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MINIMUM INCOME REQUIREMENTS IN RENTAL APPLICATIONS:
Are They Discriminatory?

NOELLE SPOTTON*

Résumé
Un grand nombre de propriétaires ontariens ont des politiques qui stipulent qu'un éventuel locataire ne doit pas consacrer plus de 25 à 30 pour cent de son revenu au coût du loyer. Si le coût du loyer excède le taux de 25 à 30 pour cent, la demande de location de cet éventuel locataire sera alors refusée par le propriétaire.

Pour soutenir l'argumentation à l'effet que les exigences de revenu minimum font de la discrimination envers des groupes de personnes protégés par le Code des droits de la personne de l'Ontario, l'auteure examine (i) la définition des exigences de revenu minimum dans les demandes de location; (ii) l'approche à cette question adoptée par la Commission ontarienne des droits de la personne; (iii) les plaintes entourant cette question; (iv) le recours à ces exigences de revenu minimum en tant que discrimination directe ou constructive; (v) et, finalement, la question de l'accessibilité au logement.

Introduction
Many Ontario landlords have policies which states that require prospective tenants to have an income level high enough to ensure that their rent will be no more than 25-35% of that income.

* Copyright © 1993 Noelle Spotton. Noelle Spotton was a lawyer and Director of Casework at Metro Tenants Legal Services and now she is the Director of Aboriginal Legal Services of Toronto. I appreciate the very useful comments and suggestions of Judith Keene, who is a lawyer at the Clinic Resource Office and author of Human Rights in Ontario, Mary Truemner, who is a lawyer with the Centre for Equality Rights in Accommodation, and Leslie Robinson, who is Director of Law Reform at Metro Tenants Legal Services. Their input made this a much better paper. The views and opinions expressed in the article are solely those of the author.
If a prospective tenant does not meet this minimum income requirement, then his or her application is refused.

This paper argues that minimum income requirements discriminate against persons protected by the Ontario Human Rights Code (the "Code").

I will begin with a definition of minimum income requirements in rental applications, followed by the Ontario Human Rights Commission approach to this issue and a description of the complaints in issue.

The next part of the paper discusses whether the use of minimum income requirements is direct or constructive discrimination. If minimum income requirements are to be characterized as constructive discrimination, then landlords who use them can raise the defence of "reasonable and bona fide in the circumstances" and "inability to accommodate without undue hardship". Landlords' organizations have made some public statements indicating what this defence may be. This will be discussed in the next part of the paper. I will also discuss the various "alternatives" to a minimum income requirement, such as rental history, credit rating/references, and use of a guarantor.

The last part of this paper will explore the issue of access to housing because that is what the use of minimum income requirements is all about: who gets access to what housing.

I should state my position up front. I am a tenant advocate, who works for Metro Tenants Legal Services, a specialty community legal aid clinic. As part of my work at Metro Tenants, I present tenant educational for a variety of community-based organizations. Invariably, I get asked the question, "when I apply for an apartment, is it legal for the landlord to ask me what my income is?" I would like to be able to answer with a clear "no."

1. WHAT ARE MINIMUM INCOME REQUIREMENTS IN RENTAL APPLICATIONS?

Many landlords in Ontario require that potential tenants have a level of income high enough to ensure that the rent will be no more than, say, 25%-35% of that income. For example, a person applies to rent a two-bedroom apartment for herself and her child for $800 per month. Her income is $30,000. The landlord has a policy that a potential tenant cannot spend more than 30% of her income on rent. This tenant is refused the apartment since $800 per month would be $50 more per month than 30% of her income.

Landlords claim that using a minimum income requirement to screen potential tenants is an effective measure of a tenant's willingness and ability to pay the rent. Tenants and tenant advocates claim that there is no empirical evidence to support landlords' claims and that these requirements discriminate against vulnerable groups of people who should be protected by the Code in the circumstances.

In a research report, representatives of 27 corporations owning large numbers of private sector apartments were asked a series of questions, including "are there income requirements for your units?" The following are the results:

Nineteen (70%) reported that there are, six reported that there are not any (22%), and two did not respond. Of the nineteen corporations which do have income requirements, fourteen answered the follow-up question: "What is the rent to income ratio that you require?" All but two are between 25% and 33%. The other two are 35% and 40%. Both the mean (the average) and the median rent to income ratio is 31%.2

2. THE ONTARIO HUMAN RIGHTS COMMISSION AND THE USE OF MINIMUM INCOME REQUIREMENTS IN RENTAL APPLICATIONS

Approximately 25% of all housing/accommodation complaints to the Ontario Human Rights Commission involve the use by landlords of minimum income requirements.3

The Commission could have taken care of all of these cases by test case litigation. However, it chose to direct its staff to consult with the various stakeholder groups in an attempt to come up with a "consultative solution":

A consultative solution that satisfies both tenant and landlord communities could be used as a guideline for adoption by landlords and for the resolution of cases of similar fact. This will ensure more adequate access to housing, reduce problems arising from income criterion assessment of potential tenants, and save the resources of all parties by eliminating the need for recourse pursuant to the Ontario Human Rights Code.4


4. Ibid. at 5
Commission staff spent the latter part of 1992 consulting with tenant advocacy groups, landlords, and policy makers (although not tenants) but were unsuccessful in reaching an agreement on a non-discriminatory model for assessing tenant applicants.

