

Taking Back Our Housing

by Grayson Alabiso-Cahill





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“ We have every reason to believe that we do indeed stand ”
on the brink of epochal changes

David Graeber, *Debt: The First 5,000 Years*

Foreword from the FMTA

Our latest report makes a compelling case for using an ordinary policy tool in an extraordinary way. The author, Grayson Alabiso-Cahill offers a series of four concrete proposals for how municipal expropriation powers could be used to significantly increase the supply of affordable and not-for-profit housing in the City of Toronto.

Alabiso-Cahill points out that, notwithstanding its “boogieman” reputation, expropriation is routinely used by municipalities to develop infrastructure such as highways, public transportation, and utilities. Why, then, should municipalities not also use these powers to meet another core infrastructure need – namely affordable housing?

The right to safe, adequate, and affordable housing is now recognized by the United Nations, and local and national governments. Yet in Canada governments at all levels continue to favour policies that facilitate using housing as an instrument of financial speculation, over those which recognize housing as a human right. This report argues that expropriation can be used to correct the decades of policy failings that have led to our current housing crisis.

Underlying the policy proposals is a rejection of the assumption that expropriating low-income and vulnerable tenants is normal, while expropriating wealthy and powerful property investors would somehow be scandalous. As Alabiso-Cahill writes, “*renters face expropriation constantly*” (p. 37). Thus, the idea of expropriation as “boogieman” is turned on its head, allowing us to begin imagining a world in which expropriation would take place *in the name of the expropriated*.

While this report is primarily concerned with expropriation as a government legal power to force the sale of private property, it also invites us to reflect on the fact that the term has a wider meaning, associated with a much broader set

of practices. As feminist academic and critical theorist Nancy Fraser points out, the process of expropriation is integral to the broader history of capitalism. For Fraser, expropriation works by “*confiscating* capacities and resources” such as land, money, or the capacity to labour, and “*conscripting* them into capital’s circuits of self-expansion.” As Frazer explains, the process of confiscation “may be blatant and violent, as in New World slavery—or it may be veiled by a cloak of commerce, as in the predatory loans and debt foreclosures of the present era.”

We read daily news stories about the deepening housing crisis fuelled by above guideline rent increases (AGIs), poorly maintained and unsafe units, “renovictions”, intimidation and harassment of tenants, and the mass eviction and demolition of entire communities. Increasingly, corporate landlords are using AGIs and renovictions to squeeze profits out of Toronto’s disproportionately racialized, differently-abled, and low-income households. Whether tenants are pushed out due to their inability to sustain above guideline rent increases, or because of poor physical maintenance, renovation or demolition the effect is the same: newly vacated units that allow landlords to take advantage of the lack of adequate rent controls to massively increase rent.

All this was true before the COVID-19 pandemic. Under stress from the economic impact of the pandemic, tenants across Toronto have been unable to pay their rent. Instead of responding with compassion, many landlords have doubled down in their efforts to expropriate tenants. We have even heard reports in the news and on social media that landlords have showed up in buildings with credit/debit machines and demanding that renters pay with credit cards.

It is illegal to charge interest or other late payment penalties on rent in Ontario. Yet the effect of this practice is that renters will nevertheless end up with double-digit interest-bearing debt in the context of an economic crisis of uncertain depth and duration. In cities like Toronto with “hot” real estate and tight rental markets, where housing costs are rising 3-4 times faster than wages, the prospect of paying such a loan would be daunting in the best of times. Compelling poor and low-income folks to carry credit card balances for thousands of dollars of rent in the midst of a global pandemic is nothing short of vicious.

If that wasn’t enough, on July 21st, just weeks before the COVID-19 eviction ban was lifted, the provincial government passed new legislation that will make it *easier* to evict tenants for rental arrears, including those incurred due to COVID

related financial hardships. Importantly, Bill 184 also contains measures that will newly allow landlords to pursue debts for rent and utilities through the Landlord and Tenant Board process.

It is in this moment, where the vulnerability of tenure characteristic of being a renter and the increased exposure to predatory lending are so blatantly working hand in glove, that we can see most clearly that renters are uniquely vulnerable to expropriation. And while the cycle of financial hardship, debt, and eviction intensifies, this report powerfully reminds us that it does not have to be this way.

For these reasons, the Federation of Metro Tenants' Associations is proud to publish this provocative and timely report. We hope that you will read it, share it, and discuss it with your friends, fellow tenants, and elected representatives. We can use this strength in numbers for *Taking Back Our Housing*.

Together we are strong!

- Federation of Metro Tenants' Associations

Executive Summary

Leilani Farha, former UN Special Rapporteur on Housing, asserts that financialization “disconnects housing from its social function of providing a place to live in security and dignity and **hence undermines the realization of housing as a human right**” (emphasis added).¹ In this report, I argue that the market logic of for-profit rental housing creates an unresolvable tension between the profit motives of a landlord and the provision of adequate affordable rental housing. This tension makes a housing strategy grounded in human rights and the right to housing difficult to achieve. I outline policies which use expropriation (a legal power allowing a government to force the sale of private property) to acquire not-for-profit affordable housing. Such actions would begin decommodifying rental housing, which in turn helps meet a government’s obligations under the right to housing.²

Through an ultimate exercise of governmental authority, policies of expropriation work against the financialization of a for-profit rental market, and reconnect the role of housing to a social function.³ The policies I propose support efforts to “ensure that all investment in housing recognizes its social function and States’ human rights obligations”.⁴ I argue that expropriation is a predictable, sound, and efficient use of government resources. It can operate in tandem with other housing policies which treat housing as a human rights issue.

The policies I propose create an approach to housing that reflects the ideals in Canada’s approach to health care: a right that is universal and delivered without profit. Expropriation confronts the commodification of housing and challenges financialization by reorienting the state’s involvement in housing, by moving housing units from the for-profit sector into the not-for-profit sector.

Section one of this report introduces the rental housing landscape in Toronto and discusses the tensions inherent to for-profit rental housing. Section two introduces expropriation, explains its legal framework, and examines how it is typically used. Section three outlines my proposed uses of expropriation:

- 1 Leilani Farha, “The Financialization of Housing” (United Nations Human Rights Council, January 18, 2017), 3.
- 2 National Housing Strategy Act, (S.C. 2019, c. 29, s. 313).
- 3 Toronto Area Transit Operating Authority v. Dell Holdings Ltd. (Toronto Transit v. Dell Holdings), 1997 CanLII 400 (SCC), [1997] 1 SCR 32, par. 20, <http://canlii.ca/t/1fr5r#20>.
- 4 Farha, “The Financialization of Housing”, 21, para 77.

1. Expropriation in lieu of inclusionary zoning,
2. Expropriation of buildings with repeated health and safety violations,
3. Expropriation of abandoned buildings, and
4. Expropriation of landlords who own more than 1,000 units.

Section four addresses some potential misunderstandings about expropriation in the affordable housing context.

This report focuses on the ways expropriation works as a mechanism to follow through on the human rights commitments in the 2020-2030 HousingTO Action Plan. I argue that the City of Toronto should treat housing as a necessity, instead of allowing private individuals and companies to use their power over people's lives to pursue profit. The principles behind this argument have been adopted by the City of Toronto through the inclusion of the right to housing in their new action plan.⁵

5 Planning and Housing Committee, Toronto City Council, "HousingTO 2020-2030 Action Plan" (HousingTO Action Plan), November 2019, <https://www.toronto.ca/legdocs/mmis/2019/ph/bgrd/backgroundfile-140651.pdf>, 5.

1. Issues & Introduction

The policies I propose help the City of Toronto to follow through on its commitment to “provide Torontonians with housing that is safe, affordable and suitable to their needs.”⁶ This report discusses the framework of expropriation, touches on examples of its use, and explains how it is an appropriate response to the current crises facing tenants. These policies focus expropriation on landlords and developers with access to large amounts of capital.

Expropriation can facilitate the transition from financialized and for-profit rental housing to not-for-profit rental housing. This transition is a crucial component of the right to housing, and reconnects housing to its social function. Policies that aim at the decommodification and definancialization of rental housing can help curb the rapid gentrification of working-class neighbourhoods, and prioritize the needs and participation of local residents. These policies also work to remove structural incentives to evict low and middle income tenants.

The policies I propose reflect rental housing’s role as public infrastructure. Rental housing is often funded partially through taxpayer money, and it is inseparable from the other forms of public infrastructure.⁷ This interdependence suggests a necessary level of public interest in the pursuit of housing affordability, as it contributes to a city in which all can live with dignity and opportunity.⁸

According to the Canada Mortgage and Housing Corporation (CMHC), tenants are far more likely to be in core housing need,⁹ with 32.3% of tenants in core need versus 6.4% of homeowners.¹⁰ This means that tenants face disproportionate financial struggles in their day-to-day lives. Affordability is one component of

6 Ibid.

7 This is true on a basic level: for an apartment building to exist it must use public roads and public sewage lines.

8 HousingTO Action Plan, 13.

9 Core housing need is defined by the CMHC as: “A household is said to be in core housing need if its housing falls below at least one of the adequacy, affordability or suitability, standards **and** it would have to spend 30% or more of its total before-tax income to pay the median rent of alternative local housing that is acceptable (meets all three housing standards).

