



1. The Federal Housing Advocate (FHA) is an independent, non-partisan watchdog, empowered to drive meaningful action to address inadequate housing and homelessness in Canada. While the OFHA receives administrative support from the Canadian Human Rights Commission (CHRC), it is not a formal unit of the CHRC. The mandate of the FHA, as defined by the National Housing Strategy Act (NHSA<sup>1</sup>), a federal statute passed in 2019, is to act as an accountability, reporting, and monitoring mechanism for the protection, respect, and fulfillment of the right to adequate housing in Canada. Marie-Josée Houle currently holds the position and mandate of FHA, having been appointed in February of 2022 by the Governor in Council of Canada. In her capacity as the Advocate, Ms. Houle is responsible for making recommendations to improve Canada’s housing laws, policies, and programs. The Advocate ensures that these comply with international human rights norms related to the right to adequate housing. The NHSA specifically requires that the Act be interpreted in light of Canada’s obligation to progressively realize the right to adequate housing under the International Covenant of Economic, Social and Cultural Rights<sup>2</sup>. Among their other responsibilities, the Advocate is required to monitor progress in meeting goals and timelines in the National Housing Strategy (s 13(b) NHSA). Further, The NHSA also mandates the Advocate to conduct research and studies on systemic housing issues; to consult with persons experiencing inadequate housing and homelessness and civil society organizations; and to receive submissions with respect to systemic housing issues. Finally, the NHSA declares that the Government of Canada “(a) recognize that the right to adequate housing is a fundamental human right affirmed in international law; (b) recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities; (c) support improved housing outcomes for the people of Canada; and (d) further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.”<sup>3</sup>
1. In the spirit of advancing implementation of the international human rights norms related to the right to adequate housing, the Advocate submits this report to the Human Rights Council on the occasion of its review of Canada during the 4<sup>th</sup> cycle of the Universal Periodic Review (UPR).
2. While this is the Advocate’s first submission to the UPR, she recognizes that there is a long history of United Nations treaty organizations and their published reports impressing upon the Government of Canada the need to engage seriously with the

<sup>1</sup> [National Housing Strategy Act](#), Act, SC 2019, c 29, s 313.

<sup>2</sup> Also see section 4 of the NHSA which declares that the housing policy of the Government of Canada is to “further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.” *Ibid.*

<sup>3</sup> See Article 4 of the NHSA (Housing Policy Declaration) *Ibid.*

challenges of the right to adequate housing and homelessness.<sup>4</sup> These reports demonstrated how high rates of poverty, inadequate housing, and a failure to allocate the maximum available resources to address the issue, has led to human rights violations in Canada, particularly with respect to funding programs aimed at alleviating the housing crisis for Indigenous Peoples.

3. In the 2018 UPR, Canada accepted a number of recommendations focused on social and economic rights, housing, and homelessness<sup>5</sup>. In doing so, Canada pointed to the new National Housing Strategy and the proposed National Housing Strategy Act as key measures in response to these recommendations.
4. The Advocate commends the progress made by the Government of Canada with respect to the concerns raised in the 2018 UPR regarding the need for a national housing strategy and a legislative framework for the right to adequate housing.
5. In 2018, the Government of Canada rolled out the major programs of the National Housing Strategy (NHS).
6. In 2019, the Government of Canada legislated the NHSA and created a unique legal architecture for addressing infringements of the right to adequate housing. The Act establishes accountability tools to help support and monitor the right to housing in Canada:
  - A National Housing Strategy, which supports the progressive realization of the human right to adequate housing;
  - A National Housing Council (NHC), to oversee the implementation of the strategy (of which the Federal Housing Advocate is an ex officio member);
  - A Federal Housing Advocate, to promote and protect the right to housing in Canada;
  - Review panels, to review systemic housing issues and make recommendations to the Minister responsible for housing.
7. At the same time, the Advocate remains concerned with respect to failing to implement some of the recommendations from other State parties (Croatia, Cuba, Denmark, etc.) that pertain to the right to adequate housing in Canada.

### **Addressing these concerns through the implementation of the NHS/NHSA**

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<sup>4</sup> Examples include the reviews of Canada by the Committee on Economic, Social and Cultural Rights in 1998, 2006 and 2016, as well as the 2007 report on Canada by the Special Rapporteur on the Right to Adequate Housing.

<sup>5</sup> The Canadian Government accepted the following recommendations from the previous UPR: 149, 159, 160, 165, 166, 163, and accepted in part recommendations 162 and 164. Canada & UN Human Rights Council Working Group on the Universal Periodic Review (30th sess : 2018 : Geneva), "Report of the Working Group on the Universal Periodic Review :: Canada : addendum" (2018), online: <https://digitallibrary.un.org/record/1652096>.

