



# **Race and Security of Housing: Security of Tenure in Canada**

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The opinions, findings, and conclusions or recommendations expressed in this document are those of the author and do not necessarily reflect the views of the Canadian Human Rights Commission or the Federal Housing Advocate.

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# Introduction

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* (NHTA), which imposes new and specific obligations on the federal government to progressively realize this right.<sup>1</sup> This report was written in response to the NHTA and the new accountability mechanisms that it offers. Specifically, the establishment of the new Federal Housing Advocate (FHA) position presents a number of possibilities for federal enforcement of adequate housing. As part of the National Housing Strategy, the Canadian Mortgage and Housing Corporation (CMHC, originally known as the Central Mortgage and Housing Corporation) has specifically prioritized housing for racialized people.<sup>2</sup> As such, the FHA has a unique opportunity to set the course for access to housing, security of tenure, and the eradication of discrimination in housing nationwide.

The report maps the challenges that racialized individuals and communities face in Canada around security of housing and tenure in order to inform the Federal Housing Advocate's course of action. It examines the displacement of racialized communities and discrimination against racialized persons, including at the time of rental and during the eviction process. Through this analysis, a number of structural conditions faced by people of colour become clearer, including: the scripting of people of colour as outsiders/non-citizens; lending practices 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; the nexus between labour, education, and housing; and the terrible impacts of COVID-19 on racialized communities. These conditions go beyond the scope of this paper, which is focused on direct security of tenure, but they nevertheless result in a lack of security of tenure for households and communities.

There are a number of actions that the FHA could take to work towards security of tenure for racialized people and communities in Canada. As an initial undertaking, this report proposes that the Advocate generate race-based data on housing nationwide and establish race-specific assessments and protections in relation to development (urban, infrastructural, and other forms), displacement, expropriation, and dispossession. It also suggests that the Advocate work with provinces and territories to regulate local housing markets more effectively and to protect

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<sup>1</sup> Kaitlin Schwan and Nadia Ali, *A Rights-Based, GBA+ Analysis of the National Housing Strategy*, Women's National Housing & Homelessness Network (2021).

<sup>2</sup> National Housing Strategy (NHS), *National Housing Strategy—Priority Areas for Action* (2017) (<https://www.cmhc-schl.gc.ca/en/nhs/guidepage-strategy/priority-areas-for-action>).

homeless populations, and that they advocate for the construction of more public and affordable housing across Canada.

The paper is comprised of three parts:

- (1) The first part provides an overview of the particular challenges facing racialized persons in Canada in relation to security of tenure. Specifically, it examines the displacement of communities and the widespread racial discrimination faced by individuals and households.
- (2) The second part briefly reviews existing federal legal commitments and human rights protections for racialized persons in the housing context.
- (3) The final part closes with paths to reform regarding the challenges discussed in the report, including recommendations for the Federal Housing Advocate.

## Note on “Race” in Canada

This paper uses the terms “racialized person” or “person of colour” (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.”<sup>3</sup>

As of 2016, “visible minorities” represent 22.3% of the population in Canada. Of that population, 25.1% identify as South Asian; 20.5% as Chinese; 15.6% as Black; 10.2% as Filipino; 6.8% as Arab; and 5.8% as Latin American.<sup>4</sup> Each of the categories has significant heterogeneity within them.<sup>5</sup>

The particular circumstances faced by racialized persons in relation to housing are often exacerbated by immigrant status, whether real or perceived. 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

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<sup>3</sup> StatCan, “Visible Minority of Person” (<https://www23.statcan.gc.ca/imdb/p3Var.pl?Function=DEC&Id=45152>).

<sup>4</sup> Catalyst, *People of Colour in Canada* (<https://www.catalyst.org/research/people-of-colour-in-canada/>); StatCan, “Focus on Geography Series, 2016 Census” (<https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-can-eng.cfm?Lang=Eng&GK=CAN&GC=01&TOPIC=7>).

<sup>5</sup> 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.

“been a landed immigrant or permanent resident in Canada”<sup>6</sup> and nearly half of the immigrant population in Canada was born in Asia (including the Middle East).<sup>7</sup>

Some forms of discrimination occur because of white Canadian 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), the location 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 colour,<sup>8</sup> 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 colour are “not Canadian” by virtue of their *misperceived* immigration status. The paper 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 colour.<sup>9</sup> The circumstances of housing insecurity of Indigenous Peoples are significantly more complex than can be covered here. Where race-related issues converge in relation to housing or where Indigenous people fall under similar governmental protections, it is indicated in the discussion below.

