



A Human Rights Analysis of the Financialization of Purpose-Built Rental Housing:

A Summary of the Federal Housing
Advocate's representations to the
Review Panel on the
Financialization of Purpose-Built
Rental Housing

Introduction

In June 2023, the first review panel hearing under Canada's *National Housing Strategy Act* (NHTSA) was launched. The NHTSA enshrined the human right to adequate housing in Canadian law for the first time and created the Office of the Federal Housing Advocate and the National Housing Council as accountability mechanisms to advance this right. The Advocate is empowered to request that the Council establish a review panel to conduct hearings into systemic issues related to housing¹ in order to provide recommendations to the Minister responsible for housing. The Advocate, Marie-Josée Houle, elected to focus the first such hearing on the urgent issue of the financialization of purpose-built, affordable rental housing in Canada.

As part of the hearing, the Advocate submitted written representations based on research commissioned by her office to examine the growing role of financial firms in the residential real estate market, long-term care, and seniors' housing. Her representations were also informed by the submissions she received from individuals and organizations, as well as by her visits to communities across Canada to engage with rights holders, civil society, industry stakeholders, and policymakers. This is a summary of those representations.

Financialization

In a report created for the Advocate, Martine August defined financialization as “a process in which finance capital has come to dominate the economy and everyday life, and in which money is increasingly made through financial channels rather than by making things.”² The financialization of housing refers to “the growing dominance of financial actors in the housing sector, which is transforming the primary function of housing from a place to live into a financial asset and tool for investor profits.”³

The financialization of purpose-built rental housing is one manifestation of this broader trend. It refers to the acquisition of rental housing by financial firms, such as private equity funds, real estate operating companies, real estate investment trusts (REITs), asset management companies, and institutional investors such as public pension funds.⁴

¹ For details about what constitutes a systemic housing issue see the definition on the Advocate's website: “A systemic housing issue is an issue which inhibits the full and equal enjoyment of the right to adequate housing in Canada and is rooted in the housing system or other public and private-market systems.” <https://www.housingchrc.ca/en/federal-housing-advocate-frequently-asked-questions#section3>

² Martine August, *The Financialization of Housing in Canada : A Summary Report for the Office of the Federal Housing Advocate* (Office of the Federal Housing Advocate, 2022) at 4, online: *Homeless Hub* <<https://www.homelesshub.ca/sites/default/files/attachments/august-financialization-summary-report-ofha-en.pdf>>

³ *Ibid* at 8.

⁴ See Martine August, *The Financialization of Multi-Family Rental Housing in Canada* (Office of the Federal Housing Advocate, 2022) at 1, online: *Homeless Hub*

These firms manage units and buildings as assets, aiming to maximize returns. This process disconnects the exchange value of housing as a financial good from its value as a place to live, which prioritizes investor returns over inhabitants' human rights.

Federal Responsibility

While all systemic housing issues are inherently multi-jurisdictional, the most important dimensions of the financialization of purpose-built rentals are within the jurisdiction of Parliament, including federal taxation, regulation of the finance and banking sectors, the Canada Mortgage and Housing Corporation (CMHC) and the National Housing Strategy (NHS). These important areas of federal responsibility are discussed in detail in the Advocate's representations. Many of the key measures to address the issue are therefore within the jurisdiction of Parliament, such as increasing regulation, altering the tax treatment of financial firms (such as the preferential treatment given to REITs), imposing conditions for infrastructure programs and CMHC mortgage insurance, and introducing targeted measures under the NHS.

The Right to Adequate Housing

Everyone has a right to adequate housing, as stated in Article 11 of the United Nations' *International Covenant on Economic, Social, and Cultural Rights* (ICESCR). Canada has ratified the ICESCR and recognized the right to housing in domestic law in the *National Housing Strategy Act* (NHTA). One of the primary goals of the NHTA is to fulfill this right by ensuring that Canada properly incorporates international legal norms into domestic housing policy.

Since much of the activity around the financialization of Canada's purpose-built, affordable rental stock is carried out by private entities, many of the human rights violations that occur as a result are due to their actions. Private businesses have a responsibility to respect human rights, including the right to adequate housing, and states have an obligation to protect individuals against human rights violations by businesses.⁵ With this in mind, the Government of Canada should ensure that its laws, policies, and actions or inactions do not enable behaviour that undermines the right to adequate housing, notably through financialization.

Negative Impacts on the Right to Adequate Housing

The research conducted for the Advocate details the negative human rights impact of the financialization of purpose-built, affordable rental housing on tenants. This affects many components of the right to adequate housing, including:

<<https://www.homelesshub.ca/sites/default/files/attachments/august-financialization-rental-housing-ofha-en.pdf>>

⁵ *Velásquez Rodríguez v Honduras*, Inter-Am.Ct.H.R.(1988) at paras 172, 174, online: <https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf>

- affordability
- habitability
- security of tenure
- accessibility
- location
- cultural adequacy

One example is forced evictions: it is well established that financialization drives forced eviction, particularly among marginalized groups, negatively impacting the right to security of tenure. Notably, this includes no-fault evictions like renoviction, when renovations are used as a pretext to remove existing tenants.

The Advocate received seven submissions that speak directly to the impact of the financialization of purpose-built, affordable rental housing in specific communities on the components of the right to housing listed above as well as on Indigenous land rights, in violation of the United Nations Declaration on the Rights of Indigenous Peoples.⁶ These submissions confirm and expand upon the research findings.

The financialization of housing has the biggest impact on the groups most likely to experience disadvantage due to intersecting forms of discrimination. The submissions demonstrate how gender discrimination is embedded within the housing system, leaving women and Two-Spirit and gender-diverse people, especially those who are also members of another disadvantaged group, overrepresented in core housing need, in violation of their right to adequate housing.

Contributing Factors

As outlined by August,⁷ government action has contributed to the increase in financialization in three main ways:

- neoliberal policies, including welfare state retrenchment (especially the cancellation of social housing),
- the deregulation of rent control and tenant protections, and
- policies that enable financialization, such as the introduction of REITs.

Private sector entities have contributed to the problem by targeting buildings where the rent is lower than the local average for acquisition in order to raise rents, political lobbying, and disrupting tenant organizing.

There are significant gaps in the current measures intended to protect the right to housing. For instance, provincial landlord-tenant laws have yet to catch up to the deliberate use by financialized landlords of loopholes enabling above-guideline rent increases, own-use evictions, and evictions for renovation. As well, federal mortgage insurance provided by the CMHC lacks sufficient conditions of affordability and respect for tenants' right to housing.

⁶ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, online: <<https://canlii.ca/t/554bd>>

⁷ *Supra* note 1.

Some government initiatives intended to address the housing crisis risk reproducing the problems associated with financialization. For instance, the largest projects under the NHS are producing buildings whose rents are above the local average, and the Housing Accelerator Fund announced earlier this year risks adding to the financialization of housing, unless conditions to protect the right to housing are added.

Human Rights-Based Solutions

The government has an obligation to progressively realize the right to adequate housing, which means all levels of government must act as quickly and effectively as possible to fulfill the human right to adequate housing, especially for those most in need. These obligations compel the government to do a number of things to realize this right:

- take immediate steps,
- use the maximum available resources,
- use all appropriate means,
- ensure that disadvantaged groups are prioritized,
- respect Indigenous rights,
- avoid discrimination,
- prevent retrogression,
- create mechanisms for accountability around the right to housing, and
- engage rights holders before creating policies that affect them.

At the conclusion of the hearing, the review panel will issue a report with recommendations to the Minister responsible for housing. The Advocate will present proposals for recommendations to the review panel based on the human rights framework described above.