

Homelessness and Housing in Canada

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Introduction

More than 100,000 people in Canada are currently homeless. One in four Canadians are experiencing housing insecurity and many of these people are at great risk of becoming homeless. The Canadian government has done little in recent years to alleviate this situation. Anti-poverty and social justice groups are developing several strategies to try and ensure that all Canadians have access to affordable housing. Most agree that the 'housing first' model, getting people into stable housing before attempting to address other issues, has proven most successful for eradicating chronic homelessness.

But how can we ensure housing is available for all who need it? The rights-based strategy involves trying to establish a right to housing relying on international agreements Canada has signed. The *Charter* based strategy involves relying on section 7, guaranteeing all Canadians a right to life, liberty and security of the person, and section 15, guaranteeing equality for all Canadians, to establish a positive obligation on behalf of the Canadian government to ensure access to housing for all Canadians. Whatever the means, more action on behalf of the Canadian government is required.

Housing and Homelessness in Canada

The federal government and homeless advocates estimate that the number of homeless individuals in Canada ranges from 150, 000 to 300, 000.¹ Approximately 40, 000 people sleep in shelters across Canada each night.² The largest segment of

¹ Human Resources and Skills Development Canada, "The Homelessness Partnering Strategy" (2010) online: <http://www.hrsdc.gc.ca/eng/homelessness/index.shtml> [Partnering Strategy]

² *Ibid.*

the homeless population is made up of single men, though homelessness is on the rise among women and single-parent families headed by women.³ There are an estimated 65, 000 youth in Canada who are homeless or living in shelters.⁴ Another four million Canadians are currently in need of affordable housing.⁵ According to the organization Justice for Girls, teenage girls make up between 6-12% all the homeless people in major Canadian cities and 30-50% of all homeless youth in Canada.⁶ Disproportionately represented amongst the homeless population in Canada are families living in poverty, street youth, aboriginal persons, persons with mental illness, the working poor and new immigrants.

Homelessness can be the result of a variety of economic, social and health causes. It can most obviously be a result of economic issues such as insufficient affordable housing stock, low incomes, a gap between income and affordability, job loss, economic downturn and poverty.⁷ Homelessness can be a result of social and health issues such as mental health issues, substance abuse issues, family conflict, inadequate discharge planning for persons exiting the prison system, mental health facilities, or social assistance system,⁸ deinstitutionalization,⁹ domestic sexual

³ *Ibid.*

⁴ Youthworks, "Youth Homelessness in Canada: The Road to Solutions" *Raising the Roof*, (2009), online: Raising the Roof <http://www.raisingtheroof.org/RoadtoSolutions_fullrept_english.pdf> [Youthworks]

⁵ "Housing in Canada: A National Crisis" *Citizens for Public Justice* (18 September 2008), online: Citizens for Public Justice < <http://www.cpj.ca/en/housing-canada-national-crisis>> [National Crisis]

⁶ Asia Czapska, Annabel Webb & Nura Taefi, *More Than Bricks & Mortar: A Rights-Based Strategy to Prevent Girl Homelessness in Canada*, (Justice for Girls, 2008) [More Than Bricks]

⁷ *Partnering Strategy*, *supra* note 1.

⁸ *Ibid.*

⁹ Bri Trypuc & Jeffrey Robinson, *Homeless in Canada: A Funder's Primer in Understanding the Tragedy on Canada's Streets*, Charity Intelligence Canada, (October 2009) at 4. [Funder's Primer]

abuse, male-perpetrated violence, colonization,¹⁰ family-related issues, inadequate child protection services, and experiences as street-involved youth¹¹ Most often risk of homelessness is caused by a combination of the above issues, while actually becoming homeless can be traced to “a single crisis beyond a person’s control which cascades.”¹²

Deinstitutionalization of mental health services since the 1960’s has been a major contributing factor.¹³ In-patient psychiatric hospitals were replaced with community care programs and outpatient services aimed at reintegration of the mentally ill in mainstream society.¹⁴ In most communities the appropriate and required amount of funding and support services were not provided resulting in people being unmonitored or bounced between hospital emergency rooms and jails.¹⁵ Among the chronically homeless in Canada approximately 30-50% suffer from schizophrenia, while 38-48% suffer from manic depression or bi-polar disorder.¹⁶ Mental illness plays a dual role in homelessness as for some it is the cause while for others it is the result.

Addiction to drugs and alcohol play a similar role, as some become homeless due to these issues while others develop them during homelessness as a means of coping with their difficult situation. This is particularly true amongst homeless youth, where though approximately half are abuse drugs and/or alcohol, only half of

¹⁰ *More Than Bricks*, *supra* note 5 at 12.