8. Despite the launch of the NHS and the enactment of the NHTA, the Advocate is very concerned with the slow pace of progress and has heard repeated concerns, echoed by civil society<sup>6</sup> and rights holders<sup>7</sup>, regarding the failure to properly implement the right to adequate housing. Indeed, this seeming lack of commitment to implementation in the context of the crises of the Covid-19 pandemic and inflation, is even more troubling given a worsening of the housing crisis in Canada since the last UPR. Moreover, there continues to be a homelessness emergency, exacerbated by an alarming increase in the toxic drug supply.
9. With the coming into force of the NHTA, people could finally claim the right to adequate housing in Canadian law, at least at the federal level. This was a very qualified right, however, and, though the right is now legislated, it remains unclear to the Advocate and others, how this right will translate into effective remedies.
10. Aside from a lack of remedies for rights holders, there is an apparent reluctance by the federal executive branch, notably the Minister, to respond effectively to the systemic issues raised by the Advocate and NHC. This was especially true of the Advocate's annual report<sup>8</sup>, submitted for the Minister's consideration, in 2022. The Advocate believes that it is of the utmost of importance for the Government of Canada to respond to the substance of the FHA's recommendations.
11. Moreover, there has been an evident failure by the current Federal government to adopt the language of human rights in relation to housing and homelessness, in all of its official communications. Finally, the Federal Government in Ottawa has demonstrated a reticence to hold other levels of government and private actors accountable for infringements of the right to adequate housing.
12. Though the NHS committed the government to analyze systemic housing issues through a gender-based analysis and human rights lens<sup>9</sup>, the Advocate notes the Federal government has failed to incorporate these into the design and planning process for housing schemes. Instead, federal entities have produced programs that consistently fall short of meeting the needs of the most disadvantaged groups

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<sup>6</sup> See for example, the Factsheets on the National Housing Strategy produced by the National Right to Housing Network and researcher Steve Pomeroy: <https://www.homelesshub.ca/resource/national-housing-strategy-factsheets>; and "What happened to the National Housing Strategy?", (1 March 2022), online: *Policy Note* <<https://www.policynote.ca/national-housing-strategy/>>.

<sup>7</sup> designgoblin.com, "WNHHN - Human Rights Claims", online: <<https://womenshomelessness.ca/humanrightsclaims/>>.

<sup>8</sup> "Federal Housing Advocate 2021-2022", online: <<https://housing.chrcreport.ca/>>.

<sup>9</sup> On the subject of gender-based analysis (GBA+), the policy of the Federal Government is "The National Housing Strategy is grounded in, and supportive of, the Government's commitment to GBA+ to ensure that programs will not negatively impact Canadians on the basis of gender and other identity factors."

"Canada's First Ever National Housing Strategy", online: *A Place to Call Home* <<https://www.placetocallhome.ca>> at 24.

in Canada.<sup>10</sup> Similarly, the Advocate is aware that civil society organizations, parliamentary committees, and rights holders in Canada, have all decried the fact that homelessness, poverty, and inadequate housing have disproportionate impacts on Indigenous Peoples, people with disabilities, women, and gender-diverse people, Black and racialized communities, immigrants and refugees, children and youth, in contravention of Canada's obligations under various international human rights instruments and treaties.<sup>11</sup>

13. Further, the NHSA requires that all housing initiatives progressively realize the right to adequate housing, partly through the deployment of the maximum available resources towards those in greatest housing need. These obligations, though enshrined in a Federal statute, merely reinforces previous international treaty obligations undertaken by the Federal government, which are binding on all orders of government in Canada (provincial, territorial, municipal).
14. In some cases, municipal governments have chosen to ignore their obligations as duty bearers in realizing the right to adequate housing and chosen to prioritize areas incompatible with their human rights duties. For instance, the Advocate notes with concern, the City of Toronto's recent decision to invest in their policing budget rather than emergency cold weather shelters.<sup>12</sup> The Advocate is also concerned by a pattern of increases in police budgets across the country at a time when there is a growing and unmet need for homelessness services and programs.
15. The urgency for policy and program tools effective enough to deal with the growing scale of housing inflation, rampant evictions, encampments, and homelessness due to barriers in the housing sector, has never been greater. Yet the NHS remains too limited in its scope and, so far, has done little to improve the situation for those in greatest need across Canada.
16. The most glaring example of this is in the area of Indigenous housing, identified by the NHS as a "priority group." Moreover, while this designation of Indigenous peoples may seem laudable, there are problems with it from a human rights perspective. Namely, it fails to account for an Indigenous right to housing under

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<sup>10</sup> See report published by the National Housing Council based on analysis of administrative data from different NHS programs. "National Housing Council - Shaping the future of housing in Canada through inclusion and participation", online: <<https://nhc-cn1.ca/publications/post/analysis-of-progress-of-bilateral-national-housing-strategy-programs-research-report>>.

