



Federal Housing Advocate's Preliminary Recommendations

Submitted to the Review Panel on
Financialization of Purpose-Built Rental
Housing

August 31 2023

A. Introduction

1. Federal Housing Advocate's representations

The Federal Housing Advocate (“the Advocate”) submitted written representations to the Review Panel on Financialization of Purpose-Built Rental Housing in June 2023.¹ The Advocate’s representations draw from research commissioned by the Office of the Federal Housing Advocate (OFHA)², and submissions she has received from individuals and organizations, to describe the negative effects of financialization on human rights including the human right to adequate housing, and analyze the factors that exacerbate it.

The Advocate’s representations establish that:

- Financialization of purpose-built rental housing is a systemic housing issue within the jurisdiction of Parliament that is having a negative impact on the full and equal enjoyment of the human right to adequate housing and other human rights;
- It results in violations of individuals’ enjoyment of the human right to adequate housing, in particular the elements of affordability, habitability, security of tenure, accessibility, availability of services, appropriate location, and cultural adequacy;
- It leads to the displacement of entire communities;
- Its impacts disproportionately affect people and communities that are Indigenous and / or those that are Black, racialized, immigrants and refugees, persons with disabilities, seniors, 2SLGBTQ+, low-income, and other disadvantaged groups, particularly women and gender-diverse people within these groups;
- It contributes to the erosion of affordable rental housing stock, and to growing socio-spatial inequality and polarization, which is contrary to the progressive realization of the right to adequate housing in Canada, and amounts to retrogression;
- A number of factors have contributed significantly to financialization of rental housing in Canada, such as government actions and inactions; the role of

¹ The Advocate’s representations are available at <https://www.homelesshub.ca/resource/human-rights-analysis-financialization-purpose-built-rental-housing-summary-federal-housing>

² Reports from the OFHA research are available at <https://www.housingchrc.ca/en/financialization-housing#research>

private sector entities; and gaps in current measures to protect the right to adequate housing;

- Canada has recognized the right to adequate housing and committed to its progressive realization under international treaties and in the National Housing Strategy Act (“NHSA”), and all orders of government are equally bound by human rights obligations including the right to adequate housing;
- The Government of Canada, and governments at all levels, are thereby obligated to protect, respect, and fulfill the right to adequate housing, which includes protecting people in Canada against human rights violations by private entities;
- Governments have a legal obligation to remedy the negative human rights impacts of financialization, and advance the progressive realization of the human right to adequate housing for everyone, especially those most in need;
- These obligations mean that governments must:
 - Implement effective measures;
 - Dedicate the maximum available resources;
 - Use all appropriate means, including laws, policies and regulations;
 - Prioritize those in greatest need, such as people experiencing homelessness and inadequate housing, particularly those who are Indigenous and members of disadvantaged groups;
 - Take immediate action to remedy discrimination and threats to life, liberty, and security of the person;
 - Prevent retrogression;
 - Ensure access to justice and accountability; and
 - Meaningfully engage with rights holders.

Following her research, analysis of submissions, and engagement with rights holders, the Advocate has concluded that the Government of Canada, and governments at all levels, have failed to ensure that Canada’s housing system is advancing the progressive realization of the right to housing. In particular, they have failed to protect rights holders from the negative human rights impacts of financialization.

Government actions and inactions which contribute to the financialization of rental housing contravene the NHSA’s stated objectives to:

- (a) recognize that the right to adequate housing is a fundamental human right affirmed in international law;
- (b) recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities;
- (c) support improved housing outcomes for the people of Canada; and
- (d) further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.

2. Preliminary recommendations

This document is submitted as an addendum to the Advocate’s representations. It outlines recommended measures governments can undertake to remedy their failure to protect human rights, uphold their human rights obligations, and address the factors that exacerbate financialization of purpose-built rental housing. These preliminary recommendations are drawn from the research conducted for the Advocate³, submissions she has received, engagement with rights holders and experts, and a review of briefs submitted to the study on financialization of housing by the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA Committee).⁴ These submissions are without prejudice to the Advocate’s procedural request to the Review Panel dated 25 July 2023, in which the Advocate requested an opportunity to present proposed recommendations on measures at the end of the oral hearing, based on the entirety of the hearing record.

The Advocate will continue to conduct engagement and analysis on the preliminary recommendations below. During the oral hearing, she will present proposals for recommendations to be considered by the Review Panel on Financialization of Purpose-Built Rental Housing for inclusion in its final report.

