

Human Rights and Rental Housing in Ontario

A Submission to the Ontario Human Rights Commission



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Executive Summary

The Federation of Rental-housing Providers of Ontario (FRPO) appreciates the opportunity to provide input into the Commission's consultation on Human Rights and Rental Housing in Ontario. Our organization is a strong supporter of human rights compliance and regularly provides education to landlords about their responsibilities under the Code. FRPO together with its members oppose discrimination in all its forms. In fact, our industry houses a disproportionately high number of visible minorities, recent immigrants, people with disabilities and households with low incomes, providing a valuable service to these households. We support inclusiveness and fair treatment for all.

Our submission covers a variety of issues, but we want to emphasize the need to balance the rights and responsibilities of housing providers, people seeking protection under the Human Rights Code and all other residential tenants. The rights of all residential tenants to be free from interference with safe and reasonable enjoyment of their homes and the rights of housing providers to use legitimate business practices and to earn a living must not be secondary to those who allege barriers to housing access. The Commission should ensure an accountable and responsible balance of rights in a way that affords dignity, respect and privacy to all affected parties.

In brief, the following points in our submission respond to the Commission's consultation questions:

1. **Raising Awareness of Discrimination Issues.** We welcome any efforts the Commission wishes to make to increase awareness. Greater awareness of rights and responsibilities will benefit all participants in the rental marketplace. We would be happy to work with the Commission in getting the word out to members of our industry.
2. **Affordable Housing.** We believe that the Commission should give priority attention to three areas if it wishes to promote housing affordability:
 - **Property tax constructive discrimination against rental households.** Tenants in Ontario are forced to pay up to four times the rate of property tax compared to households who own single family homes and condominiums. This is clear discrimination against a sector of society that does not have the same political clout (and who disproportionately represent protected classes under the Code) as those getting preferential treatment.
 - **NIMBY barriers to affordable housing.** This is a clear and growing problem in Ontario's planning system with opposition to development. It is getting more and more difficult every year to gain approvals for residential development, impacting supply which in turn has a major impact on affordability generally. However, the problem is particularly bad for special needs housing, of which there is a critical shortage in

Ontario. The Commission should express its concern about the impact that discrimination through the planning process has on vulnerable households.

- **Housing Allowances.** If the Commission really wants to see housing affordability addressed, a call for a new social housing development scheme will not do it. There are simply too many households in core need, and social housing development programs will not even keep pace with the growth in core need households. This will perpetuate the current lottery system unfairness where we fully address the housing affordability problem of a small number of households and leave the majority without assistance. The greatest, fairest and broadest housing affordability plan would be to have a broad housing allowance program.

3. Discrimination in Rental Housing.

- **Screening process.** The process of selecting prospective tenants is an important aspect of business life for a residential landlord. Rent regulation and residential tenancies legislation in Ontario, for those who are knowledgeable about how it is applied, provides very little protection for housing providers: most normal rights granted to every other business in society have been stripped away from landlords. For example, tenants in Ontario have been given lifetime security of tenure. Landlords have no ability to terminate business relationships with tenants, except in unusual circumstances. Because landlords only get one chance to assess prospective tenants, they need to be able to maintain basic rights to assess reasonable information. FRPO is satisfied that the current interpretation of Regulation 290/98 is a fair and reasonable process that protects the rights of prospective tenants, yet lets landlords conduct a reasonable assessment.
- **Accommodating Special Needs.** FRPO believes that society has an obligation to help those with special needs. It can be expensive to do so. The rental housing industry in Ontario in total represents about one half of one percent of the GDP of the province of Ontario. It is unfair to place the burden of special needs accommodation on this relatively small segment of society simply because they happen to be in the housing business. We believe that the Commission's interpretation of the "duty to accommodate" is too severe and is unfair. An overly strict interpretation of this policy will have the unintended consequence of reducing the supply of housing available for special needs households.

The requirements for landlords to grant accommodations for special needs must be clearly delimited and defined to provide certainty for housing providers. The current approach by the Commission and many Landlord and Tenant Board members to issues of "accommodation to the point of undue hardship" is unreasonable and undermines the principles on which accommodation is based. The industry and persons who require

accommodation should be provided with adequate guidelines, policies and standards for assessing and implementing accommodation as a response to discrimination under the Code. On behalf of private housing providers, FRPO would be pleased to work with the Human Rights Commission in establishing these guidelines.

Despite every sympathy for the handicapped, the Commission should not adopt policies which dictate that rental housing in a specific building, in a specific neighbourhood, with specific rent ranges is a right that is inherently tied to the right to housing. The duty to accommodate is best exercised in the context of accommodating a person's ability to be integrated into the broader rental housing community, rather than demanding that every rental unit be fully accessible to accommodate every physical limitation. Where physical modifications are appropriate, the Commission should advocate that the costs be offset by public funding or other financial incentives made available through governments rather than by the building owner and/or the person whose needs must be accommodated.

4. **Be Mindful of Your Judicial Role in Society.** The Human Rights Commission plays a judicial role in our society, not an advocacy role. Modern "housing and low-income advocacy" on Ontario is characterized by non-factually based claims designed to attract attention, and justified on the basis of the advocates' belief that the cause is noble.

In its judicial role, the Commission must show itself to be balanced and free from bias. The Commission's Background Paper to this consultation suggests that the Commission intends to take on an advocacy role. In doing so, the Commission's background document has unquestioningly adopted the viewpoint of those who call themselves "housing advocates" in our society. As a result, the Commission has released a document which is full of errors and, in some cases, inappropriately political or biased. This is disconcerting to FRPO. And it also reflects poorly on the Commission. As an industry which stands to be directly affected by any actions by the Commission following this consultation, the background document has given us great pause. Among the problems with the document are the following:

- numerous factual errors;
- assertions about rental market conditions which are the opposite of the conditions demonstrated by factual information;
- political judgements about previous government's housing policies, based on incorrect information;
- omission of obvious factual information which would provide a contrary view to that laid out by the Commission in the document;
- indications of preferences for housing policies which have been discredited.

Given all this, we urge the Commission to be cautious about taking on an advocacy role. The background documents reveals that the Commission may not have the foundation or factual information necessary to correctly advocate for positive effective policies.

FRPO looks forward to working cooperatively with the Commission in promoting and enhancing Human Rights Code compliance in Ontario.

About FRPO

The Federation of Rental-housing Providers of Ontario (FRPO) is the province's leading advocate for quality rental housing. We represent a wide range of multi-residential housing providers, from the smallest landlords to the largest property management firms, as well as related industry suppliers and professionals from across Ontario. FRPO represents over 800 members who supply and manage homes for over 250,000 households. We are promoting a healthy and competitive rental housing industry by ensuring the impact of legislative and regulatory changes serve the best interests of landlords and tenants.

As a province-wide non-profit association, our objective is a balanced and healthy housing market with a vital rental-housing industry, choice for consumers, adequate government assistance for low-income households, and private sector solutions to rental-housing needs.

Human Rights and Rental Housing in Ontario

I. Raising Public Awareness on Discrimination Issues

As one of many things that are considered a necessity, ensuring fair and inclusive access to affordable, adequate and suitable housing is an important issue. From the perspective of a housing provider, discrimination against individuals and groups based on race, colour, ancestry, religion, ethnic origin, citizenship, gender sexual orientation, age, marital status, disability, receipt of social assistance is unacceptable and should not be tolerated.

Over the recent past, there has been substantial progress in strengthening protections against discrimination based on the above noted grounds, especially in the area of access to rental housing. As pointed out by the Ontario Human Rights Commission (the Commission), rights complaints in the area of rental housing are almost negligible, forming less than 4% (90 out of 2399) of total complaints to the Commission. Continued public education and awareness will help to reduce the incidence of discrimination even further.

In Ontario, we already have an adjudication body that resolves legal disputes between landlords and tenants. The Landlord and Tenant Board bases its decisions on the provincial *Residential Tenancies Act*, which spells out the specific rights and responsibilities of landlords and tenants. These responsibilities include a requirement to adhere to the Human Rights Code. In its deliberations, the Commission should review the extensive rights and remedies already available to tenants through the Landlord and Tenant Board.

We welcome additional efforts to raise awareness provided they are genuinely intended to help avoid instances of discrimination. If the Commission believes that housing providers and landlords are contravening the Code, the most effective remedy would be to provide relevant education and information directly to owners, managers and others who are suppliers of rental housing. While many housing providers who are members of industry associations such as FRPO are informed of their legislative rights and responsibilities, there may be providers who require additional direction on how the Human Rights Code impacts their business. Some measures the Commission may want to consider include:

- A “For Housing Providers” section of the Commission’s Website
- A booklet or fact sheet of Code requirements for housing providers and landlords
- Education seminars for housing providers and other industry professionals
- An anonymous telephone service for housing providers who have inquiries about their obligations under the Code

Rather than encouraging complaints from tenants for the purpose of reprimanding and penalizing housing providers who contravene the Code, a more sound approach in the

promotion of human rights would be to help avoid violations in the first place by providing up-to-date information and education to landlords and managers. We would be happy to work with the Commission in getting the word out to members of our industry.

