RACIAL DISPARITY AND DISCRIMINATION IN HOUSING IN CANADA

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This article examines the various ways racialized people and communities face discrimination, disparity, and insecurity of housing tenure across Canada. This review encompasses various governance measures at the federal, provincial, and municipal levels.

Part I examines the concept of "race" in Canada before turning to an overview of the structural and government-perpetuated challenges facing racialized persons in Canada with relation to security of housing in Part II. Part III turns to landlord-based discrimination and the procedure and difficulty of proving such discrimination.

Through this analysis, a number of structural conditions faced by people of colour impacting housing security become clearer. These include the scripting of people of colour as outsiders/non-citizens, lending and other barriers to homeownership, unsuitable housing and poor housing conditions, a severe lack of affordable housing, the deep historical roots of current racial inequality, and the nexus between labor, education, and housing. Moreover, the difficulties of contesting both structural conditions as well as landlord-specific discrimination demonstrates how mitigation of these circumstances is well beyond the abilities of any individual tenant. The primary goal of this article is to canvas the myriad forms of discrimination and exclusion as well as review existing literature and empirical studies in making a call for further research.

L'auteure analyse les différentes formes de discrimination, de disparité et d'insécurité auxquelles sont confrontées les personnes et communautés racialisées en matière de logement au Canada. Il traite de diverses mesures de gouvernance adoptées aux échelons fédéral, provincial et municipal.

La première partie porte sur le concept de « race » au Canada. Dans la deuxième, l'auteure passe en revue les obstacles structurels et les défis,

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perpétués par l'État, auxquels font face les personnes racialisées dans leur quête de sécurité de logement. La troisième partie concerne la discrimination par le locateur et la difficulté de prouver cette discrimination lors d'une procédure.

Cette analyse met en relief plusieurs conditions structurelles auxquelles se butent les personnes de couleur et qui affaiblissent leur sécurité de logement. Ces conditions sont caractérisées par des préjugés au sujet de ces personnes, jugées d'emblée comme des étrangères sans citoyenneté; des barrières aux prêts et d'autres obstacles à l'accès à la propriété; des logements inadéquats; de mauvaises conditions de logement; une grave pénurie de logements abordables; les profondes racines historiques de l'actuelle inégalité raciale; et l'interrelation entre l'emploi, l'éducation et le logement. De plus, la difficulté de s'opposer aux conditions structurelles et à la discrimination essuyée auprès des locateurs en dit long sur le fait que l'atténuation de ces circonstances dépasse de beaucoup les ressources du locataire. L'auteure vise principalement à brosser un tableau de la pléthore de formes de discrimination et d'exclusion, ainsi qu'à examiner les publications existantes et les études empiriques pour réclamer de nouvelles études.

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Introduction

In a 2022 study by the Canadian Centre for Housing Rights (CCHR), individuals called potential landlords to inquire about available rental housing in Toronto. The study had two people call for each listing: one who presented as white, and one who presented as racialized. They found that "[m]ale telephone auditors who disclosed a newcomer status faced a *267% increase in discrimination* when they had accents presented as racialized, compared with male newcomer auditors who did not have racialized accents."[2] Female telephone auditors faced a *62% increase* in discrimination.[3]

Racial discrimination in housing in Canada is rampant and has significant consequences for the ability of racialized individuals, families, and communities to access secure places to live. Secure housing is essential to health, work opportunities, education, physical security, mental health, family life, and dignity.[4] This article maps the challenges that racialized individuals and communities face in Canada in finding and remaining in a private market rental home through two primary dimensions: the structural and the specific.

In considering the structural barriers to secure housing, it examines the interaction between public and private actors in housing provision. Through this analysis, a number of conditions faced by people of color become clearer. These include the scripting of people of colour as outsiders/non-citizens, lending and other barriers to homeownership, unsuitable housing and poor housing conditions, a severe lack of affordable housing, the deep historical roots of current racial inequality, and the nexus between labor, education, and housing. These conditions further compound racial disparities in housing.

With regard to discrimination between individual landlords and tenants, it examines discrimination at the point of initial rental and during eviction; the procedural difficulties in proving that discrimination; and the resulting overcrowded, poor-quality housing. The two dimensions—

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2 Canadian Centre for Housing Rights, *'Sorry, It's Rented.' Measuring Discrimination against Newcomers in Toronto's Rental Housing Market* (2022) 41 available at <https://tinyurl.com/ycs5j86c> [perma.cc/6KD4-JADE]. ("CCHR 2022").

3 *Ibid*.

4 See, for example, Rachel G. Bratt, Michael E. Stone & Chester W. Hartman, *"Introduction," in A Right to Housing: Foundation for a New Social Agenda* (Philadelphia, PA: Temple University Press, 2006); Balakrishnan Rajagopal, A Place to Live in Dignity for All: Make Housing Affordable—Report of the Special Rapporteur on Adequate Housing (UN Office of the High Commissioner for Human Rights, August 15, 2023), <https://tinyurl.com/5n8b984w>.

structural and specific—reinforce each other and worsen conditions for racialized communities in Canada.

Security of housing is a key component of the right to adequate housing as enshrined in international law. This right is now implemented through the 2019 *National Housing Strategy Act* (*NHSA*), which imposes new and specific obligations on the federal government for its progressive realization.[5]

The lack of adequate race-specific data in Canada at the federal, provincial, and local levels is a huge challenge to tracking and mitigating housing discrimination. The Committee on the Elimination of Racial Discrimination (CERD) opened its 2017 observations on Canada with a reiterated call for "recent reliable and comprehensive statistical data on the ethnic composition of the population, including disaggregated economic and social indicators for ethnic groups, African-Canadians, indigenous peoples, and non-citizens."[6] Without statistical data by racial, ethnic, and national origin category, it becomes impossible to fully evaluate the Canada's fulfilment of their obligations under the right to housing, as well as other the enjoyment of other civil, political, economic, social and cultural rights by racialized people.[7]

Significantly more research is needed on housing discrimination and the barriers to housing security for racialized people in Canada. This paper attempts a first step by delineating myriad processes through which housing remains insecure, highlighting existing literature on race and housing in Canada, and raising questions for further inquiry. As such, the following discussion draws on a variety of law and social science literature and empirical studies. While the figures in those studies may have changed over time, the circumstances described have generally only become further exacerbated.

Part I examines the concept of "race" in Canada before turning to an overview of the structural and government-perpetuated challenges facing racialized persons in Canada with relation to security of housing in Part II. Part III turns to landlord-based discrimination and the procedure and difficulty of proving such discrimination.

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5 Kaitlin Schwan and Nadia Ali, *A Rights-Based, GBA+ Analysis of the National Housing Strategy* (Toronto, ON: Women's National Housing & Homelessness Network 2021).

6 Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada* CERD/C/CAN/CO/21-23 (Sept. 13, 2017) 2.

7 *Ibid*.

1. "Race" in Canada

This paper uses the terms "racialized person" or "person of color" (POC). POC is used here as a socio-political category rather than as any kind of cultural identifier. Official Canadian sources, including The Employment Equity Act, the human rights legislation discussed below, and Statistics Canada use the (controversial) concept of "visible minority":

> "Visible minorities" refers to "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour. The visible minority population consists mainly of the following groups: South Asian, Chinese, Black, Filipino, Arab, Latin American, Southeast Asian, West Asian, Korean and Japanese."[8]

As of 2021, "visible minorities" represent 26.4% of the population in Canada. In Canada's total population, 7.1% identify as South Asian; 4.7% as Chinese; 4.3% as Black; 2.6% as Filipino; 1.9% as Arab; and 1.6% as Latin American.[9] Each of the categories has significant heterogeneity within them.[10]

The particular circumstances faced by racialized persons in relation to housing are often exacerbated by immigrant or perceived immigrant status. The relationship between race and immigration is both complicated and essential to understanding how discrimination works in the Canadian context. With regard to statistical overlap of race and immigration, according to the Canadian government, in 2016, approximately half of the Black population in Canada was or had "been a landed immigrant or permanent resident in Canada"[11] between 2016–2021, 62% of the immigrant population arrived from Asia.[12]

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8 Statistics Canada, Visible Minority of Person (2021) online: <https://tinyurl.com/3dybn55s> [perma.cc/ZGV7-4VAB]. Note that in its 2017 review of Canada, the CERD Committee reiterated "its concern about the continued use of the term "visible minority" in the State party to describe minority groups, as it renders invisible the differences in the lived experiences of diverse communities."

9 Statistics Canada, The Canadian census: A rich portrait of the country's religious and ethnocultural diversity (2022) online: <https://tinyurl.com/5x8m9c4p> [perma.cc/3CHQ-3MLF].

10 For example, on the heterogeneity of people referred to as "Black Canadians," see Joseph Mensah, "On the Ethno-Cultural Heterogeneity of Blacks in our 'Ethnicities'" (2005) Canadian Issues 72-77.

11 Statistics Canada, Diversity of the Black population in Canada: An overview (2019) online: <https://tinyurl.com/vjrfyake> [perma.cc/4QCL-FH34].

12 Statistics Canada, A statistical snapshot of Asians in Canada (2024) online: <https://tinyurl.com/p4h76496> [perma.cc/CF42-EEJ9].