1. Adequate housing is reported by their residents as not requiring any major repairs.
2. Affordable dwellings cost less than 30% of total before-tax household income.
3. Suitable housing has enough bedrooms for the size and make-up of resident households, according to National Occupancy Standard (NOS) requirements.”

10 Canada Mortgage and Housing Corporation, “Total Population and Population in Core Housing Need by Sex and Tenure,” March 31, 2018.

adequate housing under the right to housing, thus unaffordability contradicts commitments under the right to housing made by the Government of Canada and the City of Toronto.¹¹

Preliminary Disclaimers

Before moving forward, I would like to note a few disclaimers. First, I am not a lawyer, and nothing here is intended to be legal advice. Second, I acknowledge that I am a tenant, and my experience as such inevitably informs my thoughts on rental housing. Third, I have written this with a focus on Toronto and Ontario, and throughout the piece will reference legislation that applies in those areas. While the core arguments of this paper do not depend on jurisdiction, some elements of expropriation may differ in other locations. Finally, it is important to note that the policies I propose will only work if the expropriated units are brought onto the market effectively. Throughout this paper, I will use “affordability” to refer to rents which are tied to income. This is because a geared-to-income approach is a more appropriate framework to understand affordability in the housing context. I also want to note that I assume the new units that these policies would produce would be owned and overseen by some form of not-for-profit housing provider (co-op, government agency, etc.). I will refer to these groups collectively as not-for-profit housing providers or as non-profit housing.

The Right to Housing

The right to housing recognizes the intrinsic link between adequate housing and human dignity. It is grounded in human rights, and recognizes that “systemic patterns of inequality, exclusion and lack of adequate housing ... are human rights problems that need to be addressed through a human rights framework.”¹² The right to housing fundamentally ties housing to human rights, including the right to life, and acknowledges the deep harm caused by homelessness, precarious housing, and unaffordability. The right to housing does not demand that governments provide every person with a house, but rather “it means governments

11 “HousingTO Action Plan,” 13, National Housing Strategy Act (S.C. 2019, c. 29, s. 313), and Farha, “Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context”, 3, par 2.

12 Farha, “Adequate Housing as a Component of the Right to an Adequate Standard of Living” (United Nations General Assembly, August 4, 2015), 4, p 8.

must ensure that everyone – particularly the most disadvantaged groups – should have access to housing that is adequate.”¹³ It has been pushed for by community groups globally and on the international stage by advocates like former UN Special Rapporteur on Housing Leilani Farha.

Housing in Toronto

According to the City of Toronto’s 2019 housing report, “87% of Toronto’s low-income (< \$30,000) renters are spending more than 30% of their incomes on shelter”.¹⁴ There are roughly “100,000 households waiting to access some 94,000 social housing homes”.¹⁵ Rents for condominium units (currently the dominant supply of new rental housing through the secondary market) increased by 25% between 2006 to 2017.¹⁶ More than 8,000 people were estimated to be experiencing homelessness in 2018, and an inability to afford rent was named as a top reported cause.¹⁷

According to the CMHC, average rent for a one-bedroom apartment in Toronto’s private market is \$1,361 per month (\$16,332 per year), which shoots up to \$1,966 per month (\$23,592 per year) for a one-bedroom condominium.¹⁸ This is important because secondary condominium rentals make up 17.4% of rental units: a staggering 33.9% of all condos are rentals.¹⁹ Median *asking* rent for a one-bedroom apartment is \$2,300 per month (\$27,600 per year) according to an aggregated report from rental listing website PadMapper.²⁰ For reference, the average income in Toronto is \$46,700 per year, with a median income of \$35,000 per year.²¹ **To put this another way, Toronto’s median one-bedroom rent is approximately 79% of Toronto’s median individual income.** Based on the

13 <http://www.unhousingrapp.org/why-housing>

14 City of Toronto, “Toronto Housing Market Analysis: From Insight to Action,” Toronto, January 2019, 6.

15 Ibid.

16 Ibid.

17 Ibid., 7.

18 Canada Mortgage and Housing Corporation, “Rental Market Report Data Tables, Ontario.”

19 Toronto Housing Market Analysis

20 Crystal Chen, “May 2020 Canadian Rent Report,” *PadBlogger* (blog), <https://blog.padmapper.com/canadian-rent-trends>.

21 Statistics Canada. Table 11-10-0239-01 Income of individuals by age group, sex and income source, Canada, provinces and selected census metropolitan areas. 16+.

CMHC guideline for affordability²², a household would need to earn \$54,440 to pay an “affordable” amount of rent for a one-bedroom apartment. According to PadMapper, a household would need to earn \$78,640 for a one-bedroom condominium unit, and the median income would need to be \$92,000.

What this data shows is that the average individual tenant can barely afford to pay for rent in a one-bedroom apartment. There is an obvious imbalance between the incomes of tenants in Toronto and the costs of their housing. This degree of core housing need and unaffordability disproportionately harms already marginalized and vulnerable groups, especially those who make up the majority of low-income workers and those who rely on social assistance for their income.²³ This data also shows the disparity between sitting rents (CMHC data) and asking rents (PadMapper data). It is the immense difference between the sitting rents paid by tenants who occupy their units for medium-to-long tenures, and the rent that a landlord can ask from the market which incentivizes the illegal or bad-faith eviction of tenants.

The rental crisis in Toronto is not expected to improve in the near future. By all estimates, more people will be in core housing need, social housing waitlists will continue to grow, and Toronto’s population growth will continue to outpace the construction of rental stock.²⁴ In addition, economic disparity has grown to unfathomable levels. In 2016, “the typical person in the bottom 50% [made] \$6,200 less in market income than [they did] in 1982”, and this downward trend has shown no signs of slowing.²⁵ Amidst all this, housing stock, both public and private, continues to degrade. In 2016, between 8% and 11% of tenant-occupied dwellings needed major repairs and the “growing backlog of capital repairs in the Toronto Community Housing Corporation portfolio [is] one of the most significant challenges facing Toronto”.²⁶ Nearly a quarter of households were in core housing need, and “the number of households in core housing need is projected to increase by 80,000 ... in 2041”.²⁷

22 30% of pre-tax household income

23 Allison Harell, Stuart Soroka, and Kiera Ladner, “Public Opinion, Prejudice and the Racialization of Welfare in Canada,” *Ethnic and Racial Studies* 37, no. 14 (December 6, 2014): 2580–97, <https://doi.org/10.1080/01419870.2013.851396>.

24 Toronto Housing Market Analysis, 7.

25 Steven Ayer, “Toronto’s Vital Signs: Income and Wealth,” ed. Jennifer D. Foster and Toronto Foundation Staff (The Toronto Foundation, 2019).

26 Toronto Housing Market Analysis, 44.

27 Ibid, 42.

I would argue that this data suggests Toronto has failed to provide safe, secure, and affordable rental housing. This crisis is not the result of inaction, but is the inevitable consequence of policies which “have subsidized the excessive financialization of housing at the expense of programmes for those in desperate need of housing.”²⁸

Landlords and Tenants

Many of the crises in our rental market—high turnover, unaffordable rents, poorly maintained housing—are caused by a system that treats housing as a commodity. This is in part because the market logic of for-profit rental housing propels landlords and tenants towards an inherent conflict: a landlord seeks the highest amount of rent possible for the smallest cost, whereas a tenant seeks the lowest rent for the highest possible standard of living.²⁹ Any benefit to a landlord comes at the direct expense of the tenant, and vice versa. For-profit companies *must* maximize profit, and in rental housing, increased profit can *only* be squeezed from tenants. As such, the “rational” action for a landlord in a commodified housing market is often one which contradicts the right to housing.³⁰

In our current legislative scheme, there is an uneven distribution of power in favour of the landlord. A landlord sets a unit’s rent, which a tenant has limited (nonexistent in practice) opportunity to negotiate. The landlord chooses when to show a unit and who can view the unit. They select a tenant, and in practice can determine the length of a tenancy.³¹ If so inclined, they can sell the building and all the units within. They can renovate a unit (evicting a tenant in the process), and paint the hallways. They can upgrade the elevator, and then raise the rent of the whole building to fund that renovation.

By contrast, a tenant has no authority to substantially alter the appearance of their unit or common spaces, they have no say in who their neighbours will be, and they have a specific and limited set of rights regarding the security of their own tenancy. Tenants also have no control over who their landlord is, who maintains

28 Farha, “The Financialization of Housing,” 21, p 76.

29 Interestingly, Hannah Arendt also uses this example in her discussion of “interest conflicts” in *On Violence*.

30 See for example, the rise of “renovictions” in Toronto.

31 While a landlord cannot evict a tenant except in specific instances, in practice landlords have found ways to use the few available routes they have (i.e., personal use, renovation) at their leisure.

their building, how the building is maintained above a minimum standard, or what would happen if the building is sold. Further, landlords have access to more capital and increased access to lawyers and lobbyists, whereas tenants tend to have less financial stability, and less access to the levers of power.

