

Executive Summary

“The guy asked, the one in charge from Central Intake, ‘*what is your status?*’. Then Central Intake would just say ‘*we have no stock and you have to wait*’.”

Refugee Claimant



Executive Summary

Overview

Toronto's homelessness crisis is taking a devastating toll on the people and communities of this city. One vulnerable community is the refugee claimants who arrive in Toronto needing support for their journey towards a better life. When they cannot find housing, they have been turning in increasing numbers to the City's already-stretched emergency shelter system. In 2016, there were an average of 459 refugee claimants sleeping in the shelter system every night. By August of 2023 that number had grown to 3,344.

Refugee claimants are historically disadvantaged individuals. They often come to Canada having escaped horrific wars, occupations, and other human rights abuses. When successfully resettled, they thrive and make significant contributions to our communities and the economy. Canada has signed international agreements to protect them, and this country's federal government, provinces, and municipalities share a responsibility for maintaining basic minimum standards for their treatment, reception, and settlement.

On November 7, 2022, staff at Toronto Shelter and Support Services (TSSS) made the decision to stop allowing refugee claimants access to non-refugee-claimant beds due to a lack of space in the City's non-refugee-claimant shelter system. (The City's base shelter system at the time consisted of 20 overnight shelters run by the City and 81 run by community partner agencies.) The refugee claimants were told there was no room.

During the time period under review, there were about 1,700 refugee-specific beds throughout the shelter system, out of a total of about 9,000 shelter beds system-wide.

The City did not disclose the eligibility change for almost six months, until a news conference on May 31, 2023. Staff and elected officials announced then that they were forced to refer refugee claimants to federal supports because of a lack of funding from the provincial and federal governments. The City did not measure the impact of this eligibility change; it did not track the number of refugee claimants affected, or the reason refugee claimants were not given a bed, whether it was because they were not allowed to access an available base shelter bed, or because there were simply no available beds anywhere in the system. Many refugee claimants were living on the



sidewalk or in make-shift shelters with only limited access to sanitation, food and water.

City Council reversed the eligibility change two months later, on July 19, 2023, but it took almost another two more months for that decision to be put into effect and to return to universal access for shelter users.

In July 2023, I appointed Reema Patel as the inaugural Deputy Ombudsman (Housing) for the City of Toronto to lead a new Housing Unit. The Deputy Ombudsman investigates the fairness of the City's housing policies and procedures, with special emphasis on housing as a human right. This report is the unit's first investigation.

What We Did

On September 21, 2023, I announced that the new Housing Unit would investigate whether the City's decision to stop allowing refugee claimants access to base shelter system beds was fair and in keeping with City policies, procedures, and rules. We looked at the City's actions through the lens of the human right to adequate housing, the City's processes leading up to its decision, and how the decision was communicated to City staff and members of the public.

We chose to investigate this matter even though City Council reversed the eligibility change because we wanted to understand what led to this change, and, depending on the investigation's findings, to see whether there were any recommendations we could make to help the City improve its decision making around shelter eligibility.

This investigation was very narrow in scope. We did not look at the City's overall planning and response to the increase of refugee claimants in the shelter system. I acknowledge that City staff did a lot of important work in this area over the past few years, including adding additional shelter beds for refugee claimants; helping to reconfigure an existing shelter to serve queer and transgender refugee claimants; and supporting refugee claimant families by helping them access emergency funds and find temporary hotel spaces. But we did not investigate this overall effort and make no findings on it.

What we looked at was the very specific decision to stop allowing refugee claimants access to base shelter beds.

Our team reviewed the actions and decisions of several City divisions, including Toronto Shelter & Support Services (TSSS), the City's Social Development, Finance & Administration (SDFA), the Office of the Deputy City Manager, the Community & Social Services Division, to whom TSSS reports, and the City Manager's Office. We reviewed



thousands of emails and documents, and interviewed two members of City Council, 19 refugee claimants, 28 members of City staff, and many people providing services, facilities, and shelter to refugee claimants. We also visited three churches sheltering refugee claimants, and one program providing shelter to refugee claimants.

We also examined and analyzed relevant laws and policies. This report provides an analysis of those relevant laws and policies, but it does not constitute legal advice to the City.

What We Found

My investigation found the City of Toronto acted unfairly when it decided to stop allowing refugee claimants into the City's base shelter system. This was also inconsistent with the City's commitment to the right to adequate housing for everyone living in Toronto. I also have concerns with how the decision was carried out: it was poorly thought out, planned for, and communicated. The City did not advance the right to adequate housing for all. The decision amounted to systemic discrimination on the basis of citizenship and race, specifically, anti-Black racism. The decision was contrary to several of the City's own policies – namely the Housing Charter, the Toronto Shelter Standards, and Access T.O.