3. The issue of jurisdiction

The National Housing Strategy Act enshrines the human right to adequate housing for everyone in Canada, and makes the progressive realization of this right the basis for all housing policy. All orders of government, including provinces,

³ Recommendations from the research conducted for OFHA are summarized in a report by Professor Martine August, *The Financialization of Housing in Canada: Project Summary Report*, 2022, at 10: <<https://www.homelesshub.ca/resource/financialization-housing-canada-project-summary-report>>.

⁴ The official report is expected to be presented to Parliament in the fall of 2023. The briefs and witness statements for this study are available on the HUMA website: <https://www.ourcommons.ca/Committees/en/HUMA/StudyActivity?studyActivityId=12152852>.

territories, and municipalities, have an obligation to protect, respect, and fulfill human rights, including the human right to housing, within their areas of jurisdiction.

Under international human rights law, separation of powers must not result in human rights violations, nor does it excuse governments' failure to protect human rights. In federal states, the national government has a responsibility to play a leadership role, and to work with sub-national governments to ensure that human rights are upheld.

As outlined in the Advocate's representations, the financialization of purpose-built rental housing is exacerbated by factors within the jurisdiction of the Government of Canada, as well as factors in provincial, territorial, and municipal jurisdiction. All levels of government must therefore implement measures to limit the financialization of purpose-built rental housing and remedy its human rights impacts.

At the same time, the Advocate is cognizant that NHSA 16.3(c) directs review panels to prepare a report that sets out "any recommendations to take measures – respecting matters over which Parliament has jurisdiction." Recognizing the challenge this presents for the Review Panel on the Financialization of Purpose-Built Rental Housing, the Advocate's preliminary recommendations emphasize measures within federal jurisdiction. Where key factors are within provincial, territorial or municipal jurisdiction, the recommendations identify tools available to the Government of Canada to promote necessary actions by sub-national governments.

B. Recommended measures to remedy the factors that exacerbate the financialization of purpose-built rental housing and its negative impacts

As shown in the Advocate’s representations, key factors contributing to financialization and its negative impacts can be divided into three broad and overlapping categories: 1 – Government actions and inactions; 2 – The role of private sector entities; 3 – Gaps in current measures to protect the right to adequate housing.

The Advocate’s preliminary recommendations present measures to remedy these factors, in accordance with Canada’s human rights obligations.

1. Government actions and inactions

A) Welfare state retrenchment

The OFHA research demonstrates that the cancellation of the federal social housing program in the 1990s accelerated financialization. With a small and diminishing share of low-cost social housing in Canada’s housing system, a growing majority of low- and moderate-income households are forced to obtain housing in the private market, where they face the impacts of financialization such as unaffordable housing, poor conditions, and eviction. The decline in access to adequate housing, and increasing rates of homelessness, since the cancellation of the federal housing program are evidence of retrogression on Canada’s human rights obligations.⁵

Human rights obligations and preliminary recommendations:

The Government of Canada must reverse this retrogression, and dedicate the maximum available resources to the progressive realization of the right to adequate housing. Its allocation of investments must accord priority to those in greatest need. This means Canada must:

⁵ See for example the NHC Working Group on Progressive Realization of the Right to Housing report “This concept refers to a reduction in the enjoyment of the right to adequate housing through austerity measures or the removal or weakening of legislative or programmatic protections. Such measures can only be justified in exceptional circumstances, where the backsliding is required to satisfy other human rights, based on all available resources. In times of severe economic and financial crisis, all budgetary adjustments affecting policies must be temporary, necessary, proportional, and nondiscriminatory.” NHC, *A Literature Review on the Progressive Realization of the Right to Adequate Housing*, January 2022, at 60: <https://housingrights.ca/progressive-realization-right-to-housing/>.

1. Focus federal housing investments – particularly those under the \$84B National Housing Strategy (NHS) - on the development, repair, acquisition and operation of housing that is permanently affordable, accessible, and adequate for Indigenous people, members of disadvantaged groups, and people experiencing core housing need and homelessness, in accordance with the requirements of the NHSA. Non-market rental housing is the best investment to protect against the negative human rights impacts of financialization.⁶ (See Section 3 for details on required changes to the NHS).

B) Deregulation of rent control, vacancy decontrol, and tenant protections:

The weakening of rent control and tenant protections at the provincial and territorial level has facilitated the financialization of rental housing stock. By permitting unlimited rent increases when a unit is vacant, these changes create conditions that promote speculation on rental housing. Vacancy decontrol incentivizes landlords to vacate units by evicting tenants or pushing them out. August's research demonstrates that financialization is more common in jurisdictions with weak rent control regulations and tenant protections.⁷

Human rights obligations and preliminary recommendations:

Security of tenure is a cornerstone of the human right to adequate housing. All levels of government share the obligation to protect tenants from business practices which infringe on their right to adequate housing. Tenants must have access to justice and effective remedies, as required by international human rights norms around the right to adequate housing. Governments are expected to monitor human rights and, as a matter of transparency, report publicly on the effectiveness of these mechanisms.