<sup>11</sup> See for example *The United Nations Declaration on the Rights of Indigenous Peoples*, HR/PUB/13/2 2013; "Convention on the rights of persons with disabilities", online: <<http://www.un.org/disabilities/convention/conventionfull.shtml>>; "OHCHR | Convention on the Elimination of All Forms of Discrimination against Women", online: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>>; *ibid*; United Nations High Commissioner for Refugees, "Refworld | International Convention on the Elimination of All Forms of Racial Discrimination", online: *Refworld* <<http://www.refworld.org/docid/3ae6b3940.html>>.

<sup>12</sup> Shawn Jeffords · CBC News · , "Bid to open warming centres 24/7 rejected by Toronto city council | CBC News", (8 February 2023), online: *CBC* <<https://www.cbc.ca/news/canada/toronto/warming-centre-rejects-motion-1.6741544>>.

the Federal Constitution<sup>13</sup>, as well as inherent rights recognized under United Nations Declaration Rights of Indigenous Peoples Act.<sup>14</sup>

17. State actors responsible for the NHS have still not fully implemented the Missing Murdered Indigenous Women and Girls Report's Calls for Justice with respect to housing and homelessness.
18. Finally, with respect to Indigenous housing and homelessness in Canada, the Government, in collaboration with Indigenous peoples, must deliver on a long-standing commitment to address the housing needs with a specific strategy of Indigenous People in Urban, Rural and Northern areas.
19. The Federal Housing Advocate visited Nain, Hopedale, and Goose Bay in Nunatsiavut as well as Pangnirtung, Rankin Inlet, and Iqaluit in Nunavut from October 17 – 29 in partnership with Inuit governments to learn more about housing in the North, particularly for Inuit communities.
20. The Federal Housing Advocate witnessed first hand and heard directly from Inuit community members about the dire housing realities they face as a direct result of colonialism and a staggering failure by multiple levels of government over many decades to invest in and respect the human rights of Inuit. Despite repeated promises by multiple levels of governments, families continue to live in deplorable conditions. This is an ongoing human rights failure that needs urgent attention.
21. While the Advocate is in the process of working with Inuit governments to co-develop recommendations for government duty bearers to address longstanding inequalities and violations of the right to adequate housing. The recommendations will include measures to:
  - Dedicate funding to meet the housing needs of Inuit and their communities, especially to maintain and renovate existing community housing supply.
  - Support by all levels of government for the Inuit Housing Action plan.
  - Recognition of the direct role of Inuit organizations and governments as primary partners in addressing housing needs in their communities.
  - Direct and sustained federal investments, including respecting the government-to-government fiscal relationship as opposed to the creation of a myriad of federal housing and homelessness programming.
  - Improved, flexible, and, where possible, direct access to programs designed to reduce housing need, and related infrastructure investments.

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<sup>13</sup> Section 25 of the Federal Charter enshrined the treaty rights, including housing, between the Crown of Canada and the First Nations peoples, supra "[Constitution Act, 1982, R.S.C. 1985, Appendix II, No. 44, Schedule B, Schedule](https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html?searchUrlHash=AAAAAQAcQ2hhcnRlciBvZiByaWdodHMgYW5kIGZyZWVkb21zAAAAAE&resultIndex=1)", online: < <https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html?searchUrlHash=AAAAAQAcQ2hhcnRlciBvZiByaWdodHMgYW5kIGZyZWVkb21zAAAAAE&resultIndex=1> >.

<sup>14</sup> SC 2021, c 14 | *United Nations Declaration on the Rights of Indigenous Peoples Act*.

- Reduction in overcrowding and the numbers of dwellings requiring major repair.
  - Expansion of housing options within the housing continuum within Inuit communities.
  - Culturally appropriate understandings of home and households.
  - Explore and remediate discrimination in banking practices and provision of insurance.
22. The Advocate is acutely conscious of the treatment of encampment residents by State actors, especially the police, and affirms the importance for Canada to implement a human rights-based approach, based on the principles found in the National Protocol on Homeless Encampments in Canada.<sup>15</sup> Further, the Advocate convened her own team of researchers and scholars to produce a report for the FHA, which resulted in them identifying five key areas where State actors need to bring their actions into compliance with human rights obligations.<sup>16</sup>
- Stop the use of policing and law enforcement as a response to encampments.
  - Provide funding and services at all levels of government – to support municipalities that are facing the disproportionate impact of addressing the existence of encampments, and to invest in short- and long-term housing options and supports for encampment residents.
  - Ensure the meaningful participation of encampment residents in decisions that affect them.
  - Recognize the distinct rights of Indigenous Peoples and include them in the development of policy approaches to encampments.
  - Address the conditions within encampments and provide access to basic services such as clean water, sanitation facilities, electricity and heat.
23. The Advocate also notes with concern that financialization of housing has become a major driver of the housing crisis in Canada. Starting in the late nineties, the decline in affordable, multi-family, long-term care homes, and purpose built rentals that serve the lowest income households; financialization is a well-documented and alarming trend in the housing sector. Indeed, this severe dearth in affordable rental stock has only been exacerbated by the pandemic.
24. The Advocate commissioned six reports<sup>17</sup> dealing with different facets of this complex social, legal, and economic phenomenon and its implications for human rights in Canada.

