations experience a higher burden of housing insecurity and related poor health, including Aboriginal

people, low-income people, women, immigrants, members of racialized groups, children and seniors.

97. There is an extensive and growing body of research at the international, national and local level that documents the positive impact of housing interventions on the health of individuals, on community stability, economic issues and government finances. The “housing first” model has, in particular, been demonstrated to be effective and cost-efficient in meeting the housing and support needs of people with complicated health issues, including those living with HIV / AIDS and with substance use issues. Recent cost-benefit analyses have demonstrated that housing interventions are less costly to government than the costs of “managing” housing insecurity and homelessness, which include social and health costs, policing, courts and jail. A longitudinal study of several hundred homeless and formerly homeless people living with HIV / AIDS shows that, on average there is a cost savings of hundreds of thousands of dollars from reduced emergency room utilization for these people when they are properly housed with appropriate supports – and the cost of housing and supports is less than the cost of emergency room visits.⁴

98. A cost-benefit analysis of men from the general prison population leaving jail found that provision of housing and appropriate supports reduced recidivism (making communities safer by lowering the incidence of crime) and also resulted in an average cost savings to the government of \$350,000 (after the costs of housing and supports are set against the costs associated with recidivism, including police, courts and jail); and an average costs savings to the government of \$109,000 for a s. 810 prisoner. The research report, *Making Toronto Safer: A Cost-Benefit*

⁴ Extensive research materials on HIV and housing are posted at <http://www.healthyhousing.ca/>

Analysis of Transitional Housing Supports for Men Leaving Incarceration, is attached as **Exhibit CC**.

99. In its 2009 federal budget, the federal government committed more than \$2 billion in one-time investments in affordable housing. In early 2011, in a comprehensive report, the federal government reported that its housing investments had a significant economic multiplier and job impact. The government noted that every dollar of federal housing investment generated one dollar and fifty cents of jobs and other economic activity. Economic multipliers that measure the jobs and related impact of housing investments from other jurisdictions report a similarly high multiplier effect. Housing investments are particularly significant economic stimulus because the bulk of the spending stays within a local community. Business organizations ranging from TD Economics to the Canadian Chamber of Commerce have all noted that there is a business and economic interest in measures to end homelessness and increase housing security.

100. Housing insecurity and homelessness have a profound impact on the lives and health of millions of individual Canadians; they disrupt communities, impede economic progress and impose significant costs on the governments of Canada. Housing and homelessness solutions have been found to be beneficial to individuals, communities and the economy, and also cost-effective for governments.

SWORN BEFORE ME at
the City of Toronto,
this 15th day of November, 2011

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MICHAEL SHAPCOTT

A Commissioner, etc.

JENNIFER TANUDJAJA, *et al.*
Applicants

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, *et al.*
Respondents

Court File No. CV-10-403688

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AFFIDAVIT OF MICHAEL SHAPCOTT
(Sworn November 15, 2011)

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