

REALIZING THE RIGHT TO HOUSING IN CANADIAN MUNICIPALITIES

WHERE DO WE GO FROM HERE?

EXECUTIVE SUMMARY

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THE SH/FT

#RIGHT2HOUSING

INTRODUCTION

In June 2019, the *National Housing Strategy Act* (NHSA) received Royal Assent and for the first time in Canada's history the right to housing was enshrined in domestic legislation. The historic Act was preceded by Canada's first-ever *National Housing Strategy* (NHS), a 10-year, \$70 billion plan to advance the right to housing and significantly reduce homelessness and housing need. Through the NHSA, the Government of Canada has recognized that the Canadian housing crisis can only be addressed through a fundamental reorientation of how we view housing – from a commodity to a human right.

In order to meaningfully advance the right to adequate housing in Canada, all levels of government have a key role to play. Local governments are in a unique position to implement this new right to housing because of their proximity to residents and their responsibility for providing basic services, delivering housing and homelessness programs, leading urban planning, and enforcing building standards. Despite being most proximate to the housing challenges faced by residents, however, municipalities are often dependent on political choices at higher levels of government and lack some of the competencies, revenue, and policy frameworks critical to securing the right to housing.

In light of the potential for cities to emerge as right to housing leaders, *The Shift* undertook a pan-Canadian policy scan to explore how existing Canadian Federal/Provincial/Territorial (FTP) policy and legislation influences the adoption, implementation, and actualization of the right to housing at the local level. Relying on guidance provided by the UN Special Rapporteur on the Right to Adequate Housing in her 2020 report, *Guidelines for the Implementation of the Right to Housing*, this research provides insight into three areas:

- (1) federal and provincial/territorial policies and legislation that create barriers to advancing the human right to housing at the local level,
- (2) key opportunities and recommendations for how Canadian cities can progressively realize the right to housing locally, and
- (3) promising rights-based practices and policies from across Canada and around the world that could be scaled in Canadian cities to advance the right to housing.

Drawing on a pan-Canadian policy scan and literature review, key informant interviews, and analysis of meeting minutes from the *Right to Home Canadian Municipal Working Group*, our review highlights 7 key priority areas that are central to realizing the right to housing at the local level. Backed by the NHSA, Canadian cities can become international human rights leaders in all of these areas.

ADVANCING THE RIGHT TO HOUSING IN CANADIAN MUNICIPALITIES

– 7 KEY PRIORITIES

1. Human Rights Infrastructure

The right to housing – in the absence of the legislative and policy architecture to implement and defend it – is illusory. In order to meaningfully implement the right to housing at the local level, cities might consider establishing human rights infrastructure that formally recognizes this right, establishes accountability mechanisms, and provides avenues for community members to claim their right and participate in policymaking and progress monitoring. Our review suggests that such human rights infrastructure might include:

- Recognizing the human right to housing in local charters, declarations, or ordinances, as was done in the *Toronto Housing Charter* or Victoria's *Housing Strategy 2016-2025*.
- Implementing local accountability and enforcement mechanisms to secure the right to housing, such as a Housing Commissioner or Ombudsperson.
- Collecting real-time, person-specific data capable of assessing progress towards realizing the right to housing locally, including in relation to homelessness and core housing need. *Medicine Hat, Alberta*, is a strong example of success in this area.

While municipalities have important opportunities to create such infrastructure, research indicate some federal and provincial/territorial decisions and policies impede progress. Our review suggests that the failure to recognize the right to housing in provincial/territorial legislation or policy is a key barrier. It has meant that provinces/territories are not required to align their policy, programming, or funding with a rights-based approach to housing and homelessness, making it more difficult for municipalities to do so. Further, many policy areas that shape the human rights landscape in housing are cross-jurisdictional or occur at the provincial/territorial level (e.g., child welfare). Despite this, there remain few tools for collaborative, rights-based policymaking across policy areas and jurisdictions. The coordinated or collaborative creation of such human rights infrastructure at the provincial/territorial and municipal levels would greatly assist local progress on the right to housing.