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<sup>15</sup> Leilani Farha, Kaitlin Schwan, & UN Special Rapporteur on the Right to Housing, *A national protocol for homeless encampments in Canada a human rights approach* (Ottawa, ON: UN Special Rapporteur on the Right to Housing, 2020) online: <https://www.make-the-shift.org/wp-content/uploads/2020/04/A-National-Protocol-for-Homeless-Encampments-in-Canada.pdf>.

<sup>16</sup> “Encampments Across Canada: A Human Rights Approach | The Homeless Hub”, online: <https://www.homelesshub.ca/resource/encampments-across-canada-human-rights-approach>.

<sup>17</sup> “The Financialization of Housing in Canada: Project Summary Report | The Homeless Hub”, online: <https://www.homelesshub.ca/resource/financialization-housing-canada-project-summary-report>.

25. The research confirms that financialization of rental housing has harmful impacts on tenants' right to adequate housing, particularly in relation to security of tenure, affordability, and habitability. Further, this trend has disproportionate impacts for Black households and other disadvantaged groups including seniors, women-led households, immigrants and refugees, and people with disabilities. It is also resulting in a net loss of affordable rental housing in Canada's housing system as a whole, which can be understood as retrogression on Canada's obligations with regards to the right to adequate housing.
26. The research also confirms that financialization of long-term care homes is associated with elevated levels of morbidity and mortality during the pandemic, as well as with a decline in workers' pay, safety, and working conditions.

27. The reports recommend a number of measures for State actors to curb financialization of housing and address its negative impacts, including:
- Tracking ownership and measuring the impacts of financialization;
  - Developing mechanisms to definancialize ownership;
  - Suspending state subsidies and support to financialized landlords;
  - Ensuring public pension funds promote social good through legislation; and,
  - Implementing enduring rent controls and tenant protections.
28. The Advocate has requested that the NHC establish a review panel to hear from rights holders and report on the negative consequences of financialization for all the elements of the right to adequate housing in Canada. These include evictions/renovictions, disruption of security of tenure, increasingly unaffordable rents, diminishing availability of services, threats to the dignity of tenants, and tenants suffering mental and physical harms.
29. **Recommendation 1: The Advocate recommends that the Federal Government redesign the NHS in order to reflect the commitments to housing as a fundamental human right and to the progressive realization of the right to adequate housing outlined in the NHSA. The Federal Government must:**
- Provide better housing for Indigenous people, no matter where they live. The Strategy must support a for-Indigenous, by-Indigenous approach. It must give Indigenous governments the resources to respond to the housing crises in their communities;
  - Retool NHS programs to meet the specific needs of disadvantaged groups, particularly people experiencing homelessness and housing insecurity;
  - Prioritize the development and acquisition of housing supply that is permanently affordable and provides community value; and
  - Prioritize a federal leadership role and a coordinated, all-of-government approach to involve all levels of government in solving the housing crisis.

**30. Recommendation 2: The Federal Government must fully integrate a human rights-based approach into the delivery of the National Housing Strategy. It must:**

- Develop and make public human rights-based targets and indicators for all housing programs;
- Ensure meaningful engagement and public consultation of rights-holders, particularly people with lived experience of inadequate housing and homelessness, in design, delivery and evaluation of housing programs; and
- Ensure effective monitoring and transparency in reporting results.

**31. Recommendation 3: The Federal Government must ensure accountability in efforts to advance the progressive realization of the right to adequate housing. It must necessarily include subnational governments in Canada (provincial, territorial, municipal). Governments must:**

- Apply a human rights lens to budgeting and financing housing and homelessness programs;
- Ensure accessibility to effective legal remedies for systemic infringements of the right to adequate housing;
- Ensure ministerial accountability and close collaboration with existing mechanisms, including the NHC and the FHA;
- Ensure accountability of all orders of government in fulfilling their obligations regarding the right to housing;
- Provide resources to equip civil society to actively engage with new accountability mechanisms; and
- Undertake ongoing monitoring of results and transparent reporting on Canada's human rights obligations.