Finally, the lack of adequate race-specific data is a huge challenge. This circumstance will be more fully explained in Part IV below. For now, it is worth noting that the following discussion draws on a variety of social science literature and empirical studies from 2006 to present in an effort to indicate any existing research that may be relevant. It is recognized that while the figures may have changed over time, the circumstances described have only worsened, for the most part.

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<sup>6</sup> StatCan, “Diversity of the Black population in Canada: An overview” (<https://www150.statcan.gc.ca/n1/pub/89-657-x/89-657-x2019002-eng.htm>).

<sup>7</sup> StatCan, “Asian Heritage Month... by the numbers” ([https://www.statcan.gc.ca/en/dai/smr08/2021/smr08\\_250](https://www.statcan.gc.ca/en/dai/smr08/2021/smr08_250)).

<sup>8</sup> 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 *Journal of Housing and the Built Environment* 253–276.

<sup>9</sup> *Ibid.*

# Particular Challenges Faced by Racialized Persons in Relation to Security of Housing

People of colour face a variety of challenges in accessing and maintaining secure housing. These challenges may be thought of in terms of several (overlapping) circumstances implicating both individual households and communities as a whole: (i) insecurity at the hands of the government; (ii) discrimination by landlords, including discrimination at the point of initial rental and during eviction, as well as the difficulty in proving that discrimination; (iii) overcrowded, poor quality housing (discussed briefly below).

## Expropriation and Displacement

Communities of racialized persons have often been displaced by both public and private actors. While many of their practices are not accompanied by explicit discriminatory statements of ill intent, at the same time, their evictions, expropriations, and 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 local governments' zoning and land use powers and so-called urban renewal programs of the 20<sup>th</sup> century; and (iii) the particular histories of racialized communities.

### i) Public and Private Actors in Housing Finance

The actors implicated in expropriation and displacement include three levels of government (federal, provincial, and 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. Even a brief look at the role of the federal government in financing mortgages and in urban renewal programs reveals the layers and various practices of discrimination that have coalesced into housing insecurity for many communities of colour.

The federal government was a crucial actor here through the activities of the 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.<sup>10</sup> 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 that continue to have effect.

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<sup>10</sup> 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 *U. of Toronto Law Journal* 233–247.

With regard to consumer lending, by financing and insuring Canadian banks, the CMHC undergirded the practices of “redlining” whereby banks did not lend to communities of colour, deeming them uncreditworthy or to have low property values. While redlining is a well-studied phenomenon in the United States, there are several studies of redlining in Canada, implying that the practice was likely prevalent here as well.<sup>11</sup> Studies in the U.S. have shown that the effects of redlining on racial wealth are enduring, as low valuations persist across decades, which is likely the case in Canada as well.<sup>12</sup>

With regard to urban renewal, the CMHC, by its own account decades later, funded the destruction of racialized communities through such programs. 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.<sup>13</sup>

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.”<sup>14</sup>

The FHA is uniquely positioned to work with federal agencies and financial actors to ensure fair lending practices as well as remedial measures for past wrongs.

## ii) Legal Tools of Displacement

There are a variety of legal processes and tools that have been used to make racialized communities vulnerable 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.

### Land Use Designations

Land use and zoning regulations can be powerful way that cities make certain geographies more susceptible to expropriation. This phenomenon occurred in collaboration with the federal urban

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<sup>11</sup> 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.

<sup>12</sup> Dana Anderson, “Redlining’s Legacy of Inequality: \$212,000 Less Home Equity, Low Homeownership Rates for Black Families” *RedFin News* (June 11, 2020) available at <https://www.redfin.com/news/redlining-real-estate-racial-wealth-gap/>.

<sup>13</sup> Government of Canada, “Rebuilding Vancouver’s Black Community” (Feb. 23, 2021) available at <https://www.placetocallhome.ca/en/stories/077-rebuilding-vancouver-black-community>.

<sup>14</sup> CMHC, “Our Commitment: #BlackLivesMatter” (June 12, 2020) available at <https://www.cmhc-schl.gc.ca/en/media-newsroom/notices/2020/our-commitment-black-lives-matter>.



renewal programs discussed above and continues today. Zoning industrial or waste disposal sites close to racialized communities keep property prices low and make 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.<sup>15</sup> 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.