In a news release dated February 22, 1993, the Human Rights Commission announced that it had requested the Minister of Citizenship to appoint Boards of Inquiry in four complaints filed by persons who were denied housing because they did not meet the minimum income requirements of landlords. The Commission took the position that the use of a minimum income requirement in rental applications violates the Code as it discriminates against persons protected by the Code, particularly people in receipt of social assistance, younger people, women and the elderly. Alok Mukherjee, then Acting Chief Commissioner, stated:

> We believe that this test, which is commonly used today, acts as an artificial barrier for some members of our society in their search for adequate, affordable housing...At this time we have seen nothing but anecdotal evidence to show that demanding a person pay a maximum of 30% of income, will give a landlord any greater protection from a tenant not paying the rent. In other words there in little evidence that the test that is used almost everywhere in Ontario, is doing what it is supposed to do.  

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3. **COMPLAINTS TO BE HEARD BY BOARDS OF INQUIRY**

One Board of Inquiry has been appointed to deal with three complaints, and another Board will deal with the fourth complaint. The hearing for the three complaints is scheduled to commence in early February, 1994. These three complainants are represented by the Centre for Equality Rights in Accommodation ("CERA").

One of the complainants is a single black woman with a young daughter. She came to Canada in the late 1980’s as a refugee from Angola. At the time the complaint was filed, she was receiving family benefits. On or about August 17, 1990, she saw an ad in the newspaper for a bachelor apartment for $585 a month at the Respondent landlord’s building. She went to see the apartment the same day.

When the complainant arrived at the rental office she was told the apartment was no longer available, but when she asked how the apartment could be rented so quickly when she had called an hour ago, the rental agent asked how much money the complainant made. When she answered that she received

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about $1600 per month, the rental agent replied "this is not enough. You need to make at least $2000 a month to be able to rent this apartment." A representative from CERA later called the rental agent who said that the landlord had problems in the past with people with low incomes. The agent also said that a bachelor apartment was too small for a mother and a child. The complaint claims discrimination on the basis of sex, marital status, citizenship, place of origin, family status and receipt of public assistance.

The second complainant is a woman who was 16 years old at the time the complaint was filed with the Human Rights Commission. She and an 18-year old friend had agreed they would share an apartment. On June 1, 1990, they went to see a unit in a building owned by the respondent landlord. They filled out an application form. One of the questions asked was date of birth.

On June 4, 1990, the complainant gave the rental agent a cheque for $906 as requested for one month's rent. On June 6, 1990, the complainant's friend went back to the apartment to check on repairs to the apartment. She was told that the application to rent had been rejected because neither one of the applicants could afford to pay the rent individually. The property manager stated that it was the landlord's policy to require that one individual have an income such that the rent comprised no more than 36% of income. The complainant claims discrimination on the basis of age, sex, and marital status.

The third complaint is also based on age and sex discrimination. The complainants are husband and wife. At the time the complaint was made, the female complainant was 17 years old and visibly pregnant. Her husband was 18 years old and worked full time for $7.24 per hour.

On or about September 14, 1988, the two complainants went to the rental office of the respondent landlord to apply for an apartment. They were informed by the rental agent that there were apartments available, but when she inquired what their household income was, they were told that it was not high enough and that they would have to earn at least $30,000 to rent an apartment in the landlord's building. The landlord adhered to a policy of renting only to tenants who would pay no more than 25% of their income towards rent.

4. **DIRECT AND CONSTRUCTIVE DISCRIMINATION—DEFINITIONS**

The following sections of the *Code* are relevant to minimum income requirements in rental applications:
2. (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance.

4. (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.

9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

11. (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or

(b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.