Some forms of discrimination occur because of misperceptions that all POC in Canada are not Canadians (considering them welcome or unwelcome 'visitors'). Further, some forms of housing insecurity occur at the intersection of immigrant status and race—for example, the difficulties in finding initial housing without domestic credit or financial history (combined with societal assumptions and bias), or the locations of initial housing, or the quality of housing.

Because racial discrimination is often inseparable from discrimination based on immigrant status and because there are various empirical studies on the treatment of immigrants of color,[13] the discussion that follows at times addresses discrimination against certain immigrant groups to illustrate different forms of housing insecurity. That said, this discussion is not meant to further the impression that people of color are "not Canadian" by virtue of their *misperceived* immigration status. The article likewise does not want to further any narrative by which *immigrants* are considered to be perpetual outsiders.

This paper includes Indigenous Peoples as indicated, but as the examination that follows relies on government data and describes legislation, much of it inevitably focuses on non-Indigenous people of color.[14] The circumstances of housing insecurity of Indigenous peoples are significantly more complex than can be covered here and are covered in more specific literature.[15] Where race-related issues converge in relation to housing or where Indigenous people fall under similar governmental protections, the discussion below indicates as such.

2. Structural Disparity, Displacement, and Discrimination

Institutional and structural forms of discrimination and oppression establish and reinforce disparities in housing. From the outright racial discriminatory practices of the CMHC (Canadian Mortgage and Housing Corporation) to

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13 Carlos Teixeira, "Barriers and outcomes in the housing searches of new immigrants and refugees: a case study of "Black" Africans in Toronto's rental market" (2008) 23:4 J Housing & Built Environment 253-276.

14 *Ibid.*

15 See, for ex., Sandeep K Agrawal & Celine Zoe, "Housing and Homelessness in Indigenous Communities of Canada's North" (2024) 34:1 Housing Pol'y Debate 39-69; Yale Belanger, Gabrielle Weasel Head & Olu Awosoga, "Homelessness, Urban Aboriginal People, and the Need for a National Enumeration" (2013) 2:2 Aboriginal Pol'y Studies 4-33; Statistics Canada, Census in Brief: The Housing Conditions of Aboriginal People in Canada: Census of Population 2016 (25 October 2017), online : <https://tinyurl.com/5buykuf5>; Statistics Canada, Census in Brief: Housing conditions among First Nations people, Métis and Inuit in Canada from the 2021 Census (21 September 2022), online : <https://tinyurl.com/5n85z3cp>.

the seemingly impersonal racial impacts of financialization, communities of color continue to face housing insecurity at the hands of both public and private actors. Many of their practices are not accompanied by explicit discriminatory statements of ill intent, at the same time that their evictions/ expropriations/ clearances are directed at communities of racialized people. Understanding the processes that lead to communal displacement requires examinations of (i) the various public and private actors who have exercised power in housing finance and regulation (ii) the various *legal* methods of displacement including the local governmental use of zoning and land use powers and "urban renewal" programs of the 20th century, and (iii) the particular histories of racialized communities.

A) Housing

Housing is generally categorized as built and managed by the government (public), as "affordable housing" (which is generally capped at 85% of market rent), or as private rental market. "Social" housing is generally thought to include the first two categories, other forms of government assisted housing, and the non-profit housing sector.

Since the end of World War II, the federal government has taken various responsibilities for the provision of housing.[16] As Tracy Heffernan, Fay Faraday, and Peter Rosenthal note, drawing on an affidavit by Michael Shapcott, these include: "(a) direct funding for the construction of affordable rental housing units; (b) government administration of affordable rental housing through a wide variety of public housing, non-profit housing, co-operative, and rent supplement rental units; (c) programs of affordable housing funded through cost-sharing arrangements with the provinces; and (d) the provision of rent supplements to tenants in private rental units."[17] However, since at least the 1990s, the federal government has scaled back its programs and policy measures in respect to public and affordable housing. Heffernan et al. note the following decisions in particular: "(i) cancelling funding for the construction of new social housing; (ii) withdrawing from the administration of affordable rental housing; and (iii) phasing out funding for affordable housing projects under cost-sharing agreements with the provinces."[18]

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[16] See Nancy Smith, "Challenges of public housing in the 1990s: The case of Ontario Canada" (1995) 6:4 Housing Pol'y Debate 905 at 906-908.

[17] Tracy Heffernan, Fay Faraday, and Peter Rosenthal, "Fighting for the Right to Housing in Canada," (2015): 24JL & Soc Pol'y [i]-45.

[18] *Ibid*. They further note that At the same time, the Ontario government has taken its own decisions that erode access to affordable housing, including: (i) terminating the provincial program for constructing new social housing; (ii) amending legislation to eliminate protection against converting affordable rental housing to non-rental uses and eliminating rent regulation; (iii) downloading the cost and administration of existing

As a result of this withdrawal from public provision of housing, there has been little or no construction of new public housing in many provinces for decades.[19] There are massive shortages in public housing and long waitlists for existing units.[20] For example, as of January 2023 there were 4790 applicants on the waitlist for public housing in Nova Scotia. Significant amounts of new housing have not been built in Nova Scotia since 1995, and there is currently an average of a two-year wait time to get into public housing.

A variety of reasons are cited nationwide for the lack of construction, from a shortage of materials and labour, to the lack of financial incentive.[21] What these accounts rarely acknowledge, however, are the longer histories of the devaluing of the construction of public housing. The very little political will that does exist has often been channeled into initiatives relying too heavily on the private sector. Public housing is crucially important to sheltering Canada's population. But it takes a longer-term outlook, a steady, political commitment to funding, and bureaucratic navigation in order to make it happen. For the last three decades, these have been in short supply at all levels of government. In 2024 we face a massive housing crisis exacerbated by the bleak economic conditions sparked by the pandemic. Amidst many calls for reforms, very few acknowledge the disparate racialized impacts of the lack of housing supply.

At the same time that the government stopped building housing, it shifted its policies toward the private provision of affordable housing through quota requirements for new builds, incentives, or subsidies. In some cases, private or non-profit partners received land grants in exchange for building affordable housing.

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social housing to municipalities and responsibility for funding development of new social housing to municipalities which lack the tax base to support such programs; and (iv) heightening insecurity of tenancy by creating administrative procedures that facilitate evictions." at 19.

19 For a history of how the federal and Ontario government allowed the deterioration of public housing in Ontario, see Nancy Smith, *supra* note 16 at 905-931. Cooke, Alex, "Nova Scotia hasn't built public housing in 30 years. Why that was a 'huge mistake'" *Global News* (June 26 2023) online: <https://globalnews.ca/news/9784037/ns-public-housing-stagnant-supply/> [perma.cc/GS5W-S3J2]; Donkin, Karissa, "More than 250 N.B. public housing units sit empty on average each month, despite wait list," *CBC News* (July 22 2022), online: <https://tinyurl.com/zahj7jsj> [perma.cc/7QW6-59PG]; Little, Simon & Richard Zussman, "B.C. falling behind on new housing starts, provincial budget suggests," *Global News* (March 2, 2023)online: <https://tinyurl.com/bdfcf6mv> [perma.cc/V55Z-QXXY]; Smee, Michael "No new affordable units built linked to Toronto's Housing Now plan, 4 years after inception," *CBC News* (May 17 2023), online: <https://tinyurl.com/m54sw5s2>.

20 Cooke, Alex, Donkin, Karissa, *supra* note 19.

21 Little, Simon & Richard Zussman, *supra* note 19.

However, these programs have been insufficient in providing enough units. A typical case is illustrated by Montreal, where a city bylaw revised in 2021 was meant to spur the construction of affordable housing. While the bylaw mandates a certain amount of affordable housing for every construction of market housing, it also allows developers to pay a fine rather than construct affordable housing. A recent study in 2023 showed that every developer opted to pay the fine rather than construct affordable or public housing.[22] Moreover, the total collected fines are not adequate to actually form a pool of funding to construct new housing. The example is an important one as it reveals the difficulty of relying on private actors for construction of affordable housing.

Finally, the government has continued to support market provision of housing, including through loans, land grants, stream-lining development procedures and land use permissions, and other concessions.[23]

B) Public and Private Actors in Housing Finance

The actors implicated in housing policy—and crisis - include the three levels of government (federal, provincial, local) across judicial, legislative, executive functions, as well as quasi-government actors and private financial and industrial actors from real estate agents to mortgage lending banks. The Federal government has played a significant role in financing mortgages and "urban renewal" programs executed through quasi-public and private actors. Embedded in those programs were often opaque layers and practices of discrimination that coalesced into insecurity of housing for many communities of color. In other words, a web of government regulation, practice, and resources created the environment in which housing disparity proliferated.

As Heffernan et al. note, the homelessness crisis did not "erupt[ ] instantaneously as in the wake of a natural disaster." Understanding the crisis rather as politically enabled necessitates that it is examined structurally in both its causes and effects. This means, they argue, "that looking at a single law or policy change in isolation fails to reveal the depth of the impact on the rights claimants." Such an examination would "fragment the inherently interconnected consequences experienced by those who are homeless or at risk of homelessness" as well as obscure or invisiblize "the unconstitutional effect of the state-driven system."[24] There

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[22] Rob Lurie, "Developers prefer to pay a fine than to build affordable housing in Montreal," *CTV News*, (21August 2023).

