



# **Review Panel Hearing on the Financialization of Purpose-built Rental Housing:**

Written Representations of the  
Federal Housing Advocate

Submitted 23 June 2023

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## A. Introduction

1. These are the Written Representations of the **Federal Housing Advocate** (“the Advocate”) in Canada’s first Review Panel hearing under the National Housing Strategy Act.
2. The Advocate requested this hearing on the financialization of purpose-built rental housing because it is one of the most **pressing systemic housing issues** in our country and it requires an urgent response.
3. The Advocate led a **research project** that brought together researchers to examine the growing role of private equity and investment firms in the residential real estate market and long-term care in Canada.
4. The research demonstrates that the **financialization of purpose-built rentals** and long-term care have had significant, harmful impacts for tenants, seniors, workers, and communities. It also points to actions that governments at all levels can take to regulate financialization and mitigate its negative impacts.
5. This research has shaped the Advocate’s thinking as well as informed the Written Representations on financialization and facilitated the formulation of **legislative and policy recommendations** for the purposes of the panel’s review of financialization. To that end, links to these research reports are attached as Annex A to the Advocate’s Written Representations. The reports are:
  - *August, M.*, The Financialization of Housing in Canada – A Summary Report for the Office of the Federal Housing Advocate (2022a)
  - *August, M.*, The Financialization of Multi-Family Rental Housing in Canada (2022b)
  - *Lewis, N.*, The Uneven Racialized Impacts of Financialization (2022)
  - *Gabarre de Sus, M.*, Housing Financialization: The International Landscape (2022)
  - *Brown, J.*, The Financialization of Seniors Housing in Canada (2022)
  - *Jhamb, B.. & Duncan, J.*, The Impact of Financialization on Tenants: Findings from A National Survey of ACORN Members (2022)
6. The Advocate’s position has also been informed by **submissions she has received from individuals and organizations**, as well as by her observations during visits to communities across Canada and her engagement with rights holders, civil society, industry stakeholders, and government duty bearers.
7. The purpose of these Written Representations is to highlight for the Panel the key concerns that emerged from the research, submissions, and engagement, and to lay the foundation for **making recommendations** to the Minister to address those concerns.

## B. Overview and scale of financialization

8. **“Financialization”** is defined in a report conducted for the Federal Housing Advocate (FHA) by Martine August 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.”<sup>1</sup> This trend has come to dominate the global economy since the 1980s, and is associated with rising levels of income inequality and growing disparities in wealth.
9. In Canada and similar economies such as the US and UK, the expansion of financialization has been facilitated by the adoption of **neoliberalism** as an economic and governance framework, leading to “cuts to social spending and the prioritization of the market to distribute resources and social goods.”<sup>2</sup> The termination of Canada’s federal social housing program in 1993 is an example of a policy choice founded in a neoliberal framework.
10. **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.”<sup>3</sup> Financialization of housing is a key driver of Canada’s housing system and domestic economy. It manifests itself in a range of forms, including acquisition of housing as an investment by financial firms; the growing role of financial owners and operators in the long-term care sector; and financialization of mortgages which is linked to high levels of household debt.
11. **Financialization of purpose-built rental housing** is one manifestation of the broader trend of financialization in housing. This 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 pension funds, hedge funds, and sovereign wealth funds.<sup>4</sup> These firms manage units and buildings as assets, aiming to maximize returns for shareholders, investors, and executives. Units may be pooled into financial assets and funds for which shares are traded on global markets, a process referred to as “assetization”.<sup>5</sup>

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<sup>1</sup> August, 2022a, p. 4 – Annex A

<sup>2</sup> Ibid, p. 16.

<sup>3</sup> Ibid, p. 8.

<sup>4</sup> See August 2022b, p. 1 -Annex A

<sup>5</sup> Crosby, A. (2020). Financialized gentrification, demoviction, and landlord tactics to demobilize tenant organizing. *Geoforum*: <https://herongatetenants.ca/wp-content/uploads/2021/09/Financialized-gentrification-demoviction-and-landlord-tactics-to-demobilize-tenant-organizing.pdf>

12. In transforming buildings into tradeable assets, financialization disconnects the exchange value of **housing as a financial good** from its use value as a place to live, and prioritizes investor returns over inhabitants' human rights.
13. Financialization of purpose-built rental has expanded dramatically in Canada since the late 1990s, with an estimated 340,000 units in multi-residential rental buildings now owned by large financial firms, and an estimated 20-30 percent of Canada's purpose-built rental housing now owned by institutional investors. The acquisition of purpose-built rental portfolios by institutional investors has accelerated in the wake of the **COVID-19 pandemic**, with rental housing identified as a safe investment during a period of economic instability.
14. Most of Canada's purpose-built rental housing was built before the 1990s, often with the support of **federal funding and incentives**.<sup>6</sup> These buildings are now the target of acquisition by financial firms which aim to extract more revenue from sitting tenants, and / or to "reposition" them in the market in order to attract higher-paying tenants.
15. Firms employ a number of methods to squeeze additional revenue from sitting tenants and / or reposition buildings: **demanding large rent increases, imposing new fees, withdrawing services, conducting disruptive renovations to common areas, and evicting tenants** including through "no-fault" evictions for reasons such as renovation (now popularly known as "**renoviction**"). Once vacated, units may be remodelled and rented at a significantly higher price.
16. Analyses of **financial firms' strategies**<sup>7</sup> demonstrate that they often target acquisition of rental buildings that are considered "underperforming or "undervalued" – that is, buildings in which rents are below local averages.
17. These aging buildings are **the bulk of Canada's stock of relatively affordable private market rental housing**.<sup>8</sup> Housing policy analyst, Steve Pomeroy, estimates that replacing units lost between 2011–2016 alone would require capital investment of \$60B. From 2016-2021, a further 230,000 low-rent units (rents below \$750) were lost (an average of 46,000 per year), on top of losses in the prior five years, for a **combined total of half a million (552,000) units lost**.<sup>9</sup>

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<sup>6</sup> The built form and period of construction varies by geography, for example, post-war duplexes and triplexes in Montreal, mid-century highrises in the Greater Toronto area, and low-rise apartment buildings in Yellowknife.

<sup>7</sup> August 2022b; Lewis 2022 – Annex A; and other sources such as Walks & August 2018.

