A Place to Live in Dignity for All

Make Housing Affordable for All

Submission to the United Nations Special Rapporteur on the Right to Adequate Housing

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Canadian Centre for Housing Rights

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About the Canadian Centre for Housing Rights (CCHR)

The Canadian Centre for Housing Rights (CCHR) is Canada's leading non-profit organization working to advance the right to adequate housing. For over 35 years, we have worked tirelessly at the intersection of human rights and housing, providing free services to renters facing evictions and human rights violations to remain housed, providing education and training about housing rights across Canada, and advancing rights-based housing policy through research, policy advocacy, and law reform.

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1. National Law, Jurisprudence and Access to Justice Relating to Affordable Housing

a. The Right to Adequate and Affordable Housing under the *National Housing Strategy Act*

Affordability has long been recognized as a central component of the right to adequate housing. As affirmed by the Committee on Economic, Social and Cultural Rights (CESCR) in General Comment 4, affordability is integrally linked to the universality of the right to housing, understood as a right to a secure place to live in peace and dignity. "The inherent dignity of the human person" from which the rights in the Covenant are said to derive, requires that the term "housing" be interpreted to take account of a variety of other considerations, most importantly that **the right to housing should be ensured to all persons irrespective of income or access to economic resources**." Canada is currently in the grips of an unprecedented crisis of housing affordability which denies this right to increasing numbers of individuals and households. The affordability crisis in Canada is directly linked to widespread homelessness which, in the context of Canada's climate, all too frequently may result in death.

Until 2019, Canada had no legislation recognizing the right to adequate housing. The adoption by the federal government of the *National Housing Strategy Act*[1] (NHSA) in 2019, represents the first time that the right to housing has been recognized in legislation. The NHSA recognizes the right to housing as "a fundamental human right affirmed in international law." It states that "housing is essential to the inherent dignity and well-being of the person," and commits the federal government to "further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights."[2] By incorporating explicit reference to the right to housing under international law and to the progressive realization of this right under the ICESCR, the NHSA recognizes the key elements of the right to adequate housing under international law, and, most importantly, the right to affordable housing, interpreted expansively as a right to a secure place to live in dignity regardless of income or access to economic resources.

The NHSA requires the government to adopt and maintain a rights-based National Housing Strategy to support the progressive realization of the right to housing, requiring deliberate and targeted measures to ensure access to affordable housing for all, applying all appropriate means and the maximum of available resources. The National Housing Strategy must include national goals, timelines and desired outcomes; focus on improving housing outcomes for persons in greatest need; and provide for participatory processes to ensure the ongoing inclusion and engagement of civil society, stakeholders, vulnerable groups, and persons with lived experience of housing need and homelessness.

The NHSA also created mechanisms to ensure access to justice and accountability for the implementation of the right to housing. It created a Federal Housing Advocate who receives and reviews submissions on systemic housing issues and submits findings and recommendations to the Minister of Housing. It also created a National Housing Council to advise the Minister on changes needed to the National Housing Strategy as well as a Review Panel to hold participatory hearings into systemic housing issues.

A Federal Housing Advocate was, after significant delay, appointed in February of 2022. The first Review Panel has now been appointed to hold hearings into the systemic issue of the financialization of purpose-built rental housing and the Federal Housing Advocate has formally launched her first systemic review, which is on the issue of encampments. It is expected that both of these upcoming reviews will address widespread systemic issues of unaffordability of housing in Canada and give rise to important findings, recommendations, and remedial action by the federal government.

To date, however, the Canadian federal government has failed to align its National Housing Strategy adopted in 2017 with its historic commitment to the right to adequate housing in the *National Housing Strategy Act* (NHSA) which was adopted in 2019. The federal government continues to promote the National Housing Strategy as separate from the NHSA, failing to acknowledge that the National Housing Strategy requires major improvements in order to comply with the NHSA. A key failure of the National Housing Strategy has been a series of ineffective affordability requirements in housing that is financed or funded by the federal government. These failures have been documented by numerous experts, organizations, and authorities including the National Housing Council,[3] National Right to Housing Network,[4] Women's National Housing and Homelessness Network,[5] Front d'action populaire en réaménagement urbain,[6] Canadian Centre for Policy Alternatives,[7] the Parliamentary Budget Officer (both in 2019[8] and 2021[9]) and the Auditor General of Canada.[10] The National Housing Council recently released a research report documenting the ways in which the affordability requirements under the current National Housing Strategy fail to improve housing conditions for those most in need.[11]

The result of inaction on the affordability crisis has been serious retrogression in relation to Canada's historic commitment to implement the right to adequate housing. A commitment was made in 2022 to eliminate chronic homelessness but no timelines or goals have been established.[12] As will be described below, the homelessness crisis is directly linked to failures to take the necessary measures to address the needs of individuals and households with the most severe affordability challenges and to ensure the protection and development of more affordable housing.

b. Security of Tenure Laws and Affordable Housing

Security of tenure is one of the critical elements of the right to adequate housing. It dictates that States should extend legal protections to tenants against forced evictions, harassment, and other threats to their tenancies. In Canada, security of tenure laws are essential for allowing tenants to remain in homes with affordable rents and protecting affordable housing stock.

Vacancy decontrol policies, which allow landlords to increase rents without any limitations between tenancies, are commonplace throughout Canada.[13] Evicting tenants and increasing the rent makes units unaffordable for incoming tenants and contributes to the loss of affordable housing stock.[14] For example, in the most populated city in Canada, Toronto, the increase in average rents in 2022 for a 2-bedroom unit was significantly higher at a 29% increase in rent compared to the year before for units that turned over to a new tenant than the average rent increase for a 2-bedroom unit that did not turn over, which saw an average of 1.2% increase in rent.[15] In addition, households who are evicted are provided with no assistance in securing alternative housing so they will invariably be required to pay higher rents to secure a new apartment, experiencing economic hardship and the risk of homelessness.[16] Robust protections for security of tenure are needed to keep people housed and preserve affordable housing.