2. Progressive Realization

The most egregious violations of the right to housing are often the result of governments' failures to take *positive measures* to address unacceptable housing conditions.¹ In light of this, all governments must take progressive steps towards ensuring adequate housing for all. Under international human rights law, progressive realization requires that measures taken to ensure the right to housing are reasonable and proportionate to the circumstances of rights holders, and that such measures are immediate and match the urgency and scale of rights violations experienced.² The scale and severity of housing need and homelessness in Canadian municipalities underscores how important it is for cities to take this obligation seriously. Municipal efforts towards progressive realization might include:

¹ A/HRC/43/43, No. 2, para 17.

² A/HRC/43/43, para 19 (c, d).

- Adopting rights-based budgeting across city departments and divisions, seeking to use maximum available resources to address the housing of needs of those most marginalized. Existing mechanisms like *Equity Responsive Budgeting* in the City of Toronto can serve as models.
- Embedding Indigenous Peoples' right to housing and distinct rights under *United Nations Declaration on the Rights of Indigenous Peoples* in municipal housing strategies and plans to end homelessness, transferring decision-making power and resources wherever possible. A powerful example of progress in this area at the provincial level is *Aboriginal Housing Management Association* (AHMA) in BC.
- Training municipal staff to understand the human right to housing and meet their human rights obligations, including in departments like urban planning and parks and recreation.

Our research suggests that the capacity of municipalities to progressively realize the right to housing locally is powerfully shaped by decisions made at the federal and provincial/territorial level. While the COVID-19 pandemic has powerfully shaped fiscal spending since 2020, our review nonetheless indicates that many provinces and territories have not yet allocated the maximum resources available towards supportive, social, or affordable housing, making it difficult for municipalities to address the scale of need they are experiencing. This underinvestment is reflected at the federal level as well, with the *Parliamentary Budget Officer* concluding that in the first three years of the NHS, "CMHC spent less than half the funding allocated for two key initiatives, the National Housing Co-Investment Fund and Rental Construction Financing Initiative."³ Given that the NHS is aligned with the NHTS and its commitment to progressive realization, there are important opportunities for the NHS to be revised to reflect rights-based principles such as the maximum allocation of resources, the swift delivery of programming, and the prioritization of those most in need.

3. Meaningful Participation

Meaningful participation is grounded in the idea that people have the right to shape policies that affect them. Rather than a secondary consideration, rights-based participation "is a core element of the right to housing and critical to dignity, the exercise of agency, autonomy and self-determination."⁴ Under international human rights law, people experiencing housing need have the right "to influence the outcome of decision-making processes"⁵ at the highest levels. In seeking to advance meaningful participation, our review suggests that cities should consider opportunities to:

- Develop municipal infrastructure that embeds the meaningful participation of people with lived expertise⁶ into all policy development relevant to housing and homelessness.
- Advance the participation of Indigenous Peoples in all municipal policy areas that affect the right to housing locally, in alignment with *UNDRIP*.

³ Office of the Parliamentary Budget Officer. (2021). *Federal program spending on housing affordability in 2021*. Ottawa, ON: Parliamentary Budget Officer, p. 2. <https://distribution-a617274656661637473.pbo-dpb.ca/c14c97d8ca19d3036782918415de2bd3c976a66ed53e0030daf83b206c8d36e1>

⁴ A/HRC/43/43, No. 3.

⁵ A/HRC/43/43, No. 3.

⁶ The term "people with lived expertise" is used throughout this report to refer to people who have experienced homelessness or housing precarity (currently or in the past). The term "lived expertise" is used, rather than "lived experience," to acknowledge that these experiences generate knowledge and insights that constitute a form of expertise. This expertise is critical to generating policy and programs that meaningfully improve housing conditions for people who are homeless or precariously housed.

- Adopt the *Lived Experience Advisory Council Principles* within local policy making processes related to housing and homelessness, seeking to ensure equitable decision-making power is allocated to people with lived expertise.

Despite the centrality of meaningful participation to actualizing the right to housing, our review suggests that the inclusion of people with lived expertise in housing policy and design within Canada has been largely ad hoc and piecemeal. At present, there are limited mechanisms through which people with lived expertise can participate in program or policy design, and where these opportunities do exist, this inclusion is often not accompanied by respective authority or power. Municipalities have a unique opportunity to change this due to their particular proximity to residents, and can serve as leaders for other orders of government.