(2) The Commission, a board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

"Discrimination," although not defined in the Code, can be said to be:

...differentiation based on a prohibited ground of discrimination, harassment and the unintentional causation of a disparate impact upon persons protected by the Code... 6

This definition incorporates both direct and constructive discrimination. With direct discrimination, the person knowingly discriminates. For example, a single mother on family benefits is rejected as a tenant by one of the owners of the rental accommodation because she receives public assistance.7

Constructive discrimination, also referred to as adverse effect discrimination, is dealt with in s.11 of the Code. It is:

...unintentional discrimination that results from the imposition of a seemingly neutral requirement that disproportionately affects a particular group. 8

With constructive discrimination, the existence of an intention to discriminate is immaterial. What is in issue is the effect of the particular requirement, or qualification.

To date, there have been no cases in Ontario dealing with constructive discrimination in accommodation which have gone through Boards of Inquiry. One case in this area ended up settling. The complainant was denied access to an apartment by the Peel Non-Profit Housing Corporation because the rent exceeded 35% of her income. The settlement stated, among other things, that the portion of the complainant’s income devoted to rent should not exceed 35% of her monthly income and if it did, she would be required to have a guarantor co-sign the rental agreement.9 This is not an acceptable compromise generally since it would still have an adverse impact on groups protected by the Code, particularly social assistance recipients.

5. CAN THE USE OF MINIMUM INCOME REQUIREMENTS IN RENTAL APPLICATIONS BE CHARACTERIZED AS DIRECT DISCRIMINATION?

The Human Rights Commission has characterized the use of minimum income requirements in rental applications as constructive discrimination against groups protected by the Code. However, it is important to recognize that in many instances landlords knowingly exclude people of low income, including recipients of social assistance, by using such requirements. In other words, it is a form of direct discrimination.

As set out above, s.9 of the Code deals with direct discrimination:

9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

There are few defences or exceptions that are applicable to direct discrimination. The following is a list of exceptions in the Code which affect the right to freedom from discrimination in accommodation:

8. Supra, note 6 at 115.

1. section 14, which provides for "special programs";

2. section 15, which provides an exemption in respect of preferential treatment for those aged sixty-five and over;

3. section 16(1), which provides an exemption for situations in which Canadian citizenship, as a requirement, qualification or consideration is imposed or authorized by law;

4. section 16(2), by which cultural, educational, trade union or athletic activities can be restricted to Canadian citizens and permanent residents;

5. section 16(3), which provides an exemption for requirement respecting Canadian citizenship or domicile with the intention to obtain citizenship, when adopted by an organization or enterprise for the holder of senior executive positions;

6. section 17(1), which provides an exception where the sole reason for the facts giving rise to a complaint by a handicapped person is that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap;

7. section 18, which allows a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons protected by the Code to restrict membership or participation to persons who are similarly identified;

8. section 21(1), which allows discrimination on all grounds cited in section 2 in residential accommodation where

   (a) the owner or the owner's family resides in the accommodation, and

   (b) the occupant(s) are required to share a bathroom or kitchen with the owner or the owner's family; and

9. section 21(2), which allows discrimination on the ground of sex, "where the occupancy of all the residential accommodation in the building, other than the accommodation, if any, of the owner or family of the owner, is restricted to persons who are of the same sex."10

The exceptions listed above will rarely apply so as to relieve a respondent from liability for direct discrimination.

In some cases there will be direct evidence of intention, such as statements to applicants for apartments that tenants on social assistance are unwelcome.

Knowledge of the result of the exclusive nature of an income policy can also be proven by circumstantial evidence. Clearly, most landlords know that a

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10. Supra, note 6 at 32-33
25-35% income requirement will exclude, for example, most social assistance recipients. This is evidence of direct discrimination.

6. **MINIMUM INCOME REQUIREMENTS AS CONSTRUCTIVE DISCRIMINATION**

As mentioned above, the Human Rights Commission views the use of minimum income requirements as constructive discrimination, not direct discrimination. This is hard to understand, as there is evidence in many cases of intention to exclude.

As set out above, s.11 of the *Code* deals with constructive discrimination:

11.(1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or

(b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.

(2) The Commission, a board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Once a *prima facie* case is established, the burden of proof shifts to the respondent to put forward a defence that the requirement, qualification or factor is reasonable and *bona fide* in the circumstances or that an exception set out in the *Code* applies to the situation.

There will not be a finding that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is found in the circumstances that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, etc.

I will deal with each of the elements of a *prima facie* case in turn and then discuss reasonable and *bona fide* and undue hardship.
(a) *Prima facie* case

With constructive discrimination, as with all cases of discrimination, the burden is on the complainant to establish a *prima facie* case pursuant to s.11 of the Code. In order to do so, the complainant would appear to have to:

- prove that a requirement, qualification or factor that in itself is not discrimination on a prohibited ground exists;
- prove that the existence of the requirement, qualification or factor results in the exclusion, restriction or preference of a group of persons identified by a prohibited ground of discrimination; and
- prove that a person who is a member of the group allegedly affected by the requirement, qualification or factor has been excluded, restricted or preferred as a result of the existence of the requirement, qualification or factor.  