Recommendation 1

To help reduce or eliminate discrimination, we recommend the Commission directly provide education and information regarding Code requirements specifically for housing providers.

II. Barriers and Challenges to Affordable Housing

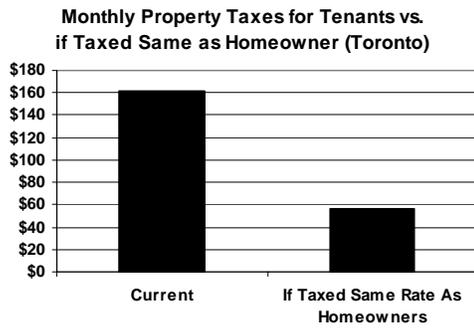
a) Property Tax Constructive Discrimination

The multi-residential property tax in Ontario's largest centres constitutes the most regressive tax in Canada. It drives up the cost of the rental housing where the lowest income households in our society live by as much as \$100 per month. As the Commission points out, "those who live in rental housing are persons, typically, who have lower incomes and who are disproportionately vulnerable to discrimination and therefore identified by the Code". The current property tax treatment of rental households by municipalities constitutes constructive discrimination and therefore requires action by the Commission. This ongoing discrimination has been occurring because of the demographic make-up of tenants: with high proportions of vulnerable households, recent immigrants, the poor, etc., tenants do not have as much political clout in municipal politics.

The Commission should tackle this constructive discrimination directly. It should require that municipal governments begin moving towards equalization immediately. This one reform alone has the potential to reduce or eliminate the housing affordability problem of hundreds of thousands of low income renters in the province.

In Toronto, a multi-residential renter is paying on average about \$100 more per month than they would pay if they were taxed at the same rate as home owners (see Chart 1, below), yet they have half the income of homeowners. When averaged across all municipalities we find the same result: tenants who face over double the rate of taxation, yet have half the income of homeowners (see Chart 2). Chart 3 further below gives a few more examples of the tax rate differential between owners and renters in several municipalities.

Chart 1



Source: FRPO, 2004

Chart 2

Average Income vs. Property Tax Rate for Renters and Homeowners, Ontario, 2004



Source: 2001 Census and FRPO based on Municipal Financial Information Returns.

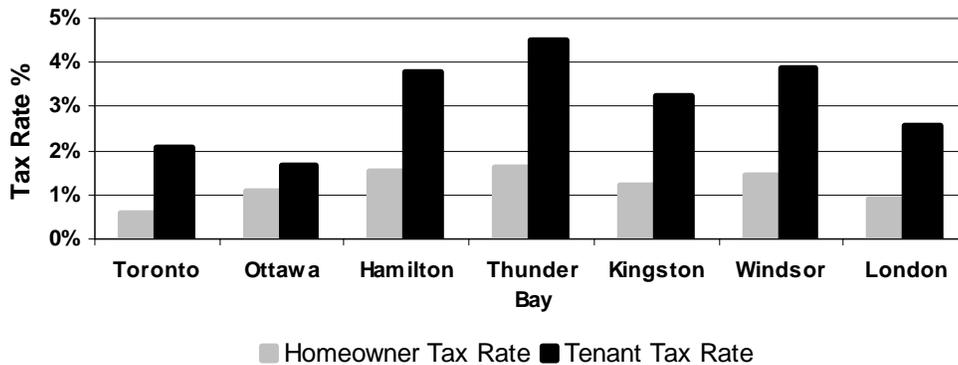
Provincial legislation requires that the full amount of property tax reductions be passed on to tenants. So any property tax reductions that result from the Commission taking action will be passed on directly to tenants.

The discrimination against tenants by municipal governments in the form of inequitable property taxes has been recognized by numerous provincial government studies, most recently the 2002 Beaubien Report to the Minister of Finance which recommended:

- Multi-residential properties be combined with the residential property class
- The municipal tax rate on multi-residential properties be reduced to the residential rate
- That municipalities be permitted to distribute the cost across all property classes, rather than shifting it entirely onto the residential class

Chart 3

Property Tax Discrimination Against Tenants Across Ontario



Source: FRPO Survey of Municipalities, 2007

While the Ontario government took measures in the late 1990's to address this issue by passing legislation which limited tax increases on over-burdened multi-residential properties, in 2004 the province stepped backward and opened the door for many municipalities to increase already excessive multi-residential tax rates.

This tax is not only discriminatory, it is regressive considering the much lower average household incomes earned by tenants. The average homeowner has double the income of the average renter. Given the current average rent in Toronto of just over \$1000, a \$100 tax reduction would translate into almost a ten percent rent reduction.

Recommendation 2

If the Commission wishes to address the area of discrimination against tenants that has the biggest negative impact on affordability, we recommend it protest the inequitable property taxes imposed by municipal governments.

b) Nimbyism: A Barrier to the Supply of Special Needs and Affordable Rental Housing

For many low income households, or those with special physical or mental needs, the type of housing most accessible to them is that found in higher density rental housing. Unfortunately, local government land use, zoning and planning policies discourage this form of housing development. In many cases, these policies are shaped by community and public opposition to intensification throughout Ontario, and political barriers are often thrown in the way of affordable or supportive housing developments due to negative public attitudes towards special needs groups.

Barriers to Special Needs Housing

Nimbyism creates formidable barriers to special needs housing, such as dwelling structures designed, constructed or modified for disabled access. Housing for those with special needs must often be located in established neighbourhoods with close proximity to support services – as a result there are limited available sites for such housing. Options for those with special needs who require a particular form of housing are even more limited.

Local opposition to new supportive housing discriminates against those with special needs, while efforts to fight NIMBY opposition through the legal process costs housing providers significant money and delays the building of affordable and supportive housing.

Increased powers and authorities being delegated to municipal governments from the provincial government are only making this situation worse. While provincial and federal governments are allocating funding and resources towards these much needed accommodations, too often funds for special needs housing are wasted on legal battles to win local planning approvals. Without clear direction from the provincial government to prevent discrimination at the municipal level, the local planning process will continue to discourage the development of special needs housing.

NIMBY opposition against special needs housing is often manifested in the following ways:

- Restrictive zoning bylaws
- An onerous planning and land-use application process
- A confrontational public consultation process
- Political opposition and delay tactics in the form of NIMTO (“Not In My Term of Office”)
- The sale of publicly owned lands for special needs housing is thwarted

Many of the same barriers NIMBY imposes on new special needs housing contributes to obstacles against new affordable housing for other lower income groups. The municipal public consultation process contributes to fueling neighbourhood opposition to higher density housing projects, while requirements contained in zoning and land-use bylaws create formal barriers to rental housing development. The Commission could play a helpful role in alleviating this type of discrimination by advocating in support of the following:

- **Strong Provincial Policy Statements:** the province must provide clear direction to municipalities to ensure an adequate supply of land be made available for development. This should mean expanding the available land supply, closer provincial monitoring of municipal performance in meeting targets, and incentives for municipalities that meet or exceed targets. Provincial direction should address the need to eliminate the effects of NIMBY opposition as early as possible in the planning process.
- **A Strong Ontario Municipal Board (OMB) With a Clear Mandate:** the province needs to ensure that the OMB has the ability to overturn local decisions that prevent affordable housing development based on NIMBY reaction. The local interest (or the perceived local interest) is not necessarily in the provincial interest. We are fortunate in Ontario to have an institution, the OMB, which can review local decisions against the provincial interest. To break down barriers to new housing supply, the OMB’s mandate must be strengthened to ensure development decisions can review local concerns against the provincial interest in creating new opportunities for affordable housing.
- **More Provincial Intervention:** the province should intervene at the OMB when development applications are being opposed by municipalities, to ensure that the provincial interest in ensuring an adequate supply of housing is met.

Recommendation 3

We recommend the Commission prevent discrimination by municipal governments against new special needs and affordable housing supply by ensuring the planning process places the provincial interest ahead of local community opposition.

c) The Need for More Shelter Allowances

The Commission's Background Paper states, "When properly funded and operated efficiently, social housing has been one of the most effective ways of providing affordable and adequate housing to Ontarians". There is, however, much evidence to support the use of alternative initiatives, such as housing or shelter allowance subsidies, as a more effective and equitable way of providing housing assistance to those in need. In fact, the Ontario government in its most recent 2007 Budget allocated \$185 million towards creating shelter allowances for an additional 27,000 low-income households.

Social Housing Projects Create Barriers and Inequity

Ontario's recent \$185 million housing allowance policy initiative is a positive step towards addressing affordability issues, and helps low-income families afford housing without the negative and inequitable outcomes associated with new social housing construction. The Commission, before advocating in support of more social housing, should be aware of some of its adverse impacts (some of which worsen discrimination) on low-income tenants, including:

- Segregation and ghetto-ization of low-income groups
- Impeded labour mobility – social housing tenants can only live in specific locations and miss out on employment opportunities that are too distant from social housing properties
- Inequitable rationing – needy households are forced onto first-come-first-served waiting lists
- Lack of autonomy – social housing tenants lack the freedom to live where they would like
- Lack of privacy – By living in social housing, tenants are forced to disclose their low-income status and may face even more bias by being publicly stigmatized.