A challenge arises in Canada because the laws and regulations that protect security of tenure, and the bodies that govern landlord and tenant relationships, are provincially enacted. This results in different levels of protection depending on the province or territory.

The CESCR has established that eviction may only be carried out if it is in compliance with international human rights law and if it is proportionate: i.e. it must serve a legitimate objective, be rationally connected to the objective, be necessary to achieve the objective, and be proportionate to the objective. Proportionality consideration is essential to minimize eviction rates and prevent unnecessary evictions.

At present, no Canadian law requires a proportionality consideration of eviction applications in accordance with the ICESCR. However, some provincial legislation requires or allows decision-makers to consider whether eviction would be fair, just, or otherwise reasonable. For example, in the province of Ontario, the law requires that, before ordering an eviction, a decision-maker must consider all the circumstances and decide whether it would be unfair to refuse eviction.[17] Circumstances that can be considered include whether the tenant can find another affordable place to live or whether they may experience homelessness if they are evicted. After considering the circumstances, the decision-maker has the discretion to provide relief from eviction and provide the tenant with the opportunity to save their tenancy. For example, if a tenant is being evicted on the grounds of owing rent arrears, they can be given the opportunity to pay the arrears they owe and to continue their tenancy.

Requiring decision-makers to consider all the circumstances is a partial realization of tenants' right to security of tenure. Where tenants face ongoing affordability issues, they may also be able to secure discretionary assistance through rent banks or government programs. However, decision-makers have not been given the authority to require governments to meet their obligation under international law to ensure that no one is deprived of the right to housing because of inadequate income or access to economic resources.

Moreover, even the partial recognition of proportionality considerations in eviction is not consistent across Canada. For example, in the province of British Columbia, decision-makers are legally required to order eviction whenever a tenant has contravened their lease.[18] They are not permitted to consider any of the tenants' circumstances, such as whether they can find another affordable place to live, or whether they may experience homelessness after being evicted. This is in direct contravention of Canada's ICESCR obligations. This is one of the weaknesses in British Columbia's security of tenure legislation, which has contributed to the Greater Vancouver Area having the highest eviction rates across major urban centers in Canada, at almost twice the rate of the national average.[19] Many other Canadian provinces allow for only minimal, if any, consideration of tenants' circumstances.

c. Constitutional and International Law

Advocates in Canada have sought remedies to the denial of access to adequate housing when this impinges on rights under the *Canadian Charter of Rights and Freedoms* (the Canadian Charter) to life, security of the person, or equality. To date, successful challenges have largely been restricted to challenges to evictions of residents of homeless encampments when access to adequate emergency shelters is not available. However, these decisions not considered governments' obligations to take measures to address the affordability crisis which is one of the main reasons for the growing number of encampments across Canada.

There are also possibilities for courts and tribunals to apply the right to housing under international law in the interpretation and application of domestic law in Canada, including security of tenure legislation. The Supreme Court of Canada has affirmed that "international treaties and conventions, even where they have not been implemented domestically by statute, can help to inform whether a decision was a reasonable exercise of administrative power.[20] While the Canadian courts have generally resisted recognizing any positive economic rights, there remains room to argue that the right to life and security of the person under the Canadian Charter, as well as the right to housing under international law, must be considered by tribunals and courts considering evictions from residential housing units in addition to homeless encampments.[21]

d. Human Rights Legislation

Canadian human rights legislation specifically protects the human right to equality, via relatively robust prohibitions on both direct and constructive discrimination. An application currently before Ontario's human rights tribunal asks that the tribunal find that a large corporate investor and the City of Ottawa violated the rights of residents of a racialized community in Ottawa when they evicted and displaced numerous residents in order to develop housing that will be occupied by more affluent, largely non-racialized, households.[22] If successful, this application would extend existing equality protections to protect diverse and low-income neighborhoods from redevelopment.

Principles and Recommendations Regarding Laws, Policies and Access to Justice:

- All orders of government should adopt legislation recognizing the right to adequate housing which provides access to justice and ensures effective remedies are provided to systemic violations of the right to housing linked to unaffordability of housing. In the Canadian context, this means that the right to adequate housing under the *National Housing Strategy Act* must be properly implemented to address a systemic affordability crisis facing tenants.

- Security of Tenure legislation should be applied in light of the State's obligation to ensure and protect access to affordable housing. Eviction must be considered as a measure of last resort, with full consideration of the possible impact of an eviction on access to affordable housing. Wherever possible, States must address affordability challenges in order to allow tenants to remain in their homes. Where security of tenure legislation is within the jurisdiction of sub-national governments, national governments should exercise leadership in implementing national minimum standards compliant with international human rights law.

- The right of access to affordable housing should be recognized as a component of the rights to life, security of the person and equality under domestic constitutions, in accordance with General Comment 36 of the UN Human Rights Committee. In the Canadian context, this means ensuring that the rights to life, security of the person and equality of those denied access to affordable housing are subject to access to justice and effective remedies under the *Canadian Charter of Rights and Freedoms*.

- The guarantee of equality and non-discrimination in human rights legislation should be applied to prohibit programs or policies that erode or prevent access to affordable housing on the basis of the discriminatory impact of such policies on groups protected from discrimination, including racialized and Black communities.

2. Definition and Policies on Affordability

a. Critical Distinctions: “affordable housing” and “housing affordability”

It is important to clarify two distinct but related concepts in regard to affordability and the right to adequate housing.

The term **affordable housing** generally refers to the stock of housing that is relatively affordable in relation to other housing. It is often described in Canada in relation to average market rent or based on divisions of the rental market into segments based on rent level and housing size.

The term ‘affordable housing’ is sometimes also used in Canada to refer to the supply of non-market housing – public, non-profit or co-operative housing – also commonly referred to as “social housing”, which includes at least a certain percentage of “rent-geared-to-income” units in which housing costs are subsidized in order to be set at a certain portion of household income. Many social housing developments also include rental units in which the rent is not geared-to-income, rented at a relatively affordable rent based on private average market rents in the area.