<sup>8</sup> Pomeroy, S. (2020). *Recovery for all: Proposals to strengthen the National Housing Strategy and end homelessness*. Prepared for the Canadian Alliance to End Homelessness. <https://caeh.ca/wp-content/uploads/Recovery-for-All-Report-July-16-2020.pdf>

<sup>9</sup> Pomeroy, S. (2021). *Updating analysis on erosion of lower rent stock from 2021 census*. <https://chec-ccrl.ca/wp-content/uploads/2022/10/Updated-Analysis-on-Housing-Erosion-from-2021-Census-Steve-Pomeroy.pdf>

## C. Financialization of purpose-built rental housing is a systemic housing issue within the jurisdiction of Parliament

18. While all systemic housing issues are inherently multi-jurisdictional, the most important dimensions of financialization of purpose-built rental are within the **jurisdiction of Parliament**, including federal taxation, regulation of the finance and banking sector, and the National Housing Strategy. Federal bodies such as the Department of Finance, the Bank of Canada, and Canada Mortgage and Housing Corporation (CMHC) play a significant role. Policies and programs of federal departments including Infrastructure and Economic and Social Development are also implicated. These important areas of Federal responsibility are discussed in detail in these Representations, and in the research papers the Advocate has submitted to the Panel.
19. As delineated in the recommendations of the research conducted for the Advocate, many **key measures for addressing financialization** of purpose-built rental are within the jurisdiction of Parliament, such as: increasing regulation of the banking and finance sector, altering the tax treatment of financial firms, imposing conditions for infrastructure programs and CMHC mortgage insurance, and introducing targeted measures under the National Housing Strategy.

## D. The Right to Adequate Housing

20. Everyone has a right to adequate housing. **This right is enshrined** under article 11 of the *International Covenant on Economic, Social, and Cultural Rights (ICESCR)*.
21. The **human rights treaties** ratified by Canada, especially ICESCR “extend to all parts of federal states without any limitations or exceptions,<sup>10</sup>” meaning that federal, provincial, territorial, and municipal governments are equally bound by human rights obligations, including the right to adequate housing. This is equally true when financialization intersects with the right to housing.
22. Canada has recognized the existence of this right under the **National Housing Strategy Act (NHSA)**. The NHSA states that the housing policy of Canada recognizes the right to adequate housing as a “fundamental right affirmed in international law” (s. 4(d)).<sup>11</sup> One of the primary goals of the NHSA is to protect, promote, and fulfill this right by ensuring that Canada properly recognizes and incorporates international legal norms into our housing policy. In doing so, Canada must ensure that it progressively

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<sup>10</sup> See Article 28 UN Gen Ass, “International Covenant on Economic, Social and Cultural Rights” (1976): <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>.

<sup>11</sup> NHSA at s. 4(d): <https://www.canlii.org/en/ca/laws/stat/sc-2019-c-29-s-313/latest/sc-2019-c-29-s-313.html#sec13.2>

realizes the right to housing by taking immediate concrete steps to realize this right, using all of available resources and all appropriate means (including the adoption of legislative measures). In essence, Canada is obligated to create the conditions necessary to ensure that everyone has access to adequate housing, with particular priority given to those in greatest need.

23. **Under General Comment No. 4: *The Right to Adequate Housing***, the Committee on Economic, Social, and Cultural Rights (CESCR) recognizes that everyone, regardless of their ability to pay, must have access to adequate housing. The Committee further states that in order to be “adequate”, housing arrangements must possess the following characteristics:

- **Legal Security of Tenure** – All persons must have a degree of security of tenure which guarantees legal protection against forced eviction, harassment, and other threats.
- **The availability of services, materials, facilities, and infrastructure** – An adequate dwelling must contain certain facilities essential for health, security, comfort, and nutrition (e.g. safe drinking water, energy for cooking, heating, lighting, sanitation, means of food storage, etc.).
- **Affordability** – Personal or household financial costs associated with housing should not reach a level that meeting other basic needs becomes impossible or compromised. States have a number of obligations in this regard. For instance, they must protect tenants against unreasonable rent levels or rent increases.
- **Habitability** – Adequate housing must ensure that inhabitants are protected from the elements (e.g. cold, damp, heat, rain, wind, disease vectors, and other threats to health) and must be in a good state of repair and of adequate size.
- **Accessibility** – Adequate housing must be accessible. This means that individuals entitled to housing should be able to obtain it and that it should be adapted to their unique needs.
- **Location** – Adequate housing must be in a location that allows individuals to access all of the rudiments necessary to properly enjoy their rights. This includes access to employment options, health-care services, schools, childcare centers, and other social facilities. Efforts should also be undertaken to preserve familial and cultural connections where relevant (e.g. availability of schools that provide access to Indigenous language education, avoiding separation of families after relocation as a result of eviction).<sup>12</sup>

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<sup>12</sup> United Nations High Commissioner for Human Rights, *The Right to Adequate Housing*, p. 10: <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-21-rev-1-human-right-adequate-housing> ; UN General Assembly, *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*, 2019, at para 61, <https://www.ohchr.org/en/documents/thematic-reports/a74183-report-right-adequate-housing-indigenous-peoples>

- **Cultural Adequacy** – Housing should be constructed in a manner that enables the expression of cultural identity and diversity of housing.<sup>13</sup>
24. In addition to ensuring universal access to adequate housing, the right to housing must also be provided on a non-discriminatory basis.<sup>14</sup> This means, among other things, that **discriminatory laws, policies, or measures**, such as exclusionary zoning, inappropriate exclusion from housing benefits, inaccessibility, and lack of protection against discriminatory practices carried out by private actors, are prohibited under international law, and are protected against by the *Canadian Charter of Rights and Freedoms*, and domestic human rights legislation.<sup>15</sup>

## E. Financialization and the Right to Adequate Housing

25. As the introduction makes clear, much of the activity around the financialization of Canada's purpose-built rental stock is centered on the activities of private entities and/or businesses. As a result, many of the human rights violations that occur as a result of financialization happen because of the **actions of private entities**.
26. **Private businesses have a responsibility** to respect human rights, including the right to adequate housing, wherever they operate. This responsibility exists independently of the ability or willingness of States to fulfil their own human rights obligations and it exists over and above their obligation to comply with national laws and regulations aimed at protecting human rights in the countries in which they operate.<sup>16</sup>
27. However, it is also important to emphasize that States themselves have an **obligation to protect individuals against human rights violations by private business**, where it occurs. This is made explicit by the United Nations High Commissioner for Human Rights who states governments have a basic "duty to protect against human rights

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<sup>13</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing* (Art. 11 (1) of the Covenant), 1991: <https://www.refworld.org/docid/47a7079a1.html>

<sup>14</sup> *International Covenant on Economic, Social and Cultural Rights*, 1966, p. 3, at Art. 2: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965, p. 195 at Art. 5: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>; *Convention on the Rights of Persons with Disabilities* at Art. 19 & 28: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

<sup>15</sup> Office of the United Nations High Commissioner for Human Rights, *The Right to Adequate Housing, Fact Sheet*, at p. 10: <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-21-rev-1-human-right-adequate-housing>

<sup>16</sup> United Nations Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights*, at p. 3: [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf).

abuse by third parties, including business enterprise”.<sup>17</sup> This duty is well recognized under international law.<sup>18</sup>