¹¹ *Youthworks*, *supra* note 4 at 12.

¹² *Ibid* at 2.

¹³ *Ibid* at 4.

¹⁴ *Funder’s Primer*, *supra* note 9 at 11.

¹⁵ *Ibid* at 11.

¹⁶ *Ibid* at 11.

these were addicts before they became homeless.¹⁷ With drug addiction and homelessness comes physical health problems. Drug addiction when coupled with homelessness can lead to injection and inhalation behaviours that put users at a higher risk of contracting HIV and hepatitis C. Homeless individuals are admitted to hospitals five times more often than other people and stay in hospital longer.¹⁸ “Homelessness magnifies poor health and exposes those in crowded shelters to TB and influenza.”¹⁹

Homelessness is often an experience rife with violence which for many individuals leads to an early death. The average life expectancy of a homeless individual in Canada is 39 years,²⁰ about half of the expectancy for the rest of Canada, which is 81 years.²¹ In 2008 there were an estimated 1350 deaths of homeless individuals in Canada.²² Many of these deaths were attributed to suicide as the suicide rate among the homeless is nearly 40 times higher than the national average.²³ According to the British Columbia Coroner’s Office, a homeless person dies, on average, every 12 days in this province.²⁴ Homeless individuals are assaulted more in one year, than most people are in their entire lifetime, with 37%

¹⁷ *Youthworks*, *supra* note 4 at 23.

¹⁸ *Funder’s Primer*, *supra* note 9 at 9.

¹⁹ S.W. Hwang, “Mortality Among Men Using Homeless Shelters in Toronto, Ontario” (April 2000) *Journal of the American Medical Association*.

²⁰ *Funder’s Primer*, *supra* note 9 at 8.

²¹ “World Development Indicators” *The World Bank*, (2010) online: <http://data.worldbank.org/data-catalog/world-development-indicators?cid=GPD_WDI>

²² Statistics Canada. *Deaths and death rate, by province and territory*. (2009) Statistics Canada, online: <<http://www40.statcan.gc.ca/l01/cst01/demo07b-eng.htm> June 2009>.

²³ *Funder’s Primer*, *supra* note 9 at 8.

²⁴ “Bill C-304” *Red Tent: Housing is a Right*, (2010) Red Tent: Housing is a Right, Pivot Legal Society, online: <http://www.redtents.org/learn.php?id=38&page=Bill%20C-304>.

of homeless women in Canada having reported being physically assaulted and 21% reporting having been raped in the last year.²⁵

Women are increasingly becoming homeless or are living in precarious housing situations as they are often the sole-caregiver for young children and are likely to earn less money than men. When women are poor, they are less able to leave abusive partners who they rely on for housing.²⁶ They are also less likely to access shelters as there is fear of provoking the involvement of the Ministry for Children and Family Development. "The state further punishes Aboriginal families, often families of Aboriginal single moms, for living in poverty by taking their children into care, under the category of "neglect," instead of providing an adequate standard of living to all families."²⁷

Homelessness in relation to youth refers to young people aged 16-25 who are not living with any family, are not in the care of child protection agencies, may be temporarily sheltered, living in crowded or unsafe conditions, or be on the street.²⁸ Youth often become homeless due to a traumatic childhood experience with approximately half of homeless youth having been involved in the foster care system.²⁹ Most homeless youth have not completed high school, about half abuse drugs or alcohol, about a third suffer from mental health problems and a third have

²⁵ *Ibid.*

²⁶ *More Than Bricks, supra* note 6 at 15.

²⁷ *Ibid.*

²⁸ *Youthworks, supra* note 4 at 12.

²⁹ *Funder's Primer, supra* note 9 at 9.

legal issues.³⁰ Youth are at a much higher risk of exploitation and report a higher level of anxiety than adult homeless.³¹

Teenaged girls are particularly vulnerable to exploitation, violence and homelessness. Unfortunately, co-ed youth programs often do not address the gendered nature of the violence experienced by girls, and lesbian or racialized girls are disadvantaged on multiple levels.³² Most homeless girls left or were forced to leave their family, foster or group home when there were between 12 and 14 years old, the majority becoming fully homeless by age 16.³³ Many homeless girls share the common experiences of having been sexually abused, couch surfing, living with an older man in order to have a place to stay, sleeping in parks or elsewhere outdoors, and a general mistrust of the Ministry for Children and Family Development.³⁴ Justice for Girls, a non-profit organization in Vancouver suggests that homeless girls require interventions tailored specifically to them, which includes all female supportive housing options.³⁵

Costs of Homelessness

Homelessness costs Canadian taxpayers both socially and financially. Homelessness results in increased crime rates, public disorder and drug use and dealing. Taxpayers carry the burden of paying for social services such as healthcare, ambulance costs and criminal law enforcement. In 2006 these costs totaled \$1.25

³⁰ *Youthworks*, *supra* note 4 at 12.