A distinctive but related issue is the concept of **housing affordability**, which assesses whether rents are affordable for particular households. Housing affordability assesses housing expenses relative to the ability to pay for them, primarily in relation to the household income. Measures of housing affordability are used to assess the impact or effectiveness of housing policies, and the well-being of segments of population in terms of their ability to maintain adequate housing while also being able to meet their other basic requirements of a dignified life, such as food security.

The supply of ‘affordable housing’ and ‘housing affordability’ are, of course, very much inter-related. If States take measures to ensure that there is more housing available at relatively low rents, this will mean that more households will be able to access housing that they are able to pay for without experiencing hardship. Alternatively, if States provide financial assistance or rent-geared-to-income subsidies to more tenants, this too will ensure that more tenants are able to pay their rent without being deprived of other requirements. However, it is important to distinguish between the two concepts. As will be described below, a key issue in Canadian housing policy is that housing that has been considered to be ‘affordable housing’ for the purposes of federal funding, such as rental housing in which 30% of units are rented at 80% of average market rent, may not in fact ensure housing affordability for many lower-income households.

Neither an exclusive focus on affordable housing supply nor on providing assistance to particular households ensure household affordability is sufficient. States must take measures to ensure a supply of affordable housing and also provide financial assistance or to subsidize rent for individual households unable to secure housing that they can afford.

The Need for a Comprehensive and Consistent Approach to Affordability

While ‘housing affordability’ and ‘affordable housing’ are used widely in housing policy and programming in Canada, there is no overarching consensus on the definition of these terms.

There are currently multiple definitions of “affordable housing” used in government programs at the federal and provincial and territorial levels. These include definitions based on average market rent, which, in many cases, do not reflect a households’ ability to pay. There is no standard method to measure housing need. Federal, provincial and territorial, municipal and regional governments often apply different definitions for housing affordability across their housing strategies, policies and programs. Notably, key programs under the federal government’s National Housing Strategy, created to increase access to affordable housing, apply different definitions of affordability.

Different definitions of affordability, of course, may serve different purposes or contexts. It may not be appropriate to impose the application of the same affordability requirements to private sector rental housing developments as to social housing funded by governments. In addition, households with low- and very-low incomes experience housing affordability differently and affordability is experienced in diverse ways by different groups in society. This means that a different approach to measuring affordability may be required in different circumstances, tied to a different set of policy responses to meet the goal of ensuring that all households have access to housing they can afford.

Nevertheless, the lack of a common framework or definition for housing affordability across jurisdictions has generally had a negative effect in Canada. It has led to the allocation of government financing or funding for housing that is unaffordable to most lower-income tenants, and to inadequate affordability requirements being imposed on new private sector housing developments financed or approved by governments. Inadequate definitions of affordability have also led to misleading indicators of progress that have suggested reductions in the number of households experiencing affordability challenges or “core housing need” in Canada at a time when lower-income tenants are facing an unprecedented affordability crisis leading to significant increases in experiences of housing precarity and homelessness.

The development of more appropriate common definitions of affordability in different contexts that can be applied across jurisdictions and used in effective monitoring and assessment of the progressive realization of the right to housing would facilitate more coherent and effective policymaking and programming, providing a common approach and standard for both policymakers, advocates, courts and accountability mechanisms under the NHSA, to better understand the scope, depth and distribution of housing need. CCHR therefore welcomes the Special Rapporteur’s upcoming thematic report that will provide guidance on improving assessments of affordability as well as effective measures to address the affordability crisis, in particular for those most impacted by this crisis.

While affordability challenges in relation to homeownership in Canada are receiving considerable attention at present because of higher interest rates, the high cost of homeownership in Canada means that lower-income households without additional financial means and assets are generally unable to purchase a home. While there are some circumstances in rural areas where lower-income households rely on homeownership given the lack of available rental housing, the current crisis of homelessness in Canada is primarily linked to the affordability crisis in rental housing. These submissions, therefore, focus exclusively on affordability in the context of rental housing.

We will first consider what constitutes “housing affordability” from the standpoint of households and assess how measures of housing affordability have been applied in Canada. We will then consider policies on affordable housing stock.

b. Housing Affordability: The Relationship Between Income and Rent

As noted by the Committee on Economic, Social and Cultural Rights (CESCR) in General Comment 4, housing affordability assesses the relationship between household income and housing costs, and this may be assessed in two ways. The first may be called the “residual income approach.” The CESCR stated that “personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.”[23] This has been refined subsequently to clarify that affordable housing may, in many instances require more than the satisfaction of other “basic needs.” It should not compromise “the occupants' enjoyment of other human rights.”[24] In other words, it should be understood in the context of the obligations of States to realize the right to housing and other socio-economic rights to the maximum of available resources and by all appropriate means. Tenants in so affluent a country as Canada should have access to housing that ensures the full realization of all human rights necessary for dignity and social inclusion, not simply the satisfaction of basic needs.

A second measure identified by the CESCR may be called the “housing-cost-to-income” measure, according to which States should ensure that “the percentage of housing-related costs is, in general, commensurate with income levels.”[25] UN Habitat has suggested that “the ratio of the monthly rent for tenants (should be) less than 25% of the net monthly household income.”[26] One advantage of this measure is that it is a “relative” measure, assessing the cost of rent relative to income, so that in States or regions with higher income levels, it is assumed that a greater amount of income should be available for other needs, ensuring a higher standard of living commensurate with available resources.

Embedded in both of these income-based definitions of housing affordability is the assumption that housing is one of several core costs that a household must cover to fulfill their human rights. If too large a share of household income is spent on housing, there is likely to be insufficient income remaining to cover the cost of other requirements.[27] Similarly, if “residual income” is insufficient to meet other needs and realize other human rights, then it is also true that housing costs have taken up a disproportionate amount of income.

An additional dimension of affordability identified by the CESCR also warrants attention: rent levels in relation to what a household has paid previously. Households make financial commitments based on the assumption of a relatively constant rent, so an unreasonable or unforeseen rent increase is likely to compromise the fulfillment of other rights or jeopardize housing security.[28] As described below, rent regulation and protection from unreasonable rent increases, as well as protection from eviction from existing housing, are critical components of the protection of housing affordability.