28. This duty requires States to take appropriate steps to **prevent, investigate, punish and redress human rights violations** by business interests through effective legislation, regulation, policies, and adjudication.<sup>19</sup> While States are not necessarily responsible for *all* human rights violations by private actors, they may breach their obligations where abuse can be attributed to them, or where they “fail to take appropriate steps to prevent, investigate, punish, and redress” the abuse of private actors.<sup>20</sup>
29. To this end, States should: a) **enforce laws** aimed at requiring businesses to respect human rights; b) ensure that other laws and **policies governing the operation of businesses** (e.g. corporate law, securities law, banking law) do not constrain but enable business to respect human rights; c) **provide effective guidance on how businesses can respect human rights** in their operations; and d) where appropriate **require businesses to communicate** how they address their human rights impacts.<sup>21</sup>
30. These obligations represent a recognition that the behavior and operations of many businesses are dependent on, and shaped by, the policies, laws, and actions of the State. This is particularly true when it comes to the financialization of housing, a **phenomenon that is often directly supported by the actions of States**. As stated by The Shift, an advocacy organization dedicated to realizing the right to adequate housing:

“In most countries, government-enacted laws and policies support and even drive the financialization of housing. These incentives include low interest rates, quantitative easing policies, easy access to credit (particularly for those who already have wealth), preferential tax treatment (particularly for real estate investment trusts), neighbourhood development schemes, and weak tenant protections.”<sup>22</sup>
31. With this in mind, it is incumbent on the Government of Canada to ensure that its laws, policies, and actions do not enable or drive behaviour that undermines the right to adequate housing. Instead, the Government of Canada must ensure that its laws both actively prevent this behaviour and encourage the private sector to avoid compromising this right. As part of this obligation, the Government of Canada should ensure that the

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Velásquez Rodríguez v Honduras*, Inter-Am.Ct.H.R.(1988) at para 172 & 174: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_04\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf).

<sup>19</sup> *Supra* – *Guiding Principles on Business and Human Rights*, at p. 3.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> The Shift, *The Shift Directives: From Financialized to Human Rights-Based Housing*, at p.5: <https://make-the-shift.org/wp-content/uploads/2022/05/The-Directives-Formatted-DRAFT4.pdf>

**financialization of housing by private actors** does not undermine any of the elements of the right to adequate housing listed above.

## Protecting the Right to Security of Tenure – An example

32. As noted above, it is well established that financialization drives forced evictions, particularly among marginalized groups. As such, financialization adversely impacts the right to security of tenure. With this in mind, all levels of government in Canada need to ensure that they take legislative and regulatory steps to limit financialization or its negative impacts on security of tenure – in accordance with their international obligations.
33. States have numerous obligations when it comes to ensuring that individuals have adequate **security of tenure** and are protected from forced evictions. The CESCR “considers that instances of forced eviction are prima facie incompatible with the requirements of the [ICESCR] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”.<sup>23</sup> This includes an obligation **not to evict someone if it will lead to homelessness**.<sup>24</sup>
34. The only time an eviction should be contemplated is when it is “(a) **authorized by law**; (b) carried out in accordance with **international human rights law**; (c) **undertaken solely for the purpose of promoting the general welfare**; (d) [it is] **reasonable and proportional**; [and] (e) [it is] **regulated** so as to ensure full and fair compensation and rehabilitation...”. Furthermore, prior to authorizing an eviction, states should have procedures in place to ensure that all alternatives to eviction are explored before eviction is permitted.<sup>25</sup>
35. The obligation to **prevent unjustifiable evictions** extends to development-linked evictions and related forms of displacement in rural or urban areas<sup>26</sup> – a phenomenon frequently associated with financialization. As part of a States’ obligation to prevent development-based evictions, they must take a variety of different steps, including some of the following:

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<sup>23</sup> *Supra*, General Comment No. 4, para 18.

<sup>24</sup> UN General Assembly, *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*, 2017, at para 58: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/56/PDF/G1700956.pdf?OpenElement>.

<sup>25</sup> UN General Assembly, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Miloon Kothari, 2007, at para 21: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/106/28/PDF/G0710628.pdf?OpenElement>; See also: Committee on Economic, Social, and Cultural Rights (CESCR) *Rosario Gómez-Limón Pardo v. Spain*, 2020: <https://www.housingrightswatch.org/jurisprudence/rosario-g%C3%B3mez-lim%C3%B3n-pardo-v-spain-communication-no-522018-05032020>

<sup>26</sup> UN General Assembly, *Basic Principles and Guidelines On Development-Based Evictions and Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, 2007: [https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Guidelines_en.pdf)

36. **Ensuring adequate legal protection against eviction:** As part of a State's obligation to protect individuals from inappropriate forced evictions, they must ensure that individuals have effective legal or other appropriate remedies against development-linked forced evictions where necessary.<sup>27,28</sup> This includes ensuring proper due process and that procedural protections are in place during eviction hearings<sup>29</sup> (e.g. providing proper notice to individuals facing eviction).<sup>30</sup>
37. **Ensuring evictions are proportional:** States must ensure that evictions, when they are carried out, are proportional. This means that the consequences of an eviction must not outweigh its legitimate objectives. It also means that other options should be explored before authorizing an eviction. In general, given that evictions amount to a severe remedy, they should "only be carried out as a last resort".<sup>31</sup> With this in mind, it is useful to highlight that the Special Rapporteur on the Right to Adequate Housing has stated that:

*"...the "remedy" of eviction from homes is routinely applied in the case of unpaid debts, even though there are many other options available for courts to enforce repayment or restructuring of debts, short of invoking the State power to seize or evict individuals from their home, such as imposing repayment plans or garnishing wages. Foreclosures and evictions have severe effects on health and well-being and may result in the loss of custody of children. Those are unacceptable consequences of default on mortgage or rent payments when other options are available. They are, moreover, generally contrary to international human rights law."*

38. **Taking steps to remediate the conditions that lead to evictions:** The Special Rapporteur on the Right to Adequate Housing states that:

"States should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate. States should review the operation and regulation of the housing and tenancy markets and, when necessary, intervene to ensure that market forces do not increase the vulnerability of low-income and other marginalized groups to forced eviction. In the event of an increase in housing or land prices, States should also ensure sufficient protection

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<sup>27</sup> *Ibid* para 17.

<sup>28</sup> *Miscellaneous Cause No 127* High Court of Uganda, Civil Division (2019): <https://ulii.org/akn/ug/judgment/ughccd/2019/3/eng@2019-01-25>.