As was the case in the clearance of Hogan's Alley, Vancouver, once neighbourhoods were designated as blighted or as slums, they were targeted for urban renewal programs.<sup>16</sup> These programs displaced existing communities, thereby affecting their livelihoods, social fabric, education, and security.

### **Formality and Lack of Title**

In some cases, clearances have been made with little or no compensation on account of the resident not always holding formalized title. That lack of title, however, is a governance choice, as some titles do get regularized through government programs. A clear example of this is the clearance of the Black community of Africville in Halifax.<sup>17</sup>

### **Decisions Around Where Infrastructure Goes**

Federal, provincial, and local decisions around where infrastructure is located have also had profound effects on racialized and Indigenous people in Canada. Notable examples are the construction of highways through the Black neighbourhood of Little Burgundy in Montréal and the displacement of the Mohawk community in Kahnawá:ke for the expansion of the St. Lawrence Seaway.

In Little Burgundy, the construction of the highways to serve (White) suburban populations commuting into downtown Montréal displaced and dispersed the Black community by demolishing their buildings and neighbourhoods.<sup>18</sup>

The Kanien'kehá:ka, or Mohawks, had lived and worked on the banks of the St. Lawrence for centuries. The expansion of the river into a gateway for commerce was a powerful symbol of Canadian nationalism in the mid-20<sup>th</sup> century, popularly understood to represent the emergence of Canadian industry and economy on a global scale.<sup>19</sup>

### **Discursive Justifications: Health, Hygiene, Dilapidation, and 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

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<sup>15</sup> Allen (2019) 34.

<sup>16</sup> Allen (2019).

<sup>17</sup> Jennifer Jill Nelson, *Razing Africville: A Geography of Racism* (University of Toronto Press, 2008).

<sup>18</sup> 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.

<sup>19</sup> Audra Simpson, *Mohawk Interruptus* (Duke University Press, 2014).

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. 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.

### iii) Communities Displaced and Excluded

The tools discussed in this section can be mapped onto particular histories of racialized communities. Here are several illustrative examples:

- **Hogan’s Alley, Vancouver:** The clearance of this Black neighbourhood 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 their narratives around dilapidation and blight.<sup>20</sup>
- **Africville, Halifax:** The clearance of this Black neighbourhood in Halifax in 1967–1969 was justified through health and hygiene and its proximity to a waste disposal site; additionally, the lack of formal title was used as justification for no compensation until a settlement in 2010.<sup>21</sup>
- **Kahnawá:ke, Quebec:** The expansion of the St. Lawrence Seaway was planned in such a way that it displaced and upended the Kanien’kehá:ka, and it was justified through various Canadian nationalistic narratives around infrastructure and modernity.<sup>22</sup>
- **Little Burgundy, Montréal:** Through various redevelopment programs beginning in November 1966, this Black neighbourhood’s residences and community centres were cleared for highways and other construction projects. As Steven High points out, the comprehensive planning documents compiled at the time do not mention race, itself a “form of racism.”<sup>23</sup> 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.<sup>24</sup> 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.”<sup>25</sup>

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<sup>20</sup> For a discussion of the history and aftermath of this displacement, see Allen (2019).

<sup>21</sup> Nelson (2008); 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 Speak Up* (Schulich School of Law, Aug. 19, 2014).

<sup>22</sup> Simpson (2014).

<sup>23</sup> High (2017) 34.

<sup>24</sup> High (2017).

<sup>25</sup> High (2017) 35.

- **Amber Valley, Alberta (and Edmonton and Calgary):** In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, a Black settlement formed in Amber Valley, Alberta.<sup>26</sup> With new urban work opportunities, many people moved from Amber Valley to Edmonton and Calgary in the 20<sup>th</sup> 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, and housing.<sup>27</sup>
- **Heron Gate, Ottawa:** More recently, a private developer purchased a residential development called Heron Gate in Ottawa 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 “displace [d] 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 *Ontario Human Rights Code* and that the city was complicit in that violation.<sup>28</sup> They also claimed that the landlord purposely allowed units to fall into disrepair in order to justify the redevelopment.<sup>29</sup> The claim has taken years to work its way through the Ontario Human Rights Tribunal, with mounting legal fees.<sup>30</sup> 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.<sup>31</sup>

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<sup>26</sup> Russell Cobb, “The Last Black West: Oklahoma Freedmen Seek Refuge in Alberta, Part 2,” *City Museum Edmonton* (Feb. 9, 2021) available at <https://citymuseumedmonton.ca/2021/02/09/the-last-black-west-oklahoma-freedmen-seek-refuge-in-alberta-part-2/>; The Last Best West: Hattie’s Place, Part 3, *City Museum Edmonton* (July 20, 2021) available at <https://citymuseumedmonton.ca/2021/07/20/the-last-best-west-hatties-place-part-3/>. Cobb also describes the de facto discriminatory immigration policies that surrounded official, race-neutral laws.

