

Federal role in housing: Constitutional and legal issues

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Housing and *The Constitution Act, 1867*

Canada's founding document, *The British North America Act* of 1867 (which is now called *The Constitution Act 1867*, with the *Charter of Rights and Freedoms*), doesn't mention housing. There are other important areas that were not contemplated, such as foreign affairs. For the first 40 years, Canada's foreign affairs were handled by Britain. The first Department of External Affairs was established in 1909 by Sir Wilfrid Laurier. The 1867 constitution assigned "property and civil rights in the province" to provincial jurisdiction, which includes ownership and use of land. Housing includes property issues, and also significantly wider social and economic concerns. Section 91 assigns the residual power (the responsibility "for all matters not coming within the classes of subjects by this act assigned exclusively to the legislatures of the provinces") to the federal government. The Charter doesn't mention housing, but s6 guarantees mobility rights, s7 the right to life and s15 equality rights. In international law, the right to housing is linked to these other rights. The *Charlottetown Accord* of 1992 named "housing" and assigned it to "exclusive provincial jurisdiction". This accord was rejected by voters in a national referendum and never enacted.

Ongoing federal role in housing

The federal government – with the support of the provinces, and sometimes with provincial cost-sharing – has had a strong role in housing since the creation of the Central Mortgage and Housing Corporation (now Canada Mortgage and Housing Corporation) in 1946. The federal role continued to grow over the next 40 years. The federal government funded more than 600,000 affordable homes. It continues to support more than 630,000 subsidized households, and administers a variety of housing rehabilitation and homelessness initiatives. After 1984, the federal role began to decline. From 1984 to 1993, the federal government cut almost \$2 billion from housing programs. In 1993, it cancelled funding for new units. In 1996, the federal government downloaded administration of most federal housing programs (except for co-ops) to the provinces and territories. In 1998, the federal government amended the *National Housing Act* to reduce the role of CMHC in affordable housing initiatives. The decline in the federal role in housing coincided with an increase in homelessness reported in major Canadian cities in the mid to late 1990s. The federal government, some provinces and territories and some municipalities have responded with a patchwork of housing funding and programs. There are no national standards or targets. There is no co-ordination. Canada remains the only major country in the world without a national housing strategy.

"It is only in Canada that the national government has, except for CMHC loans, withdrawn from social housing. The rush to get out of managing existing projects and building new, low-income housing has taken advocates by surprise. It was never imagined that a system that had taken 50 years to build-up could be dismantled so rapidly. Social housing policy in

Canada now consists of a checker-board of 12 provincial and territorial policies, and innumerable local policies. It is truly post-modern.”

Dr. Jean M. Wolfe, McGill University, 1998

Housing in international law

The federal government has accepted its obligation, in international law, to ensure all Canadians have access to housing. The primary source of the international right to housing is Article 11 of the *International Covenant on Economic, Social and Cultural Rights* states:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”

The international right to housing appears in other legal instruments that Canada has signed including: The Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Declaration on the Right to Development, Convention on the Rights of the Child, the Vancouver Declaration, the Istanbul Declaration and the Habitat Agenda. General Comment #4 of the United Nation’s Committee on Economic, Social and Cultural Rights (1991), contains a detailed outline of the international right to housing.

Canada’s compliance with the covenant, is reviewed every five years by a special committee of the United Nations and also by the United Nation’s Special Rapporteur on the Right to Adequate Housing. The most recent U.N. review was released in May of 2006. The committee warned that the federal government has a responsibility to make sure that provinces, territories and municipalities are aware of the federal responsibility to meet its international obligations:

“The Committee reiterates its recommendation that the federal government take concrete steps to ensure that Provinces and Territories are made aware of the State party’s legal obligations under the Covenant, that the Covenant rights should be enforceable within Provinces and Territories through legislation or policy measures, and that independent and appropriate monitoring and adjudication mechanisms be established in this regard. In particular, the State party should establish transparent and effective mechanisms, involving all levels of governments as well as civil society, including indigenous peoples, with the specific mandate to follow-up on the Committee’s concluding observations.”

“The Committee reiterates its recommendation that the federal, provincial and territorial governments address homelessness and inadequate housing as a national emergency by reinstating or increasing, where necessary, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, and providing adequate support services for persons with disabilities. The Committee urges the State party to implement a national strategy for the reduction of homelessness that includes measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms, in keeping with Covenant standards.”

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