

RE: PH1.2: Declaring Toronto's Homelessness and Housing Crisis a State of Emergency

Response to City solicitor's opinion on human rights obligations

FROM: Bruce Porter, Executive Director, Social Rights Advocacy Centre

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Bruce Porter is the Executive Director of the Social Rights Advocacy Centre, former Executive Director and founder of the Centre for Equality Rights in Accommodation and Chief Advisor to the UN Special Rapporteur on the Right to Housing. He is a leading expert on Canadian and international human rights law.

We are concerned about the City Solicitor's Report concerning the recommendation to affirm Toronto's commitments to meeting its international human rights obligations with respect to the right to housing.

Rather than addressing the important question raised in the recommendation to affirm a commitment to compliance with international human rights obligations, the Report focuses on the question of whether these obligations are binding under Canadian law and whether they can be enforced in courts. The assumption seems to be that the only kind of legal obligations the City should be concerned about relate to obligations under domestic law that can be enforced in court.

We believe the report should have informed Councilors that although the right to housing under international law ratified by Canada cannot be enforced directly in courts, these obligations are considered binding under international law, and all levels of government, including the City, are expected to comply with these obligations in good faith. An affirmation of the City's commitment to comply with its obligations under international human rights law is therefore entirely appropriate.

The question of what enforceable legal obligations City officials have as a result of Canada's recognition of the right to housing under international human rights law is also more complex than the Report suggests. This is not just a matter of "policy" but of legal obligations. In our view, whenever it is stated, correctly, that international human rights law is not *directly* enforceable as Canadian law if it has not been incorporated through federal or provincial legislation, this statement should be followed by a "**nevertheless...**" This is what the Supreme Court of Canada explained in the important case of *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, in which the question of the application of human rights law ratified by Canada was directly at issue in a deportation case. The Court stated:

.... the Convention has not been implemented by Parliament. Its provisions therefore have no direct application within Canadian law.

Nevertheless, the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review. As stated in R. Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994), at p. 330:

[T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. **In so far as possible, therefore,**

interpretations that reflect these values and principles are preferred. [Emphasis added.]

We believe the Report should therefore have explained that while the right to housing recognized by Canada under international human rights law has no *direct* application to City officials under Canadian law, it **nevertheless** has significant legal effect on the obligations of the City's administrative decision-makers. They should, in so far as possible, exercise discretion and adopt interpretations of legislation, by-laws or regulations that reflect the values and principles behind Canada's recognition of the right to housing under international human rights law. These values and principles have been well developed internationally to include obligations to address homelessness as an urgent human rights crisis and to take measure so eliminate homelessness within the shortest possible time. Such obligations apply to all levels of government in Canada. The proposed affirmation of the City's commitment to compliance with these obligations would serve to ensure that staff consider Canada's obligations under international human right law to respect, protect and fulfil the right to housing in the exercise of administrative discretion or interpreting and applying any laws or policies. This is an existing obligation of decision-makers under Canadian law and ensuring that City officials comply with it would have a significant impact on the alleviation of homelessness.

We are also concerned about the suggestion that because homelessness is "a social and economic problems of an ongoing systemic nature that cannot be resolved in days, weeks or months," emergency measures are not appropriate. International human rights law recognizes that while ensuring the right to housing requires longer term measures and programs to address systemic issues, it also imposes immediate obligations to address homelessness urgently, and to ensure that access to safe and secure shelter is provided immediately through all necessary measures.

The statement that "There is no right to housing in Canada, **nor is there a positive obligation on any level of government to provide housing or adequate shelter, in human rights law**" in our view, also overstates and distorts the implications of scant jurisprudence on this issue – particularly with respect to ensuring access to adequate shelter when life is at stake. That issue has not been fully considered by courts and it has been explicitly left open by the Supreme Court of Canada. It should not be described as settled law. If City of Toronto lawyers were arguing a case in court in an attempt to prevent homeless people from securing any rights to dignity or security under the Canadian Charter of Rights and Freedoms, there are sentences they could pull out of some judgments to try to substantiate that extreme position. However, advocates for those who are homeless have other authority to cite to contest such extreme statements. There is, in our view, little chance that when the issue is considered by the Supreme Court of Canada, it will be anywhere nearly as extreme as the position described in the Report. We believe City Council should make decisions based on a more balanced understanding of the rights in the Canadian Charter, more in line with what they are understood to mean under international human rights law and with the City Council's own values.

The Report also states that there is no obligation under human rights law to provide adequate shelter or housing. There is no jurisprudence to date that we are aware of to justify such a blanket statement about the application of human rights legislation to homelessness. Human rights legislation may certainly require the provision of adequate shelter or housing to persons which disabilities forced to choose between homelessness or institutionalization, for example. That issue currently before a human rights tribunal in Nova Scotia.

Most importantly, ongoing and complex developments in relation to what may or may not be enforceable in courts or human rights tribunals in relation to homelessness and the right to housing should in no way dissuade Council from acting on the important recommendations being considered. If anything, the fact that it has proven so difficult for homeless people to secure effective remedies in courts or before human rights tribunals to date provides a good reason for the Council to recognize their rights as human rights under international human rights law and to explore means of ensuring compliance with the City's obligations to respect, protect and fulfil the right to housing of all of its residents, in all areas within its authority.

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