<sup>27</sup> Jennifer Kelly, “Social Exclusion,” *City Museum Edmonton* (Aug. 15, 2021) available at <https://citymuseumedmonton.ca/2021/08/15/social-exclusion/>.

<sup>28</sup> [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) available at <https://ottawacitizen.com/news/local-news/evicted-heron-gate-residents-file-human-rights-complaint-over-landlords-hyper-gentrification>. 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 Social Justice* 81–101.

<sup>29</sup> Heron Gate Submission to Ontario Human Rights Tribunal, para 94.

<sup>30</sup> “Legal Fees Piling Up for Former Heron Gate Tenants,” *CBC News* (Feb 27, 2020) available at <https://www.cbc.ca/news/canada/ottawa/legal-fees-piling-up-heron-gate-residents-1.5477429>.

<sup>31</sup> Sara Frizzell and Ben Andrews, “Heron Gate developer signs contract binding it to social commitments,” *CBC News* (Aug 16, 2021) available at <https://www.cbc.ca/news/canada/ottawa/heron-gate-developer-hazelview-memorandum-of-understanding-1.6142429>. Note that many have criticized the deal for not going far enough in assuring sustainable affordability. Matthew Kupfer, “Heron Gate Tenants Say

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 active remedial measures.

## Discrimination and Eviction

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.<sup>32</sup> However, racial animus is notoriously difficult to prove. Landlords rarely express racial bias outright. This is why large-scale paired testing—studies where a person of colour attempts to rent a property, followed closely in time by a white person with similar qualifications—is needed.

### i) Barriers to Access: Discrimination at the Time of Rental

In 2009, the Canadian Centre for Housing Rights (CCHR, formerly known as the Centre for Equality Rights in Accommodation) conducted a paired study in Toronto and found significant discrimination against tenancy applicants 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”)<sup>33</sup> as well as the use of seemingly neutral rental policies or practices that were discriminatory in effect. The latter policies and practices included an “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, people with disabilities, young families and people receiving social assistance.”<sup>34</sup>

With regard to racial discrimination specifically, such animus is not usually overt. 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-to-rent ratios.

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Developer’s Social Contract Won’t Meet Affordability Needs” *CBC News* (Aug 20, 2021), available at <https://www.cbc.ca/news/canada/ottawa/heron-gate-hazelview-social-contract-falls-short-1.6146545>.

<sup>32</sup> 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) available at <https://globalnews.ca/news/7082858/renting-while-black-canada/>; CERA, *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).

<sup>33</sup> CERA (2009) 1–2.

<sup>34</sup> CERA (2009) 1–2.

In 2012, CCHR conducted a follow-up to their study of rental experience in Toronto and found that “85–92% of recent newcomers experience significant barriers to accessing rental housing due to discrimination.”<sup>35</sup> 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.”<sup>36</sup> The conditions varied by group, though as CCHR makes clear, all (racialized) groups were equally disadvantaged.

CCHR reported 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).”
- “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.”<sup>37</sup>

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.”<sup>38</sup> For these reasons, immigrants often live, at least at first, within communities of their national origins where they can find a place to stay through social networks.<sup>39</sup> These conditions have meant that immigrants, and therefore many racialized Canadians, are more likely to be pushed into lower-quality housing under the control of exploitative landlords and to face extreme poverty and homelessness.<sup>40</sup>

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<sup>35</sup> CERA (2012) 1.

<sup>36</sup> CERA (2012) 2.

<sup>37</sup> CERA (2012) 1–2.

<sup>38</sup> Teixeira (2008).

<sup>39</sup> See Teixeira (2008); 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.

<sup>40</sup> Teixeira (2008).

## ii) The difficulty of proving discrimination

Overt discrimination is very difficult to prove, as landlords and managers rarely explicitly state racist reasonings for refusing a rental or for mistreating a tenant. There are a number of cases where petitions were dismissed because of a lack of evidence.<sup>41</sup> 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 several successful cases brought, where human rights training was sought or imposed on the respondent landlords.<sup>42</sup> There have also been at least two recent successful cases involving Indigenous applicants who were discriminated against.<sup>43</sup>

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<sup>41</sup> 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 colour 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, "There 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 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).