4. Ending Homelessness and the Criminalization of Homelessness

Homelessness is one of the most urgent human rights issues facing cities across Canada. Under international human rights law, homelessness is a *prima facie* violation of the right to housing.⁷ Human rights standards require that all governments eliminate homelessness in the shortest possible time, allocating the maximum available resources in order to achieve this.⁸ In response to the crisis of homelessness, cities across Canada have employed a range of policy and programmatic tools in their attempts to stem the number of people living without housing. Despite these efforts, many cities have continued to see their homeless populations grow, and some cities have increasingly used law enforcement and other punitive measures in response to this issue.⁹ In order to adopt a human rights-based approach to homelessness, our review suggests that Canadian cities might consider:

- Re-deploying city-owned land and buildings, and acquiring existing distressed properties, to create permanent housing for people experiencing homelessness on an urgent basis. The NHS's *Rapid Housing Initiative* has supported many cities to do just this, including the *Tłıchǫ Region* of the Northwest Territories.¹⁰ Other cities have chosen to sell city-owned properties to non-profit housing providers, such as Winnipeg (MB), who approved selling 15 properties for \$1 each in order to create new affordable housing units.
- Implementing local anti-discrimination campaigns focused on eliminating stigma and discrimination on the basis of housing status.
- Adopting a human rights-based approach to encampments, using *A National Protocol for Homeless Encampments in Canada* to guide the development of a local strategy.
- Ensure that local homelessness and Violence Against Women (VAW) housing and service providers have the training and supports they need to employ a rights-based approach to service delivery.

Despite municipal progress in this area, our review emphasized the impact of jurisdictional disconnects between revenue and responsibility, with municipalities often bearing the burden of addressing homelessness but lacking the tax base to address the scale of the issue. Our review also indicates that federal and provincial/territorial

⁷ A/HRC/31/54, para. 4.

⁸ A/HRC/31/54, para. 4.

⁹ See e.g., Van Dongen, M. (2020 April 21). "I Can't Pay It Anyway": Why Are Hamilton Police Ticketing The Homeless During The Covid-19 Pandemic?." *Toronto Star*. www.thestar.com/news/gta/2020/04/21/i-cant-pay-it-anyway-why-are-hamilton-police-ticketing-the-homeless-during-the-covid-19-pandemic.html

¹⁰ Tłıchǫ Government. (2021, 26 July). "Canada Supports Rapid Housing Project in the Tłıchǫ Region." <https://www.tlicho.ca/news/canada-supports-rapid-housing-project-t%C5%82%C4%B1%CC%A8ch%C7%AB-region>

governments have not specifically sought to address the widespread discrimination faced by people who are homeless or precariously housed, and protection against this form of discrimination is not well established in provincial/territorial legislation or policy.¹¹ This has meant that local governments have had to contend with discriminatory opposition to the creation of supportive housing, provision of services, and temporary shelters as they seek to improve their communities.¹² Our findings suggest that further FTP leadership on rights-based solutions to homelessness, combined with interjurisdictional cooperation and sufficient investments, will help cities achieve progress on ending homelessness.

5. Advance Substantive Equality for Marginalized Groups and Prioritize those Most in Need

Under international human rights law, governments must “prioritize the needs of disadvantaged and marginalized individuals or groups living in precarious housing conditions” in all efforts to secure the right to housing.¹³ Those identified as ‘most in need’ – defined intersectionally and in relation to and the immediacy and urgency of housing rights violations¹⁴ – must be prioritized in the allocation of resources. This means that municipal governments have an obligation to rectify discriminatory policies, practices, and systems that marginalize particular groups and impede their enjoyment of the right to housing, as well as adopt positive measures to prevent discrimination and advance substantive equality.¹⁵ To do so, our review suggests municipalities might consider the following:

- Setting local targets, timelines, outcomes, and indicators that redress systemic barriers to adequate housing experienced by those most in need.
- Conducting Gender-Based Analysis Plus (GBA+), rights-based audits of local policies and programs relevant to securing the right to housing.
- Engaging in interjurisdictional and cross-sectoral cooperation in order to transform public system policies that undermine the right to housing. A good example of this at the provincial level is BC’s *Office of Homelessness Coordination*, which works with municipalities to ensure a more coordinated approach to homelessness in British Columbia.