The tension in the relationship between tenants and landlords is highlighted by the language from Real Estate Investment Trusts (REITs), which are companies that invest in real estate assets and then typically operate as the landlord for those properties.

CAPREIT is one of Canada's largest REITs, as well as one of its oldest. In 2019, CAPREIT owned and oversaw 16,155 residential suites within Toronto, or nearly 5% of all of Toronto's housing stock. In 2019, it earned \$279,162,000 from rental revenue on these units. CAPREIT's 2019 annual report proudly shared that their "net AMR [average monthly rent] increased due to the strong rents on turnovers in British Columbia and Ontario and above guideline increases in Ontario."³² By this, CAPREIT means that their profits have increased by replacing long-term tenants paying low rents with new tenants paying higher rents, along with increasing rents above the legal guidelines using Above-Guideline Increases (AGIs).

CAPREIT is a for-profit trust, so they must continue raising profits. To do this, they plan to "pursue applications in Ontario for AGIs where it believes increases above the annual guideline are supported by market conditions to raise monthly rents on lease renewals".³³ This approach misinterprets the legislative intent of above-guideline increases. AGIs exist for landlords to better bear the cost of necessary capital expenditures, not for picking and choosing when to obey Ontario's rent guidelines in a needless pursuit of higher rents.

In effect, CAPREIT is proving the doctrine I have laid out above—that a landlord's profit comes at the expense of a tenant, and that the pursuit of profit introduces irreconcilable tensions with the provision of affordable and secure rental housing. In jurisdictions where sitting tenants can no longer provide increased profit (such as through tenancy rent control), a landlord will engage in behaviours which are increasingly divorced from housing's social function in order to increase profit. As

32 Canadian Apartment Properties Real Estate Investment Trust, "CAPREIT Reports Continued Growth and Strong Operating Performance in Third Quarter of 2019," *GlobeNewswire* (blog), November 13, 2019.

33 CAPREIT, "CAPREIT 2019 Annual Report," 2019, http://www.annualreports.com/HostedData/AnnualReports/PDF/TSX_CAR_U.TO_2019.pdf.

CAPREIT's language suggests, increased profit is realized through the eviction ("turnover") of tenants paying low rents, and the abuse of AGIs.

The market logic of commodified rental housing incentivizes the inhumane treatment of tenants. This is not to say that landlords are inherently cruel, but rather to point out the fact that the effective and everyday operation of a for-profit rental system necessarily produces this conflict. Governments, tenants, and landlords are all aware of this on a base level, as it is part of the reason we have regulations and legislation placing restrictions on the relationship between landlord and tenant. These restrictions exist to protect vulnerable parties from abuse and undue harm. When there are no regulations, or there are issues with access to justice, landlords can take advantage of these conditions to the detriment of tenants. For example, without vacancy rent control,³⁴ landlords have incentive to evict long-term tenants who pay below-market rent in order to significantly raise the rent by finding a new tenant. When it is easy to abuse a legislative system, landlords are encouraged to maximize the rent they can charge. In Ontario, both AGI applications and "landlord's own use" evictions have skyrocketed in recent years, suggesting landlords are engaging in exactly this kind of behaviour.³⁵

When there is an opportunity to make more profit, a rational landlord will take it because the logic of the market compels them to seek profit wherever it is. The goal of a landlord is to squeeze money out of every square foot of the units they own. The goal of a tenant is to live with security and stability. This creates an unresolvable contradiction in a commodified housing market. In the best case scenario, callousness is mitigated by a landlord's good conscience. In the worst case scenario, it produces housing markets which are hostile to the needs of tenants by incentivizing low rates of maintenance, high turnover, and increasing rents.

34 Vacancy rent control is when a landlord cannot raise the rent on a unit even between tenants - i.e, the rent is attached to the *unit* not the tenancy. Toronto does not have this in place at the time of writing.

35 See <https://www.thespec.com/news/hamilton-region/2019/01/09/landlord-applications-for-above-guideline-rental-hikes-in-hamilton-soaring.html> and <https://www.thestar.com/news/gta/2020/02/12/toronto-saw-a-nearly-77-per-cent-rise-in-personal-use-eviction-applications-over-four-years.html>

Expropriation Gives Toronto Control Over Rental Housing

Financialized landlords “have acquired nearly one fifth of Canada’s private multi-family rental stock.”³⁶ The magnitude of units owned by these landlords gives them a certain degree of power over public policy decisions. Implicitly, this power curbs the extent to which a government can develop housing policy oriented towards the public good. As Farha notes:

Policy responses to the financialization of housing have tended to prioritize support for financial institutions over responding to the needs of those whose right to adequate housing is at stake.³⁷

Expropriation of financialized rental properties can be used to deny financialized landlords legislative and political power by limiting the extent to which these bodies control a given housing market.

36 Martine August, “The Financialization of Canadian Multi-Family Rental Housing: From Trailer to Tower,” *Journal of Urban Affairs*, February 28, 2020, 1–23, <https://doi.org/10.1080/07352166.2019.1705846>.

37 Farha, “The Financialization of Housing,” 19, p 69.

2. What is Expropriation?

Legal Framework

Expropriation is the “taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers.”³⁸ In each expropriation, an expropriating authority must pay compensation to the affected party for the expropriated property and other related damages.

Expropriation exists as the framework through which a legislative body can exercise its power over individuals in service of the public good. It is a set of laws which recognize and balance the need for a government to develop infrastructure for the public good with an individual’s right to property. When these two needs come into conflict, such as when a government needs to build a new subway line through a neighbourhood, expropriation is the mechanism through which the conflict is mediated.

The typical course of a successful expropriation proceeding is:

1. Identification of property
2. Pre-expropriation negotiations
3. Application for Approval of Expropriation
4. Hearing of Necessity with Inquiry Officer (if requested by party facing expropriation)
5. Approval of expropriation
6. Registration of plan for expropriation (within three months of approval)
7. Notice of Expropriation, Notice of Election, Notice of Possession all served (within 30 days of registration of plan)
8. Appraisal of property to be expropriated (date of valuation chosen by property owner)
9. Appraisal report and offer of compensation; related negotiations.
10. Possession of property taken (within three months of Notice of Possession)
11. Closing of expropriation (assuming no negotiation of compensation is needed)³⁹

38 Expropriations Act, RSO 1990, c E.26, <<http://canlii.ca/t/53nl1>>, s 1.

39 Expropriations Act.

In plain terms, expropriation is the forced sale of property by a body that has been granted the authority to expropriate. These bodies are typically governments—provincial, federal, and municipal—but can include some specific private corporations or public bodies that are granted the power to expropriate (ie., energy companies, school boards). Many people will be familiar with expropriation, as it is often used to develop infrastructure such as subway lines and highways.

Expropriation is a bit of a boogeyman in public imagination, but the reality is that it is an everyday occurrence. It is used frequently, by authorities at all levels of government, and for a diverse range of needs. The Ontario Board of Negotiation (which oversees expropriation negotiations) resolved with 59 expropriations in between April 2019 and March 2020.⁴⁰ In 2019, the City of Toronto fully expropriated fifteen properties as per their public webpage on expropriation proceedings, which does not include times when expropriation proceedings began but were resolved through negotiation.

“Fair, Sound, and Reasonably Necessary”

Expropriations must be “fair, sound, and reasonably necessary.”⁴¹ This test is laid out by the *Expropriations Act* (the Act), and is the minimum requirement an expropriating body must meet in order to expropriate a property. By understanding this test, we can develop clear policies which meet the legal obligations of an expropriating authority and successfully use the tools of a government to provide affordable housing. I will touch on the timeline of expropriation, and explore the potential hurdles to a government’s use of expropriation in the affordable housing context by looking at a few case studies.

According to the Act, it is the duty of the inquiry officer⁴² to establish whether the proposed expropriation is “**fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority**” (emphasis added).⁴³ In other words, “**having regard to the objectives of the expropriating authority, is this expropriation reasonably defensible**” (emphasis added).⁴⁴ This test is

40 Tribunals Ontario, “Board of Negotiation Performance Cases Resolved Within 18 Months.”

41 Expropriations Act, s 7.

42 An appointed figure to oversee the expropriation proceedings

43 Expropriations Act, s 7.

44 *Parkins v. The Queen in right of Ontario et al.*, 1978 CanLII 1254 (ON CA) (*Parkins v. Ontario*).

the guideline for understanding the merits of any proposed expropriation; it frames how an inquiry officer must balance “the conflict between private and public interests which exists in every expropriation.”⁴⁵ It provides a roadmap through which inquiry officers understand the validity of expropriation, while also giving an expropriating authority the grounds upon which their reasoning for the expropriation must rest. The role of the inquiry officer is to understand an expropriation through the lens of this test, and balance the evidence given using its outline. If a proposed expropriation meets this standard, it will be recommended to proceed. If not, it will be recommended to be cancelled.

