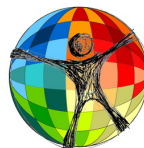


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Doubling Rent and Denying Dignity: The Affordable Housing Crisis in New Brunswick

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ABSTRACT

The purpose of this paper is to shed light on the lack of affordable housing in the province of New Brunswick and propose legislative and policy solutions to the issue. This paper frames the obligation to provide affordable housing in the context of international and Canadian human rights law and draws on human rights theory to demonstrate the importance of access to housing. Using this human rights framework, this paper analyzes New Brunswick's current housing legislation in contrast to other provinces and international jurisdictions. In particular, it critiques the lack of rent safeguards in the province's Residential Tenancies Act (RTA) and the shortcomings of recent amendments to the Act. Finally, the paper considers various legal and policy solutions to the province's lack of affordable housing including further amendments to the RTA, inclusionary zoning policies, co-operative housing programs, restrictions on short-term rental businesses, and rent banks.

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Introduction

Housing represents more than four walls and a roof: having a safe place to live sets the foundation for one's wellbeing and sense of self. As Margaret Jane Radin puts it: property such as housing is "closely bound up with personhood."¹ Lacking access to affordable housing can affect all areas of an individual's life including their sense of security, dignity, and social connection. Respecting this fact, international and Canadian laws have recognized housing as a fundamental human right. In the province of New Brunswick, however, a shortage of affordable housing and legislative protections have put this right in jeopardy for thousands of citizens.

In recent years, provincial residents have faced rent increases of up to 50 per cent.² In September 2021, 77-year-old New Brunswick resident Marie Roy was forced to search for new accommodation after her landlord increased her rent from \$580 per month to \$1,150.³ Roy lives alone on a monthly pension of \$1,600 and could not afford to stay in her home.⁴ A few months earlier, in May 2021, Monctonian Josh Murphy received notice that his rent would be increasing by \$2000 per month—an over 200 per cent increase.⁵ Roy and Murphy's stories are just two of countless in the province where approximately 28,000 individuals are in need of affordable housing.⁶

Canada's Mortgage and Housing Association defines affordable housing as accommodation that costs less than 30 per

¹ "Property and Personhood" (1982) 34 Stan L Rev 957 at 957.

² See Mia Urquhart, "N.B. Senior hunts for Apartment after new Landlord doubles her Rent", CBC News (2 September 2021), online: <www.cbc.ca/news/canada/new-brunswick/rent-doubles-for-senior-1.6161294>; Shelley Steeves, "New Brunswick Man calls for Rent Control after Facing \$2,000-a-Month Increase", Global News (18 May 2021), online: <globalnews.ca/news/7869174/rent-increase-reversed-moncton-man/>.

³ See Urquhart, *supra* note 2.

⁴ See *ibid.*

⁵ See Steeves, *supra* note 2.

⁶ See "Details of National Housing Strategy Released" (22 November 2017), online: New Brunswick Non-Profit Housing Association <www.nbnonprofithousing.ca/single-post/2017/11/23/details-of-national-housing-strategy-released>.

cent of household income before tax.⁷ As this paper will demonstrate, rental units in New Brunswick are increasingly moving out of the affordable housing category for lower income tenants. Resultingly, accessing affordable accommodation is becoming more and more challenging for New Brunswick residents, creating a provincial housing crisis.⁸

This paper will argue that New Brunswick must implement law and policy in tandem to increase affordable housing for residents. In section one, I will present the legislation and doctrine categorizing housing as a human right. This section will consider the relationship between housing and other human rights and analyze article 11 of the *International Covenant on Economic, Social and Cultural Rights* as well as Canada's *National Housing Strategy Act*. I will also present why conceiving of housing as a human right is crucial to housing affordability laws and policies. Section two will delve into the issue of affordable housing in New Brunswick by examining the province's housing-related legislation and policies as well as the provincial government's 2020 review of the residential landscape. The last section of the paper, section three, will propose legal and policy solutions to the affordable housing crisis.

1. Affordable Housing as a Human Right

The United Nations considers human rights to be mutually reinforcing and holds that they should be treated equally under the law.⁹ In other words, state parties cannot selectively enforce

⁷ See "About Affordable Housing in Canada" (31 March 2018), online: Canada Mortgage and Housing Association <www.cmhc-schl.gc.ca/en/professionals/industry-innovation-and-leadership/industry-expertise/affordable-housing/about-affordable-housing/affordable-housing-in-canada>.

⁸ See "NB Government Needs to ACT NOW on HOUSING" (14 May 2021), online: ACORN Canada <acorncanada.org/take-action/nb-government-needs-act-now-housing?source=webpost>; "NB ACORN MLA Tenant Pickets a BIG Success" (2 June 2021), online: ACORN Canada <acorncanada.org/nb-acorn-mla-tenant-pickets-big-success>; "Joint statement from ACORN NB and NB Coalition for Tenants Rights" (11 June 2021), online: NB Coalition for Tenants Rights <www.nbtenants.ca/en/news/joint-statement-from-acorn-nb-and-nb-coalition-for-tenants-rights>.

⁹ See Office of the United Nations High Commissioner for Human Rights "Fact Sheet No. 21: The Right to Adequate Housing" (May 2014) at 2, online (pdf):

some rights while ignoring others: protecting human rights means protecting all rights. Given this, the right to housing¹⁰, must be protected in light of other human rights such as the right to food and sanitation. The UN considers housing to be the “foundation from which other legal entitlements can be achieved.”¹¹ For many, access to housing also means access to basic needs such as drinking water and adequate hygiene facilities.¹² Housing correlates overall with a higher degree of mental and physical wellness: the “adequacy of one's housing and living conditions is closely linked to the degree to which ... right to the highest attainable level of mental and physical health can be enjoyed.”¹³ Without housing taking steps to preserve their population's right to housing, states cannot uphold human rights.

Human rights are rooted in the principle of preserving human dignity.¹⁴ While the meaning of dignity, and what treatments uphold and violate dignity, varies from place to place, dignity can be generally defined as the inherent worth of a human being.¹⁵ More specifically, the Supreme Court of Canada defines dignity as an individual or group's feeling of self-respect and self-worth.¹⁶ It concerns one's physical and psychological integrity, empowerment, autonomy and self-determination.¹⁷

Upholding human rights helps maintain a person's dignity and therefore their sense of self-worth and personal power. In particular, access to housing can be integral to an individual's

Office of the United Nations High Commissioner for Human Rights
<www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf>.

¹⁰ See The right to housing is protected under article 11 of the International Covenant on Economic, Social and Cultural Rights. See *International Covenant on Economic, Social and Cultural Political Rights*, 16 December 1966, 933 UNTS, (entered into force 3 January 1976).

¹¹ *Supra* note 9 at 5.

¹² See *ibid* at 3.

¹³ *Ibid* at 5.

¹⁴ See Sandra Liebenberg, "The Value of Human Dignity in Interpreting Socio-Economic Rights" (2005) 21:1 SAJHR 1 at 9; Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights" (2008) 19:4 Eur J Intl L 655 at 681.

¹⁵ See McCrudden, *supra* note 14 at 680.

¹⁶ See *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at para 53, 170 DLR (4th) 1.

¹⁷ See *ibid*. Per the court, human dignity is “harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within ... society” (see *ibid*).

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sense of dignity. When housing is unaffordable, it can have serious impacts on the dignity of vulnerable groups: women may be forced to live with abusive partners, individuals with disabilities may have to live in inaccessible buildings that limit their autonomy, and Indigenous families may be forced to live in unacceptable conditions because better housing is financially inaccessible. Protecting the right to housing is critical to ensuring everyone can feel a sense of dignity in their home.

Housing is also essential to social inclusion. Social inclusion refers to the process of “improving the terms of participation in society, particularly for individuals who are disadvantaged, through enhancing opportunities, access to resources, voice and respect for rights.”¹⁸ Social exclusion on the other hand describes an inability to participate in civic and cultural life, political processes and the labour market.¹⁹ Samuel writes that social isolation exacerbates the condition of impoverished persons who often struggle with finding adequate housing.²⁰ Moreover, rather than stemming from an individuals’ capacity as it is often perceived to, isolation results from the “broader social context.”²¹ In other words, lower-income people are not to blame for their social isolation; the fault lies with exclusionary institutions and social structures.