Firstly, a minimum income requirement would be the kind of qualification contemplated by s.11 of the Code. Qualification can be defined as follows;

...restricting or limiting circumstance...quality or accomplishment fitting person or thing (for post, etc.)...condition that must be filled before right can be acquired or office held.  

With minimum income requirements, to qualify for an apartment a potential tenant must have an income high enough to ensure that s/he does not pay more than, for example, 25%-35% of that income towards rent.

Secondly, the use of minimum income requirements in rental applications results in the exclusion of groups of persons identified by a prohibited ground of discrimination, such as receipt of social assistance, age, marital status, sex, and place of origin. Statistical evidence will be needed for this aspect of the case. For example, the following are some statistics on average annual incomes for classes of people in the Census Metropolitan Area of Toronto, except in the case of the social assistance recipient where the income is based on family size and cost of accommodation and immigrants where the average is for all of Canada:

A single parent with two children under the age of 12 and rent of $750 per month receiving General Welfare (or Family Benefits since the amounts would be the same in this case) - approximately $16,620

A 15-19 year old male - $5,187

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11. *Supra,* note 6 at 126


13. Interview with welfare worker (23 September 1993) office at 1900 Dundas Street West, Toronto.
A 15-19 year old female - $4,837
Women - $21,855 14
Non-Canadian born people who have come to Canada after 1979 - $18,686 15

The following are average monthly rents for apartments in the Census Metropolitan Area of Toronto:

- Bachelor - $493
- 1-Bedroom - $609
- 2-Bedroom - $754
- 3-Bedroom - $899 16

If a landlord was applying a minimum income requirement of 30% to rental applicants, then none of the people represented by the above statistics would qualify for an apartment, except the "average" woman, who would qualify for a bachelor unit. 17

Thirdly, as can be seen from the summaries of the cases set out earlier in the paper, all of the complainants are members of groups affected by minimum income requirements and have been excluded as a result of the use of the requirements or qualifications.

17. Rent for a year would be as follows:

- Bachelor - $5916
- 1-Bedroom - $7308
- 2-Bedroom - $9048
- 3-Bedroom - $10,788

30% of the incomes set out in the sample statistics:

- $16,620 - $4986
- $15,187 - $15,561.10
- $14,837 - $14,511.10
- $21,855 - $6,556.50
- $18,686 - $5,605.80
(b) Reasonable and bona fide in the circumstances

Briefly, the reasonable and bona fide standard is very close to a standard of absolute necessity, particularly since "reasonable and bona fide" cannot be met without the respondent establishing that accommodation cannot be made without undue hardship. 18

Is the use of a minimum income requirement reasonable and bona fide? The following are excerpts from the public statements of four supporters of minimum income requirements.

Florence Geneen was the Chair of the Fair Rental Policy Organization of Ontario ("FRPO"). FRPO has more than 1,000 members who collectively own or manage more than 200,000 rental units across the province. 19 In an article in the Toronto Star entitled "Rights group bid to cut out credit queries threat to business," she said the following:

An issue with ramifications for every business in Ontario is percolating deep in the bowels of the Ontario Human Rights Commission. It is entirely possible that a policy could be enacted which would prevent stores, financial institutions, leasing companies or anyone else from considering a customer’s ability and willingness to pay for the product when evaluating a credit application.

Absurd? Absolutely, but a real threat nonetheless.

The Ontario Human Rights Commission has been telling landlords that their use of financial criteria such as income and credit rating to select tenants constitutes “constructive discrimination” under the Ontario Human Rights Code because it adversely affects groups such as social assistance recipients...

Why should other business people be concerned? Well, the Ontario Human Rights Code covers far more than just rental accommodation. Provincially regulated trust companies could be forced to abandon income criteria for mortgage lending, since this is also a credit arrangement related to housing. Since the Code also applies to “services, goods and facilities” and “contracts,” income could become a prohibited criterion when weighing applications for credit cards, car leases and every other financial transaction in our society...

...it is...the landlord’s legitimate role to evaluate the likely ability and willingness of prospective tenants to pay the rent...


It is important to keep in mind what we are trying to accomplish with a statute like the Human Rights Code. The prohibition of discrimination on the basis of race, creed, sex, receipt of public assistance and all the grounds set out in the Code is a worthy objective which deserves support from everyone in our society. Prohibiting discrimination on the basis of price is another matter altogether, and such a restriction would be impossible and undesirable in a capitalist economy.