<sup>42</sup> *Kelly v Levesque*, 2020 HRTO 583; *Dwyer v Tarantino*, 2020 HRTO 685.

<sup>43</sup> *Smith v. Mohan (No. 2)*, 2020 BCHRT 52 (Indigenous woman received offensive comments from her landlord based on Indigenous stereotypes. There were attempts to evict her after landlord learned that she was smudging in her apartment. Applicant presented social context evidence, but the judge decided not to rely on it because it was 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

### iii) Eviction

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 by researchers in Toronto mapped eviction notices with census tracts. They found that “census tracts with 36 percent Black renter households have 2.1 times higher eviction filing rates compared to census tracts with 2 percent Black households,” even after controlling for poverty and other important factors.<sup>44</sup>

Eviction has devastating effects for families and households. As Nemo Lewis’ study of foreclosure evictions in the U.S. demonstrates, “Housing instability coupled with income insecurity can have an adverse and lasting impact on families, children’s scholastic performance, and people’s ability to secure future employment.”<sup>45</sup>

### Overcrowded, Poor Quality Housing and Other Structural Issues

These difficulties 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 is mostly outside the scope of this paper, but there are several points to note briefly because they illustrate how people are pushed into unsuitable homes with exploitative landlords through the processes described in the sections above.

In relation to securing adequate housing in the first place, studies from 2006 and 2008 noted that refugees had been “relegated to lower-rent, private-sector apartments”<sup>46</sup> 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.”<sup>47</sup> As Mendez et al. (2006) found, “visible minorities,” particularly Black people, faced more

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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.).

<sup>44</sup> Scott Leon and James Iveniuk, *Forced Out: Evictions, Race, and Poverty in Toronto* (August 2020) 7.

<sup>45</sup> Nemo (2022); Nemo 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.

<sup>46</sup> Teixeira (2008); 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) *Canadian Journal of Urban Research* 82–104; Renaud, J., Begin, K., Ferreira, V. & Rose, D., “The Residential Mobility of Newcomers to Canada: The First Months” (2006) 15 *Canadian Journal of Urban Research* 79-95.

<sup>47</sup> Teixeira (2008); 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).

barriers when finding housing than White immigrants.<sup>48</sup> These observations are corroborated by a 2014 empirical study in Toronto by Paradis, Wilson, and Logan which found that:

Racialized, immigrant, and lone-mother-headed 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 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).<sup>49</sup>

According to an extensive empirical study done in 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%).<sup>50</sup> “Unsuitable housing” refers to whether there are enough bedrooms for the number of people in the household.<sup>51</sup>

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% of Black people compared to 10% of racialized people overall and 9% of non-racialized people.<sup>52</sup>

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/Indo-Caribbean, Southeast Asian, and Arab/Middle Eastern/West Asian communities are over-represented among COVID-19 cases.<sup>53</sup>

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<sup>48</sup> Mendez et al. (2006).

<sup>49</sup> 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.

<sup>50</sup> Beth Wilson, Naomi Lightman, and 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”).

<sup>51</sup> [Dictionary, Census of Population, 2016—Housing suitability \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/92-627-x/2016001/article/14861-eng.htm): “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.”

<sup>52</sup> *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 remodeling 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,” (p. 59).

<sup>53</sup> *Spaces and Places of Exclusion Report* citing Toronto Public Health, *COVID-19 and the Social Determinants of Health: What Do We Know?* (May 14, 2020), available at <https://www.toronto.ca/wp->



Compounding the low supply of affordable housing and exploitation by landlords is the increasing financialization of housing. There are two dimensions to note here: first, luxury housing is proliferating in Canada as institutional investors turn their sights to real estate as a secure and profitable site of investment; second, investors are also increasingly purchasing middle-class housing to rent out as landlord. On the first dimension, such units are often built on the sites of formerly middle-class or upper-middle-class housing, and they are known for often being left unoccupied in order to serve their purposes as sites for money laundering or capital accumulation. To stem this tide, British Columbia and other provinces have introduced taxes on unoccupied housing as well as registries of beneficial ownership (to prevent secrecy in landholdings).<sup>54</sup> On the second dimension, when investment companies take control as landlords, they are far more likely to enact rent increases and inflexible rental policies, as well as to ignore service and other requests by tenants.<sup>55</sup> Both of these dimensions are crucial areas for further study in the Canadian context.