The human right to adequate housing is central to other economic, social, and cultural rights.²² When someone cannot access housing due to affordability or other factors, it can cause social exclusion or isolation. This can mean inability to access social security or education. Statistics Canada’s Social Inclusion Index reveals a relationship between dissatisfaction with one’s dwelling, and a reduced sense of safety and inclusion in one’s community.²³ Samuel argues that society needs a cultural shift

¹⁸ See “Identifying Social Inclusion and Exclusion” (last visited 22 June 2022) at 19, online (pdf): *United Nations* <www.un.org/esa/socdev/rwss/2016/chapter1.pdf>.

¹⁹ See *ibid.*

²⁰ See Kim Samuel et al, “Social Isolation and its Relationship to Multidimensional Poverty” (2017) 46:1 *Oxford Development Studies* 83 at 83.

²¹ *Ibid.*

²² See UNHRC, *General Comment No. 4: Access to Housing*, 6th Sess, adopted 13 December 1991, UN Doc E/1992/23 at para 1, online (pdf): <www.refworld.org/pdfid/47a7079a1.pdf>.

²³ See Rubab Arim, “Construction and Assessment of a Social Inclusion Index for the Canada Mortgage and Housing Corporation: Technical Report” (5

towards recognizing the necessity of social connections.²⁴ An important first step in this could be recognizing the need for housing.

Recognizing housing as a right rather than as a commodity is vital to governments maintaining affordable housing. When governments view housing as a mere commodity, they may reduce it to a basic conception of having a roof over one's head. A capitalist perception of housing places economic concerns above human dignity and benefits those who already have a financial advantage in society—e.g., landlords and development corporations. In contrast, when housing is prioritized as foundational to meeting human needs, governments can develop a more generous understanding of housing that accounts for the needs of residents, such as affordable rent. Moreover, as the following sub-section will show, international law requires that governments take this approach to housing under the *International Covenant on Economic, Social and Cultural Rights*.²⁵ While not all states have met their obligations under the covenant, they are technically required to recognize and protect housing as a human right.

Although it is beyond the scope of this paper, it is also important to note that housing rights do not exist in a vacuum and are impacted by economic inequality. Notably, insufficient living wages can play a central role in explaining people's inability to afford housing. With that in mind, while this paper argues for affordable rent and landlord accountability to preserve individuals' right to housing, without sufficient living wages, no housing will ever be affordable. As such, the housing policies in this paper must be considered as supplemental to the need for an adequate living wage.

This section has demonstrated how housing sits at the foundation of human rights, underscoring the importance of states upholding housing with the same commitment as any other right. The following sections will delve into the right to housing in international and Canadian laws to further demonstrate the responsibility governments must uphold this right.

January 2021), online: Statistics Canada <www150.statcan.gc.ca/n1/pub/11-633-x/11-633-x2021001-eng.htm>.

²⁴ See *supra* note 20 at 93.

²⁵ See *supra* note 10.

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1.1 International context

Article 11 of the *International Covenant on Economic, Social and Cultural Rights* requires that state parties recognize the right of all people to an adequate standard of living which includes adequate housing.²⁶ According to the United Nations Committee on Economic, Social and Cultural Rights, the right to housing should be interpreted in a broad sense and “should be seen as the right to live somewhere in security, peace and dignity.”²⁷ Under the Covenant, states have a responsibility to recognize, respect, protect and fulfill housing and other rights.²⁸ In other words, governments must take steps to meet citizens’ housing needs, improve access to housing and protect citizens against corporations that cause a loss of affordable housing. Having acceded to the Covenant in 1976, Canada has a responsibility to meet these obligations.²⁹ Canada’s last report on the Covenant obligations was published in 2013.³⁰ Although the report acknowledged housing as a key issue, not all provinces did, including New Brunswick.³¹ New Brunswick’s failure to prioritize housing as a human right rather than as a commodity will be further examined in section two.

The right to adequate housing can be broken down into seven distinct sub-rights: legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location and cultural adequacy.³² While this paper

²⁶ *Supra* note 10.

²⁷ *Supra* note 22 at para 7.

²⁸ See *supra* note 10, art 2.1.

²⁹ See “Status of Treaties: International Covenant on Economic, Social and Cultural Rights”, (last visited 11 December 2021) online: *United Nations Treaties Collection* <treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4>.

³⁰ See Minister of Public Works and Government Services Canada, “International Covenant on Economic, Social and Cultural Rights: Sixth Report of Canada” (2013), online (pdf): Government of Canada <www.canada.ca/content/dam/pch/documents/services/canada-United-nations-system/reports-united-nations-treaties/pacte_intnl_droits-intnl_covenant_rights-eng.pdf>. While the Canadian government has not published a report in recent years, it has taken other measures to protect the right to housing as the following sub-section will demonstrate.

³¹ See *ibid* at 97.

³² See *supra* note 22 at para 8.

is focused primarily on the issue of affordability, the seven criteria affect one another and are thus all relevant to this paper. For example, individuals with physical handicaps may need affordable housing but also require accessible housing. Similarly, affordable housing is no good if it is not within reasonable distance of employment options and health-care services (location), or if it fails to meet sanitation standards (habitability). Affordable housing policy should account for these interrelated criteria.

The Committee asserts that state parties must take steps to ensure that housing-related costs are adjusted to income levels and establish housing subsidies for those unable to obtain affordable housing.³³ Notably, the Committee states that, per the principle of affordability, tenants must be protected against unreasonable rent increases.³⁴ As section two will show, New Brunswick has not met this standard. Finally, the Committee underscores the importance of designing housing policies with special consideration for vulnerable groups.³⁵ Policies and legislation should not be designed to benefit “already advantaged social groups at the expense of others.”³⁶ This point is particularly important in the context of affordability where landlords receive financial benefits at the expense of vulnerable tenants.

1.2 Canadian Context

At the Canadian level, housing was finally recognized as a human right by the National Housing Strategy Act which came into force in July 2019. The Act declares that “the right to adequate housing is a fundamental human right affirmed in international law” and recognizes that “housing is essential to the inherent dignity and well-being of the person.”³⁷ Moreover, the Act recognizes the interdependence of housing rights and other fundamental human rights.³⁸

The National Housing Strategy (NHS) aims to invest over \$70 billion between 2019 and 2029 into various initiatives,

³³ See *ibid.*

³⁴ See *ibid.*

³⁵ See *ibid.*

³⁶ *Ibid* at para 11.

³⁷ *National Housing Strategy Act*, SC 2019, c 29, s 313, art 2.

³⁸ See *ibid.* Specifically, the Act “recognizes the importance of housing in achieving social, economic, health and environmental goals” (*ibid.*).

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including ones designed to build and repair affordable housing stock.³⁹ The Canadian government has also formed a bilateral agreement with the New Brunswick government to jointly invest \$299.2 million into affordable housing by 2029.⁴⁰ The agreement includes a plan to create 151 new rental units by 2022, and approximately 1,260 units over the next decade.⁴¹ Unfortunately, as this paper will demonstrate, these numbers do not meet the need for new affordable rental units.

Despite the federal government's attempts at improving affordable housing, the shortcomings of the National Housing Strategy point to a larger issue: the failure of Canada as a welfare state.

The welfare state refers to an industrial capitalise state that uses policy to meet social needs and mitigate market forces and class conflict.⁴² Three of the welfare state's main programs include: minimum income, reduction of economic insecurity due to old age, unemployment, or disability, and social services such as healthcare and childcare.⁴³ Since the 1960s which saw the development of various social programs including unemployment insurance, Medicare, and government housing, Canada has identified as a welfare state.⁴⁴ In the more recent decades however, Canada has seemingly fallen short of this state model by letting citizen wellbeing and economic security slip through the cracks.⁴⁵ The lack of adequate housing is a prime example of this and calls into question whether Canada can truly call itself a

³⁹ See Government of Canada, "Progress on the National Housing Strategy" (2021), online: *Place to Call Home* <www.placetocallhome.ca/progress-on-the-national-housing-strategy>.

⁴⁰ See *ibid.*

⁴¹ See "2019–2022 New Brunswick Action Plan" (last visited 4 July 2022) at 21, online (pdf): Government of New Brunswick <www2.gnb.ca/content/dam/gnb/Departments/sd-ds/pdf/Housing/2019-2022NewBrunswickActionPlan.pdf>.

⁴² See Asa Briggs, "The Welfare State in Historical Perspective" (1961) 2:2 *European Journal of Sociology* 221.

