From: "Fraser, Marion (ENERGY)" <Marion.Fraser@energy.gov.on.ca>
To: "'Theresa McClenaghan [CELA]'" <mcclenat@lao.on.ca>
Subject: RE: cela research
Date: Tue, 30 Mar 2004 15:45:13 -0500

Great!

Regards, Marion

Marion Fraser
Senior Policy Advisor
Office of the Honourable Dwight Duncan, Minister of Energy
4th Floor Hearst Block
900 Bay Street
Toronto, Ontario, M7A 2E1
416 327-3373
marion.fraser@energy.gov.on.ca

-----Original Message-----
From: Theresa McClenaghan [CELA] [mailto:mcclenat@lao.on.ca]
Sent: Tuesday, March 30, 2004 3:13 PM
To: Marion.Fraser@energy.gov.on.ca
Cc: jsimon@indeco.com
Subject: cela research

Marion I am taking you up on the invitation in your phone message to email as it may be easier to reply by email than connect by phone. We wanted to follow up the meeting we had with the Minister particularly regarding low income access to energy programs and other jurisdictions - as you know we have secured funding to do some research on this issue. We are aiming for late next week for completion of the research and release of the findings and recommendations. I am concerned about timing from the perspective of ensuring that it will still be useful for policy making on that time line. Or on the other hand do we have more time than I am expecting before the research becomes interesting but redundant. Understanding that you can't probably be very specific, what are your thoughts about timing and the usefulness of our feedback to the Minister's questions to us by then? also, when we are finished, we may want to pursue his suggestion about jointly presenting the results to him and the Minister for Social Affairs - we think we would want to do that jointly with other clinics who deal with tenancy and income issues in the province, namely ACTO and ISAC if they feel they can support the report when it's done. So that's a heads up that we will follow up when the report is ready. Thanks. Theresa McClenaghan

Theresa McClenaghan
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mcclenat@lao.on.ca

home office email mcclenaghan@execulink.com

Date: 16-Aug-2004 09:59
From: THERESAM (Theresa McClenaghan [CELA])
To: "Young, Bryan (ENERGY)" <Bryan.Young@energy.gov.on.ca>
Copies-to: "'JSimon@indeco.com'" <JSimon@indeco.com>
Subject: RE: Question about Intellectual Property Provision in boilerplate

OK, Bryan, this is excellent. There is no problem of course with the crown also using the products of the contract as it sees fit. Thanks. Theresa McClenaghan, CELA counsel

On Monday, August 16, 2004 9:35 AM, Young, Bryan (ENERGY) wrote:
>
>Date: Mon, 16 Aug 2004 09:35:18 -0400
>From: Young, Bryan (ENERGY)
>To: "'mcclenat@lao.on.ca'" <mcclenat@lao.on.ca>
>Subject: RE: Question about Intellectual Property Provision in boilerplate
>
>I spoke with Gary Wuschnakowski, who is our Manager of Shared Services and
>would be responsible for drafting the contract. It is not the intention of
>the clause to restrict your ability to disseminate the products of the
>contract. Rather, it is intended to ensure that the Crown can use the
>products of the contract as it sees fit, unfettered.
>
>If that clarifies the issue to your satisfaction, I suggest that we proceed
>with drafting a contract. If this is not satisfactory, then could you
>suggest some wording that would adequately address your concerns? As time
>is very tight, and our wheels turn more slowly than yours, if you could let
>me know asap, that would be great.
>
>I am filling out a purchase req. today, which is the main instrument that
>goes up for signature. Pending approval of the purchase req., Gary executes
>the contract and we are then away at the races. While I can't say that we
>will go ahead, I don't see any roadblocks at this point.
>
>Look forward to moving this along.
>
>Bryan
>
>> -----Original Message-----
>> From: Young, Bryan (ENERGY)
>> Sent: Friday, August 13, 2004 10:52 AM
>> To: Wuschnakowski, Gary (ENERGY)
>> Cc: 'mcclenat@lao.on.ca'
>> Subject: Question about Intellectual Property Provision in
>> boilerplate
>>
>> Theresa from the Cdn Env Law Ass, the proponent for one of the two
>> proposed conservation outreach projects, had a question about the above
>> provision. CELA wants to ensure that the material they generate can be
>> freely shared, particularly with LDCs, who are the target audience of this
>> project. I told her I didn't think it was the intention of the provision
>> to impede public acceess if the Crown is the designated owner, but wanted
>> to hear from you on this point. Otherwise, she sees no problems with the
>> boilerplate contract.
>>
>> Many thanks.
>>

>> Bryan Young, Advisor
>>
>> ***
>> Office of Energy Supply and Conservation
>> Ministry of Energy
>> 880 Bay Street, 3rd Floor
>> Toronto, ON M7A 2C1
>>
>> Tel: 416-325-6712
>> Fax: 416-325-6972
>>

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IndEco

Notes of Meeting

RE:	*Low Income Energy Network (LIEN) - update and next steps*
Date:	Monday, July 5th , 2004
Time:	2 p.m. - 4:30 p.m.
Location:	Canadian Environmental Law Association. 130 Spadina Ave, Suite 301
Participants:	Theresa McClenaghan (CELA), Keith Stewart (TEA), Mary Todorow (ACTO), Cristina Ingravalle (Share the Warmth),Sarah Miller (CELA), Paul Muldoon (CELA), Michael Shapcott (Toronto Disaster Relief Committee), John Campey (Community Social Planning Council for Toronto), Judy Simon (IndEco) Regrets: Sarah Blackstock, ISAC, and Edward de Gale, Share the Warmth

The following is a brief summary of the key items discussed and the actions required as a result of the LIEN meeting on July 5th, 2004.

1. Perceptions of Ministry of Energy and Minister's Staff on Energy Policy

LIEN members reported on recent briefing meetings with Ministry of Energy staff and the Minister's Executive Assistant (EA) on Bill 100. Members found strong support among Ministry staff and the Minister's EA for nuclear energy and the Minister's EA. There was also mention that there is little to be gained from energy efficiency in the residential sector.

2. Status of Funding Proposals

TAF is ready to begin the process to finalize the contract (up to $35,000 based on matching funds) between TAF and ISAC, the administrator of the funds for the project. Written confirmation is needed from the Ministry of Energy that it will provide $30,000 to assist capacity with the TAF work – capacity building of LIEN, the workshop on draft recommendations for low income DSM program designs for Toronto Hydro and other electric local distribution companies (LDCS) for implementation this fall, and a final report on low income DSM programs for implementation by Toronto Hydro and possibly other LDCs in Ontario.

Marion Fraser, Senior Policy Advisor to the Minister of Energy, Dwight Duncan, has advised informally that the Ministry has approved $30,000 for the LIEN DSM work for this fall and will be flowing the dollars through the Ministry of Community and Social Services to be administered by CELA.

The CELA Resource Library has applied for a $40,000 grant to assist LIEN in capacity building work to be done starting the winter of 2005, assuming approval. The work will involve a workshop on low income DSM to share information and experiences among LIEN members and other interested energy and social service groups in Toronto and the development of a LIEN website for sharing of knowledge and experience related to low income DSM in Toronto.

3. Other Funding Opportunities

Share the Warmth and IndEco have embarked on exploratory discussions to pursue a Trillium application to be submitted in the fall of 2004 (if successful, work would begin on the project in June 2005) for a public communications and outreach program with low income consumers in communities where Ontario's LDCs have expressed interest in or are pursuing DSM efforts.

4. Upcoming Opportunities for Intervention

ACTO has just completed a comprehensive submission to the government on tenancy reform. ACTO will continue to be actively involved in this reform and will respond to the government's proposed new legislation when it is tabled. ACTO is a party at the upcoming OEB hearing that will determine the treatment of customers with unpaid electricity charges. ACTO will try to ensure that LICO customers who pay their electricity bills, but not their security deposits, will continue to have electricity service. Sub-metering is also an issue that ACTO will take the lead on, trying to ensure that tenants should not pay more than direct residential customers of an LDC for their meters.

There are several concerns with Bill 100 (proposed amendments of the Electricity Act and Ontario Energy Board Act). CELA plans to make a submission to the government on this Bill. For example, in choosing among energy options – conservation, supply, transmission/distribution – environment is excluded from consideration by the OEB.

CELA will also send a letter to the OEB regarding the OEB's proposed process for consultation on energy policy development.

The Community Social Planning Council for Toronto can provide LIEN with help in working with 'hard to reach communities'. The CSPC has extensive expertise and experience consulting with ethnospecific groups and could facilitate such consultations if that were needed by LIEN. Low income energy issues is not a core business of the SPCS; as a result it will not be playing an active role in LIEN, but will lend support and assistance in mobilizing other

social planning councils and other members of the broad voluntary sector for LIEN initiatives.

5. LIEN Operating Plan and Procedures

Participants agreed that LIEN would continue to operate as a network similar to how the Ontario Environment Network operates. Groups join the network and have the option to formally sign onto various reports and initiatives. Individual members of LIEN would take the lead in obtaining funding and carrying out the work related to LIEN's mission.

LIEN would operate through a steering committee. The participants at this meeting would form an interim steering committee; a final steering committee would be voted on by LIEN members at the workshop (Sept – Oct. 2004). IndEco would serve as the facilitator of the interim steering committee.

There may be opportunities for LIEN to collaborate with the Green Communities Association in the development of a national low income energy strategy. The GCA is excited about LIEN's efforts and with other similar groups in other provinces is optimistic that there will be a push for such a national strategy.

There may be federal funds available – $10, 000 – to $20,000 - for small projects or to top off the funding of larger low income energy projects.

FCM may be a natural ally for LIEN and should be pursued.

6. LIEN Operating Plan and Procedures

Participants agreed that LIEN would continue to operate as a network similar to how the Ontario Environment Network operates. Groups that join the network have the option to formally sign onto reports and initiatives. Individual members of LIEN would take the lead in obtaining funding and carrying out the work related to LIEN's mission.

LIEN would operate through a steering committee. The participants at this meeting would form an interim steering committee; a final steering committee would be voted on by LIEN members at the workshop (Sept – Oct. 2004).

A LIEN Secretariat could provide regular updates of LIEN's work to LIEN members and identify opportunities to intervene.

7. Action Items

1) Paul Muldoon and Keith Stewart will meet with the new CEO of Toronto Hydro to rejuvenate the proposal with Toronto Hydro for funds to match the TAF project and to obtain funding.
2) Judy Simon will request that Marion Fraser formally confirm that the Ministry of Energy will provide $30,000 to CELA for our low income DSM work.
3) Michael Shapcott will work with other LIEN members in exploring small - $10 – 20K - federal funding opportunities.
4) Keith Stewart will do a first draft of the LIEN Mission Statement for review by meeting participants.
5) Cristina Ingravalle agreed to provide contact information of Share the Warmth members for news releases.
6) Participants to this meeting will confirm to Keith Stewart by email by July 19th their interest in being on the interim steering committee of LIEN. Sarah Miller has already agreed to represent CELA on the Steering Committee.
7) Participants agreed to keep each other better informed of their LIEN related initiatives by copying each other on relevant emails.

From: "Mary Todorow (ACTO)" <todorom@lao.on.ca>
To: "'ecowx@era-inc.ca'" <ecow[illegible]era-inc.ca>, "Theresa McCle[illegible]ghan (CELA)" <mcclenat@lao.on.ca>, "Sarah Blackstock (ISAC)" <blackstocks@lao.on.ca>, "'keith@torontoenvironment.org'" <keith@torontoenvironment.org>, "'mcclenaghan@execulink.com'" <mcclenaghan@execulink.com>
Subject: Mark your calendars - Confirming our meeting for this Friday, Jun e 4 at 11:30 a.m. to discuss Enbridge and low-income DSM
Date: Mon, 31 May 2004 12:13:15 -0400

Emay, Theresa, Sarah and Keith: Whew! - it looks like we are all available to meet this Friday, June 4th at 11:30 a.m. here at the ACTO/ISAC offices at 425 Adelaide St. West, 5th floor. See you all then.

Emay - thanks for sending the briefing notes/questions in advance - very helpful in terms of organizing our discussion. With respect to the recent filings by Enbridge on their 2005 DSM programs - would the information about the low income market transformation and the social housing program be available on the OEB's web site? (I know you're planning on bringing these sections to the Friday meeting, but I thought it would be good to have a look at them before the meeting.)

Mary Todorow
Policy Analyst
Advocacy Centre for Tenants Ontario (ACTO)
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(Tel) 416-597-5855, ext. 5173
(Toll free) 1-866-245-4072
(Fax) 416-597-5821
(E-mail) todorom@lao.on.ca

Theresa McClenaghan

From: "Mary Todorow (ACTO)" <todorom@lao.on.ca>
To: "Sarah Blackstock (ISAC)" <blackstocks@lao.on.ca>; "Theresa McClenaghan (CELA)" <mcclenat@lao.on.ca>; <mcclenaghan@execulink.com>
Sent: Wednesday, May 26, 2004 11:38 AM
Attach: ACTO mtg ques list.doc
Subject: FW: Briefing notes from Emay Cowx for this Friday morning's meeting (TBC) re: Enbridge and low-income DSM

Sarah and Theresa: Background information from Emay regarding the feedback
she'd like from us with respect to her research for Enbridge on low income DSM.

I haven't heard back from you both as to whether you are available for the first proposed meeting date and time (Friday, May 28th, 9:30 a.m. here at ACTO/ISAC offices) with Emay - please let me know. Thanks.

-----Original Message-----
From: Emay Cowx [mailto:ecowx@era-inc.ca]
Sent: Wednesday, May 26, 2004 11:25 AM
To: todorom@lao.on.ca
Subject: Briefing notes for Friday's meeting

As discussed yesterday, I appreciate the time you are taking to meet with me later this week, along with your colleagues from Income Security Advocacy and CELA. In order to make the most of our time together, the following should help give you an idea of where I am coming from, and how I hope your
collective feedback will help Enbridge design practical and effective DSM programs for the low income residential sector.

Firstly, I know that electricity DSM is foremost in many of our minds, and recognize that many of the same issues also apply to natural gas. Where you have specific ideas or issues concerning natural gas DSM, I am happy to hear those as well.

Enbridge recently filed supplemental programs to the planned 2005 DSM

programs in their 2005 rates application, RP-2003-0203. Among the proposed incremental programs for the residential sector are two:
1. Low income market transformation Requested Budget: $450K
2. Social housing program Requested Budget: $180K

(I will bring copies of these sections of the filing to the meeting.)

As the OEB has not specifically mandated programs for this sector, the fact that both Union and Enbridge are finally moving ahead demonstrates some progressive action that will benefit your constituents.

With this background in mind, I would greatly appreciate your feedback on the attached questions/issues. This is not by any means a comprehensive list, but rather a starting point for discussions and will certainly assist me in ensuring that your feedback goes back to the utility in an immediately implementable form so that actual benefit from those proposed dollars flow back to the customers in need.

Thank you again for your time, and looking forward to meeting you soon.

Best regards,

EC ("Emmy")

Emay Cowx
Elenchus Research Associates Inc.
Suite 610, 34 King St. East
Toronto ON M5C 2X8

Ph: 416-348-9917 x26
Fx: 416-348-0641

Question/Issues List:

- What is your perspective regarding existing Enbridge retrofit programs in terms of value/benefit to your constituents?
  - Programs include TAPS – showerheads/aerators
  - Water heater set point reduction
  - Water heater pipe wrap
  - Thermostats
  - Equipment replacement: furnaces (presently), windows (future)
- What are the barriers to participation in these specific programs?
- Lack of knowledge of energy efficiency/conservation initiatives has been cited as a predominant barrier to participation, what would you suggest as the most critical elements of any education outreach program? Language issues?
- Are there any specific advocacy groups or organizations (outside of the Social Housing Services Corporation) that you would suggest could assist in efficient, targeted implementation of such an outreach program?
- What would be your priority among the following financial assistance options:
  - Payment relief; i.e., rate discounts
  - More generous arrearage policies;
  - Revised disconnection policies;
  - Energy efficient equipment purchase assistance;
  - Moving energy consumption more into households' control; e.g. Pre-paid metering.
  - Free energy audits;
- Recognizing the constraining "split incentive" situation of low income renters, what strategies have you considered? What are your thoughts regarding the "Pay As You Save®" program?
  FYI http://www.nh.gov/oep/programs/energy/pays.htm
  http://www.paysamerica.org
- Geographically in the GTA, are there specific neighbourhoods where the need is particularly greatest? (Referencing United Way's report, "Poverty by Postal Code".)
- Other critical issues?

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- Geographically in the GTA, are there specific neighbourhoods where the need is particularly greatest? (Referencing United Way's report, "Poverty by Postal Code".)
- Other critical issues?

Theresa McClenaghan

From: "Keith Stewart" <keith@torontoenvironment.org>
To: "Mary Todorow (ACTO)" <todorom@lao.on.ca>; "Theresa McClenaghan (CELA)" <mcclenat@lao.on.ca>; <jsimon@indeco.com>
Cc: <mcclenaghan@execulink.com>
Sent: Wednesday, May 26, 2004 9:49 AM
Attach: TenantPaidUtility.pdf
Subject: RE: Sub-metering proposal - Federation of Rental-housing Providers of Ontario

See also Toronto Community Housing Corporation's discussion paper on sub-metering and the interaction with Rent-Geared-to-Income rules.

-----Original Message-----
From: Mary Todorow (ACTO) [mailto:todorom@lao.on.ca]
Sent: Tuesday, May 25, 2004 6:18 PM
To: Theresa McClenaghan (CELA); 'keith@torontoenvironment.org'; 'jsimon@indeco.com'
Cc: 'mcclenaghan@execulink.com'
Subject: Sub-metering proposal - Federation of Rental-housing Providers of Ontario

FYI - The landlords' lobby group (Federation of Rental-housing Providers of Ontario, formerly Fair Rental Policy Organization), submitted a proposal on sub-metering (i.e. reducing energy consumption) in mulit-residential buildings to the Ontario gov't in February 2003. A copy of the proposal is attached.

As a result, sub-metering is discussed in the Liberals' Residential Tenancy Reform Consultation Paper (on page 31) - and they want feedback.
Also attached is ACTO's preliminary analysis of the sub-metering options discussed in the Paper (it's on pages 11 and 12 of the tpa consultation backgrounder which I would appreciate you kept internal, for your reference only). Since I drafted those notes, another concern has been raised with respect to how rent will be calculated once sub-metering is in place and electricity is no longer included in the monthly rent (e.g. how will the rent be adjusted to account for this expense which will now be borne directly by the tenant).

<<FRPO%20Electricity%20Submetering%20Paper.pdf>>
<<3213913_ConsultationPaper.E(8)_B&W.pdf>>

<<tpa consultation backgrounder key issues rev by mtod1.doc>>

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Toronto Community Housing

Date: March 15, 2004

To: **Board of Directors**

From: Chief Executive Officer

Subject: **REPORT ON TENANT PAID UTILITIES TCHC:2004-34**

PURPOSE:

To report back to the Board of Directors with an assessment of potential impacts on tenants and on TCHC if TCHC moves to landlord billed utilities in all sites.

RECOMMENDATIONS:

It is recommended that the Board of Directors:

(1) request TCHC staff to pursue studies in eight sites where tenants currently pay their own utilities to assess the feasibility of improving energy efficiency, reducing energy usage and determining whether TCHC should switch from tenant pay utilities to TCHC payment of these charges;

(2) direct staff to use the data collected from the pilot program to assist in the development of strategies to reduce the impact on tenants of having to pay for utilities, and report to the Board in the context of the 2005 Operating Plan on recommended approaches;

(3) that the resulting strategies, adjusted for the individual buildings, be implemented across all TCHC multi-residential buildings where tenants currently pay their own utilities in a manner consistent with the Green;

(4) direct the CEO to report to the Finance/Audit Committee at the earliest possible time on the financial impact of moving from directly tenant paid utility charges to a system of TCHC paid utility charges for tenants in multi-residential and townhouse complexes; and

(5) direct the CEO to review the issues related to payment of utilities for scattered units and to report to the Finance/Audit Committee at the earliest possible time on the financial impacts of moving to TCHC paid utility charges in the these units.

BACKGROUND:

TCHC operates with two approaches to payment of utilities. For most tenants all utilities are paid by TCHC. This includes, heat, electricity, water and gas. In 2,800 multi-residential and townhouse units tenants pay for heat and a range of other utilities depending on the building. TCHC generally pays the water charges with the exception of six buildings where the tenants pay for water. This number excludes the scattered properties, where there is a mix of approaches. There is a perception of an inequity for tenants paying utilities with other TCHC tenants. Tenants in units where they pay for utilities have expressed desire to move to a TCHC paid utility system.

This issue of tenants paying for utilities and the impact on those tenants is a complex one as it involves both a wide range of physical structures, program and legislative rules, policy issues and individual tenant lifestyles.

Staff recognizes that utility costs are rising, and consequently there is increased economic pressure on tenants paying utility charges.

REASONS FOR RECOMMENDATIONS:

It is recommended that staff undertake additional studies and a pilot program to determine how best to reduce utility costs to tenants in TCHC properties where tenants pay utilities directly. Moving from direct tenant pay to a TCHC system for utilities is complex, and has varying impacts on tenants.