The necessity of an inquiry is explained in a 1998 case at the Ontario Divisional Court:

... the expropriating authority which makes the decision on whether to proceed with the expropriation must know the case of those in favour of expropriation and those opposed to it in order to have an informed appreciation of the evidence on which the report of the inquiry officer is based.⁴⁶

The goal of an expropriation inquiry is to elucidate affected parties to the logic of the expropriation as it relates to the goals of the expropriating authority, and to guarantee that the expropriating authority is acting with reasonable care and reasonable necessity in their proceedings. An inquiry is meant to give affected parties the opportunity to present evidence which the expropriating authority may not have considered in their own reasoning, as well as to provide these parties with the opportunity to understand why their properties are being expropriated.

Importantly, neither the test nor the inquiry imply that an inquiry is meant to challenge the *goals* of the expropriating authority. Rather the test, and its application in an inquiry, exist to balance the public and private needs as they *relate to those goals*. That is to say parties can argue about the ways in which an expropriation meets a set goal, but *not* the goal itself: “whether the housing policy and an expropriation is wise or unwise is not for the court to appraise. It is not for us to try to penetrate the precise cause of the City Council’s reasoning.”⁴⁷

45 Parkins v. Ontario, 7.

46 Marvin Hertzman Holdings Inc. v. Toronto (City), 1998 CanLII 19426 (ON SCDC), par 11.

47 Buttery Construction Ltd. v. Windsor (City), (1979) 17 L.C.R. 33 (Ont. H.C.J.).

In appeals of expropriation proceedings, reviewing bodies can look for issues with the specificity and clarity of the proposed expropriation. In the 2016 case, *1739061 Ontario Inc. v. Hamilton-Wentworth District*, Justice Lauwers clarifies this review, stating that “the expropriating authority must state its **purposes and objectives, and must be held to them**, in order for the protective elements of the Expropriations Act to be effective in protecting the owner’s interest” (emphasis added).⁴⁸ This demonstrates the need for an expropriating authority to have clear, concise, and consistent purposes for expropriation.

I want to also note that the Act limits the power of the inquiry officer. The only requirement an expropriating authority has with respect to the inquiry is to “consider the report” that the inquiry officer produces.⁴⁹ While these reports are very persuasive on the actions of the expropriating authority, they are *not necessarily* binding. This means that even if an inquiry officer does not recommend the expropriation, the expropriating authority could conceivably proceed regardless, and vice versa. That being said, I found no examples of this and am hard pressed to imagine an expropriation which ignores the recommendations of the inquiry proceeding.

With this background, I would like to highlight a few passages from inquiry reports that clarify how this test is met. Expropriation inquiries are sometimes explained in such a manner that the test often seems circular: “the expropriation is reasonably defensible because the city can defend it reasonably” is the overall thrust of many expropriation inquiries. In the case of *194 Dowling*,⁵⁰ the inquiry officer explains his reasoning for approving the expropriation by saying:

... at some point in time, it is reasonable for an Expropriating authority to conclude that having ... land developed privately is no longer realistic for financial and/or practical reasons. That point in time has come regarding [194 Dowling], and for that reason it is my recommendation that the proposed expropriation is fair, sound,

48 *1739061 Ontario Inc. v. Hamilton-Wentworth District*, 2016 ONCA 210 (CanLII), par. 65.

49 Expropriations Act, s 8.

50 *194 Dowling* is a three story building in Toronto which was expropriated and turned into affordable housing. It is discussed in further detail on page 16.

and reasonably necessary in the achievement of the objectives of the Expropriating Authority.⁵¹

Freidin's reasoning relies on the City's policy objective to "to produce ... 1,000 new affordable housing units, including ... derelict properties such as this for development or conversion."⁵² This expropriation inquiry together with the language from Justice Lauwers proves that a successful expropriation depends on clear goals laid out by the expropriating authority. It is through these goals that an inquiry officer can interpret and apply the "fair, sound and reasonably defensible" test in the context of the specific expropriations.

In an expropriation from 2019, regarding the expropriation of a small parcel of land for the purposes of a laneway, the inquiry officer discussed the evidence submitted in just one page. His findings were a single paragraph:

"The owner's proposal ignores the issue of safety and liability and the upgrading and repair by the City of private property. **In my view the public interest outweighs the desires of the property owner.** The evidence does not support any significant impact of either the property or operations of 3038-3040 Danforth Avenue" (emphasis added).⁵³

This highlights the baseline rule for the expropriation test: does the public interest outweigh the desires of a property owner? The core act which policymakers and inquiry officers must engage in when pursuing expropriation is "the balancing of the public interest as against the private interest of the owner."⁵⁴ The purpose of expropriation is to develop something for the public good which can *only* be done through that expropriation. This is why expropriation is a tool of last resort, and also why it is crucial to fully understand the urgency and unconscionability of Toronto's current housing landscape. This clarity and context gives a legislator the grounds they need to frame expropriation in such a way that it meets the standard of reasonable defensibility.

51 Chief Corporate Officer and General Manager, Shelter, Support and Housing Administration, "Approval to Expropriate 194 Dowling Avenue (Also Known as 1495 Queen Street West) for the Purpose of Developing Affordable Housing on a Derelict Housing Site," June 14, 2006, 8.

52 Ibid, 4.

53 Executive Director, Corporate Real Estate Management, City of Toronto, "Expropriation of a Portion of 3038-3040 Danforth Avenue for Laneway Purposes," August 20, 2019., 10.

54 Parkins v. Ontario, 5.

It was suggested that the new 2020-2030 HousingTO Action Plan would provide a revised framework for expropriation in the context of affordable housing, but it did not.⁵⁵ However, the HousingTO Plan does include a new housing charter which contains a commitment by the city of Toronto to “develop and maintain a housing strategy to further the progressive realization of the right to adequate housing, **through all appropriate means**” (emphasis added).⁵⁶ Through this language, the new charter provides an expropriating authority with a framework through which they can articulate their reasons for expropriation in the context of affordable housing.

Brief Case Studies from Toronto

In Toronto, the clearest example of expropriation in the affordable housing context is the expropriation of 194 Dowling Avenue.

194 Dowling Avenue is a three-storey building on Queen Street West in Toronto. It operated as a privately-owned boarding house until a fire in the mid-1990s killed two people and caused extensive structural damage. It remained vacant after the fire. After a well-organized push from grassroots community groups, including the Parkdale Activity Recreation Centre (PARC) and the Ontario Coalition Against Poverty, expropriation proceedings commenced in the early 2000s. The expropriation was initiated with the specific goal “of developing affordable housing on a derelict housing site.”⁵⁷ The expropriation inquiry for 194 Dowling took place in 2006. There was a challenge to the market value compensation by the owner of the land, which was settled in a mediation session. The expropriation was successful, and the property is now run by the PARC as supportive housing.⁵⁸

To give us a better sense of what one can expect with the policies I propose, I have laid out the timeline of this expropriation more clearly. The expropriation was first initiated in early **2005**. The inquiry hearing on the expropriation took place in **March 2006**, and the expropriation was approved in **June 2006**. The

55 Expropriation of a Portion of 3038-3040 Danforth Avenue for Laneway Purposes.

56 HousingTO Action Plan, 14.

57 Chief Corporate Officer and General Manager, Shelter, Support and Housing Administration, “Approval to Expropriate 194 Dowling Avenue.”

58 City Solicitor and the Deputy City Manager & Chief Financial Officer, “Proposed Settlement of Compensation Re: Expropriation of 194 Dowling Avenue (Also Known as 1495 Queen Street West)” (Toronto, March 23, 2010).

property was expropriated shortly after, and PARC began renovations in 2008. After some mediation over the final market-price assessment, a final settlement was paid in 2010, and the building began operating as supportive housing in 2011.⁵⁹ In all, from the formal initiation of expropriation, to PARC beginning renovations, it took 3 years to complete the expropriation. From other reports, this is considered an average timeline when expropriations require an inquiry (rather than finding a resolution through negotiation). As evidence of this, the Board of Negotiation (which oversees expropriation negotiations in Ontario) resolved 57 of 59 expropriations within 18 months in the 2019-2020 fiscal year.⁶⁰ 194 Dowling is a crucial precedent as it shows that it is possible to use expropriation as a mechanism to develop affordable housing, and that there is a framework the City of Toronto has used in the past to do this.