⁴³ See *ibid.*

⁴⁴ See "Benefits" (last visited 4 July 2022), online: Government of Canada <www.canada.ca/en/services/benefits.html>.

⁴⁵ See Denise Guest, "Social Security" (last visited 4 July 2022), online: *The Canadian Encyclopedia* <www.thecanadianencyclopedia.ca/en/article/social-security>.

welfare state if it is not able to fully address national housing issues.

Before moving to the following section, it is important to briefly define the scope of federal and provincial responsibilities with regards to housing under Canadian and international law. Under Canada's federal model, provinces have a jurisdiction over legislation pertaining to property rights and therefore housing rights.⁴⁶ To this end, provinces including New Brunswick bear the responsibility of creating affordable housing. At the same time, the federal government has a responsibility to provide funding to provinces to promote "equal opportunities for the well-being of Canadians."⁴⁷ This includes funding housing programs, particularly in less wealthy provinces such as New Brunswick. Additionally, as the previous section showed, Canada has an obligation under international law to protect Canadians' right to housing. As such, while this paper focuses mainly on New Brunswick's shortcomings in addressing housing issues, the province should not be held solely accountable. The Canadian government has an international and federal duty to protect the right to housing and must take action to fulfill this obligation where provinces are unable to meet housing needs.

2. Access to Affordable Housing in New Brunswick

2.1 New Brunswick's increasingly unaffordable housing

In recent years, rental rates in New Brunswick have risen faster than in any other province, and nearly 1,000 rental units are moving out of affordable rents each year.⁴⁸ Over the last decade, "household spending on rented accommodation has increased by 41%, with the lowest 20% of the tenant population seeing an

⁴⁶ See *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, Appendix II, No 5.

⁴⁷ *Constitution Act, 1982*, s 36, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

⁴⁸ See Vanessa Blanch, "Loss of Affordable Rents forces Growing Number onto Waitlist for Subsidized Housing", CBC News (September 14 2021), online: <www.cbc.ca/news/canada/new-brunswick/affordable-housing-new-brunswick-rent-increases-market-subsidized-1.6171691>.

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increase of 34%.”⁴⁹ Housing expert Steve Pomeroy asserts that a high market demand combined with a lack of government rent controls have given landlords the opportunity to raise rents by “very, very significant jumps.”⁵⁰

While other provinces set moratoriums on rent increases to protect residents during the pandemic⁵¹, the New Brunswick government opted not to. In March 2020, the province temporarily suspended landlord rights to evict tenants for non-payment of rent⁵², but this limitation was quickly lifted on May 31, 2020.⁵³ Despite the COVID-19 pandemic, Statistics Canada recorded a 4.8 per cent increase in rents paid in New Brunswick between March 2020 and March 2021, the largest increase in the country.⁵⁴

Although approximately 28,000 provincial residents lack affordable housing⁵⁵, the province has only committed to building 151 new affordable rental units by the end of 2022.⁵⁶ As the following section will demonstrate, the provincial government has made other efforts to improve access to affordable housing. However, these initiatives have proved insufficient in addressing the needs of the population. In order to ensure access to affordable housing, the New Brunswick government must amend their current legislation to include rent control and inclusionary housing laws and create new policies that bolster non-profit and cooperative housing initiatives.

⁴⁹ Office of the Chief Operating Office, “Review of Residential Landscape in New Brunswick” (May 2021) at 23, online (pdf): Government of New Brunswick <www2.gnb.ca/content/dam/gnb/Departments/eco-bce/Promo/rentals-loyers/review-of-the-rental-landscape-nb.pdf>.

⁵⁰ *Supra* note 48.

⁵¹ See “Rent Freeze for 2021”, online: Government of Ontario <<https://www.ontario.ca/page/residential-rent-increases>>.

⁵² See “State of emergency declared in response to COVID-19” (19 March 2020), online: Government of New Brunswick <www2.gnb.ca/content/gnb/en/news/news_release.2020.03.0139.html>.

⁵³ See “Eviction Protection ends May 31” (19 May 2020), online: Government of New Brunswick <www2.gnb.ca/content/gnb/en/news/news_release.2020.05.0285.html>.

⁵⁴ See *supra* note 49 at 30.

⁵⁵ See *supra* note 6.

⁵⁶ See *supra* note 41 at 16.

2.2 New Brunswick housing legislation and government programs

Enacted in 1971, New Brunswick's *Residential Tenancies Act* (RTA) establishes landlord and tenant rights. According to the Act, a landlord must provide their tenant with three-month's notice of an upcoming rent increase on a year-to-year lease, and two-months' notice of a rent increase on a month-to-month lease.⁵⁷ The Act does not provide any limitations on rent increases, giving landlords full control over how much to charge, and leaving tenants without a safeguard.

Upon receiving a notice of rent increase from their landlord, a tenant has 15 days to request a revision of the notice through the Residential Tenancies Tribunal. However, not all tenants have the right to dispute a rent increase.⁵⁸ Only long-term tenants who have lived in their rented accommodation for five years or more can request a review of a rent increase.⁵⁹ Notably, the Act does not apply to tenants living in public housing, leaving some of the province's most vulnerable residents without protection.

In November 2021, the province proposed legislation to amend the RTA. If implemented, the amendments would limit rent increases to once per year⁶⁰, allow tenants 30 days instead of 15⁶¹ to apply for a rent increase review, and require a 6-month instead of 3-month notice period for rent increases.⁶² Additionally, all tenants would be allowed to apply for review of a rent increase at the Residential Tenancies Tribunal.⁶³ However, while these protections would be a step in the right direction, they fail to provide full protection of tenants' right to housing. Most concerning, the amendments would not provide a cap on annual rent increases and would not ensure tenant protection against

⁵⁷ See *Residential Tenancies Act*, SNB 1975, c R-10.2, art 11.1(1).

⁵⁸ See Residential Tenancies Tribunal, "Rent Increases" (last visited 4 July 2022), online (pdf): Service New Brunswick <www2.snb.ca/content/dam/snb/tribunal/rent-increases-faq.pdf>.

⁵⁹ See *ibid.*

⁶⁰ See "Legislation introduced to improve protections and remove barriers for tenants and landlords" (2 November 2021), online: Service New Brunswick <www2.gnb.ca/content/gnb/en/news/news_release.2021.11.0782.html>.

⁶¹ See *ibid.*

⁶² See *ibid.*

⁶³ See *ibid.*

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unreasonable increases even if they requested a review of rent increase through the Residential Tenancies Tribunal.

While its legislation may not provide sufficient tenant protections, the New Brunswick government does operate housing programs that aim to increase housing affordability for low-income residents. The first of these are the public housing and rent supplement programs. Participants in these programs receive subsidies to cover rent over 30 per cent of their household income.⁶⁴ To be eligible, participants must have a total income below the Household Income Limit for their area.⁶⁵

For those living with disabilities, the government provides a rent supplement program which offers a subsidy for an individual to help them find appropriate housing to meet their needs.⁶⁶ By offering financial support to individuals with disabilities, the province demonstrates a commitment to making affordable housing available to all. While there are still many steps to take to meet housing needs in the province, this project deserves recognition for its inclusive approach. The province must continue to include individuals with disabilities in its plans to create affordable housing.

Another program that the province offers is the Affordable Rental Housing Program (ARHP). Instead of providing financial supplements to tenants, the ARHP provides forgivable loans of up to \$40,000 per unit to developers to build, acquire and convert units.⁶⁷ Eligible projects must create affordable rental units that would rent “at or below the average market housing rents.”⁶⁸ Eligible tenants for these projects include “families, seniors, non-

⁶⁴ See *ibid.*

⁶⁵ See “Public Housing and Rent Supplement Program” (11 June 2021), online: Social Supports NB <socialsupportsnb.ca/en/program/public-housing-and-rent-supplement-programs>. To qualify for the rent supplement program, an applicant must also live in crowded or inadequate housing where adequate housing in their area would cost over 30 per cent of their household income.

⁶⁶ See *ibid.*

⁶⁷ See “Affordable Rental Housing Program” (last visited 4 July 2022), online: Government of New Brunswick <www2.gnb.ca/content/gnb/en/services/services_renderer.8675.Affordable_Rental_Housing_Program.html>.