TCHC does not pay for electricity and gas for some units primarily as a result of the program operating agreement under which the building was funded. These buildings were generally constructed under the Pre-1986 Municipal Non-Profit program (MNP or Section 56.1). The projects range in size from 2 units to 192 units. During the development phase utility costs were removed from the operating budgets of these buildings by the legacy corporation to make them acceptable under the funding models for non-profit housing at the time. This was in part due to development budget constraints and in part based on the idea that where the non-profit pays for utilities there is no incentive for tenants to restrain consumption. The resulting funding agreements for these buildings were based on having the utility costs borne by the tenant and not by the provider.

2,800 households directly pay for their own electricity and/or gas costs in 37 sites across the TCHC portfolio. This number does not include the close to 1,000 scattered units, where tenants also pay their own utilities. These units were not included for the purposes of this analysis; while the costs issues are the same and policy changes in utility payment will apply to them, the energy solutions that can be applied to these units will be different than those applied to multi-residential units and townhouse complexes.

Of the 37 sites where tenants pay utilities, 27 of these are electrically heated. The total number of households in the 27 sites is 2,200. Of these about half are rent-geared-to-income (RGI) households. Tenants in 10 buildings directly pay for gas heat. There are approximately 600 households in this situation.

In all other buildings and units, (with the exception of some of the scattered units) TCHC pays for the heating in the building. Some are gas heated and some are electrically heated.

Impacts of Moving from Tenant Paid to TCHC Paid Utilities

Moving from a system of directly tenant paid utility charges to TCHC utility charges will have varying impact on tenants, depending on legislative and program requirements. By identifying options, TCHC may find a good alternative to reducing impact on tenants that does not require TCHC to take on the cost of paying for heat or options for reducing the impacts on TCHC.

Tenants and Heating Costs (see appendix 1 for summary table)

Impact on Rent Geared-to-Income Tenants

RGI tenants who pay for their own heating and/or hot water receive a 'utility allowance' within the calculation of their rent that has the effect of reducing the RGI rent calculation. A tenant's rent is calculated based on the amount and type of income they receive using a legislated formula and then an 'allowance' amount is deducted from the calculated amount. The amount of the allowance is based on the utility type, whether it is for heat, hot water or both, the built form and the size of the unit. Allowances range from $15 to $150 per month.

Where all utilities, including power for lights and appliances, are paid for by the housing provider, RGI tenants are charged an amount for electricity in addition to their rent. This amount ranges from $30 to $53 per month depending on the size of the unit.

The utility allowance for tenants who pay their own heat and hot water is meant to cover these additional costs. The allowance amounts are set in Regulation 298/01 under the *Social Housing Reform Act, 2000* by the Province. Any increase in these allowances to more accurately reflect the cost of heating can only be set by the Province and would increase the subsidy costs for TCHC and the City of Toronto.

Tenants' heating bills vary considerably depending on the construction of their unit, the efficiency of heating and hot water systems, their lifestyle and efforts at conservation. It is hard to estimate what a tenant's monthly heating bill might be but the general consensus is that the allowance provided as part of RGI generally does not cover their actual costs, especially for electrically heated units. Staff has conducted limited

monitoring of tenant-paid utility charges where permission to do so has been received. Costs for heat and electricity can be in the range of $2,000 per year.

If TCHC were to convert these units to landlord provided heating and a tenant no longer has to pay for heat and/or hot water the tenant will effectively see their rent increase as the allowance will no longer be deducted and the actual 'rent' amount will therefore appear to increase. However, the total monthly housing costs will likely decrease as they will no longer have to pay directly for heat.

As it is likely that where TCHC would assume utility costs this would be for all electricity usage (lights, general usage as well as heat), TCHC would have to add a charge to rents to cover the cost of utilities, as per the SHRA requirements. This amount ranges from $30 to $53 per month depending on the size of the unit. Tenants in these buildings would see an increase in rent of anywhere from $28 to $154 per month but would no longer have a monthly heating bill or electricity bill to pay.

Impact for Tenants Receiving Ontario Works or Ontario Disability Support

In addition to the RGI heating allowance, tenants receiving Ontario Works (OW) or Ontario Disability Support (ODSP) payments (about 20% or 560 of the 2,800 tenants in these buildings) have their heating costs subsidized by Ontario Works or Ontario Disability Support. The program estimates their heating costs, generally based on their actual bills, and provided that their rent and heating costs together are less than the maximum shelter allowance the costs will be covered. In social housing the combined costs will generally be less than the maximum shelter allowance.

An OW or ODSP recipient who pays his or her own heating has his/her rent calculated based on a table that specifies the rent and has the RGI heating 'allowance' applied to reduce that rent. The rent cannot go below $85/month. This tenant also receives an additional amount of shelter allowance from OW/ODSP to subsidize their heating costs. This may sound like tenants in these situations receive additional benefits but that is not the case. An OW or ODSP tenant will receive a shelter allowance amount that covers whatever TCHC charges them and an estimated amount for heat. The tenant pays the rent amount and the full heating charge, which is covered by the OW/ODSP shelter amount that they receive.

If an OW or ODSP tenant no longer has to pay for heat and/or hot water the shelter allowance portion of their benefit payment will be reduced by the amount that was included for heat. The tenant will also see the amount of rent they are charged by TCHC increase as identified above with RGI calculations, but the OW or ODSP shelter allowance portion would also increase to cover their actual rent. Therefore, provided the estimated amount for heat costs was accurate, there will be no impact on the household if they pay the heating costs directly or if TCHC pays those costs.

Impact on market rent tenants

There are no allowances for market rent tenants who pay their own heat and/or hot water costs. Generally, however, the market rent for the unit is set at a rate comparable to similar units in the neighbourhood to take into consideration whether utilities are included in the rent or not in order to make the rent marketable at the low-end of market.

If TCHC took over the cost of heat for market rent tenants TCHC would increase the rent for those units to reflect the low-end of market rent for similar units in the area where heat is included. TCHC may increase the rent as long as it is only done once in a 12-month period. TCHC would not be able to increase the rent until the anniversary of the lease. Rents would likely increase by $70 - $100 per month although an assessment would have to be made based on current marketability of the units.

Impact of Tenants paying for heat on arrears

In an attempt to assess whether tenant versus TCHC paid utilities was a factor in arrears staff reviewed a number of buildings with similar characteristics comparing the arrears situation for half of the buildings where tenants paid for their own heat and in the other half where TCHC paid. A period of six months was used for analysis.

Arrears in individual buildings varied considerably and many factors would affect this, however, the analysis revealed was that for all these buildings arrears were higher for market rent tenants and the arrears for market rent tenants were about 50% higher in buildings were the tenants paid for heat, suggesting that the cost of carrying market rents, even at the low end, in combination with high monthly costs for heating bills, is a factor in contributing to arrears.

Impact of TCHC assuming the costs for heat

An estimate of the impact of TCHC assuming the cost of heat and hot water on RGI rent is possible, based on how the RGI allowances work. RGI tenants would have their rent increased by approximately $50 per household per month on average if they continued to pay for power for lights and appliances. TCHC would see an increase in rent revenue of just over $650,000 per year. For market rent tenants, rents would be increased to cover increased utility costs to TCHC provided the rents are not above the local market. In the first year these rents would have to be phased in as the rents can only be increased upon annual review of the lease.

What is not easily estimated is the extra utility cost to TCHC. Estimates vary between $1.75 million and $3.4 million. The range of costs is large because TCHC is not able to accurately identify the cost of heat and hot water in our buildings. High and low estimates have been used based on a small sample of tenants' bills and TCHC's direct utility costs. These estimates are based on the tenant continuing to pay for power for

lighting and appliances. It is probable that taking on these utility costs would cost more than the increased revenue.

In the buildings that were reviewed for the arrears analysis utility bills from 30 tenants were also reviewed. In these examples the average monthly cost for electricity was $74. Based on this small sample the cost to TCHC would be about $1.75 million. TCHC's utility costs range from $1,700 to $2,500 per unit with a few buildings being significantly higher. Using these per unit utility costs the extra cost to TCHC would be about $3.4 million.

If TCHC were to take over heat and hot water costs there would need to be changes made to heating and hot water systems. These would have capital costs. The cost of convert 37 sites to enable landlord pay heating would be substantial. A study examining conversion from incremental (in wall) PTAC heating units to a centralized heating system in seven buildings found that the least expensive approach cost about $4,000 per unit. Using that per unit cost the conversion of the 37 buildings would cost approximately $10.5 million. This does not consider whether or not it is feasible in these buildings and this does not look at the hot water systems. It is important to note that not all buildings can be easily converted to centralized heating systems due to the design of the buildings and/or units.

Pilot Project Studies

TCHC has recently learned that the Social Housing Services Corporation has partnered with an energy conservation firm, Ameresco, to run a pilot program aimed at reducing energy costs in social housing buildings. TCHC has asked to participate in the pilot program and has Ameresco reviewing a number of buildings including several where tenants pay for electrical heat. The review is to develop options to reduce energy costs and to assess heating system conversions. This project is in the initial stages and is expected to report out within a year.

The pilot projects have three phases. They include reviewing basic utility cost information, doing an engineering study of the building and, if appropriate, installing new equipment, and doing energy efficiency education and training. Because it is a pilot study sponsored by Social Housing Services Corporation, participation provides the benefit of reducing the cost of the engineering study by 50%. Typical costs for these studies have ranged from $5,000 to $10,000 per building of which TCHC would pay 50%. At each phase TCHC would review the analysis and determine if it is reasonable to continue with the study.

TCHC has been advised by Ameresco that the time period for the first two phases (reviewing utility data and doing the engineering study) usually takes from six to nine months. Depending on the nature of the changes required, implementation of any recommended changes can take up to a year. In addition, if the work includes heating system conversion, this requires extensive onsite work for a substantial period of time.

Tenants may find this work to be disruptive. TCHC would work with the contractor to ensure minimal disruption to tenants, however, conversions are large initiatives involving the entire building.

CONCLUSION:

TCHC has 37 sites where tenants pay their own heating costs. This is a result of the program agreement and economic conditions under which the building was developed and funded. Now that the social housing programs have been downloaded to the City, the old program agreement restrictions are no longer in place. This enables TCHC to examine the issue of tenant paid utilities and assess impact and options.

Converting these sites to landlord paid heating has many impacts, for both tenants and TCHC. The impacts need to be evaluated to ensure they are fully considered and addressed in any move forward decision.

Joining a pilot program to make changes in our buildings to reduce energy costs will enable us to determine the options and impacts related to the issue of tenant paid heating that can be applied in developing local plans and strategies to mitigate the existing issue around the high cost of heat for tenants in affordable housing.

FINANCIAL IMPLICATIONS:

Costs will depend on the number of buildings TCHC agrees to have engineering studies on. The maximum cost per building of the study is likely to be $5,000 for TCHC. Funds are available within the corporate capital contingency for these studies. Future costs on implementing any recommended changes and the financial impacts should there be a conversion form tenant pay to TCHC for utilities will be reported to the Board prior to or during the presentation of the 2005 Operating Plan.

LEGAL IMPLICATIONS:
N/A

COMMUNICATION IMPLICATIONS:

Communications about the pilot energy reduction programs will need to address not just the facts of the pilot program and linkages with the Green Plan as well as potential reductions in utility costs for some tenants and the related impacts. The initiatives that may flow from this must be seen as a part of an overarching energy conservation and green plan. Communication with tenants to ensure clear expectations about what the studies may produce and potential impact must be clear.

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Attachments: Appendix 1 — Calculation of RGI rent and the impact of Utility Costs
Appendix 2 — List of Buildings where tenants pay utilities

Options to Reduce Energy Consumption by Encouraging Sub-Metering and Individual Billing in Multi-Residential Rental Dwellings

submitted to

The Government of Ontario

by

frpo
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fair
rental
policy
organization

February 26, 2003

Executive Summary

About 90 percent of Ontario's stock of rental multi-residential apartments is currently bulk-metered. This means that there is only one meter on the building or complex, the landlord pays the electricity bill, and the associated costs are incorporated into the rents. This sector currently represents about 5 percent of Ontario's electricity consumption.

There is very good evidence that when these buildings are sub-metered, the total electricity consumption for the building drops by anywhere between 10 percent and 26 percent. Therefore, there are good public policy reasons to encourage sub-metering. It reduces overall demand for electricity, reducing demand for new generation capacity, which has a relatively high marginal cost. If all buildings were to be sub-metered, it would reduce overall provincial consumption by about 1 percent. Therefore, we believe it is in the government's interest to encourage more sub-metering, because reducing demand pressures on the electricity market will ultimately reduce costs for government.

Tenants benefit from sub-metering, because all of the savings due to the reduction in electricity consumption associated with sub-metering accrue to the tenants. This is required by the Tenant Protection Act.

However, there are some barriers to sub-metering:

- No return on investment for the landlord (primarily because the energy consumption reduction accrues to the tenant)
- Given the current capital cost of installing sub-meters ($500 to $800 per unit), the payback period is too long, even if the benefits were to accrue to the landlord
- There are some regulatory barriers in the Tenant Protection Act which discourage sub-metering

This paper suggests that the government consider giving grants to encourage sub-metering, or that tax incentives be provided, that cover the full cost of installation. FRPO believes that this will have a significant impact on the number of suites which are ultimately sub-metered.

In addition, FRPO recommends that the government seriously look at other options which would provide further incentives, such as reducing regulatory barriers in the *Tenant Protection Act.*

Although this paper focuses on rental housing, some of the findings or suggestions may be applicable to condominiums as well.

About FRPO

FRPO is the largest association in Ontario representing those who own, manage, build and finance residential rental properties. Our membership includes a diverse group of owners and managers, from those with one small building or a few units, up to the largest property management firms and institutional owners and managers. The association also includes our colleagues and partners in industry, including service providers, suppliers, and industry consultants. With more than 800 members in every area of Ontario, and with over 250,000 homes, we represent the full spectrum of the industry in Ontario.

Multi-Residential Buildings Typically Bulk-Metered

The majority of multi-residential rental buildings in Ontario are bulk metered for electricity, gas and water. This means that consumption of energy and water in the units in these buildings are not individually metered. Rather, there is one bulk meter for the building which records the buildings overall consumption. The building owner, the landlord, is billed for the buildings gross consumption, and incorporates the cost of this consumption into the rent.

Discussions with owners in the industry, and with consultants active in this area, suggest that less than 10% of apartments in Ontario are sub-metered. This has significant implications for energy consumption in the province, as will be discussed in this paper.

The focus of this paper will be on electricity consumption, but there are also some interesting implications for gas and water consumption from sub-metering, which will be discussed later in this paper.

Size of the Multi-Residential Market

According to the 2001 Census, there were 543,355 units in Ontario in rental apartments with five or more storeys. Another 348,205 units are in apartment buildings with fewer than five storeys, for a total of 891,560 units in rented apartments. This represents about 21 percent of Ontario's 4.2 million households. FRPO estimates that about 90 percent of these units are bulk-metered.[1]

2001 Census	
Rented units in apartments with 5+ storeys	543,355
Rented units in apartments with fewer than 5 storeys	348,205
Total	891,560

Average in-suite consumption of electricity, for non-electrically heated units, ranges from 350-700 kWh (kilowatt hours) per month, or up to 8400 kWh annually. Using a

[1] This is a rough calculation based on discussion with industry owners and consultants.

conservative average of 400 kWh per month, this represents a total market consumption of about 357 million kWh per month, or about 4.3 billion kWh annually. Therefore, using the 90 percent rule of thumb, about 3.9 billion kWh in electricity consumption annually is bulk metered, or 321 million kWh monthly.

Average energy consumption in electrically heated units is much higher at about 1200 to 1700 kWh per month in the winter. There are a number of areas of the province that do not have access to gas, and the apartments in these areas are typically electrically heated. Therefore, the overall size of the market is somewhat bigger than estimated above.

Historical Utility Bias Against Sub-Metering

In many cases, individual metering was not contemplated in apartments. The cost of installing a meter for each unit during construction may have been a factor. However, there are a number of buildings that were built with individual meters.

Some people in the industry indicated that, in a number of these buildings, the local utility required the landlord to disconnect the individual meters. The primary motive for this was cost-related for the local utility. Individual metering requires numerous bills, mailing costs, customer relations and collection issues. Bulk metering to one landlord represented a cost-savings for the utility in each of these areas.

However, deregulation of the electricity market may have lessened this issue. There is now a customer charge that is specifically targeted to cover the administrative costs for each customer. Therefore, the cost issue may no longer be as significant a concern for local utilities. Individual metering will result in increased revenues for the local utility.

In spite if the lack of interest in individual suite metering by local utilities, sub-metering product and service companies have stepped in, somewhat, to provide a means of cost allocation among tenants. Basically, these companies provide solutions ranging from the supply and installation of equipment to the operation and service of the system including reading the meters, billing and collecting the tenants, and managing the local utility invoices. In general these services are still at the early stages of development in Ontario as the actual volume of sub-metering has been limited.

Impact of Sub-Metering on Electricity Consumption

There are two main tenant benefits associated with sub-metering. The first is fairness. In sub-metered building tenants pay for the energy they use, therefore low energy consumers are not inadvertently subsidising heavy users. This is discussed in the next section. The second is that sub-metering allows tenants the opportunity to benefit directly from energy conservation. Basically when people understand that their actions impact their costs they are more likely to be energy conscious.

There is excellent evidence that sub-metering leads to a reduction in electricity consumption. Non-electrically heated apartments in Ontario that have been sub-metered have shown a 16-22% reduction in electricity consumption after a switch to sub-metering. Electrically heated apartments show a reduction in consumption of over 30 percent. This is based on the actual results from sub-metering three different buildings. A larger database of results is not available because the cost of sub-metering and other barriers to sub-metering in the province. These will be discussed later in this paper.

A very detailed study of the issue was undertaken in New York State by the Energy Research and Development Authority. A full copy the study is available at http://www.submeteronline.com/pdf/subman2001.pdf. This study found that annual reductions in electricity consumption of 10-26% were achieved in the first year after sub-metering, and that these savings persisted over time. The likely reasons cited for such a reduction were: (a) that conservation is reinforced each month by the resident's receipt of an electricity bill; and (b) residents will invest in efficiency (e.g., more efficient appliances and lighting) because they will reap the benefits directly.

The findings from the New York study reinforce the actual experience with sub-metering where it has happened in Ontario.

What this means is that the total potential consumption reduction, across Ontario, were all apartment buildings to be sub-metered, is about 1.2 billion kWh annually, assuming an average consumption reduction of 18%, or about 100 million kWh monthly (or 100,000 mega Watt hours (MWh)). However, it would take a concerted effort, and the removal of a number of barriers, before such a reduction could be achieved.

Impact of Sub-Metering on Tenants

Currently, in bulk-metered buildings, there is no relationship between an individual tenant's electricity consumption and their monthly expenses. The total cost for the whole building is simply averaged and incorporated into the rent. There is clearly no incentive to minimize consumption, because there is no marginal cost associated with consumption.

As a result, there is a fairness problem. High electricity users are, in effect, subsidized by low electricity users. The New York study found that 20-25% of usage is consumed by 10% of the apartment residents. Sub-metering also perfectly allocates utility rates. As rates increase or decrease, the rates are passed through to residents immediately.

The process of sub-metering in Ontario involves two main steps:

(a) remove the average utility cost (pro-rated either by unit size or number of bedrooms) from the rent; and
(b) begin charging the tenant directly for actual consumption.

What this means for the majority of tenants is that their total monthly costs will decline because they are below average consumers of electricity. Higher users will experience an increase in monthly costs, but this is fair. They can also take steps to reduce their consumption if they want to lower their monthly costs. The New York study found that 60-70% of the residents benefited from lower total monthly costs after sub-metering.

With electricity prices now frozen until 2006, this is an excellent time to undertake a sub-metering initiative, as all tenants can be provided absolute certainty as to the costs they can expect from a switch to sub-metering. It makes it much easier to demonstrate the benefits.

Benefits to Government and Society of Sub-Metering

Given that sub-metering reduces energy consumption, it follows that there are benefits to the government, utilities and society.

Government and utilities will benefit because reduced electricity consumption will reduce the marginal cost of electricity production. The marginal cost is typically higher than the average cost, so any reductions in consumption would have larger benefits. OPG, of which the government is currently the primary shareholder, would have reduced capital investment requirements.

There are also environmental benefits of reduced consumption. Reducing the burning of fossil fuels and coal, by reducing electricity consumption, will have air quality benefits across the province. It will also help the province meet potential Kyoto accord requirements.

Barriers to Sub-Metering

No Return on the Cost of Sub-metering

Based on discussions with consultants active in this area, FRPO estimates that the cost of sub-metering ranges from about $500 to $800 per suite (i.e. per metre point) installed.

However, the benefits of this expenditure flow primarily to the tenants. Under the *Tenant Protection Act*, the landlord is required to reduce the rent in accordance with the estimated cost of this "service reduction" to the tenants. FRPO does not take issue with this, but it means that there is typically no return on investment for the landlord from investing in sub-metering.

It is possible for a landlord to apply for an "above-guideline increase" for this capital to recoup some of the cost. However, these applications are time-consuming, are costly themselves, can be controversial with tenants, so many landlords are reticent to make these applications. Furthermore, the rental market in most parts of Ontario is now characterized by high vacancy rates. A soft rental market means that most landlords will simply not be able to pass on an above-guideline rent increase. Many are not even passing on the annual guideline currently.