Expropriation has also been used to acquire specific condominium units; recently, this was done with several units at 414 Dawes Road.⁶¹ Several ground floor units were needed by the City to improve the public library facilities at the property. The expropriation was approved by Toronto City Council with very little debate. I wanted to touch on this specific form of expropriation briefly, as the ability to expropriate individual units in condominiums will become important when we discuss the ways expropriation could work in lieu of, or in tandem with, inclusionary zoning.⁶²

Despite the clear procedure outlined in the Expropriation Act, the frequent use of expropriation for a wide range of municipal endeavours, and the precedent of expropriation used in the context of affordable housing, there has been reticence from Toronto City Council to use expropriation to acquire affordable housing. In 2019, community groups pushed City Council to expropriate several parcels of land on Sherbourne Street. Despite this push, the staff report recommended not expropriating these properties, in part because “the City of Toronto does not currently have a policy or standardized approach to the acquisition/expropriation

59 <http://parc.on.ca/programs/supportive-housing/>, Edmond House.

60 Tribunals Ontario, “Board of Negotiation Performance Cases Resolved Within 18 Months,” <http://elto.gov.on.ca/wp-content/uploads/2020/01/BON-Stats-Q3-December-31-2019.pdf>.

61 Acting Director, Real Estate Services, City of Toronto, “Expropriation of Condominium Units - 414 Dawes Road, Units 1 and 6,” February 8, 2019, 9.

62 Inclusionary Zoning is defined by Ontario as “a land-use planning tool that a municipality may use to require affordable housing units (IZ units) to be included in residential developments of 10 units or more.”

of properties for affordable housing development.”⁶³ Unfortunately, there is no public information on why else this expropriation did not proceed, nor are there other readily available examples to understand the internal processes of expropriation for affordable housing.

Compensation

The jurisprudence on expropriation looks to appropriately compensate the person facing expropriation. The courts approach expropriation as a remedial statute, with “the specific purpose of adequately compensating those whose lands are taken to serve the public interest.”⁶⁴ When taking into account the level of compensation to be awarded, the courts hold “broad and liberal interpretation” of expropriation statutes.⁶⁵ They seek to detail the ways in which the expropriation harms (or does not harm) the affected party. The most obvious compensation is for the market value of the property, or the value the property could expect to fetch when sold on an open market by a willing seller to a willing buyer.⁶⁶ In total, the compensation paid to the owner of the expropriated property is based on:

- a. the market value of the land;
- b. the damages attributable to disturbance;
- c. damages for injurious affection; and
- d. any special difficulties in relocation⁶⁷

Ontario’s *Expropriation Act* “does not limit disturbance damages to losses relating only to the expropriated land”, but rather looks to award damages that are “the natural and reasonable consequence of the expropriation.”⁶⁸ The link between the compensation and the expropriation is not simply temporal, but rather is tied to causation.⁶⁹

63 Director, Affordable Housing Office Director, Real Estate Services Division, City of Toronto, “Feasibility of Acquisition or Expropriation of 214, 218, 220, 222, 224, 226 and 230 Sherbourne Street.”

64 *Toronto Transit v. Dell*, par. 20.

65 *Ibid*, par. 21.

66 *Expropriations Act*, s 14.

67 *Expropriations Act*, s 13 (2)

68 *Toronto Transit v. Dell*, pars. 21, 28.

69 *Ibid*, para 38.

With regards to forms of compensation flowing from expropriation, the court will look to costs and harms which directly arise from the expropriation, in addition to the market cost of the expropriated property. Compensation can also include costs for injurious affection.⁷⁰ Injurious affection under the Expropriation Act covers two areas:

- a. where a statutory authority acquires part of the land of an owner,
 - i. the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works thereon or by the use of the works thereon or any combination of them, and
 - ii. such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute,
- b. where the statutory authority does not acquire part of the land of an owner,
 - i. such reduction in the market value of the land of the owner, and
 - ii. such personal and business damages.⁷¹

To clarify, the expropriating authority must account for potential decreases of value and potential business damages that the expropriation causes to both the party facing expropriation, as well as other parties who may be harmed by the expropriation. For our purposes, it is unlikely any of the parties involved in the expropriation I propose would have strong claims for injurious affection, as they should not interfere with businesses or land values. Further, “anticipated future lost developers’ profits are not compensable damages,” which helps limit the costs of expropriation of rental units from developers and investors.⁷²

Compensation can also cover legal fees arising from the expropriation. These costs can be limited, however, as the courts have found “no reason to extend the principle of full compensation for the costs of collateral civil litigation expropriated owners may bring to challenge the legality of the expropriation.”⁷³ This suggests that the compensation an afflicted party can seek does not necessarily extend to litigation regarding the *legality of the expropriation*. I emphasize this, as it is important to note

70 Expropriations Act, s 13.

71 Ibid, s 1

72 Bernard Homes Ltd v. York Catholic District School Board, 2004 CanLII 12069 (ON SCDC), par. 34.

73 1739061 Ontario Inc. v. Hamilton-Wentworth District, par. 92.

the difference between costs and expenses flowing from expropriation (which trigger compensation) and costs and expenses about the reasons for expropriation (which do not necessarily trigger compensation).

Expropriation is a tool of last resort. With the policies below, expropriation should only be triggered if a property owner is unwilling to negotiate. This is true of expropriation as it is currently used as well. Typically, a municipality will first enter into standard negotiations with the owner of the property, and more often than not these negotiations will be resolved outside of the expropriation context. If, however, these negotiations fall through, or the owner of the property in question refuses outright to enter negotiations, expropriation proceedings will be commenced in order to guarantee the property can be acquired.

Expropriation Against Capitalist Realism

In *Toronto Area Transit v Dell Holdings Ltd*, the court describes expropriation as “one of the ultimate exercises of governmental authority.”⁷⁴ It is the extreme use of “governmental authority” which makes expropriation an appealing policy in terms of public perception.⁷⁵

In order to normalize a rights-based approach to housing, a government must treat housing as they do other necessities, such as healthcare. Progress towards the realization of the right to housing requires “a transformation of the relationship between the State and the financial sector, **whereby human rights implementation becomes the overriding goal**” (emphasis added).⁷⁶ Through drastic uses of authority, a government demonstrates to the public that a matter is urgent, and it is the government’s responsibility to respond, rectify, and prioritize the issue. A government which vigorously decommodifies housing using a mechanism like expropriation rapidly shifts how the public perceives housing in their day-to-day life, as housing is re-tied to its social role, and removed from its role as a financialized asset.

Through this, a human rights housing framework is more easily implemented and understood. This kind of transition is clear historically when we look at shifting responses to once-radical ideas. For example, during the Canadian shift to

⁷⁴ *Toronto Transit v. Dell*, par. 20.

⁷⁵ *Ibid.*

⁷⁶ Farha, “The Financialization of Housing,” 21, par 77.

universal healthcare, and with labour regulations such as the eight-hour workday. These are policies that are perceived as normal in part because of exercises of authority.⁷⁷ This is not to say this process is quick, easy, or without work. It merely suggests that one benefit of a housing strategy which employs expropriation is the effect on how the public perceives the role of housing in their everyday life.

Neoliberalism has largely obfuscated the role of government in day-to-day life. We are often told that a government's function is to merely "correct the ship", with slight adjustments meant to curb the most brash impulses of the private market. In reality, the austerity policies of the last forty years have been deliberately enacted.⁷⁸ The deregulation and downloading of affordable housing, its replacement with market-oriented incentives to own homes, and the shifting of the welfare state from the role of government to the role of private institutions (or often, no one at all), are the results of focused efforts to construct laws and frameworks which encourage for-profit actors to fill the voids left by the shrinking welfare state.⁷⁹ States' deference to market-friendly policies "is simply not in accordance with the important obligation to fulfill the right to adequate housing by all appropriate means."⁸⁰

As one method of engaging with, regulating, and directing the private market, expropriation works to build a system that is consistent with the realization of the right to adequate housing.⁸¹ It is through bold actions—like expropriation—that a government can reject financialized approaches to housing, and instead turn its focus on guaranteeing a minimum level of dignity. Through this lens, expropriation challenges what theorist Mark Fisher describes as Capitalist Realism: "the widespread sense that not only is capitalism the only viable political and economic system, but also that it is now impossible even to imagine a coherent alternative to it."⁸²

77 Not to dismiss the vital role of grassroots activism and organizing - just to note what that activism often does is pressure the government into using their powers to foster a group's goals.

78 Marjorie Johnstone, Eunjung Lee, and Jo Connelly, "Understanding the Meta-Discourse Driving Homeless Policies and Programs in Toronto, Canada: The Neoliberal Management of Social Service Delivery," *International Social Work* 60, no. 6 (November 2017): 1443–56, <https://doi.org/10.1177/0020872817706406>.

79 Alan Walks and Brian Clifford, "The Political Economy of Mortgage Securitization and the Neoliberalization of Housing Policy in Canada," *Environment and Planning A: Economy and Space* 47, no. 8 (August 2015): 1624–42, <https://doi.org/10.1068/a130226p>.