Portable housing allowances alleviate many of these negative consequences of social housing, and are a much more cost-effective policy for assisting low-income households to access housing. In addition to the affirmation by Ontario's recent initiative of shelter allowances as a positive alternative to social housing, portable housing allowances were introduced in Saskatchewan and have also been successfully used in the provinces of British Columbia, Manitoba and in Quebec, which is the only province to have a universal entitlement program.

Recommendation 4

To provide more effective support and reduce discriminatory barriers against low-income households, we recommend the Human Rights Commission advocate for a long-term universal shelter allowance program in Ontario.

d) Eliminate Rent Controls

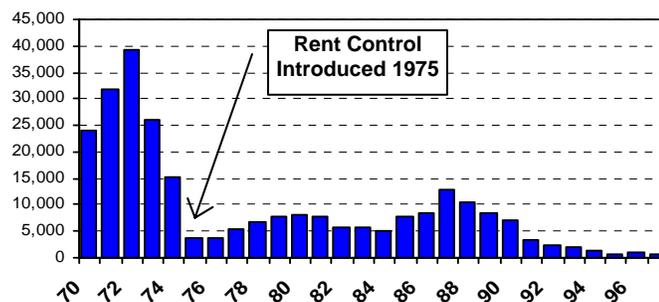
Rent controls have been shown conclusively to reduce housing supply, while increasing demand, which worsens the housing affordability problem for low income households. With high vacancy rates in Ontario, this is an opportune time to eliminate them. At least eight Nobel Laureates have opined that rent controls are a terrible policy. One of the reasons that these knowledgeable people are against rent control is because they reduce the availability of affordable housing, and it is most often the poor and vulnerable who are most impacted.

Ontario's experience has shown that the imposition of rent controls in 1975 resulted in lower average vacancy rates and a long-term decline in the construction of new rental housing. Inevitably, rent controls lead to lower quality housing and less choice for renters.

Advocates for rent control have long argued that such price regulation leads to more supply of affordable units and better quality through tighter and more rigid control of the market by the government. Unfortunately, rent controls always result in the exact opposite. The artificially lower price after rent control results in excess demand and hoarding of rental units by households who could easily afford market rents. Lower-income tenants are then shut-out of a tightened rental market. Ironically, the exact conditions the Human Rights Commission is trying to prevent – discrimination against lower income tenants and dubious screening of prospective renters – are inevitably exacerbated under a rent controlled environment. This is a natural reaction to the abnormally high demand facing providers of rental housing in a price-controlled environment.

Unable to increase rents to keep up with wages, capital, taxes, interest rates and utility costs, properties under rent control inevitably decline in quality. As housing providers struggle just to maintain their units in a good state of repair under rent control, investment in new rental housing grinds to virtual halt. As Chart 4 below shows, there was a 96% decline in new rental starts by the mid 1990's compared to average pre-rent control levels since 1975 in Ontario.

Chart 4
Ontario Annual Rental Starts 1970 to 1998



Source: Ministry of Municipal Affairs and Housing and CMHC

As shown in the Appendix in Chart 10, since the province allowed the setting of market rents on vacant units in Ontario almost a decade ago, the number of new annual rental starts has increased steadily, almost 400% higher in 2006 than in 1997. Also, a 2001 Survey conducted by FRPO indicated that with the easing of rent controls in the late 1990's, landlords had infused increased capital expenditures into their buildings, with per unit investments increasing from less than \$400 in 1995 to almost \$1,200 in 2000, a 200% increase in just five years. The elimination of rent control on vacant units in Ontario in 1998 also led to rents being reduced in real terms, with 2007 inflation adjusted rents now near late-1990's levels.

Recommendation 5

With evidence, and a large amount of it, clearly showing the negative impact on low income tenants from rent control, we recommend that the Human Rights Commission advocate against any form of price regulation in rental housing.

e) Demolition and Redevelopment

There is a growing trend of municipalities implementing policies to prevent the demolition, redevelopment and intensification of old rental buildings. These misguided policies create a barrier to the supply of affordable housing by:

- Reducing the number of available affordable home ownership opportunities for tenants
- Discouraging much needed capital investment in older buildings and aging neighbourhoods
- Deterring investment in new rental housing by reducing the value of the property asset due to its restricted use

Conversion policies are, in many respects, similar to rent controls in this matter. They are brought in as a proposed solution to a real or perceived housing shortage. In fact, they exacerbate the shortage, by massively discouraging investment in rental housing. It is not surprising that very little modern rental supply comes through traditional purpose-built rental housing. The presence of current rent controls, the presence of existing municipal demolition-conversion laws, the history of regulation of the industry in Ontario, and the constant threat of new and tightened regulation, make investment in purpose-built rental housing less and less attractive.

Demolitions and redevelopment, when they occur, almost always result in the construction of more - and better - housing units than existed before. Redevelopments from conversions and demolitions increase the overall housing supply and improve the vitality of communities and neighbourhoods. Restrictions on these redevelopments limit the capacity of older properties to house a growing population and reduce available resources needed to renew and revitalize buildings that are in decline.

Conversion/Demolition Policies Violate People's Rights

Rights of Tenants

Policies which prevent conversions are viewed negatively by many tenants, who would appreciate the right and the opportunity to purchase their units. In a society where an increasing percentage of the population wishes to own rather than rent, the rights of tenants to have access to as many affordable home ownership opportunities as possible should be protected.

A large study by the U.S. Department of Housing and Urban Development (HUD) found that conversions clearly provided for a disproportionately high number of ownership opportunities for single people, especially single females and visible minorities, in comparison with the rest of the ownership stock. When tenants are able to easily purchase a home due to conversion opportunities, the result is an overall reduction in the demand for rental housing, and this benefits all other existing tenants, especially those with lower incomes.

Rights of Property Owners

When governments take away the right of a rental housing property owner to change the use of their property, it is an expropriation of their property rights. This perception is exacerbated when such rights continue to be provided to owners of other property classes. Governments have every entitlement to assist needy tenants, indeed industry associations such as FRPO have advocated for many effective policies to provide assistance to lower income renters. It is morally wrong, however, for any level of government to abuse the rights of a small minority of property owners by confiscating the value of their assets and destroying their livelihood.

Advocates of policies to prevent conversions and demolitions falsely argue that allowing the conversion of rental housing into other uses reduces the supply of rental housing. In fact, conversion of ownership housing to rental housing over time has massively dwarfed conversions of rental to ownership. This fact, coupled with the overall decline in the percentage of Ontarians who rent, means that such policies are unnecessary, and for reasons discussed above, actually reduce the supply and quality of affordable accommodation choices.

FRPO also reminds the Commission that when municipal governments argue in favour of policies to prevent conversion of rental housing to other uses, it is often based on the rationale of protecting the tax revenue that is generated by property tax rates on rental buildings that are many times higher than tax rates imposed on condominiums and houses. This is the same property tax inequity that we strongly argue is a severe form of constructive discrimination against tenants by municipal governments.

Recommendation 6

To improve the overall supply and quality of affordable housing opportunities, it is recommended that the Human Rights Commission oppose government policies that prevent the conversion and demolition of rental properties.

III. Discrimination in Rental Housing

a) Protection of legitimate landlords' business practices

i) Regulation 290/98 and the Selection of Prospective Tenants

The Human Rights Commission must recognize that housing providers have a legitimate need to assess prospective tenants, so long as they do so in a manner consistent with the Human Rights Code. FRPO is satisfied that Regulation 290/98 under the Human Rights Code prescribes fair, equitable and legitimate business practices permissible to landlords in selecting prospective tenants for residential accommodation. These business practices are carried out in order to prevent undue economic hardship on the housing provider.

There is no need to re-interpret or amend this Regulation.

The right of a housing provider to select a prospective tenant as a customer remains one of the most important ways for property owners to maintain the viability of their businesses and their livelihoods. With provincial residential tenancies legislation providing tenants with the security of lifetime tenure, selecting a tenant often proves to be the most important decision a housing provider can make, and is indeed often the most critical step a housing provider can take to avoid undue economic hardship.

Regulation 290/98 Balances the Rights of Tenants and Landlords

Under the current interpretation, landlords may request income information from prospective tenants only if the landlord also requests credit references, rental history and credit checks. Income information can only be considered together with all the other information the landlord has obtained. This prescribed process offers a fair and equitable balance between protecting the rights of tenants to apply to live in private rental housing, and protecting the rights of landlords to carry out legitimate business practices and avoid economic loss.

Risk Management in Rental Housing

Landlords face a fundamental problem in that agreements with tenants to rent property are in fact a credit transaction. The landlord depends on the integrity and credit-worthiness of the prospective tenant.

When a case of non-payment occurs, the result is a long, costly process for the landlord to gain back the right to rent a unit to another tenant. In Ontario, it currently takes an average of almost 80 days to complete this process and on average costs the housing provider over \$3000.

Due to this significant risk, landlords require a process to select tenants that helps to avoid undue economic hardship to their livelihood caused by cases of non-payment and default. This process must include any legitimate business practice that helps a landlord assess a prospective tenant's ability or willingness to provide regular rent payments.