The example in the table below contrasts the capital cost of sub-metering with the value of the energy reduction.

Annual Consumption (kWh)	4800
Cost Per kWh	$0.043
Annual Energy Cost	$206.40
Forecast Sub-metering Consumption Reduction	$41.28
Cost of sub-metering	$500.00
Payback in Years	12.1

Since the savings from the consumption reduction accrues to the tenants, there is no payback for the landlord. Even if the full amount of the reduction were to accrue to the owner, it would still mean a 12.1 year payback. A payback beyond 3 years is too long a time horizon for many potential investors.

The only reason that a few landlords have proceeded with sub-metering is that it gets a volatile cost item out of their cost base. Volatile costs are not compatible with a rent control system with does not allow quick adjustments to rent. However, in the absence of any incentives or reduction in risks and uncertainty, few in the industry can be expected to sub-meter their buildings.

Regulatory Barriers

Currently the *Tenant Protection Act* refers to the ability to decrease rent in conjunction with a decrease in service "if the landlord and the tenant agree" (s. 134 - decrease in services). This is a significant problem for landlords who want to convert a whole building, and in fact may be a major barrier. One might expect high energy consumers to oppose sub-metering. Other tenants, fearful of change, may oppose sub-metering as well. A change to the legislation which permits an exception to the requirement for 'tenant agreement' where the decreased service is a utility being converted to a 'user-pay' service would facilitate implementation of sub-metering.

Another barrier is that the vital services provisions (s. 145-153) of the *Tenant Protection Act* could kick in after the electricity has been removed from the rent, and the electrical service is now provided independently. Some owners are retaining independent consultants to arrange the sub-metering, and then handle the electricity provision, billing and collection.

Some landlords remain concerned that they could be required to continue to provide the service, even though the tenant is not paying the electrical bills, and the rent had been reduced in accordance. This could happen if, for example, the Ontario Rental Housing Tribunal were to make a finding that the subcontractor is not independent from the landlord.

Options to Promote Sub-metering

Several options to promote sub-metering are listed below. They are listed in order of priority.

Government Grants or Incentives

In order to get more sub-metering, it is necessary to increase the return on investment in sub-metering. One way to do this is to have the government offset the cost of sub-metering through grants or other incentives such as tax reductions. Given the advantages in terms of reduced electricity demand, reduced costs for tenants, and environmental benefits, FRPO believes that the government should make the incentive equivalent to the full cost of sub-metering.

This mechanism could be done a direct grant, or a tax incentive.

Regulatory Changes

The two legislative barriers mentioned above should be eliminated. Owners should be allowed to proceed unilaterally with sub-metering if they so choose. And the legislation should clarify that sub-metering will not invoke a vital-services responsibility on the landlord.

Guideline or Regulatory Change for Sub-Metering Rent Reductions

Ontario's rent control system makes sub-metering a difficult exercise, but also an uncertain exercise. This is because the amount of the rent reduction may be subject to change as a result of the rent control process. If there were a provincial guideline that used province-wide average data (for non-electrically heated buildings), and outlined a basic formula which would provide guaranteed results at the Tribunal, this would help the process. Landlords would then have some certainty as to the amount of the rent reduction they would be required to pass on. However this guideline is designed, it must have the effect of providing certainty to the investor. There should not be any subsequent surprises to the investor in the form of a tenant application that results in an subsequent unanticipated change to the amount of a rent reduction. Such uncertainty would discourage all investors from proceeding.

Landlords are reluctant to proceed with sub-metering because they risk a mid-project change in the terms. Clear guidelines need to be developed which include:

1. Sub-metering be recognized as an energy conservation measure and therefore a mechanism needs to be in place to reward the landlord.
2. An easily recognizable method of reducing rents due to the removal of the electricity cost.
3. Some guideline with respect to charging for the electricity usage including fixed service charges.

4. Clear guidelines to allow the landlord to convert a building.

Allow Owners to Recapture Some of the Savings

Currently, the rent control provisions require the landlord to reduce the rents by 100% of the current estimated costs of the electricity. Since the evidence show that the majority of tenants benefit from lower total monthly costs after sub-metering, a case can be made that some of these savings should be used to offset the capital cost of sub-metering. One option is to reduce the percentage of current electricity costs that must be passed through to tenants via a rent reduction from 100 percent (e.g. to 75 percent). This would require an amendment to the *Tenant Protection Act.*

Accelerated Capital Expenditures Under Rent Control

Another option is to dramatically accelerate the rate at which sub-metering costs can be amortized under the provincial rent control system. These should be allowed a one-year amortization. While the market currently presents a problem for most landlords in passing on above-guideline rent increases, there may be some who would still be able to take advantage of this system. Since the primary beneficiaries of sub-metering are tenants, it makes sense to allow for an accelerated cost pass-through.

Government Campaign to Promote Sub-Metering

Some tenants initially resist attempts by their landlord to sub-meter. This can create some issues for landlords wishing to proceed, and may create some marketing problems for landlords try to lease their units.

Proactive Rules or Regulations for LDCs

Some changes could be made to the rules or guidelines that govern LDCs, to make sure that they are supportive of this issue. A government direction to promote sub-metering, for example, might help reduce resistance to such efforts.

Gas and Water Ratio Billing

The above discussion has focused on electricity, because of the relative ease of sub-metering electricity consumption. However, gas and water consumption in rental complexes is also bulk metered. Unfortunately, sub-metering is much more difficult for these items. The heating plant for most complexes is centrally located, so sub-metering is not an option. As well, water might have numerous entry points into a unit, and the cost of sub-metering would be prohibitive.

However, it is still possible to separately bill for these utilities, by allocating the total bill across the units in the complex on a proportional basis (e.g. by square feet, or by number of bedrooms), sometimes called ratio billing. Interestingly, individual billing in these circumstances leads to similar reductions in consumption amongst the tenants. There appears to be some sort of "bill effect", whereby those who receive a separate bill for a utility become more conscious of their consumption.

Therefore, it would provide similar benefits to encourage more individual billing for these commodities. There are some federal legislative barriers, however, to ratio billing. Federally approved btu meters are required, and monitoring rules and costs currently make ratio billing impractical.

Some of the regulatory barriers in the Tenant Protection Act mentioned with respect to electricity sub-metering also apply to other utilities. If the government wanted to broaden the net, to reduce water consumption as well, it should consider including water if it makes and legislative or regulatory changes.

ADVOCACY CENTRE FOR TENANTS ONTARIO
BACKGROUND NOTES:
RESPONSE TO ISSUES RAISED IN THE CONSULTATION PAPER

These notes are prepared by the Advocacy Centre for Tenants Ontario ACTO) to assist legal clinics, housing advocacy and social justice organizations, as well as individual tenants, in preparing submissions to the Ontario Government's Residential Tenancy Reform Consultation. The notes make recommendations on options for reform with the overall goal of re-balancing the legislation, and improving the Ontario Rental Housing Tribunal, to better meet the needs of tenants, particularly the low-income tenant constituency served by community legal clinics.

In each case, the notes make reference to the relevant questions in the Questionnaire prepared by the Government for use in the Consultation. In addition to these background notes, ACTO has prepared a short set of recommended responses to the Questionnaire, as well as more lengthy discussion papers on many of the areas discussed in the Consultation Paper. The background notes are intended to be in an accessible format and do not include footnoted sources, most of which can be found in ACTO's Housing Quick Facts.

FULL RENT REGULATION

Consultation Paper – Rents for New Tenants; Regional Decontrol
Questionnaire # 1 and #7

Vacancy Decontrol
The Ontario government should re-introduce rent controls on vacant units, removing the rule that allowed a landlord to charge a new tenant whatever rent the market would bear. In a tight rental market, unregulated rents on vacant units have contributed to a 26% increase in rents across Ontario since 1995. Rent control rules must be applicable to all buildings, including buildings built since 1991.

Linking Rent Control and the Vacancy Rate
Rent controls should be in place for all tenants across the province, irrespective of where they live or what the vacancy rate is in their community. Even in Ontario communities with a relatively high vacancy rate, there is still a critical shortage of adequate and affordable rental housing. It's conservatively estimated that there are 158,456 low-income households – representing more than 300,000 individuals - on social housing waiting lists across the province.

Vacancies tend to be at the high end of the market, but the removal of rent controls will hurt tenants at the bottom end of the market, who are not able to take advantage of market choice. In reality, most tenants cannot pick up and move to chase lower rents.

Moreover, the available vacancy rate information is incomplete and not a reliable basis for de-regulating rents. The information on vacancy rates is calculated based on larger multi-unit buildings, and does not reflect the reality for almost 50% of renter households who rent in smaller buildings, houses and townhouses.

The Government will find a regional system of rent controls, tied to vacancy rates, to be administratively awkward and burdensome to implement, operate and oversee. More importantly, regional rent decontrol will leave tenants vulnerable to arbitrary rent increases and economic evictions, something the Liberals vowed not to do in their election platform. In fact, previous Ontario Governments introduced and strengthened rent controls as a necessary safeguard to protect security of tenure.

Regional decontrol would create an unpredictable environment. Both tenants and landlords need some degree of certainty with respect to expected costs and revenues in order to make financial decisions and plans.

FAIR EVICTION PROCESS

Consultation Paper – Dispute Resolution
Questionnaire # 9 and 10

Right to a Hearing and Mediation
Eviction must be seen as a remedy of last resort. Every tenant facing eviction should have a fair opportunity to tell their side of the dispute at a hearing. Every tenant should be able to obtain assistance if they want to settle their dispute through mediation and negotiation.

Many tenants do not understand that they do not have the right to a hearing, or to assistance in settling their housing dispute, **unless** they file a written dispute with the Tribunal within 5 days of receiving a Notice of Hearing from their landlord. From June 1998, when the Tribunal began operations, to March 31, 2004, it has issued default eviction orders (without a hearing or mediation) against 189,942 tenant households who failed to file a written dispute within the 5 day period.

Most eviction applications (84%) are for arrears of rent. The amounts in dispute are quite small – the median amount is less than $800 – but most eviction applications (58%) result in an eviction order without the tenant having had a hearing or the opportunity to come up with a repayment plan at mediation.

In some cases where a tenant owes rent, the tenant may want to go to the scheduled hearing to tell the Tribunal that the landlord is asking for more rent than is owed, or to ask the Tribunal for more time to pay the amount owing. But if the tenant has not filed the written dispute within 5 days, they will automatically receive an eviction order before their scheduled hearing date.

Under the current law, most tenants facing eviction do not get a hearing and, therefore, lose the opportunity to tell their side of the story and are not given a chance to settle their dispute with the help of a Tribunal mediator.

Setting Aside a Default Eviction Order

When a tenant receives a default eviction order in the mail, he or she can bring an application to the Tribunal asking that the order be set aside. However, the only basis on which a tenant is entitled to an order setting aside a default eviction order is if the tenant is found by the Tribunal to not have been "reasonably able to" file a dispute within the 5 day period.

This is called the "set aside test" and it means that the Tribunal will usually not set aside a default eviction order if a tenant did not understand the requirement to file a dispute within 5 days. In many cases, the Tribunal has upheld an eviction order even though the tenant brings a set aside application telling the Tribunal that they do not still owe rent money or that they have the intention and ability to pay off the outstanding arrears right away.

The set aside test must be amended. The best solution would be to remove the default eviction process so that all evictions are scheduled for a hearing, with the opportunity for mediation. But if a default eviction process remains in the Act, it is important that the test be changed to provide that a tenant has the right to have a default eviction order set aside, and a hearing of their dispute on its merits, as of right, regardless of the reason why they were unable to file a written dispute during the initial filing period.

Re-Designing Eviction Dispute Process

The eviction process must be re-designed to be fair to tenants who want to challenge eviction or to settle their dispute with their landlord without moving out. This can be achieved without sacrificing the opportunity for a quick resolution in cases where the tenant has no intention of remaining in the rental unit.

Legal clinics have taken the position that the best way to re-balance the eviction process is to schedule all evictions for mediation and hearing before the Tribunal <u>without the requirement to file a dispute within 5 days</u>. If a tenant does not appear on the hearing date, or files a notice of non-appearance in advance, an eviction order can be issued immediately. If a tenant comes on the scheduled hearing day but needs more time to pay off rent arrears, or to obtain a loan under the Rent Bank program, a mediator can assist the tenant and the landlord in developing a mutually satisfactory agreement.

GOVERNMENT RECORD OF LEGAL RENTS

Consultation Paper – Rents for New Tenants
Questionnaire #2

The Government should establish a public archive or record of legal rents that tenants can use to verify that they are being charged the appropriate amount for their housing. In order to avoid undue government expense, a simple record of all legal rents as of a date to be named in the new law would be a good solution.

For example, if the new landlord/tenant act comes into force as of January 1, 2005, the law should require all landlords to do a one-time filing of the current legal rent for every unit rented as of October 1, 2004. Every landlord could be required to give their tenant a copy. If the amount filed by the landlord was wrong, the tenant could apply to the new tribunal for an order clarifying the rent.

If a tenant could, in subsequent years, obtain the information about the rent for their unit as of October 1, 2004, on a Ministry web site, then it would be a relatively simple matter for the tenant to access that information online (at a library if they don't have a home computer). The Ministry site could also build in the ability to add on all annual guideline rent increases since the start date, as well as any ordered rent increases above the annual guideline.

This approach would be cheaper than the rent registry that we used to have because landlords would not have to file annually. If a landlord reduced the rent for a particular tenant, this system would not lower the legal rent for subsequent tenants. But the current tenant would be protected under the law from any revocation of the decrease.

This simplified record of legal rents would work particularly well if the law was changed to provide for one date for rent increases across the province – a province-wide rent increase anniversary date.

REFORMING THE RENTAL HOUSING TRIBUNAL

Consultation Paper – Other Issues and Concerns

The Legal Clinic Perspective

Ontario community legal clinics have lost confidence in the capacity of the Ontario Rental Housing Tribunal, as it is currently constituted, to fulfill its mandate in an impartial, straightforward and transparent manner that is respectful of the needs and experience of all parties, including the disadvantaged population that is served by the legal clinic system.

Legal clinics submit that it is imperative that the new Government of Ontario put in place new leadership at a re-oriented housing tribunal that can re-establish confidence and trust with both its stakeholder communities.

Background on Clinic Experience and Expertise

Legal Aid Ontario funds 79 legal clinics in communities across Ontario. Legal clinics provide legal and advocacy services, including law reform advocacy, on behalf of low-income Ontarians in respect of housing matters in all of these communities. In addition, Legal Aid Ontario funds a Tenant Duty Counsel (TDC) Program which is managed by a provincial clinic, the Advocacy Centre for Tenants Ontario, and is delivered by clinics at all locations of the Ontario Rental Housing Tribunal in Ontario.

Even without counting Tenant Duty Counsel Program files, twenty-four percent of all clinic case files are in the area of housing law. These files consist almost exclusively of applications before the Ontario Rental Housing Tribunal (ORHT) or appeals from ORHT decisions.

Through Legal Aid Ontario's Clinic Resource Office (CRO), legal clinics have created a database of ORHT decisions and of legal and research memorandum analyzing all aspects of ORHT adjudicative and administrative functions.

The legal clinic sector has an unmatched level of experience in representing clients before ORHT. Clinics have specialized and in depth expertise on the *Tenant Protection Act* and the operation of the ORHT. Clinics also have an historical perspective, and are able to view the current legislation and tribunal in the context of prior adjudication regimes in Ontario, under both landlord and tenant legislation and rent regulation legislation.

Problems Experienced by Clinics at the Tribunal

Clinics report the following as typical or frequent problems in eviction hearings before the Tribunal:

- Rushed hearings – often less than 10 minutes is scheduled for an eviction
- Reliance on hearsay evidence
- Reliance on unsworn testimony
- Disrespectful treatment of parties
- Refusal to hold applications down to allow tenant to consult TDC or mediator
- Capricious restriction of scope of evidence or submissions
- Inconsistent and reluctant exercise of discretion to relieve from eviction
- Unreliable recording of hearings
- Failure to provide counsel with copies of decision within appeal period.

How Have The Needs Of Stakeholder Communities Been Served By the Tribunal?

The tenant households that are parties to applications before the ORHT are predominately low income. We know this because 94% of all landlord applications to the Tribunal are for evictions and 84% of these applications seek eviction because of alleged arrears of rent. Research conducted by York University has demonstrated that a disproportionate number of low income tenants are single mothers, persons with disabilities, seniors, youth under 20 years of age, visible minorities and new immigrants for whom English is not a first language. As has been noted by the Ontario Ombudsman, this population can be particularly vulnerable to negative consequences if legal procedures are too complex and if efficiency is valued over fair process.

The ORHT has failed to establish procedures and materials that recognize and meet the needs of its vulnerable stakeholder group. For example, the ORHT has:

- Failed to produce a clear, understandable Notice of Hearing that would give tenants adequate notice of the 5 day dispute period

- Failed to publish a balanced range of public information materials which would address the needs of both stakeholder communities (eg. no mention of 5-day dispute period in any ORHT pamphlet or on website)

- Emphasized procedural efficiency over a flexible and balanced mediation and adjudication process (e.g. the Tribunal aims for a 70% default eviction rate and its last Annual Report emphasizes that default orders are signed within 1 to 2 days of failure to file a dispute).

As well, the ORHT has distinguished itself from many other Ontario tribunals by:

- Refusing requests that it set up a process for periodical stakeholder consultation on rules of procedure, interpretation guidelines, forms, etc.

- Failing to respond in a timely manner to recommendations for revisions to its procedures, forms and public information materials.

- Failing to establish, or to ensure compliance with, a consistent and appropriate hearing protocol that is respectful of both the parties and proper legal procedure.

- Selling information from eviction applications to a commercial entity (which was setting up a tenant blacklist), notwithstanding that this contained unproven allegations with respect to the personal financial circumstances of tenants (This practice was discontinued in 2003 after a direction from the Office of the Information and Privacy Commissioner.).

- Refusing to make accessible Tribunal information on ordered fines and costs against landlords, taking the position that this would be a breach of landlord privacy rights notwithstanding that this removed a possible statutory defense for tenants facing eviction. (This information is now provided pursuant to a 2004 decision of the Office of the Information and Privacy Commissioner).

- Failing to make available a public database of its decisions. Of over 100,000 decisions issued by ORHT, less than 500 are available to the public (through a commercial legal on-line publication).

In order to re-orient the Tribunal, the Government should establish a public recruitment process for new, qualified adjudicators and a new Tribunal Chair.

ANNUAL RENT INCREASE GUIDELINE

Consultation Paper – Rent increase guideline
Questionnaire #3

Currently the annual rent increase guideline includes a 2% bonus, in addition to an amount calculated on the basis of increases in residential rental maintenance and operating costs. The 2% bonus has been removed during the period of the Residential Tenancy Reform Consultation.

The 2% bonus should be removed in the new legislation. Rent increases have outstripped inflation since the *Tenant Protection Act* was enacted in 1998. Landlords should not be entitled to increases beyond what is justified by actual increases in their maintenance and operating costs.

ABOVE-GUIDELINE RENT INCREASES (AGIs) TIED TO INCREASES IN THE COST OF UTILITIES

Consultation document – "Costs No Longer Borne" for utility costs
Questionnaire #4

The legislation should be amended to eliminate above-guideline rent increases that are based on increases in the cost of utilities. The cost of utilities is already factored in to the calculation of the Annual Guideline Increase. Landlords are able to recover their increased costs for utilities through the Annual Guideline Increase.

ABOVE-GUIDELINE RENT INCREASES (AGIs) TIED TO CAPITAL EXPENDITURES

Consultation document – Costs No Longer Borne – Capital Expenditures
Questionnaire #4

Rationale for Eliminating AGIs for Capitals
Capital expenditures are already a component of the rents paid by tenants in Ontario. Landlords have been able to cover capital expenditures by raising the rents freely on all units that have been vacant at any point since 1998. Landlords that have been following sound and responsible business practices have set up capital expenditure reserve funds to finance planned "big ticket" replacements and improvements. Across the province, landlords have achieved a 26% increase in overall average rents since 1995, compared to an 18% increase in the Ontario Consumer Price Index.

Eliminating AGIs for capital expenditures will also eliminate the need to set up an administrative procedure for removing capital expenditures from rents after an item is paid off.

ENCOURAGING COMPLIANCE WITH MAINTENANCE STANDARDS

Consultation document – Maintenance and rent increases
Questionnaire #5

Certain measures should be included in the Act to encourage landlords to maintain their buildings. The consultation paper proposes several options for a property that has an outstanding work order:

A) not allowing any rent increases (i.e., neither the guideline nor an above-guideline increase);
B) allowing the annual rent guideline increase, but not allowing a landlord to seek an above-guideline rent increase from the Tribunal; and
C) expanding the power of the Tribunal to deal with disrepair and non-compliance with maintenance standards.

Options A) and C) offer the best solution for tenants facing disrepair of their accommodation.