³¹ *Ibid.*

³² *More Than Bricks*, *supra* note 6 at 11.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

billion dollars.³⁶ The bill for emergency services, social assistance, income support, child protection and drug and alcohol treatment for the homeless totaled \$285 million dollars in 2006.³⁷ Homelessness also has a negative impact on tourism, and on businesses and property owners in areas with a visible homeless population.³⁸ It is estimated to cost approximately \$40,000 per year to provide social services to a homeless individual, while it costs approximately \$7300 to \$13,370 per year to provide supportive housing and get them off the street.³⁹ Furthermore, it makes economic sense for the government to build entirely new affordable housing units where an insufficient amount exists, as this costs approximately \$22,000 to \$28,000 per person, approximately half the cost of supplying social services to homeless persons.⁴⁰

The affordable housing stock in Canada is shrinking due to a variety of causes, particularly in urban centres where homelessness is concentrated. Gentrification, “whereby more affluent residents return to a disadvantaged area, attracted primarily by its low cost, location at the city’s core, and proximity to environmental, social and cultural amenities,”⁴¹ is particularly a problem in Vancouver where the price of property has skyrocketed. Closures and conversions of low-rent accommodations into more profitable high cost rentals have reduced the amount of affordable housing. For those on social assistance, the allotment of \$325

³⁶ *Funder’s Primer*, *supra* note 9 at 9.

³⁷ *Funder’s Primer*, *supra* note 9 at 10.

³⁸ Pivot Legal Society, “Cracks in the Foundation: Solving the Housing Crisis in Canada’s Poorest Neighbourhood” (2006) at IV. [*Cracks in the Foundation*]

³⁹ *Ibid* at V.

⁴⁰ *Ibid*.

⁴¹ *Ibid* at 14.

per month for housing and \$125 per month for living costs is an unreasonably low amount to be expected to live on and has not been increased since 1994.⁴² These factors in combination have made finding affordable housing increasingly difficult and for some individuals, impossible.

Housing First

Many advocates support the 'housing first approach' applied in New York City through its Pathways program with an 88% success rate at a cost of about \$24 000 US per person per year. This approach posits that by supplying homeless individuals with accommodations, their lives will stabilize, allowing them to address other issues in their lives as it includes access to mental health, addictions and support services.⁴³ The 'housing first approach' differs from traditional government sponsored initiatives, as there are no prerequisites requiring abstinence from drugs or enrollment in any program in order to access it.⁴⁴ The approach acknowledges that success comes from providing individual choice, dignity, recovery opportunities and a sense of community.⁴⁵

If it is more successful and cost-effective to supply the homeless with housing first, why is this not being done? Underlying discussions around homelessness and housing is a debate between those who argue for individual "self-reliance" and those who see homelessness as a collective problem.⁴⁶ Many people still believe that homelessness is a choice, and that homeless individuals are lazy and undeserving of

⁴² *Ibid* at 11.

⁴³ *Funder's Primer*, *supra* note 9 at 13.

⁴⁴ *Ibid*.

⁴⁵ *Ibid*.

⁴⁶ "Homeless in Canada" *Intraspec* (2010), online: Intraspec <<http://intraspec.ca/homelessCanada.php>>

assistance or “hand outs.”⁴⁷ This view not only ignores relevant social science research, historical and structural inequality, child poverty and comparative studies, it also does not offer a solution.

A ‘Right to Housing’

Calls for establishing a ‘right to housing’ in Canada have been ringing out across the country. Advocates argue that safe, quality housing is a human right that should be ensured for all Canadians. They suggest that rent be geared to an individual’s income, instead of market value.⁴⁸ In Canada, housing is the responsibility of government at the federal, provincial and municipal levels.⁴⁹ At a national level Canada does not currently recognize a right to housing in the *Canadian Charter of Rights and Freedoms*, nor the *Canadian Human Rights Act*. Provincial human rights legislation also does not include a right to housing, but does prohibit discrimination in the rental of housing.

Internationally, however, Canada has signed United Nations agreements supporting a right to housing. The *Universal Declaration of Human Rights, 1948*, recognizes in Article 25 that

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.⁵⁰

⁴⁷ *Funder’s Primer*, *supra* note 9 at 2.

⁴⁸ Centre for Urban and Community Studies, *The Right to Adequate Housing in Canada*, Research Bulletin #14, (University of Toronto, 2003) online: <<http://righttohousing.ca/>>

⁴⁹ *National Crisis*, *supra* note 5.