Let's keep the two distinct - before every Ontario business is threatened. 20

In a letter to the Editor of the Toronto Star entitled "Rental lease is credit arrangement," Philip Dewan, President and Chief Executive Officer of FRPO stated in part as follows:

...Like provision of a mortgage, a car lease, a credit card or bank loan, an apartment lease is a credit arrangement. The tenant is receiving the right to a valuable property in return for a promise to make a monthly payment. The lender, in this case the landlord, must have the ability to assess the tenant's ability to pay as well as the likelihood of paying.

The guideline that a tenant should spend no more than 30 per cent of income on accommodation is used by the federal and provincial governments and lending institutions as well as private landlords. 21

In a column in the New in Homes section of the Toronto Star entitled "Move to stop landlords from screening tenants by income is asinine," Alan Silverstein said:

...The Human Rights Commission wants to stop landlords from using 'income earned' as a screening tool in deciding to whom to lease their properties.

At issue is the '30 per cent rule' used by many landlords. If the rent will exceed 30 per cent of an applicant's income, many landlords won't lease residential premises to that person.

To me, landlords need information about a prospective tenant's financial background - including credit checks, references, previous rental history and most importantly, his/her rent-to-income ratio - for one simple reason.

Before making any commitment to lease, landlords have to know that the tenant will be able to handle the rent payable each month...

Picture what a victory by the Human Rights Commission would mean.


No longer could landlords evaluate and assess tenants based on their ability to pay. But remember that residential landlords in Ontario can’t just throw out tenants when rent is in arrears - a court order is needed.

Imagine - landlords could only learn if a tenant earned too little money to pay the rent if the matter went to litigation - but not when renting the premises.

And if the provincial government supports the Human Rights Commission position, isn’t it promoting a double standard?

After all, the government asks applicants for welfare and other social assistance programs (including subsidized housing) how much they earn. But private landlords couldn't make the same inquiry.

Let’s take the decision one step further.

If landlords can’t question possible tenants about their incomes, how long before a prospective borrower alleges the request for income information by a mortgage lender is discriminatory, too?

Just imagine going to your (by this time, not too friendly) lender to borrow a few 100 thousand dollars, and not tell him/ her whether your income is high enough to repay the loan. Asinine? But it’s distinctly possible.

If I took a poll, I’m confident over 90 per cent of the public would agree that minimum income rules are needed to properly judge a tenant’s application.

Still, to satisfy the scatty ideas of a small but vocal group of disgruntled tenant applicants, several 100 thousand dollars of taxpayer money - your money and mine - will be squandered on this so-called 'human rights’ issue. 22

In a radio interview, Allen Weinbaum, a manager with WJ Realty stated that the landlord and tenant relationship is a commercial relationship and any prudent business person will determine whether the tenant can uphold his or her part of the bargain by employing a minimum income requirement. Such requirements are objective, since they are not based on personal characteristics, and therefore they are in keeping with the Code. He went on to say that the Code is not based on wealth. It undermines the Code when the Commission looks into commercial agreements.23

The extensive quotes above give a sense of what some landlords and landlord advocates are saying about the Commission’s position on the use of minimum

22. A. Silverstein, “Move to stop landlords from screening tenants by income is ‘asinine’” The Toronto Star (17 July 1993).
23. CBC interview with Allan Weinbaum of WJ Realty and Bruce Porter of the Centre for Equality Rights in Accommodation (21 July 1993).
income requirements and the possibility that a Board of Inquiry will find that such use constitutes discrimination under the *Code*.

The arguments advanced by landlords in favour of minimum income requirements in rental applications appear to boil down to the following: the relationship between landlords and tenants is a commercial one. Applying for an apartment is a "credit application" and a tenancy agreement is a "credit arrangement." The decision whether or not to rent to a prospective tenant is a business decision. Just like with a mortgage, a car lease, a credit card application or a bank loan, landlords should be entitled to ask how much income a prospective tenant has now in order to assess the tenant's willingness and ability to pay the rent in the future.

(i) *Is applying for an apartment really a "credit application" and a tenancy agreement a "credit arrangement?"*

The Concise Oxford Dictionary defines "credit" as "trust in person's ability and intention to pay at a later time for goods etc. supplied." Unlike a mortgage, car lease, credit card application or a bank loan, when a tenant rents an apartment s/he is paying *in advance* for the accommodation.

In Ontario, a landlord is permitted to ask a tenant for the first month's rent and an amount equivalent to no more than one month's rent to be held as a security deposit.24 This security deposit is then applied to the last month the tenant resides in the apartment. The majority of tenancy agreements require tenants to pay rent on the first day of each month or the first day of each week. This is rent for the coming month or week, not for the month or week that has just passed. Nothing is advanced to the tenant by the landlord until the rent is actually paid.