These are not, however, the only considerations in assessing housing affordability. It is not just a matter of numbers. Housing affordability issues are linked to dignity and lived experience of violations of the right to housing. As such, they must be understood through meaningful engagement and the full participation of affected groups.

c. The Need to Consider both Residual Income and Housing Cost-to-Income Ratio and the Broader Context of the Right to Adequate Housing

Neither the residual income nor the housing-cost-to-income ratio measures of affordability, considered on its own, is sufficient to adequately monitor housing affordability. These two dimensions must be considered together, along with other factors linked to housing adequacy and the distinctive circumstances and needs of particular groups or communities.

Assessing the proportion of income paid toward rent alone does not accurately identify those in the most severe circumstances whose human rights are most vulnerable. A household paying rent that is 50% of an income of $80,000, for example, is unlikely to have the same level of affordability challenges infringing on a right to a secure place to live in dignity as a household paying 50% of an income of $20,000. The latter household will have one-quarter of what the former household has in order to meet basic needs and fulfill other human rights.

Similarly, considering only the amount of income remaining after the payment of rent without attention to the context can also be misleading. Households with children or persons with disabilities may have additional expenses compared to others. Food and other costs in Canada's Northern communities may be prohibitive. In many instances, and particularly for persons with disabilities, the right to adequate and affordable housing relies not only on an affordable rent but also on the provision of services and supports that are required to live in the community with dignity. These state obligations must be recognized as interdependent with the right to adequate and affordable housing.

If the two approaches are used in combination, however, with adequate attention to context and other factors, they help to identify the relative position of different groups of households within the housing system,[29] and to track changes in the relationship between income and housing costs over time. They can also be used to indicate a household's 'affordability threshold' - the minimum income that a household would require to cover shelter costs and other basic costs in a given area.[30] Households with incomes falling below the affordability threshold may be considered to be in housing need/housing burden. In this way, income-based definitions can indicate where housing policies, including the provision of housing subsidies, should be targeted in order to reduce housing need and enable households to meet the affordability threshold – in line with a rights-based approach.

d. Housing Cost-to-Income Measures of Affordability in Canada

In Canada, the most common ratio applied in the housing-cost-to-income measure is 30%. Some social housing providers in the North apply a 25% ratio, in recognition of the excessive cost of food and other requirements. The 30% ratio was established as a benchmark for affordability in the 1980's in North America and today it is widely used, including by Statistics

Canada.[31] It is generally applied to a household's before-tax income and includes the cost of rent plus any additional costs for utilities or other services.

As noted in a previous submission to the UN Special Rapporteur on discrimination in housing, the 30% rent-to-income ratio has also been widely applied by landlords in a discriminatory fashion to deny access to lower-income applicants. As noted above, this practice has been found by human rights tribunals and courts to constitute prohibited discrimination against protected groups under human rights legislation.[32] Sole support female parents, persons with disabilities and other groups facing discrimination are more likely to rely on lower incomes and must pay a higher percentage of their income in order to secure rental housing in the private housing market. A landlord applying a 30% rent to income criterion for affordability to deny someone access to what may be the most affordable housing they are able to find in the private housing market must be entirely distinguished from the use of this criteria by social housing providers as a means to provide an appropriate level of rent subsidy. Measures of affordability must be applied carefully, in light of the context and purpose, and assessed for their effect on disadvantaged groups.

It is also important to consider the adequacy of housing in assessing affordability based on rent-to-income ratios. If a household is only able to secure housing that they can pay for by living in overcrowded housing that is in need of major repairs, they are still facing unacceptable affordability barriers. In its assessment of households in "core housing need", Statistics Canada and the Canada Mortgage and Housing Corporation (CMHC) therefore consider both whether a household is spending more than 30% of pre-tax income on shelter expenses and whether they would be able to find alternative housing in the local housing market that meets standards for affordability, adequacy and suitability that would be affordable based on their income.[33] Housing is deemed inadequate if it is in need of major repairs and it is considered unsuitable if there are not enough bedrooms for the size and makeup of the family. The definition of core housing need includes all of these factors, so that some households paying less than 30% of income toward rent will fall within that category if they are living in unsuitable housing in need of major repairs. However, over 90% of households in core housing need experience affordability issues based on the 30% housing-cost-to-income ratio.

While the assessment of "core housing need" is a helpful approach to assessing affordability that includes assessments of adequacy and income level in relation to the local housing market, there are a number of shortcomings with using this approach alone. It does not fully take into account the differences in household income, size and composition. It relies on gross income rather than the actual income available to pay for housing. Additionally, it relies on average market rent of housing of a particular size to assess the amount needed by a household to secure adequate housing. This fails to account for the significant difference between the rents charged to existing tenants, on which average market rent is based and rents charged to new tenants, which are generally not subject to rent regulation and which are significantly higher than average market rents.[34] Most fundamentally, the reliance on the 30% ratio without consideration of the actual amount of residual income means that the "core housing need" category does not distinguish households with the lowest incomes facing the most serious deprivations.

e. Residual Income Approaches in Canada

Residual income approaches to housing affordability have not been as commonly applied in Canada. The one exception is in the determination of social assistance benefits, which include assistance for housing costs as well as for basic needs. In some provinces, these are divided into two components: a variable shelter component that is provided up to a maximum to cover the actual cost of housing; and a basic needs component that is supposed to cover a household's other basic requirements. Sadly, both of these amounts have been set at grossly inadequate levels, bearing little resemblance to an adequate assessment based on the requirements of international human rights.

The most recent report on social assistance rates in Canada found that the total welfare incomes for all family scenarios and in every province in Canada were below Canada's Official Poverty Line, based on a Market Basket Measure of the expected cost of housing and basic requirements of a modest basic standard of living. In addition, 33 of the 41 example households receiving social assistance in the provinces — or 80 percent of households — were living in 'deep poverty', at less than 75% of the poverty line.[35]

Most provinces have failed to increase already inadequate social assistance rates to adjust for inflation. In the province of Nova Scotia, single social assistance recipients now receive, on average, less than one-third of the official poverty line for single people and less than half of the 'deep poverty' line. In the province of Ontario, the maximum shelter component of social assistance for a single person is less than half of modest market rent housing in Toronto and less than 70% of modest market rent in most municipalities. This means that social assistance recipients relying on private market housing are essentially unable to secure any kind of adequate housing and are at serious risk of experiencing homelessness.