Dealing with Cases of Rent Non-Payment

In fairness to other tenants, one solution to helping housing providers manage financial risk would be legislative changes to allow the expedited eviction of non-paying tenants. When the *Residential Tenancies Act* was introduced, similar provisions were passed into law that allowed the expedited eviction of tenants who cause severe damage or impaired the safety of others.

If landlords faced reduced risk and lower costs related to non-payment cases, they would have more assurance that prospective renters will not endanger their financial security and ability to earn a living. The long term result of such a policy tool would be enhanced accessibility to rental housing for lower income households. To further reduce cases of rent nonpayment, governments should increase resources for social assistance payments and rent banks to help lower income households.

ii) Requiring Prospective Tenants to Obtain a Guarantee

Section 2(1) of Regulation 290/98 under the Human Rights Code permits landlords to require prospective tenants to obtain a guarantee for the rent. A landlord should be entitled to ask for a guarantor when there is any doubt about a prospective tenant's ability to meet any of the lease obligations, based on a review of all of the information gathered.

There are many instances that justify a housing provider's request for a guarantee. These include but are not limited to:

- When there are concerns that a prospective tenant may not be able to pay the rent
- When money to pay the rent is coming from another person rather than the tenant
- Lack of tenancy history
- Insufficient credit record

The importance of a guarantee request is that it allows prospective tenants, especially lower income renters, to enhance their access to rental housing by providing assurance to the landlord that rent will be paid, and should the rent not be paid the landlord can take collection action against the guarantor. The guarantee request, where applied, is an important part of the assessment of a prospective tenant and permits applicants to appear as favourable as possible as a renter.

The request for guarantees is extremely common as an acceptable and legitimate business practice among any vendor or lessor conducting a credit transaction for a customer, such as mortgage lending for home purchases. It is appropriate that requests for a guarantee be fully permitted in the rental-housing sector.

Special Rules for Students

Students who are renters often rely on funds from another person to pay for their living expenses. In these cases, housing providers must be able to rightfully request guarantees and information related to the credit worthiness of the other person paying the rent.

Students often have little or no employment, tenancy or credit history of their own. Students also typically have rent-to-income ratios in excess of standard measures of affordability. Despite this, institutions such as the Canada and Mortgage Housing Corporation do not consider students to be in core housing need as they are clearly in a transitional life phase.

Landlords, however, despite the increased financial risk of renting to those without incomes or credit history, are very accommodating to students who require rental housing while they attend school. To best facilitate access to rental housing by prospective student renters, landlords should be permitted to apply normal business practices, including:

- Requests for guarantee of payment of rent
- Requests for credit and income information of the guarantor
- Request for guarantee for potential payment to repair damage to a rental unit
- Provision of evidence of funding when the rent is paid from other sources (eg: student loans, bursaries, scholarships)

iii) Last Month's Rent Deposits

One key legitimate business practice that allows landlords to manage risk is the requirement in Ontario of a rent deposit that is no more than the amount of rent for one month. This deposit provides essential security for the landlord, and is returned to the tenant in the form of rent for the last rent period before a tenancy terminates. Landlords are also required to pay annual interest on the rent deposit directly to the tenant. In Ontario, this is **the only type of security deposit** a landlord is allowed to collect.

The requirement of this deposit firmly establishes a commitment between the tenant and landlord to meet their respective responsibilities under the *Residential Tenancies Act*, as well as their respective obligations under the lease agreement. The requirement for these deposits exists in virtually every other provincial and state jurisdiction in North America, and the amount typically varies between one and one-and-a-half times the monthly rent.

Along with the popularity of this requirement, there is no evidence that the last month rent deposit reduces access to rental housing or makes housing less affordable. The rent deposit is in fact only a one-time issue for tenants, for if they move to another rental property, they can use their last month's rent towards the deposit of their new accommodations.

Landlords play a critical role in the housing market by supplying rental accommodations. The elimination of the right to collect a last month's rent deposit would discourage participation and investment in rental housing and would result in housing providers becoming more discerning in selecting prospective tenants. The Human Rights Commission should recognize that the current rules relating to rent deposits are fair to tenants and serve as a legitimate and justifiable business practice for housing providers.

Recommendation 7

To ensure the ongoing viability of Ontario’s private rental housing sector in its efforts to provide quality accommodations to hundreds of thousands of households, FRPO strongly recommends the Ontario Human Rights Commission:

- **Recognize the appropriateness and acceptability of the current correct interpretation of O. Reg. 290/98 under the Human Rights Code**
- **Advocate in support of increased social assistance payments and rent bank resources to prevent evictions**
- **Improve risk management for housing providers by advocating in support of legislative changes to expedite the eviction of non-paying tenants**
- **Recognize and permit continued right of housing providers to request guarantees for payment of rent and requests for additional information from prospective student renters**
- **Recognize the last month’s rent deposit as a legitimate business practice carried out by housing providers**

b) Inclusiveness and Accommodating Special Needs

(i) Conflicting Legal Obligations

Generally speaking, the rental housing industry caters to a diverse market place and actively promotes “niches” within that market place. In response to tenant demand, some housing providers target students; others market to “families”; and still others market to “adult” lifestyle. In many cases, by virtue of location and quality, some owners actively market to persons of limited income whereas others market to tenants who seek “luxury” accommodation. As a practical matter, tenants assume ownership of the choices they make with respect to the nature and quality of accommodation. In all of the foregoing instances, it is conceivable that the owners expose themselves to complaints of discrimination.

The greater challenge for owners and tenants arises in the context of accommodation of persons with physical or mental disabilities, where owners and tenants have much less control over the circumstances and choices they make. Under the provisions of the *Residential Tenancies Act* (“RTA”) the landlord and tenants have a statutory duty not to interfere with other tenants’ reasonable enjoyment of their rental unit or the residential complex. In cases where the manifestation of a tenant’s disability is disruptive to other residents’ reasonable enjoyment of their homes, the landlord has a legal duty to take legal action to stop the disruptive activity. One example where these circumstances may arise is where a tenant who is hard of hearing substantially increases the volume of their stereo or television at late hours thereby disturbing other tenants and residents.

Landlords confronted with a disruptive tenant will typically first notify the tenant of the problem and ask that the disruption stop. If the disruptive conduct does not stop, a

landlord is legally required, under the RTA, to give an eviction notice to an “offending” tenant (see S. 64 of the RTA). Landlords who have failed to give such a notice have been found to have breached their statutory obligations and ordered to pay an abatement of rent to tenants whose enjoyment of their own rental unit has been disrupted.

In some cases, a landlord may seek termination of a tenant’s tenancy where the manifestation of the tenant’s disability is such that it imperils the health and safety of other residents or results in damage to the rental unit or residential complex (ss. 62, 66 RTA). A failure by the landlord to take legal action exposes the landlord to legal liability to residents who are adversely affected by the offending tenant’s behaviours.

A tenant who is physically disabled may also present a challenge, not so much to other tenants but to the landlord, in circumstances where there are physical barriers present which restrict the tenant’s ability to use a particular type of accommodation. For example, a tenant who resides in a two storey townhouse (with a full basement and laundry facilities in the basement) who becomes disabled and requires wheelchair access can pose a substantial financial and physical challenge to the owner of that townhouse unit. This is particularly the case where the townhouse unit is a condominium unit rented out to the individual. The challenges in such a case are multi-layered; involving resolution of conflicts with the declaration and by-laws of the condominium corporation; conflicts with municipal building codes and street set back issues, for example in connection with the construction of a wheelchair ramp; physical and financial challenges of making it possible for the tenant to use the second floor and basement of the townhouse unit; and related safety issues.

In all of the areas of conflict described above, it is recognised that, regardless of most circumstances, the provisions of the Code “trump” all conflicting legal obligations and therefore the Code has supremacy when sorting out the rights and responsibilities of all parties dealing with issues of “accommodation”.

(ii) The Duty to Accommodate: Disabilities Which Adversely Affect Tenants’ Reasonable Use and Enjoyment

Where the manifestation of a mental or physical disability adversely affects other tenants’ reasonable use and enjoyment of their rental units, landlords must take steps to “accommodate” the person with the disability. Landlords recognize and accept that they also have a legal obligation to the tenants whose families’ lives and safety may be adversely affected; however, the Commission appears to take the view that the rights of other tenants are secondary to those of the person who must be accommodated under the Code.

Landlords are prepared to accept that they have a duty to “accommodate” persons with disabilities and that the principles applicable to the duty to accommodate are as follows:

1. Respect for dignity;
2. Individualization; and
3. Integration and full participation.

We believe the industry's position in this regard is consistent with the position set out in the Commission's Policy Paper.

The shortcoming with the Commission's Policy Paper is that it fails to place appropriate emphasis on the person who requires accommodation to:

- (a) make their needs known to the landlord;
- (b) participate in the accommodation process; and,
- (c) assume an appropriate level of responsibility and ownership of the accommodation process.

