

Housing Rights: Cross Country Check Up

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Last week, two Canadian courts had the opportunity to consider the rights of people who are homeless, and to issue judgments that brought these individuals a step closer to justice. One court took this opportunity. The other refused.

In BC, the provincial court issued 10 warrants for the arrest of notorious Downtown Eastside landlord George Wolsey. Wolsey owes thousands of dollars in damages to his former tenants as compensation for the terrible housing conditions they endured. It wasn't easy for those tenants to get their day in court. They fought long and hard to hold Wolsey accountable for numerous violations of their right to safe and secure housing. The BC court's decision to issue warrants for Wolsey's arrest shows that courts can and will use their authority to protect the rights of vulnerable people and provide redress when those rights are violated.

Not so in Ontario. On September 6th, Justice Lederer of the Ontario Superior Court of Justice issued a judgment in *Tanudjaja v. Attorney General (Canada)* that appears to deny that courts have *any* role in protecting the rights of vulnerable groups. The case was launched by the Centre for Equality Rights in Accommodation and four individuals who have experienced homelessness and housing insecurity. These plaintiffs argued that the government's failure to address homelessness and inadequate housing – resulting in hundreds of thousands of Canadians living on the streets and in substandard accommodations – violates rights protected by the *Charter* to life, liberty, security of the person, and equality. They were joined by numerous housing experts, all prepared to provide evidence and make arguments in support of the contention that the government is falling short of its constitutional obligations. However, the Ontario court's decision denies them that opportunity.

The Court dismissed the case out of hand at a very preliminary stage, refusing to allow a hearing on the merits of the case, thus denying the plaintiffs the chance to present any evidence or make their arguments. In the course of his reasons, the judge said that a courtroom is simply not the place to hear these issues, effectively short sheeting, without full argument, *Charter* protection for a vast and vulnerable segment of our population.

It's not as if the legislatures haven't had the opportunity to address these critical issues. In February, Members of Parliament had before them Bill C-400 which would have obligated the government to create a plan to ensure all citizens *are* guaranteed adequate, affordable and accessible housing. The MPs defeated the Bill on second reading.

The plaintiffs in this case were not asking the court to design a national housing strategy, monitor its implementation and assess its outcomes. Certainly, the logistics of a plan for addressing our national housing crisis will require expertise and analysis that a court is ill-equipped to provide. But what courts *are* supposed to be expert in is how human rights law works to protect vulnerable members of our society. The day for ducking consideration of the impact of government policy on fundamental human

rights passed the day our governments chose to enact the *Charter* and charged the courts with its enforcement.

We may prefer that our government attend properly to the human rights of the most vulnerable in our society at its own initiative. We may politely remind our governments that they committed to observing these rights—here the right to adequate housing—when Canada signed on to various international human rights treaties that guarantee such rights. But when governments fail to listen, when they fail to follow up rhetoric with action, recourse to the courts is one of the few options left to those most disempowered in the political process. This is particularly true in the face of the human rights crisis that homelessness is.

Groups from across Canada joined the Ontario action to urge that, at a minimum, the issue should be heard and the arguments be made fully. These groups now share the cross-nation outrage that such significant human rights concerns are apparently no concern of this Ontario court and have no potential home, according to this court, in the *Canadian Charter of Rights and Freedoms*.