The consultation paper suggests that if rent increases were prohibited while a work order was outstanding, that this may result in a "downward slide" in building standards, by leaving landlords without the resources to effect the repairs. However, the opposite would be the case. In business, stricter regulatory penalties generally have the effect of encouraging early compliance with standards. Under the current rules, there is little or no downside in the short term for a landlord failing to maintain a rental property. Where a landlord knows they may not be able to raise the rent if they don't maintain the building, prompt repairs and regular maintenance are more likely to take place. The result will be an overall improvement in the condition of rental properties, while still allowing responsible landlords to take a modest rent increase each year.

Ensuring maintenance standards are kept up could also be promoted by ensuring that work orders are made available to the public. In those cases where a landlord continually fails to maintain their property, there must also be greater potential penalties. To this end, the power of the Tribunal to compel compliance and compensate tenants living in disrepair must be strengthened.

As a healthy rental housing stock is in the interests of all Ontarians, the government should also reintroduce minimum property standards to apply across the province. The current O.Reg. 198/98 maintenance standards currently only apply where the local municipality has no standards of its own; it would be a simple matter to convert these to minimum standards across the province, though allowing municipalities to require higher standards if they so choose.

DEMOLITION AND CONDOMINIUM CONVERSION CONTROLS

Consultation document – Demolition and conversion
Questionnaire #11

Ontario needs laws requiring cities and towns to have an approval process for demolition and conversion, based on rules set out by the provincial government. Protections should not be based on vacancy rates criteria alone as this is just one factor among many to determine the state of local rental housing markets.

Between 1991 and 2001, Ontario lost 24,298 existing private rental units to demolitions and conversions, while only 16,885 new private rental units were built. That means we had a net loss of 7,413 units.

Ontario has averaged 2,462 rental starts annually over the years 1995-2003. By contrast, from 1988 to 1992, rental starts averaged 16,000 units annually. Ontario is facing an affordable housing deficit of more than 80,000 units.

Changes in rental demand can happen quickly, causing temporary fluctuations up or down in the vacancy rate, but changes (gains) in the rental stock occur much more slowly. For example, an upswing in economic growth results in the formation of more tenant households as young people can afford to move into their first apartments and as those sharing a rental unit can afford to pay the rent on their own apartment. With an increase in immigration levels, newcomers will be looking for accommodation and for the majority in their first years in the country, that will be a rental apartment.

With the recent rise in vacancy rates, landlords may feel that this is a good time to get out of rental housing. However, municipalities need to plan for the long-term for their communities and their residents – preserving the existing rental stock for current and future tenants. The problem is currently most pressing in larger urban centres such as Toronto, Hamilton and Ottawa, but it's important that all municipalities be able to act to preserve housing in their local communities when necessary.

There are various legislative avenues that the Government could take to support municipalities' efforts to ensure that a wide range of affordable rental housing is available in their communities, including:

- Amendments to the *Municipal Act* to strengthen the authority of municipalities to protect the existing affordable rental housing stock from demolition or conversion to condominium and other uses.

- The restoration of an improved *Rental Housing Protection Act* which will give municipalities the powers and permanent tools to control conversion and demolition of existing rental housing.

Until the government decides on a permanent solution, there should be a freeze on all conversions and demolitions.

SOCIAL HOUSING REFORM ACT

The *Social Housing Reform Act* is not formally part of the TPA consultation as framed by the Government. However, legal clinics, housing providers and tenants living in social housing have identified the need for reform of the social housing legislation brought in by the previous government. Some issues raised by social housing tenants overlap with TPA Consultation issues, including the question of the quality of adjudication and fair process at the Ontario Rental Housing Tribunal.

In particular, the Tribunal has interpreted the *Social Housing Reform Act,* and its own jurisdiction under the *Tenant Protection Act* in a manner that fails to afford a hearing on the merits to tenants facing eviction from social housing after cancellation of a rent subsidy. This has created hardship because the *Social Housing Reform Act* imposes a mandatory loss of subsidy for tenants who fail to comply with inflexible filing deadlines, **even where the tenant household otherwise continues to qualify for a rent subsidy.** In other words, tenants across Ontario are at risk of losing their rent-subsidized housing if they fail to promptly provide the housing provider with the documentation proving that they continue to qualify for a subsidy. In these circumstances, a tenant who subsequently provides the documentation proving that they continue to qualify for a subsidy, is nonetheless unable to get a hearing on the merits of their case before the Tribunal and is vulnerable to eviction.

The *Social Housing Reform Act* should be amended to remove the mandatory loss of subsidy provisions.

The *Tenant Protection Act* should be amended to expressly provide that, in social housing evictions for arrears, the Tribunal has the authority to consider the merits of a subsidy revocation decision, as part of its determination as to whether rent is owing.

ELECTRICITY PRICES AND RENT INCREASES

Consultation Paper – Costs No Longer Borne – Utility costs and capital expenditures; Other issues and concerns – Energy savings through sub-metering
Questionnaire # 4

The legislation to replace the *Tenant Protection Act* must remove barriers that now prevent tenants from fully participating in programs that would allow them to reduce electricity use and realize savings from their conservation efforts.

Most tenants pay for electricity and other utilities in their rent. On April 1st, 2004, the electricity rate cap was increased to 4.7 cents per kWh for the first 750 kWh consumed per month, and 5.5 cents per kWh for consumption above that level. The Ontario Energy Board will be developing and implementing a new electricity price structure for May 1, 2005. The provincial government has announced that energy conservation and efficiency initiatives to reduce electricity consumption and save consumers money are a key component of their overall energy plan.

Under the current rent rules in the *Tenant Protection Act*, landlords recover electricity price increases both through the Table of Operating Costs (hydro category) used to calculate the Annual Rent Increase Guideline and through applications for above-guideline rent increases if the increase in hydro rates is above the percentage accounted for in the Table. In addition, landlords can pass on the capital costs associated with energy conservation or efficiency programs in their buildings through above-guideline rent increases – but there is no provision for tenants to apply for a rent reduction if a landlord's hydro costs decrease.

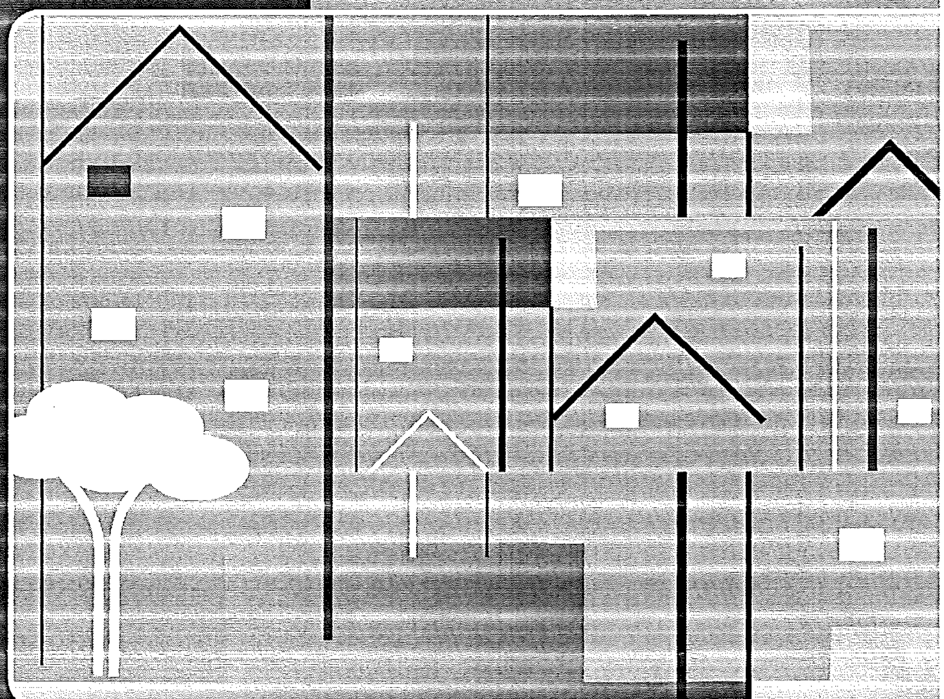
The provincial government is suggesting that electricity consumption in apartment buildings can be reduced through the installation of individual electricity meters for each rental unit – with either the landlord charging back tenants for their actual consumption (with the addition of services charges to cover the cost of billing, meter reading and maintenance) or the tenants becoming the direct customers of the local distribution electricity companies (subject to the LDCs' regulated rates and service charges).

Sub-metering with landlord administration would be difficult to oversee and, without clear rules on the type and level of service charges allowed, will be open to disputes over the billings (this has been the experience of mobile home park tenants who are billed for utilities by their landlord). Sub-metering with the tenants as direct customers of LDCs is problematic because tenants do not have control over the type of appliances in their unit, their heating fuel source, or the energy efficiency of their unit (e.g. windows, insulation, weatherization) – all of which affect consumption levels.

Before proceeding with any sub-metering initiatives, the legislative rules around cost-pass through for electricity service must be revised to ensure that landlords cannot pass on all the costs associated with energy conservation/efficiency to their tenants and that there is a mechanism for tenants to share in energy savings.

Ontario

Residential Tenancy Reform Consultation Paper



Spring 2004

Message from Minister of Municipal Affairs and Housing John Gerretsen

Welcome to a discussion on the proposed reform of Ontario's residential tenancy legislation.

The Ontario government is committed to providing real and balanced protection for landlords and tenants, and encouraging the growth and proper maintenance of the stock of rental housing across the province. We understand that the strength of our communities in part depends on a healthy rental market.

Before proposing new legislation to achieve this goal, we will consult extensively with tenants, landlords and others affected by these issues to hear what they think. We are seeking input from the people of Ontario by holding town hall meetings and discussions with a wide range of community groups.

This discussion paper is an essential part of our strategy to obtain your suggestions and ideas on how to proceed.

I have asked my Parliamentary Assistant Brad Duguid to be my representative for these public consultations. He will travel across the province to hear your views on the ways we can make Ontario's rental housing market healthy and strong for both tenants and landlords.

With your help, our government is confident we can propose legislative reform to protect tenants and promote a healthy private rental housing market both now and in the future. This will help keep our communities strong and vibrant, and ensure that residents enjoy a quality of life that is second to none.

John Gerretsen

Minister

Message from Parliamentary Assistant to the Minister of Municipal Affairs and Housing (Urban) Brad Duguid

Minister of Municipal Affairs and Housing John Gerretsen has asked me to lead the dialogue between our government and Ontarians on ways to improve our rental housing market to ensure tenants have real protection and to encourage a healthy and vital rental housing industry. This is part of the Ontario government's plan to make Ontario strong, healthy and prosperous.

I look forward to touring our province, and listening to the views of tenants and landlords across Ontario.

This document contains a questionnaire that I encourage you to complete. It forms an important part of our dialogue with you, and provides you with an opportunity to make your views known directly to our government, as we move forward on our agenda of real, positive change for Ontario.

The discussion paper examines a number of areas where improvements are needed. These include rents charged to new tenants, adjusting rents based on utility costs, proper maintenance of a rental building, regional decontrol, rent deposits, dispute resolution, tenant and landlord rights, and the demolition and conversion of rental housing.

Our discussion will take us to communities where we can hear from as many people and organizations as possible. Town hall meetings will be held in the GTA (Central, East and West), Kitchener, Hamilton, London, Sudbury, Kingston, Ottawa and Thunder Bay.

I invite you to attend one of the public meetings, and provide your comments on this very important topic. Information regarding the dates and times of the meetings can be found on our website, www.rentreform.ontario.ca, and/or by calling 1-866-751-8082.

Thank you in advance for your participation in this process.

Brad Duguid

Parliamentary Assistant

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Introduction

Thank you for participating in the discussion on possible reform of Ontario's residential tenancy legislation.

The Ontario government has stated that it wishes to put forward new legislation that would protect tenants and encourage landlords to maintain and invest in rental housing. We want your input on this proposed legislation.

How to share your views with us:

1. Fill out the multiple-choice questionnaire electronically on our website: www.rentreform.ontario.ca. On this site, you can also read this consultation paper, download copies of the questionnaire in English, French or any of 10 widely spoken languages, and find up-to-date information about the consultation.
2. Mail or fax the questionnaire and/or written comments to:
   Residential Tenancy Reform Consultation
   Ministry of Municipal Affairs and Housing
   Market Housing Branch
   777 Bay Street, 14th Floor
   Toronto ON, M5G 2E5
   Phone: 416-645-8082 or toll-free 1-866-751-8082
   Fax: 416-585-7607 or toll-free 1-888-846-8832
3. Attend one of the many town-hall meetings that will be held across the province to express your views in person. Dates and locations can be found on the website, or by calling the phone number listed above.

Submissions must be received no later than June 15, 2004.

We want to know what you think. It is our responsibility to make sure the system works for everyone, and the Ontario government needs your ideas and visions. Tell us how to make it work.

Principles for change

The Ontario government has stated its intention to introduce legislation to repeal the current law, the *Tenant Protection Act, 1997*, and introduce a new bill that would provide real protection for tenants and, at the same time, ensure an adequate stock of rental housing.

We want to consult with Ontarians about how to develop proposed legislation to balance the interests of landlords and tenants. This consultation paper is a starting point for discussion on creating a fair system to address landlord and tenant issues in Ontario.

- We intend to introduce legislation that would bring back real rent control. If passed, this legislation would:
  - eliminate vacancy de-control, which allows unlimited rent increases when a tenant leaves;
  - keep rent controls in place whenever vacancy rates are below the threshold at which tenants have real choice;
  - apply rent control measures on a regional basis. The minimum threshold for lifting rent controls would include a vacancy rate requirement in excess of three per cent;
  - protect tenants in situations of high vacancy rates against landlords who attempt economic eviction by way of selective, excessive increases; and,
  - restructure procedural rules so that the process to file grievances and respond to eviction applications at the Ontario Rental Housing Tribunal is more fair and equitable to tenants.

- The proposed legislation would ensure that municipalities with low vacancy rates have the right to protect existing rental housing from unreasonable demolition or conversion to condominiums.

We want your views

This paper offers proposals for improving the existing system of rent and tenancy regulation. The discussion of each proposal includes options for implementation, important considerations and issues of concern, so that interested parties can have input on all aspects of the proposals.

The paper has been organized so that each of the key areas for consideration is contained in a separate chapter. These are:

- Rents for new tenants
- Rent increase guideline
- "Costs No Longer Borne" for utility costs
- Maintenance and rent increases
- Regional decontrol
- Interest on rent deposits
- Dispute resolution
- Making landlords and tenants aware of their rights and responsibilities
- Demolition and conversion

At the end of this paper is a multiple-choice questionnaire that corresponds to the chapters. Additionally, if there are any other issues you wish to raise or comment on, we encourage you to submit them. This questionnaire contains the key questions and possible solutions discussed in the paper. You may also submit a more detailed written submission.

We look forward to hearing from you.

Rents for new tenants

Under the current system, introduced by the *Tenant Protection Act, 1997* (TPA), most rent increases are limited by the annual rent increase guideline. However, when a rental unit becomes vacant, there is no limit to the amount of rent that can be charged to the new tenant. This is commonly referred to as "vacancy decontrol." When a tenant moves, he/she must choose from among vacant units that are "decontrolled" and which may be renting for considerably more than the tenant's existing unit.

Background:

The current system of vacancy decontrol allows the market to determine the rent for vacant units. It has been argued that:

a) this gives greater incentives for landlords to do capital work (such as major renovations and repairs) once a tenant moves out of a unit; and,

b) it results in higher returns to investors in rental housing, who are then more likely to build new rental properties.

However, it is also argued that vacancy decontrol creates an incentive for landlords to evict so that they can raise rents for the unit. As well, tenant advocates believe that vacancy decontrol has allowed rents to rise too quickly, resulting in an affordability problem.

The government proposes to eliminate vacancy decontrol and introduce a system to regulate the rents for new tenants. At the same time, in order to retain incentives for investors to build more rental housing, the government proposes to decontrol regions where high vacancy rates provide a natural protection against large rent increases (see chapter on Regional decontrol.)

Questions for consideration:

1. By how much, if at all, should a landlord be able to increase the rent when a new tenant moves in?

A. No increase. A new tenant should be charged the same amount as the previous tenant.

This option would address the concern that vacancy decontrol encourages landlords to evict existing tenants in order to raise rents. It would also help keep rents on vacant units affordable. In the short run, this option may not have a large impact, since in many areas of the province, rent increases have been low in recent years. However, this is not the case in all communities.

Further, this option might prove difficult for landlords who have not been charging the previous tenant full market rent. Some landlords, particularly small landlords, choose to charge tenants less than market rent — or at least not impose guideline increases — to avoid frequent turnovers. As well, some landlords argue that they wait until a unit is vacant to do capital repairs, and then charge the new tenant a higher but fair rent for the improved units (rather than applying to the Ontario Rental Housing Tribunal (the Tribunal) for an increase above the provincial guideline). It would also be necessary to consider how to determine the rents on units that have been vacant for a period of time.

B. A landlord should be able to charge a new tenant the same rent as the previous tenant, plus the increase allowed by the annual rent increase guideline.

This option would help maintain affordable rent levels for new tenants, while still allowing landlords to raise rents modestly. It gives landlords the opportunity to bring the new rent closer to market level. As well, compared to option A, this option would create greater incentive for landlords to maintain and improve rental units. However, this option might allow landlords to increase the rent for some units twice in the same year.

C. A landlord should be able to charge a new tenant the same rent as the previous tenant, plus any increases that the landlord was allowed to charge to the previous tenant but chose not to.

This would allow landlords to set the rent for a new tenant based on what they could have charged the previous tenant, had they taken all allowable rent increases. In other words, landlords could have the opportunity to catch up on missed rent increases when setting the rent for a new tenant.

This would provide more flexibility to landlords by allowing them to make up for missed increases, while still protecting existing tenants from large rent increases. This option might provide some incentive for landlords to improve a unit when it became vacant. It would allow a landlord to give an existing tenant a break from rent increases, without fearing the repercussion of a permanently depressed rent. This option might result in large rent increases on vacant rental units, if the landload had not regularly applied allowable rent increases.

2. When should the first rent increase for new tenants be permitted?

In the current system, upon entering into a tenancy agreement, a landlord and new tenant agree on the rent, and typically this rent cannot be increased for 12 months. It can be assumed that this would also be the case if allowing a limited increase for new tenants (options B and C), were implemented.

However, if landlords were not allowed to increase the rent when a new tenant moved in (option A and option C where the landlord has not missed previous rent increases), on what date should the first rent increase occur?

One option is to keep the existing rules and not allow an increase for 12 months after a new tenant moves in. This approach is the simplest for tenants to understand. However, if no rent increase is allowed when a new tenant moves in (option A), this could be a hardship for landlords who did not increase their rents for some time, or for landlords who have had a series of tenants staying less than 12 months. In both of these situations, the landlord would not have the opportunity to increase the rent at all for an extended period of time.

Another option is to allow a landlord to increase the rents not sooner than 12 months after the previous increase for that unit. Assuming that the landlord is required to give a tenant 90 days written notice of a rent increase (same as current situation), then the earliest a rent increase could be applied would be three months after a tenancy began. This could be confusing for both tenants and landlords and would complicate leases; the lease renewal date and the increase date would rarely be the same.

A third option is to set a province-wide "anniversary date" for all rent increases (i.e., January 1). This would be simple and predictable for both landlords and tenants as it would not be necessary to keep track of individual anniversary dates. However, since units currently have various anniversary dates, it could be initially disruptive to adopt a common date.

If rents for new tenants are regulated, then it must be considered how tenants would find out what the lawful rent is when they move in to a new unit.

3. How would new tenants find out what their rent should be?

A. *It should be up to the new tenant to contact the previous tenant to find out how much they were paying for rent.*

This system existed under previous legislation between 1975 and 1986. It was the responsibility of tenants to find out the previous rent, and if they believed the rent was unlawful, they could make an application to get their money back based on the evidence they had found.

One problem with this option is that it can be very difficult to locate previous tenants, particularly in larger cities where there tends to be significant migration. Tenants in these circumstances may have little recourse if they suspect they are being charged unlawful rents.

B. Landlords should have to tell the new tenants what the previous rent was.

This could be done by requiring landlords to give new tenants a copy of the last notice of rent increase (NORI) they gave to the previous tenant, or the prior lease, or some other stipulated legal document.

If a tenant believes their rent is unlawful, they would be able to use this information as written evidence in making an application to the Ontario Rental Housing (the Tribunal). A penalty could be imposed if the landlord did not comply with the requirement to give tenants this information. For example, the tenant could be permitted to withhold rent until the landlord provides this information.

If combined with options A or B from question 1 (no rent increase or only guideline increase allowed) this process would be relatively easy to administer, and both landlords and tenants could easily understand it. However, it would be more complicated for a landlord to demonstrate how catch-up increases they are charging (option C) are lawful.

C. The provincial government should keep a list of the rent in every apartment and rental house that the new tenant can use to look up the previous rent.

A third option is to require landlords to register their rents with the Tribunal. This would allow tenants to inquire about the lawful rent for their unit at the Tribunal and make an application if they believe that their rent is unlawful. It would be the landlord's responsibility to provide rent information to the Tribunal, which would then need to be verified with the tenant. A penalty could apply to landlords who failed to provide this information.