Our review indicates that policy choices at federal and provincial/territorial levels impact enjoyment of the right to housing for marginalized groups at the local level. In our review we focused on inequities experienced by women and girls (cis and trans), highlighting a few policy barriers to substantive equality for this group. These included: (1) failure to capture the experiences of women within federal definitions of chronic homelessness; (2) provincial/territorial underinvestment in Violence Against Women Shelters and services; and (3) conflicting and contradictory policies across provincial/territorial public systems that can undermine housing stability for women and exacerbate family dissolution. Such examples illustrate that advancing non-discrimination and substantive equality in housing involves centering equity and human rights in all stages of the policy process, both within and

¹¹ Centre for Equality Rights in Accommodation (CERA), National Right to Housing Network (NRHN), & Social Rights Advocacy Centre (SRAC). (2021). *Housing Discrimination and Spatial Segregation in Canada*. Ottawa, ON: CERA, NRHN, & SRAC.

<https://www.ohchr.org/Documents/Issues/Housing/SubmissionsCFIhousingdiscrim/CERA-NRHN-SRAC.pdf>

¹² Krishnan, M. (2021, March 1). “NIMBYs Want to Save This Parking Lot from Becoming Affordable Housing.” *Vice*.

<https://www.vice.com/en/article/pkd9qm/toronto-residents-east-york-parking-lot-homeless-housing>

¹³ A/HRC/43/43, No. 3, para 19 (b).

¹⁴ UN Human Rights Council. (2018, January 15). *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*. A/HRC/37/53. <http://www.undocs.org/A/HRC/37/53>

¹⁵ A/HRC/43/43, No. 8.

outside of the housing policy domain. This must involve working with people with lived expertise to ensure policy creation and implementation is responsive to lived realities and does not undermine equality or deepen exclusion.

6. Regulate the Private Sector and Address the Financialization of Housing

In Canada and around the globe, housing is increasingly positioned as a financial asset and commodity for global investors, rather than a place to live in security and dignity.¹⁶ Cities often bear the consequences of financialization, including increased housing insecurity and need (particularly amongst marginalized and disadvantaged groups), increased evictions, decreased affordability, eroding housing conditions, and escalating homelessness.¹⁷ International human rights standards require that governments, including municipalities, “regulate business in order to prevent investments having any negative impacts on the right to housing.”¹⁸ In order to address the effects of financialization locally, our review suggests that municipalities might consider:

- Embedding the right to housing in urban planning processes and practices.
- Preserving the existing stock of affordable housing through community-based, non-market acquisition of distressed housing. A good example of this is the *Right of First Refusal* bylaw adopted by the City of Montreal in 2020, which gives the City the ability to exercise a right of first refusal (a pre-emptive right) to purchase properties for social housing.
- Maximizing land use, zoning, and other bylaw opportunities to increase the availability of affordable housing and preserve existing affordable housing units. BC, for example, adopted a *Speculation and Vacancy Tax* that contributes to turning empty homes into affordable housing initiatives.
- Regulating short-term rentals, such as Airbnb and VRBO, as is being done in Toronto with the adoption of a 4% *Municipal Accommodation Tax* on all registered short-term rentals.

Federal and provincial/territorial leadership is critical in this area. As it currently stands, the financialization of housing is poorly regulated in federal and provincial/territorial legislation and policy, making it difficult for cities to produce affordable housing at the rate that it is being lost.¹⁹ Our review also indicated that some government programs are subsidizing corporate landlords and other developers in the place of creating deeply affordable housing.²⁰ Gaps in FTP regulation of businesses in alignment with the right to housing is likely connected to the fact that many Canadian governments rely heavily on tax revenue produced through real estate development to fund their budgets, creating a disincentive for them to adopt policies that would curb the financialization of housing.²¹

¹⁶ UNHRC. (2017, January 10). *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.* A/HRC/34/51. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/56/PDF/G1700956.pdf?OpenElement>

¹⁷ NRHN & CERA, 2021.

¹⁸ A/HRC/43/43, para 69.

¹⁹ Pomeroy, S. (2020). *Recovery for All: Proposals to Strengthen the National Housing Strategy and End Homelessness*. Calgary, AB: Canadian Alliance to End Homelessness. <https://caeh.ca/wp-content/uploads/Recovery-for-All-Report-July-16-2020.pdf>.