The Canada Mortgage and Housing Corporation (CMHC) has recently considered how a residual income approach could be applied in Canada, utilizing the Market Basket Measure that has been adopted as Canada's official poverty line under Canada's *Poverty Reduction Act* to assess the cost of goods necessary for a modest basic standard of living.

This approach calculates the cost of non-housing necessities based on the size and composition of the household, using the Market Basket Benchmark, in order to calculate the income remaining for housing expenses.[36] This amount is then compared to the average market rent for an appropriately sized apartment.

The advantage of this approach is that it more accurately identifies the affordability challenges of households with lower incomes. Figure 1[37] – below – demonstrates how the housing-cost-to-income identifies greater affordability challenges at higher income levels while the residual income approach identifies greater affordability challenges at the lowest income level. These outcomes demonstrate the potential limitations of applying the fixed 30% affordability benchmark to households on the high and low end of the income distribution without reference to income levels.[38]

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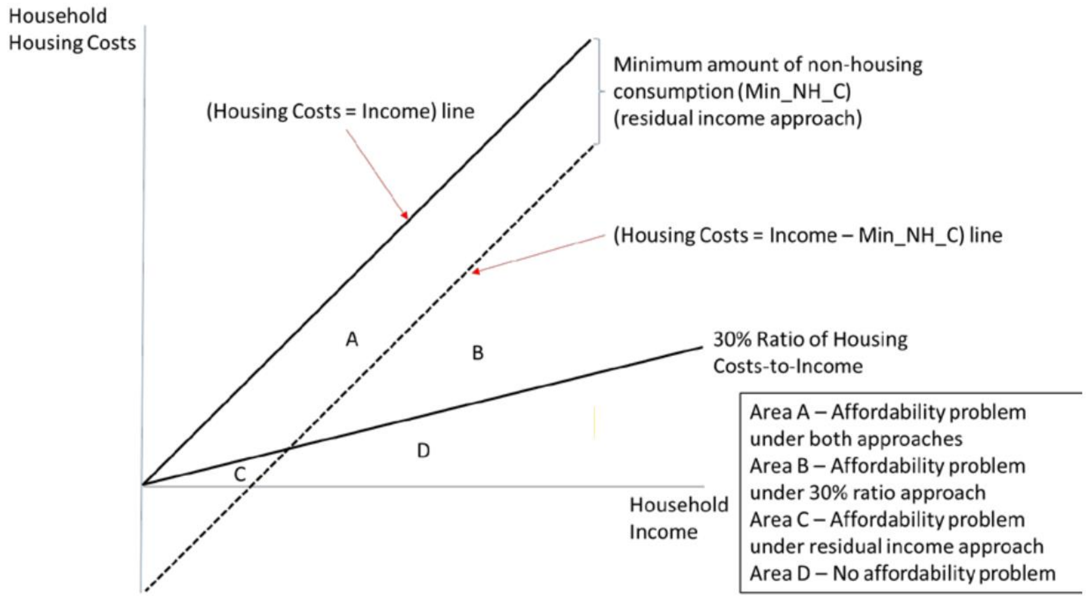
Figure 1 - Affordability Problem Labeling Under Two Household-Level Metrics



For households living on low and very-low incomes,[43] it may be impossible to cover other basic non-housing costs, even if spending well under 30% of household income on housing.[44] For these households, the residual income approach is more effective at determining how much a household can afford to contribute towards housing costs after covering other necessities and what size of housing subsidy they would require to reach the affordability threshold.

Higher income households, on the other hand, may be able to devote a larger share of their income (i.e. beyond 30%) to housing costs and still have sufficient income left to cover other needs.[45] These dynamics are demonstrated in a study conducted by the Harvard University Joint Centre for Housing Studies, which found that while the two approaches generate similar findings on the extent of housing affordability challenges at the city level, the measures do differ substantially in their estimates of housing affordability challenges for specific income groups.[46]

The exclusive reliance on 30% shelter-cost-to-income approach in Canada has led to a systemic neglect of the lowest income households experiencing the deepest affordability challenges and has provided misleading indicators of progress. By accounting for important household level details like household size and composition and the actual cost of non-shelter necessities at the local level, a residual income approach can provide a more nuanced and realistic picture of the incidence and severity of housing affordability challenges.[47] However, the residual income approach as described by CMHC also has several limitations:

- The definition of “non-shelter necessities” involves value judgments that may be applied with inadequate regard for equal right to dignity and rights.[48]
- Determining the cost of a household’s basket of necessities/goods requires more complex calculations and the data is not readily available across jurisdictions.[49]

- The reliance on average market rent to consider what a tenant needs to pay to secure adequate housing does not account for the higher cost of housing that is actually available to rent.

f. Intersectional and Equity Considerations

Many additional factors related to the circumstances of particular groups need to be considered in measuring housing affordability. Women and gender-diverse communities in Canada experience significant barriers to accessing housing that is affordable. Canada has committed to a GBA+ analysis of housing policy and to ensure that 25% of housing funding be targeted toward housing programs for women and girls.[50] This commitment is insufficient to address the extent of housing need within this group and has not been monitored or adequately implemented.[51] Women-led households with children have the burden of childcare costs that can further strain a budget that is already strained by low-paying jobs.[52] Persons with disabilities have additional expenses that are not included in the Market Basket Measure. Racialized communities face widespread discrimination in both housing and employment leading to unique affordability challenges. Indigenous Peoples in Canada face the most severe housing and homelessness crises. As pointed out by a previous Special Rapporteur, considerations of adequacy and suitability of housing in the core housing need assessment does not consider cultural adequacy or access to land that may be critical for Indigenous understandings of adequacy.[53]

These considerations clarify the fact that the right to adequate and affordable housing cannot be reduced to statistical analysis. Assessments of affordability and policies to ensure housing affordability must be responsive to the diverse circumstances of rights-holders, designed with the full participation of affected groups, and adjusted to different local contexts.

g. Emerging Best Practice: The Housing Needs Assessment Tool (HART)

A very positive best practice that has emerged in Canada is the development of the Housing Assessment Resource Tools (HART)[54] by a consortium of housing researchers working collaboratively with affected communities.