⁵⁰ *Universal Declaration of Human Rights*, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

In 1976 Canada also signed the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), which acknowledges in Article 11 “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.”⁵¹ This agreement places the responsibility on governments, stating that they should “take appropriate steps to ensure the realization of this right.”⁵² These agreements do not form part of Canadian law until they are integrated into legislation and signatory governments do not have to comply with them, though their actions are also not supposed to conflict with international commitments. As recently as 2007 though, a United Nations Special Rapporteur on the Right to Adequate Housing in Canada called this country’s situation a “national emergency.”⁵³

Canada is one of the few countries in the world without a national housing strategy. Back in the 1970’s Canada created a National Affordable Housing Program, but due to cuts in the 1990’s the program was ended in 1993.⁵⁴ Responsibility for housing was pushed down the line to the provincial and municipal governments, but with less resources and coordination, little has been achieved.⁵⁵ Between 1989 and 1993, 12,675 social housing units were built each year, while between 1994 and 1998, only 4450 units were built each year.⁵⁶ Currently the federal government provides three national housing and homelessness programs: the Affordable

⁵¹ *International Covenant on Economic, Social and Cultural Rights*, G.A. res. 2200A (XXI), U.N. Doc. A/6316 (1966) at Article 11.

⁵² *Ibid.*

⁵³ M. Kothari, “Report of the Special Rapporteur on Adequate Housing” (2009) United Nations, based on Mission to Canada 2007

⁵⁴ *National Crisis*, *supra* note 5.

⁵⁵ *Ibid.*

⁵⁶ *Victoria (City) v. Adams*, [2008] B.C.S.C. 1363 at para. 62.

Housing Initiative, the Residential Rehabilitation Assistance Program, and the Homelessness Partnering Strategy. The programs have proven not to be enough and fall short of making a significant impact as their funding has not been increased since their inception.⁵⁷ “The magnitude of the problem is such that only long-term, strategic planning, agreed to by all levels of government, can ensure that every Canadian has an affordable home.”⁵⁸

Recently, Bill C-304 was introduced to Canadian Parliament by Vancouver MP Libby Davies.⁵⁹ Bill C-304 advocates for the establishment of a national housing strategy.⁶⁰ This bill also proposes an addition to *An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms* that “every person has the right to the enjoyment of that persons property” with only specified means by which that right can be infringed. This bill calls for cooperation by all levels of government, Aboriginal communities, civil society and the private sector. Measures would be included to ensure that “the cost of housing does not compromise an individual’s ability to meet other basic needs, including food, clothing and access to education.”⁶¹ Bill C-304 has passed second reading and hopefully will be passed in the near the future, as a national housing strategy for Canada is long overdue.

Housing and Homelessness and Section 7

The issues of homelessness and housing have been dealt with directly and indirectly in a variety of ways by the courts, which may have implications for

⁵⁷ *National Crisis*, *supra* note 5.

⁵⁸ *Ibid.*

⁵⁹ Bill C-304, 1st Session, 36th Parliament, 46 Elizabeth II, (1997) The House of Commons of Canada,

⁶⁰ *Ibid.*

⁶¹ Mariel Angus, “Proposed Bill for a National Housing Strategy” *Citizens for Public Justice* (2 April 2009), online: <<http://www.cpj.ca/en/blog/mariel/proposed-bill-national-housing-strategy>>

establishing a right to housing in the future. In the British case *Southwark London Borough Council v. Williams*, Lord Denning determined that “if homelessness were once admitted as a defence for trespass, no one’s house could be safe.”⁶² This decision demonstrates the courts general preference for private property rights over the rights of the homeless.⁶³ The homeless are often perceived as a nuisance for pan-handling, sitting or sleeping in public spaces. These concerns have inspired provincial legislation such as the *Safe Streets Act*⁶⁴ in British Columbia, and municipal legislation such as the *Parks Regulation Bylaw*⁶⁵ and *Streets and Traffic Bylaw*⁶⁶ in Victoria, where there is “...an inevitable conflict between the need of homeless individuals to perform essential, life-sustaining acts in public and the responsibility of the government to maintain orderly, aesthetically pleasing public parks and streets.”⁶⁷

In *Victoria v. Adams*, the British Columbia Supreme Court heard a group of homeless individuals challenge the *Parks Regulation Bylaw* and *Streets and Traffic Bylaws* as unconstitutional.⁶⁸ They alleged that by preventing them from constructing temporary structures in public spaces, their right to life, liberty and security of the person under section 7 of the *Charter* was infringed.⁶⁹ At trial, it was determined that though there were more than 1000 homeless individuals in Victoria there were only 104 shelter beds, expanding to 326 in extreme weather

⁶² *Cracks in the Foundation*, *supra* note 37 at 75.