In the context of eviction proceedings, for example, human rights issues are generally not raised until an eviction application has been started and a hearing has been scheduled and, even then, there is no obligation on the tenant to raise the human rights issue until the day of hearing. Once the issue of human rights is raised, the Landlord and Tenant Board typically places no onus on the tenant to assist the Landlord in determining the nature of the disability; the link between the disability and the disruptive behaviour; and no proposals for solutions by the complaining tenant. The assumption seems to be that the Landlord must divine this information and come up with a solution with no assistance from the tenant. Such assumptions are wrong and inconsistent with direction given by all courts with respect to the responsibility of the person who requires accommodation.

The Courts have long recognized and articulated the shared obligation of "accommodation" by, for example, employers, employees and an individual challenged with a disability. In the housing context, it has been recognized by the Courts that tenants need to be tolerant of behaviours of individuals suffering from a disability where such behaviours are disruptive; however, it is equally recognized by the Courts that there is a responsibility on the person engaging in disruptive behaviour to take responsibility for it in a way that respects the rights of others.

The industry urges the Commission, in the context of the principle of "respect for dignity" and "individualization" to make it clear that accommodation is a shared responsibility and that a key player in the process is the individual whose disability must be accommodated.

In the example of the townhouse unit given above, it is arguable that the most appropriate accommodation for the person with the disability would be for the individual, the landlord, and perhaps the condominium corporation to share the cost of relocating the tenant to a rental building which is fully wheelchair accessible with all living space on one floor and with laundry facilities accessible by wheelchair. Subject to the need for "individualization", it is submitted that this is an example of an appropriate solution which takes into account the need for all affected parties to participate in accommodation.

What the industry has found, particularly in cases originating from Landlord and Tenant Board/ Rental Housing Tribunal Members is that there is a tendency on the part of such

tribunals to place the onus entirely on the landlord to come up with appropriate accommodation. Having placed the onus on the Landlord, there is a second assumption that the only limit to the exercise of the duty (apart from health and safety issues) is financial ruin in the course of accommodation.

While the current assumptions by the Landlord and Tenant Board (and in some cases the Ontario Human Rights Commission) may be superficially appealing, as a practical matter they fail to take into account the very principles which the Commission bases the duty to accommodate on: the dignity of the person; individualization; and integration/full participation by the affected individual.

By ensuring that the person requiring accommodation participates pro-actively and co-operatively in the process, it is submitted that accommodation in a manner consistent with the principles espoused by the Commission will be achievable.

(iii) The Duty to Accommodate: Physical Challenges

If the Commission accepts that, in the context of individualization and respect for an individual's dignity, it is appropriate for the individual with a disability to accept ownership and responsibility for accommodation, then accommodation is much more likely to occur even in those cases where physical barriers may appear, on a superficial level, to prevent integration and full participation by the individual. The Commission is right to assert that rental housing is a basic right to which all persons are entitled without discrimination on the basis of handicap or disability. The Commission should not adopt policies, however, which dictate that rental housing in a specific type of building, in a specific neighbourhood, with specific rent ranges is a right that is inherently tied to the right to housing.

The Commission appears to recognise, for example, that there is not a legal obligation for a landlord to "accommodate" a low income person seeking luxury rental accommodation by paying the difference between what the tenant can afford and what the rental rate for the unit actually is. This is so even though such a form of accommodation could be achieved without "undue hardship" as that term is defined in the Code (ie: to the brink of financial ruin for the housing provider). In the same way, the Commission ought to recognise that there are cases where physical challenges are best met through re-location of a tenant to premises which are better adapted to meet the physical challenges of the individual so that the individual can actively participate as a tenant.

Again, the example of the townhouse condominium unit above is one where physical challenges require some form of accommodation. One approach is for the Commission, as it often does, to simply take the position that the onus is on the landlord to spend whatever amount is necessary in order to ensure that the tenant has full wheelchair access to the townhouse unit and to all floors within that unit regardless of what building codes and condominium documents say. It is the industry's view, however, that the end result in this example will do little to foster respect for the disabled individual's dignity or privacy. In contrast, by having the individual take ownership in the accommodation process, it is far more likely that appropriate and safe housing will be established for the affected individual.

It is the industry's view that the Commission appears, in its Policy Paper, to favour modifications to the physical infrastructure of multi-residential buildings regardless of the cost to the industry in achieving such modifications. This apparent bias exists regardless of the fact that there is an ample supply of accessible rental housing stock in most municipalities throughout Ontario. Again, it is a case of the Commission failing to appreciate that the duty to accommodate is best exercised in the broader context of rental housing, rather than demanding that every rental unit be fully accessible to accommodate every physical limitation.

While cost is not a relevant factor in the assessment of the legal duty to accommodate an individual, it is a relevant factor in the formulation of appropriate policies and standards which seek to assist rental housing providers **and** the person requiring accommodation of special needs with an appropriate solution.

As is the case with most new standards imposed under the Ontario Building Code, accommodation requirements should be grandfathered, and only applied to recently constructed properties. It is reasonable to expect current and future developers of new buildings to design and build inclusively. The obligation to redesign and retrofit older buildings, however, should be avoided.

To the extent that the Commission seeks sweeping changes to legislation in order to require mandatory retrofitting of older buildings in order to broaden the degree of "accessibility" the housing industry takes legitimate exception. The Commission itself has emphasized the need for "individualization" of accommodation of persons with disabilities. Generic legislation is inconsistent with the concept of individualization and inconsistent with the notion that the individual ought to accept some responsibility for identifying and co-operating an implementation of appropriate accommodation.

It is further submitted that where it is determined, cooperatively by the parties, that the appropriate accommodation will require structural modification, then the cost of such physical modifications should be offset by public funding or other financial incentives made available through governments rather than by the building owner and/or the person whose needs must be accommodated. This way, it is much more likely that the parties will work together to achieve the goal of accommodating a person's disability through physical modifications without regard to cost.

The housing industry also supports the promulgation, under S. 17 (3) of the *Code*, of Standards for assessing what constitutes undue hardship. This is particularly the case where what is to be balanced are the rights of an individual under the *Code* versus the rights of tenants to be free from interference with their reasonable enjoyment; or balancing the right of the tenant to accommodation under the *Code* versus the right of other tenants to safety and security within their own building. For example, an individual suffering from Alzheimer's disease who is responsible for starting a fire as a consequence of their disability may pose a risk to the safety of other tenants and their families. It would be helpful to all affected parties if the Commission were to develop appropriate standards for these and other instances of safety issues (eg. a diagnosed pedophile living in a family oriented building).

The development of Standards for assessing what constitutes undue hardship in the context of rental housing is important because the failure to prescribe standards exposes members of the housing industry to *ex post facto* rationalization by Tribunals and Courts as to what the landlord “might have” or “could have” or “should have” explored. In such scenarios landlords are easily held liable by the equivalent of “arm chair quarterbacks” assessing behaviour through the crystal clear lens of hindsight.

Rental housing providers are particularly vulnerable when appearing before the Landlord and Tenant Board because the procedures established under the *Residential Tenancies Act* do not allow for any disclosure of evidence or issues by tenants prior to most eviction hearings and, in many cases, there is virtually no onus placed on a tenant to provide evidence of their disability or the manifestations of their disability which give rise to conduct which may warrant an eviction. Again, there seems to be a general presumption that the landlord is solely responsible for “accommodation” and the only limitation which seems to be considered by triers of fact is that of “cost” to the point of financial ruin. Given the general lack of expertise and knowledge by persons who require accommodation; by rental housing providers; and by Landlord and Tenant Board Members, it would be extremely helpful if standards for assessing what is undue hardship could be established by the Commission. In this context, it would also be extremely helpful if the Commission would consult with the industry much more fully in formulating standards and in formulating guidelines and policies relating to the shared duty to accommodate persons with disabilities.

Recommendation

The rental housing industry recommends the Commission develop policy and guidelines for dealing with “accommodation” of persons with disabilities.

- Such guidelines and policies should ensure that the person who seeks accommodation is charged with responsibility to work cooperatively in achieving a solution that is respectful of the rights of other persons and that is respectful of the individual’s own dignity and privacy.
- Such policies and guidelines must place some onus on the person who requires accommodation to communicate needs to the housing provider and to work cooperatively with the housing provider and, if appropriate, with other agencies in order to achieve individualized accommodation which best respects the dignity and privacy of the individual.

IV. Human Rights and Social Issues

a) Homelessness

Homelessness remains a serious social problem in Ontario. Based on extensive research and policy work done in this area, there are many other significant contributing factors, other than discrimination, affecting the small segment of the population that is unable to access any form of adequate housing. As noted by the 1999 Report of the City of Toronto's Mayor's Task Force on Homelessness (Chaired by Dr. Anne Golden), many other factors have a critical impact on the causes of homelessness. These factors include:

- the incidence and depth of poverty among the homeless
- low wages and unstable employment opportunities for low wage workers
- inadequate government social assistance
- lack of support programs for the mentally ill
- domestic abuse and family breakdown
- inadequate support for vulnerable groups such as aboriginals who are not well served by mainstream programs

The vast majority of factors leading to homelessness are the responsibility of government to ensure adequate and effective resources are provided to needy individuals and households. For those who are affected by the factors listed above, there is likely little or no direct link between alleged discrimination by housing providers and the incidence of homelessness. To blame homelessness on discrimination by housing providers is to minimize the severity of the problem and ignore the root causes leading to housing being completely unaffordable and out of reach for those who face barriers due to illness, disability, family breakdown, or even marginalization by broader direct discrimination by society in general against certain groups such as aboriginals.