In addition, with a mortgage, car lease, credit card application or bank loan, money or chattels change hands. By contrast, only the *use* of an apartment changes hands. Furthermore, there is no deterioration in the value of an apartment by the tenant's use. With a mortgage, car lease, credit card application or bank loan, the debtor could abscond with the money or sell the chattel.

(ii) *Is level of current income in relation to rent any indication of a tenant's willingness and ability to pay the rent in the future?*

In my experience, tenants do not pay the rent for many reasons, none of which can be known in advance of the tenancy agreement. At Metro Tenants Legal Services, we provide legal information to over 7,000 tenants each year. In the last year or two, it appears that the main reason tenants fall into arrears of rent

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24. *Landlord and Tenant Act, R.S.O. 1990, c.L-7, s.82*
is because they have lost their jobs or have had their incomes reduced since they entered into their tenancies, not because they have rented accommodation which was beyond their means at the time.\textsuperscript{25}

Jeanette Price runs "Making Ends Meet" in the City of North York. She helps people who are having financial difficulties with budgeting and money management. She assists people in dealing with their creditors. In certain circumstances, she will advocate on behalf of clients with institutions such as welfare and public housing.

In her work, Ms. Price sees a wide variety of people. She sees a lot of people who have lost their jobs and who have no idea how to set up a budget. It is not only low income people who do not pay their bills. Many people with healthy incomes simply do not have their priorities straight and they fall into debt.

In Ms. Price's experience, there is "no correlation between low income and defaulting on rent."\textsuperscript{26}

Peter Rahmer is a branch manager and counsellor with Credit Counselling Services of Metropolitan Toronto. Counsellors with this service act as mediators between clients and their creditors. They set up budgets and payment schedules. They ensure that the payment schedules are acceptable to the creditors. The organization takes in money from clients and distributes it to creditors in accordance with the payment schedules.

According to Mr. Rahmer, the majority of people who use the credit counselling service are tenants. In his experience, clients have a hierarchy of debt payments. With tenants, rent is usually at the top of that hierarchy. Most of the tenants he sees are current in their rent, but not in other areas of debt payment.

Mr. Rahmer feels that it is not constructive to apply a hard and fast rule such as a minimum income requirement in rental applications because some people are able to sustain their life-styles on a lot less than other people.\textsuperscript{27}

From the above evidence, there is no reasonable and \textit{bona fide} reason for the use of minimum income requirements. There is simply no correlation between a tenant's income and his or her willingness and ability to pay the rent in the future.

\textsuperscript{25} This is anecdotal evidence only.

\textsuperscript{26} Interview with Jeanette Price (3 August 1993) Toronto.

\textsuperscript{27} Interview with Peter Rahmer (3 August 1993) Toronto.
Minimum Income Requirements in Rental Applications

But if it is not reasonable and *bona fide* to use minimum income requirements in rental applications, why would some landlords and landlord advocates be so vehemently opposed to discontinuing their use?

Perhaps Professor Hulchanski, a University of Toronto Professor of Housing Policy and Community Planning (Faculty of Social Work) put it correctly. He is quoted in a *Toronto Star* editorial about minimum income requirements as saying “in our society, lower income has come to mean immigrants, refugees, single parents and a bunch of ‘undesirables’ in some people’s minds.” 28

Another of the questions asked in the *Survey of Corporations Owning or Managing Large Numbers of Rental Apartments in Metro Toronto: Requirement for Last Month’s Rent Deposit* was “are you willing to rent at all to people receiving social assistance?” The following is the result:

...six (22%) reported that they did not rent to people receiving social assistance. One refused to answer, one did not know, and 19 (70%) reported that they do rent to people receiving social assistance. The six corporations that do not rent to people in receipt of social assistance own or manage a total of approximately 27,860 units within the income ceiling. This is 56% of the total sample of “affordable” units in this survey.29

7. EXCEPTIONS
The exceptions that affect the right to freedom from discrimination in accommodation are outlined above.30 None of these exceptions would appear to apply to the use of minimum income requirements in rental applications.

8. UNDUE HARDSHIP
As mentioned above, “reasonable and *bona fide* test cannot be met without the respondent establishing that accommodation cannot be made without undue hardship.

In the same article in the *Toronto Star* quoted above, Florence Geneen of FRPO gave an indication of the undue hardship argument landlords may advance:

...Some tenant advocates suggest that there should be no criteria for selecting tenants other than the ability to supply first and last month’s rent. With the strict eviction provisions spelled out in the *Landlord and Tenant Act* and the lengthy delays in the court system, this would be devastating.