While landlord-tenant law is in the jurisdiction of provinces and territories, the Government of Canada has a duty to protect tenants, protect rental affordability, and ensure access to justice, through measures such as:

2. Work with provinces and territories to collect and monitor comprehensive, transparent, publicly-available data on decisions in landlord-tenant disputes and eviction cases.

⁶ See for example CHFC, *Study Regarding the Financialization of Housing*, May 2023: <https://www.ourcommons.ca/Content/Committee/441/HUMA/Brief/BR12459250/br-external/CooperativeHousingFederationOfCanada-e.pdf>

⁷ August, *supra* note 4, at 22.

3. Require provinces and territories to collect comprehensive, transparent, publicly-available data on beneficial ownership⁸, as a condition for federal housing and infrastructure funding.
4. Require and fund municipalities to create public apartment unit registries that include details such as changes in ownership, historical rent charges, and property standards infractions⁹.
5. Include rent stabilization and tenant protection requirements as a condition in transfers to provinces and territories through programs such as the Canada Housing Benefit, in order to incentivize provincial and territorial governments to introduce regulations to limit the increase in rents between tenancies (vacancy control¹⁰), and strengthen rent controls and protections for sitting tenants.¹¹
6. Work with provinces, territories, and municipalities to reduce affordable rental erosion and arbitrary evictions. For example, the federal Housing Accelerator Fund can support municipalities to implement protections against renovation and demotion, and rental unit replacement requirements, in the permitting and planning approvals processes.
7. Fund local eviction prevention and rent-relief programs.

These changes would improve security of tenure for all tenants, not only those in financialized purpose-built rental housing.

C) Policies that enable financialization:

The research points to a number of federal policies that contribute to financialization, such as the deregulation of finance, legislative reform of pension funds, the introduction of REITs, and the creation of the Canada Mortgage Bond. These reforms opened the door to financialization of housing and its negative impacts for rights holders and the housing system. In reducing regulation and

⁸ See for example FINA Committee No 10, *Responding to the Challenges of Our Time: Report of the Standing Committee on Finance*, March 2023, at 10:

<https://www.ourcommons.ca/DocumentViewer/en/44-1/FINA/report-10/page-24>

⁹ See for example NPF, *Age With Dignity, Uphold Housing Human Rights in Canada: BRIEF by the National Pensioners Federation to the HUMA Committee*, May 2023, at 4:

<https://www.ourcommons.ca/Content/Committee/441/HUMA/Brief/BR12459246/br-external/NationalPensionersFederation-e.pdf>.

¹⁰ See for example Steve Pomeroy, *Examining the financialization of rental housing: A brief submission to HUMA Committee*, May 2023, at 11:

<https://www.ourcommons.ca/Content/Committee/441/HUMA/Brief/BR12459654/br-external/PomeroySteve-e.pdf>.

¹¹ See for example Rexdale Community Legal Clinic, *Financialization of Housing and Eviction in North Etobicoke*, May 2023, at 4:

<https://www.ourcommons.ca/Content/Committee/441/HUMA/Brief/BR12459252/br-external/RexdaleCommunityLegalClinic-e.pdf>.

taxation, the government failed to predict and prevent the resulting human rights impacts.

Human rights obligations and preliminary recommendations:

The Government of Canada must use all appropriate means to advance the right to adequate housing, including laws, policies, and regulations. This includes measures to restore and strengthen regulation of banking, finance, and financial actors to ensure that their actions are aligned with Canada's human rights commitments, such as:

1. Enact regulations to ensure that public pension funds and their investment boards uphold human rights including the right to adequate housing; for example, prohibit public pension funds from investing in the financialization of housing, require them to provide greater transparency regarding their investments, and ensure their investments promote social good.¹²
2. Prevent banks from financing the acquisition of rental housing where the business plan relies on the displacement of tenants or the generation of revenues via excessive rent increases or the withdrawal of services.
3. Eliminate favourable tax incentives for REITs, and direct the resulting tax revenues to the expansion of non-market, affordable, adequate housing.¹³
4. Institute capital gains tax on properties transferred or distributed to financial firms.
5. Revise all CMHC policies and programs to make them consistent with federal obligations under NHSA and, specifically, the obligation to progressively realize the right to adequate housing.
6. Review the role of the Canada Mortgage Bond in fueling the financialization of housing, and ensure that this use of public funds delivers social good by protecting Canada's housing system without contributing to the harmful impacts of financialization.