⁶³ *Ibid*.

⁶⁴ *Safe Streets Act*, S.B.C. 2004, C. 75.

⁶⁵ *Parks Regulation Bylaw*, City of Victoria Bylaw, No. 07-059.

⁶⁶ *Streets and Traffic Bylaw*, City of Victoria Bylaw, No. 92-84.

⁶⁷ *Victoria v. Adams*, *supra* note 54 at para. 1.

⁶⁸ *Ibid* at para. 2.

⁶⁹ *Ibid* at para. 2.

conditions.⁷⁰ It was further determined that the bylaws prevented homeless people from “taking up a temporary abode” by constructing overhead protection, protection that is required to shelter oneself from exposure to the elements.⁷¹

The City of Victoria argued that the bylaws did not ban sleeping outdoors altogether, only the construction of forms of shelter, and that they were intended to protect the park from damage, “ensure that parks and public spaces are available for the use and enjoyment to all members of the public generally” and “respecting the public interest in the purpose and rationale for the creation of parks and public spaces.”⁷² The city feared that by allowing homeless people to erect any sort of shelter in the parks, the parks would be lost to normal uses for the public. This case raised interesting questions about who public spaces are for; Who is the public? Whose interests should be primary? The British Columbia Civil Liberties Association (BCCLA) suggests that a balance must be struck between the right of the homeless to occupy public lands and the benefits lost to the public.⁷³ The BCCLA notes that “it is demeaning and hostile for a society to herd its homeless population at a whim from one public space to another.”⁷⁴

Claimants alleging a section 7 violation must show that there has been a deprivation of the right to life, liberty and security of the person, and that the deprivation is contrary to the principles of fundamental justice.⁷⁵ The court found

⁷⁰ *Ibid* at para. 4.

⁷¹ *Ibid* at para. 4.

⁷² *Ibid* at para. 172.

⁷³ “Squatters’ Rights” *British Columbia Civil Liberties Association*, (2004) British Columbia Civil Liberties, online: <<http://www.bccla.org/positions/discrim/04squatter.htm>>

⁷⁴ *Ibid*.

⁷⁵ *R. v. Beare; R. v. Higgins*, [1988] 2 S.C.R. 387

that by prohibiting the construction of temporary shelter, when all available shelter beds were full, homeless individuals were exposed to a risk of significant health problems or even death which therefore violated their rights to life, liberty and security of the person.⁷⁶ Madam Justice Ross stated that “sleep and shelter are necessary preconditions to any kind of security, liberty or human flourishing.”⁷⁷ The prohibitions were found to be both arbitrary and overbroad and not consistent with the principles of fundamental justice.⁷⁸

Victoria v. Adams has been described as “an important step towards the domestic recognition of a right to adequate shelter, and towards absorbing international human rights protections into Canadian law.”⁷⁹ The Attorney General of British Columbia argued in *Adams* that the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights* were irrelevant as they did not form part of Canadian law. Madam Justice Ross observed that the Courts can use international instruments to aid in the interpretation of the *Charter*, as determined in *Reference re Public Service Employee Relations Act (Alberta)*, and *United States v. Burns*.⁸⁰ She referenced a statement made by the Government of Canada in 1993 to the Committee on Economic, Social and Cultural Rights that section 7 of the *Charter* should not be interpreted so as to deprive

⁷⁶ *Victoria v. Adams*, *supra* note 54 at para. 155.

⁷⁷ *Ibid* at para. 5.

⁷⁸ *Ibid* at para. 194.

⁷⁹ The Poverty and Human Rights Centre, *Victoria (City) v. Adams: Advancing the Right to Shelter*, Law Sheet, (2009), online: The Poverty and Human Rights Centre <http://povertyandhumanrights.org/wp/wp-content/uploads/2009/07/phr_adamslaw_v3_1.pdf> at 2. [*Advancing the Right*]

⁸⁰ *Victoria v. Adams*, *supra* note 54 at para. 95-99.

persons of the basic necessities of life,⁸¹ indicating the governments acknowledgement of the importance of interpreting the *Charter* in ways that do not contradict with international commitments. The decision in *Victoria v. Adams* “makes clear that, what Canadian governments have said to the international bodies that enforce human rights treaties can matter in Canadian courts.”⁸²