[23] Ricardo Tranjan, "How to Shake the Unshakable Support for Private Housing Markets," *Policy Options*, (December 7, 2023), online: <https://tinyurl.com/yphw5t55>.

[24] *Supra* note 17.

is, in short, a massive housing crisis in Canada, which has been enabled by public policy for decades, and which is too often examined piecemeal.[25]

The federal government was a crucial actor in housing through the activities of the Canadian Mortgage and Housing Corporation (CMHC). In 1946, the CMHC became the administrator of *The National Housing Act of 1944*. In that role, they financed mortgages and implemented urban renewal projects. The CMHC initially jointly financed mortgages in order to spur middle-class house-buying, and then shifted to insuring mortgages with private lenders. The CMHC also co-financed the acquisition and clearance of "blighted" neighbourhoods, under the justification of providing low- or moderate-income housing.[26] These projects were known as "urban renewal" projects. Through both of these functions, the CMHC exercised considerable power over who would have access to housing in ways which continue to have effect.

With regard to consumer lending, CMHC financing and insuring of Canadian banks undergirded the practices of "redlining" whereby banks did not lend to communities of color, deeming them uncreditworthy or associating them with low property values. While redlining is a well-studied phenomenon in the States, there are several studies of redlining in Canada, implying that the practice was likely prevalent here as well.[27] Studies in the US have shown that the effects of redlining on racial wealth endure as low valuations persist across decades, which is likely the case in Canada as well.[28]

With regard to urban renewal, the CMHC, by its own account decades later, funded the destruction of racialized communities through such programs. Through the National Housing Strategy, the CMHC

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[25] Bruce Porter, "The right to adequate housing in Canada," in *National Perspectives on Housing Rights*, ed by Scott Leckie (Leiden, The Netherlands: Brill Nijhoff, 2003) at 107–139.

[26] Stephanie Allen, *Fight the power: Redressing displacement and building a just city for Black lives in Vancouver*, (Simon Fraser University, Master's Thesis, 2019); Stanley H. Pickett, "An Appraisal of the Urban Renewal Programme in Canada" (1969) 18 UTLJ233-247.

[27] Richard Harris and Doris Forrester, "The Suburban Origins of Redlining: A Canadian Case Study, 1935-54" (2003) 40:13 Urban Studies 2661-2686; Eric Fong, "A Comparative Perspective on Racial Residential Segregation: American and Canadian Experiences" (1996) 37:2 The Sociological Quarterly 199–226.

[28] Dana Anderson, "Redlining's Legacy of Inequality: $212,000 Less Home Equity, Low Homeownership Rates For Black Families" *RedFin News* (June 11, 2020) online: <https://tinyurl.com/5469tcb2>.

has specifically prioritized housing for racialized people.[29] In June 2020, CMHC formally recognized complicity and issued the following statement:

> "We reject racism, white supremacy and wish to atone for our past racism and insensitivity, including our role in funding the forced resettlement of Black people, most notably from Halifax's historic Africville and Hogan's Alley in Vancouver."[30]

A statement from February 2021 on the CMHC website acknowledges the racial disparities that they perpetrated:

> "CMHC played a role in the destruction of Hogan's Alley. Under the *National Housing Act*, CMHC funded up to 75% of what was incorrectly termed "community urban renewal". This paved the way for the City of Vancouver to raze Hogan's Alley."[31]

The materials effects of these statements, and purported commitment to mitigation of their actions, remains to be demonstrated.

C) Financialization

Compounding the low supply of affordable housing and exploitation by landlords, and similarly enabled by government law and policy, is the increasing financialization of housing. The financialization of housing refers to treating housing as a *financial* asset from which value can be extracted from both the physical building as well as real estate related investments and debt, including mortgages, the securitization of mortgages, and various other forms of real estate financial instruments.[32] The extraction of value from the physical building often involves practices that go beyond rent, including renovations (which enable rent increases above rent control) and re-branding and "re-positioning" the property in the image of luxury - which includes changing the demographic of

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[29] National Housing Strategy (NHS), National Housing Strategy—Priority Areas for Action (2017) online: <https://tinyurl.com/56hmvmv5> [perma.cc/RH2P-YWDE].

[30] CMHC, "Our Commitment: #BlackLivesMatter" (June 12, 2020) online: <https://tinyurl.com/3hrprnsm> [https://perma.cc/8PE4-DPDP].

[31] Government of Canada, "Rebuilding Vancouver's Black Community" (Feb. 23, 2021) online: <https://tinyurl.com/y59shp8y> [perma.cc/4PXX-47C9].

[32] Manuel B Aalbers, The Financialization of Housing: A Political Economy Approach (London: Routledge, 2016), <https://tinyurl.com/3bvsnez3> [perma.cc/4XJ5-GL34]; Special Rapporteur on Housing, "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" (United Nations Human Rights Office of the High Commissioner, January 18, 2017); Priya S Gupta, "The Entwined Futures of Financialisation and Cities," 43: 4 Cambridge J Econ (2019): 1123–48.

residents.[33] Investment in real estate also serves the purposes of diversifying portfolios and providing collateral for lending.

The financialization of housing has significant consequences for affordable, working, and middle-class housing supply.[34] Units may be purchased by investors in order to be left empty as they appreciate in value or to provide a cover for money laundering. Inhabited housing developments may be used for increasing revenue generation through higher rents, or cost-cutting on necessary upkeep and repair. When investment companies take control as landlords, they are far more likely to enact these rent increases, inflexible rental policies, eviction, as well as to ignore service and other requests of tenants.[35] Investors acting as landlords are often hard to identify, and appeals by tenants for repairs or for the restructuring of rent payments are often deliberately left unanswered or are denied as investors have every incentive to find new renters at new, higher rents.

Canada's enabling of the financialization of housing is entwined with its turn to neoliberal economic policies since the early 1980s, including austerity (which drove a turn away from public housing) and government-insured mortgage securitization.[36] For the past few decades, investment actors from private equity firms to pension funds have increasingly flooded the housing market in Canada with funds, aiming to secure

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[33] "#DefendHerongate," available at <https://herongatetenants.ca/> [perma.cc/4HQY-AEFJ].

[34] ACORN Canada, *The impact of financialization on tenants: Findings from a national survey of ACORN members,* The Office of the Federal Housing Advocate (2022); Gideon Kalman-Lamb, "The Financialization of Housing in Canada: Intensifying Contradictions of Neoliberal Accumulation," Studies in Political Econ 98, no. 3 (September 2, 2017): 298–323, <https://tinyurl.com/msem6e5a>.

[35] On the devastating and racialized consequences of these circumstances in Atlanta, Georgia, Elora Lee Raymond, Richard Duckworth, Benjamin Miller, Michael Lucas, and Shiraj Pokharel, "From Foreclosure to Eviction: Housing Insecurity in Corporate-Owned Single-Family Rentals" 20(3) Cityscape (2018) 159–188. On investor-owned housing in Toronto and its racially disparate impact, see Nemoy Lewis, *The Uneven Racialized Impacts of Financialization: A report for the Office of the Federal Housing Advocate* (2022). For an analysis of the financialization of rental housing in Canada, see Martine August, "The Financialization of Canadian Multi-Family Rental Housing: From Trailer to Tower," 42:7 J Urban Affairs (2020): 975–97.

[36] Kalman-Lamb, *supra* note 34; Alan Walks and Brian Clifford, "The Political Economy of Mortgage Securitization and the Neoliberalization of Housing Policy in Canada," 47:8 Environment and Planning A: Economy and Space (2015): 1624–42, <https://tinyurl.com/v7xh3drs>; Alan Walks and Dylan Simone, "Neoliberalization through Housing Finance, the Displacement of Risk, and Canadian Housing Policy: Challenging Minsky's Financial Instability Hypothesis," in *Risking Capitalism*, vol. 31, Research in Political Econ (Emerald Group Publishing Limited, 2016) 49–77.

ongoing high returns through rentals and construction.[37] In Toronto, we have the following rather sober reality that "financialized landlords have acquired nearly 120,000 rental units [between 1995 and 2021], which is approximately 55% of the total number of rental units that have been acquired by all landlords."[38] Investors have turned their attention both to the construction of luxury housing as well as acting as landlord for middle-class rental housing. Luxury housing is often built on the sites of formerly middle-class or upper-middle class housing.

Various governance measures have both enabled the proliferation of investor-landlords, and to a much lesser extent more recently, attempted to mitigate it.[39] For example, to stem the tide of money laundering and empty units, British Columbia and other provinces have introduced taxes on unoccupied housing as well as registries of beneficial ownership (to prevent secrecy in landholdings).[40] However, a host of other regulations remain in place which structure investment in housing as attractive and lucrative. For example, Ontario no longer has rent control on buildings built after 2018, and allows for vacancy decontrol for tenancies after 2018.[41] Vacancy decontrol allows landlords to increase rent to market prices in between tenancies. Meanwhile, the Ontario Landlord Tenant Board faces a massive backlog of files, such that tenants are unlikely to get timely relief.[42] All of this is to say that the pressures that financial investors in housing are putting on middle-class, working class, and affordable housing must be seen in the governance context which enabled and promoted housing's treatment as a financial asset.