<sup>29</sup> *Supra*, *Development Based Evictions* at para 37; *Supra*, *General Comment No. 4*

<sup>30</sup> CESCR, *I.D.G v. Spain*, 2014:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1Xt9%2fAm48919J%2bLiF0hYPeY968mFV3ao2KS0doRHmXMsisV%2bTP1tpRZnlYohtZFPuPELW5S%2fUudCtjl1mPoUdJ4G1hHDdlo3LfnRGDLin ed5JgDYm4EkyglaB52Zut%2bRCW6%2begAf1Wm6T14PKhWmME%3d>

<sup>31</sup> Committee on Economic, Social, and Cultural Rights (CESCR) *Maribel Viviana López Albán v. Spain*, 2019, para 8:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1Xt9%2fAm48919J%2bLiF0hYPdgrl7KpbaV4meSbrxS%2bqAGw91WltqgSJsJ2Z7lODdxocslvIMhgvJVvhVMZ8%2bLb5lZ0sYs3HrW0ZLqrugObw8RBPW8FPvMn%2fegktwgH%2b0rgy7yByUMef5H35Vrk67E8cg%3d>

against physical or economic pressures on residents to leave or be deprived of adequate housing or land.”<sup>32</sup>

39. Moreover, in General Comment number 7, the CESCR deals with the matter of forced evictions, declaring:

*“Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, **appropriate measures are taken to ensure that no form of discrimination is involved.**”*<sup>33</sup>

40. **Ensuring community involvement in planning and development processes:** Development processes should strive to meaningfully include those affected by planning decisions in the planning process, particularly when those decisions might lead to an eviction. In doing so, planning authorities must ensure (among other things) that: a) **appropriate notice** is given to all affected persons; b) that the authorities effectively **disseminate information** about developments in advance of consultations; c) that they provide members of the public with a **reasonable time period for public comment** on development; d) that they **provide public hearings** where development plans can be challenged; e) that they **provide sufficient legal, technical, or other advice** to persons who are affected by the plans, and f) that their views are actually considered in the decision-making process.<sup>34</sup>
41. Ultimately, these are just some of Canada’s human rights obligations as they relate to **security of tenure**.
42. It is worth highlighting that in Canada, different aspects of this right fall within different jurisdictions. For instance, provinces have a large degree of authority over residential tenancy law, whereas municipalities have some authority over planning and development.
43. However, other aspects of the obligation to promote the right to security of tenure are squarely within the jurisdiction of the federal government. In this regard, the obligation to remediate the underlying ‘conditions’ that lead to evictions (see para 38) deserves special emphasis. Financialization is one such condition and, as the research papers

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<sup>32</sup> *Supra*, Development Based Evictions para 30.

<sup>33</sup> General Comment No. 7: The Right to Adequate Housing, para. 10, <https://www.refworld.org/docid/47a70799d.html>.

<sup>34</sup> *Ibid*, para 37.

demonstrate, it is a condition which the Federal Government has significant authority to regulate (e.g. through banking and finance regulation, tax treatment of financial firms, infrastructure programs, CMHC mortgage insurance, and targeted measures under the National Housing Strategy).

44. This leads to the inevitable conclusion that the Federal Government has an obligation under international law to use all appropriate means to eliminate the negative impact that financialization has on the right to security of tenure. That is, it must restrain the bad practices of private actors (associated with financialization) and encourage other levels of government to do the same.
45. At this stage, it is worth highlighting that the above discussion on security of tenure represents just one aspect of the right to adequate housing that is affected by financialization. Many others are implicated in, or degraded by a financialized housing system as well. The following sections elaborate on these issues.

## **F. The financialization of purpose-built rental housing erodes the human right to adequate housing in Canada and its progressive realization**

46. **The research conducted for the Advocate** details the negative human rights impacts of the financialization of purpose-built rental housing for tenants. This trend affects components of the right to adequate housing, including affordability, habitability, and security of tenure, accessibility, location, and availability of services, and cultural adequacy.
47. **Affordability:** Affordability is threatened when established guideline increases from provincial/territorial housing authorities are circumvented by landlords, through imposing above-guideline increases (AGIs), higher rents and additional fees on their tenants. This may lead to evictions, and once vacated, rents may be significantly increased to reflect current market rates. Thus, affordable units may be lost forever.
  - **August's report** on financialization reveals that it continues to have a negative and measurable impact on the supply of multifamily affordable purpose-built rental stock across the country, particularly for low-income households and other vulnerable groups.
  - Analyses of financial firms' strategies demonstrate that they contribute to the affordability crisis in the Canadian housing market often through the acquisition of rental buildings that are considered to be "**underperforming**" or "**undervalued**" – that is, buildings in which rents are below local average market rates.

- Firms engaged in these acquisitions aim to **increase revenues** from these buildings by reducing expenses, increasing rents and fees for sitting tenants, and / or vacating units in order to rent to higher-paying tenants.
48. **Habitability:** ACORN's report for the Advocate found that financialized landlords consistently rated the worst on building and unit maintenance. Moreover, often they withdrew services; made disruptive renovations to common spaces; and let units fall into disrepair, all in an effort to push existing tenants out.
- ACORN's survey demonstrates that, while there is a consistent problem across the country with landlords not doing repairs, this issue is worst in financialized buildings. "67% of all respondents and those with large-private landlords said that their unit needs some or urgent repair and maintenance, the percentage of respondents goes up to 80% in case of financialized landlords."<sup>35</sup>
  - ACORN's report points out that when buildings are repaired or upgraded, the increased value of the property will, ultimately, be to the advantage of the owner. However, tenants may be forced to pay for this through rent increases, though such renovations might lead to cost savings for landlords.
49. **Security of tenure:** Lewis's research details the link between high rates of evictions and financialized ownership in Toronto neighbourhoods with high concentration of the city's Black population. Thus, undermining the security of tenure among the city's racialized communities.
- **The research on financialization** shows that when financial firms acquire rental buildings, they do so with the aim of significantly increasing average rents, often by evicting current lower-income tenants and bringing in those who will pay more.
  - **August's** research demonstrates that financialization of purpose-built rental is especially prevalent in jurisdictions that lack vacancy control – that is, where landlords are permitted to raise the rent by an unlimited amount between tenants.
  - Vacancy decontrol creates an incentive for landlords to vacate units. They may do so either through formal eviction, or by creating conditions that "push" tenants out, such as disruptive renovations, disrepair, and excessive rent increases
  - The reports demonstrate a link between financialization and "**renovictions**" – that is, when landlords use the need for renovations as a pretext to evict sitting tenants.

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<sup>35</sup> Jamb, p. 6 –Annex A.

50. **Accessibility:** Many of the repair and maintenance issues reported in the ACORN survey, such as broken elevators, have a disproportionate negative impact for households whose members have disabilities.
- In addition, when households are evicted or can no longer afford their homes in financialized buildings, they are often forced to move to different areas in order to find housing they can afford, losing access to nearby services and supports in the process. This may have disproportionate impacts for households with accessibility needs, such as people with disabilities, seniors, families with young children, and others who rely on community services.
51. **Availability of services:** In ACORN's survey, tenants in properties owned by financial firms reported lower satisfaction with cleaning during the pandemic, and longer waiting periods for maintenance requests, including those linked to essential services such as plumbing, heating, and lighting.
52. **Cultural adequacy:** Housing is not adequate if it does not respect and take into account the expression of cultural identity. The structural prioritization of investor profits means that other objectives—including social, environmental, cultural, or other goals—are deprioritized by financial firms.
- **Cultural appropriateness** is threatened when corporations acquire land and real estate, in neighbourhoods/regions historically occupied by racialized and marginalized communities.
  - As pointed out by Lewis in his report, even if affordable units were replaced by NHS capital programs, this would not replace networks of informal and formal support, workplaces and small businesses, family and neighbourhood ties, histories and place attachments that form communities.
  - A 2017 report on financialization issued by the former UN Special Rapporteur for Housing explains that “**Low-income, informal and Indigenous communities** have experienced, first-hand, the power of financial corporations to appropriate land and real estate and to generate vast disparities in wealth by treating housing and land as commodities.”<sup>36</sup>
53. **Location:** The Lewis report shows that financialization is also implicated in the gentrification and dispersal of long-standing Black and other racialized and immigrant communities, resulting in the disruption and loss of networks of informal and formal

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<sup>36</sup> Leilani Farha, “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, 2017, para. 44: <https://digitallibrary.un.org/record/861179>.

supports, language- and culture-specific commercial and social resources, employment, etc.