As advocates for rental housing we stress that housing providers are committed to providing quality housing to Ontario's households, not withholding it. We strongly support any efforts by the Commission to advocate in favour of urging government actions to address the root causes of homelessness and help even more households afford better rental housing.

b) Housing Protections Through Social and Economic Rights

As stated in the Commission's Background Paper, there has been extensive work by various institutions to establish improved rules to address economic inequality and recognize the rights of people who may be discriminated against based on economic or social status. FRPO believes that the Commission can best help address this matter through continued broader public education and awareness of issues facing people of all levels of social and economic status.

We do not recommend extending this effort to include public policy and legislative recommendations or adding “social condition” or “economic condition” to the Ontario Human Rights Code.

First, it should be the primary objective of the Commission, and indeed governments and society, to first address the root causes of depressed social and economic condition and focus efforts on assisting affected households to escape these conditions. It is unacceptable to admit that poverty cannot be defeated and that our actions should be relegated to enshrining economic hardship as a legally recognized “condition”.

Past experience shows that economic policies *can* succeed in alleviating poverty and help to improve income and employment opportunities. This objective should not require the force of law in our province or country, indeed we believe that this objective is one that is readily embraced by governments, institutions and the private sector.

Secondly, we have concerns related to the enforceability and legality of extending the Human Rights Code to include social or economic condition, or using other provisions to provide new rights in this area. The status of poverty or economic hardship is difficult to define – there are many definitions and designations to categorize individuals and households based on wealth, income or economic status. These characteristics vary considerably based on geographic location, age, education, occupation and other factors. For example, one income level in Toronto could have a vastly different impact on someone’s status compared to the same income or level of wealth in a smaller town or in rural Ontario.

Housing providers can play an effective role in addressing direct discrimination based on established grounds already identified in the Code. Addressing discrimination based on social or economic condition, however, would be much more difficult if not impossible. Housing providers would also face increased risk and undue liability based on a vague or arbitrary notion of social or economic condition. We fear that many businesses and institutions, in addition to our sector, would be vulnerable to abuse from fabricated human rights complaints due to subjective or ambiguous claims from those who simply believe they are members of a distinct social or economic class.

Rather than proceeding into a legal quagmire concerning economic or social rights, we recommend the Commission focus on continued public education and awareness of how government and society can help meet the challenges of those affected by poverty and economic hardship.

Recommendations

FRPO recommends that the Human Rights Commission:

- **Focus efforts on promoting increased support for government assistance programs to alleviate homelessness and poverty**
- **Refrain from extending rights protection based on social or economic condition**

Conclusion

In reviewing the issue of discrimination and rental housing, the Commission considered many factors related to the current functionality of the rental housing market and its ability to serve tenants and low income households. FRPO has some serious concerns about the information presented by the Commission in its background paper, which we detail in the appendix to this submission. In summary, the Commission failed to give proper credit to late 1990's provincial housing policy reforms in improving conditions for renters, overlooked strong positive trends evident in today's rental housing market and neglected recent improvements in affordability for low-income households.

The Commission, also in its Background Paper, overlooked or did not provide appropriate focus on additional serious issues that relate to the rights of tenants. These include property tax discrimination by municipal governments, discrimination by local communities against higher density rental housing development projects, and rent control policies that reduce the supply and quality of rental housing. To further improve housing affordability, the Commission should provide stronger support for housing allowance initiatives that reduce the inequitable outcomes associated with social housing.

Design of accommodations for people with special needs remains an important issue. Clearer and more accountable guidelines are needed to address accommodation of persons with disabilities, while the obligation to fund any necessary changes and modifications to many older buildings throughout Ontario must rest with governments and society. It is impossible for a small number of landlords to carry out this responsibility.

Concerning the rights of landlords, the Commission must continue to recognize and support the ability of landlords to conduct legitimate business practices in the selection of prospective tenants. The current interpretation of Regulation 290/98 under the Human Rights Code balances the rights of tenants and landlords, and protects housing providers from undue economic hardship.

The Commission can also play a useful role in advocating for effective and rational policy solutions to alleviate homelessness and poverty. We do not recommend or support, however, any extension of human rights or recognition of any unique status in the area of homelessness, or social and economic condition.

To effectively reduce and eliminate discrimination, the Commission should focus on educating and informing housing providers of their obligations, and support public policies that foster a healthy rental market and cost-effective affordable housing solutions. We look forward to working with the Commission to achieve these shared objectives.

Appendix

Inaccuracy of the Commission's Background Paper

The Commission's Background Paper identified a significant number of commonly debated policy issues related to the affordability, accessibility and supply of rental housing. As a respected province-wide industry association that typically looks to learn from credible, un-biased research, FRPO can only express tremendous disappointment and frustration at the misleading and incorrect information contained in the background paper.

FRPO's key concerns with the Commission's Background Paper include:

- numerous factual errors;
- assertions about rental market conditions which are the opposite of the conditions demonstrated by factual information;
- political judgements about previous government's housing policies, based on incorrect information;
- omission of obvious factual information which would provide a contrary view to that laid out by the Commission in the document;
- indications of preferences for housing policies which have been discredited

An Incorrect Assessment of Rent Controls, the Tenant Protection Act, and other 1990s Housing Policies

The Commission's Background Paper incorrectly states that housing policies implemented in Ontario during the late 1990's negatively impact tenants. In the section of the paper titled "The Rental Housing Landscape in Ontario", numerous statements are put forth with little supporting evidence, and certainly with no semblance to reality.

The second paragraph on page five of the Background Paper is one which never should have been written by the Commission. The first problem with the paragraph is the lack of any factual information to support it. For example, it asserts that the following three policies "decreased the availability of affordable rental housing options":

- decreasing social assistance rates
- the cancelling of non-profit housing projects
- the elimination of rent controls by the Tenant Protection Act

The first problem with the paragraph is that it is rather political for an organization such as the Commission. We do not believe that the Commission should be evaluating the policies of the current or previous governments in this fashion.

The second problem is that the assertions are not supported by factual information for any of the policies. In fact, as the charts on the next page show, housing affordability

worsened in Ontario when policies were being pursued which the commission suggests increase the availability and affordability of rent housing. From the 1970s to the mid-1990s, Ontario built huge amounts of social housing, increased welfare rates, and tightened rent controls the whole time. All through this period, housing affordability and availability worsened, when you look at factual information (as shown by the six charts on page 30).

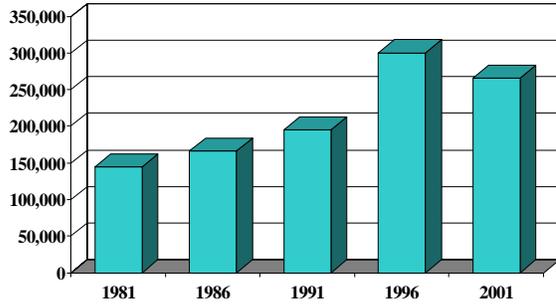
The third problem is that the implied statement that certain housing policies are good and others are bad. One of significant interest to FRPO is the Commission's assertion that the loosening of rent controls reduced the availability and affordability of rental housing. At least eight Nobel Laureates have opined that rent controls are a terrible policy. One of the reasons that these knowledgeable people are against them is because they reduce the availability of affordable housing, and it is most often the poor and vulnerable who are most impacted.

As well, it is inaccurate when the Commission's Background Paper states that "rent controls were eliminated on vacant units" in 1998. In fact, vacancy decontrol-recontrol only allows landlords and tenants to negotiate starting rents in vacant units – once set, the rents are then regulated again by the provincial government guideline.

A related problem was the false assertion by the Commission that the Tenant Protection Act made it easier for landlords to evict tenants. While this is a common assertion of tenant advocates, the reality of the difficulty faced by landlords in Ontario in evicting tenants is quite another thing.

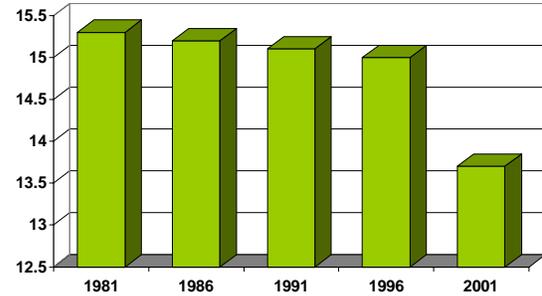
What follows is a review of just some of the factual information available which would have allowed the Commission to properly assess the impact of policies introduced in the mid-1990s, particularly the introduction of the Tenant Protection Act (TPA).