2. The role of private sector entities

Analyses of financial firms' strategies¹⁴ demonstrate that they often target acquisition of buildings and portfolios that are considered "underperforming" or

¹² See for example, CP Planning's submission to HUMA Committee study of financialization on housing, May 2023, at 4: <https://www.ourcommons.ca/Content/Committee/441/HUMA/Brief/BR12459965/br-external/CreativePlanningFinancialGroup-e.pdf>.

¹³ Multi-family REITs currently benefit from tax advantages resulting in foregone revenue of \$285M per year. Eskandar Elmarzougui, *Cost of removing the tax exemptions for Real Estate Investment Trusts* (Office of the Parliamentary Budget Officer, 2023): www.pbo-dpb.ca.

¹⁴ Nemo Lewis, *The Uneven Racialized Impacts of Financialization*, 2022, at 34: <https://www.homelesshub.ca/resource/uneven-racialized-impacts-financialization>.

“undervalued” – that is, buildings in which rents are below local averages, where households are disproportionately low-income and members of disadvantaged groups, and in neighbourhoods undergoing gentrification.

Firms’ methods to extract additional revenue from these buildings often directly contravene tenants’ rights, including elements of the right to housing such as security of tenure, affordability, and habitable conditions. Repositioning strategies, in which firms upgrade units or demolish affordable buildings to construct luxury rentals, contribute to displacement of entire communities and exacerbate socio-spatial inequality. Some firms engage in a strategy of consolidation of ownership in defined geographic areas, leading to monopolistic ownership. These strategies have disproportionate impacts for Indigenous people, as well as Black and racialized communities, immigrants and refugees, people with disabilities, seniors, lone parents, other disadvantaged groups, and particularly women and gender-diverse people within these groups.

Research also shows that financialized landlords may attempt to interfere with tenant organizing, and that financial firms actively lobby governments to reduce regulatory constraints, increase public spending on private development, and weaken tenant protections that might diminish their revenues.

To date, governments in Canada have failed to prevent and eliminate the human rights violations resulting from these business practices.

Human rights obligations and preliminary recommendations:

Where private actors are directly contravening human rights, or where their actions result in discriminatory impacts or violations of Indigenous rights, governments have a duty to take immediate action to protect human rights, prevent discrimination, and uphold Indigenous rights. Governments must also ensure the meaningful engagement of rights holders in the development and implementation of policies that affect them. Measures the federal government must urgently undertake include:

7. Monitor and report on the extent of financialization and its relationship to evictions, rent increases, and other human rights impacts.¹⁵ Collect and analyze disaggregated data to understand the distinct experiences of people who are Indigenous, Black, and racialized; immigrants and refugees; people with disabilities; seniors, youth, and children; lone

¹⁵ See for example CCHR, *Financialization of Housing: Submission to Government of Canada’s Standing Committee on HUMA*, May 2023, at 5.

<https://www.ourcommons.ca/Content/Committee/441/HUMA/Brief/BR12505073/br-external/CanadianCentreForHousingRights-e.pdf>.

- parent families; veterans; 2SLGBTQ+; other disadvantaged groups; and particularly, women and gender-diverse people within these groups.¹⁶
8. Engage tenants and other rights holders in monitoring financialization and its impacts, and in the development, implementation, and evaluation of measures to address it.
 9. Engage actively and consistently with accountability mechanisms such as those established by the CHRA, NHTS and UNDRIPA.
 10. Establish penalties for entities in federally-regulated sectors, such as banks and financial firms, whose activities result in discriminatory impacts or violate human rights or Indigenous rights.
 11. Require corporate responsibility-holders in banking and finance, as well as those benefiting from programs of the NHTS, CMHC, Infrastructure, or other federal programs and investments, to demonstrate knowledge of and compliance with the NHTS and Indigenous rights under UNDRIPA.
 12. Prevent oligopolies and monopolies by regulating institutional investors active in rental markets through the Competition Act.¹⁷
 13. Fund community-based, non-profit organizations to undertake legal education, representation, and community organizing with households and communities affected by financialization.¹⁸ Ensure that organizations representing rights holders are adequately resourced to exert influence in policy processes equivalent to that of financial firms, and that they are protected from interference or retaliation.

3. Gaps in current measures to protect the right to adequate housing

Even where measures are in place, these have proven insufficient to guard against the harmful impacts of financialization. Federal infrastructure spending, and housing policies and programs under CMHC, the National Housing Strategy, and the Housing Accelerator Fund, all too often contribute to financialization and its associated harms.