- The overwhelming evidence contained in the reports on financialization shows that financialization is contributing to displacement, disruption, and unravelling of vulnerable communities, such as the Herongate community in Ottawa. This threatens the location element of the right to housing, as well as access to infrastructure, accessibility, and cultural appropriateness.
- Once displaced from these units, tenants must often move to other, more affordable neighbourhoods – thereby losing access to networks of formal and informal supports. In the case of the Black Community of Eglinton West’s- “Little Jamaica”- community this is having devastating consequences, documented so well in Dr. Lewis’s report.

54. **Social & economic rights are indivisible from other rights**, including fundamental rights of dignity and security of the person, equality rights, and Indigenous rights. Financialization has harmful impacts on fundamental human rights: Lewis & August cite U.S. research showing impacts of eviction & displacement on tenants’ mental and physical health, and impacts on children’s educational attainment. There is a high risk that displaced households experience increased food insecurity, difficulty meeting other basic needs such as childcare, and may endure periods of hidden and visible homelessness while searching for other housing.
55. The ACORN survey and testimonies show tenants report disrespectful treatment, and **fear of making complaints**. According to their findings “when a comparison is made in relation to the type of the landlord, tenants living more than five years in financialized housing are likely to face worse issues,”<sup>37</sup> with respect to feeling intimidated by their landlord.
56. **Financialized landlords** may also attempt to interfere with tenant organizing in response to evictions, rent increases, withdrawal of services, and deteriorating conditions, such as imposing rules prohibiting tenants from gathering in common areas, or threatening legal action in response to tenants’ public communications.<sup>38</sup>
57. **Equality rights impacts:** Financialization has a disproportionate impact for disadvantaged groups. In seeking “undervalued” assets, firms target buildings and neighbourhoods with a high share of low- and moderate-income tenants, who are disproportionately members of National Housing Strategy priority groups, including Indigenous people, members of racialized groups, people with disabilities, lone parent

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<sup>37</sup> Jhamb, at p. 26-Annex A.

<sup>38</sup> *Supra*, Financialized gentrification, demoviction, and landlord tactics to demobilize tenant organizing.

households, recent immigrants and refugees, seniors, young adults, and survivors of violence, and particularly women and gender-diverse people within these groups.

58. **Submissions received by the Advocate** confirm and expand upon the research findings regarding the negative impact on the human right to adequate housing.
59. The Advocate has received **seven submissions from organizations** that speak directly to the impacts of the financialization of purpose-built rental housing in their communities. These submissions examine the negative impacts of financialization on security of tenure, affordability, and other components of the right to housing, as well as Indigenous land rights. They also point to the ways in which financialization is embedded in Canada's housing system and the consequences of a financialized system.
60. The **National Indigenous Feminist Housing Working Group** submitted a detailed multi-part claim regarding violations to the right to housing for Indigenous women, girls, Two-Spirit, and gender-diverse people. This submission identifies how financialization is inextricably linked and enabled by the colonial dispossession of land to which Indigenous people have inherent rights.
61. The **Women's National Housing and Homelessness Network (WNHHN)** submitted a detailed multi-part claim regarding violations to the right to housing for women and gender-diverse people. Their submission outlines the gendered impacts of financialization on the equal enjoyment of the right to adequate housing.
62. **Community Legal Assistance Society** made a submission describing the impact of financialization of Single Room Accommodations in the Downtown Eastside of Vancouver, resulting in the violation of low-income tenants' right to security of tenure and subsequent eviction into homelessness.
63. **A submission by a Toronto tenants' association** represents tenants in a number of rental buildings owned by a large REIT. Their submission outlines many individual impacts of financialization (security of tenure, habitability, accessibility, affordability), as well as broader structural and policy issues resulting from financialization.
64. **Avant Law, Professional Corporation** is representing tenants impacted by mass eviction in the Herongate neighbourhood of Ottawa. Their submission provides evidence to show that financialized landlords target buying in neighbourhoods with high concentrations of ethnoracial minorities.
65. **Somerset West Community Health Centre** provided a comprehensive submission on the gentrification and transformation of the Centretown neighbourhood in Ottawa. Their submission demonstrates how corporate real estate investment in a traditionally working class neighbourhood is actively raising rents, permanently removing deeply

affordable housing (mostly rooming houses), displacing low-income people and creating conditions for further gentrification.

66. **Tenants of 71, 75 and 79 Thorncliffe Park Drive**, whose buildings are owned by PSP Investments - a federal crown corporation responsible for investment of public sector pensions - sent a communication to the Advocate regarding poor treatment of tenants, intimidation, and above-guideline rent increases.
67. **The impacts of financialization on the right to adequate housing** set out by these submissions are as follows:
68. **Dispossession of land and violation of Indigenous land rights:** As outlined in one submission, Indigenous rights and relationship to land, which are rooted in mutuality and reciprocity, are disrupted by "...colonial conceptualizations of land, ownership and housing as commodities that are bought, sold and are subject to financial speculation". Financialization is thus enabled by the dispossession of Indigenous peoples from lands to which they have inherent rights, and is embedded in Canada's housing system as a logical extension of colonial notions of land and property rights.
69. **Erosion of tenancy rights:** Submissions from tenant groups suggest that financialized landlords take advantage of dysfunctional and inaccessible landlord-tenant boards and use them to their advantage when seeking to evict tenants.
70. **Displacement from community and right to location:** Several submissions made by organizations describe how the financialized housing system and corporate real estate investment has increased displacement of low-income, marginalized, Black and Indigenous renters and contributed to the gentrification of traditionally affordable neighbourhoods, forcing people out of their communities of support.
71. **Targeting of low-income renters leading to homelessness:** Submissions from two cities on either side of the country describe how corporate investors are buying up the most affordable rental stock – Single Room Occupancy hotels and rooming houses – which is often considered the last step in the housing continuum before homelessness. In these cases, low-income renters were subject to mass evictions, many of whom ended up homeless. Landlords were reported to subsequently increase rents well above the income assistance shelter rate, or simply leave buildings vacant while awaiting the required permits for redevelopment.