Renter Households Paying More Than 50% of Income in Rent, Ontario



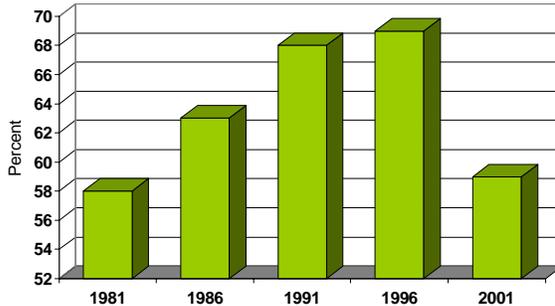
Source: Statistics Canada Census, various years

Average Rent as a Percent of Average Household Income



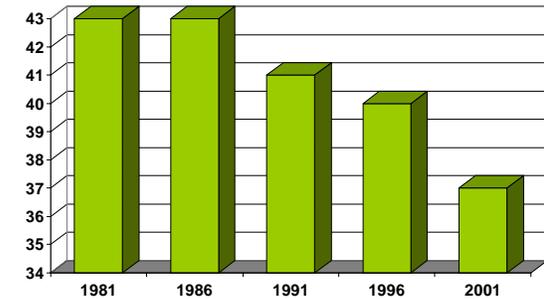
Source: Census, various years.

Average Gross Rent Vs. Lowest Quintile Family Income, Ontario



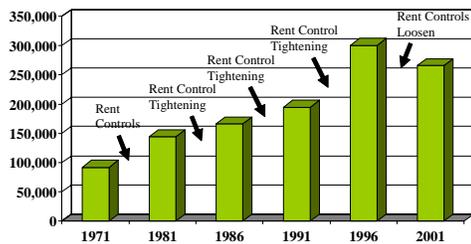
Source: FRPO based on Census and Statistics Canada data.

Average Gross Rent Percent of Average Per Capita Income Ontario



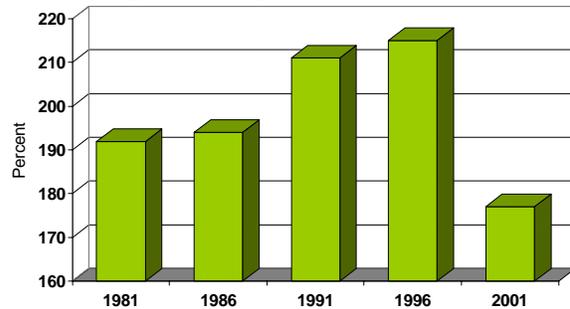
Source: FRPO based on Census and Statistics Canada data.

Renter Households Paying More Than 50% of Income in Rent, Ontario



Source: Statistics Canada Census, various years, 1971 estimated based on Miron & Cullingworth (1983)

Average Rent Vs. Lowest Quintile Family Per Capita Income, Ontario

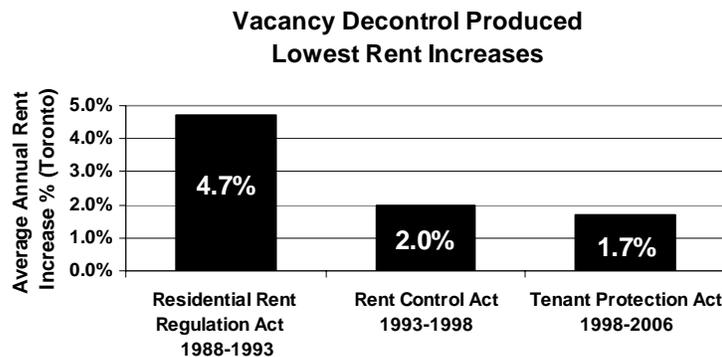


Source: FRPO based on Census and Statistics Canada data.

The Tenant Protection Act Improved Rent Conditions

Recent rental market reports published by CMHC have clearly shown that rents in Ontario have fallen in real terms and when adjusted for inflation are now at early 1990's levels. The introduction of the *Tenant Protection Act, 1998*, which eliminated rent controls on vacant units, was actually followed with the smallest rate of rent increases compared to the two previous legislative regimes with more rigid rent control (the *Rent Control Act, 1993*, and *Residential Rent Regulation Act, 1988*), as shown in Chart 5.

Chart 5



According to the most recent CMHC annual Rental Market Survey, rents rose less than inflation and less than salaries and wages over the past year. CMHC data also shows that real rents have been falling for several years now.

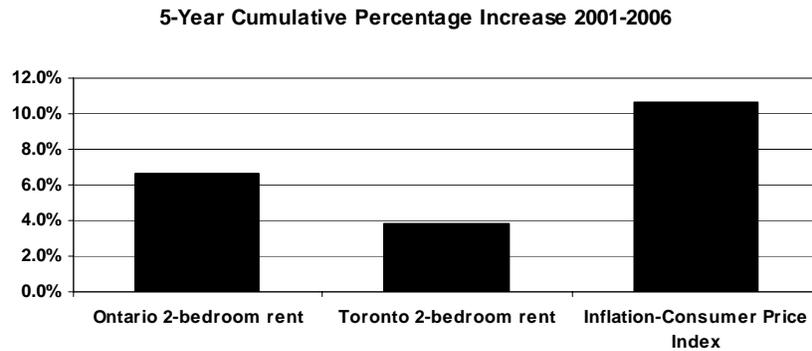
The Current State of the Rental Market

The Commission's Background Paper overlooked some of the major positive trends in today's rental housing market that are creating ideal housing conditions for renters and lower-income households.

Rents are decreasing in real terms

Reforms introduced by the *Tenant Protection Act, 1998*, have now resulted in rents being kept far below the provincial annual rent guideline and, according to CMHC, are actually falling in real terms in major centres such as Toronto. It is hard to believe that the Commission would attempt to argue that rent increases are unreasonable by reaching back over seven years to find an example of a rent increase that exceeded inflation, using the 1999-2000 example. Since then, rents have failed to keep up with inflation, as landlords have struggled to recover escalating operating and capital costs in a more competitive market. Chart 6 below illustrates the cumulative percentage change in rents compared to inflation for an average 2-bedroom apartment for both Ontario and Toronto since that time period.

Chart 6

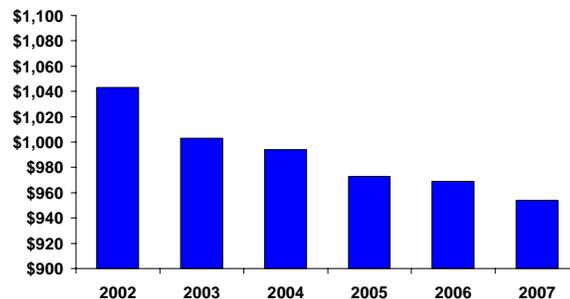


Source: CMHC Housing Observer, 2006

CMHC data reveals that for the most recent five-year period, rent increases have been only half the rate of inflation for the average Ontario 2-bedroom unit, while in Toronto rents have been virtually frozen, even decreasing in nominal dollars from 2002 to 2003 (dropping from \$1047 to \$1040 per month) and not changing at all from 2004 to 2005 (remaining at \$1052 year over year). In real inflation-adjusted terms, rents in Toronto have been decreasing since 2002 (see Chart 7).

Chart 7 Rents continue to fall in real terms

**Real Rents in Toronto, All Units
Constant \$2005**



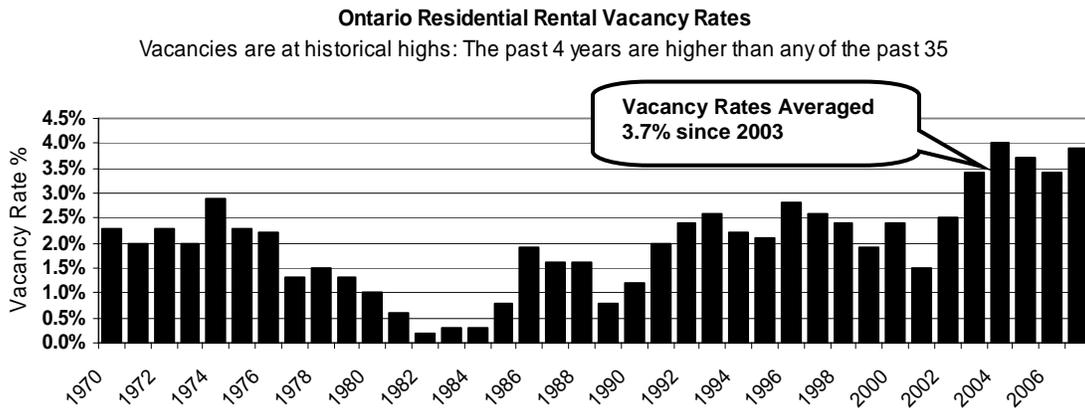
Source: CMHC and Statscan CPI.

Vacancy rates are at 30-year historical highs

Few indicators of the positive market trends favouring renters are as evident as the historically high apartment vacancy rates that have remained a fixture in the rental housing sector for the past four and a half years. While the Commission's Background Paper recognized the trend of higher vacancy rates, the significance of this positive pattern cannot be overstated, or its importance to more vulnerable households.

After over thirty years of never exceeding 3%, provincial vacancy rates have averaged 3.7% since 2003 (see Chart 8, below). The four and a half year average in major cities such as Toronto is even higher, at 3.8%.