80 Farha, "The Financialization of Housing," 5, par 14.

81 Ibid, 6, par 15.

82 Fisher, *Capitalist Realism*, Chapter 1.

When a government exerts its authority over the market through expropriation, and moves private rental stock into public or non-profit hands, it delivers an urgently needed public good (affordable rental housing) and demonstrates that there in fact *is an alternative* to for-profit rental housing. Expropriation, like all policy, is a way for a government to articulate its values and concerns. The goals with the policies I propose are twofold: firstly, they are material, and secondly, they are *ideological*. They aim to change the ways government interacts with people, empowering and engaging them in decisions which affect their lives and the enjoyment of their rights.⁸³

83 Farha, "Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context," United Nations Human Rights Council, January 15, 2018, 4, par 11.

3. Proposed Uses of Expropriation

In this section I outline policies which use expropriation to acquire affordable housing. For each policy, I offer cursory arguments for how each use of expropriation will meet the test required by the Expropriations Act. These arguments are meant to be general and emphasize the public policy and moral reasons for each approach. These factors inform the decisions of both an inquiry officer and reviewing tribunals and judiciaries. For example, in *Marvin Hertzman Holdings Inc. v. Toronto*, an expropriation which was appealed in part due to perceived issues of fairness, the Joint Board (acting as Inquiry Officer) explicitly balanced the public policy benefits of a revitalized downtown core against the party's private property interests: "the social and economic well-being of the City was clearly recognized by the Ontario Municipal Board as the principal motivation for this undertaking."⁸⁴ Justice Corbett in the appeal of this decision found that this was appropriate.⁸⁵

Every expropriation will be different, dependent on context and facts, and will need to be rationalized on those unique grounds. The arguments I present would be most successful before a tribunal which is willing to "recognize and apply the paramountcy of human rights and interpret and apply domestic laws and policies related to housing and housing finance consistently with the right to adequate housing."⁸⁶

I do not discuss the operation of the units after they have been expropriated because it will take us too far from the narrower topic of expropriation as a mechanism to acquire affordable housing units. However, I do not mean to limit the management of expropriated units to only public (government-owned) housing. Models which expropriate units and then transfer ownership to not-for-profit housing providers (as happened with 194 Dowling) or community land trusts are in line with my arguments. Expropriation is a power vested in a municipality, which is why my focus is on the City of Toronto's actions, but the operation of affordable rental units could be done by a variety of actors, and the unique benefits of each are best left outside of this paper.

84 Strategic Policies and Priorities Committee, City of Toronto, "Final Approvals - Yonge Dundas Redevelopment Project," May 6, 1997.

85 *Marvin Hertzman Holdings Inc. v. Toronto (City)*, par. 6.

86 Farha, "The Financialization of Housing," 22, para 77 (f).

These policies make sense to pursue vigorously when markets have crashed: the lower the market value of new units on the market, the cheaper they are to expropriate. But these policies will not work in a vacuum. They would all require deeper investments in affordable housing from the City of Toronto and the Government of Ontario. In addition, these policies would have a chilling effect on development in Toronto. They are specifically designed to curb the amount of profit that can be made on multi-unit housing by large private developers. This would make development unappealing to investors. For that reason, these policies would need to be accompanied by increases in funding to (and the creation of) not-for-profit developers who could continue to build new housing.

Expropriation In Lieu of Inclusionary Zoning

Inclusionary zoning (IZ) is a policy that requires every new multi-unit development to include a set percentage of affordable units, typically in exchange for higher density developments and/or subsidies (often in the form of tax breaks).⁸⁷ In this approach, expropriation takes over the role of IZ by expropriating a set percentage of units from every new condominium and rental development.

Expropriation would take the place of IZ in a scenario where IZ was unfeasible. This might happen if the Local Planning Appeal Tribunal is hostile to municipal zoning legislation and is refusing or overturning a municipality's decisions. Since legal challenges to well-crafted expropriations center on the amount of compensation required (and not the legality or permissibility of the expropriation itself), this model allows a municipal body to require affordable units in new developments in lieu of an explicit IZ policy.

In the preliminary and pre-expropriation negotiations regarding the units to be acquired from each unit, an agent of the city could bargain with the same tools of IZ. For example, they could offer higher density or preferential tax treatments for a set percentage of affordable units rather than proceeding with expropriation. One could assume that after this policy has become a habit, it would operate in more or less the same way IZ would.

Since these units are unowned (as they would be newly built), and there is no reason to expect expropriation proceedings to lower the value of other units in

⁸⁷ N. Barry Lyon Consultants Limited, "Evaluation of Potential Impacts of an Inclusionary Zoning Policy in the City of Toronto," May 2019.

the building, there should not be an argument for injurious affection or loss of business. Expropriation compensation is based on a judgment of cost in the open market when using expropriation in lieu of IZ, so I recommend expropriating units during pre-construction sales as this is when the units will be cheapest.

This policy is similar to Toronto's current Section 37 negotiations.⁸⁸ It would introduce unique challenges, such as integrating affordable housing with potentially hostile condominium boards and ensuring fair access to building amenities. In spite of the difficulties that arise, several mixed-use developments are under construction, including some high-profile examples like the Mirvish Village development.⁸⁹

How is this policy "fair, sound, and reasonably necessary"?

Expropriation is a tool of last resort in a municipality's pursuit of its goals. Where negotiation fails to fulfill a municipality's housing goals as they relate to new housing developments, it is reasonably defensible to use expropriation to acquire those units.

There is an argument that this policy is developer-friendly, as it would guarantee a developer a set percentage of sales for every new development, minimizing uncertainty. In the eyes of the developer, there should be no difference between selling a unit willingly to an investor who will lease it out as an Airbnb, or to the City of Toronto. Both will pay market price if the sale is needed when other bargaining tools like tax exemptions and increased density fall through. Further, tenants who rent condominium units are in precarious situations when leasing units owned by single investors. By having a not-for-profit operate these units, tenants in condominiums are given security and stability.

Since this policy does not cause harm to developers, and provides a public good through longer tenure and more stable tenancies, it is fair. As the only option a municipality has when negotiations in the pursuit of a city's development plan faces roadblocks, it is sound. This policy is reasonably necessary in reaching the city's housing goals on two fronts. First, it recognizes that condominiums (which are the overwhelming majority of new developments) already make up a large part

⁸⁸ Where the City can negotiate for community benefits in exchange for increased density.

⁸⁹ <https://www.cmhc-schl.gc.ca/en/media-newsroom/news-releases/2020/making-housing-more-affordable-toronto>

of Toronto's rental stock, but are "a less stable form of tenancy".⁹⁰ By ensuring that rental units in new condominiums (amongst other developments) are delivered by not-for-profit landlords (rather than for-profit investor-owners), renters in these units would be provided with a "safe, secure affordable home in which they can live in peace and dignity and realize their full potential".⁹¹

Second, this policy furthers Toronto's goal of creating 40,000 new affordable rental homes over the next ten years. If the city had expropriated 15% of all new developments (purpose-built multi-unit rentals and condos) in 2018, they would have acquired 2,143 units.⁹² This means that this policy alone could feasibly provide half of the affordable units Toronto has committed to building over the next decade (assuming build levels remain constant).

Expropriation of Buildings Owned by Landlords with Repeated Health and Safety Violations

In this approach, Toronto would expropriate buildings owned by landlords who fail to maintain their properties to standards set out by municipal by-laws. I recommend the expropriation of landlords who operate apartments which receive a RentSafeTO score under 50 in any two years.⁹³ Two years is appropriate, as it gives a negligent landlord a first warning, and then final chance, to rectify issues in the buildings they own. I would suggest that leniency should be given in cases where the work required to fix any issues takes longer than two years.

After these buildings are expropriated, they should be leased or sold to a not-for-profit housing provider. At first the operator will need capital to make repairs to rectify the safety and maintenance issues, so I would recommend a phased transition of the current tenants to affordable rents. As new units become available, they should be offered at affordable rates.

Outside of the benefits gained by acquiring new affordable units, this policy encourages responsible landlords and will provide tenants with cleaner, safer, and more secure tenancies by punishing negligence. This policy gives the RentSafeTO

⁹⁰ Toronto Housing Market Analysis.

⁹¹ HousingTO Action Plan.

⁹² Canada Mortgage and Housing Corporation, "Housing Completions: By Intended Market."

⁹³ This mark would mean that a landlord substantially failed their duty to provide a safe, secure, and well maintained rental building in crucial areas, such as fire safety, vital service provision, or pest control.

program increased enforceability, properly incentivizing landlords to follow health and safety by-laws by recognizing the threat to tenants' safety.

As an example, Vancouver recently expropriated two buildings that were being run as single-room occupancy hotels with repeated egregious violations of health and safety standards. Both buildings were expropriated for \$1 each.⁹⁴ These buildings were known to be rife with issues, run by a slumlord whose negligence was shocking. Vancouver expropriated the hotels “to bring the buildings into public ownership and create new low-income housing.”⁹⁵

How is this policy “fair, sound, and reasonably necessary”?

Toronto has clear and enforceable safety and maintenance guidelines which safeguard the wellbeing and health of tenants. A failure to meet those standards threatens the lives of health of those tenants. Thus it is reasonably defensible to expropriate the properties of landlords who consistently fail to meet those standards and who make no effort to resolve those issues.