## **G. Financialization of housing has the biggest impact on groups most likely to experience disadvantage and intersecting forms of discrimination**

72. Canada's National Housing Strategy must, according to section 5(2) of the *National Housing Strategy Act*, focus on improving housing outcomes for persons in greatest need. Similarly, the Advocate is mandated to assess the impact of Canada's housing policy on Indigenous people and persons who are **members of disadvantaged groups**. Focusing on financialization is consistent with these statutory duties.
73. The submission from WNHHN explains that **gender discrimination is embedded in the housing system**. Due to factors related to the feminization of poverty and overrepresentation in core housing need, women, Two-Spirit, and gender-diverse persons' rights to adequate housing are uniquely impacted and violated. Financialization exacerbates their existing housing precarity and outcomes as threats to security of tenure and increasing housing prices put a strain on pay inequity and disproportionate caretaking responsibilities.
74. The research and submissions demonstrate that the financialization of purpose-built rental housing has a **disproportionate impact on disadvantaged groups** and people experiencing inadequate housing and homelessness. Financialization disproportionately impacts persons experiencing inadequate housing or homelessness, and disadvantaged groups – such as people with disabilities, Black and racialized people, recent immigrants and refugees, lone parent families, low-income tenants, survivors of violence, seniors, young people, members of 2SLGBTQI+ communities, veterans – and in particular, on women and gender-diverse people within these groups.
75. The **discriminatory impacts of the financialization of rental housing** are illustrated by the case of the Herongate community in Ottawa, still pending a decision at the Human Rights Tribunal of Ontario. In this legal challenge, the plaintiffs allege that their right to housing, among others, was infringed when Timbercreek Asset Management (now Hazelview) purchased a purpose-built rental complex of approximately 1200 low-rent townhome units. Timbercreek, in turn, evicted and uprooted the vast majority of tenants in a neighbourhood that was home to predominantly low-income, racialized, and immigrant families.
76. In their brief, the plaintiffs argue that “Timbercreek’s redevelopment plan for Heron Gate Village violates the right to housing in international law. The reengineering of the social and ethnic composition of Herongate from a low-income, migrant community to one that is primarily white and affluent cannot be justified by an overriding public interest. Further, this violation is compounded by Timbercreek’s failure to take steps to minimize the impact of displacement.”<sup>39</sup>
77. The submission pertaining to the Herongate mass eviction in Ottawa contains several studies demonstrating that financialized landlords target buying in neighbourhoods with

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<sup>39</sup> See Human Rights Case Against Timbercreek and the City of Ottawa: <https://herongatetenants.ca/human-rights/>.

high concentrations of ethno-racial minorities, as these neighbourhoods are correlated with lower rents and thus present the opportunity for greater profit. The authors show that racial discrimination in housing is systemic and structural in nature, and Herongate is a prime example.

78. Canada has formally recognized and legislated<sup>40</sup> the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**<sup>41</sup>), which codifies the right to adequate housing and affirms that Indigenous Peoples have the right to be actively involved in developing and determining housing programs and policies that affect them. In addition, Indigenous peoples are recognized as a “priority group” under the NHS.
79. While evidence of the intersection between **Indigenous peoples** and financialization remains scarce, there are documented examples<sup>42</sup> of communities where the harmful impacts of the financialization of housing is disproportionately undermining the right to housing of Indigenous peoples in Canada. For example, since 2017, one firm (**Northview REIT**) owned 74% of all private rental housing in Yellowknife, Northwest Territories, and 85% in Iqaluit, the capital of Nunavut, giving it effective monopoly control on those housing markets.
80. The Advocate urges the Review Panel to engage with Indigenous organizations, rights-holders, and experts in order to ensure the Indigenous dimensions of this issue are thoroughly addressed in the hearing and recommendations.

## **H. Many factors exacerbate the financialization of purpose-built rental housing and its negative impacts**

81. The Advocate **defines a systemic housing issue** as an issue that 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. The studies that were done for the Advocate consistently conclude that the financialization of purpose built rental housing inhibits the enjoyment of the right to adequate housing, and negatively affects the whole of the housing system, with a disproportionate, negative impact on disadvantaged groups and people experiencing inadequate housing and homelessness.

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<sup>40</sup> United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14: <https://canlii.ca/t/554bd>

<sup>41</sup> *The United Nations Declaration on the Rights of Indigenous Peoples*: <https://www.refworld.org/docid/5289e4fc4.html>

<sup>42</sup> John Last, “How One Company Came to Dominate Rental Housing in the North,” 2021: <https://newsinteractives.cbc.ca/longform/the-landlords-game>.

82. Beyond its impacts for individual households, financialization of purpose-built rental housing also contributes to growing **socio-spatial inequality and polarization** and drives unaffordability and insecure tenure in the housing system as a whole.
83. Firms often target low-cost buildings in neighbourhoods undergoing **gentrification**. This contributes to the displacement of lower-income tenants, and the decline of diversity and inclusion in gentrifying neighbourhoods. This trend is implicated in the growing shift in Canada's largest cities from mixed-income neighbourhoods to increasing spatial concentration of wealth in some areas and poverty in others.<sup>43</sup>
84. Affordable units are lost forever when they are "repositioned" in the market and their rents are increased. **National Housing Strategy (NHS) programs** will not generate sufficient affordable units to replace those that are lost to financialization.
85. Even if affordable units were replaced by the **National Housing Strategy's capital programs**, this would not replace networks of informal and formal support, workplaces and small businesses, family and neighbourhood ties, histories and place attachments that form communities such as the historically Black community described by Lewis.
86. This is contrary to progressive realization, and in fact contributes to **retrogression** – making Canada's housing system less and less compliant with the human rights obligations of the NHSA.
87. In this section, we analyze the factors (economic, social, regulatory, etc.) which have contributed significantly to this systemic housing issue and continue to feed the housing crisis in Canada.
88. Key factors contributing to financialization, and its negative impacts can be divided into three broad and overlapping categories: **1 – Government actions and inactions; 2 – The role of private sector entities; 3 – Gaps in current measures to protect the right to adequate housing.**

## 1. Government actions & inactions

89. August outlines government actions that have contributed to the increase in financialization. These fall into three broad categories: (1) **welfare state retrenchment**, especially the cancellation of social housing; (2) **deregulation of rent control and tenant protections**; and (3) **policies that enable financialization** by creating new ways for investors to access gains from real estate.

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<sup>43</sup> "The Timing, Patterning, and Forms of Gentrification and Neighbourhood Change in Montreal, Toronto, and Vancouver, 1961 to 2001" (2008): <http://neighbourhoodchange.ca/publications/the-timing-patterning-forms-of-gentrification-neighbourhood-change%e2%80%a8in-montreal-toronto-vancouver-1961-to-2001%e2%80%a8/>.