⁶⁸ *Ibid.*

elderly singles, disabled households, persons with special needs.”⁶⁹

The ARHP is a positive initiative to incentivize increased affordable housing. However, as discussed later in this paper, the strong demand for higher-end units with elevated building costs pushes developers away from this option.⁷⁰ Without adequate motivations for developers, affordable housing development will remain stifled. As such, this paper will propose mandatory inclusionary housing policies as a solution in section three.

Overall, while the province developed a few initiatives to promote affordable housing, its legislation and programs fall short in key areas. Most crucially, the RTA must be amended to better protect and promote tenant housing rights. This paper will propose RTA amendments in section three.

2.3 2020 Government Review of Rental Landscape in New Brunswick

In May 2021, the New Brunswick government responded to public concern about access to housing by publishing a report reviewing the rental landscape in the province. This section will critically review the issues, challenges, goals, and recommendations outlined in the report. Before presenting these, however, it is relevant to note that in its first pages, the report contrasted housing as a human right and housing as a business.⁷¹ The report does not explicitly prioritize housing as a human right, implying that human rights and capital gain rights should be given equal consideration. This approach contradicts Canada’s obligations under the *International Covenant on Economic, Social and Cultural Rights*, and is unacceptable. Going forward, the province must label housing as a right that takes paramouncy over other considerations.

The report began by discussing how housing needs in the province have shifted in recent years. An aging population has increased the number of senior citizens looking to downsize; short-term rentals have increased in popularity; an influx of immigrant

⁶⁹ *Ibid.* Supportive housing programs may also be used to assist vulnerable seniors and adults to help them maintain or resume independent living in their own home. Additionally, where appropriate, low-income tenants living in these housing projects may be eligible for rent supplements to ensure units are affordable. See *ibid.*

⁷⁰ See *supra* note 49 at 25.

⁷¹ See *ibid* at 12.

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and refugee families are seeking to rent upon arrival; and finally, with new remote work protocols, more residents are seeking units with extra space leading to increased building costs.⁷² These and other factors have created a housing boom in the province with sales of apartment buildings almost doubling between 2015 and 2020.⁷³ Out of province buyers have also increased with only 70 per cent of apartment buildings being owned by New Brunswick businesses in 2020 compared to 93 per cent in 2015.⁷⁴

With shifting housing needs, accessibility issues have ensued. A lack of rent control; unlivable conditions or lack of suitable housing; rising costs of building; and housing discrimination were all raised as concerns during the 90-day review that informed the report. 31 per cent of tenants who responded to the review reported that rental rates were out of their budget.⁷⁵ One tenant stated: “rent is way too overpriced for one person to afford. I make \$16.75 an hour 44 hours per week and still struggle to pay my bills, plus rent, and often have no food.”⁷⁶ While tenants living in lower-cost housing units avoided high rents, 47 per cent reported that their rental units were in “very bad condition.”⁷⁷ This is unacceptable as tenants have a right to housing that is adequately maintained and safe to live in, in addition to being affordable. According to dignity-based theories of human rights, rights are critical for preserving individual’s basic dignity and sense of self-worth.⁷⁸ For most people, safe and maintained housing is critical for preserving basic dignity and must be prioritized as such.

The report highlighted particularly vulnerable groups: newcomers, families, low-income earners, individuals with health and social needs, and Indigenous people and families.⁷⁹ Low-vacancy rates make it difficult for newcomers to find housing in their price-range and they generally spend more than 30 per cent

⁷² See *supra* note 43 at 9.

⁷³ See *ibid* at 10.

⁷⁴ See *ibid* at 10.

⁷⁵ See *ibid* at 17.

⁷⁶ *Ibid* at 17.

⁷⁷ *Ibid* at 20. Leaking roofs, non-working appliances and bad water were amongst the issues tenants raised.

⁷⁸ See *supra* note 14.

⁷⁹ See *supra* note 43 at 22–23.

of their income on rent.⁸⁰ For families, finding suitably large apartments at affordable rates is challenging due to a lack of larger units. Similarly, the specific housing needs of individuals with health and social needs make finding an affordable unit challenging.⁸¹ Indigenous individuals also have difficulty finding safe and affordable homes due to a lack of housing both on and off-reserve.⁸²

In addition to issues in the housing market, New Brunswickers reported feeling unprotected by the province's RTA and its associated tribunal. Concerns included a lack of protection from eviction, and unpredictability related to rent increases.⁸³ This dissatisfaction is likely what motivated the provincial government to propose amendments to the RTA a few months after the report.

Having presented the difficulties faced by tenants in finding affordable accommodation, the report then considered the challenges to solving these issues. When discussing the challenges to developing affordable housing stock, the report argued that there is "very little to no strong business incentive to create and manage affordable housing."⁸⁴ High building costs and strong demand for higher-end units mean affordable housing development is "not enticing" to developers.⁸⁵ Moreover, existing incentive programs do not provide enough money to complete affordable housing projects.⁸⁶

Based on the aforementioned issues, the report acknowledged that the rental landscape needs to change. However, rather than base its rationale for change on human rights, the report grounded its argument in financial incentives, stating: "if we do not keep an eye on housing market trends and New Brunswicker's housing needs we could see increases in lack of suitable housing availability, which could limit immigration and retention and lead to missed economic opportunities."⁸⁷ While economic factors should be considered in development plans, this rationale minimizes the innate importance of protecting housing

⁸⁰ See *ibid* at 22.

⁸¹ See *ibid* at 23.

⁸² See *ibid*.

⁸³ See *ibid* at 25.

⁸⁴ *Ibid* at 26.

⁸⁵ *Ibid* at 25.

⁸⁶ See *ibid* at 25.

⁸⁷ *Ibid* at 31.

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rights as ends in themselves. Housing rights, as with all human rights, should be derive from the “inherent dignity and worth of a person.”⁸⁸ The explicit prioritization of commercial interests demonstrates how financial gain, not human rights, or dignity, motivates provincial improvements to the housing market. The province must alter its approach to meet its international obligations and protect the right to housing. Instead of justifying affordable housing from an economic lens, the province should let citizens’ dignity and basic quality of life drive its policy decisions.

Before concluding, the report issued recommendations. First, it recommended strengthening existing housing services.⁸⁹ This included improving informational tenant-assistance-telephone services, and the Residential Tenancies Tribunal website. It also recommended that the government provide tools and information to advocacy groups to help them assist tenants in understanding their rights.⁹⁰ Since the publication of the report, Service New Brunswick has responded to all three of these recommendations. An improved telephone service has increased the per cent of callers who reach the team on their first call from 81 per cent in June 2020 to 94 per cent in June 2021.⁹¹ Re-design of the Residential Tenancies Tribunal’s new website is expected to be completed by December 2021.⁹² Finally, a November news release by Service New Brunswick stated that “work is ongoing to provide advocacy groups with the tools and information to help renters and vulnerable groups understand their rights.”⁹³ While the release did not cite specific projects, the commitment to provide more information is a positive step.

Secondly, the report recommended increasing the supply of rentals.⁹⁴ This included creating a business plan for a non-profit rural housing development corporation.⁹⁵ It also included leveraging provincially-owned property to encourage developers

⁸⁸ GA Res 41/120, 4 December 1986.

⁸⁹ See *supra* note 14 at 37.

⁹⁰ See *ibid* at 37.

⁹¹ See *supra* note 60.

⁹² See *ibid*.

⁹³ *Ibid*.

⁹⁴ See *supra* note 49 at 37.

⁹⁵ See *ibid*.

to build more affordable housing.⁹⁶ Finally, it suggested investigating additional tools, such as inclusionary zoning, with the help of the province's Land Use Planning Working Group.⁹⁷ As section three will argue, inclusionary zoning is a critical policy tool for improving access to affordable housing. The province must not merely investigate this option but prioritize its implementation in the coming years.

Thirdly, the report recommended a revision of the RTA, including limiting rent increases to once a year and improving protections against unreasonable rent increases. To its credit, the province has accomplished this by proposing legislation which includes these amendments and others.⁹⁸ However, as previously mentioned, the province must also implement rent caps to ensure that annual increases do not make rent unaffordable. Section three will discuss how rent guidelines used in other provinces could be implemented in New Brunswick to address this issue.

2.4 Non-governmental initiatives

This section has highlighted New Brunswick's current efforts to improve access to affordable housing including: a rent supplement program, the AHSC, proposed amendments to the *Residential Tenancies Act*, and improved tenant information services. Having discussed these, this sub-section will review extra-governmental efforts improve access to affordable housing through advocacy, information sharing, and cooperative and non-profit housing.

