

Indigenous Women's Right to Housing: Pathways for Rectification under the Charter of Rights and Freedoms and Intersections with International Law

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Agenda

Opening by Marie McGregor Pitawanakwat.

A discussion of the legal issues surrounding the right to housing followed by breakout rooms where participants can provide their insights on questions posed during the presentation.

Acknowledgment: Homelessness affects other groups including Indigenous men, but this presentation is focused on the ways Indigenous women and gender diverse people are particularly vulnerable given both their gender and Indigenous identity. Homelessness disproportionately affects Indigenous women.

Timeline: Key Dates for Settlement



50,000/130,000 BC-
Indigenous settlement
on Turtle Island
(Archaeologist Paulette
Steeves)



1000 AD Contact with
First Europeans
Vikings in
Newfoundland



1763- The Royal
Proclamation



1960- Indigenous
people allowed
to vote
without conditions



1982- Constitution
Act



2007- UNDRIP



2015- Truth and
Reconciliation
Commission



1871- Numbered
treaties enforced
without consultation



1876- The Indian Act



1883- Creation of
Residential Schools



2019- National
Housing Strategy
Act



2019- MMIWG
Final Report



2023- Canada
Adopts UNDRIP
Action Plan

The Canadian Charter of Rights and Freedoms

- Enacted in 1982 guarantees certain rights and freedoms to all residents entrenched in the Constitution.
- All residents have various rights under the *Charter* unless the infringement is justified under section 1, also known as the limitation clause.
- Section 7- Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
- Section 15 (1)- Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- Indigenous understandings on the right to life are substantive and do not simply represent the right to not be deprived of something.
- Many rights Indigenous communities recognize for themselves have not been acknowledged by the federal government.

UNDRIP

Articles 5, 6, and 7

- Article 5- Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.
- Article 6- Every Indigenous individual has the right to a nationality.
- Article 7- 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

The 12 Dimensions of Indigenous Homelessness as Articulated by Indigenous Peoples across Canada- Jessie A. Thistle



Historic Displacement



Contemporary Geographic Separation



Spiritual Disconnection



Mental Disruption and Imbalance



Cultural Disintegration and Loss



Overcrowding



Relocation and Mobility



Going Home



Nowhere to Go



Escaping or Evading Harm



Emergency Crisis



Climatic Refugee



Current Domestic Law on the Right to Housing

- Tanudjaja v. Attorney General (Canada) 2014 ONCA
 - An application was brought by four individuals and the Centre for Equality Rights in Accommodation (“CERA”) alleging that actions and inactions on the part of the Canadian and Ontario governments have resulted in homelessness and inadequate housing, which they argued violated their *Charter* rights.
 - Case was dismissed because the majority held that there is no legal component to engage the decision-making capacity of the courts since the appellants were not challenging a particular policy or law.
 - The court did not shut the door on the idea that governments have positive obligations to address homelessness.
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Canada's Commitment to the Right to Housing under International Human Rights

- Canada has recognized the right to housing under international human rights law by ratifying the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other human rights treaties.
- The ICESCR, States are committed to:
- "achieving progressively the full realization of the rights recognized in the Covenant, to the maximum of its available resources ... by all appropriate means, including particularly the adoption of legislative measures."
- Article 3- "The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant."



The National Housing Strategy Act (2019)

- Includes the principles of the right to adequate housing as a fundamental human right and housing as a fundamental human right. The *Act* articulates that housing is essential to the inherent dignity and wellbeing of a person.
- Canada is obliged to progressively realize the right to housing focusing on those in greatest need.
- The National Indigenous Women's Housing Network human rights claim report, *Homeless on Homelands (2022)* articulates the key violations of Indigenous women, girls, two-spirit, and gender diverse people submitted to the Federal Housing Advocate.
- These violations include various violations to be discussed in the next slide.

Homeless on Homelands, 2022 (NIWHN)- The 4 Violations

- Violation 1- Lack of Action on the Calls to Justice from the MMIWG Report and Calls to Action from the Truth and Reconciliation Report
- Violation 2- Failure to Provide Safe, Adequate and Culturally- Appropriate Housing, on Our Own Terms
- Violation 3- Interjurisdictional Neglect, Multiple Systems Failure, and Institutional Betrayal
- Violation 4- Security of Tenure under the National Housing Strategy Act and Secure Indigenous Land Tenure



Marie McGregor
Pitawanakwat on the 4
Violations

Homeless on Homelands, 2022 (NIWHN)- The Way Forward: Recommendations

- 12 recommendations- meant to articulate preliminary violations and considerations that shape the landscape of housing rights violations of Indigenous women, girls, Two-spirit, and gender-diverse people.
- The recommendations include articulation of rights, housing development, and housing funding by Indigenous communities for Indigenous communities.

Legal Avenues- *Charter* Claim on The Right to Housing



- One of the avenues in realizing the right to housing in Canada is through a *Charter* application.
- NIWHN is embarking on a novel claim against the federal government alleging that the Minister's failure to comply with the commitments under the *National Housing Strategy Act* (2019) in relation to Indigenous women and gender-diverse people violates the section 7 security of the person and section 15 equality rights.
- This claim is novel and has not been brought forward to the courts. Even the act of articulating the claim for the government to provide a positive obligation to residents of Canada is incredibly significant and innovative.

Focus Groups-Avenues to Realize the Right to Housing



The goal of the claim is to create pathways towards Indigenous women and gender-diverse people to articulate what the right to housing looks like for them.



Goal of the focus groups is to have a public record on Indigenous women and gender-diverse people thoughts on the right to housing.

Focus Group Discussion

How can people use the knowledge provided in this webinar in their communities?

How can this knowledge lend to existing advocacy on land and/or housing issues?

How can knowledge of systemic failures outlined in this webinar help individuals address their own housing issues?

Given the legal avenues to realize the right to housing highlighted in this webinar, what does justice relating to the right to housing look like to you?

Questions and Insights