90. **Welfare state retrenchment:** The research traces the beginning of the financialization of housing to the cancellation of the federal social housing program in 1993. This resulted in the downloading these responsibilities to provinces (and in Ontario, to municipalities) without offering any additional revenue tools to maintain existing levels of service or to construct new affordable housing. This withdrawal of federal and provincial investments in social housing led to a privatization of housing stock in certain provinces and the transfer of social housing properties and management to financial firms. With a small and diminishing share of low-cost social housing in Canada's housing system, a large majority low- and moderate-income households are forced to obtain housing in the private market.
91. **Deregulation of rent control and tenant protections:** The withdrawal of vacancy control regulations at the provincial level has helped to facilitate the financialization of rental housing stock. By permitting unlimited rent increases when a unit is vacated, these changes incentivized landlords to evict tenants or push them out. August's research demonstrates that financialization is most prevalent in provinces with vacancy de-control and weak rent control regimes.
92. **Policies that enable financialization:** The research points to a number of federal policies that have catalyzed financialization, such as the deregulation of finance, legislative reform of pension funds, the introduction of REITs, and the creation of the Canada Mortgage Bond.
93. In Canada, federal policies to **deregulate and liberalize finance** have supported the rising power of finance capital. Like other advanced economies, policies to withdraw from redistributive social housing programs, to cut social housing production, and to deregulate restrictions in order to treat real estate as a commodity were enacted in step with programs to deregulate housing finance. August explains that the consequence of loosening restrictions on the financial sector have resulted in the state-led creation of new financial tools for real estate investment and neoliberal policies in the housing sector which make it highly lucrative to extract value from housing.
94. **The legislative reform of pension funds** also opened the door to increased real estate investment in the 1990s. These reforms removed restrictions on the type and location of assets that pension plans could hold and on the amount of risk they could take on, and they added statutory requirements to maximize shareholder returns. According to August, the 1997 *Canadian Pension Plan Investment Board Act* <sup>44</sup> enabled the **Canadian Pension Plan Investment Board** (CPPIB) to remove the limitation restricting their investments to state infrastructure projects and allowed pension funds to invest in financial markets and instruments. The consequences are illustrated in the submission from tenants of 71, 75 and 79 Thorncliffe Park Drive. In

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<sup>44</sup> Legislative Services Branch, "Consolidated Federal Laws of Canada, Canada Pension Plan Investment Board Act" (2017): <https://laws-lois.justice.gc.ca/eng/acts/c-8.3/page-1.html>.

2005, further reforms removed restrictions on foreign investments. The result of these and other reforms has been a massive expansion of pension fund capital into 'alternative investments,' including private equity, infrastructure, and real estate.

95. Another example of state-led financialization is the **introduction of Real Estate Investment Trusts (REITs)**, which are major financialized players in the affordable rental market. REITS were enabled in Canadian legislation in 1993 to provide investors with access to real estate income with preferential **low rates of taxation**. Such favourable measures have been questioned by financialization experts and housing rights advocates. The Parliamentary Budget Officer, for instance, has analyzed the significant loss of federal tax revenue brought about by this tax break. According to PBO estimates, the Federal government would collect an additional \$285 million in tax revenues, if it imposed the statutory corporate income tax rate of 38%.<sup>45</sup>
96. Finally, the Canadian government's **creation and regulation of Canada Mortgage Bond (CMB)** in 2001 is a driver of financialization. Under this program, CMHC purchases mortgages from the banks, allowing them to free up capital to grant more mortgages and, as a consequence, the CMB program fuels the housing bubble.

## 2. The role of private sector entities

97. **Financialization of purpose-built rental housing** has expanded dramatically in Canada since the late 1990s, with an estimated 340,000 units in multi-residential rental buildings now owned by large financial firms, and an estimated 20-30 percent of Canada's purpose-built rental housing now owned by institutional investors.
98. As described in detail in Section G, analyses of financial firms' strategies demonstrate that they often target acquisition of rental buildings that are considered to be "underperforming" or "undervalued" – that is, buildings in which rents are below local averages. Firms aim to increase revenues from these buildings by reducing expenses, increasing rents and fees for sitting tenants, and / or vacating units in order to rent to higher-paying tenants.
99. Research by Crosby shows that financialized landlords may also attempt to interfere with tenant organizing in response to evictions, rent increases, withdrawal of services, and deteriorating conditions, such as through imposing rules prohibiting tenants from gathering in common areas, or threatening legal action in response to tenants' public communications.

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<sup>45</sup> Eskandar Elmarzougui, "Cost of Removing the Tax Exemptions for Real Estate Investment Trusts," *Office of the Parliamentary Budget Officer* (2023): <https://www.pbo-dpb.ca/en/publications/RP-2324-001-M--cost-removing-tax-exemptions-real-estate-investment-trusts--estimation-couts-elimination-exemptions-fiscales-accordees-fiducies-placement-immobilier>.

100. As the Shift's blueprint for governments fighting financialization makes clear, the influence of corporate lobbies on housing policy, may also contravene human rights. The progressive realization of the right to housing in Canada, requires that governments create a level playing field so that the disparities in influence and input of financialized firms do not outweigh the voices of rights holders, nor prevent them from having an equal say in policy decisions.

### 3. Gaps in current measures to protect the right to adequate housing

101. The harmful impacts of financialization are further exacerbated by gaps in the measures that are in place at municipal, provincial, and federal levels.
102. For example, at the municipal level, the failure to enforce **municipal licensing and standards** affects the decline in conditions associated with financialization. Meanwhile, **planning and zoning** decisions do not adequately consider the potential impacts of financialized redevelopment on land values, rents, and gentrification in the surrounding area and the resulting risk of displacement of low-income households.
103. **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, renovictions, and demovictions**. Evidence is growing that provisions intended to allow for landlords to recoup extraordinary costs, reclaim a rental unit for use by a family member, or make necessary major repairs, have been systematically exploited by financialized landlords to increase revenues.
104. While landlord-tenant law is normally in provincial-territorial jurisdiction, federal responsibility for addressing these issues is acknowledged in the 2021 **mandate letters**<sup>46</sup> for the Ministers of Housing and Finance respectively, which direct the Ministers to work together in support of a Fairness in Real Estate Action Plan to deter renovictions and address housing affordability in Canada.
105. **Infrastructure investment by federal and provincial governments** has historically contributed to financialization by elevating property values and inflating rents. August calculates that government infrastructure spending (on transit and other infrastructure) can generate housing-price increases, catalyze gentrification, and lead to the displacement of long-standing residents. Lewis documents the financialization of rental housing that has resulted from state investments in transit infrastructure in Toronto. As noted by the United Nations Special Rapporteur on the Right to Adequate Housing in

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<sup>46</sup> Deputy Prime Minister and Minister of Finance Mandate Letter (2021): <https://pm.gc.ca/en/mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letter>.

a 2017 report, this is a consequence of a lack of measures to require recipients of infrastructure funding (usually municipalities) to protect existing affordable housing.<sup>47</sup>

106. **Federal mortgage insurance provided by Canada Mortgage and Housing Corporation (CMHC)** also lacks sufficient conditions of affordability and respect for tenants' right to housing.
107. The stated aim of Canada's **National Housing Strategy** is to protect and expand affordable housing, and the NHSA requires the strategy to advance the right to housing in Canada and prioritize those in deepest need. Despite having this \$84B strategy in place, research demonstrates that the largest capital programs are not producing housing that is affordable to households in core housing need & those experiencing homelessness. Instead, the largest program – the **Rental Construction Financing Initiative** – contributes to financialization & gentrification by financing rental buildings whose rents often exceed the local average rent.
108. The **Housing Accelerator Fund (HAF)**, a \$4 billion federal program announced earlier this year, risks adding to the growing financialization of housing without stronger conditions to protect the right to adequate housing<sup>48</sup>.
109. **Submissions received by the Advocate** validate the analysis above. They describe a number of systemic factors that interconnect to exacerbate the harmful impacts of financialization, such as: dysfunctional landlord-tenant boards, policy changes like above-guideline rent increases, lack of regulatory enforcement mechanisms, and weak renter protections.