The Government of Canada has also failed to demonstrate leadership as required under international law, to ensure that measures are adequate at the sub-national level. For example, at the provincial-territorial level, landlord-tenant laws have not evolved to prevent the deliberate use by financialized landlords of loopholes enabling above-guideline rent increases, own-use evictions, renovictions, and

¹⁶ See for example WNHHN, *Gendered Evictions in Financialized Housing Markets Across Canada: The Case for Human Rights Intervention and Oversight*, March 2023: <https://housingrights.ca/wp-content/uploads/Submission-to-the-NHC-Review-Panel-NRHN-WNHHN-31-March-2023-FINAL.pdf>.

¹⁷ *Consolidated federal laws of Canada, Competition Act*, 2023: <https://laws-lois.justice.gc.ca/eng/acts/C-34/>.

¹⁸ See for example SIC, *Brief to HUMA Re: Study on Financialization of Housing*, May 2023, at 6: <https://www.ourcommons.ca/Content/Committee/441/HUMA/Brief/BR12459454/br-external/SocialInnovationCanada-e.pdf>.

demovictions. At the municipal level, meanwhile, there is a lack of enforcement of municipal licensing and standards, and planning and zoning decisions fail to adequately consider the potential impacts of financialized redevelopment on Indigenous people, disadvantaged groups, and low-income households.

Human rights obligations and preliminary recommendations:

The commitments to progressive realization under the NHTA require the Government of Canada to take effective measures to respect, protect, promote, and fulfill the human right to adequate housing. Actions the Federal government must take to improve the effectiveness of existing measures include:

14. The National Housing Strategy must be revised to align with the requirements of the National Housing Strategy Act, and its legislated purpose of advancing the progressive realization of the right to adequate housing. Among other measures, this means:
 - a. Target NHS investments to public and non-profit entities to acquire, develop, convert and / or repair housing to meet the needs of Indigenous people, disadvantaged groups, and people experiencing core housing need and homelessness;
 - b. Use a consistent definition of affordable housing across NHS programs, based on the income of households in core housing need ;
 - c. Re-design the Rental Construction Financing Initiative so that it doesn't produce buildings whose rents exceed local averages;
 - d. Require that firms receiving grants or financing from NHS programs demonstrate human rights compliance across all their properties, not only those that are NHS-funded.
15. The Housing Accelerator Fund must implement criteria to ensure that funded projects and programs do not worsen financialization, speculation, gentrification, displacement.
16. In addition to requiring average rents below a prescribed threshold in order to qualify, the CMHC Mortgage Select Insurance program should require insured properties to demonstrate ongoing low levels of rent increases and evictions.
17. Federal infrastructure spending must be tied to affordable housing targets, and require provinces, territories, and municipalities to protect existing affordable housing from gentrification and speculation through measures such as those outlined in section 1B.
18. Federal programs to expand housing options for students and seniors¹⁹ must support the development and acquisition of non-market

¹⁹ Jackie Brown, *The Financialization of Seniors' Housing in Canada*, 2022: <https://www.homelesshub.ca/resource/financialization-seniors-housing-canada>.

- housing for these groups, and guard against the growing financialization of seniors'²⁰ and students'²¹ housing;
19. The Government of Canada must also work with provincial, territorial, and municipal governments to strengthen measures to protect against financialization and its human rights impacts. Federal funding for housing and infrastructure must be tied to conditions such as:
 - a. Municipalities must improve the enforcement of maintenance standards in rental housing; implement landlord licensing systems with strict penalties for violations; impose vacancy taxes; and curtail short-term rentals.
 - b. Municipalities must ensure that planning and zoning decisions place Indigenous rights, and human rights including the right to housing, at the centre. Planning consultation processes must be human rights compliant and meaningfully engage disadvantaged communities.
 - c. As noted in Section 1, provinces and territories must strengthen rent controls, tenant protections, and access to justice for households affected by the impacts of financialization. In particular, they must adapt existing measures to ensure that they protect against bad-faith evictions and rent increases.

²⁰ See for example ACTO, *Submission from the Advocacy Centre for Tenants Ontario on the Financialization of Housing*, 2023, at 3:

<https://www.ourcommons.ca/Content/Committee/441/HUMA/Brief/BR12459254/br-external/AdvocacyCentreForTenantsOntario-e.pdf>.

²¹ See for example, ACHAT, *Financialization of Housing: Proposals to HUMA Committee*, May 2023, at 6:

<https://www.ourcommons.ca/Content/Committee/441/HUMA/Brief/BR12457577/br-external/AllianceDesCorporationsDHabitationsAbordablesDuTerritoireDuGrandMontr%C3%A9-10772878-e.pdf>.