A brief powerful example of the speed of financialization of housing and its racial impact in a neighborhood called Little Jamaica in Eglinton West, York, Ontario is provided by Nemoy Lewis. He describes how, "in 2018, Blackstone entered the Canadian market through a joint venture with Starlight Investments" to purchase a variety of properties, including several "along the Eglinton L.R.T. corridor." In their efforts to maximize returns to shareholders, the JV plans to "upgrade the properties to charge higher rents and capture the additional appreciation in land values." As

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37 Nemoy Lewis, *supra* note 35.

38 *Ibid* at 19, citing Altus Group, *Chart of the Volume of Units Purchased by Landlord Profile in Toronto*.

39 Kalman-Lamb, *supra* note 34.

40 Priya S. Gupta, Ryan Chawner; Grace Hermansen; Shahrzad Lari; Alexandra Potamianos, *Stemming Money Laundering in Ontario, Canada*, Environmental Justice & Sustainability Clinic at Osgoode Hall Law School (2021).

41 Lane Harrison, "How Does Rent Control Work in Ontario, and Does It Apply to You?," *CBC News* (30 September 2023), online: <https://tinyurl.com/5n7mktzz> [perma.cc/2LPN-J9RB].

42 *Ibid*.

Lewis explains, the project has had devasting effects for the community in terms of higher rents and "a buying frenzy" by financialized landlords/developers.[43]

Lewis further explains how Starlight's practices in Toronto discriminate, extract from, and displace racialized communities:

> "Starlight's investment and management practices often entail acquiring devalued properties in gentrified or gentrifying areas, renovating the properties, and significantly increasing rents to maximize returns for investors and shareholders. Such business practices often reduce the amount of affordable housing available to renters in Black communities and exacerbate housing precarity and displacement problems for tenants. But what makes the effect of this act even more profound is that many properties acquired by financialized landlords are occupied by low-income households."[44]

Another example comes from Ottawa, where real estate investor Timbercreek (later known as Hazelview) purchased a residential development called Heron Gate and evicted residents between 2015 and 2018 as part of a redevelopment plan. In 2019, fourteen residents, all people of colour, filed a human rights complaint against the developer/landlord and the City of Ottawa, claiming that the landlord has "displaced a large group of residents of a low-income, family-oriented, racialized and immigrant community in order to create a predominantly affluent, adult-oriented, white and non-immigrant community in its stead," in violation of Sections 2 and 11 of the Human Rights Code of Ontario and that the city was complicit in that violation.[45] They also claimed that the landlord purposely allowed units to fall into disrepair in order to justify the redevelopment.[46] As Andrew Crosby explains, "Heron Gate Village is a majority-racialized community home to many immigrants and refugees, including significant numbers of Somali, Arab, and Nepali families."[47]

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43 Nemoy Lewis, *supra* note 35 at 34.

44 *Ibid* at 35.

45 *[Redacted Names of Applicants] and Timbercreek Asset Management et al. and The City of Ottawa (Respondents),* submission to Ontario Human Rights Tribunal (2019) at paras 1-2 and 12 ("Heron Gate Submission to Ontario Human Rights Tribunal"); Blair Crawford, "Evicted Heron Gate residents file human rights complaint over landlord's 'hyper-gentrification'" *Ottawa Citizen* (Apr. 2, 2019) online: <https://tinyurl.com/36jym3c5> [perma.cc/6WDQ-JLQU]. See also Joseph Mensah, and Daniel Tucker-Simmons, "Social (In) justice and Rental Housing Discrimination in Urban Canada: The Case of Ethno-racial Minorities in the Herongate Community in Ottawa" (2021) 15(1) Studies in Soc Justice 81–101.

46 Heron Gate Submission to Ontario Human Rights Tribunal, para 94.

47 Andrew Crosby, *Resisting Eviction: Domicide and the Financialization of Rental Housing* (Fernwood Publishing, 2023) at 7.

Eviction, therefore, tears the "cultural networks, social supports, and amenities" which they enjoy in their shared community.[48]

The claim has taken years to continue to work its way through the Ontario Human Rights Tribunal, with mounting legal fees.[49] Separately, in 2021, the developer and the city agreed to construct affordable housing and to accommodate displaced renters in the midst of extensive protests by residents.[50] That plan has been criticized by the advocacy group Acorn for reinforcing spatial segregation and sanctioning construction with rents that are too high for most residents of Heron Gate, even if they meet the legal definition of "affordable."[51]

While Canadian housing is already well enmeshed in financialization, which continues to have an uneven racial impact in cities and towns across the country, the processes and exclusions of financial actors are crucial sites of further study and remedial policymaking.

D) Legal Tools of Displacement

There are a variety of legal processes and tools which have been used to make racialized communities vulnerable both to expropriation and displacement as well as to discrimination by private actors from landlords to financial actors. In other words, these legal tools have enabled both public and private forms of insecurity of tenure and discrimination including restrictive covenants, segregation, expropriation and displacement, and a lack of access to finance.

The histories discussed here are crucial to understanding housing insecurity for racialized people in Canada today. Patterns of *legalized* insecurity of tenure continue in both similar and transformed modes. Material inequities are ongoing—they are often compounded over time - and remedying them requires actively pro-tenant measures.

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48 *Ibid*.

49 "Legal fees piling up for former Heron Gate tenants" *CBC News* (Feb 27, 2020) online: <https://tinyurl.com/y7yssajv> [perma.cc/WUJ6-DFG5].

50 Sara Frizzell and Ben Andrews, "Heron Gate developer signs contract binding it to social commitments Social Sharing" *CBC News* (Aug 16, 2021) online: <https://tinyurl.com/m644tz8h> [perma.cc/4USJ-D8PX]. Note that many have criticized the deal for not going far enough in assuring sustainable affordability. Matthew Kupfer, "Heron Gate tenants say developer's social contract won't meet affordability needs" *CBC News* (Aug 20, 2021) online: <https://tinyurl.com/ycxdwmvk> [perma.cc/MB4W-GVXU].

51 "City of Ottawa's Official Plan Does Little to Address Racial Segregation, Says Lawyer Opposing Heron Gate Redevelopment," *Ottawa Citizen*, (November 1, 2024) online: <https://tinyurl.com/4uhjr2jr> [perma.cc/KAB4-6S7Y].

1) Land use designations

Land use and zoning regulations can be a powerful way that cities make certain geographies more susceptible to expropriation. This phenomenon occurred in collaboration with the federal urban renewal programs discussed above and continues today. Zoning industrial or waste disposal sites close to racialized communities keeps property prices low and makes such neighbourhoods less expensive to expropriate as lower (market price) compensation would be required. Lower property values also make it more difficult to get home improvement loans or mortgages.[52] Living in the proximity of waste and industrial sites affects the health and safety of racialized communities in various geographies—underlining the structural importance of safe and secure housing to quality of life.

The clearance of the Black neighbourhood Hogan's Alley in Vancouver in 1967 used a variety of land use tools which resulted in the devaluing of its property and the implementation of urban renewal programs, along with narratives around dilapidation and blight.[53]As was the case in the clearance of Hogan's Alley, once neighborhoods across Canada were designated as "blighted" or as "slums," they were targeted for urban renewal programs.[54] These programs displaced existing communities, thereby affecting their livelihoods, social fabric, education, and security.

2) Selective Formality/lack of title

In some cases, clearances have been made with little or no compensation on account of residents not always holding formalized title. That lack of title, however, is a governance choice, as some titles do get regularized through government programs. An example of this pattern is the clearance of the Black community of Africville in Halifax.[55] The residents of Africville had been living there for decades, and had built various community infrastructure, and paid taxes. Despite this presence, community, and history, the clearance of Africville in 1967-1969 was justified through health and hygiene and its proximity to a waste disposal site. The lack of formal title was used as justification for a denial of compensation until finally, in 2010, when a too-modest settlement was reached after decades of advocacy and litigation.[56]

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52 Allen, *supra* note 26 at 34.

53 For a discussion of the history and aftermath of this displacement, see Allen (2019) *supra* note 26.

54 *Ibid*.

55 Jennifer Jill Nelson, *Razing Africville: A geography of racism* (University of Toronto Press, 2008).

56 *Ibid*; On the use of missing title to dispossess the Preston community, see Angela Simmonds, *This Land is Our Land: African Nova Scotian Voices from the Preston Area*

3) Formal Exclusion

Formal exclusion was entrenched at the federal, provincial, and local level throughout Canada through spatial segregation and exclusion, lending discrimination, and the allowance of racial covenants. Formal legal exclusion often goes hand-in-hand with cultural and other forms of social exclusion. For example, in the late 19th and early 20th centuries, a Black settlement formed in Amber Valley, Alberta.[57] With new urban work opportunities, many people moved from Amber Valley to Edmonton and Calgary in the 20th century. In Edmonton and Calgary, they faced a variety of forms social exclusion and segregation, including in institutions such as community swimming pools, theatres, Canadian Expeditionary Forces (CEF), and housing.[58]

Although these formal discriminatory measures were outlawed in the early and mid-20th century, they continue to have spatial and social effects in Canadian society today.[59] As such, various jurisdictions, including Vancouver, have recently made efforts to eradicate historical racial covenants found in property deeds.[60]

4) Decisions around the location of infrastructure

Federal, provincial, and local decisions around where infrastructure is located has also had profound effects on racialized and Indigenous people in Canada. Notable examples are the construction of highways through the Black neighborhood of Little Burgundy in Montreal, and the displacement

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Speak Up (Schulich School of Law, Aug.19, 2014).