New Brunswick advocacy groups have played an important role in pushing for policy change. The New Brunswick Coalition for Tenants Rights, a tenants right advocacy group, helps empower citizens by teaching tenants their rights through educational events and informational documents.⁹⁹ The coalition also advocates for improved housing rights by publishing articles and sharing stories through media outlets and on their website.¹⁰⁰

⁹⁶ See *ibid.*

⁹⁷ See *ibid.*

⁹⁸ See *supra* note 60.

⁹⁹ See "Tenants Know Your Rights" (last visited 4 July 2022), online: New Brunswick Coalition for Tenants' Rights <www.nbtenants.ca/en/events/tenants-know-your-rights>; "Publications and Reports" (last visited 4 July 2022), online: New Brunswick Coalition for Tenants' Rights <www.nbtenants.ca/en/publications-and-reports>.

¹⁰⁰ See "Vote for Housing in New Brunswick's 2021 Municipal Election" (2021), online: NB Coalition for Tenants' Rights <www.nbtenants.ca/municipal-platform-housing>. See also Mia Urquhart, "Tenants' rights Advocate says Saint John

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In 2021, the coalition secured a Tenant Advocate for the province. The advocate, Jael Duarte, is employed by the Saint John Human Development Council and works part time to represent tenants in any disputes with their landlord, including disputes about rent increase.¹⁰¹

Another prominent advocacy group is the Association of Community Organizations for Reform Now (ACORN), a multi-issue union composed of low-and moderate-income members. The union advocates for social and economic justice including promoting access to affordable housing. In Summer 2021, the organization ran a Tenant Protection campaign to pressure the province to stop evictions, implement rent control, and reform housing laws.¹⁰² By educating and defending citizens' right to affordable housing, these advocacy groups help play a crucial role in holding the province accountable for the creation and maintenance of affordable housing initiatives.

Outside of advocacy work, extra-governmental organizations have also been critical in supplementing affordable housing stock with non-profit and cooperative housing. Tenants in most non-profit and cooperative housing projects have a household income below a certain level, and their rent is typically based on 30 per cent of their adjusted household income.¹⁰³ These projects tend to select tenants from the provincial waitlist for affordable housing, thus helping reduce the number of individuals without access to housing within their budget.¹⁰⁴ In non-profit housing projects, the board of directors is composed of community volunteers.¹⁰⁵ Cooperative housing projects are operated by a board is made

case highlights 'Absurdity' of Province's Rules", CBC News (31 August 2021), online: www.cbc.ca/news/canada/new-brunswick/province-needs-better-tenant-rights-1.6155929.

¹⁰¹ See "Tenant Advocate" (last visited 4 July 2022), online: NB Coalition for Tenants' Rights <www.nbtenants.ca/en/tenant-advocate>.

¹⁰² See "NB Acorn MLA Tenant Pickets a BIG Success" (2 June 2021), online: NB Coalition for Tenants' Rights <acorncanada.org/nb-acorn-mla-tenant-pickets-big-success>.

¹⁰³ See *supra* note 65.

¹⁰⁴ See *ibid.*

¹⁰⁵ See *ibid.*

up of residents living in the of the housing cooperative.¹⁰⁶ Each organization is free to select tenants.¹⁰⁷

Fredericton's Pine Valley Cooperative housing is one example of a successful cooperative housing project.¹⁰⁸ Pine Valley's construction was funded in the 1980s by a now non-existent federal government program.¹⁰⁹ Members at the cooperative today report a high level of satisfaction and some members even returned to the housing to raise their own families.¹¹⁰ All members are active participants in managing and maintaining the property, but the workload is "not a huge amount of effort."¹¹¹ Members are involved in establishing the annual budget and report very affordable rates: three-bedroom townhouses are available at the cooperative for \$680 per month.¹¹²

Despite these benefits, the Pine Valley Cooperative has the disadvantage of an on-average 5-year waitlist.¹¹³ While those who are accepted into Pine Valley benefit from its low rental rates, many individuals in need of affordable housing are unable to access the cooperative due to long wait times. The success of the cooperative paired with its being highly sought-after demonstrate a clear demand for similar projects. With their low rent and empowering community-run management style, cooperatives are an excellent mode of affordable housing that should be made more widely available through provincial financing. The province should provide more financial support to organizations or groups looking to develop their own cooperative housing projects. The following section will further analyze the use of cooperative housing as a solution to the affordable housing shortage in New Brunswick.

¹⁰⁶ See *ibid.*

¹⁰⁷ See *ibid.*

¹⁰⁸ See Jennifer Sweet, "Inside Fredericton's Pine Valley Co-operative Housing", CBC News (23 September 2021), online: <www.cbc.ca/news/canada/new-brunswick/inside-frederictons-pine-valley-1.6185653n>.

¹⁰⁹ See *ibid.*

¹¹⁰ See *ibid.*

¹¹¹ *Ibid.*

¹¹² See *ibid.*

¹¹³ See *ibid.*

3. Solutions

3.1 Amending the Residential Tenancies Act

In the previous section, this paper examined the housing crisis in New Brunswick, including a discussion on how the RTA makes tenants vulnerable to unpredictable rent increases. Section 2.2 drew attention to the lack of rent control provisions in the RTA, as well as the lack of limitations on how often a landlord can increase rent. Additionally, under the current RTA only tenants who have lived in their home for five years or more are currently eligible to dispute a rent increase.¹¹⁴ While the province's proposed amendments to the RTA offer a few improvements, the legislation is silent on the amount by which a landlord may increase a tenant's rent.¹¹⁵ This sub-section will consider rent increase legislation in other provinces, drawing on these to suggest amendments to New Brunswick's RTA. Specifically, this sub-section will recommend (1) a rent increase guideline as used in Ontario; (2) shifting the burden of defending a rent increase to the landlord as modeled in Quebec; (3) universal tenant right to contest rent increases, a 12-month limit on rent increase, and a 6-month notice as recommended in New Brunswick's recently proposed RTA amendments.

Each year in Ontario, the government publishes a rent increase guideline that landlords may not exceed unless they meet special conditions.¹¹⁶ These conditions include agreeing to carry out additional tasks or spending on a unit, in exchange for increased rent.¹¹⁷ A landlord may also apply for permission to increase rent by more than the guideline if their capital

¹¹⁴ See *supra* note 58 at 2.

¹¹⁵ See *supra* note 60.

¹¹⁶ See *Residential Tenancies Act*, SO 2006, c 17, s 120.

¹¹⁷ Per section 121 (1) of Ontario's *Residential Tenancies Act*, "a landlord and a tenant may agree to increase the rent charged to the tenant for a rental unit above the guideline if, (a) the landlord has carried out or undertakes to carry out a specified capital expenditure in exchange for the rent increase; or (b) the landlord has provided or undertakes to provide a new or additional service in exchange for the rent increase." Under section 123, a landlord and tenant may also agree to an increase in rent if the landlord agrees to add a parking space or a "prescribed service, facility, privilege, accommodation or thing" for the tenant's enjoyment (*ibid*).

expenditures on the property reach an eligible amount.¹¹⁸ Notably, even if a landlord and tenant agree on a rent increase that exceeds the guideline, the increase may not exceed the guideline by more than 3 per cent of the previous rent charged.¹¹⁹ In all cases, tenants have the right to refuse an increase and dispute it at the Residential Tenancies Tribunal.

Ontario's rent increase guideline provides a safeguard for how much a tenant can expect their rent to increase each year and ensures affordable housing stays affordable for those who need it. This approach has been used successfully in other provinces as well, including Manitoba and British Columbia.¹²⁰ The New Brunswick government should implement a similar guideline to protect tenants against unjustified and unaffordable rent increases. Without this standard, landlords have the power to charge unreasonable amounts of rent forcing tenants to either move out of their homes or pay a rental rate they cannot afford. Both options threaten a tenant's right to affordable housing.

Although some provinces do not publish rent increase guidelines, other legal tools have been applied to protect the rights of vulnerable tenants. For instance, while Quebec does not enforce an official limit on how much a landlord may increase rent, rent increases must be agreed on by both landlord and tenant.¹²¹ Tenants have a right to refuse a rent increase within one month of notice, and the burden is on the landlord to dispute the

¹¹⁸ See *Supra* note 108, s 126. Landlords may also apply if there is an extraordinary increase in the cost for municipal taxes for the building in which the rental units are located or if their operating costs related to security services in the building reach an amount that justifies a rent increase.