There was also a lack of transparency and accountability. Our investigators could not determine who made the decision to stop allowing refugee claimants into City's base shelter system. There is no clear written record documenting the City's decisions, and staff have differing opinions about what happened and when. Refugee claimants were not told why they were being asked about their immigration status. Refugee claimant-serving organizations and the public were not informed when the eligibility criteria were initially changed.

City Council had earlier told staff to develop a separate shelter program to help meet the special needs of refugee claimants. During the investigation, staff often pointed to this Council decision as justification for not allowing refugee claimants to use other parts of the City's shelter system. But fairness required that staff be upfront with the public and Council about their plan to stop admitting refugee claimants into non-refugee claimant beds. This did not happen.



Toronto's Housing Charter and the Right to Housing

Non-discrimination is a pillar of the right to adequate housing. In my opinion, the decision to stop allowing refugee claimants into the base shelter system constituted systemic discrimination based on race and citizenship, something prohibited under the Ontario *Human Rights Code*, the City's Housing Charter, and several City policies. Specifically, it amounted to anti-Black racism, as many or most of the refugee claimants who were affected came from African countries. Even if some refugee claimants continued to be referred to non-refugee-claimant-designated shelter beds, the change, as planned and implemented, was discriminatory on its face.

To be clear, my investigation could not establish that the City's eligibility change caused widespread and direct harm to all refugee claimants trying to access Toronto's shelter system.

Rather, the decision itself, and the way it was implemented, are what concern me.

At no point do I think City staff intended to discriminate against the refugee claimants, but under human rights law, and the City's human rights policy, it is the effect or consequence of their actions or policies that matter, not the intent.

Toronto's Housing Charter commits the City to equal treatment with respect to housing, without discrimination, including discrimination based on homelessness or housing status. The Housing Charter also says all people have a right to a safe, secure, and affordable home.

City Policies Not Followed

The decision to exclude refugee claimants from the City's base shelter system not only went against the Ontario Human Rights Code, and was not consistent with the Housing Charter, it also went against two other important City policies:

- The Access T.O. policy states the City cannot deny service to people because of their immigration status, including that of being a refugee claimant. The Access T.O. policy also says staff must also explain to people why they are being asked about their immigration status. The applicants were not told they could lose access to a shelter bed if they disclosed they were a refugee claimant.



- Toronto’s Shelter Standards say, “all persons have the right to seek shelter services.” Staff used immigration status, not just to refer refugee claimants to a suitable shelter, but to stop allowing them access to the base shelter system.

Poor Planning and Implementation

TSSS did not consult with organizations supporting and helping refugee claimants before deciding to stop allowing refugee claimants into the City’s base shelter system. They did also not consult with the City’s Confronting Anti-Black Racism Unit (CABR), which ensures that municipal services are inclusive and accessible to Black Torontonians. Decision-makers at TSSS gave the Toronto Newcomer Office (TNO) just two days to provide input. They did not consult with the Human Rights Office (HRO) until late June 2023, long after the eligibility change was already put into place.

Intake staff did not have clear instructions or phone scripts for more than six months on how to respond to refugee claimants seeking shelter beds. After May 2023, staff told refugee claimants to instead call Service Canada or Immigration, Refugee and Citizenship Canada (IRCC) for help. This advice was unhelpful at best as TSSS management knew the refugee claimants who called would not get any help with finding somewhere to sleep at either organization.

In the weeks following the May announcement, media reported that groups of refugee claimants, predominantly Black and from African countries, were sleeping on the street outside the City’s shelter referral centre at 129 Peter Street. Refugee claimants we interviewed told us they repeatedly called Central Intake and were unable to find a place to sleep in a City shelter. While many of these people were likely turned away because there were no beds available anywhere in the system, some staff confirmed that at least some refugee claimants were turned away, even when shelter beds were available.

Delayed Reversal

On July 19, 2023, Council passed the newly elected Mayor’s motion to ensure that “everyone regardless of status is able to access the City’s shelter system as spaces become available,” which appeared to mean ending the exclusion of refugee claimants from the City’s base shelter system. And the Mayor apologized for how they were treated. But staff at TSSS did not carry out Council’s decision for almost two months, until an article in the Toronto Star disclosed that refugee claimants were still being refused beds in the non-refugee-claimant shelter system.



Recommendations

Without all three orders of government working together, the City will continue to be in a state of crisis when it comes to refugee claimant housing. The City cannot solve the problem on its own; it depends on money and support from the provincial and federal governments. However, when funds are insufficient, the City must still act in a way that is consistent with its commitments and policies to help newcomers.