It can take many months and thousands of dollars in legal costs, lost rents and often damage to the premises to evict a non-paying tenant. To not attempt to mitigate such costs by careful tenant selection would be irresponsible for all landlords. 31

It is quite correct to say that the *Landlord and Tenant Act* has strict eviction provisions that landlords must follow in order to evict a tenant for arrears of rent. Part IV of the *Act*, which deals with residential tenancies, was put in place to redress the power imbalance between landlords and tenants. The *Act* ensures, among other things, that landlords follow due process and that tenants have their day in court before they can be evicted from their homes.

Ms. Geneen contends that eviction proceedings are lengthy and expensive. In fact, landlord and tenant applications are summary in nature. They are relatively quick, inexpensive procedures geared toward the layperson.

According to Joe Vantassel, the assistant supervisor of landlord and tenant court in Toronto, if the landlord is well prepared and pushes the matter along in accordance with the *Act* and the court procedures, then the time between the default in rent payments and eviction will be short. 32

In addition, there is no evidence that I know of to show that ceasing to use minimum income requirements will actually increase the number of eviction proceedings for landlords.

(a) Alternatives to minimum income requirements

There are a number of alternatives to minimum income requirements that have been suggested, namely rental history, credit rating/references, and guarantors. Many landlords presently use one or more of these measures in conjunction with minimum income requirements. The problem with all of them is that they are potentially discriminatory.

Rental history will show if a prospective tenant has paid the rent for another apartment in the past. It would allegedly give the landlord some indication of the likelihood of a tenant paying the rent in the future. What about all those people who do not have a rental history, such as first time renters or people who are new to the country? Clearly, a rental history requirement would have an adverse impact on such groups of people. It also disadvantages those who have poor rental histories through no fault of their own, such as women whose partners have defaulted on the rent.

31. *Supra*, note 12

32. Interview with Joe Vantassel (September 1993) Toronto.
Minimum Income Requirements in Rental Applications

Credit rating/references present some of the same problems as rental history for many people, such as social assistance recipients and young people since often they will not have a credit rating. In addition, a poor credit rating may be because the person has not paid credit card bills, although the rent has always been paid on time. As mentioned earlier, the tenants Peter Rahmer sees at Credit Counselling Services of Metropolitan Toronto are usually up to date with their rent since it is one of their priorities.

With the guarantor option, it would be the guarantor who would sign the lease and ultimately be responsible for the rent. People who are new to the country may not be able to find a suitable guarantor. As well, the requirement may put the tenant in a difficult position, such as a young person from an abusive family situation having to rely on a parent to be a guarantor.

(b) First and last month’s rent

As previously mentioned, landlords in Ontario can ask a new tenant for the first month’s rent and a security deposit (also known as last month’s rent). Although this causes hardship for many tenants, it does strike a balance between a tenant’s right to have equal access to rental housing and a landlord’s desire to minimize his or her business risk.

In my opinion, the only requirement a landlord should be able to impose on a prospective tenant is payment of first and last month’s rent. This will both accommodate tenants and will not cause undue hardship to landlords.

9. ACCESS TO HOUSING

(a) United Nations Committee on Economic, Social and Cultural Rights

In June 1993 the United Nations Committee on Economic, Social and Cultural Rights released concluding observations on Canada in relation to certain articles of the International Covenant on Economic, Social and Cultural Rights. One of the “Principal subjects of concern” for the Committee is as follows:

18. The Committee learned from non-governmental organizations of widespread discrimination in housing against people with children, people on social assistance, people with low incomes, and people who are indebted. Although prohibited by law in many provinces, these forms of discrimination are apparently common. A more concerted effort to eliminate such practices would therefore seem to be in order. 33

(b) Access to housing on an equal basis
According to Professor Hulchanski, the following factors affect access to rental housing:

- Discrimination of various types aimed at various groups is as pervasive in housing markets as it is in the rest of society. All forms of discrimination exist in a system of mutual support.

- Canada relies on the private sector for most of its housing, yet the ownership sector is very expensive and the rental sector, particularly in Ontario, does not function normally.

- The private rental sector is highly regulated, very few units are available, few new units are being built, and renters have an increasingly lower income profile relative to home owners (i.e. have difficulty paying for the housing they need).