Chart 8



The most affordable units are the most available

Simply referring to average vacancy rates (although they remain historically high) is also misleading, since in large cities such as Toronto, the vacancy rate for the most affordable units is often higher than the average rate. In 2006, the vacancy rate for the average rental unit priced at \$699 per month or less was 5.2%, compared to Toronto’s average vacancy rate of 3.2%. This means more than one out of every twenty of the most affordable apartment units is vacant. The following Chart 9 offers concrete evidence of the improved choice and supply for lower-income tenants in the rental market.

Chart 9



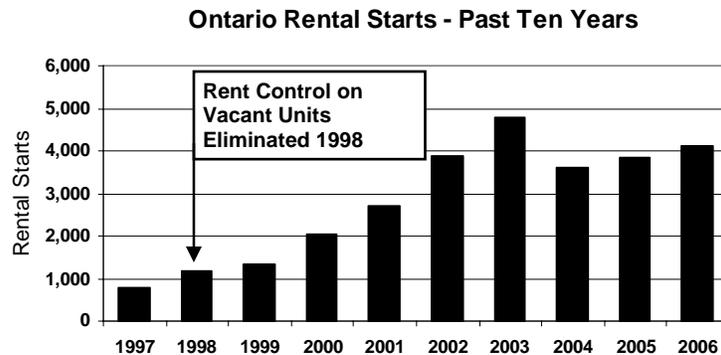
The above two sections demonstrate one of the major benefits of introducing the Tenant Protection Act was to get rid of the chronic low vacancy problem that troubled Ontario’s major centers for decades. This is one of the reasons that so many economists and Nobel Laureates have been against rent controls: the chronic low vacancy rates reduce the availability of affordable housing for low income households – they cannot access the market when rent controls get introduced. Since ensuring fair access to rental housing is a priority for the Commission, it is surprising to FRPO to see that the Commission is still prepared to opine that rent controls help improve the availability of affordable housing.

Supply and Quality are Improving

The Commission’s background paper expresses a concern that “discrimination against tenants is exacerbated by an inadequate rental housing supply”. In Ontario, however, rental market data suggests that affordability, choice and supply conditions are ideally suited to tenant households. Another positive effect of the elimination of rent controls on vacant units was the increased confidence of the industry in their ability to run viable businesses.

The consequence was investment of much needed dollars into repairs, upgrades and new rental housing supply. The resulting positive trend is illustrated by Chart 10 below, showing the steady increase in annual rental starts across Ontario since rent control on vacant units was eliminated in 1998.

Chart 10



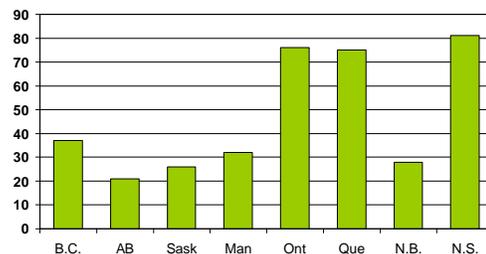
Source: CMHC Canadian Housing Observer 2005; CHS Residential Building Activity, Apr 2006; CMHC Housing Now, Ontario Region 1Q 2007

Recent experience in Ontario has shown that forward looking housing policies can provide measurable benefits to the ability of tenants to access and afford housing. Reforms introduced in the late 1990’s have brought enhanced competition and customer choice back into the private rental market. The Commission should work to properly identify the conditions that have fostered today’s positive market conditions and perhaps advocate in support of housing policies that ensure a continuation of current trends. We strongly encourage the Commission to closely examine *recent* rental market data to properly assess conditions facing tenants today.

Eviction Has Become More Difficult in Ontario

The TPA resulted in enhanced abilities of non-paying tenants to dispute evictions, make representations at tribunal hearings, move to set aside default orders and obtain reviews of orders. Under the *Tenant Protection Act*, tenants were generally given the benefit of the doubt at hearings. As a result of the Act, it is more difficult for landlords in Ontario to evict

How many days does it typically take for a rental owner to evict a tenant who refuses to pay rent



Source: FRPO survey of landlords and rental housing industry associations, March 2006.

non-paying or destructive tenants, compared to any other province. In Ontario it takes a landlord an average of 75 days (with financial losses of over \$3,000) to terminate the tenancy of a non-paying tenant. This compares to a time period of between 20 and 30 days typically found in most other provinces. The new *Residential Tenancies Act, 2006*, has offered substantially improved protections and rent abatement benefits to tenants and has harmed the ability of landlords to terminate a tenancy in cases in non-payment.

Issues Related to Rental Housing Affordability

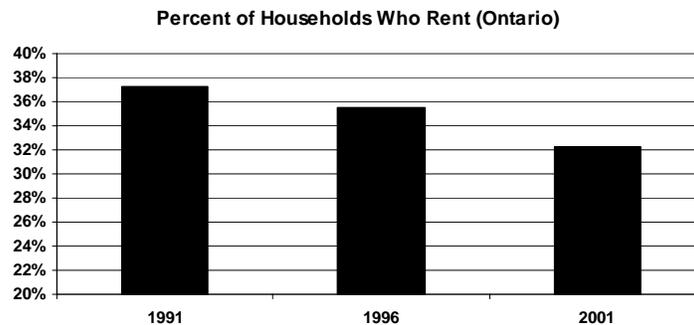
Affordability for low-income tenant households has improved

Renters as a group are not becoming poorer or finding housing less affordable. In fact the opposite is occurring, so much so that more renter households than ever have been able to now purchase homes as opposed to renting. This important fact was also pointed out by CMHC in their December 2006 Rental Market Survey, noting that one factor that contributed to the drop in the real incomes of renters was the movement in the late 1990s of large numbers of relatively affluent households out of rental units into homeownership.

Trends in Tenants' Incomes Driven by Declining Percentage of Ontarians Who Rent

When considering factors affecting affordability for tenants, the Commission should give consideration to the fact that the percentage of Ontario households who rent has been steadily declining for some time, leading to a resulting decline in average tenant incomes as more affluent renter households opt for homeownership. In fact, the improved ability of tenants to choose homeownership resulted in a total decline of over 40,000 renter households between 1996 and 2001 (see Chart 9, below).

Chart 9

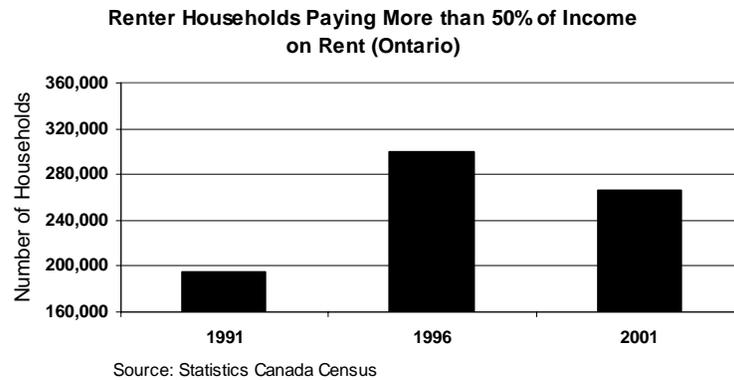


Source: Statistics Canada Census, various years

One way for the Commission to better assess affordability conditions for tenants is to consider rents compared to household incomes. When considering these factors, one of the most noticeable trends was that affordability for tenants deteriorated between 1991 and 1996, but has since improved significantly. One measure is the total number of renter households in Ontario who are paying more than 50% of their income in rent. After increasing in number by over 100,000 between 1991 and 1996, the total number of renter

households paying more than 50% of their income on rent declined by almost 35,000 by 2001 (as shown in Chart 10, below).

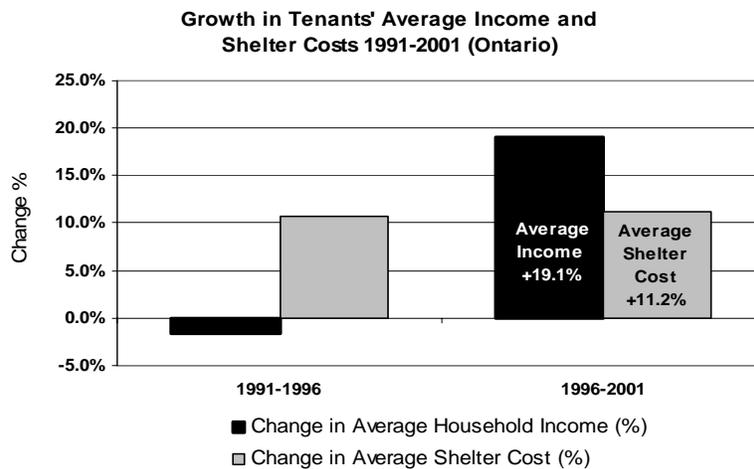
Chart 10



Tenant Household Incomes are Improving

Growth in tenants’ average household incomes have also started to recently exceed growth in accommodation costs. Between 1996 and 2001, renters experienced growth in average household income at almost twice the pace as increases in shelter costs, as shown in Chart 11, below. This improvement occurred after a period of erosion in tenant incomes between 1991 and 1996.

Chart 11



In summary, the Human Rights Commission should reconsider many of the policy assumptions made in its Background Paper, and review current academic and market information that discredits many of the assertions by so-called housing and tenant advocates and illustrates the vast improvement in affordability, supply and quality of rental housing since reforms by the provincial government in the late 1990’s.