[57] Russell Cobb, "The Last Black West: Oklahoma Freedmen Seek Refuge in Alberta, Part 2," *City Museum Edmonton* (Feb. 9, 2021) online: <https://tinyurl.com/3f4ybbkb> [perma.cc/NM9S-ZA6N]; The Last Best West: Hattie's Place, Part 3, *City Museum Edmonton* (July 20, 2021) online: <https://tinyurl.com/mry3prmh> [perma.cc/9L7C-RRE2]. Cobb also describes the de facto discriminatory immigration policies that surrounded official race-neutral law.

[58] Jennifer Kelly, "Social Exclusion," *City Museum Edmonton* (Aug. 15, 2021) online: <https://tinyurl.com/m7kebdyh> [perma.cc/CA9G-PTLE].

[59] James W. St. G. Walker, *"Race," Rights and the Law in the Supreme Court of Canada: Historical Case Studies* (Wilfrid Laurier Press, 2006).

[60] "West Vancouver Makes Racist Land Covenants History," *CBC News* (January 28, 2020) online: <https://tinyurl.com/44rs6r86> [perma.cc/W8ZF-Z9L7]; Andrew Weichel, *CTVNews Vancouver*, "Striking Racist Language from West Vancouver Land Covenants Would Cost $1 Million, Report Estimates," British Columbia (May 26, 2022) online: <https://tinyurl.com/yc5y59ev> [perma.cc/N2CB-GBFN], Councillor Kirby-Yung, *Motion B-13: Discriminatory Covenants, Language and Encumbrances on Vancouver Land Titles*, Vancouver City Council (2020).

of the Mohawk community in Kahnewake for the expansion of the St. Lawrence seaway.

In the 18th and 19th centuries, the Kanien'kehá:ka in Quebec faced multiple instances of colonial infringement of their land through the use of seignorial grants, colonial land recording, and attempts to divide their holdings into individual plots.[61] The Kanien'kehá:ka had lived and worked on the banks of the St. Lawrence Seaway for centuries. In the mid 20th century, the expansion of the St Lawrence Seaway was planned in such a way that displaced and upended the Kanien'kehá:ka and was justified through various Canadian nationalistic narratives around infrastructure and modernity.[62] The expansion of the river into a gateway for commerce was a powerful symbol of Canadian nationalism in the mid-20th century, popularly understood to represent the emergence of Canadian industry and economy on a global scale.[63]

In Little Burgundy (then known as Saint-Antoine district, Ste-Cunégonde, Faubourg St. Joseph, the West End, or as part of Saint Henri), the construction of the highways to serve (white) suburban populations commuting into downtown Montreal displaced and dispersed the Black community by demolishing their buildings and neighborhoods, as further described below. [64]

5) Discursive justifications: health/hygiene/dilapidation/ crime

A final tool discussed here is the use of various justifications for displacement of communities, from health and hygiene to the dilapidation of buildings or the purported crime rates. In places such as Little Burgundy, discrimination and harassment by police built a narrative of such places as crime-ridden or in need of interventions of various kinds.[65] Through various redevelopment programs beginning in November 1966, this Black neighbourhood's residences and community centers were cleared for highway and other construction projects. As Steven High points out, the comprehensive planning documents compiled at the time do not mention

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61 Daniel Rück. *The Laws and the Land: The settler colonial invasion of Kahnawà:ke in nineteenth-century Canada* (UBC Press, 2021). For an account of the use of land use to displace other Indigenous communities, see Greg Cook and Cathy Crowe. *Displacement City: Fighting for Health and Homes in a Pandemic* (Aevo UTP, 2022).

62 Audra Simpson, *Mohawk Interruptus* (Duke University Press, 2014).

63 *Ibid*.

64 Steven High, "Little Burgundy: The interwoven histories of race, residence, and work in twentieth-century Montreal" (2017) 46:1 Urban History Review/Revue d'histoire urbaine 23–44.

65 *Ibid*.

race, itself a "form of racism."[66] At the same time, the police targeted and harassed Black residents of this neighbourhood, contributing to a public discourse (a justification for development) of crime and policing.[67] Little Burgundy also provides an example of innovative community resistance. The residents organized into a "citizens committee" and "demanded more explanation, more compensation, more time, temporary housing, design changes, and ultimately, better rent scales in the newly built public housing."[68]

High has written about the reports and justifications used to justify the clearance of primarily Black residents of Little Burgundy, Montreal for a highway:

> "According to the white urbanists writing the report, 'The atmosphere of the study area is bleak and forlorn. The narrow streets, squeezed between long rows of grey and anonymous houses, leave little room for sunshine and even less for a bit of greenery.'" [69]

What these justifications ignore is the role of the government in creating these conditions, the falsity of such claims, and other potential more constructive roles that the government could have played in alleviating difficult living conditions *to the benefit of* residents. As in the case of Africville, the government has often neglected and deprived Black neighborhoods of basic services such as garbage disposal and sewage, clean water access, and secure electricity, in effect creating the conditions which are then used to justify clearance.[70] That clearance is done for the purposes of new transit infrastructure meant to benefit people outside the neighborhood in the case of Little Burgundy as argued by Steven High or Little Jamaica and Jane and Finch in Toronto, as argued by Nemoy Lewis.[71]

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66 *Ibid* at 34.

67 *Ibid*.

68 *Ibid* at 35.

69 *Ibid*, citing Service d'Urbanisme, Ville de Montréal, La Petite Bourgogne Bulletin Spécial, no 1, March 1965, Preliminary Urban Renewal Scheme, 43.

70 Nelson; Matthew McRae, "The story of Africville" (last updated: April 26 2023), online: Canadian Museum for Human Rights <https://tinyurl.com/mvu5kws2> [perma.cc/X57J-YZXC].

71 Sheila Reid, "Toronto's Black neighbourhoods hard hit by displacement" (June 30, 2023), online: *The Globe and Mail* <https://tinyurl.com/jdxttxdn>. Article behind paywall.

E) Overcrowded, Poor Quality Housing and Other Structural Issues

The difficulties faced by racialized communities in securing safe housing are compounded by the lack of existing affordable housing, as well as the lack of political commitment to the construction of new units. The lack of supply exacerbates the problems of poor housing as people are pushed into unsuitable homes with exploitative landlords through the processes described in the next section. It should also be noted that even the public housing stock was built to low standards, causing significant issues of dilapidation already in the 1990s, a mere thirty years after construction.[72]

With relation to securing adequate housing in the first place, a 2024 empirical study by Choi and Ramaj demonstrated that ethno-racialized people in Canada are more likely than white people to live in unaffordable housing (where housing costs are beyond 30% of pretax income).[73] Studies from 2006 and 2008 noted that refugees had been "relegated to lower-rent, private-sector apartments"[74] and that "new immigrant groups and visible minorities, including 'Black' Africans, are more likely than non-immigrants to live in poor-quality housing and in neighbourhoods with high rates of poverty."[75] As Mendez et al. (2006) found, "visible minorities," particularly Black people, faced more barriers when finding housing than white immigrants.[76] These observations are corroborated by a 2014 empirical study in Toronto by Emily Paradis, Ruth Marie Wilson, and Jennifer Logan which found that:

> "Racialized, immigrant, and lone-motherheaded families are over-represented in deteriorating apartment buildings. Recent immigrants and racialized tenants are much more likely to live in overcrowded conditions. And Canadian-born

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72 *Supra* note 16 at 914.

73 Kate H. Choi and Sagi Ramaj, "Ethno-Racial and Nativity Differences in the Likelihood of Living in Affordable Housing in Canada," (2024) 39:9 Housing Studies 2210–33.

74 *Supra* note 13; Pablo Mendez, Daniel Hiebert, Elvin Wyly, "Landing at Home: Insights on Immigration and Metropolitan Housing Markets from the Longitudinal Survey of Immigrants to Canada" (2006) 15(2) Can J Urban Research 82-104; Renaud, J, Begin, K, Ferreira, V, & Rose, D, "The residential mobility of newcomers to Canada: The first months" (2006) 15 Can J Urban Research 79–95.

75 *Supra* note 13; A. Kazemipur, and S.S. Halli, *The new poverty in Canada: Ethnic groups and ghetto neighbourhoods* (Thompson, 2000). E. Opoku-Dapaah, "African immigrants in Canada: Trends, socio-demographic and spatial aspects" in K. Konadu-Agyemang, B. K. Takyi, and J. Arthu (Eds.), *The new African diaspora in North America: Trends, community building, and adaptation* 69–93 (Rowman & Littlefield, 2006).