²⁰ This is perhaps most evident in the case of the *Rental Construction Financing Initiative* (RCFI). The RCFI provides low-interest loans for the construction of rental housing, and only requires that developers offer 20% of their units at 30% of the median total income for families in the area (over a duration of ten years). That 80% of the rental units constructed in this program have no affordability requirements, and only 20% have such a criteria for 10 years, reveals a structural bias towards the interests of housing developers and their investors, rather than the needs of those experiencing deep core housing need

²¹ August, M. (2020). The financialization of Canadian multi-family rental housing: From trailer to tower. *Journal of Urban Affairs*, 42(7), 975-997.

Our review suggests that policy change and oversight is needed at higher levels of government to enable municipal governments to prevent financialization locally and adopt creative solutions to preserving affordable housing stock.

7. Prevent Evictions and Prohibit Forced Evictions

Evictions are one of the most urgent crises currently facing Canadian cities, underpinned by the widespread unaffordability of housing. International human rights law recognizes that eviction is a significant threat to security, dignity, and may even put one's life at risk.²² Eviction into homelessness is considered a gross human rights violation,²³ and forced evictions are strictly prohibited.²⁴ Human rights standards require that governments implement programs to actively prevent evictions, such as rent stabilization and controls, rental assistance, land reforms, and measures to eliminate underlying causes of eviction.²⁵ At the municipal level, such efforts might include:

- Developing screening programs to identify individuals and families at risk of eviction, providing immediate interventions to stabilize housing. The City of Toronto's *Eviction Prevention in the Community* (EPIC) is a great example of such a program, with *evaluation data* indicating 90% of EPIC clients were stabilized in their current housing during the first year of the program.²⁶
- Analyzing local data on evictions to better understand and address systemic and neighbourhood-based inequities. *Research on evictions in Toronto*, for example, has demonstrated that Black households are at significantly greater risk of experiencing eviction, even after controlling for poverty and other factors. Such data can be used to target interventions and supports
- Investing in emergency financial supports for tenants at risk of eviction, such as rent banks or emergency cash relief programs.
- Improving access to legal information, advice, and representation for persons at risk of eviction. Examples of organizations that provide strong eviction prevention and legal supports include the *Centre for Equality Rights in Accommodation*, *Pivot Legal Society*, and *Justice for Children and Youth*.

Preventing evictions at the municipal level is deeply intertwined with provincial/territorial policy choices, given that evictions are the outcome of processes defined under provincial or territorial landlord/tenant legislation. Our review indicated that some legal loopholes in provincial/territorial legislation can enable landlords to raise rents above rent control guidelines, contributing to evictions and the loss of naturally-occurring affordable housing (NOAH) at the municipal level. Some provinces and territories have also significantly reduced spending on legal aid supports in

²² Committee on Economic, Social and Cultural Rights. (1997, May 20). *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*. E/1998/22, para 4. <https://undocs.org/en/E/1998/22>

²³ See Committee on Economic, Social and Cultural Rights, General Comment No. 7 on forced evictions, para 16.

²⁴ Forced evictions are defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection ... in conformity with the provisions of the International Covenants on Human Rights." See CESCR General Comment No.7.

²⁵ A/HRC/43/43.

²⁶ Ecker, J. Holden, S. & Schwan, K. (2018). *Eviction Prevention in the Community (EPIC) Pilot Program Evaluation*. Toronto, ON: Canadian Observatory on Homelessness. <https://www.homelesshub.ca/resource/eviction-prevention-community-epic-pilot-program-evaluation#:~:text=The%20EPIC%20program%20was%20launched,facing%20imminent%20risk%20of%20eviction.>

recent years,²⁷ including supports for tenants facing eviction, despite evidence of the efficacy of such programs.²⁸ Fortunately, there are many domestic and international examples of successful programmatic and policy interventions that can help cities prevent evictions. In order to advance eviction prevention, higher levels of government should consider supporting and advancing these local innovations, while also addressing policy choices that contribute to poverty and put individuals at risk of eviction (e.g., low social assistance rates and minimum wage).

²⁷ Hasham, A. (2020, July 13). Legal Aid Ontario facing up to \$70 million funding drop amid COVID-19 'perfect storm.' *Toronto Star*. <https://www.thestar.com/news/canada/2020/07/13/legal-aid-ontario-facing-up-to-70-million-funding-drop-amid-covid-19-perfect-storm.html>

²⁸ Seron, C., Frankel, M., Van Ryzin, G. & Kovath, J. (2001). The impact of legal counsel on outcomes for poor tenants in New York city's housing court: Results of a randomized experiment. *Law & Society Review*, 35(2), 419-434.