The logic for this approach is simple: if a landlord is unable or unwilling to ensure their tenants live in safe, secure, and well-maintained apartments, they have failed your basic obligations. As such, it is a matter of public health and decency to expropriate their properties and give them to an organization which can meet those requirements. RentSafeTO has given Toronto a health and safety standards framework for apartments. This policy would be an extension of that program, with expropriation being the final consequence for egregious and repeated violations of health and safety by-laws.

When expropriation proceedings begin, a landlord would have already been given multiple opportunities to resolve the issues, and would already have faced fines based on the RentSafeTO procedures. If a landlord does not change their behaviour despite multiple opportunities to do so, it is fair to expropriate their units because of the harm this inaction causes to the tenants.

In addition, there are serious public health concerns caused by negligence which necessitate intervention. We know what happens when landlords ignore or avoid

94 Mike Hager and Wendy Stueck, “Vancouver Hotel Expropriation,” *The Globe and Mail*, October 31, 2018.

95 “Council Approves Expropriation of the Balmoral and Regent Hotels,” November 6, 2019, <https://vancouver.ca/news-calendar/council-approves-expropriation-of-the-balmoral-and-regent-hotels.aspx>

their health and safety obligations: tenants suffer.⁹⁶ A sound course of action is to take control of the negligent landlord's units. Expropriation is reasonably necessary insofar as negligent landlords who have failed to meet the RentSafeTO guidelines repeatedly demonstrated that less punitive consequences are ineffective.

Expropriation of Abandoned Buildings

In this approach, City Council would expropriate abandoned buildings and then partner with a not-for-profit housing provider to bring them back onto the market at affordable rents. David Wachsmuth described this approach as a “use it or lose it” policy.⁹⁷ This approach has gained attention in recent years. As mentioned earlier, there was the successful 2006 expropriation of 194 Dowling, and the Ontario Coalition Against Poverty recently called for the expropriation of several abandoned buildings on Sherbourne Street (although City Council did not proceed with these expropriations).⁹⁸ Unfortunately the reasons against expropriating the Sherbourne sites are not public, so it is unclear what hurdles need to be cleared in order for the City of Toronto to proceed with expropriation in this context. As a result of this push, city staff had been asked to include a plan for acquisition or expropriation in the HousingTO action plan, but there is no mention of abandoned housing in the final document. I would speculate that the choices to not expropriate abandoned buildings come down to a combination of: difficulty establishing sources of funding, political ambivalence, and a lack of public pressure.

The broad reasoning for this policy is clear: if you own a building but are leaving it unused, the city will put it to use for you. We are simply facing too dire a housing crisis for buildings in the downtown core to sit empty. This is especially true in instances where housing is kept abandoned as a form of speculative investment

96 For example, the St. James Town highrise fires, which displaced hundreds of tenants and sent two people to the hospital with serious injuries.

97 David Wachsmuth, University of Toronto, and Centre for Urban and Community Studies, *From Abandonment to Affordable Housing: Policy Options for Addressing Toronto's Abandonment Problem* (Toronto, Ont.: Cities Centre, University of Toronto, 2008), <http://ra.ocl.ca/ra/login.aspx?inst=centennial&curl=https://www.deslibris.ca/ID/216260>.

98 Affordable Housing Office Director, Real Estate Services Division, City of Toronto, “Feasibility of Acquisition or Expropriation of 214, 218, 220, 222, 224, 226 and 230 Sherbourne Street.”

or non-productive commodity.⁹⁹ Expropriation in this context will be relatively inexpensive. Given that many abandoned buildings have serious damage and are sitting unused, the calculation for fair market value should be smaller when compared to some of the other policies proposed.

In determining which properties to expropriate, I would adopt David Wachsmuth's definition of abandonment. In brief, that is properties which are either: vacant for six months without a building permit, having substantial outstanding code violations, or having outstanding property tax bills for at least three years.¹⁰⁰ I will note that there is still a dearth of data regarding the extent to which abandonment is a problem in Toronto, and even more so regarding absentee abandonment¹⁰¹ in condominiums.

Winnipeg has a policy like this in effect: they have created a registry and monitoring system for abandoned housing, with steadily increasing penalties for both keeping a property abandoned and non-compliance. In the event of total non-compliance, they have a process for expropriation of abandoned properties without compensation.¹⁰²

How is this policy "fair, sound, and reasonably necessary"?

With an urgent housing crisis, and abandoned housing having harmful impacts on the health of neighbourhoods and communities, it is reasonably defensible for a city to expropriate properties which are sitting unused and put them into use as affordable housing.

When balancing fairness, it is crucial to take context into account. In abandonment because of financial duress (like many of the homes abandoned or forfeited during the 2008 financial crisis), an expropriating body should proceed with caution and empathy for the former owners. I would suggest this policy should avoid these owners, and instead focus on financialized or speculative abandonment (i.e. on those hoarding housing stock to flip for profit at some point in the future). With absentee investor-owners, the balancing of fairness

99 Lind, Kermit J. "Perspectives on Abandoned Houses in a Time of Dystopia." *Journal of Affordable Housing & Community Development Law* 24, no. 1 (2015): 121-32. www.jstor.org/stable/26408156.

100 Wachsmuth, 39.

101 i.e, leaving a unit unoccupied with the intention of selling it for profit at a later date.

102 "Taking Title to Vacant and Derelict Buildings," Pub. L. No. NO. 89/2010 (2015).

should weigh the private owners' need for financial enrichment against the public good of affordable housing and vibrant communities. This policy is in line with our obligations under the right to housing to avoid allowing abandoned housing to sit unused.¹⁰³

Further, because abandoned properties are well known to have adverse impacts on the neighbourhoods they are in, there is an urgency to the expropriation (or at the very least, re-habitation) of abandoned housing, as blight is known to spread rapidly in a neighbourhood.¹⁰⁴ Abandoned housing has dire effects on the housing market, in addition to posing health and safety hazards to community members.¹⁰⁵

This policy is sound and reasonably necessary, as it takes the next reasonable step when a building has been recognized as abandoned. Toronto currently has response mechanisms in place for when buildings are abandoned. When those mechanisms fail and the property is allowed to continue sitting unused, expropriation proceedings are the only possible option City Council has in order to take action. This was the case with 194 Dowling, and as such has already been proven to meet the required test.

Expropriation of Landlords with More than 1,000 Units

This approach puts a hard ceiling on the amounts of rental units a landlord can own. To do this, City Council would begin expropriating units from existing landlords, until each landlord had no more than 1,000 units in their portfolio.

This approach addresses a systemic cause of housing crises and their harms by limiting the extent to which profit determines our approach to housing. The policy has two obvious impacts: it curbs incentives to financialize rental housing, and it limits the power landlords and developers have over tenants and legislators.

First, by limiting the amount of property any one landlord can own, this policy curbs the extent to which REITs are effective investment bodies. These trusts depend on their ability to acquire huge amounts of real estate in order to generate profit. By refusing to allow REITs to soak up rental properties, they become less viable tools for speculation: the fewer units owned by a REIT, the less profit they

103 Farha, "Adequate Housing as a Component of the Right to an Adequate Standard of Living," 21, par 76 (d).

104 Lind, 126

105 Ibid.

can earn. By denying REITs oxygen (through a hard ceiling on the number of units they can own), we limit the toxic effects financialization has on housing markets and the perception of rental housing in everyday life.

Second, this policy strips financialized landlords of their leverage over the government. As huge landlords oversee a vital need for so many people, I would argue that they have outsized influence on decisions made by legislators. This is exacerbated by the control private developers have over the production of rental housing. These two groups oversee the development of most rental housing, so it is only logical that governments must take into account their concerns. We can assume this limits the pressures policymakers can put on the private market out of fear that private landlords and developers would stop providing housing. This attitude is reflected in the policies pursued by governments globally, as noted by Farha:

There seems to be a gross imbalance between the attention, mechanisms and resources that States have developed to support the financialization of housing and the complete deficit of housing for the implementation of the right to adequate housing.¹⁰⁶

In essence, we have allowed private providers of housing far too much power by putting them in charge of a necessity.

Because information on private landlords is kept private, it is hard to predict how many landlords fall into this category and how many units in total would be expropriated. Therefore, I use information from publicly traded REITs to understand the impact this would have on Toronto's rental market.

As of 2019, five of Toronto's largest REITs (CAPREIT, Minto, Interrent, Northview, Morguard) collectively owned a total of 24,489 units in Toronto. This accounts for 9.18% of all rental units in Toronto. Under my proposed policy, this would be cut down to 5,000 units in total owned by these five REITs, accounting for 1.8% of Toronto's rental units. This means there would be a gain of 19,489 non-profit units. By limiting REITs (and all landlords) to just 1,000 units, no single landlord could ever own more than just over a third of a percentage point of Toronto's rental housing (~0.375%). The obvious effect of this is that REITs would be nearly useless as investment bodies in Toronto, and their leverage over tenants and policymakers would be reduced.