This type of system was in effect in Ontario from 1987 to 1998. While it provided a way for many tenants and landlords to check lawful rents, it was very costly to maintain due to the volume of data to be collected, interpreted and verified. There were significant backlogs and delays with the verification of the data that was registered.

A further consideration with this approach is how often landlords would be required to update this information. Under the previous registry system, the "maximum rent" (the rent charged on a starting date plus all allowable increases, whether or not the landlord had taken them) rather than the actual rent was tracked, which meant the landlord only had to register once. Currently, the concept of maximum rent does not apply to most units, and tracking actual rents would be extremely difficult to implement and enforce.

4. Should any class of rental accommodation be exempt from regulation of new rents (e.g., smaller buildings or luxury apartments)?

For some classes of rental housing, it may be less important to regulate the rents of new tenants.

For example, buildings of fewer than four rental units could be exempted from restrictions on how much rent new tenants can be charged. This could mean that people with basement apartments could rent them out at whatever rent they choose once an existing tenant leaves (same as current situation). As small landlords are less likely to be professional property managers skilled at setting rents to maximize their income, this may be appropriate.

On the other hand, the most affordable segment of the rental market tends to be the secondary rental market (rental units not specifically built for rental purposes). The secondary rental market includes basement apartments, duplexes and apartments over garages or stores. Demand typically outstrips supply in the most affordable segment of the rental market, which puts tenants at a disadvantage when negotiating rents with landlords.

It could also be considered whether to regulate the starting rents for new tenants who move into luxury rental units. It could be argued that tenants who can afford higher-end rental have sufficient housing options and do not really need the protection of rent rules.

5. Partial Exemption for New Units

Under the TPA, units built or first occupied after November 1, 1991 are exempt from most of the rent rules of the legislation. For these units, rent increases are not limited at all. However, just as for non-exempt units, rents cannot be increased more often than once every 12 months and landlords are required to give 90 days notice of a rent increase. (All rules related to evictions and security of tenure also apply to new units.)

This partial exemption for new units was first introduced under previous legislation to exempt new units for the first five years after they were built or first occupied. This exemption was continued in the TPA, with the exemption for units built or occupied after November 1, 1991, extended indefinitely. It is argued that exempting new units provides an incentive for developers to build new rental stock.

In some cases, this exemption has prevented rent control protection from being applied to tenants of units that are now up to 12 years old.

To be consistent with the government's desired objective to regulate the rents for new tenants, it will be necessary to consider how the new legislation should treat new units and units still benefiting from the 1991 exemption. It must be considered whether there should be an exemption from the rent rules for new units, and for how long this exemption should stay in place.

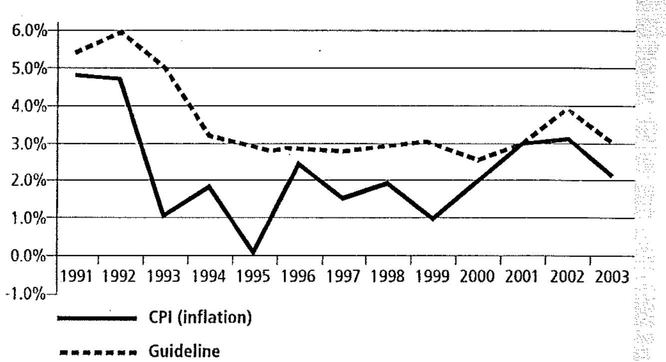
Rent increase guideline

The rent increase guideline is the maximum percentage by which landlords are generally authorized to raise rents without seeking approval from the Ontario Rental Housing Tribunal (the Tribunal). Many tenant advocates and others have maintained that the guideline is too high. Achieving the government's desired objective of strengthening rent controls requires an examination of how the guideline is calculated.

Background:

The rent increase guideline applies to most residential rental accommodation (excluding units built since 1991 and all social housing). The guideline is calculated by taking a base amount of 2 per cent and adding an amount that reflects the average increase in building operating costs. The *Tenant Protection Act, 1997* (TPA), sets out how the part of the guideline that is related to building operating costs is to be calculated. Every year the government publishes the Rent Control Index (RCI)[1], which is a three-year average of the increases in the eight operating costs that affect most landlords. Fifty-five per cent of the RCI is the amount included in the guideline, because that is the typical operating cost-to-revenue ratio for Ontario's apartment buildings.

Table 1: Rent Control Guideline and Inflation, Ontario



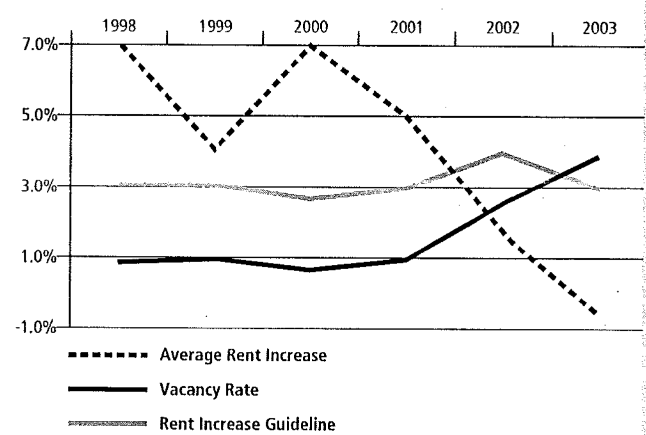
1. The eight costs measured are: heat, water, hydro, municipal property taxes, insurance, maintenance, administration and miscellaneous costs.

Since 1991, this calculation method has generally resulted in guidelines exceeding the rate of inflation, as indicated in Table 1. (In periods of high inflation, this formula would tend to result in guideline increases below inflation.)

The TPA does not specify what the 2 per cent base amount is for; landlords may argue that it provides a return on their investment in rental housing, while tenant stakeholders generally characterize it as a bonus for landlords. The 2 per cent base was established in 1987 when inflation was substantially higher (average inflation from 1988-1990 was over 5 per cent). Current inflation is approximately 2 per cent (average inflation from 1999-2003 was 2.2 per cent). The federal government and Bank of Canada have an inflation target range of 1-3 per cent, and monetary policy is aimed at keeping inflation at the 2 per cent target midpoint.

Increasing vacancy rates have made it more difficult for landlords to raise rents, and as Table 2 indicates, this has caused average rent increases for vacant units to be less than the rent increase guideline. Therefore, the rent increase guideline has had a limited role in determining rent increases in 2002 and 2003. In previous years, the rent increase guideline was lower than the average rent increases in vacant units in major cities, such as Toronto, Ottawa, Kitchener and Oshawa.

Table 2: Greater Toronto Area 1998 to 2003



Questions for consideration:

When the government is setting the limit for rent increases (the annual rent increase guideline) every year, how should that number be calculated?

A. Keep the current system of 2 per cent plus an amount for increases in building operating costs.

It has been argued that the current formula produces a guideline that is too high, and this erodes the affordability of rental housing. However, landlords may argue that a formula that produces a relatively high guideline generally allows them to maintain their properties and absorb operating costs.

B. Keep the current system, but reduce the base amount from 2 per cent to 1 per cent.

This option would result in guidelines that are close to the current rate of inflation. For example, if inflation remains at approximately 2 per cent, the guideline would be approximately 2 per cent. If inflation were higher, the guideline would be lower than the rate of inflation. For example, if inflation were 4 per cent, the guideline would be approximately 3.2 per cent.

C. Keep the current system, but remove the base amount altogether. Rent increases would be based only on increases in building operating costs.

This option eliminates the 2 per cent guideline base amount. Therefore, the guideline calculation would be based solely on 55 per cent of the average increase in landlord operating costs. If inflation remains at approximately 2 per cent, the rent increase guideline would be approximately 1 per cent. Therefore, the guideline would most likely remain below the rate of inflation.

For both options B and C, landlords may argue that rent increases will not be adequate to pay for increased costs, so it is likely they would need to apply to the Ontario Rental Housing Tribunal for above-guideline increases more frequently than under the current system. This measure may require significant administration for both the Tribunal and landlords.

D. Rent increases should be tied to the Ontario Consumer Price Index (CPI), which is the rate of inflation.

The CPI tracks changes in consumer prices for a basket of goods and services that is weighted based on typical consumer spending patterns. A rolling average over three years could be used. (This is the time frame used for the Rent Control Index.) This would help smooth fluctuations in the rate of inflation, thereby protecting tenants against large increases that may occur over a short period of time.

This option would tend to produce guidelines lower than the guidelines produced by the current formula (see Table 1, above). For example, the total CPI in Ontario for 2003 was 2.7 per cent, whereas the rent increase guideline was 2.9 per cent. The average CPI from 2001-2003 inclusive was 2.7 per cent, whereas the guidelines from 2001–2003 were 2.9, 3.9 and 2.9 respectively.

This option essentially uses the rate of inflation to set the rent increase guideline, which could be considered a fair method for both landlords and tenants. As well, the CPI is a widely accepted public indicator of price changes. However, the CPI measures hundreds of goods and services, whereas the RCI specifically measures landlord operating costs. The question remains whether to use the total CPI or the core CPI, which excludes eight components with the most volatile and fluctuating prices, such as gasoline, fuel, oil and natural gas.

With this option, if there were a spike in energy costs, the guideline would not increase as much as it does using the current calculation method, because energy is weighted less in the CPI compared to the RCI.

"Costs No Longer Borne" for utility costs

Landlords can apply to the Ontario Rental Housing Tribunal (the Tribunal) for an above-guideline increase (AGI) to increase the rent charged to tenants if their utility costs (heat, water and electricity) are higher than anticipated by the annual rent increase guideline calculations. However, if landlords' utility costs subsequently decline, the *Tenant Protection Act, 1997* (TPA) has no requirement for landlords to reduce the increased rent. This issue is commonly known as "costs no longer borne."

Background:

Under the legislation prior to the TPA, tenants could apply for a reduction in rent when utility rates declined. Landlords had to include information about their utility rates with notices of rent increase after an AGI had been approved.

The Ombudsman of Ontario initiated an investigation regarding AGIs for utility rates, and issued a preliminary report on October 24, 2002, which tentatively concluded that the TPA is unfair in this regard. The report said that the imbalance that occurs when tenants do not receive a rent reduction might have a "substantial negative impact on a large number of individuals in the province". The report also stated that "rent increases based on extraordinary increases in the rates for utilities are in accordance with a provision of a regulation that is unreasonable and improperly discriminatory." This investigation was prompted by a 2001 rate increase of 42 per cent for natural gas, and a decrease of 23 per cent in 2002. Tenant advocates are critical that the legislation does not contain a "costs no longer borne" provision.

Questions for consideration:

What should be done to protect tenants from continuing to pay higher rents when utility costs decrease?

A. *Allow AGIs based on utility costs to be charged for one year only, unless the landlord can prove to the government that the utility costs have not decreased.*

This option directly benefits tenants who can be assured that they will not pay extra costs unnecessarily. However, because utility costs generally do not decline unless there has been a spike in rates, it may be excessive to regularly require landlords to demonstrate that rates have not decreased, a measure that requires significant administration for both the Tribunal and landlords.

Another consideration is the type of proof the landlord would have to provide to the Tribunal, i.e. whether another full AGI application would be required. Furthermore, it must be considered how many years would landlords have to justify that their costs have not decreased, before the AGI amounts could remain permanently in the rent.

B. *Allow AGIs based on utility costs to remain in the rent, but give tenants the right to apply for a rent reduction if these costs decrease.*

This approach might be more efficient than the first option because tenants would only need to file applications with the Tribunal if utility costs have decreased, which does not occur very often. However, how will tenants know whether utility costs have decreased? They could be required to seek the information from utility providers, or landlords could be required to give tenants the information. If the latter option were chosen, how long would landlords be required to give this information, and when and how would they be required to do so.

A further consideration for both options A and B is whether landlords whose costs decreased because of investment in energy conservation measures should be exempted from requirements to reduce rents accordingly. If not, there could be a disincentive for landlords to implement such measures.

C. *Have the government through the Ontario Energy Board keep track of utility rates, and if these go down, announce a decrease in rents affected by AGIs based on utility costs.*

In this option, the government would track changes in utility prices over a period of time, and if the market price remained the same, AGIs for utility costs automatically would remain in the rent. If these decreased by a certain amount, landlords whose rents had recently increased as a result of an AGI for utility costs would be required to reduce rents accordingly. If a tenant believed that a landlord had not reduced rents by the correct amount, they could file an application with the Tribunal.

This option offers the benefit of not penalizing landlords who implement energy conservation measures; because landlords would only have to reduce rents based on the market rate and not on their actual costs. Another benefit is that, like the second option, this option eliminates the need to file applications in years when utility costs have not decreased.

However, some may find it unfair that the basis for removing an AGI is a general price change and not the costs of a particular building. Further, if there were a decline in consumption in a particular building after an AGI were granted, this would not cause the AGI to be removed. This approach, unlike the other options, means that a drop in consumption will not always lead to a rent reduction. However, this option does still address the Ombudsman's concern based on the spike in utility costs in 2001; if the rate of utilities drops, tenants should no longer have to pay the extra costs.

Costs No Longer Borne — Capital Expenditures

A related issue is whether costs no longer borne rules should apply to AGIs for major renovations and repairs (capital expenditures). The TPA does not include rules to remove these increases when the capital expenditure has been paid for.

Landlords have to apply to the Tribunal for an AGI for capital expenditures. Typically, an application will cover a number of different items, from new carpets to concrete repairs. Under the TPA, the tenant's rent increase to pay for these capital expenditures does not pay for the work in one year. Instead, the tenant's rent increase usually pays for the work over 5-25 years, based on the expected useful life of each item (the amortization period). However, the rent increase is not taken out of the rent when the item has been paid for after the amortization period.

Previous legislation did include rules for costs no longer borne for capital expenditures. When the useful life of each capital expenditure item was over, the government was required to provide a notice to the tenant that their rent was reduced so that the tenant no longer paid for that item.

There are drawbacks to introducing costs no longer borne rules for capital expenditures. Since each item included in one AGI can have a different useful life, there could be many rent reductions (some for very small amounts) over many years arising from one application. Many items would result in rent reductions after 20 or 25 years, at which point the reduction would likely be a surprise to both the landlord and most tenants, particularly tenants who moved into the building after the initial application 20 or more years earlier. There could be further complications where additional AGIs for capital expenditures, made in future years, overlapped with the earlier application.

Rules requiring the removal from rents of amounts relating to capital expenditures after their amortization period has expired would be complex for both tenants and landlords, and, in most cases, major reductions to rents would not take place for a long time.

Maintenance and rent increases

Landlords are required to keep rental buildings in a good state of repair, and they must comply with health, safety, housing and maintenance standards. When landlords do not comply with these requirements, the well-being of tenants can be jeopardized. Should landlords be allowed to raise rents if rental buildings are inadequately maintained, and what penalties should be imposed on landlords who do not meet these responsibilities?

Background:

It is generally the responsibility of municipalities to enforce building standards. Inspections are conducted upon tenant request, and inspectors will enforce standards by issuing work orders. Tenants can also apply to the Ontario Rental Housing Tribunal (the Tribunal) for remedies including an order requiring the landlord to make repairs, or for an abatement of rent (a return of rent charged during the period when maintenance was inadequate).

In previous provincial legislation, if landlords did not comply with a work order within a specific period of time, they were issued an Order Prohibiting a Rent Increase, and could not increase the rent until the work was done. The *Tenant Protection Act, 1997* (TPA) removed this provision from the legislation.

Tenant advocates and others maintain that there should be penalties for landlords who do not comply with work orders. Data from the City of Toronto shows that since 2001, when landlords were told to take immediate action, it took an average of five months and in some cases as long as two years for landlords to make the repairs and have the orders cleared by inspectors.

Questions for consideration:

What should be done if landlords fail to properly maintain rental buildings?

A. Do not allow any rent increases if a landlord has not complied with a work order.

With this option, landlords would not be allowed to raise rents at all for those units with outstanding work orders. If the work order were for a common area in a building, then the prohibition would apply to all units. This could be done without the Tribunal issuing orders prohibiting rent increases; tenants would have the automatic right not to pay a rent increase if there were an outstanding work order.

An advantage of this option is that it provides some compensation for tenants who are required to live in substandard conditions. However, it is possible that without the revenue generated from rent increases, some landlords would not have the funds to make the necessary repairs. This could result in a downward slide in the quality of building standards, leading to worsened conditions for tenants.

B. Do not allow any above-guideline *rent increases (AGIs) if a landlord has not complied with a work order.*

When landlords have incurred extraordinary operating costs, an increase in security costs, and/or done major capital expenditures, they can apply to the Tribunal for a rent increase above the annual guideline.

With this option, landlords would not be eligible to receive an AGI if there were an outstanding work order. Before receiving an AGI, landlords could be required to sign an affidavit that they had no outstanding work orders. In addition, tenants could be allowed to submit copies of outstanding work orders in order to have an AGI application discontinued, or delayed until the work was done.

This system could be designed so that any outstanding work order would render an AGI disqualified, or only those orders that an adjudicator considered to be serious.

This option is relatively easy for tenants and landlords to understand and apply, and could be considered fair to both parties. Tenant groups have stated that it is unfair for landlords to increase rents above the guideline when they have not complied with work orders. With this option, landlords would be encouraged to maintain their buildings, but would not be denied the annual rent guideline increase, which could provide the necessary revenue to conduct outstanding repairs.

For both options A and B, municipalities have different systems for issuing work orders: some have the resources to be proactive; others do not. If a municipality were very late in lifting a work order, unfair penalties might be applied to the landlord. The government might not be able to ensure that these options were implemented equitably across the province.

C. Expand what the Ontario Rental Housing Tribunal can order a landlord to do when a tenant reports inadequate maintenance.

Currently, if the Tribunal determines that a landlord has breached the obligations for adequate maintenance, it can order various remedies. These include requiring the landlord to make repairs, pay the tenant an abatement of rent or compensate the tenant for the cost of repairs or damage to tenant property. With this option, the list would be expanded to include orders such as prohibitions of rent increases until repairs are made and in serious cases, a permanent reduction in rent.

This option addresses the maintenance concerns of tenants, whether or not the municipality has issued a work order. With this option, varying degrees of municipal by-law enforcement would be of less concern. However, this option does not directly address the issue of non-compliance with work orders.

This option could be implemented in conjunction with option A or B.

Regional decontrol

To stimulate the production of new rental housing, and to encourage landlords to invest in the maintenance of existing rental stock, the government will explore ways to remove rent controls in regions with sustained high vacancy rates. This is known as "regional decontrol."

The government recognizes the importance of consulting on how this initiative could be implemented and has stated that, at a minimum, rent controls should not be lifted in a region unless there are sustained high vacancy rates of at least 3 per cent in all income categories. The government's proposed goals for regional decontrol are to give developers an opportunity to "build their way out of rent controls" while ensuring that, in regions where it is necessary, both existing and new tenants are protected by full rent controls.

Background:

When consumers have many choices, suppliers must price their goods or services more competitively. This holds true in the rental market – when more rental units are available, landlords typically keep rent increases to below those permitted under rent controls and may forego increases or even reduce rents. High vacancy rates tend to have the same effect as rent controls in protecting tenants from excessive rent increases.

Rent controls were first introduced in Ontario in 1975. Rent increases for most privately-owned rental units have been limited by rent controls since then. While exemptions from rent controls have existed for certain types of rental buildings, there have never been exemptions based on local vacancy rates.[2]

There are issues with existing vacancy rate data to consider before undertaking a major new initiative such as regional decontrol based on that data. Vacancy data compiled by Canada Mortgage and Housing Corporation (CMHC) are currently the most reliable and extensive, but there are limitations. CMHC reports on purpose-built rental units within buildings with three or more rental units; the secondary rental market is not counted. The secondary rental market includes a significant number of units: accessory apartments in family homes such as basement apartments, apartments over garages and stores, rented condominiums, and rented houses and duplexes. This part of the market helps meet demand for rental housing, providing up to 40 per cent or more of all rental units within some areas. The secondary rental market is also important because many of its units are the most affordable types of rental housing.

As the government wants to ensure that vacancy rates in each segment of a local market — low, moderate and high end — are above at least a 3 per cent threshold before decontrolling a region, more analysis must be done in order to make a decision based on vacancy data that recognizes the secondary market. Unfortunately, it is very difficult to get information about the secondary market. The sector is informal and many units are not officially on the market. There are also a high number of illegal or unreported apartments in this sector.

CMHC data is also limited because they do not include rental units in municipalities containing fewer than 10,000 residents. This means that vacancy rates are not available for about one-third of Ontario's 447 municipalities.

The government could develop its own data sources and statistics. These could be used to develop a more comprehensive vacancy rate measure to implement regional decontrol. Although this may entail significant start-up and ongoing costs, the government would like to receive suggestions for how this information on the secondary market and smaller municipalities could be obtained. The government is interested in your input on how this data could be accurately collected. Another approach could be to research whether CMHC data could be extrapolated as a reasonably accurate reflection of the secondary market.

2. At present, buildings built or first occupied since November 1991 are exempt from rent control.

Regional decontrol could create boundary issues. For example, if one region were decontrolled and a neighbouring region were not, it might be unclear to landlords and tenants on the "borders" whether or not they were controlled by rent regulation. Tenants on the decontrolled side of a border would have an increased interest in moving to the controlled side. Landlords on the border of a decontrolled region might find themselves with an even greater number of vacancies than the already high number, which had led to the decontrol in the first place. Creating the regional areas to incorporate continuous urban regions regardless of municipal boundaries could resolve this issue.