76 Mendez et al, *supra* note 74.

> respondents and long-term immigrants are much more likely than newcomers to live in bad building conditions, and to be at risk of eviction (behind in rent)."[77]

According to an extensive empirical study done of Toronto in 2020, racialized individuals in tenant households are *nearly three times more likely* to live in "unsuitable housing" than non-racialized individuals in tenant households (45% v 16%).[78] "Unsuitable housing" indicates whether there are enough bedrooms for the number of people in the household.[79]

The same study found that Black people were more likely than other racialized groups and non-racialized groups to live in rented units "in need of major repairs": 15% v 10% (racialized people overall) v 9% (non-racialized people).[80]

Crowded housing exacerbated the spread and ill effects of Covid-19 in racialized populations:

> "…Racialized individuals make up 83% of recently reported cases while representing just 52% of the population [as of July 2020]. Specifically, Black, South Asian/IndoCaribbean, Southeast Asian, and Arab/Middle Eastern/West Asian communities are over-represented among COVID-19 cases."[81]

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[77] Emily Paradis, Ruth Marie Wilson, and Jennifer Logan, "Nowhere Else to Go: Inadequate Housing & Risk of Homelessness Among Families in Toronto's Aging Rental Buildings" RP 231 Cities Centre, University of Toronto (March 2014) 17-19.

[78] Beth Wilson, Naomi Lightman, Luann Good Gingrich, *Spaces and Places of Exclusion: Mapping Rental Housing Disparities for Toronto's Racialized and Immigrant Communities* (November 2020) 50-57. ("Spaces and Places of Exclusion Report").

[79] Dictionary, Census of Population, 2016—Housing suitability (statcan.gc.ca): 'Housing suitability' refers to whether a private household is living in suitable accommodations according to the National Occupancy Standard (NOS); that is, whether the dwelling has enough bedrooms for the size and composition of the household."

[80] Spaces and Places of Exclusion Report 58-65, noting that "According to Statistics Canada, "dwelling condition refers to whether the dwelling is in need of repairs. This does not include desirable remodelling or additions. The 'regular maintenance needed' category includes dwellings where only regular maintenance such as painting or furnace cleaning is required. The 'minor repairs needed' category includes dwellings needing only minor repairs such as dwellings with missing or loose floor tiles, bricks or shingles or defective steps, railing or siding. The 'major repairs needed' category includes dwellings needing major repairs such as dwellings with defective plumbing or electrical wiring, and dwellings needing structural repairs to walls, floors or ceilings" 59.

[81] Beth Wilson, Naomi Lightman, and Luann Good Gingrich, "Spaces and places of exclusion: Mapping rental housing disparities for Toronto's racialized and immigrant communities," Social Planning Toronto (2020) online: <https://tinyurl.com/2w266jnp> [perma.cc/5PZY-RDTL].

3. Discrimination by Landlords

Whether at the point of rental, while renting, or in relation to eviction, anecdotal and survey evidence is that racial discrimination in housing is widespread in Canada.[82] However, racial animus is notoriously difficult to prove. Landlords rarely express racial bias outright. For this reason, large-scale paired testing—studies where a person of color attempts to rent a property, followed close in time by a white person with similar qualifications—is needed.

A) Barriers to Access: Discrimination at the time of rental

As explained in this section, racial discrimination at the time of rental is rampant in Canada. However, often such animus is not usually overt, making it even more difficult to prove. Rather, racialized applicants are often subject to additional requirements as part of their application such as more rent, more proof, and more documentation. Moreover, discrimination often intersects with other structural inequities from criminal records to income/rent ratios.

In 2009, the Canadian Center for Housing Rights (CCHR, then known as the Centre for Equality Rights in Accommodation (CERA)) conducted a paired study in Toronto and found significant discrimination against tenancy applications across various social categories protected by the Ontario Human Rights Code, including specifically mental illness, the use of social assistance, race, gender, and family status. They found both overt, intentional discrimination: "We don't rent to families with children;"[83] as well as the use of facially-neutral rental policies or practices that were discriminatory in effect. The latter policies and practices included: "inflexible requirement that all applicants have Canadian credit and rental histories" which effectively excluded "recent immigrants and refugees, young first-time renters, and women leaving a relationship after years as the primary caregiver" as well as "minimum income or "affordability" requirements" which exclude "most young people, newcomers to Canada,

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82 For recent anecdotal evidence and maps illustrating racial concentration in Toronto, see Erica Alini, "What it's like to rent as a Black Canadian: 'I don't even have a chance'," *Global News* (June 27, 2020) online: <https://tinyurl.com/4ac7ffty> [perma.cc/9FZE-QVSB]; CCHR, *Sorry it's Rented* (2009); CERA, *Housing Equality for New Canadians: Measuring Discrimination in Toronto's Rental Housing Market* (2012); Alexandra Ages, Mariel Aramburu, Rebecca Charles, Ricardo Chejfec, Rudayna Bahubeshi, *A Path Forward: Housing Discrimination in Canada: Urban Centres, Rental Markets, and Black Communities* (2021).

83 CCHR (2009), *supra* note 82 at 1-2.

people with disabilities, young families and people receiving social assistance."[84]

In a 2012 follow-up to their study of rental experience in Toronto, CCHR found that "85-92% of recent newcomers experience significant barriers to accessing rental housing due to discrimination."[85] The barriers were either a denial of the unit or additional rental conditions. The additional conditions included "excessively large deposits, mandatory Canadian credit history, and required guarantors."[86] The conditions varied by group, though as CCHR makes clear, all (racialized) groups were equally disadvantaged. They found that "a couple without a child and living on savings alone is, by a wide margin, more likely to be required to provide a large deposit, pay extra rent in advance and be required to have a guarantor (for no clear business reason)"; "applicants with an East Asian or South Asian accent are more likely to be denied an apartment outright"; "applicants with an African or Middle Eastern accent are more likely to require a guarantor (for no clear business reason)"; and "applicants with an African, East Asian, Middle Eastern or South Asian accent are more likely to be required to provide proof of employment, to have a guarantor *required*, and are more likely to be deemed ineligible to rent than applicants with British or Australian accents."[87]

As discussed above, immigration status is often closely entwined with racial discrimination. Immigrants and refugees also often face a variety of barriers to accessing housing, including: "economic disadvantages and housing costs; a lack of knowledge about the functioning (or the intricacies) of the housing market; a lack of fluency of the official languages (English or French); and racism and discrimination by landlords, private and non-private housing agencies and real estate agents."[88] For these reasons, immigrants often live, at least at first, within communities of their national origin where they can find a place to stay through social networks.[89] These conditions have meant that immigrants, and therefore many racialized Canadians, are more likely to be pushed into lower quality housing under

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84 *Ibid*. For an insightful discussion on discrimination against women in the context of the Right to Housing in Canada, see Margot Young, "Charter Eviction: Litigating out of House and Home" (2015) 24 JL & Soc Pol'y [i] at 53-56.

85 CCHR, *Sorry it's Rented* (2012) 1.

86 CERA (2012), *supra* note 82 at 2.

87 *Ibid* at 1-2.

88 *Supra* note 13.

89 *Ibid*; S Ghosh, "Transnational ties and intra-immigrant group settlement experiences: A case study of Indian Bengalis and Bangladeshis in Toronto" (2007) 68 *GeoJournal* 223–242. Damaris Rose and Brian Ray, "The housing situation of refugees in Montréal three years after arrival: The case of asylum seekers who obtained permanent residence" (2001) 2 Int. Migration & Integration 493–529.

the control of exploitative landlords and to face extreme poverty and homelessness.[90]

The discriminatory treatment of newcomers was further substantiated by a 2022 telephone and email paired study by CCHR which tested for newcomer discrimination in rental housing in Toronto for both racialized and non-racialized persons. The CCHR found that newcomer status consistently "elicited some form of discrimination." Moreover, when study participants appeared to be racialized, the discriminatory treatment was even more likely to occur. Specifically, in addition to the discrimination cited at the opening of this article, they found that:

- "Racialized newcomer women faced a 563% increase in discriminatory treatment when they disclosed that they were caring for a child, compared with when parental status was not disclosed."

- "In the email audits, auditors who disclosed newcomer status with names that presented as female faced a 30% increase in discrimination when their name was also presented as racialized, compared with their non-racialized counterparts."

- "In many interactions, after a telephone auditor or email auditor disclosed their newcomer status, housing providers outlined stringent criteria they had to meet to rent the unit in question. By outlining such stringent criteria, housing providers were able to deny housing to newcomers to Canada while not necessarily engaging in conduct the Ontario Human Rights Code would classify as discriminatory."[91]

Many racialized people face discrimination that is manifest through more stringent paperwork or credit criteria. These forms of discrimination can be difficult to identify and prove. Moreover, as many immigrants are racialized, they often do not have a credit history in Canada, compounding the difficulty of securing housing.[92] Severe backlogs in paperwork

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90 *Supra* note 13.

91 *Supra* note 2.