Under these conditions, the private rental sector is a classic sellers market. Those who own and manage the existing stock of rental housing are in a position to pick and choose tenants on criteria other than market criteria. There is no market in terms of supply and demand. Buyers (renters) can easily be taken advantage of, if sellers can legally do so, or of they can find a way to lessen the risk of being caught. 34

This non-functioning market allows landlords to use selection criteria, such as minimum income requirements, to cream off the “best” tenants, meaning the ones with the higher incomes. The interlocking nature of different kinds of discrimination in this society leads to lower incomes, which in turn often exclude various groups of people, such as women, people of colour, disabled people, single parents, youth, the elderly and people who are new to the country from rental housing where minimum income requirements are employed:

Housing, as shelter, is not only one of the essential human needs, it is also a culturally significant life style consumption good (physical and psychological comfort and security) as well as a status symbol (as is the home’s location — the neighbourhood). Because it is essential — everyone must have a home, and because it is so significant to the social, economic and psychological well-being of individuals, society plays a significant role in the provision and maintenance of housing through government housing programs, building codes, and numerous regulations.

Consumers in a normally functioning marketplace are protected by having many options from which to select, forcing suppliers or producers to offer the

best service or product at the best possible price. They also have an incentive to seek as many customers as possible — regardless of race, gender, creed or any other factor. This is not the case in Ontario’s urban rental market. Where discrimination against certain groups is common in a society and where a market is not functioning normally, the conditions exist for groups to be singled out as targets for those who would seek to take financial or other advantage of the situation.

The disadvantaged status of visible minority individuals, male and female, and the disadvantaged status of women in Canadian society, translates into housing disadvantage for many in these groups. The realities of discrimination and the failure of the urban housing market in Ontario to function normally, means that these groups have fewer housing options than others.

It is important to note that this aspect of the housing problem — some groups having fewer options than others — is not simply one of poverty. All poor people have fewer options. All lower-income people have difficulty affording good quality housing appropriate to the size and needs of their household. Even most moderate income home owners would like larger, nicer and better located homes.

The issue here is not housing affordability, but access to housing on an equal basis. Every country’s housing system has its problems and limitations. The question is whether all people have equal access to the full range of available options, or are some people denied some of the options or singled out for disparate treatment on grounds which violate their human rights. 35

(c) Segregation in housing

Many cities in the United States are depressing examples of what lack of access to housing on an equal basis can do to communities. A recently published book documents how Black Americans have been subjected to decades of discrimination in housing:

The spatial isolation of black Americans was achieved by a conjunction of racist attitudes, private behaviours, and institutional practices that disenfranchised blacks from urban housing markets and led to the creation of the ghetto. Discrimination in employment exacerbated black poverty and limited the economic potential for integration, and black residential mobility was systemically blocked by pervasive discrimination and white avoidance of neighbourhoods containing blacks. The walls of the ghetto were buttressed after 1950 by government programs that promoted slum clearance and relocated displaced ghetto residents into multi-storey, high-density housing projects. 36

35. Ibid. at 14-15.

Minimum income requirements in rental applications contribute to segregation in rental housing. In this society, people who are vulnerable to discrimination in accommodation also tend to have lower incomes, often because they suffer discrimination in employment as well. Income requirements impede equal access to rental housing and exacerbate existing segregation in rental housing. Anything that contributes to segregation in housing weakens the health and social stability of our communities and moves us closer to the devastation of some U.S. cities. 37

CONCLUSION
The use of minimum income requirements in rental applications is about who gets access to what rental housing. It is about a fundamental human right, housing, versus a business run for profit, private rental housing. And it is about discrimination, be it direct or constructive.

Some landlords assert that minimum income requirements are an effective measure of a potential tenant’s willingness and ability to pay the rent in the future. Some advocates of income requirements go so far as to refer to any move to stop screening tenants by income as “asinine,” as Alan Silverstein did in his *Toronto Star* column. What about the 22% of corporations mentioned in the *Survey of Corporations Owning or Managing Large Numbers of Rental Apartments in Metro Toronto: Requirement for Last Month’s Rent Deposit* which did not have income requirements for units? Are they also asinine? Or maybe the use of minimum income requirements is simply not reasonable and *bona fide*.

Landlords can ask a new tenant for first and last month’s rent, and they have access to a quick, inexpensive eviction procedure under the *Landlord and Tenant Act* in the event that the tenant does not continue to pay the rent. This is more than adequate protection of their business interests.

Minimum income requirements exclude many groups of people identified by prohibited grounds in the Code from access to rental accommodation. This discrimination contributes to segregation in rental housing, which in turn leads to the deterioration of our communities, as is evidenced by some cities in the United States.

Hopefully, The Board of Inquiry set to deal with minimum income requirements in rental applications in February, 1994 will make the right decision and find such requirements to be discriminatory.

One final quote will end this paper. It is from The Vancouver Declaration on Human Settlements, 1976:

Adequate shelter and services are a basic human right which places an obligation on governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community-action. Governments should endeavour to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities. 38

38. The Vancouver Declaration on Human Settlements, section III(8). This Declaration was adopted by the United Nations Conference on Human Settlements in 1976 (UN Doc. A/CONF.70/15).