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[content/uploads/2020/05/96e0-SDOHandCOVID19\\_Summary\\_2020May14.pdf](#) and Toronto Public Health, Race, income, and COVID-19 infection (July 22, 2020), available at <https://public.tableau.com/profile/tphseu#!/vizhome/RaceIncomeandCOVID19Infection/Proportions>.

<sup>54</sup> Priya S. Gupta et al, *Stemming Money Laundering in Ontario, Canada*, Environmental Justice & Sustainability Clinic at Osgoode Hall Law School (2021).

<sup>55</sup> 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, see Nemoy Lewis, *The Uneven Racialized Impacts of Financialization* (2022).

# Housing-Related Federal Legal Commitments and Human Rights Protection of Racialized Persons

The *National Housing Strategy Act* commits Canada to the recognition and realization of the right to adequate housing.<sup>56</sup> 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.”<sup>57</sup> In recognition of these commitments, the National Housing Strategy specifically prioritizes housing for racialized people.<sup>58</sup>

Provinces have various forms of protection against racial discrimination in housing.<sup>59</sup> For example, the *Ontario Human Rights Code* prohibits discrimination in housing on the basis of race.<sup>60</sup> 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)
- 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)

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<sup>56</sup> *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313.

<sup>57</sup> Parliament of Canada, *A Primer on Housing Rights in Canada*, available at [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201916E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201916E); *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 2.

<sup>58</sup> National Housing Strategy (NHS), *National Housing Strategy—Priority Areas for Action* (2017) (<https://www.cmhc-schl.gc.ca/en/nhs/guidepage-strategy/priority-areas-for-action>).

<sup>59</sup> 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*, available at [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201916E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201916E).

<sup>60</sup> *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.

- 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)<sup>61</sup>

However, as explained above discrimination remains difficult to prove and claims are expensive to pursue. The lack of race-based data compounds that difficulty.

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<sup>61</sup> Ontario Human Rights Commission, “Types of Rental Housing Discrimination,” available at <https://www.ohrc.on.ca/en/human-rights-and-rental-housing-ontario-background-paper/types-rental-housing-discrimination#fn82>

# Role of the Federal Housing Advocate

The NHTA provides an exciting new mandate for the Federal Housing Advocate.<sup>62</sup> There are two categories of action focused on here: the collection of race-specific data and several types of substantive reforms necessary for the mitigation of race-specific challenges to secure housing.

## The Pressing Need for Race-Specific Data

The Committee on the Elimination of Racial Discrimination (CERD) opened its 2017 observations on Canada with a call for better data on race:

The Committee regrets again that the absence of 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, and the lack of detailed data and information on the representation of minority groups in public and political life in the State party, prevent it from evaluating the enjoyment of civil, political, economic, social and cultural rights in the State party by these groups.<sup>63</sup>

The Committee also 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.”<sup>64</sup>

This call for data has been echoed in both academic literature and popular media, recently in relation to the effects of COVID-19 on racialized communities.

The Federal Housing Advocate is specifically directed under the NHTA to initiate and conduct a variety of research on systemic housing issues:

(c) analyze and conduct research, as the Advocate sees fit, on systemic housing issues, including barriers faced by persons referred to in paragraph (a); (d) initiate studies, as the Advocate sees fit, into economic, institutional or industry conditions—respecting matters over which Parliament has jurisdiction—that affect the housing system;<sup>65</sup>

It is essential that such studies be initiated and conducted to gather race-specific data on housing, including in relation to access, quality, and discrimination; expropriation and development; and the construction of affordable housing.

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<sup>62</sup> *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313 at 13.

<sup>63</sup> 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.

<sup>64</sup> *Ibid.*

<sup>65</sup> *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313 at 13.

## **Reforming Housing in the Context of Structural Inequality**

The Federal Housing Advocate has a unique opportunity to work towards the goals of adequate housing, as enshrined in the NHSA, by:

- working with the provinces and territories to address unequal access to housing for racialized people in Canada;
- advocating for programs to alleviate the severe lack of affordable housing in Canada;
- collecting race-based data on housing and discrimination;
- initiating studies to examine structural inequality in relation to housing;
- working with provinces and municipalities to (i) protect homeless people; (ii) regulate local housing markets more effectively, including in relation to rent control and forced evictions; and (iii) provide more public housing;
- collaborating with federal and quasi-federal agencies, including the 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.