## I. Solutions must be grounded in a human rights-based approach to housing

110. Article 11 of the *ICESCR* requires Canada to act as quickly and as effectively as possible to promote, protect, and fulfil the human right to adequate housing, especially for those most in need. In the language of international human rights law, this is called the government's obligation to **progressively realize** the right to adequate housing.
111. **The progressive realization of the right to housing** means that the Government of Canada, and governments at all levels, must act as quickly and as effectively as possible to promote, protect and fulfill the human right to adequate housing, especially for those most in need. Put bluntly, the Government has a legal obligation to take

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<sup>47</sup> *Supra*, 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 (2017).

<sup>48</sup> For more on this, see the Federal Housing Advocate's Submission to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities on the Housing Accelerator Fund (2022): <https://www.ourcommons.ca/Content/Committee/441/HUMA/Brief/BR11904280/br-external/CanadianHumanRightsCommission-e.pdf>.

effective measures and create the conditions to fulfill the human right to adequate housing for everyone. Moreover, the Advocate has a mandated role in overseeing the application of those measures.

112. These obligations compel governments to do a number of things:

- **Take immediate steps to realize this right:** While the full realization of rights may be achieved progressively, steps toward that goal must be taken immediately.<sup>49</sup>
- **Use the maximum available resources to realize this right:** Article 2 of the *ICESCR* obliges States to use the maximum available resources to achieve the full realization of the rights laid out in the Convention. In this context, the Committee on Social, Economic, and Cultural Rights has questioned in the past whether Canada has dedicated sufficient resources to the realization of *ICESCR* rights, including the right to adequate housing.<sup>50</sup>
- **Use all appropriate means:** Article 2 of the *ICESCR* also requires States Parties to use “all appropriate means, including particularly the adoption of legislative measures” to progressively realize the right to adequate housing.<sup>51</sup> This includes adopting legislation and regulation to “ensure that [the] investment and actions of private and non-governmental actors contribute to and do not undermine [the] progressive realization of the right to adequate housing”.<sup>52</sup>
- **Ensure that actions prioritize vulnerable groups and address discrimination:** Article 2 of the *ICESCR* provides that the right to adequate housing must be provided on a non-discriminatory basis. Furthermore, international human rights law also suggests that actions to promote this right should prioritize its fulfilment among those who are most in need.<sup>53</sup>
- **Ensure access to justice and accountability for the right to adequate housing:** This includes making administrative and judicial mechanisms available to individuals and groups regarding disputes over the human right to adequate housing.

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<sup>49</sup> *CESCR General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2, Para. 1):

<https://www.ohchr.org/en/resources/educators/human-rights-education-training/general-comment-no-3-nature-states-parties-obligations-article-2-para-1-1990>

<sup>50</sup> Committee on Economic, Social and Cultural Rights (CESCR), *Concluding observations on the sixth periodic report of Canada* (2016):

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW4yzVsFh%2Fjl1u%2Ft0KVExfQT6EfAENdSjJTaz3raPv3QWT3Y59q3zadXvBYMpLNW5%2FsveoBdxLZoVN%2Fzz31c7YEggRm0DpoVivqHo2yN5ilam>

<sup>51</sup> *Supra* - *The Nature of States Parties' Obligations* (Art. 2, Para. 1) at para 3.

<sup>52</sup> Michèle Biss, Bruce Porter, Sahar Raza, & David DesBaillets, *Progressive Realization of the Right to Adequate Housing: A Literature Review*, p. 74 (2022): [https://housingrights.ca/wp-content/uploads/NHC-Progressive-Realization-Paper\\_EN.pdf](https://housingrights.ca/wp-content/uploads/NHC-Progressive-Realization-Paper_EN.pdf)

<sup>53</sup> *Ibid.*

- **Meaningfully engage** with rights holders, when establishing policies that affect them.

113. Any actions that Canada takes to address shortfalls in the right to adequate housing must be grounded in these basic principles.

## J. Advocate Proposals

114. It is the Advocate's position that the Government of Canada can and should take further actions in conjunctions with provincial and territorial governments to fulfill its **obligations under the NHSA** to protect, promote, and fulfill the right to adequate housing and to advance its progressive realization in response to the financialization of purpose-built rental housing.
115. The **Advocate will present proposals for recommendations to the Review Panel in accordance with section 16.4** of the *NHSA*. The Advocate will propose to the Review Panel recommendations for the Minister responsible for Housing to take measures within the jurisdiction of Parliament to address the factors outlined in Section I and remediate the negative impacts of the financialization of purpose-built rental housing, as well as proposed recommendations for other orders of government. The Advocate's Proposals may include legislative and regulatory measures, policies, and programs, including but not limited to programs of the National Housing Strategy.
116. The Advocate will propose to the Review Panel to recommend that the Government of Canada take **concrete and deliberate measures** by:
- I. using all **appropriate means**, including laws, regulations, and policies;
  - II. using **all available resources**;
  - III. **prioritizing** those in greatest need;
  - IV. ensuring **non-discrimination**; and
  - V. ensuring **non-retrogression**.
117. The Government of Canada is well positioned to lead a **coordinated efforts between different levels of government**, or introduce laws within the jurisdiction of Parliament that will complement provincial, territorial and local efforts, both within the public and private housing sectors.
118. The Advocate looks forward to hearing the experiences and perspectives of rights-holders – including Indigenous rights-holders, tenants, disadvantaged groups, and people experiencing inadequate housing and homelessness – with regards to financialization of purpose-built rental housing. The Advocate's Proposals will be informed by their understanding of the content of the human right to adequate housing

in relation to this issue, and the solutions they wish to see governments and other actors implement in order to address the negative impacts associated with the issue.

## **Annex A: Research Reports Commissioned by the Advocate**

- August, M., The Financialization of Housing in Canada - A Summary Report for the Office of the Federal Housing Advocate(2022a) EN
- August, M., The Financialization of Multi-Family Rental Housing in Canada (2022b) EN
- Lewis, N., The Uneven Racialized Impacts of Financialization (2022) EN
- Gabarre de Sus, M., Housing Financialization: The International Landscape (2022) EN
- Brown, J. The Financialization of Seniors Housing in Canada (2022) EN
- Jhamb, B.. & Duncan, J., The Impact of Financialization on Tenants: Findings from A National Survey of ACORN Members - A Report for the Office of the Federal Housing Advocate (2022) EN