The decision in *Victoria v. Adams* allows homeless individuals in British Columbia to cover themselves with modest shelters when forced to sleep outdoors in public spaces, but can it help create a positive right, an obligation on the part of the government of Canada to provide adequate housing for all citizens? To this point, the courts have been reluctant to extend section 7 protections beyond the negative rights of non-interference by a specific government action.⁸³ It was suggested though, in a dissenting opinion by Justice Arbour in *Gosselin v. Quebec (Attorney General)*, that section 7 actually includes a positive dimension and that not only does Canada have a moral obligation to protect the life, liberty and security of the person of Canadians, it also has a legal one.⁸⁴

In *Gosselin v. Quebec (Attorney General)*, Gosselin argued that Quebec legislation that created differential access to social assistance for people under 30 years of age between 1984 and 1989, violated her section 15 right to equality under the *Charter*.⁸⁵ Justice Arbour referenced *Irwin Toy Ltd. v. Quebec (Attorney General)*, in which the Supreme Court of Canada did not rule out the possibility that ‘security

⁸¹ *Ibid* at para. 98.

⁸² *Advancing the Right*, *supra* note 74 at 5.

⁸³ *Victoria v. Adams*, *supra* note 54 at 78.

⁸⁴ *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84, [2002] 4 S.C.R. 429 at para. 309.

⁸⁵ *Ibid* at 3.

of the person' could include an economic component.⁸⁶ Lower courts have found that "economic rights" includes rights to social security, equal pay for equal work, adequate food, clothing and shelter and traditional property-contract rights.⁸⁷ Justice Arbour posited that the rights in question in *Gosselin*, the right to a minimum level of social assistance, are so connected to 'security of the person' and 'life' that "it is a gross mischaracterization to attach to them the label of "economic rights."⁸⁸

Justice Arbour reasoned that if section 7 could include a positive dimension, "what might be described as rights of 'performance,' then they may be violable by mere inaction or failure by the state to actively provide the conditions necessary for their fulfillment."⁸⁹ Furthermore, other rights guaranteed by the *Charter* are positive rights, including the right to vote, the word 'deprive' in section 7 does not preclude withholding, and section 7 does not just apply to legal rights.⁹⁰ Finally, in *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, the Supreme Court of Canada held that section 7 provided a positive right to state-funded counsel where custody of children is at issue.⁹¹

Based on *Victoria v. Adams* and *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, it appears possible that a case could be brought in the future by homeless individuals arguing that their section 7 rights to life, liberty and security of the person have been infringed by the government's inaction in ensuring adequate access to housing. If section 7 is interpreted in light of *Victoria v. Adams* as

⁸⁶ *Ibid* at para. 311.

⁸⁷ *Ibid*.

⁸⁸ *Ibid* at para. 312.

⁸⁹ *Ibid* at para. 319.

⁹⁰ *Ibid* at paras. 320-323.

⁹¹ *New Brunswick (Minister of Health ad Community Services) v. G.(J.)*, [1999] 3 S.C.R. 46

consistent with the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights*, it could be viewed as encompassing a right to adequate housing. If Justice Arbour's dissent in *Gosselin v. Quebec (Attorney General)* gains more support, it could one day become the majority opinion, allowing positive rights to be captured under section 7. This 'rights-based' approach to social justice could be one avenue towards the end of ensuring that all Canadians are able to access affordable and adequate housing.

Housing and Homelessness and Section 15

Another possible avenue for ensuring a right to adequate housing has centered around section 15 of the *Charter*, which ensures equality before and under the law, and equal protection and benefit of the law without discrimination on number of enumerated grounds. Generally section 15 claims must meet the test laid out in *R. v. Law*, which requires a law, program or activity which imposes differential treatment between the claimant and a comparator group in purpose or in effect, that this differential treatment was based on enumerated or analogous grounds and that there was a purpose or effect which was discriminatory.⁹² Enumerated grounds include race, national or ethnic origin, colour, religion, age or sex.⁹³ Analogous grounds have been found to include sexual orientation, marital status, off-reserve aboriginal status and citizenship.

In *Eldridge v. British Columbia (Attorney General)* the Supreme Court of Canada discussed section 15 in relation to the provision of interpreters for deaf

⁹² *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497

⁹³ *Ibid.*

people accessing hospital services.⁹⁴ This case involved the concept of substantive equality, that in some circumstances people must be treated differently in order for everyone to receive equal benefit.⁹⁵ In *Andrews v. Law Society of B.C.*, it was found that formal equality can result in increased inequality and in some circumstances it is imperative to treat people differently to achieve substantive equality.⁹⁶ In regards to government action it was stated in *Eldridge v. British Columbia* that “once the state provides a benefit, it must do so equally and achieving a constitutionally sound result may require it to take positive measures.”⁹⁷ Legislation and government action must ensure that ‘adverse impact discrimination’ does not result, as this is contrary to section 15 of the *Charter*.⁹⁸

Some suggest that section 15 could be utilized to help secure access to adequate housing. Grace-Edward Galabuzi stated that,

...the requirement under s.15(1) of the *Charter* for positive steps to ameliorate conditions of disadvantage arises not only in the context of claims of discriminatory under-inclusion by disadvantaged groups, but also in instances where substantive inequalities would otherwise result from a government’s failure to take affirmative action to address the specific needs of disadvantaged groups.⁹⁹

This argument suggests that the failure by the government to provide a service needed by a disadvantaged group could constitute discrimination.