HART has been developed to address many of the problems identified above with current affordability assessments and inconsistent approaches across multiple jurisdictions in Canada. Fundamentally, HART corrects for the failure of previous assessments of affordability to properly identify households in greatest housing need or to consider the circumstances of priority groups facing systemic housing need. By assessing housing affordability in relation to different income levels, based on Area Median Household Income, HART provides a more accurate analysis of the affordability issues facing the lowest income households and allows for improved targeting of both programs.

Using more robust, disaggregated nationwide data than has previously been available, HART also provides a method for the consistent monitoring of targets for addressing affordability. It provides for cross-jurisdictional analysis and a common understanding of housing need. HART allows governments to set housing targets that will be genuinely affordable to the lowest income households.

HART provides a potential framework for governments to better target programs to meet equity targets such as a new federal government commitment to allocate 33% of funding for women-led households and the City of Toronto to allocate 20% of new affordable rental homes to Indigenous housing provided by Indigenous organizations. It will enable communities to identify their housing need, assess how their current housing stock meets community needs, compare progress with other jurisdictions and address need where it is most acute.

h. Direct Financial Assistance to Tenants for Rent

The most direct and effective means to ensure household affordability is to provide direct financial assistance to tenants for the payment of rent, or to provide rent subsidy to make rents affordable. Unlike many other countries, Canada has not implemented any kind of universal program, based on common eligibility criteria and based on reliable affordability measures, to provide financial assistance to tenants in need. Rent-geared-to-income assistance in Canada has been largely restricted to units in social housing. Social housing, however, is allocated on the basis of lengthy waiting lists, meaning that households in immediate need of assistance, young people, recent immigrants or those facing unanticipated hardship, do not have access to rent subsidies.

A "Canada Housing Benefit" was co-developed with provinces and territories and launched in 2020 with joint funding of $4 billion over eight years to provide direct financial support to Canadians who are experiencing housing need.[55] In the province of Ontario, the Canada Ontario Housing Benefit (COHB) is available to eligible priority groups who are on, or are eligible to be on, a Centralized Waiting List for rent-geared-to-income subsidized housing. The COHB pays the difference between 30% of the household's income and the average market rent in the area. For recipients of social assistance, the COHB pays the difference between the shelter allowance and the household's rent and utilities costs up to the maximum COHB amount. Priority is given to persons experiencing homelessness, survivors of domestic violence and human trafficking, Indigenous persons, and persons with disabilities requiring modified units. However, the amount of funding provided under the COHB is entirely inadequate to meet current needs and acceptance of the benefit requires beneficiaries to be removed from waiting lists for rent-geared-to-income units in social housing.

Recently, the federal government announced a top-up to the Canada Housing Benefit (CHB) top-up. This one-time rental top-up of $500 is for individuals who paid rent in 2022 that is at least 30% of their net family income, and who have a net family income of $35,000 or less for a family, or $20,000 or less for an individual. The amount of this payment is entirely inadequate to address the ongoing, severe affordability crisis facing lower-income tenants in Canada.

Principles and Recommendations on Housing Affordability:

- Affordability measures should include both rent-to-income ratios and residual income assessment and distinguish among different household income levels, based on the HART methodology. This requires consideration of household composition and income as well as housing costs that will vary depending on household composition.

- The consideration of other "basic needs" should be understood in light of the obligation to progressively realize economic, social and cultural rights based on applying the maximum of available resources and all appropriate means so as to ensure a life of dignity.

- Affordability should be assessed based on the same methodology across all jurisdictions, utilizing the methodology such as HART.

- Additional parameters should be included to identify households with the greatest need, requiring housing providers offering "deeply affordable" units to use those parameters to inform the distribution of housing subsidies.

- Portable housing subsidies based on income and the amount of rent required for adequate housing should be provided to all lower-income households in the private rental market, based on established affordability requirements consistent with the realization of human rights and dignity, and without restricting individuals from accessing other social assistance programs.

- Governments and housing providers should adopt an intersectional approach to measuring and ensuring affordability that considers the impact of gender, race, Indigenous identity, ability, etc. on both housing and other requirements.

- Governments should co-develop, with representatives of Indigenous communities, indicators and requirements of cultural adequacy in the definition of affordable housing.

3. Affordable Housing

While it is critical, as described above, that governments apply an income-based definition of affordability and provide necessary support to ensure affordability for all lower-income tenant households, it is also crucial to take measures to ensure that more affordable housing is available to tenants. Ensuring availability of affordable housing involves a number of critical areas. Governments must ensure an adequate component of social housing - public, non-profit or co-operative housing; take measures to encourage the development of new affordable private sector rental housing; preserve existing affordable housing stock and, in particular from the growing impacts of the financialization of housing and regulate rents.

a. Development of Affordable Housing

Canada continues to suffer from a significant deficit in public, non-market, and affordable housing as a result of decades of federal divestment in social housing funding. Recent data from the Organization for Economic Co-operation and Development (OECD)[56] shows Canada's social housing stock at 4% in 2020, far below the OECD average (7%) and comparable countries like the Netherlands (34%) and United Kingdom (17%). Canada has failed to allocate sufficient funding for new social housing in order to address this deficit. Measures to ensure affordability of new private sector rental housing are also sorely wanting in Canada.

i. Affordability Requirements in Federal Housing Programs

The affordability requirements for federal government financing and funding for purpose-built rental housing, as part of the National Housing Strategy, are arbitrary and have failed to ensure affordability for lower-income renters.