¹¹⁹ See *supra* note 108, s 121(3). Additionally, a tenant who agrees to a rent increase under section 121 may cancel their agreement with written notice within five days of signing the agreement (see *ibid*).

¹²⁰ See Government of Manitoba, "Rent Increase", online: *Manitoba* <www.manitoba.ca/ccg/rtb/landlord/rentincrease.html>; "Rent Increases", online: *Government of British Columbia* <www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases>.

¹²¹ See Tribunal administratif du logement, "Renewal of the lease and fixing of rent", online: *Tribunal administratif du logement* <www.tal.gouv.qc.ca/en/renewal-of-the-lease-and-fixing-of-rent/rent-increase>. The Tribunal provides a tool for calculating an appropriate rent increase. This calculator draws on rules established in the Tribunal's Regulation respecting the criteria for the fixing of rent. To use it, the lessor enters relevant data pertaining to their building, then submits the results to their tenant to reach an agreement.

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refusal at the Tribunal administratif du logement.¹²² If the landlord and tenant cannot agree on a rent increase amount, the landlord may file an application to increase rent at the Tribunal within one month following notice of refusal from the tenant.¹²³ The Tribunal then invites the landlord and tenant to a hearing where a final decision is reached regarding the rent increase.¹²⁴

While an official limit or guideline for annual rent is ideal, Quebec's legislation on rent increases also helps protect tenant rights to affordable housing. By placing the burden on the landlord to demonstrate their rationale for rent increase, tenants are rendered less vulnerable. In contrast with New Brunswick residents who are forced to choose between eviction and accepting an unreasonable rent increase¹²⁵, allowing tenants the right to refusal and requiring landlords to prove their need to charge a higher rent protects tenants from unreasonable increases. New Brunswick should implement a similar system by encouraging tenants and landlords to collaborate when determining the amount of a rent increase and placing the burden of dispute on the landlord when there is non-agreement.

Finally, while New Brunswick's recently proposed amendments to the RTA lack key provisions, they do provide two useful amendments that should be implemented immediately. Firstly, the proposed legislation would require 6-months' notice instead of 3-months' notice for a rent increase.¹²⁶ This increase in time would give tenants more time to seek new accommodation should they choose not to dispute their rent increase, or if their dispute fails at the Tribunal. Secondly, the proposed legislation holds that landlords can only increase rent every 12 months or within 12 months of the first day of the tenancy.¹²⁷ However, while these more generous timelines will benefit tenants, the amendments are incomplete without a rent cap regulation and a

¹²² See *ibid.*

¹²³ See *ibid.* After filing the application, the lessor submits information on the revenue and expenses of the building to the Tribunal.

¹²⁴ See *ibid.*

¹²⁵ Except in the case of long-term residents who have the right to dispute rent increases at the Residential Tenancies Tribunal.

¹²⁶ See *supra* note 60.

¹²⁷ See *supra* note 60.

provision that shifts the burden of disputing a rent increase to the landlord.

To summarize, New Brunswick's Residential Tenancies Act must be amended to include:

1. A rent increase guideline that limits the amount by which a landlord may increase rent each year, with exceptions as outlined in Ontario's Residential Tenancies Act above (e.g., if a landlord adds services in exchange for increased rent).
2. A provision whereby the landlord and tenant must agree on a rent increase, and in the case of disagreement the burden is on the landlord to bring the case before the Residential Tenancies Tribunal.
3. A provision that mandates 6-months' notice for rent increase instead of 3 months' notice as is currently required in the RTA.
4. A provision that limits rent increases to once every 12 months or within 12 months of the first day of tenancy.

3.2 Inclusionary Housing and Inclusionary Zoning

Another form of legislation that New Brunswick should implement to increase access to affordable housing, is an inclusionary housing law. Inclusionary housing (IH), also known as inclusionary zoning (IZ), policies are those which mandate or incentivize property developers to create a certain percentage of affordable housing units in their residential developments. Cost-offsets are often provided to compensate for the expenses of providing affordable housing.¹²⁸ Both IZ and IH terms will be used in this subsection to refer to these types of policies.

IH policies have become highly prevalent in the United States—being used in over 800 jurisdictions across the country. Based on inclusionary zoning research in the United States, these policies are most effective when they include mandatory, strict, and universal provisions.¹²⁹ More flexible policies have lower

¹²⁸ See Government of Canada and Canada Mortgage and Housing Corporation, "Inclusionary Zoning: Domestic and International Practices" (August 2017), online (pdf): [Canada Mortgage and Housing Corporation <assets.cmhc-schl.gc.ca/sf/project/archive/publications/research_insight/69138_w.pdf?rev=00a59cf2-cad5-4425-b359-f1c0ad523008>](https://assets.cmhc-schl.gc.ca/sf/project/archive/publications/research_insight/69138_w.pdf?rev=00a59cf2-cad5-4425-b359-f1c0ad523008) at 1.

¹²⁹ See *ibid.* More specifically, the most effective measure focus on (1) making affordable housing provisions mandatory rather than incentivized; (2) applying mandates as universally as possible; (3) implementing strict, non-negotiable

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rates of implementation and are less effective at achieving their purpose.¹³⁰ While these types of policies may not yet be prevalent in Canada, this section will consider how IZ provisions in Ontario, British Columbia, and Manitoba and how they could be improved and applied in New Brunswick.

Before discussing policies in other provinces, it is worth recalling that New Brunswick already provides incentives to developers to construct affordable housing units. As mentioned in section 2.2, the Affordable Rental Housing Program (ARHP) provides forgivable loans to development projects committed to offering affordable housing units.¹³¹ However, because participating in the ARHP is optional, and private developers have better financial incentives to build higher-end units,¹³² the ARHP does not create nearly the amount of inclusionary housing needed in the province. Mandatory and strict inclusionary housing policies would better ensure the creation of more affordable units.

The best example of a mandatory inclusionary zoning policy in Canada is Ontario's *Planning Act*. The Act stipulates that municipalities engaged in land use planning must implement specific inclusionary zoning policies and by-laws.¹³³ Before planning new developments, municipalities must create provisions on the types and sizes of housing included in affordable housing, the range of incomes that must be able to afford housing, and the method used for determining rent.¹³⁴ Section 37 of the Act also permits municipalities to pass a by-law authorizing height and density that exceeds the relevant zoning by-law in exchange for inclusionary housing facilities.¹³⁵

policies; (4) maintaining affordability long-term; and (5) limiting flexibility within provisions to prevent loopholes and ineffective application.

¹³⁰ See *ibid*.

¹³¹ See *supra* note 67.

¹³² See *supra* note 49 at 67.

¹³³ See *Planning Act*, RSO 1990, c P.13. The Ontario Government defines *land use planning* as the management of land and resources; this includes the development of residential buildings (see "Land use planning", online: Government of Ontario www.ontario.ca/document/ontario-municipal-councillors-guide/10-land-use-planning#section-1).

¹³⁴ See *ibid*. Per section 11 of the Act, municipal councils shall provide updated assessment report that analyze housing need and demand every five years, and update IZ frameworks where necessary (see *ibid*, s 11).

¹³⁵ See *ibid*, s 37.

Municipalities have a large role to play in implementing Ontario's *Planning Act*. Specifically, they are charged with (1) creating an official plan, which sets out its policies for future land use, and (2) passing zoning by-laws, which set out the rules listed in the previous paragraph.¹³⁶ Given the broad discretion granted to municipalities, it is useful to consider how particular cities have implemented the *Planning Act*.

Toronto's Official Plan for land development includes provisions about affordable housing but falls short in some areas. Toronto's plan allows developers to increase the height and density of their units per section 37 of the *Planning Act*, in exchange for affordable housing.¹³⁷ The plan requires developers to reserve 20 per cent of additional residential units as affordable housing where an increase in height or density is sought under the by-law.¹³⁸ This mandate is an excellent tool for incentivising developers while also ensuring the creation of new affordable housing units.

The Official Plan's affordable housing policy holds that new development on sites containing six or more rental units, must secure affordable rental housing and make improvements to existing affordable housing without costs to tenants.¹³⁹ This preservation policy is crucial to conserving affordable housing. However, the plan does not outline standards for how many affordable units must be created in new developments that are not built on pre-existing affordable housing units. The Official Plan should be more specific in mandating affordable housing in these cases.