Questions for consideration:

1. In your opinion, how high should a region's vacancy rate be before the government looks at removing rent controls?

The government is seeking input on whether 3 per cent is an appropriate threshold, or if it should be higher.

A. The threshold should be 3 per cent.

A vacancy rate of 2-3 per cent is most often cited in Canada as a healthy vacancy rate, so this could be an appropriate threshold for decontrolling a region. Using this threshold could mean that many municipalities would be decontrolled, including major urban centres such as the City of Toronto.

B. The threshold should be higher than 3 per cent.

Fewer regions would be eligible for decontrol.

2. In addition to the vacancy rate, what factors should be considered in determining whether a region is decontrolled?

Sustainability – How long would a specified vacancy rate continue before a region was decontrolled? In some regions, vacancy rates would be above the threshold one year and below it during the next year. It would be disruptive for landlords and tenants to have rents decontrolled one year, re-controlled the next and decontrolled the subsequent year. As well, constant change in the status of a region might actually discourage new rental housing by creating uncertainty for investors.

Higher vacancy rate on affordable units – Should the vacancy rate criteria for the low end of the market be higher than the vacancy criteria for the rest of the market before regional decontrol is implemented? Current vacancy data in key areas show higher vacancy rates in the lower rent levels of units that were studied. However, more typically, vacancy rates ease up for the higher rent units while the market stays tight for the lower rent units. To ensure adequate supply and price control for the more affordable class of units, the criteria to decontrol could include a higher vacancy rate for lower rent units than moderate and high rent units.

Percentage of tenants living in core need – CMHC considers individuals and families to be living in "core need" if they must spend more than 30 per cent of their income on rent for a "suitable, adequate and median rent unit in their community." When vacancy rates are high, there may still be a significant number of tenants living in core need. The core need data are not yet available from the 2001 census. However, a similar piece of data is the percentage of tenants spending more than 30 per cent of their income on rent. For example, in Sudbury, the vacancy rate was 5.7 per cent in 2001, yet the number of tenants spending more than 30 per cent of their income on rent was 44 per cent. This demonstrates that higher vacancy rates do not necessarily ease housing affordability problems. So perhaps one of the criteria that a region should meet before being decontrolled is that no more than a certain percentage of tenants should be living in core need.

Low average rent increases – Should the average rent increase in a region be considered before regional decontrol is implemented? This would help ensure that the region does in fact have only modest rent increases. When vacancy rates are high, landlords usually limit rent increases to ensure that they can attract and retain tenants. Sometimes, however, a rental market can take a longer time to adjust to higher vacancy rates. In such circumstances, tenants might face significant rent increases, despite high vacancy rates.

The government is looking for input on whether any or all of these factors should be considered and, if so, what the thresholds should be.

3. Who should decide whether a region should be decontrolled?

A. The Province would determine the criteria for whether a region should be decontrolled and then declare certain regions decontrolled based on that criteria.

This option would help ensure that criteria were applied consistently for each region of the province. However, not involving municipalities in the decision-making process might result in a region being inappropriately decontrolled, due to specific local circumstances.

B. Municipalities should be given the authority to determine if a region should be decontrolled, but only if the region meets provincially established criteria.

In this option, municipalities, which are responsible for administering social services, such as welfare and social housing, would examine local circumstances and decide whether the region should be decontrolled (assuming that the municipality met the provincial criteria.) As municipalities might have a better understanding of local housing needs, it might be appropriate for them to assume this responsibility.

However, this could also be seen as the government sidestepping its responsibility to deal with this issue. Municipalities might resent being subjected to pressure to decontrol from local landlords and developers.

4. Under what circumstances could a region become "recontrolled"?

If regions are to be decontrolled when vacancy rates and other factors meet sufficient thresholds, then how and when can a region be "recontrolled" should those conditions cease? It would be simplest if a region were automatically recontrolled as soon as the prescribed conditions ceased. However, investor uncertainty would be heightened if a decontrolled region could fall back under control in a relatively short period of time. If there were no guarantees about how long decontrol would last for a region, then decontrol might not act as an incentive to build more rental housing. It would be necessary to consider how long a guarantee of decontrol should last. Periods such as 3, 5 or 10 years might be reasonable to consider.

5. If a region is decontrolled, what rent rules should be eliminated?

It is assumed that, in any regional decontrol situation, the following matters would still be regulated:

- Rights and responsibilities of landlords and tenants, i.e., privacy and entry into the unit, responsibilities regarding maintenance, assignment and subletting rules.
- Security of tenure and the termination of tenancies, i.e., legal ways for landlords and tenants to terminate a tenancy and grounds for applications to evict.
- Security deposits, rent receipts, post-dated cheques, and notice provisions (i.e., the landlord can only increase the rent once every 12 months and is required to give 90 days written notice of a rent increase).
- Procedural matters relating to the Ontario Rental Housing Tribunal (the Tribunal) and the processing of applications.

In this context, which of the remaining rent rules should be eliminated in a decontrolled region?

A. Eliminate rules around rents for new tenants, the annual rent increase guideline and above-guideline increases.

This would allow landlords to charge any rent that the market would allow, as they could set rents for new and existing tenants, without restriction.

This would provide more incentives for landlords and developers to invest in rental housing.

B. Eliminate rules around rents for new tenants, but keep rules around the annual rent increase guideline and above-guideline rent increases.

In this option, landlords in decontrolled regions could set any rent for a new tenant. However, once a tenant moved in, the guideline and all other existing rules would still apply.

Given that rent increases tend to be limited in regions with high vacancy rates, this option might not be overly restrictive for landlords. Further, landlords would have the freedom to renovate a vacant unit and charge a new rent based on the desirability of the improved unit, or catch up on missed increases when a new tenant moved in. At the same time, this option means that existing tenants would not experience excessive rent increases. In addition, tenants would not face the risk of "economic eviction." (See below.)

6. On what grounds should tenants in a decontrolled region be able to challenge a large rent increase?

When rent controls are lifted, there might be some tenants who would need protection from landlords who attempted "economic eviction"— when the rent is increased to the point that tenants have no choice but to move out because the rent is unaffordable.

Tenants in decontrolled regions could be given the right to file an application to the Tribunal if they felt their rent were unfair. Some possible grounds a tenant might use to challenge a rent increase could be:

- the tenant believes that the increase is a direct result of the tenant attempting to enforce their rights, for example, by forming a tenant association or requesting to have a work order issued for poor maintenance;
- the proposed rent greatly exceeds the market rent for the region; and,
- the proposed rent greatly exceeds the rents for similar units in the same building.

Interest on rent deposits

Landlords who collect rent deposits must pay tenants 6 per cent interest on the deposit each year. The 6 per cent rate is considerably higher than current inflation rates, and landlords have maintained that it is too high.

Background:

Landlords are permitted to collect rent deposits from tenants before they move in, as a way to protect against rent arrears. Deposits cannot be more than one month's rent, or, if rent is paid weekly, one week's rent. Deposits can only be used for the last month or week of the tenancy. They cannot be used to pay for repairs or for any other reason. When the rent is lawfully increased the deposit can also be increased by the same amount.

The 6 per cent interest rate has not changed since 1975, when landlords were first required to pay interest. At the time, 6 per cent closely matched inflation, and so it acted to protect tenants from seeing the value of their deposits erode. However, inflation is now significantly lower; for example, the average inflation rate in Ontario from 1990-2003 was 2.2 per cent.

Table 1: Inflation in Ontario

Average:	1990-2003	2003
	2.2%	2.7%

Source: Bank of Canada and Statistics Canada data.

Another measure of whether the interest landlords are required to pay on rent deposits is reasonable, is how closely it approximates the expected rate of return on investment. In other words, if tenants were not required to pay the deposit to the landlord, they could invest this money. What return on their money could they reasonably expect? One common type of low-risk investment is the Guaranteed Investment Certificate (GIC). Three percent is in between the current GIC rate and the average GIC rate since 1990, as indicated in Table 2.

Table 2: GIC Interest Rates of Return

Average:	1990-2003	2003*
	4.7%	1.7%

Source:Bank of Canada and Statistics Canada data.
GIC rates are for 1 year GICs
*until November, 2003

Questions for consideration:

What interest rate should be paid on rent deposits?

A. Change the interest rate paid on rent deposits to a fixed rate of 3 per cent.

This figure is fairer for landlords and more closely reflects current economic conditions, as 3 per cent is closer to the current rate of inflation. It is expected that the rate of inflation will be stable for at least the next few years, as the federal government and the Bank of Canada have agreed on a 1-3 per cent target range for inflation until the end of 2006, and monetary policy will be aimed at keeping inflation at the 2 per cent target midpoint.

The advantage of a fixed rate of 3 per cent is that it is close to both the average rate of inflation and the average rate of return on investments. The fixed nature of the rate (compared to a variable rate) means that it is easy for landlords and tenants to understand and apply.

B. Keep the interest rate paid on rent deposits at a fixed rate of 6 per cent.

The existing 6 per cent interest rate is well known and understood by landlords and tenants. However, it is higher than both the inflation rate and the rate of return for common types of investment, and may no longer be appropriate or fair.

C. *Change the interest rate paid on rent deposits to a variable rate that is based on the rate of inflation, or on the interest rate on a common type of investment such as a GIC.*

A variable rate would be based on either the yearly inflation rate, or the yearly interest rate for a common investment type such as GICs. The government would announce the rate on an annual basis.

This option would be consistently fair to both landlords and tenants, as the interest rate paid by landlords would closely reflect the economic climate at any point in time. However, this rate could be more confusing than a fixed rate, because the number would change each year.

Dispute resolution – default process

The Ontario Rental Housing Tribunal (the Tribunal) resolves disputes between landlords and tenants and its decisions have a significant impact on the parties involved. Developing procedures that are fair and workable for both landlords and tenants is a priority for the government. Below are some areas under consideration for reform.

Background:

Most applications to the Tribunal are for eviction. For most types of eviction applications, the Tribunal may issue a default order if the tenant does not file a written dispute. When a landlord files an application with the Tribunal to evict a tenant, a hearing is scheduled. The landlord then serves a copy of the application and the notice of hearing to the tenant. However, if the tenant does not file a written response disputing the application with the Tribunal within five days, the Tribunal can cancel the hearing, and issue a default order evicting the tenant, based on the details of the landlord's application.

This default order stands unless the tenant requests that it be "set aside" within 11 days. If the tenant requests a set aside, a hearing is scheduled. The tenant must first demonstrate that there was a valid reason why he/she did not dispute the original application on time before the order will be changed.

This process applies to most eviction applications, and to some tenant applications, such as applications for illegal rent or illegal charges.

A large percentage of tenants (approximately 70 per cent) do not respond to eviction applications, or show up at hearings. Without a default process, hearing time has to be scheduled for all cases, even though often the tenant will not attend. Requiring a written dispute to be filed ahead of time speeds up the process and reduces costs.

This process has been strongly criticized by tenant advocates and the Ontario Ombudsman. They argue that the process is confusing to tenants, that the five-day dispute deadline is too short, and that denying tenants hearings in these cases is unfair. Tenant advocates have also argued that the "set aside" process is unfair.

Questions for consideration:

How can the dispute resolution process be made fairer?

A. Remove the default process.

The government is considering ending the default process altogether by removing the requirement for tenants to dispute in writing in order to have a hearing on an application. Instead, a tenant would automatically have the opportunity to attend a hearing when the landlord filed an application to evict them. This would remove the need for the Tribunal to inform tenants and landlords about the default process, and about the fact that the hearing might be cancelled if the tenant fails to dispute the application.

However, sending all applications to hearing would mean the Tribunal would take several days longer to issue most orders. In cases of arrears, this would increase the amount of rent owed to landlords. As well, landlords would be required to appear at all hearings, even in cases where the tenant had no intention of participating, costing the landlord extra time and expense. Finally, removing the default process would increase the costs to the Tribunal to resolve applications.

B. Make changes to the default process, such as giving tenants longer than five days to respond, allowing tenants to respond by phone or e-mail (instead of only in writing) or giving tenants more opportunities to argue against the eviction order.

Another option is to keep the default process, but change it to make the process simpler and fairer for tenants.

Lengthening the five calendar day deadline to dispute an application could make the process more accessible for tenants. For example, the deadline could be changed to five business days, which would ensure that weekends and holidays would not reduce a tenant's opportunity to dispute, or the deadline could be doubled to 10 days. However, for both these changes, extending the time to dispute might be seen by landlords as an unnecessary and costly delay to the resolution of their applications.[3]

Tenants could also be given more ways to file disputes. For example, the Tribunal could receive disputes filed by e-mail or even by telephone.

The "set aside" process could be changed to allow an adjudicator to consider the merits of the tenant's case without first requiring the tenant to demonstrate why they were unable to respond to the landlord's application. This would provide for a default process for uncontested applications, but would allow any tenant to participate in the set aside process if they disagreed with an order. However, this option might allow tenants to extend the eviction process even where the extension was not justified.

It should be noted that options A and B would also relate to other applications that are subject to the default process. These include tenant applications for issues such as illegal rent.

3. Under the current process, it takes at least 31 days from the date a landlord first takes action against a tenant for arrears to the date the tenant is required to move out of the unit. This does not take into account that weekends may cause further delays. If the tenant requests that the order be set aside, this will delay the final order by at least several days. If the landlord is required to have the order enforced by the sheriff (because the tenant will not move out voluntarily) this may take several additional weeks.

The process is as follows: When a tenant falls into arrears the landlord must first give the tenant a Notice of Termination giving 14 days to pay in full or vacate the unit. If the tenant does not pay or vacate the unit, then after the 14 days have passed, the landlord can file an eviction application with the Tribunal. If the tenant does not dispute the application, the earliest the Tribunal can issue a default order is six days later (although this process typically takes a few days longer.) The default order gives the tenant 11 days to pay to void the order, or file a request to set aside the order.

Dispute resolution – notification of hearing

Background:

Under earlier tenancy legislation, the *Landlord and Tenant Act*, which was administered by the Courts, the applicant was always required to serve the notice of hearing on the respondent. However, at the same time, applications dealing with rent regulation matters were dealt with by the government, under the *Rent Control Act*, and the government was responsible for serving notices of hearing on respondents. During this program, application volume was low, and hearings were not scheduled until some time after an application was filed. Mailing the notices to all parties was not a major task, since the notice had to be mailed to the applicant anyway.

Requiring the applicant to serve the notice of hearing on the respondent was adopted under the *Tenant Protection Act* (TPA). To safeguard against times when the applicant did not serve the respondent, the *Act* provided that a respondent might request that a default order be set aside if they were unable to participate in the application. Under the current process, hearings with short time frames are scheduled on the spot when the applicant files the application. Applicants leave the Ontario Rental Housing Tribunal (the Tribunal) offices with their notice of hearing and, in many cases, serve them personally on the respondent much more quickly than the Tribunal could mail them.

However, the Tribunal frequently receives complaints from respondents who claim that they have not received an application or notice of hearing from an applicant. Tenant advocates argue that service of the notice of hearing should not be left to the applicant, since it might be seen as in the applicant's best interest for the respondent not to attend the hearing.

In most cases, when the respondent receives an order and complains they were not aware of the application or hearing, they can file a motion to set aside the order. This results in the order being stayed and a new hearing being scheduled, costing the applicant and the Tribunal time and expense. In cases where a set aside of the order is not an option, the respondent is required to pay $75 to have the order reviewed.

The need for the Tribunal to serve these notices would be even greater if the default order process were to be eliminated. Currently, if an applicant does not properly serve the application and notice of hearing, and a default order is issued, the respondent may request, at no cost, that the order be set aside. However, if the default process were eliminated, there would be no set aside process. The only way for the respondent to be heard would be to request that the order be reviewed and pay the review fee, which might be difficult for many tenants.

Options for consideration:

A. *Require the Tribunal to serve the notices of hearing on respondents.*

The applicant would still be required to serve a copy of the application on the respondent. Making the Tribunal responsible for service of the notice of hearing would help ensure that respondents were made aware of hearings. It might reduce the number of set asides as well as the time spent in hearings determining whether the respondent was adequately informed.

However, this option generally increases the time for service since many landlords personally serve the documents to the respondents on the same day that the application is filed, whereas it would take up to five days for the respondent to receive copies mailed by the Tribunal. The increased service time would result in delayed hearings and increased resolution time, which would have grave implications for emergency applications (i.e., when the tenant has been illegally locked out). There might also be an increased number of respondents who do not receive the notice of hearing in areas where there are mailing address irregularities (hand delivery is more reliable in these areas).

B. Require the Tribunal to notify respondents that an application has been filed and a hearing scheduled, but require the applicant to serve the actual notice of hearing and the application.

In this option the applicant would still be required to serve the notice of hearing and the application on the respondent, but the Tribunal would also send out an information notice advising the respondent that the Tribunal had received an application, and that a hearing had been scheduled. The notice would also state that they should call the Tribunal if they do not receive the necessary documents from the applicant.

This would ensure that respondents were made aware of applications and hearings, and that may avoid many of the problems associated with the Tribunal being responsible for service. As with option A, this option might also reduce the number of requests to set aside and the time currently spent in hearings determining whether the respondent was adequately informed.

However, having the Tribunal send out information notices could raise questions about the best use of taxpayers' money and about the necessity of respondents receiving more than one notice. As well, it could be confusing for respondents to receive two documents about the same proceeding.

Making landlords and tenants aware of their rights and responsibilities

To ensure that tenants and landlords are aware of their rights and responsibilities, the government could require that landlords of multi-unit buildings post a document outlining these rights and responsibilities in a conspicuous place on the rental property.

Background:

Previous legislation required landlords to post a summary of specific sections of the law that described the rights and obligations of tenants and landlords. This requirement was limited to multi-unit buildings, and the document had to be posted in a common area. This requirement was difficult to enforce, and landlords needed to be aware of any amendments to any section so they could ensure the most recent version was posted. It was sometimes difficult for landlords to comply with this requirement because of vandalism.

A requirement to post this type of document was not included in the *Tenant Protection Act, 1997* (TPA).

Questions for consideration:

1. Should landlords be required to post a document that is easy to see in rental buildings, giving information about the rights and responsibilities of landlords and tenants?

A. *Yes. Require landlords to post information about the rights and responsibilities of tenants and landlords.*

This option means that the majority of tenants would have access to this information in their buildings.

B. *No. Do not require landlords to post information about rights and responsibilities of tenants and landlords.*

With this option, tenants would not have access to the information in their buildings. However, it is possible that many tenants would not read the document anyway, but could continue to access all necessary information through the Ontario Rental Housing Tribunal (the Tribunal).

2. What should the text of the document be?

A. *A copy of the sections of the new legislation that describe the rights and responsibilities of tenants and landlords.*

With this option, landlords would be responsible for ensuring that they replace the excerpt with an updated version, should there be subsequent amendments to the section.

This option would ensure that the relevant parts of the legislation are available in a readily accessible location. However, some tenants might find the legal nature of the text difficult to understand.

B. *A plain-language summary of the sections of the new legislation that describes the rights and responsibilities of tenants and landlords.*

With this option, the government would issue an official summary in clear language.

This option would make the text more readable and user-friendly.

The drawback of options A and B is that each would require a multiple-page document. This is likely too long to be effective in posted form.

C. *A brief explanation of how the Ontario Rental Housing Tribunal helps tenants and landlords, and contact information such as the phone number and website.*

This option would produce the shortest and simplest document. Tenants would still be made aware of how to access the information, and could contact the Tribunal for assistance with specific issues.

3. What types of rental buildings should be subject to the posting requirement?

Posting the document in all rental buildings would reach the greatest number of tenants. However, this could be difficult in non purpose-built rental buildings (such as basement apartments, rental units over stores, duplexes, rented houses, etc.) where there is often no lobby or other common area. For these types of rental buildings, landlords could be required to give the tenant a paper version.

Demolition and conversion

The government has stated it wants to ensure that municipalities with low vacancy rates have the right to protect existing rental housing from unreasonable demolition or conversion to condominiums.

Many municipalities have sought control over the demolition and conversion of existing rental housing stock in order to protect affordable rental housing. They argue that current higher vacancy rates may be temporary, caused by factors such as a shift of renter households to ownership or by higher rents that have reduced the number of new renter households. They believe there is a need to protect existing rental housing stock since little new rental housing is being built, particularly at affordable rent levels.

However, many landlords and developers argue that controls on demolitions and conversions restrict the "best and highest use of land." They are against restrictions that could prevent them from earning a better rate of return on the land and structure in another use (for example, as a condominium or redeveloped as a commercial space.)

Background:

Rental Housing Protection Act

The former *Rental Housing Protection Act* (RHPA), enacted in 1986, required landlords to apply to their municipal council for approval if they wanted to convert, demolish or make major renovations to a rental property. In general, these rules applied to buildings with five or more units in municipalities with a population greater than 50,000 and in the case of a proposed conversion to condominium these rules applied to all rental properties in all municipalities. The RHPA was repealed in June 1998 as the *Tenant Protection Act, 1997* (TPA) came into effect. The TPA does not include a municipal approval process for conversions and demolitions.