106 Farha, "The Financialization of Housing", 21, p76.,

How is this policy “fair, sound, and reasonably necessary”?

The City of Toronto and the Government of Canada have recognised the right to housing, and because the right to housing relates to the inherent dignity of a person, it is reasonably defensible to expropriate the excess properties of landlords and turn those properties into affordable housing. The opportunity to profit should be subordinate to the right to housing. Financialized landlords, like all investors, must accept the inherent risk of investing, and one such risk in real estate investments is government intervention.

To meet the test, a government would need to fully commit to a human rights-based approach to housing, and courts would need to “recognize the paramountcy of human rights over investor interests.”¹⁰⁷ As the newly adopted housing charter in Toronto recognizes, “all residents have a right to a safe, secure, affordable home in which they can live in peace and dignity and realize their full potential.”¹⁰⁸ As I have argued, financialized housing creates an inherent antagonism between the provision of adequate rental housing and a landlord’s profit. The goal of this policy is to begin resolving this tension through expropriation. This highlights a central question: to what extent do we prize the right to profit over the right to housing? In answering this, fairness should be guided by a moral lens informed by our government’s commitments to human rights.

It is worth reversing the framing of the question, and asking whether it is fair for multi-billion dollar companies to “to replace existing lower-cost housing with luxury housing,” displacing tenants in direct contradiction to the right to housing.¹⁰⁹ I would argue that because the right to housing requires a government to prioritize the needs of tenants over the need for profit, expropriation in this context is appropriate and in accordance with international law.

Through the right-to-housing framework, this approach is reasonably necessary because it is the only method (outside of standard negotiations) to acquire rental units on a large scale, and thus to follow through on guarantees implied by the right to housing. There is no other tool a government could use to acquire these units if landlords refused to sell them.

107 Farha, “The Financialization of Housing”, 15, par 52.

108 HousingTO Action Plan, 13.

109 Farha, “Guidelines for the Implementation of the Right to Adequate Housing” (United Nations Human Rights Council, December 26, 2019), 8, p 36.

4. Final Thoughts

Expropriation would face a great deal of opposition, and I hope to refute some of the more obvious arguments against it. The most obvious objection will be to the cost of these policies. It is certainly true that expropriation can be costly, and that even a modest approach to the development of affordable housing will require substantial investment from the government. However, we should not forget that there is already a huge amount of money being spent on housing. Billions of dollars of global capital are poured into housing markets around the world and “what is so stark about the pouring of those vast amounts of money into housing is that hardly any of it is directed towards ameliorating the insufferable housing conditions in which millions live.”¹¹⁰ I would argue that finding ways to shift the influx of capital in housing away from private profit, and towards the provision of affordable housing, is in line with our obligations under the right to housing. While this is not the place to discuss detailed approaches to taxation or funding for these programs, it is with this context that I suggest we are able to find appropriate funding mechanisms through new and increased taxes on corporations and the wealthy.

Aside from the issue of funding, I imagine that opposition to expropriation will manifest in three areas: an intentional misunderstanding of the scope of these proposals, an obfuscation of the government’s current role in housing, and ignorance of the precarity of renting.

To start with the first point, these proposals are intentionally limited in scope to focus expropriation on those who can afford the loss of these units. I want to be very clear that I am not by any means calling for the expropriation of basement units being operated by live-in landlords, or other secondary suites created by individual homeowners. Instead, I am calling for the expropriation of corporate landlords who have either grown too-big-to-fail, or who consistently fail to meet their health and safety obligations. In just one of the above proposals (abandoned properties) is there even the possibility that the party facing expropriation might be an individual homeowner. In the other proposals, the parties are (in order of policy): developers, landlords who fail to meet health and safety standards, and landlords who own more than 1,000 units. An argument that asserts that these policies would cause harm to the middle class or to individual homeowners would

¹¹⁰ Farha, “The Financialization of Housing”, 9, par 29.

be misunderstanding the scope, as none of the policies above would touch those people's lives, except by providing them with the option to live in stable and secure rental housing.

To the second point: since the 1970s, neoliberal politicians have proudly claimed that governments have slowly “shrunk” in size, leaving much of the social safety net up to the market to provide. This includes the promotion of trade deregulation, defunding of social welfare programs, tax reductions, deregulation of markets, financialization, and a fixation on balanced budgets.¹¹¹ Neoliberal policies are framed as a “cutting-back”; they are articulated as the removal of institutional red tape, and they prize efficiency. This obfuscates the intentional and aggressive role legislation and government has played in the transition to our current lack of welfare policies and is obviously false, especially within the Canadian housing context. As Walks and Clifford note:

It was only through the fashioning of **more complex** regulatory structures and deeper involvement of the state that securitization came to dominate mortgage finance in Canada, and it is these state-driven changes that have been at the forefront of the incremental neoliberalization of Canadian housing policy. (emphasis added)¹¹²

That is to say, we have arrived at our current housing crisis because the market is a clumsy mechanism for providing affordable housing, and government actions have *created* opportunities for rental housing providers to shirk social responsibility and pursue profit at any cost. At the same time, governments (both provincial and federal) have actively divested from public or non-profit housing and housing development. This is mirrored broadly in other areas of neoliberal governance, where the Ontario government worked to implement “quasi-markets in public services” and to commercialize public-sector organizations.¹¹³

When people argue that the policies I propose overstep the role of government, they misunderstand the extent of the government's role in the transition and

111 Bryan M Evans and Charles W Smith, *Transforming Provincial Politics: The Political Economy of Canada's Provinces and Territories in the Neoliberal Era*, 2014, 3. <http://books.scholarsportal.info/viewdoc.html?id=/ebooks/ebooks3/utpress/2015-06-02/1/9781442695924>.

112 Alan Walks and Brian Clifford, “The Political Economy of Mortgage Securitization and the Neoliberalization of Housing Policy in Canada,” *Environment and Planning A: Economy and Space* 47, no. 8 (August 2015): 1624–42, <https://doi.org/10.1068/a130226p>.

113 Evans and Smith, 163.

regulation of the financialized housing market. A counterargument is that these policies only alter the focus of government action, rather than introducing any new regulatory powers. The state is not “expanding” with the use of these policies. Instead, it is using its power to provide housing to those who lack it, rather than to further benefit landlords and developers.

As to the third point: *tenants constantly face expropriation*. This happens through the guise of eviction. They face expropriation with very little (if any) recourse for compensation, and with devastating consequences in a housing market as tight as Toronto. Similar to expropriation in the sense of the Expropriation Act, this exertion of extreme power by landlords is limited by statute. For tenants, this statute is the Residential Tenancies Act (RTA). The RTA gives clear limits on when eviction is appropriate and legal, and the process that eviction must follow—these are the same type of rules that the Expropriation Act delineates. As with expropriation, the RTA determines a test and framework for compensation (with the important note that compensation is *much* smaller for tenants than for property owners facing expropriation). Finally, both acts are mediated by tribunals, and are governed by provincial statute.

My broader point here is to counter the argument that expropriation is a radical or unorthodox practice in the context of housing. Instead, I would suggest that expropriation is a constant threat for tenants which looms over their head as a sword of Damocles. The question to ask is whether we think it is only tenants who deserve such a high degree of expropriation. I would suggest that this threat is a stress which is far better borne by landlords, as in many cases it is only financialized investments they will lose. Housing for landlords is a commodity to generate profit, whereas housing for tenants is a baseline necessity and an intrinsic part of their lives. Expropriation as eviction forces people out of their homes. The harm done to tenants is undoubtedly greater than the harm caused by expropriating a property from a landlord who fails to meet health and safety standards, or who has allowed their property to sit vacant.

I wrote this report before the outbreak of the COVID-19 pandemic. As this global crisis progresses, it underscores and exacerbates the inhumanity of our housing system. The tension between housing’s social role versus being an investment mechanism forces governments to unnecessarily balance the lives and safety of tenants with landlords’ desire for profit. At the outset of this pandemic, our governments briefly chose to provide security to renters by legislating a

temporary eviction ban. While insufficient on its own, this intervention shows us that government action can help realize the right to housing by providing security and safety to tenants. In August 2020, the Ontario government reopened the eviction process, despite the ongoing crisis. The Federation of Metro Tenants' Associations estimates that this move will place 400,000 tenants at immediate risk of eviction because of COVID-19 related rent arrears. By displacing thousands of tenants, these evictions will further facilitate the financialization of Toronto's rental stock, continuing to divorce housing from its social role.

The inhumanity of forcing people from their homes amidst a global health crisis should speak for itself, but clearly it does not. This is why we must press governments to take swift and substantial action to protect tenants and their internationally recognized right to housing. Expropriation is one of many policy tools which our governments can use to ameliorate the horrifying cruelty of mass evictions during a pandemic. The City of Toronto and the Government of Canada can and must do better to provide tenants secure, safe, and affordable housing. We can prevent harming tenants' livelihoods in the name of landlords' profits. Now, more than ever, we must use every tool at our disposal to realize the right to housing.

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