Moreover, the Plan defines affordable housing rent as "at or below one times the average Toronto rent, by unit type (number of bedrooms)."¹⁴⁰ This definition is problematic because it does not factor in the tenant's income. An effective housing policy should define affordable housing based on each tenant's income, specifically 30 per cent of household income as specified in this paper.

¹³⁶ See *ibid*.

¹³⁷ See "Official Plan" (last visited 22 June 2022) at 29, online (pdf): City of Toronto <www.toronto.ca/wp-content/uploads/2017/11/981f-cp-official-plan-chapter-3.pdf>.

¹³⁸ See *ibid* at 29.

¹³⁹ See *ibid* at 27.

¹⁴⁰ *Ibid* at 30.

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The Official Plan created by Toronto demonstrates how despite having a provincially mandated inclusionary housing law, municipal-level implementation can fall short. While New Brunswick tenants would benefit from an inclusionary housing law, municipalities would need to create more specific and strict provisions that set out the percentage of units that must be affordable. Additionally, any affordable housing policy should employ an income-based definition of affordable rent so that rates may be adjusted to individual tenants.

Inclusionary zoning has been implemented elsewhere in Canada. In 2014, Manitoba passed its four-page *Planning Act*¹⁴¹. Notably, this Act does not mandate but merely enables the use of inclusionary zoning bylaws in municipalities. As such, there is no requirement for municipalities to require inclusionary zoning. While Winnipeg has amended its Charter to allow for inclusionary zoning bylaws, no such bylaws have been created.¹⁴² A mandatory inclusionary zoning approach is thus preferable because it requires municipalities to create policies instead of viewing them as an option that never reaches implementation.

While British Columbia has not given municipalities complete legislative authority to use mandatory inclusionary zoning, the province's *Local Government Act* holds that municipalities may create a zoning bylaw that designates an affordable housing areas within zones, if the owners of the property consent to the designation.¹⁴³ Under this law, in 2019 the City of Victoria passed an inclusionary housing policy that requires new housing developments in the municipality with 60 units or to ensure that 20 per cent of the units are affordable.¹⁴⁴

Victoria's initiative to create local IZ policies should be emulated by New Brunswick municipalities. In addition to passing a provincial inclusionary zoning law, municipalities should create specific provisions similar to the one passed in Victoria. Precise

¹⁴¹ RSM 1987, c P80.

¹⁴² See *The City of Winnipeg Charter*, SM 2002, c 39, s 236.

¹⁴³ See *Local Government Act*, RSBC 2015 c 1, s 482(3).

¹⁴⁴ See "Inclusionary Housing and Community Amenity Policy" (June 2019) at 2, online (pdf): City of Victoria <www.victoria.ca/assets/Departments/Planning~Development/Community~Planning/Housing~Strategy/Inclusionary%20Housing%20and%20Community%20Amenity%20Policy_Adopted%20June%2027%202019.pdf>.

obligations would guarantee that developers know what is expected of them and help ensure that affordable housing needs are met.

The New Brunswick Coalition for Tenants' Rights recommends that municipalities require all new housing developments with five or more units to make at least 20 per cent of units affordable housing. To support this, the Coalition recommends that the government pass legislation that requires builders to sign an agreement with the municipality regarding affordable housing supply before obtaining a construction permit.¹⁴⁵ In addition to these recommendations, the province should require companies that develop current affordable housing units to renovate the units and preserve a portion of renewed units for affordable housing. Renovations should include green retrofitting that restores affordable housing units while making them more energy efficient. While it may not be feasible for the province to mandate these types of renovations, the provincial government should provide financial incentives to companies willing to execute this type of sustainable restoration plan.

While IH laws have not obtained widespread popularity in Canada, this is not a reason for New Brunswick to be hesitant in creating such legislation. Similar laws in the United States have demonstrated clear success in increasing affordable housing. Moreover, although IH policies in other provinces fall short in certain areas, they set a precedent for similar policies in New Brunswick. The provincial and municipal governments must collaborate to create specific and mandatory inclusionary housing policies throughout the province. The Coalition's recommendations of making 20 per cent of units affordable in developments over five units and requiring agreement from development before issuing construction permits should be included in municipal IH policies.

3.3 Cooperative and non-profit housing

In addition to the legislative amendments above, New Brunswick should implement policies that strengthen the non-profit affordable housing sector. Investment in non-profit housing benefits both citizens by creating affordable places to live, and the province by increasing affordable housing stock at minimal building cost. As policy analysts point out, typical municipal partnerships with wealthy for-profit developers can drive up the

¹⁴⁵ See *supra* note 100.

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cost of the projects.¹⁴⁶ By partnering with non-profits, municipal governments can complete affordable housing projects at a lower cost.

One way the government can support non-profit housing is by making surplus government land available to non-profits at a discounted price. Winnipeg's Affordable Housing Opportunities in Housing Improvement Zones program makes unused city-owned lands available to non-profit housing provider at subsidized rates for affordable housing development.¹⁴⁷ To qualify, non-profits must demonstrate a plan create and maintain affordable units for 20 years.¹⁴⁸ Properties may be purchased at 50 per cent of the assessed value. Moreover, land may be sold for as little as \$1 to up to six affordable housing projects that meet net zero efficiency standards.¹⁴⁹

Allowing non-profits to acquire property at an affordable rate bolsters their capacity to develop affordable housing projects. Moreover, reserving surplus land for non-profits minimizes the property available to upscale development corporations that would create high-end, unaffordable units. New Brunswick should implement a similar program that reserves unused provincial and municipal lands for non-profit affordable housing development.

Another way New Brunswick could support non-profit housing is by focusing its federal and provincial funding on these projects. The provincial government already has a provincial-federal funding agreement under the NHS to invest \$299.2 million into affordable and community housing.¹⁵⁰ According to Tim Ross, Executive Director of the Co-operative Housing Federation of Canada, this funding should prioritize cooperative housing

¹⁴⁶ See Linda McQuaig, "Trudeau's new Bank Delivers for Investors, not the Public", *The Star* (10 March 2021), online: www.thestar.com/opinion/contributors/2021/03/10/trudeaus-new-bank-delivers-for-investors-not-the-public.html.

¹⁴⁷ See "Affordable Housing Opportunities in Housing Improvement Zones" (27 July 2021), online: City of Winnipeg winnipeg.ca/ppd/CityPlanning/Housing/AffordableHousingOpportunities.st.

¹⁴⁸ See *ibid.*

¹⁴⁹ See *ibid.*

¹⁵⁰ See "What is the status of initiatives under the National Housing Strategy?" (10 June 2021), online: Government of Canada www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cow-jun-10-2021/national-housing-strategy.html.

development.¹⁵¹ As discussed in section 2.4, housing cooperatives are at-cost housing for typically low-income members. New Brunswick's Cooperatives Act requires that housing cooperatives remain not-for-profit communities, forever, thus ensuring long-term affordability.¹⁵² Cooperatives are also owned and operated by their members, allowing tenants to make critical decisions about their housing and rent. However, cooperative housing in New Brunswick is currently difficult to access due to long wait times.

Ross argues that provincial-federal funding should be focused on a diversified housing landscape that can both grow and retain New Brunswick's population, ensuring that seniors are treated with dignity and newcomers are able to find suitable homes.¹⁵³ Cooperative housing meets these goals. In addition to affordable rent, cooperative housing often has a strong community.¹⁵⁴ Because cooperatives are community-owned, they can better adapt to the needs of their members.¹⁵⁵ This communal support would be beneficial for diverse segments of the population including aging populations, young families, newcomers and other who may benefit from living in stronger communities at affordable rates. Focusing affordable housing development funding on cooperative projects could thus benefit many of New Brunswick's most vulnerable populations.

One roadblock to creating more cooperative housing is that this type of member-owned project is not eligible for certain types of funding. For example, Canada's Infrastructure Bank requires municipalities seeking the bank's financial support to partner with a private business, making it impossible for alternative development projects such as cooperatives to receive funding.¹⁵⁶

¹⁵¹ See Tim Ross, "New Brunswick needs Co-operative Housing Solutions Now", *Telegraph-Journal* (13 September 2020), online: <tj.news/telegraph-journal/101358721?ref=tw>.