The federal government's National Housing Co-Investment Fund (NHCF) provides low-interest loans and contributions to build new affordable housing through partnerships between governments, non-profits, the private sector and other partners for both new construction[57] and renovation.[58] It requires that at least 30% of the units rent for less than 80% of the Median Market Rent, with affordability maintained for a minimum of 20 years. A similar requirement is applied in the Federal Lands Initiative, which supports the transfer of surplus federal lands and buildings at discounted to no cost to be developed or renovated for use as affordable housing. Under this program, at least 30% of units must rent for less than 80% of Median Market Rent, for a minimum of 25 years.[59]

The Rental Construction Financing Initiative (RCFI)[60] provides low-cost funding and financing for the construction and preliminary operation of new private sector rental housing. It only requires that at least 20% of units have rents below 30% of the median total income of all families in the area with the remaining units renting for the achievable market rent for new units. In response to criticism that these requirements encouraged the construction of rental housing that is unaffordable to the majority of lower and even median-income tenant households, the federal government proposed in its 2022 Budget that the RCFI "will target a goal of having at least 40% of the units it supports provide rent equal to or lower than 80% of the average market rent in their local community." It is unclear whether this commitment has actually been implemented.

A number of analyses have determined that new rental housing in all of these programs, which are based on inconsistent affordability requirements, has largely excluded low-income households and failed to meet the needs of households with affordability challenges.[61]

Research commissioned by the National Housing Council (NHC) concluded that two key National Housing Programs – the Rental Construction Financing Initiative (RCFI) and the National Housing Co-Investment Fund (NHCF) – have largely financed housing that is unaffordable to lower-income households. Only 3% of units funded through the RCFI – the largest program expenditure in the National Housing Strategy – would be suitable and affordable for low-income households.[62]

Tying affordability criteria to median income of all households (including homeowners) under the RCFI means that the federal government is supporting housing that is unaffordable to most tenants and is certainly unaffordable to low-income tenants. Housing funded under the NHCF, with only 30% of units at less than 80% of median rent and the remaining units at the high end of market rent has also been found to fail to meet the needs of lower-income households.[63]

The 2019 Parliamentary Budget Office's *Report on Federal Program Spending on Housing Affordability* concluded that spending in federal housing programs, based on the current affordability requirements, represents a net transfer of targeted funding for low-income households towards middle-income households. The Report concludes that "it is not clear" whether the National Housing Strategy in its current form "will reduce housing need relative to 2017 levels."[64]

More recent housing programs have included somewhat improved affordability requirements. The Rapid Housing Initiative (RHI), which was originally developed as a pandemic response, provides capital contributions to provincial and local governments for the rapid construction of new housing or the acquisition of existing buildings for rehabilitation or conversion to permanent affordable housing.[65] It requires that tenants pay no more than 30% of their before-tax income on housing costs or the equivalent of the shelter component of any provincial or territorial income assistance. Funded projects, however, must only remain affordable for 10 years while the RHI remains a temporary funding stream under the National Housing Strategy.

ii. **Municipal Regulations**

Another way to promote the development of affordable housing is through municipal regulation and approval processes. Private market purpose-built rental housing may be required by municipalities to include a certain percentage of social housing units or affordable private market housing units. Municipalities have also adopted by-laws to prevent or regulate the demolition or the conversion of rental housing to condominiums or short-term rentals. However, there is no consistent practice or requirement applied nationally.

The city of Montreal in the province of Quebec, provides an example of a relatively progressive practice compared to other cities in Canada. In 2021, the City of Montreal adopted the "By-law for a Diverse Metropolis", commonly called the "20-20-20" bylaw, requiring that new developments include 20% social housing, 20% affordable housing, and 20% family housing.[66] The by-law requires affordable housing of either 10% or 20% below market rent or market value of ownership housing, according to the zone in which they are located. The developer's contribution may be the development of affordable housing for tenants or owners, or a financial contribution of 10% or 20%. Montreal has also initiated an affordable housing initiative involving coordinated action by dozens of organizations recognized for their expertise in the real estate, finance and social economy sectors.[67]

The City of Toronto in the province of Ontario, passed an Inclusionary Zoning (IZ) policy towards the end of 2021 that requires new developments with 100 or more units to set aside a certain portion of their units for affordable use.[68] The allocation requirements vary in terms of location in the city, dwelling and tenure type and the set-aside rates gradually increase until 2030. The variations in allocation requirements stem from different market conditions throughout the city, which was developed through various feasibility studies.[69] Affordability requirements are based on the City's definition of affordability.[70] In addition to the affordability requirements, there are provisions in place to ensure that affordable units are adequate and that affordability remains in perpetuity. This policy has the potential of creating approximately 3,000 affordable rental units every year, however, it is speculated that the current iteration will likely deliver significantly less affordable units. Ongoing monitoring, evaluation and adjustment of this regulation is required to ensure that the needs of low- and moderate-income tenants for affordable housing are actually met.[71] However, the province of Ontario passed regulations earlier this year that arbitrarily limits the set-aside rates, nullifying the numerous feasibility studies that consider local market conditions, and limits the years of affordability, which will greatly limit the potential of the City of Toronto's IZ policy.

b. Protection of Existing Affordable Housing

i. Rent Regulation

Rent regulation is critical to the protection of existing affordable housing, particularly if it is applied to both existing and new tenancies. Rent regulation helps renter households to remain in their homes as markets change and housing costs rise, which is particularly important for lower-income renter households. They further preserve the affordable housing stock and provide housing stability while also working as an anti-displacement tool.[72] Research shows that rent regulations help lower-income households remain in affordable homes in neighborhoods that are undergoing change.[73]

In some provinces in Canada, there are rent regulations that set limits on the amount of rent that landlords can charge tenants. An argument used by some against rent regulation is that it discourages the construction of new housing supply,[74] however the evidence does not support this notion. For instance, in the province of Ontario, an exemption on rent regulation for new residential units from 1991 to 2016, did not produce affordable rental housing, as rentals constituted a mere 9% of all units built since 1990 while the bulk of housing developed was for homeownership and as condominiums.[75] Nonetheless, the argument against rent regulation has been used to justify significant exemptions to rent regulation, such as exemptions for newly constructed buildings.[76]

Rent regulations, like security of tenure and affordability requirements, vary across Canada. In seven Canadian provinces and territories, once a year, landlords are permitted to raise tenants' rents by any amount, while British Columbia, Manitoba, Nova Scotia, Ontario, Prince Edward Island, and Québec limit the amount by which landlords can increase the rents of sitting tenants.[77] In Manitoba and Prince Edward Island, the limits also apply between tenancies. Allowed increases are generally calculated based on inflation plus any additional increase in landlords' operating costs;[78] however, the formulae are frequently flawed and result in increases well above landlords' cost increases.