In demolition situations the TPA requires landlords to provide compensation to tenants that is equal to three months rent or to provide another apartment for the tenant to live in that the tenant accepts (this applies to buildings with five or more units). In conversion situations, the TPA states that a tenant can continue to live in their rental unit for their entire life after the building becomes a condominium, and the tenant has the right of first refusal to purchase their apartment if it is sold.

Official Plan policies

Many municipalities in Ontario have policies governing condominium conversions and/or demolitions. Generally, these policies are part of the Official Plans of those municipalities. Subsection 16 (1) (a) of the provincial *Planning Act* provides that an official plan shall contain "goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality or part of it..."

Official Plan policies use a range of measures or criteria to evaluate proposed conversions or demolitions. These measures or criteria could include: vacancy rate thresholds that need to be met, limitations on buildings with high rent levels, requirements for replacement rental units of a similar type, consideration of the impact on the mix of housing options available, requirements for public meetings and requirements for the approval of the current tenants.

Recently, after lengthy legal proceedings, the Court of Appeal for Ontario found that municipalities have the authority to set policies in their Official Plans concerning conversions to condominium and the demolition of rental housing.

Although the Court of Appeal decision has clarified the authority of municipalities in this area, there continue to be situations where rental housing is not protected by policies in Official Plans. This is the case in situations where no planning approvals are needed. For example, the demolition of a five-storey rental residential building that is replaced by a five-storey co-ownership residential building may not need municipal planning approval. To be able to preserve rental housing in these situations, municipalities would need to be given authority through provincial legislation.

Status of conversion to condominium, demolition and new rental housing in Toronto

In the City of Toronto, since the repeal of the RHPA there have been 298 rental units (in six properties) that have been approved by Council for conversion to condominium. These were conversions at the high end of the market. Recently the Ontario Municipal Board (OMB), the tribunal that hears appeals of municipal planning decisions, approved the conversion to condominium of 500 rental units in Toronto that the City of Toronto Council had previously refused. As of March 1, 2004, there were outstanding applications in Toronto for the conversion of 1,203 rental units that were refused by Council and appealed to the OMB.

Since the repeal of the RHPA, there have been 10 applications to the Council to demolish 1,346 units in Toronto. The Council has tried to retain these units, or have as many as possible replaced. The City of Toronto expects that of these 1,346 units, 204 will be retained and 784 replaced – resulting in a net loss of 358 units.

In the period from 1998-2002 there were 1,566 new rental units added to the City's rental stock. This number falls short of the 2,000 new low-rent units that the Golden Report on Homelessness estimated that the City of Toronto needs annually to meet new demand.

Views from Ontario communities

At this point, it is not known whether potential condominium conversions or demolitions are a significant issue in communities across Ontario. In order to develop legislation that would, if passed, reflect the realities for all communities, the government wants to hear about local experiences with conversion and demolition of rental housing, and views on the appropriate approach to regulation based on those experiences.

Long-term leases

Another form of conversion, which may be considered for regulation, is conversion to long-term lease. A long-term lease is a form of housing tenure that occupies a grey area between rental and ownership. It involves the owner of a property giving another person the right to occupy the property for a long period (such as 49 years or more), in return for an up-front payment and monthly maintenance fee payments. The owner of a building containing month-to-month rental apartments might attempt to avoid the rules that apply to condominium conversions by instead "converting" his/her building into long-term lease apartments.

1. Which of the following should be used to ensure that municipalities with low vacancy rates are able to protect existing rental housing from unreasonable demolition or conversion to condominiums?

A. *Bring in laws requiring cities and towns to have an approval process for demolition or conversion, based on rules set out by the provincial government.*

The government could introduce provincial legislation similar to the former RHPA, which would mandate a municipal approval process based on provincial criteria. These criteria could include a sustained vacancy rate threshold (e.g., less than 3 per cent for three years) and/or other criteria, such as the percentage of tenants in core need.[4] However, in determining a threshold, there are problems with the reliability and scope of vacancy rate data.[5] In addition, the adequacy of rental housing supply, particularly for low-income households, is affected by a number of factors and can change significantly in a short timeframe.

The government could also introduce rules that affected municipalities would consider before approving conversions or demolitions of rental housing, similar to the rules in the former RHPA. These include requiring that the property owner provide replacement rental units at similar rents, permitting demolitions if the property is structurally unsound or allowing a conversion or demolition if the

4. Core need is a term used by the Canada Mortgage and Housing Corporation to describe households spending more than 30 per cent of their income for a "suitable, adequate and median rental unit in their community."
5. Please see chapter on 'Regional Decontrol' for further information on this issue.

Council decides that the proposal will not adversely affect the supply of affordable rental housing in the municipality. It may also be appropriate to limit the mandated municipal approval process to buildings above a certain size (such as the limitation to buildings containing five or more units under previous legislation), to allow the process to be effectively administered and to only include conversions and demolitions that could have a significant effect on the rental housing stock.

A mandated municipal approval process would help municipalities with low vacancy rates protect the existing rental housing stock. This approach would also enable a comprehensive, long-term approach to the issue. However, this option could not be implemented immediately, due to the preceding policy development and legislative approvals process. There might be some short-term losses to the stock of rental housing as a result. As well, some municipalities might object to a mandated process, if the local Council did not regard the rental housing supply to be an issue in their community and considered such a process to be unnecessary red tape. However, by mandating a process, the government could ensure that local councils give proper consideration to preserving the supply of rental housing before permitting conversion or demolition.

B. Bring in laws allowing each city or town to decide whether to have an approval process for demolition or conversion, based on rules set out by the provincial government.

The government could introduce provincial legislation that could, if passed, make a municipal approval process optional, subject to certain provincial criteria. These criteria could include a sustained vacancy rate threshold (e.g., less than 3 per cent for three years); and/or other criteria such as the percentage of tenants in core need. It may also be appropriate to limit the optional municipal approval process to buildings above a certain size, (such as the limitation to buildings containing five or more units under previous legislation), to allow the process to be effectively administered and to only include conversions and demolitions that could have a significant effect on the rental housing stock.

As discussed above, proposed rules set out by the provincial government could include requiring that the property owner provide replacement rental units at similar rents, permitting demolitions if the property is structurally unsound, or allowing a conversion or demolition if the Council decides that the proposal will not adversely affect the supply of affordable rental housing in the municipality.

This, again, would help municipalities with low vacancy rates protect the existing rental housing stock. Rather than requiring a municipal approvals process in all urban centres, this option would be more flexible and would permit communities greater control over how they develop. Again, there would be the possibility for short-term losses in some urban centres while longer-term rental housing protection was developed.

C. Bring in laws allowing each city or town to decide whether to have an approval process for demolition or conversion, based on their own rules.

The government could introduce provincial legislation allowing municipalities to set their own criteria for controlling the demolition and conversion of rental stock. Similar to option B, a municipality would have the choice whether to control demolition and conversion. However, in this option, the municipality could also determine the vacancy rate threshold or any other conditions.

This option would allow municipalities to implement approval processes that meet the specific needs and conditions of their rental markets. Municipalities are aware of local housing needs and may be in the best position to make these decisions.

Further, this option could enhance the authority of municipalities beyond what the courts have given them. Municipalities could establish controls over aspects such as long-term leases and other situations where currently no planning approvals are needed.

However, this option could give municipalities the ability to effectively prohibit demolitions and conversions in all circumstances, and depending on the rental market, this could discourage new investment in the region. Municipal policies on this issue could vary widely across the province — ranging from no approval process to effectively a complete prohibition on demolition and conversion. This might create inconsistency and lead to confusion for developers, landlords and tenants.

2. Should there be a temporary freeze on conversions and demolitions, protecting all rental properties until the government decides on a permanent solution?

To deal with potential short-term losses of rental stock in some urban centres while developing legislation, the government could introduce legislation that would, if passed, establish a moratorium on conversions and demolitions (except in specific situations to be defined, such as where demolition is necessary to ensure public safety) until long-term comprehensive rental housing protection legislation was in place. This approach would send a strong public message about supporting municipalities' efforts to protect the stock of rental housing. However, landlords and developers might view this as interference in their ability to manage their investments/assets. A moratorium or freeze could be implemented with any of the other options.

Other issues and concerns

The preceding chapters contain options for implementing the government's commitments for proposed residential tenancy reform. We are seeking input from you on how to make these initiatives work.

In addition, we are also interested in hearing about any other issues or concerns you may have. We want to know how you feel the system is working, whether you think the rules are fair and how you think things can be improved.

Below are examples of some comments from constituents and pre-consultation meetings with stakeholders. If these are concerns of yours, we invite you to make your views known. If you have other concerns or suggestions, we want to hear them too.

Ontario Rental Housing Tribunal processes

We have heard concerns and suggestions about the effectiveness of the Ontario Rental Housing Tribunal (the Tribunal). The Tribunal was established to be a more efficient and approachable adjudicative body than the courts. In 2002-2003, approximately 70,000 applications were filed, of which 60,000 related to termination of tenancies. 29,000 of these cases went to a hearing. The average waiting time between filing an application and the hearing was 16-20 days (excluding applications for above-guideline rent increases). The Tribunal has provided a necessary service for both landlord and tenants. However, concerns about the following issues have been raised, and we welcome your comments and suggestions on these and any other issues:

- fees
- public availability of orders
- access to mediation
- process for evictions and recovery of rent arrears
- opportunity for tenants to state their case at hearings.

These fees are charged by the Tribunal in recognition that the service being provided applies specifically to the landlord or tenant, and is not of a general benefit to the public. However, the fees only cover some of the Tribunal's costs. Should a greater share of the Tribunal's costs be recovered through fees? This would benefit taxpayers as a whole, because their tax dollars would not need to pay for services sought by specific landlords and tenants. However, higher fees could be prohibitive for some landlords and tenants. In addition, some landlords argue that the cost for an eviction application (usually due to non-payment of rent) is already high, considering the additional cost of Sheriff's fees. Further, high fees for evictions can be difficult for tenants, as the tenant is required to pay the application fee, as well as any arrears of rent, in order to void an eviction order.

We would also like to hear your views on making information contained in Tribunal applications and orders more widely available to the public. We have heard from landlords and tenants that this information would be helpful in making decisions about whether to file applications with the Tribunal, or in preparing for hearings before the Tribunal. Public interest in making this information more available will have to be balanced with legislative requirements relating to privacy and administrative proceedings. We would like your input on ways to make this possible.

Long-term sustainability of rent banks

The government has recently announced a provincial rent bank program, which has endowed municipal rent banks (operated by Consolidated Municipal Service Managers) with $10 million. Rent banks help keep people in their homes by providing short-term assistance where the tenant may have been unable to pay rent. This provides a benefit to both tenants and landlords, as it prevents the disruption to both tenants and landlords caused by eviction.

It is anticipated that in the long term, rent banks could be a sustainable means of providing assistance. We are looking for ideas on how this can be accomplished. One example is through "insurance funds." This means tenants and/or landlords could pay a very small premium for long-term protection against short-term default of rent payments.

We would like to hear your views on this idea, and how to ensure that rent banks can be made sustainable.

Mobile homes

Some mobile home park tenants feel that the annual rent increase guideline is not appropriate for mobile homes. It reflects average operating cost changes for rental apartments, rather than the operating cost changes for a mobile home site and associated costs related to park infrastructure and services. In many cases, mobile home park tenants pay for their own utilities, and they maintain that utility costs should not be reflected in their annual rent increases. Some residents have suggested that there should be a separate guideline for mobile home parks, which would more accurately reflect operating cost changes experienced by the park owners.

In addition, some mobile home park tenants have argued that it is not fair that a landlord of a mobile home park can increase the rent for a new tenant of the park by $50. They feel that since increasing the rent makes it harder for mobile home park tenants to sell their mobile homes, landlords should not be allowed to increase the rent for new tenants.

Energy savings through sub-metering

It has been argued that electricity consumption in apartment buildings could be reduced by as much as 30 per cent with the installation of individual electricity meters for each rental unit. Right now, 90 per cent of apartment buildings are master-metered, which means landlords purchase electricity for the apartment building and then provide it to their tenants as a service included in the rent. Since tenants do not pay based on their consumption, they have no financial incentive to conserve electricity.

Energy management companies and landlords have proposed that the government could encourage sub-metering as an energy savings initiative. In this proposal, landlords would continue to purchase the electricity for their building from their local distributor, and then charge tenants for their actual consumption. Rents would be revised to reflect this change. In most cases, the amount of energy that tenants consume would go down. However, there would be added service charges to cover the cost of billing, meter reading and maintenance, so total electricity charges would not go down proportionately.

As an alternative to landlord administered sub-metering, Ontario Energy Board licensed Local Distribution Companies (LDC's) may be interested in providing the sub-metering and billing service to apartment buildings in their territories. Tenants would then become LDC customers and be subject to their regulated rates and service charges.

A major challenge in encouraging the installation of individual meters is to ensure that tenants do not encounter high account or user fees (these costs would be above the cost of the electricity) that prevent tenants from financially benefiting from their conservation efforts.

The government is currently reviewing its energy policies and, as part of this review, is looking at additional measures to specifically support conservation, including different types of metering programs and the regulatory oversight of metering and billing.

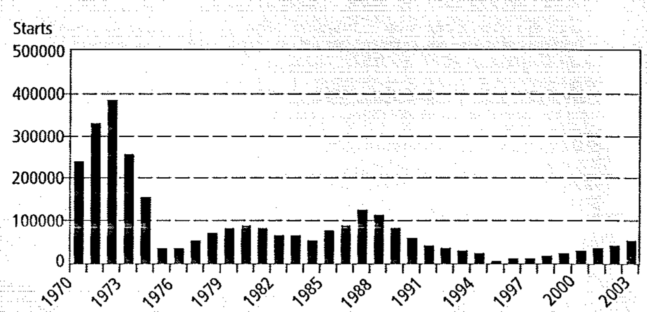
Appendix A:
Overview of Ontario's private rental market

Approximately 1.1 million tenant households rely on the private rental market to meet their housing needs. Another 250,000 renter households occupy social housing units.

Rental production

The development of new rental housing, since the early 1970s, has been generally unattractive to the private sector as returns on alternative investments, including condominiums, have been higher. New private rental construction starts dropped to 550 units in 1995, the lowest recorded level, having peaked at almost 40,000 units in 1972. The changes in the federal tax treatment of rental investment in the early 1970s were one of the main reasons for the decline in rental starts[6]. The effect of removing some of the barriers to new private rental housing and making improvements to the business conditions for rental housing is beginning to be seen. Private rental housing starts in Ontario, while continuing to be low by historical standards, have increased to nearly 4,800 units in 2003 compared to 1995.

Private Rental Starts in Ontario



Source: MMAH estimates based on CMHC data

Secondary rental market

Conventional purpose built rental production is supplemented by the secondary sector. The secondary rental market, which includes tenant-occupied single, semi and row dwellings, rented condominium units, accessory apartments such as self-contained basement units and flats (legal and illegal) and apartments over stores, contain some of the more affordable rental housing. The secondary rental market is an important component of overall rental supply.

A 1998 report by Starr Consulting Inc., titled *The Secondary Rental Market*, found that the secondary sector represented 36 per cent of the overall rental supply in the City of Toronto, 73 per cent in the suburban GTA, and between 43 per cent to 55 per cent in other centres like Ottawa, Hamilton, Kitchener-Waterloo, Windsor and Sudbury. It is estimated that more than 100,000 houses in Ontario have basement apartments and other forms of accessory units.

Another study by Canada Mortgage and Housing Corporation (CMHC) on rented condominiums estimated that 19 per cent (33,838 units) of all condominiums in the GTA were rented out in 2003.

The secondary rental market is, however, a less secure source of rental housing than purpose-built rental housing. The sustained availability of secondary rental market housing depends heavily on economic and real estate conditions and thus cannot be counted on for long-term supply.

Vacancy rates

Vacancy rates for private rental units have increased significantly over the past two years. According to CMHC, Ontario had an average vacancy rate of 3.5 per cent in October 2003, compared to 2.7 per cent in October 2002 and 1.7 per cent in 2000. CMHC's survey is not conducted in areas with a population of less than 10,000 nor does it include units in the secondary rental market. Vacancy rates in Toronto and Ottawa Census Metropolitan Areas (CMAs) were 3.8 per cent and 2.9 per cent, respectively, compared to 2.5 per cent and 1.9 per cent, respectively, in 2002. Other major urban centres also had relatively high vacancy rates including Windsor (4.3 per cent), Kitchener (3.2 per cent), Hamilton (3.0 per cent) and St. Catharines (2.7 per cent). Kingston has a relatively lower vacancy rate (1.9 per cent in 2003). A vacancy rate of 2-3 per cent is conventionally considered to be representative of a balanced market.

6. Lampert, Greg. (1995). Discussion Paper: *The Challenge of Encouraging Investment in New Rental Housing in Ontario.* Ministry of Municipal Affairs and Housing.

Table 1: Vacancy Rates in Ontario's CMAs (All bedroom types)
Private Rental Apartment Buildings of Three Units & Over

Ontario CMAs	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
					(In per cent)								
Greater Sudbury	0.7	2.5	3.8	4.3	6.0	6.8	7.2	9.4	11.1	7.7	5.7	5.1	3.6
Hamilton	1.6	2.3	2.7	2.7	2.0	2.2	3.1	3.2	1.9	1.7	1.3	1.6	3.0
Kingston	1.5	1.9	2.5	2.9	3.2	4.2	5.3	5.4	3.4	1.8	1.5	0.9	1.9
Kitchener	4.3	4.4	4.3	2.8	2.2	1.8	1.9	1.5	1.0	0.7	0.9	2.3	3.2
London	3.9	3.4	3.8	4.1	4.3	6.0	5.1	4.5	3.5	2.2	1.6	2.0	2.1
Oshawa	3.4	6.1	4.6	3.4	2.7	3.7	2.4	2.0	1.7	1.7	1.3	2.3	2.9
Ottawa	0.8	1.3	1.8	2.6	3.8	4.9	4.2	2.1	0.7	0.2	0.8	1.9	2.9
St. Catharines – Niagara	2.9	3.4	4.9	5.8	5.2	5.6	5.4	4.6	3.2	2.6	1.9	2.4	2.7
Thunder Bay	1.0	2.5	2.7	4.1	6.2	5.6	7.7	9.3	7.5	5.8	5.8	4.7	3.3
Toronto	1.8	2.2	2.0	1.2	0.8	1.2	0.8	0.8	0.9	0.6	0.9	2.5	3.8
Windsor	3.3	3.3	2.7	1.6	1.8	2.8	4.5	4.3	2.7	1.9	2.9	3.9	4.3
Ontario	**2.2**	**2.6**	**2.7**	**2.4**	**3.0**	**3.0**	**2.8**	**2.6**	**2.1**	**1.6**	**1.7**	**2.7**	**3.5**

Source: CMHC Rental Market Survey conducted every year in October

The primary reason for the increases in vacancy rates has been a decline in rental demand, not a high increase in new supply. A number of renter households have taken advantage of the historically low mortgage rates and have made the transition into homeownership. There has also been a dip in net migration in 2003 and in youth employment (age cohort of 15-24), discouraging the formation of new renter households (both these groups are dominant renter categories).

However, the trend of rising vacancy rates over the past two years may be temporary. Vacancy rates tend to be cyclical. The early and mid-1990s witnessed the same trend, when vacancy rates rose above 3 per cent in many urban areas. This was followed by a period of record low vacancies until the end of the decade, before the current easing — which is expected to continue for a few more years.

Demand for rental units is likely to rise after a few years. The formation of new renter households will increase with growth in youth employment as the economy improves (many persons in the age group of 15-24 will probably move out of their parents' home and into separate residences). Also, as mortgage rates start to rise after some time, the number of renters moving into homeownership will decline. Immigration levels in Ontario are not projected to rise in the next two years; however, if there is an increase, this could result in higher demand for rental units.

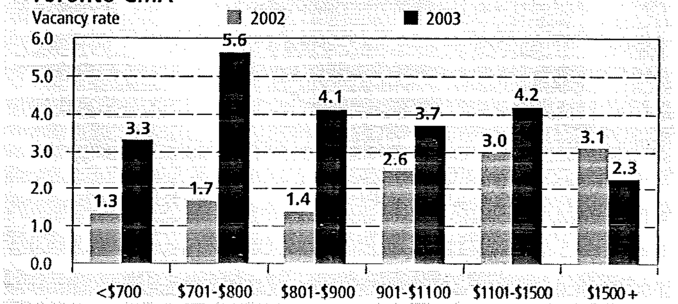
Vacancy rates in low rent units

In the past several years, any easing in the rental market conditions in the larger centres generally occurred at the higher rent levels. Here, the increases in income and lower interest rates (compared to early 1990s) made home ownership attainable and preferable for many renter households, especially those paying high rents. The more affordable and low rent units remained in tight supply, with the vacancy rates for these units generally remaining low. However, in the 2003 survey, while vacancy rates rose across the rent spectrum in several larger urban centres, the vacancy rates in units with lower rents (across all bedroom types) had higher increases than the higher rent units.