¹⁵² See *Cooperatives Act*, SNB 2019, c 24, s 123; "Updated New Brunswick Co-op Act includes Housing Co-ops and Modernizes 43-year-old Legal Framework" (9 October 2019), online: Co-operative Housing Federation of Canada <chfcanada.coop/updated-new-brunswick-co-op-act-includes-housing-co-ops-and-modernizes-43-year-old-legal-framework/>.

¹⁵³ See *supra* note 151.

¹⁵⁴ See *ibid*.

¹⁵⁵ See *ibid*; According to Ross, the Co-operative Housing Federation of Canada has heard "countless stories of cooperative members checking on each other, running errands, and picking up groceries for their neighbours" (*ibid*).

¹⁵⁶ See "Frequently Asked Questions", online: Canada Infrastructure Bank <cib-bic.ca/en/about-us/frequently-asked-questions/>.

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The federal government must amend its funding initiatives to ensure non-profit and cooperative housing projects are eligible for maximum financial support. In the interim, New Brunswick should continue to prioritize not-for-profit housing development in spending its nearly-\$300 million NHS budget.

3.4 Other Recommendations

So far, this section has outlined three key recommendations for improving access to affordable housing in New Brunswick. Firstly, 3.1 recommended amending the province's *Residential Tenancies Act*. Secondly, 3.2 argued for inclusionary housing legislation and municipal policies. Finally, 3.3 proposed greater investment in non-profit housing, specifically in cooperative housing projects. This section will add two recommendations to these. First, it will recommend stricter regulation of short-term rentals, and, second, it will consider rent banks as a tool for ensuring access to affordable housing in crisis situations.

Prior to the pandemic, short-term rentals such as Airbnbs became increasingly popular in New Brunswick.¹⁵⁷ While their presence has decreased over the past year, experts expect short-term rentals to become frequent again once post-pandemic travel resumes.¹⁵⁸ Small towns with strong tourist industries, such as Grand Manan Island and Alma, are most vulnerable to short-term rentals that cater to tourists and make communities unaffordable for full-time residents. To protect local communities, the government must create regulations that limit the takeover of short-term rentals.

In January 2021, the town of Saint Andrews tried to pass a by-law restricting the number of short-term rentals allowed each year. The regulation required landlords for these units to acquire a permit and reserved the right of the town to limit the number of permits given each year.¹⁵⁹ While the by-law was ultimately

¹⁵⁷ See Jennifer Sweet, "More N.B. Rental Units Expected to go Short-term on sites like Airbnb as Pandemic Eases", CBC News (13 October 2021), online: <www.cbc.ca/news/canada/new-brunswick/short-term-airbnb-rentals-in-nb-1.6209562>.

¹⁵⁸ See *ibid.*

¹⁵⁹ See "DRAFT BY-LAW NO. 21-01: A By-Law Respecting Short-Term Rental Residential Units in the Town of Saint Andrews" online (pdf): *Town of Saint Andrews* <www.townofsaintandrews.ca/wp-content/uploads/2020/01/DRAFT-BY-LAW-NO.-21-01-A-BY-LAW-RESPECTING-SHORT-TERM-RENTAL-RESIDENTIAL-UNITS-IN-THE-TOWN-OF-SAINT-ANDREWS.pdf>.

defeated, town clerk Paul Nopper said it may be revisited in the coming months.¹⁶⁰

Another solution is to restrict short-term rentals to owner-occupied properties, meaning that short-term rentals would be limited to an extra room or building on a long-term resident's property. This way, local residents can earn an extra income, but community's avoid having dozens of homes bought up and converted into "de facto hotels."¹⁶¹ This policy approach has been implemented in Halifax and Vancouver and Canada Research Chair in urban governance David Wachsmuth recommends New Brunswick implement this approach in order to protect long-term rentals in the province.¹⁶² A third solution to short-term rentals is for municipalities to designate rental-only zones, thus limiting how much housing can be devoted to short-term rentals within a community.

Certainly, each municipality will have different housing needs, and policies should be tailored to each unique demographic. With that said, short-term rentals have had negative impacts on housing markets across the province and therefore each community should regulate these rentals in order to maintain housing affordability for long-term residents.

Another initiative that could help mitigate New Brunswick's housing crisis is the creation of municipal rent banks. Rent banks offer emergency financial support to residents who are unable to pay rent due to temporary and unexpected financial crisis.¹⁶³ These monetary safety nets can allow tenants to stay in their homes in moments of hardship, thus protecting their right to affordable housing and preventing homelessness.

While these banks are often operated at a municipal level, they can be funded by provincial governments. In British Columbia, the provincial government's Ministry of Social Development and Poverty Reduction funds municipal rent banks in several cities.¹⁶⁴ The City of Burnaby's rent bank offers interest-free loans to low and moderate-income households. Loans can be used to pay off deposits, past due rent and utilities and future

¹⁶⁰ See *supra* note 149.

¹⁶¹ *Ibid.*

¹⁶² See *ibid.*

¹⁶³ See "Rent Bank", online: Purpose Society <purposesociety.org/events/categories/family-programs/rent-bank/>.

¹⁶⁴ See "About BC Rent Bank" (last visited 22 June 2022), online: BC Rent Bank <bcrentbank.ca/about-bc-rent-bank/>.

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rent.¹⁶⁵ Toronto's Rent Bank Program operates similarly to Burnaby's but has notably stricter eligibility criteria. For example, applicants must be paying market rent, must have a steady income or proof of pending employment, and must not be receiving social assistance. Additionally, Toronto's rent bank does not offer loans for upcoming rent, only rental arrears.¹⁶⁶ However, as a pilot project, Toronto's program has offered grants instead of loans.¹⁶⁷ During the COVID-19 pandemic, the city also invested \$5 million into the project, serving 1,062 household in 2020.¹⁶⁸

Municipal rent banks would help ensure tenants were able to afford housing in moments of financial crisis. While subsidized rent and other affordable housing options can offer support in the long-term, protecting housing rights requires emergency, short-term grants or loans too. According to a 2017 article by the CBC, the province possessed over \$25 million in unclaimed security deposits in a trust run by Service New Brunswick.¹⁶⁹ The New Brunswick Coalition for Tenants' Rights suggested using these deposits to establish provincial or municipal rent banks.¹⁷⁰ While this approach may be too complicated, or jeopardize tenants' right to re-claim deposit, the trust does create interest that the province could use to start a rent bank.

Conclusion

Housing is a core human right in which affordability plays a critical role.¹⁷¹ When individuals cannot access affordable housing, it affects all areas of their life including their social,

¹⁶⁵ See "Burnaby Rent Bank" (last visited 22 June 2022), online: Purpose Society <purposesociety.org/events/categories/rent-bank/burnaby-rent-bank/>.

¹⁶⁶ See "FAQs" (last visited 22 June 2022), online: Neighbourhood Information Post <nipost.org/toronto-rent-bank/>.

¹⁶⁷ See "Toronto Rent Bank" (last visited 22 June 2022), online: City of Toronto <www.toronto.ca/community-people/employment-social-support/housing-support/financial-support-for-renters/toronto-rent-bank/>.

¹⁶⁸ See *ibid.*

¹⁶⁹ See Jacques Poitras, "\$25M in Tenant Security Deposits kept in Province's Grip", CBC News (21 September 2017), online: <www.cbc.ca/news/canada/new-brunswick/nb-25-million-renter-security-deposit-government1.4299279>.

¹⁷⁰ See *supra* note 100.

¹⁷¹ See *supra* note 22.

physical, and mental health. In New Brunswick, rapidly increasing rents and a lack of legislative guidelines has left countless citizens unable to access housing within their means. This paper argued that the New Brunswick government must take immediate action to resolve this crisis by implementing law and policy in tandem to increase affordable housing and protect residents from exorbitant rent increases.

In section one, I presented affordable housing as a human right, focusing on the *International Covenant on Economic, Social and Cultural Political Rights* as well as Canada's *National Housing Strategy Act*. In section two, this paper considered the issue of affordable housing New Brunswick. This section reviewed current legislation and policies, as well as the province's 2020 rental landscape review. Here, I highlighted the government's shortcomings in addressing affordable housing including failing to acknowledge housing as a legally protected human right. The final section of the paper outlined legal and policy solutions to the affordable housing crisis including: (1) amending the *Residential Tenancies Act*; (2) implementing inclusionary housing policies at the provincial and municipal level; (3) increasing investment in non-profit and cooperative housing; and (4) regulating the short-term rental industry and creating municipal rent banks.

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