⁹⁴ *Eldridge v. British Columbia (Attorney General)*, [1997] 2 S.C.R. 624

⁹⁵ *Ibid* at para. 61.

⁹⁶ *Andrews v. Law Society of B.C.*, [1989] 1 S.C.R. 143

⁹⁷ Mary Cornish & Fay Faraday, *Eldridge v. British Columbia: Defining the Equality Rights of The Disabled Under the Charter*, (Toronto: Osgoode Hall Law School Conference 1997).

⁹⁸ *Eldridge v. British Columbia*, *supra* note 87 at 60.

⁹⁹ Grace-Edward Galabuzi, “The Racialization of Poverty in Canada: Implications for Section 15 Charter Protection” The National Anti-Racism Council of Canada National Conference Ottawa (November 2005) at 32 online: <http://action.web.ca/home/narcc/attach/GEG-Section%2015%20Implications%20of%20Racialization%20of%20Poverty.pdf>.

As previously noted, women are disproportionately represented amongst the poor. If it can be demonstrated that everyone in Canada should be able to receive a sufficient level of social assistance under section 7, it might also be argued that where that access has a gendered bias, section 15 could require the government to take action to alleviate that differential access.¹⁰⁰

The particular and disproportionate effects on women of being in a condition of extreme economic vulnerability require recognition that government denials of adequate social assistance constitute a violation of women's right to equality."¹⁰¹

It may be possible to apply this argument to section 15 and a right to adequate housing. If it can be established that everyone in Canada has a right to access adequate housing under section 7, it might also be argued that where marginalized groups are less able to access that housing, section 15 could require the government to ensure that access was possible. Women and aboriginal people are disproportionately represented amongst the poor and homeless, and are groups that have experienced discrimination and pre-existing disadvantage. If they are unable to access housing due to their marginalization, section 15 could require the government to take positive actions to ensure they can access housing.

It is yet to be seen whether challenge based on section 15 by homeless individuals would be successful. This view of section 15 as requiring some positive action on behalf of the government would be consistent with the ideals of substantive equality embodied in the *Charter* and supported in *Andrews v. Law*

¹⁰⁰ Gwen Brodsky and Shelagh Day, "Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty" 14 *Canadian Journal of Women and the Law* 184 at 200.

¹⁰¹ *Ibid.*

*Society of B.C.*¹⁰² As in *Eldridge v. British Columbia (Attorney General)*, where the government was required to provide interpreters for deaf individuals when accessing health services, this approach would argue that differential treatment and services are required to ensure that these individuals are able to access, for example, housing through government social housing programs, or adequate social assistance. But, as already discussed, the courts are reluctant to include economic rights or anything similar when discussing the scope of the *Charter*,¹⁰³ and courts are also reluctant to make decisions regarding social issues that they consider to be in the realm of government to legislate.

Conclusion

When ordinary Canadians think of the homeless, they picture the most visible individuals sleeping in alleyways and doorways. In reality, a lack of affordable housing and lack of government action has left a much larger segment of the population without stable housing, living in unsafe conditions, utilizing shelters periodically or at risk of losing their home. Many of these people are employed, are members of families, are women, and are youth. Many suffer from poor health, and struggle with addiction, mental health issues or have been victims of violence.

On the international stage, Canada has acknowledged access to adequate housing as a right and has committed to ensuring it is accessible to all Canadians, while domestically the Canadian government has fallen short. Arguments can be made relying on section 7, with a right to adequate shelter considered to fall under 'life, liberty and security of the person,' or under section 15, with marginalized

¹⁰² *Andrews v. Law Society of B.C.*, *supra* note 96.