92 *Ibid* at 35, noting "Many interviewees also noted that not having a credit history in Canada in many instances precluded them from applying to a large volume of housing units. Others outlined an initial sense of confusion about how and where to seek housing in Toronto as being a key impediment to securing housing upon arrival. All 10 interviewees disclosed that being unable to access housing created significant challenges in other areas of their lives. For example, one interviewee described being unable to secure a social insurance number upon arrival, because she and her husband were living in a motel and had no mailing address. In turn, this precluded them from seeking employment

processing at Immigration, Refugees and Citizenship Canada leaves immigrants unable to secure employment or/ therefore housing.[93] The inability to secure housing leads to "negative physical and mental health outcomes," all while the search for secure housing drains resources, time, and energy. CCHR interviewees described spending "their limited savings on transit around the city, temporary hotel or motel accommodations, and fees associated with applications for housing units [which] in turn left them with less savings to direct towards expenses like first and last month's rent upon securing housing."[94]

B) The Difficulty of Proving Discrimination

If a tenant or would-be tenant seeks to challenge discrimination by a landlord, they have a variety of legal mechanisms to assist them, as well as a number of procedural, substantive, and resource challenges to navigate. While each province differs, in general, a tenant who has faced discrimination can avail themselves of legal remedies either through a landlord-tenant tribunal or through a provincial human rights commission; other kinds of claimants (who are not tenants of the landlord who discriminated against them) can seek recourse through the human rights commission.

Provinces have various forms of protection against racial discrimination in housing.[95] For example, Ontario's Human Rights Code prohibits discrimination in housing on the basis of race.[96] The Ontario Human Rights Commission recognizes that discrimination can happen in the following circumstances:

- "Differential treatment in the application process (*e.g.,* screening out an applicant on the basis of a racialized name)
- Outright denial of accommodation (*e.g.,* refusal to rent to someone with children)

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which then created additional barriers to securing housing. Others echoed the challenges of seeking employment while residing at a temporary address."

93 *Ibid*.

94 *Ibid* at 36.

95 For a chart of provincial and territorial protections against discrimination in housing, see Parliament of Canada, "Housing Rights In Provincial And Territorial Human Rights Codes" in *A Primer on Housing Rights in Canada*, online: <https://tinyurl.com/56h7n6hu> [perma.cc/5G4P-XQ76].

96 *Human Rights Code*, R.S.O. 1990, Chapter H.19 Subsection 2(1). See also *Residential Tenancies Act*, 2006, S.O. 2006, Chapter 17: Part II, section 10.

- Differential treatment relating to the statutory obligations of a landlord during occupancy (*e.g.,* refusal to allow a tenant to sublet, refusal to do required repairs) that can be tied to a *Code* ground

- Differential treatment with regard to the amenities associated with some accommodation (*e.g.,* inaccessible recreational facilities)

- Negative impact as a result of a seemingly neutral rule (*e.g.,* an inflexible "no pets" policy that impacts on a person with a disability who uses a service animal)

- Differential treatment as a result of association (*e.g.,* refusing to rent to someone because he or she is in an interracial relationship)"[97]

Section 2(1) of Ontario's *Human Rights Code* provides for the right to equal treatment "with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance."[98] Section 12 further provides that "a right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination."[99] A current tenant facing discrimination or landlord based on these grounds can seek remedy through the Human Rights Tribunal of Ontario (HRTO) or the Landlord and Tenant Board (LTB). Those who face discrimination prior to becoming a tenant or paying a deposit cannot bring their claim to the LTB.[100] The LTB is typically governed by the Residential Tenancy Act (RTA). It is worth noting that, in case of a conflict, the Ontario Human Rights Code is paramount over the RTA.

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97 Ontario Human Rights Commission, Types of Rental Housing Discrimination available at <https://tinyurl.com/3hxd7f98> [perma.cc/56YW-QGPR].

98 *Human Rights Code*, RSO 1990, c H.19. Note that tribunals have found that protections against discrimination may not apply where a tenant shares living spaces with the owner. See *Anyanka v Morris*, 2018 HRTO 1721: Per s. 21(1) of the Code, "persons should be able to determine who they are going to live with when the accommodation arrangement involves shared living spaces such as bathrooms and kitchens. The fact that the legislature did not include tenants in that exemption leads to the inference that it did not think it was necessary. That is, it did not contemplate that such a living arrangement would otherwise be included in the protections found in s. 2 of the Code" (para 11). See also *Binns v Huebia*, 2017 HRTO 217 and *Kuffuor v Kam*, 2013 HRTO 1264.

99 *Ibid*; See also *Dwyer v Tarantino*, 2020 HRTO 685.

100 "Human Rights: Interpretation Guideline 17", online: *Tribunals Ontario: Landlord Tenant Board* <https://tribunalsontario.ca/documents/ltb/Interpretation%20Guidelines/17%20-%20Human%20Rights.html> [perma.cc/RC2Y-J6Q4].

In both the LTB and the HRTO, the claimant must establish prima facie discrimination by the landlord. To establish prima facie housing discrimination, the complainant must show that:

(a) They have a characteristic protected from discrimination under the human rights code

(b) They were adversely treated or experienced adverse impact

(c) The protected characteristic was at least a factor in the adverse treatment[101]

Note that "in order to succeed in her discrimination claim, the applicant need not prove that her race, colour, place of origin and/or ethnic origin was the sole reason or even the main reason that the respondent did not rent or show her an apartment; it is sufficient for her to establish that a prohibited ground of discrimination was more likely than not a factor in the respondent's [adverse treatment]."[102] If the complainant successfully demonstrates prima facie discrimination, the burden shifts to the landlord to show that the alleged adverse treatment did not happen or that it was due to a bonafide requirement (BFR) or other justification.[103]

Proving prima facie discrimination is often very difficult as the refusal of rental or poor treatment is rarely accompanied by outright racially discriminatory comments. Moreover, the evidence of such discrimination is often with the landlord (for example, in the pile of rejected rental applications from racialized persons or the additional paperwork asked of them) and is difficult to access for potential claimants. There are a number of cases where petitions were dismissed because of a lack of evidence.[104]

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[101] *Moore v British Columbia (Education)*, [2012] 3 SCR 360 at para 33. See also *Dwyer v Tarantino,* 2020 HRTO 685 at para 25, *Gowland v Gill*, 2015 BCHRT 187 at para 35.

[102] See *Thomas v Haque*, 2016 HRTO 1012 at para 70. See also *Peel Law Association v Pieters*, 2013 ONCA 396 at paras 111–114.

[103] *Borden v MacDonald* (1993), 23 CHRR D/459.

[104] See, for example, *Seignoret v Bakonyi Holdings and others,* 2019 BCHRT 277 (An Afro-descendent Canadian tenant's requests for repairs were ignored and then he was evicted. He was the only person of color in the building. The application alleged discrimination on the basis of his race and colour. The application was dismissed for lack of reasonable prospect of success (conjecture, inference)); *Heath-Engel v Sidestreet Properties Ltd.,* 2021 AHRC 114 (Métis complainant alleged discrimination in the provision of residential tenancy on the grounds of gender (sexual harassment) and ancestry. The motion was dismissed in part, and the case was allowed to proceed to a hearing. However, the Tribunal Chair noted "[t]here does not appear to be sufficient particulars to support a claim based on ancestry, but if the complainant wants to allege that her Métis identity

This is not to say that these cases were wrongly decided, but rather to show that we do not know what kind of act occurred, underscoring the difficulty of proof. There have also been at least two recent successful cases involving Indigenous applicants who were discriminated against.[105]

At the LTB, after hearing the case or reviewing the documents (in the case of a written hearing), the LTB member issues an order which "tells

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was a factor in the harassment then she must provide information to support that claim." (para 11)); *Yildirim v Kuchak,* 2019 BCHRT 179 (Turkish Muslim immigrant alleged discrimination on the basis of place of origin, race and religion regarding tenancy: his family and he received racist comments from the respondent landlord (e.g., the son was called a "terrorist"), the landlord harassed them and threatened to evict them, and more. The judge does not make findings of fact here, and the application to dismiss the complaint was denied.); *D.D. v The Hotel and others,* 2020 BCHRT 109 (The complainant is of Indigenous heritage, bisexual, and HIV positive and alleges discrimination on the basis of race, physical disability and sexual orientation. Employees of the respondent (who are also respondents) threatened and harassed the complainant on a daily basis by making racial slurs and demeaning comments about his sexual orientation, as well as threatening him with physical violence (threats which the complainant reported to the police). The complainant claims that the two employees attempted to have him evicted twice and that they continued to harass him through the eviction process. He was eventually served an eviction notice for having an unwanted tenant in his room, and the Residential Tenancy Board granted the hotel's eviction request. The two employees continued harassing the complainant after he moved out of the hotel and into another one. The Tribunal denied the respondents' application to dismiss the complaint and encouraged the parties to use the Tribunal's mediation services, while allowing the hearing to go forward.). See also *Karman v PSATT INC*, 2021 HRTO 438; *Facey v Northview Apartment REIT*, 2021 HRTO 81; *Charro v Toronto Community Housing Corporation*, 2020 HRTO 354; *Vigon v Portland Place Non-Profit Housing Corporation*, 2019 HRTO 1135; *Yang v You*, 2019 BCHRT 153; *Kostanenko v Thresholds Homes and Supports*, 2019 HRTO 621. Note also that many cases are dismissed because of statutory limitations. See for example, *Pang v 940412 Ontario Ltd.,* 2021 HRTO 182 (Chinese applicants were evicted, and then sued respondents for "discrimination and harassment with respect to housing because of race, colour, ancestry, place of origin and ethnic origin" (at para 1); most of the applications were summarily dismissed because of the statute of limitations).