Considering this report's findings and information gathered in my investigation, I have made 14 recommendations to the administration of the City of Toronto.¹ They include that:

- All future changes to refugee claimant shelter eligibility should conform to the Ontario Human Rights Code, the City's Human Rights and Anti-Harassment/Discrimination Policy, Access T.O., and the Toronto Shelter Standards. Any proposed changes should be reviewed by the City's Human Rights Office, the Confronting Anti-Black Racism Unit, the Toronto Newcomer Office, and other relevant internal experts before their implementation.
- All senior TSSS leadership and staff involved in shelter policy development should be trained in the Anti-Black Racism Analysis Tool. All new shelter policy staff, as part of their onboarding, should be trained in this tool as well.
- The City should develop a comprehensive strategy for meaningfully engaging with refugee claimants and refugee claimant-serving organizations to help plan and deliver shelter services impacting refugee claimants. This strategy should include clear definitions of "meaningful engagement" and set out how the City will incorporate the feedback it receives.
- The City Manager, Deputy City Manager (Community & Social Services), and the General Manager of Toronto Shelter & Support Services, should meet with the Chair of the Housing Rights Advisory Committee and the Executive Director of the Housing Secretariat to discuss the City's obligations to progressively realize housing as a human right.

¹ The full list of recommendations can be found on page 112.



The City Manager's Response

As a matter of procedural fairness, I provided several opportunities for the City Manager and relevant City staff to share feedback on the draft report. I considered their responses and incorporated the information that was relevant and in scope.

On November 26, 2024, the City Manager wrote that he would receive the report on behalf of the organization, but that he did not agree with the report's findings and, subject to Council's decision on the report, would not take any further action in response to the recommendations.

I responded directly to the City Manager and have included his letter and my response as Appendix C and D to this report. What follows is a brief summary of both letters.

In his letter, the City Manager set out:

- The context around the funding challenges facing the City's shelter system, and steps the federal government began taking to support refugee claimants towards the end of 2023.
- Why he disagreed with our assessment of the City's Housing Charter and Access T.O. policy.
- His belief that the report shows a lack of understanding about divisional roles and responsibilities in the City's shelter response, in particular with respect to the TNO.
- His belief that the tone of the report is accusatory in many places and reflects a lack of understanding of the context the City was in at the time as well as roles and responsibilities of other orders of government.

The City Manager previously raised very similar concerns with me, and I had considered and addressed that feedback in the final draft report.

In my response letter, I noted that my report describes the extremely difficult context in which the City was operating, and that the focus of my report was on the City's actions, since we do not have jurisdiction over other orders of government.

It appears that we have a different view on the implications of the nature and applicability of the Housing Charter. The City takes the position that the "right to adequate housing" set out in the Housing Charter is an "aspirational statement that the City works towards." I disagree. The Council-approved Housing Charter is not merely an aspirational statement. It is part of the HousingTO 2020-2030 Action Plan, and



contains 13 implementation steps. The City's policy is "to move deliberately to further the progressive realization of the right to adequate housing recognized in the International Covenant on Economic, Social and Cultural Rights." As a result, the City has an obligation to uphold and progressively implement the right to adequate housing.

And while the City Manager believes that staff were following the steps required in the policy, my report identifies serious gaps in its response. This includes staff failing to adequately consult with affected people, meaningfully consult the City's own experts, and consider the human rights impacts of its decision.

We also disagree on the application of the Access T.O. policy. The City Manager takes the position that the City has never used immigration status to deny clients access to shelter services, and that "staff use a client's refugee status to connect them to the most appropriate programs and services to meet their specific needs." The report shows that the direction given to City staff was that if a refugee claimant disclosed their immigration status to shelter intake workers, that individual had to be offered a bed only in a refugee-designated program and nowhere else. My investigation found that because of this direction, at least some refugee claimants were not given a base shelter bed when one was available.

On the roles and responsibilities of City divisions in administering the City's shelter response, my report is clear that TSSS is responsible for the shelter system, and that they should have consulted the TNO when making the shelter eligibility decision about refugee claimants, since that unit is responsible for the stewardship of the Access T.O. policy.

I noted my disappointment that the City Manager said he will not accept the report or act on its recommendations unless instructed by Council. This is the first time in the history of the Ombudsman's office that the Toronto Public Service has rejected my findings and recommendations in their entirety. In doing so, the City is missing an opportunity to improve its services and advance its commitment to the right to adequate housing.

I am asking Council to direct staff to implement my recommendations. If Council chooses to do so, I will, as always, work collaboratively with staff on the implementation of these recommendations as we advance our shared interest of building a fairer City.