Studies in Ontario show that operating cost-based rent increases have been on the rise. Rent increases cause financial strain for tenants and can lead to economic evictions and the loss of affordable housing.[79]

Furthermore, all Canadian rent regulations contain significant exemptions. For example, in Ontario, all units that were occupied for the first time after November 15, 2018 are exempt from the rent regulation,[80] while in Manitoba, all units occupied on or after March 7, 2005 are exempt. These exemptions hinder the regulation's aim of preserving affordable housing and protecting tenants from arbitrary rent increases.

The lack of rent regulations in most Canadian provinces and territories in Canada, and the flaws and exemptions in the rent regulations of the other six provinces, place tenants at a higher risk of facing economic evictions due to drastic rent increases, creating a barrier to affordable housing, particularly for lower-income households.

ii. Financialization of Housing

Canada has one of the most financialized housing markets in the world, with an estimated 20-30% of Canada's purpose-built rental housing now owned by institutional investors.[81]

The central business model applied by financial firms is to purchase under-valued rental properties in lower-income areas, "upgrade" the housing, raise rents and replace lower-income tenants with higher income tenants, thereby increasing both profitability and equity. The business model is referred to as "value-add repositioning," through which "underperforming" apartment buildings are acquired and efforts are made to increase their profitability by increasing revenue. Revenue is increased by charging tenants more ancillary fees for parking, storage, utilities, and other services as well as by raising rent.

Financial investors generally apply for regular rent increases as well as for "above guideline" rent increases after completing eligible major capital repairs. They also encourage turnover of apartments to skirt rent regulation, charging new tenants much higher rents, in effect capitalizing on the "rent gap" between existing and potential rents. The firms apply rigorous tenant "screening" mechanisms which deny access to lower-income households. The business model is therefore to make rental housing less affordable to lower-income tenants and to gentrify neighborhoods that have traditionally provided affordable rental housing to lower-income households.[82]

Major financial investors in Canada operate as Real Estate Investment Trusts (REITs), making up approximately 20% of the rental housing market. REITs are known for displacing and renovicting low and middle-income tenants to significantly increase rents, yet they continue to benefit from tax incentives and loopholes. A recent study from the Parliamentary Budget Office found that Canada could collect $285.8 million of additional revenue over the 2023 to 2027 period by removing existing tax exemptions for REITs and subjecting REITs instead to the 38% rate of statutory corporate income tax.[83]

Canada has recently initiated some measures to address the financialization of housing. As part of the 2022 budget, it implemented a house flipping tax and a two-year foreign investor ban while promising to study "potential changes to the tax treatment of large corporate players that invest in residential real estate." Given that foreign investors make up only 5% of the housing market and foreign corporate landlords can easily create Canadian subsidiaries to become "domestic," these measures will not make a significant impact on housing affordability. Removing tax exemptions would both discourage excessive investment in rental housing by firms seeking to reduce affordability and could provide additional revenue for housing subsidies and other affordability initiatives.[84] In addition, the federal government can play a significant role in responding to the growing speculative forces in housing by introducing a targeted capital gains tax, that reforms the taxation system in order to discourage speculation in the housing market.

At the municipal level, initiatives have been developed to prevent the acquisition of affordable rental housing by private investors. The City of Montreal, for example, has adopted a by-law that will allow the City of Montreal to exercise a right of first refusal (pre-emptive right) to purchase properties to be used to become social housing.[85]

Principles and Recommendations for the Production and Protection of Affordable Housing:

- States must ensure an adequate supply of social housing that is protected from market forces and provides permanent and sustainable affordable housing, with rents that are subsidized to ensure affordability based on income.

- Government support for the development of rental housing should be conditional on affordability requirements that are co-developed with affected groups and that actually meet the needs of lower-income renters.

- Careful analysis should be applied to all affordability requirements applied to new rental housing to ensure that they respond to the circumstances of diverse groups and different needs.

- Any new rental housing should be required to include appropriate allocations of social housing units and affordable housing units to ensure that lower-income households are not displaced or disproportionately excluded from accessing new rental housing developments.

- Conversion of rental housing to other uses, including condominiums and short-term rentals, should be regulated and prevented through legislation or municipal by-laws.

- National minimum standards should be applied across jurisdictions for robust rent regulations to preserve affordable housing and prevent unreasonable rent increases.

- No exemptions from rent regulations should be applied to newly constructed or newly occupied rental units.

- Approval of above-guideline rent increases to pay for eligible operating costs or capital expenses must be subject to rigorous approval processes and require consultation with and input from affected tenants.

- Before a landlord initiates any upgrading or renovations or applies for an above-guideline rent increase, they should be required to carry out meaningful consultations with the tenants affected to develop solutions that minimize the impact of the proposed capital repairs on tenants and avoid unnecessary rent increases.

- Tax incentives for Real Estate Investment Trusts should be removed and any tax benefits should require affirmative measures to produce more affordable housing, based on adequate affordability requirements**.**

- Necessary measures should be implemented to address the financialization of housing and real estate speculation, including a targeted capital gains tax, rigorous affordability requirements for newly acquired rental housing; prevention of renovictions and unwarranted rent increases; restrictions on large-scale acquisitions of rental housing stock; and providing the right of first refusal of any purchase of rental housing to local governments or non-profits who will develop social or affordable housing.

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