[105] *Smith v Mohan (No. 2),* 2020 BCHRT 52 (Indigenous woman received offensive comments from landlord based on Indigenous stereotypes. Attempts to evict her after landlord learned that she was smudging her apartment. Applicant presented social context evidence but the judge decided not to rely on it because unnecessary for this particular decision. The application was granted.); *Abel v Faraja Mwenebembe,* 2021 AHRC 5 (Indigenous tenants were served an eviction notice and forced to leave their home because their landlord believed they were violating a no-smoking provision of the tenancy agreement by burning ceremonial sweetgrass and sage for smudging and spiritual practices. The complaint alleges discrimination on the basis of ancestry, race, and religious beliefs. The Director of the Human Rights Commission dismissed the complaint, but the Chief of the Commission and Tribunals overturned that decision and the Complaint will proceed to a hearing.).

the parties, in writing, what the member has decided and may describe terms or conditions that a party must follow." The LTB notes, that these conditions may include a termination of tenancy or the completion of necessary repairs.[106]

Within thirty days, either party can ask for a review of the order by the LTB on the grounds that a "serious error" was made in the order, including an order made beyond the powers of the LTB; procedural unfairness in the application or hearing; a lack of evidence supporting the LTB conclusions; new evidence; and that a party was not reasonably able to participate in the LTB's proceeding.[107]

The HRTO has a longer procedure and includes the possibility of voluntary mediation prior to summary and preliminary hearings.[108] As noted in *Charro*,

> "The test that is applied at the summary hearing stage is whether an application has no reasonable prospect of success. At this stage, the Tribunal is not determining whether the applicant is telling the truth or assessing the impact of the treatment he or she experienced. The test of no reasonable prospect of success is determined by assuming the applicant's version of events is true unless there is some clear evidence to the contrary or the evidence is not disputed by the applicant."[109]

The HRTO may also schedule a preliminary hearing to decide other issues such as whether the HRTO has jurisdiction to decide the allegations or whether another proceeding has already appropriately dealt the case.[110] Notably, the "Tribunal's jurisdiction is limited to claims of discrimination that are linked to the protections set out in the *Code*" and "cannot address allegations of unfairness that are unrelated to the *Code*."[111]

If the HRTO does not dismiss an application, its decision may include moral, material damages or punitive damages as well as monetary

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106 Landlord Tenant Board, "Application and Hearing Process" (2015), online: *Tribunals Ontario* <https://tinyurl.com/3v4wyez9>.

107 *Ibid*; Landlord Tenant Board Rules of Procedure Rule 26.1–26.6.

108 Human Rights Tribunal Ontario, "Application and Hearing Process" (2015), online: *Tribunals Ontario* <https://tinyurl.com/2t3kxprs>. See also *Charro v Toronto Community Housing Corporation*, 2020 HRTO 354 at para 21 [*Charro*].

109 *Charro*, *supra* note 108 at para 23.

110 Human Rights Code, RSO 1990, c. H.19 s 39, 45.1; See also *Soroush v Crescent Village Housing Corporation*, 2022 HRTO 468 at para 16.

111 Human Rights Tribunal Ontario, "Application and Hearing Process" (2015), online: *Tribunals Ontario* <https://tinyurl.com/2t3kxprs>. See for example, *de Freitas v CLV Group Inc*, 2021 HRTO 608 at para 20.

compensation and/or order human rights training for the landlord, staff working in the building where the discrimination occurred, and/or for other tenants in the building where the discrimination occurred.[112]

As noted by the HTRO, there are only limited possibilities for relief beyond the HRTO:

> "There is no right to appeal the HRTO's decisions. However, in limited circumstances, a party who is dissatisfied with a decision may make a request for "judicial review" to the Divisional Court. The court will not grant judicial review unless it is satisfied the decision is unreasonable. A judicial review is not an opportunity to reargue a case, and the Divisional Court will not overturn a decision simply because it believes the HRTO could have or should have come to a different conclusion."[113]

CCHR has noted that despite the Code, "discrimination on [the protected] grounds remain persistent in Ontario's housing market, in part because there is little effective recourse for people who face housing discrimination."[114] Seeking relief through the HRTO is a long and resource-heavy process for claimants. CCHR notes the astounding levels of pending cases and backlog: "The HRTO typically hears 3,000 cases per year and is currently experiencing a backlog of nearly 9,000 cases,5 with an average of 8–9% of cases filed having to do with housing discrimination from 2017 to 2021."

C) Unsafe Housing and Eviction

Even when housing can be found, CCHR interviewees described the many ways in which they are taken advantage of by predatory landlords, including the neglect of repairs, unfair rules, and unwarranted fees.[115]

Eviction has devastating effects for families and households impacting employment, education, access to food, and health, not to mention community support and resources.[116] Racialized communities face higher rates of evictions than other communities. Other structural issues, such as poverty can compound these differences as well. A 2020 study

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112 See for example *Kelly v Levesque,* 2020 HRTO 583; *Dwyer v Tarantino,* 2020 HRTO 685; *Vasu v Toronto Community Housing*, 2010 HRTO 344.

113 *Supra* note 111.

114 *Ibid* at 11–12.

115 *Supra* note 2 at 36.

116 Nemoy (2022), *supra* note 35; Nemoy Lewis, "The Impact of Foreclosures on the Home Environments and Education of Black Youth in the United States" in Sandra R. Schecter and Carl E. James (eds.), *Critical Approaches Toward a Cosmopolitan Education* (Routledge, 2021) 238-254.

by researchers in Toronto mapped eviction notices with census tracts. They found: that "census tracts with 36 per cent Black renter households have *2.1 times higher eviction filing rates* compared to census tracts with 2 per cent Black households" even after controlling for poverty and other important factors."[117]

Many people are not aware or unable to exercise their legal rights when faced with eviction, including procedural or governmental mechanisms to protect tenants.

Conclusion

There are a number of actions which could alleviate insecurity of tenure for racialized people and communities in Canada. As an initial undertaking, this paper proposes that the federal government prioritizes the collection of race-based data on housing nationwide. It should also work with provinces, territories and municipalities to regulate local housing markets more effectively and to protect homeless populations; to establish race-specific assessments and protections in relation to development (urban development, infrastructural, and other forms), displacement, expropriation, and dispossession; and to construct more public and affordable housing and expand rent control.

In 2019, Canada passed the *National Housing Strategy Act*, committing Canada to the recognition and realization of the right to adequate housing.[118] Moreover, Canada has committed itself to international obligations around security of tenure and non-discrimination in housing. The *Canadian Human Rights Act* (CHRA) "prohibits discrimination in employment and services under federal jurisdiction, including housing."[119] In recognition of these commitments, the National Housing Strategy specifically prioritizes housing for racialized people.[120] The *NHSA* provides a new mandate for the Federal Housing Advocate.[121]

The federal government, in particular through the newly constituted Office of the Federal Housing Advocate, has a unique opportunity to work towards the goals of adequate housing as enshrined in the *NHSA* by:

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117 Scott Leon and James Iveniuk, *Forced Out: Evictions, Race, and Poverty in Toronto* (August 2020) 7.

118 *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313.

119 Parliament of Canada, *A Primer on Housing Rights in Canada*, online: <https://tinyurl.com/56h7n6hu> [perma.cc/HSN4-QTMM]; *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 2.

120 National Housing Strategy (NHS), *National Housing Strategy—Priority Areas for Action* (2017) online: <https://tinyurl.com/56hmvmv5>.

121 *Supra* note 118 at 13.

- expanding public and affordable housing in Canada;
- increasing and enforcing regularly protections against predatory landlords;
- working with Provinces and Territories to address unequal access to housing for racialized people in Canada;
- collecting race-based data on housing and discrimination;
- initiating studies which examine structural inequality in relation to housing;
- working with Community Land Trusts and other local advocacy groups to ensure community participation in design and provision of housing.
- working with provinces and municipalities to protect homeless people and regulate local housing markets more effectively, including in relation to rent control and forced evictions;
- ensuring collaboration across federal and quasi-federal agencies, including the Federal Housing Advocate, CMHC, and financial actors to ensure fair lending as well as remedial measures for past wrongs, including reparations; and
- establishing race-specific assessments and protections in relation to development (urban development, infrastructural, and other forms), displacement, expropriation, and dispossession.

This Article has surveyed existing literature and studies on the insecurity of housing access for racialized people in Canada. It has explored structural dimensions such as expropriation, under-investment, legal mechanisms of displacement, and financialization, as well as landlord-specific forms of discrimination and the difficulty of seeking judicial relief. It was written in hope of justifying further empirical research and remedial policymaking regarding the many ways in which racialized communities and households face housing discrimination, exclusion, and unsafe conditions.