

City of Toronto – Affordable Housing Committee
Speaking Notes
October 20, 2009

I would first like to say thank you on behalf of the Ontario Human Rights Commission for inviting me to speak with you here today. The Commission considers the City of Toronto an important partner in the work that it does to address human rights issues in housing.

As you may know, on October 5, 2009, the Commission released its *Policy on Human Rights and Rental Housing*. The Commission's policies set standards for how responsible parties should act to ensure compliance with the Ontario *Human Rights Code*. They are important because they represent the Commission's interpretation of the *Code* at the time of publication, and they set out practical guidelines on the rights and responsibilities of parties under the *Code*.

(Section 45.5 of the *Code*) The Human Rights Tribunal of Ontario, the body that receives and hears human rights claims, may consider Commission policies in a human rights proceeding before it. And where a party or an intervenor in a proceeding requests it, the Tribunal must consider a Commission policy.

(Section 45.6 of the *Code*) If a final decision or order of the Tribunal is not consistent with a Commission policy, in a case where the Commission was either a party or an intervenor, the Commission may apply to the Tribunal to have the Tribunal state a case

to the Divisional Court to address the inconsistency. So, the Commission's policies have weight in how human rights claims are heard.

As you may have seen, the Commission's Housing Policy is lengthy, and covers many aspects of discrimination in the context of rental housing. For today, though, I have been asked to focus on the sections of the Policy that are applicable to new development and the phenomenon of NIMBYism.

In the Commission's view, "NIMBYism," refers to opposition to housing projects that are based on stereotypes or prejudice towards the people who will live in them. It can refer to discriminatory attitudes as well as actions, laws or policies that have the effect of creating barriers for people who seek to move into affordable housing or supportive housing in a neighbourhood. It is also the Commission's view that the right to be free from discrimination in housing under the *Code* could extend to the development of affordable housing projects for people and groups identified by the *Code*.

Of course, NIMBYism does not refer to legitimate public consultations or concerns around land use and planning and security. It refers to the negative response to affordable and supportive housing because of biases toward and stereotypes about the people who will live there. NIMBY responses are often based on unfounded concerns that such housing will bring down property values, create safety risks, or otherwise ruin

the neighbourhood.¹ It may cause housing providers to feel that they need to make design compromises, even when these compromises undermine the dignity and well-being of their residents.

People typically affected by NIMBYism are people who need to rely on affordable housing, such as rooming houses, group homes, social housing and supportive housing, boarding houses, institutional care homes, and shelters. These types of housing often serve people identified by *Code* grounds, including people receiving social assistance, racialized people, Aboriginal people, immigrants and refugees, students (who are often young people), older people, single people, people with disabilities, including mental health issues, and families with young children.

It is the OHRC's position that people or groups identified by the *Code* should not have to ask permission from prospective neighbours before moving into a neighbourhood.² Concerns about affordable housing projects should be anchored legitimately in planning issues, rather than stereotypical assumptions about the people for whom the housing is being built.

NIMBY opposition to affordable housing projects can violate the *Code* when it results in changes to existing planning processes, barriers to access to housing or exposes proposed residents to discriminatory comment or conduct. Also, when planning policies

¹ S. Chisholm, *Affordable Housing in Canada's Urban Communities: A Literature Review* prepared for Canada Mortgage and Housing Consultation (July 2003) at 23, online: www.chra-achru.ca/english/View.asp?x=511 (date accessed October 26, 2006).

² Chief Commissioner Barbara Hall, "Re: Residents angry over housing project," (November 14, 2007): www.ohrc.on.ca/en/resources/news/nimby/view

or practices are directed towards, or disproportionately affect, *Code*-protected populations, they may be seen to violate the *Code*.

Zoning By-laws

During our province-wide consultation in 2007, the Commission heard concerns from many consultees that municipal processes and by-laws – including zoning by-laws – may contribute to opposition to affordable housing projects.

Historically, zoning by-laws are often embedded in the urban plan of a municipality. It is the Commission’s position that zoning by-laws that are not based in a legitimate urban planning rationale and have the effect of “people zoning,” as opposed to zoning the use of the land, are deemed to be invalid³ and could be open to human rights challenges if they result in restrictions to people identified by *Code* grounds. The Ministry of Municipal Affairs and Housing indicated in their submission to our consultation that its official position is that a zoning by-law is invalid if its effect is to regulate the user, as opposed to the use of the land.

Zoning by-laws that define and restrict the location of dwellings based on the characteristics of their users, instead of the type of building structure, have been deemed to be discriminatory by the courts.

³ *R.v.Bell* (S.C.C.), (1979), 98 D.L.R. (3rd) 255.

Example: In one case, the Manitoba Court of Appeal ruled that a city's zoning by-law violated s. 15(1) of the Canadian *Charter of Rights and Freedoms* by defining its group homes through reference to characteristics of the users (people who were “aged,” “receiving supervision or treatment for alcohol or other drug addiction,” “convalescent or disabled people,” or “discharged from a penal institution”). As well, the court deemed that the people living in these homes were discriminated against because they and they alone had to apply to the various community and city committees for permission to form and live together as a group or “family.” The court also indicated that the impugned provisions of the by-law were those that intended to regulate where these homes could be situated in the city.⁴

Types of NIMBYism

The Policy identifies several types of NIMBYism that raise human rights concerns. For example:

- requiring additional public meetings, amendments to the planning process, lengthy approval processes, or development moratoria because the intended residents of a proposed housing project are people from *Code*-identified groups
- zoning by-laws that restrict affordable housing development that serves people identified by *Code* grounds (such as lodging houses) in certain areas while allowing other establishments of a similar scale

⁴ *Alcoholism Foundation of Manitoba v. Winnipeg (City of)*, (Man. C.A.), (1990), 69 D.L.R. (4th) 697.

- minimum separation distances, caps on the number of residents allowed, or quotas on the number of housing projects allowed in an area, that are not justified in a rational planning basis, nor passed in good faith⁵

And there are additional examples in the Policy.

It is the Commission's position that City Councils, councillors, neighbourhood associations, developers, decision-makers such as the Ontario Municipal Board, and individuals all have a responsibility to refrain from discrimination against people identified by *Code* grounds based on NIMBYism, and to make sure policies and practices do not give rise to differential treatment. Even though these organizations and individuals may not provide housing directly, they still have an obligation not to contribute to indirect discrimination in the context of housing.

City of Toronto Housing Charter

The Commission commends the City for its development of a Housing Charter, which sets out minimum standards in housing and respect for human rights as basic principles. We were very pleased to see, among other things, that the Charter recognizes that “all residents should be able to live in their neighbourhood of choice without discrimination.”

⁵ The Ministry of Municipal Affairs and Housing indicates that separation distance requirements should be justified on a rational planning basis, passed in good faith, and in the public interest: Ministry of Municipal Affairs and Housing submission to Commission's Housing Consultation.

The Housing Charter provides an important foundation when considering zoning practices and how these affect the availability of affordable housing for people from *Code*-protected groups.

City of Toronto's Proposed Zoning By-law

The Commission also recently had the opportunity to review and provide comment on the City's proposed zoning by-law, a by-law which has the potential to affect the housing rights of many people across the City, particularly those living in affordable housing (such as group homes, seniors' residences, rooming houses, etc.).

We look forward to continuing to work with the City of Toronto to make sure that the residents of Toronto have access to adequate and affordable housing opportunities without discrimination.