In Toronto, in the two-bedroom category, the vacancy rate in 2003 for units renting for less than $700 increased to 3.3 per cent, and for units between $701-$800 increased to 5.6 per cent. (The increases were 1.3 per cent and 1.7

per cent, respectively, in 2002). In comparison, for units that rented above $1,500, the vacancy rate decreased from 3.1 per cent in 2002 to 2.3 per cent in 2003.

Vacancy rates by rent ranges for 2 bedroom units Toronto CMA



Source: 2003 Rental Market Survey CHMC
2002 overall vacancy rate= 2.5%
2003 overall vacancy rate= 3.8%

The new trend of higher vacancies in low-rent units across the rent spectrum is also visible in several other CMAs like St. Catharines-Niagara, Thunder Bay, Sudbury, Oshawa, Hamilton and London.

The primary reason for the higher vacancy rates in units with lower rents and vice versa seems to be related to both quality and affordability issues. The 2003 rental market survey data also show that vacancy rates were the highest in older buildings with fewer amenities. Moreover, not all renters (especially those at the lower end of the rental spectrum) were in a position to move into home ownership. With higher vacancies at almost all rent levels and negligible rent increases, it is likely that many of these renters moved into better quality rental accommodation at a slightly higher cost. This helped free up units at the lower end of the rental market. With a drop in immigration flows in 2003, many of these units remained vacant, resulting in high vacancy rates.

Average rents

Over the past two decades, rents have generally risen in line with inflation. However, with the recent increases in vacancy rates, rent increases in 2003 have moderated and are well below inflation. High vacancy rates are forcing landlords to offer lower rents (especially for units that have not been renovated) in a bid to attract new tenants, and refrain from imposing any rent increases to retain their existing tenants. Also, most rents are now at market levels, as a result of the *Tenant Protection Act* having been in effect for about five years.

According to CMHC, Ontario's average two-bedroom apartment rent in October 2003 remained relatively unchanged, edging up only 0.3 per cent, from October 2002 — much lower than the 2003 inflation rate (2.7 per cent) and the rent increase guideline (2.9 per cent). Toronto rents, in fact, decreased in 2003 for the first time since the mid-1970s. In many of the other major centres like Ottawa, Kitchener, Windsor and Hamilton rent increases between 2002 and 2003 were either negligible or very minor.

This current softening in rents is in contrast to the high rent increases in the late 1990s, especially after the introduction of the *Tenant Protection Act, 1997* and partial decontrol of rents in 1998. Under the new law, landlords were allowed to increase the asking rent on a vacant unit without legislative restriction. As a result, the increase in average rents was much higher than inflation. Between 1996 and 2001, the average annual increase in rents in many of Ontario's larger urban centres was higher than the average rate of inflation (2.2 per cent) in that period. Most of the high rent increases were concentrated in Southern Ontario, especially around the Golden Horseshoe area, as well as Ottawa.

Rental housing affordability

While the rental market (in terms of vacancy rates) seems to be improving, some renter households still face problems in accessing safe, adequate and affordable accommodation. Housing affordability for renters, especially those with low incomes, continues to be of concern.

Core need

One of the widely used housing affordability indicators is CMHC's Core Housing Need, which is based on Statistics Canada's Census data.

- *Core housing need* households are those occupying housing who falls below standards for adequacy, suitability or affordability and that cannot afford to pay the median rent of alternative local market housing that meets all three standards.
- *Adequate* dwellings are those reported by their residents as not requiring major repairs.
- *Suitable*[7] dwellings have enough bedrooms for the size and make-up of the occupying household, according to National Occupancy Standard (NOS) requirements.
- *Affordable* dwellings cost less than 30 per cent of before-tax household income.

CMHC data reveals that in 1996, 449,510 households (36 per cent) were classified as being in core housing need, compared to 280,165 households (24 per cent) in 1991. The latest core need data based on the 2001 Census are currently unavailable, but based on the analysis of other affordability indicators and survey data, it is expected that the economic and employment growth of the late 1990s has led to a slight improvement in housing affordability in 2001 compared to 1996. However, the number of households in core need is still expected to be higher than in 1991.

Preliminary analysis on affordability in terms of proportion of gross household income spent on shelter show the same results. The number of households paying more than 30 per cent of their (gross) incomes grew significantly from 356,095 (29 per cent of renter households) in 1991 to 486,325 households in 1996 (38 per cent of renter households). Since then, economic, employment and income growth in the late 1990s has resulted in an increase in affordability for Ontario renters. However, this increase is marginal, with 37 per cent of renter households (458,040) spending more than 30 per cent of their income on shelter in 2001.

In addition, nearly 20 per cent of Ontario's renter households continued to pay more than 50 per cent of their incomes on rent in 2001. These households are considered to have serious affordability problems and are at significant risk of becoming homeless.

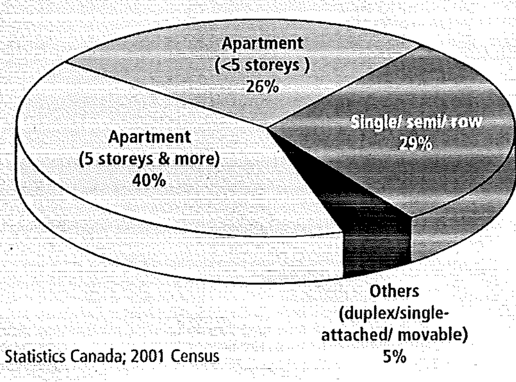
In Toronto CMA, 37 per cent of renter households (201,620) faced affordability problems in 2001, compared to 38 per cent in 1996.

Rental stock

There are an estimated 4.21 million housing units in Ontario, of which about 1.35 million units — or approximately one in three of all housing units — are rented.

Roughly 40 per cent of the rental units are found in high-rise apartment structures (defined as having five storeys or more). Low-rise apartment structures (less than five storeys) account for about 26 per cent of the rental stock. The remaining 34 per cent consists of single-detached, semi-detached, row, duplex and single-attached houses.

Rental Stock by Type Of Structure



Source: Statistics Canada; 2001 Census

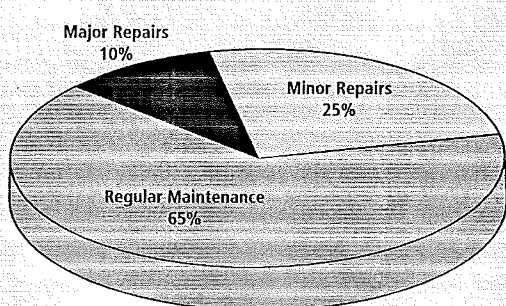
7. According to the National Occupancy Standard, enough bedrooms means one bedroom for each:
   - Cohabitating adult couple
   - Unattached household member 18 years of age and over
   - Same-sex pair of children under age 18
   - Additional boy/girl in the family, unless there are two opposite sex siblings under 5 years of age, in which case they are expected to share a bedroom
   - However, a household of one individual can occupy a bachelor unit (i.e., no bedroom)

Condition of rental stock

It is estimated that roughly 35 per cent of the Ontario's rental stock is in need of either minor or major repairs (approximately 140,000 rental dwellings in need of major repairs and 343,000 in need of minor repairs in 2001). It is important to note that this estimate is based on Census results and collected from individual household responses and not technical inspection of dwellings.

The proportion of Ontario's rental stock that requires repairs (major and minor) has remained the same over the past few Census years and is also similar to the proportions of rental units requiring repairs at the national and (other) provincial levels.

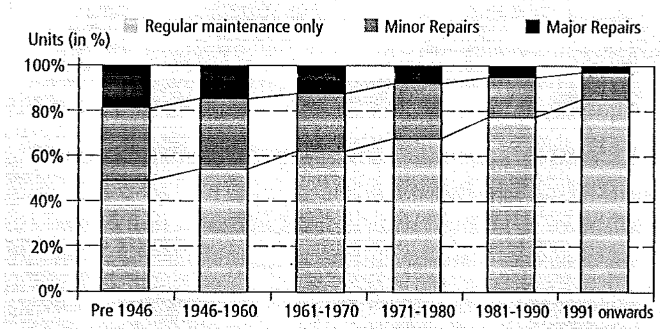
Condition of Ontario's Rental Stock



Source: Statistics Canada; 2001 Census

Of particular concern is the condition of the many high-rise residential projects built during the rental housing construction boom of the late 1960s and early 1970s. These buildings are due for major systems overhauls, and possibly some major structural repairs. Also, some of the neediest renters live in rooming and boarding houses. Independent studies have estimated that perhaps 20,000 of these units are in substandard buildings.

Need for Repair by Age of Stock



Source: Statistics Canada; 2001 Census

Questionnaire

HAVE YOUR SAY: The Tenant Protection Act

The McGuinty government wants to make sure that any proposed legislation for rental housing provides balanced protection for landlords and tenants, and encourages the growth of rental housing. To make this happen, the government needs your advice on what works and what doesn't in the current legislation. Use this questionnaire to have your say. Give us your ideas on how to create a better act. The questionnaire covers a variety of issues including rents for new tenants, utility costs, dispute resolution and much more. We also plan to hold town hall meetings across the province to hear from as many people as possible. You can get more information on our website www.rentreform.ontario.ca or by calling 416-645-8082, toll-free 1-866-751-8082 or dial TTY line 1-866-220-2290.

Please take the time to complete this questionnaire. Return it to us by mail to the address below. If you need additional copies, please call Publications Ontario at 416-326-5300 or toll-free at 1-800-668-9938. If you prefer, you can complete the questionnaire online on our website. You may also send or fax any written comments to:

Residential Tenancy Reform Consultation
Ministry of Municipal Affairs and Housing
Market Housing Branch
777 Bay Street, 14th Floor
Toronto ON, M5G 2E5
Fax: 416-585-7607 or toll-free 1-888-846-8832

The deadline for completed questionnaires and comments is June 15, 2004.

Thank you for your input and for participating in this important discussion.

Your Information

You are not required to provide your name or other personally identifying information in this questionnaire. Should you wish to give us this information, we will, unless ordered by a court or tribunal, do our best to keep it confidential. If you have questions about this, please contact Ministry of Municipal Affairs and Housing at 416-645-8082 or toll-free 1-866-751-8082.

Postal Code: (Required):________________________________

Postal codes are collected to determine which areas of the province are participating in the consultation process.

Are you, or do you represent: (Required. Please circle as many as apply.)

a) a tenant

b) a landlord

c) a tenant organization

d) a landlord organization

e) other

RENTS FOR NEW TENANTS

Right now, when a tenant moves out, there are no rules about what the rent for new tenants moving in should be. A landlord can charge any amount.

For tenants who are not moving, the provincial government sets a limit on how much their rent can be increased from one year to the next (this is known as the "annual rent increase guideline"). Sometimes, landlords do not increase the rent, even when they can.

1. By how much, if at all, should a landlord be able to increase the rent when a new tenant moves in?

Circle one.

a) No increase. A new tenant should be charged the same amount as the previous tenant.

b) A landlord should be able to charge a new tenant the same rent as the previous tenant, *plus* the increase allowed by the annual rent increase guideline.

c) A landlord should be able to charge a new tenant the same rent as the previous tenant, *plus* any increases that the landlord was allowed to charge to the previous tenant but chose not to.

d) No opinion/don't know.

2. How would new tenants find out what their rent should be?

Circle one.

a) It should be up to the new tenant to contact the previous tenant to find out how much they were paying for rent.

b) Landlords should have to tell the new tenants what the previous rent was.

c) The provincial government should keep a list of the rent in every apartment and rental house that the new tenant can use to look up the previous rent.

d) No opinion/don't know.

RENT INCREASE GUIDELINE

Every year, the government sets the annual rent increase guideline (the maximum amount rents can go up each year). Right now, they start with a base of 2 per cent. Then they add an amount that reflects how much the costs of operating a building (utilities, repairs, etc.) have gone up.

If a landlord wants to increase rent by more than the guideline (to cover special costs, such as major construction), the landlord must make an application to the Ontario Rental Housing Tribunal. This is known as an Above-Guideline Increase, or AGI.

3. When the government is setting the limit for rent increases (the annual rent increase guideline) every year, how should that number be calculated?

Circle one.

a) Keep the current system of 2 per cent plus an amount for increases in building operating costs.

b) Keep the current system, but reduce the base amount from 2 per cent to 1 per cent.

c) Keep the current system, but remove the base amount altogether. Rent increases would be based only on increases in building operating costs.

d) Rent increases should be tied to the Ontario Consumer Price Index (which is the rate of inflation).

e) No opinion/don't know.

"COSTS NO LONGER BORNE" FOR UTILITY COSTS

Sometimes, landlords are allowed to charge an above-guideline increase (AGI) in a tenant's rent, because costs for utilities (heat, water and electricity) have gone up. When landlords' utility costs go down again, the landlord is not required to reduce the rent.

4. What should be done to protect tenants from continuing to pay higher rents when utility costs decrease?

Circle one.

a) Allow AGIs based on utility costs to be charged for one year only, unless the landlord can prove to the government that the utility costs have not decreased.

b) Allow AGIs based on utility costs to remain in the rent, but give tenants the right to apply for a rent reduction if these costs decrease.

c) Have the government, through the Ontario Energy Board, keep track of utility rates, and if these go down, announce a decrease in rents affected by AGIs based on utility costs.

d) No opinion/don't know.

MAINTENANCE AND RENT INCREASES

It is generally the responsibility of municipalities to enforce building standards. Inspections are conducted upon tenant request, and inspectors will enforce standards by issuing work orders.

Tenants can also apply to the Ontario Rental Housing Tribunal for relief, such as the landlord being required to do the work or reduce the rent for a period of time.

5. What should be done if landlords fail to properly maintain rental buildings?

Circle as many as apply.

a) Do not allow any rent increases if a landlord has not complied with a work order.

b) Do not allow any above-guideline rent increases if a landlord has not complied with a work order.

c) Expand what the Ontario Rental Housing Tribunal can order a landlord to do when a tenant reports inadequate maintenance..New options could include forbidding rent increases or forcing the landlord to permanently lower the rent.

d) No opinion/don't know.

REGIONAL DECONTROL

In some communities, where there is a high vacancy rate, strict rules about rent aren't always necessary. To help encourage developers to build new rental apartments, the government is looking at removing the rent controls when vacancy rates are high. This is known as "regional decontrol."

6. In your opinion, how high should a region's vacancy rate be before the government looks at removing rent controls?

Circle one.

a) 3 per cent.

b) Higher than 3 per cent.

c) No opinion/don't know.

7. If a region is decontrolled what rent rules should be eliminated?

Circle one.

a) Eliminate rules around rents for new tenants, the annual rent increase guideline and above-guideline increases.

b) Eliminate rules around rents for new tenants, but keep rules around the annual rent increase guideline and above-guideline rent increases.

c) No opinion/don't know.

INTEREST ON RENT DEPOSITS

Right now, landlords can require tenants to pay one month's deposit in order to move in. Landlords must use this money for the last month the tenant lives in the rental unit. Until the tenant leaves, landlords must pay the tenant 6 per cent interest per year on the deposit.

8. What interest rate should be paid on rent deposits?

Circle one.

a) Change it to a fixed rate of 3 per cent.

b) Keep it at a fixed rate of 6 per cent.

c) Change it to a variable rate. This rate could be based on the inflation rate, or on the interest rate on a common type of investment such as a Guaranteed Investment Certificate.

d) No opinion/don't know.

DISPUTE RESOLUTION

When a landlord and tenant have a dispute, the Ontario Rental Housing Tribunal can be brought in to settle the argument.

Many disputes involve evictions. Right now, tenants who fail to pay their rent are given 14 days notice. After that, the landlord can apply to the Ontario Rental Housing Tribunal to have the tenant evicted, and the tenant has five days to respond in writing. If they do not respond, the Tribunal may issue a "default order," which means the eviction can go ahead without a hearing. This is called the default process.

9. How can the dispute resolution process be made fairer?

Circle one.

a) Remove the default process.

b) Make changes to the default process, such as giving tenants longer than five days to respond, allowing tenants to respond by phone or e-mail (instead of only in writing), or giving tenants more opportunities to argue against the eviction order.

c) No opinion/don't know.

MAKING LANDLORDS AND TENANTS AWARE OF THEIR RIGHTS AND RESPONSIBILITIES

10. Should landlords be required to post a document that is easy to see in rental buildings, giving information about the rights and responsibilities of landlords and tenants?

Circle one.

a) Yes.

b) No.

c) No opinion/don't know.

DEMOLITION AND CONVERSION

In cities and towns where vacancy rates are low, there is a need to make sure that rental apartments are not unreasonably demolished or converted into condominiums.

11. Which of the following should be used to ensure that municipalities with low vacancy rates are able to protect existing rental housing from unreasonable demolition or conversion to condominiums?

Circle one.

a) Bring in laws requiring cities and towns to have an approval process for demolition or conversion, based on rules set out by the provincial government.

b) Bring in laws allowing each city or town to decide whether to have an approval process for demolition or conversion, based on rules set out by the provincial government.

c) Bring in laws allowing each city or town to decide whether to have an approval process for demolition or conversion, based on their own rules.

d) No opinion/don't know.

12. Any additional comments?

Mail or fax this completed questionnaire no later than June 15, 2004, to:

Residential Tenancy Reform Consultation
Ministry of Municipal Affairs and Housing
Market Housing Branch
777 Bay Street, 14th Floor
Toronto ON, M5G 2E5
Fax: 416-585-7607 or toll-free 1-888-846-8832

Published by Ministry of Municipal Affairs and Housing

Copies of this publication are available from Publications Ontario, 50 Grosvenor St., Toronto, ON, M7A 1N8.
Telephone (416)326-5300 or toll-free in Canada 1-800-668-9938. Fax (416) 326-5317. Internet: www.publications.gov.on.ca
The hearing impaired may call toll-free in Canada 1-800-268-7095

ISBN: 0-7794-6023-5
Disponible en français : Document de consultation sur la réforme de la location résidentielle, printemps 2004

To: cleanair-l@list.web.ca
From: Ontario Clean Air Alliance <info@cleanair.web.ca>
Subject: [cleanair-l] Real nuclear costs revealed
Errors-To: cleanair-l-admin@list.web.net
Precedence: bulk
Reply-To: info@cleanair.web.ca
List-Help: <mailto:cleanair-l-request@list.web.net?subject=help>
List-Post: <mailto:cleanair-l@list.web.net>
List-Subscribe: <http://list.web.net/lists/listinfo/cleanair-l>,
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List-Archive: <http://list.web.net/lists/private/cleanair-l/>
Date: Tue, 25 May 2004 20:30:18 -0400

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Spreadsheets tell the tale: Nuclear costs not properly calculated by
OPG Review Committee

Late on Friday afternoon, the OCAA finally received copies of the
electronic spreadsheet model used by the OPG Review Committee (the Manley
Committee) to justify its recommendation to restart the Pickering A Unit
#1 nuclear reactor.

After a thorough review of the model and its input assumptions, we have
found that the Committee made overly optimistic assumptions about the
potential reliability of the re-started nuclear unit, the cost of repairs
to the unit and the cost of capital to undertake these repairs. It
also overestimated the cost of power from a new combined-cycle
natural-gas generating station.

When more realistic assumptions based on the actual performance of
Ontario's nuclear power plants are used in place of the Committee's
unsupported projections, the economic model actually tells us that power
from a new combined-cycle natural gas plant would be 45% cheaper than
power from the restarted Pickering unit.

To further test the Committee's assumptions, we raised the price of
natural gas to $4.75 (U.S.) per thousand cubic feet, higher than both the
U.S. Department of Energy's 2010 price forecast and the price used in the
Committee's spreadsheet model. Even with this elevated gas price,
however, gas-fired generation was still far cheaper than the Pickering
restart option.

Our analysis suggests that Ontario will be heading down a slippery slope
if it follows the Review Committee's recommendation to restart Pickering
A Unit #1 while relying on estimates for repair costs and reliability
that have no real-world precedent in Ontario. The result is likely
to be continued reliance on dirty coal-fired generation to offset
inevitable shortfalls in nuclear performance.

Please email Energy Minister Dwight Duncan
(Dwight.Duncan@energy.gov<a
href="mailto:dwight.duncan@energy.gov.on.ca">.on.ca)

and thank him for making the Review Committee's spreadsheets
public. Please also ask the Minister if he will address the
shortcomings found in the model by the OCAA by reassessing the
advisability of a Pickering A restart.

The OCAA's analysis, <i>Manley's Spreadsheet Revisited: Natural Gas vs.
Nuclear Power, </i>is available on our website along with the
spreadsheets released by the Ministry of Energy –
www.cleanairalliance.org.

Raví Mark Singh
Communications & Membership Co-ordinator
Ontario Clean Air Alliance
Ph: (416)926-1907 ext. 245
NOTE OUR NEW EMAIL ADDRESS: info@cleanair.web.ca.

The Ontario Clean Air Alliance is a coalition of health,
environmental and consumer organizations, faith communities,
unions, utilities, municipalities and individuals working for
cleaner air through strict emission limits and a phase-out of
coal in the electricity sector. Our partner organizations
represent more than six million Ontarians.

To subscribe or unsubscribe to this list please visit
<a href="http://www.cleanair.web.ca/whatsnew"
eudora="autourl">www.cleanair.web.ca/whatsnew.

For more on how you can contribute to clearing Ontario's air through your
electricity purchases, please see our consumer-advice website:
www.electricitychoices.org.

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