¹⁰³ *Gosselin v. British Columbia*, *supra* note 90 at para. 1.

individuals arguing for the government to ensure they are equally able to access housing. The government has a moral and legal responsibility to take positive action to ensure substantive equality for all Canadians. “Protecting the human right to housing requires Canada to address issues of affordable housing and homelessness, and is also a crucial step towards fighting poverty in our country.”¹⁰⁴

¹⁰⁴ *National Housing, supra note*

References

Legislation

Bill C-304, 1st Session, 36th Parliament, 46 Elizabeth II, (1997) The House of Commons of Canada, online:
<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2330205&Language=e&Mode=1&File=19>

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982 being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

Canadian Human Rights Act, R.S. 1985, c. H-6

Charter of Human Rights and Freedoms, R.S.Q. c-12

International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), U.N. Doc. A/6316 (1966).

Parks Regulation Bylaw, City of Victoria Bylaw, No. 07-059.

Safe Streets Act, S.B.C. 2004, C. 75

Streets and Traffic Bylaw, City of Victoria Bylaw, No. 92-84.

Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

Jurisprudence

Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143

Eldridge v. British Columbia (Attorney General), [1997] 2 S.C.R. 624

Gosselin v. Quebec (Attorney General), 2002 SCC 84, [2002] 4 S.C.R. 429

Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497

New Brunswick (Minister of Health and Community Services) v. G.(J.), [1999] 3 S.C.R. 46

R. v. Beare; R. v. Higgins, [1988] 2 S.C.R. 387

Victoria (City) v. Adams, [2008] B.C.S.C. 1363

Secondary Sources

- Asia Czapska, Annabel Webb & Nura Taefi, *More Than Bricks & Mortar: A Rights Based Strategy to Prevent Girl Homelessness in Canada*, (Justice for Girls, 2008)
- Bri Trypuc & Jeffrey Robinson, *Homeless in Canada: A Funder's Primer in Understanding the Tragedy on Canada's Streets*, Charity Intelligence Canada, (October 2009).
- "Bill C-304" *Red Tent: Housing is a Right*, (2010) Red Tent: Housing is a Right, Pivot Legal Society, online:
<http://www.redtents.org/learn.php?id=38&page=Bill%20C-304>.
- Centre for Urban and Community Studies, *The Right to Adequate Housing in Canada*, Research Bulletin #14, (University of Toronto, 2003) online:
<<http://righttohousing.ca/>>
- Grace-Edward Galabuzi, "The Racialization of Poverty in Canada: Implications for Section 15 Charter Protection" The National Anti-Racism Council of Canada National Conference Ottawa (November 2005) at 32 online:
<http://action.web.ca/home/narcc/attach/GEG-Section%2015%20Implications%20of%20Racialization%20of%20Poverty.pdf>.
- Gwen Brodsky and Shelagh Day, "Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty" 14 *Canadian Journal of Women and the Law* 184 at 200.
- "Homeless in Canada" *Intraspec* (2010), online: Intraspec
<http://intraspec.ca/homelessCanada.php>
- "Housing in Canada: A National Crisis" *Citizens for Public Justice* (18 September 2008), online: Citizens for Public Justice < <http://www.cpj.ca/en/housing-canada-national-crisis>
- Human Resources and Skills Development Canada, "The Homelessness Partnering Strategy" (2010) online:
<http://www.hrsdc.gc.ca/eng/homelessness/index.shtml>
- Mary Cornish & Fay Faraday, *Eldridge v. British Columbia: Defining the Equality Rights of The Disabled Under the Charter*, (Toronto: Osgoode Hall Law School Conference 1997)
- Mariel Angus, "Proposed Bill for a National Housing Strategy" *Citizens for Public*

Justice (2 April 2009), online:
<<http://www.cpj.ca/en/blog/mariel/proposed-bill-national-housing-strategy>>

Pivot Legal Society, “Cracks in the Foundation: Solving the Housing Crisis in Canada’s Poorest Neighbourhood” (Pivot Legal Society, 2006).

S.W. Hwang, “Mortality Among Men Using Homeless Shelters in Toronto, Ontario” (April 2000) *Journal of the American Medical Association*.

“Squatters’ Rights” *British Columbia Civil Liberties Association*, (2004) British Columbia Civil Liberties, online:
<http://www.bccla.org/positions/discrim/04squatter.htm>

Statistics Canada. *Deaths and death rate, by province and territory*. (2009) Statistics Canada, online: < <http://www40.statcan.gc.ca/101/cst01/demo07b-eng.htm> June 2009>.

The Poverty and Human Rights Centre, *Victoria (City) v. Adams: Advancing the Right to Shelter*, Law Sheet, (2009), online: The Poverty and Human Rights Centre <http://povertyandhumanrights.org/wp/wp-content/uploads/2009/07/phr_adamslaw_v3_1.pdf>

“World Development Indicators” *The World Bank*, (2010) online:
http://data.worldbank.org/data-catalog/world-development-indicators?cid=GPD_WDI