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## BACKGROUND PAPER



# A Primer on Housing Rights in Canada

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*A Primer on Housing Rights in Canada*  
(Background Paper)

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# A PRIMER ON HOUSING RIGHTS IN CANADA

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## 1 INTRODUCTION

The Government of Canada introduced *An Act respecting a national housing strategy* (short title: *National Housing Strategy Act*) in April 2019 as part of Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures (short title: *Budget Implementation Act, 2019, No. 1*).<sup>1</sup> Canada's first national housing strategy, originally announced in November 2017, is informed by a human rights-based approach to housing. The strategy states that "housing rights are human rights" and that the plan "will contribute to United Nations Sustainable Development Goals and affirm the *International Covenant on Economic, Social and Cultural Rights*."<sup>2</sup> Nevertheless, during the consultations leading up to the strategy, it quickly became clear that Canadians have different ideas about what housing rights they are entitled to.<sup>3</sup>

Housing rights are complex. First, they are hard to define; they are not simply a "right to shelter." Second, it can be difficult to separate housing rights from other rights and freedoms, such as the right to own property. In addition, housing rights are difficult to uphold and enforce. In Canada, all levels of government are responsible for upholding these rights. Third parties, such as landlords, are also obliged to respect certain housing rights.

Furthermore, it is sometimes unclear who is entitled to housing rights. This can depend on the context in which people claim a right, for example, the region where they live or the group with which they identify. In some cases, it is unclear whether any Canadian can claim certain housing rights under domestic law. This publication describes how Canadians' housing rights are defined and upheld.

## 2 WHAT ARE HOUSING RIGHTS?

The United Nations (UN) first recognized housing rights in the 1948 *Universal Declaration of Human Rights*.<sup>4</sup> As described below, it has since reaffirmed housing rights in seven core human rights treaties. The 1966 *International Covenant on Economic, Social and Cultural Rights* contains the UN's broadest recognition of the right to housing: "the right of everyone to an adequate standard of living for himself and his family, including adequate ... housing, and to the continuous improvement of living conditions."<sup>5</sup>

In addition, 22 countries have enshrined justiciable housing rights in their constitutions.<sup>6</sup> Together, they recognize a range of freedoms and entitlements connected to the right to housing. While many of these nations include housing as a stand-alone right, others recognize it as a part of other rights (e.g., children's rights).<sup>7</sup> Some countries include special rights for certain groups of people, such as low-income families. Others grant the right to a certain standard of housing. For example, Venezuelans have a right to "adequate, safe and comfortable, hygienic housing."<sup>8</sup>

## 2.1 RIGHT TO ADEQUATE HOUSING

Housing rights can thus amount to much more than a roof over one's head; most definitions also specify that housing must be "adequate." Adequacy means that housing meets social, economic, environmental and/or cultural needs.

In addition, the fulfilment of housing rights may differ from one person to the next, depending on their circumstances. For example, as explained below, people with disabilities may have a right to priority access to government housing programs.

### 2.1.1 UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The UN Committee on Economic, Social and Cultural Rights (CESCR), the treaty body charged with monitoring the implementation of the 1966 *International Covenant on Economic, Social and Cultural Rights*, offers two sets of general comments that define adequacy in relation to housing rights under that covenant. They are arguably the most widely accepted definitions.<sup>9</sup>

The CESCR's 1991 General Comment No. 4 lists seven characteristics of adequate housing. They are as follows:

- legal security of tenure (people have "protection against forced eviction, harassment and other threats");
- availability of services, materials, facilities and infrastructure (housing contains the resources necessary for "health, security, comfort and nutrition");
- affordability (housing costs do not prevent people from satisfying their other basic needs);
- habitability (housing contains adequate space, guarantees physical safety and protects occupants from the environment, health threats and structural hazards);
- accessibility (housing must be accessible to those entitled to it, and disadvantaged groups are given some degree of priority consideration in the housing sphere);
- location (housing is situated away from polluted sites and allows access to "employment options, health-care services, schools, childcare centres and other social facilities"); and
- cultural adequacy ("the way housing is constructed, the building materials used and the policies supporting these ... appropriately enable the expression of cultural identity and diversity of housing").<sup>10</sup>

The CESCR also states that housing must be understood in the context of other rights, freedoms and entitlements. For example, people must have the right to take part in housing-related decision-making and the right to freedom of residence.<sup>11</sup>

Furthermore, the CESCR's 1997 General Comment No. 7 clarifies that forced evictions are a gross violation of human rights. It nevertheless allows for forced evictions if the state and/or third parties provide the proper protections.<sup>12</sup>

## 2.1.2 OTHER CORE UNITED NATIONS HUMAN RIGHTS TREATIES

In addition to the *International Covenant on Economic, Social and Cultural Rights*, six core UN human rights treaties include specific housing rights as part of other rights. They are as follows:

- the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965);<sup>13</sup>
- the *International Covenant on Civil and Political Rights* (1966);<sup>14</sup>
- the *Convention on the Elimination of All Forms of Discrimination against Women* (1979);<sup>15</sup>
- the *Convention on the Rights of the Child* (1989);<sup>16</sup>
- the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990);<sup>17</sup> and
- the *Convention on the Rights of Persons with Disabilities* (2006).<sup>18</sup>

Collectively, these treaties recognize all people's rights to adequate housing, without distinction as to their sex (including women in rural areas), ability, race, colour, and national or ethnic origin. They also enshrine the right of all people to protection against "arbitrary or unlawful interference" with their home.<sup>19</sup>

Some of these treaties recognize unique rights for certain groups. For example, under the *Convention on the Elimination of All Forms of Discrimination against Women*, states parties must ensure that women can legally administer property and choose their own home. For its part, the *Convention on the Rights of the Child* obliges states parties to recognize the right of every child to a standard of living sufficient for the child's development. It stipulates that states parties shall

take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes [regarding] housing.<sup>20</sup>

The *Convention on the Rights of Persons with Disabilities* requires that states parties take steps to ensure that people with disabilities have equal access to housing. This includes removing barriers to accessibility.<sup>21</sup>

The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* provides that states parties must ensure that certain classes of migrant workers have equal access to "housing, including social housing schemes, and protection against exploitation in respect of rents."<sup>22</sup> The treaty also obliges states parties to let employers build housing for migrant workers if the housing meets national standards.<sup>23</sup> This is the only core UN human rights treaty recognizing housing rights to which Canada is not a party.

## 2.2 STATE RESPONSIBILITIES

International human rights treaties generally impose obligations only on governments (as opposed to private citizens or other third parties) that have ratified the treaties. Housing rights treaties do not require states to provide housing for their entire population. However, these treaties do oblige governments to “prevent homelessness, prohibit forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that everyone’s housing is adequate.”<sup>24</sup>

States parties are expected to achieve the full realization of these rights progressively. In other words, they must take steps over time, to the maximum of their available resources, to ensure people enjoy housing rights.

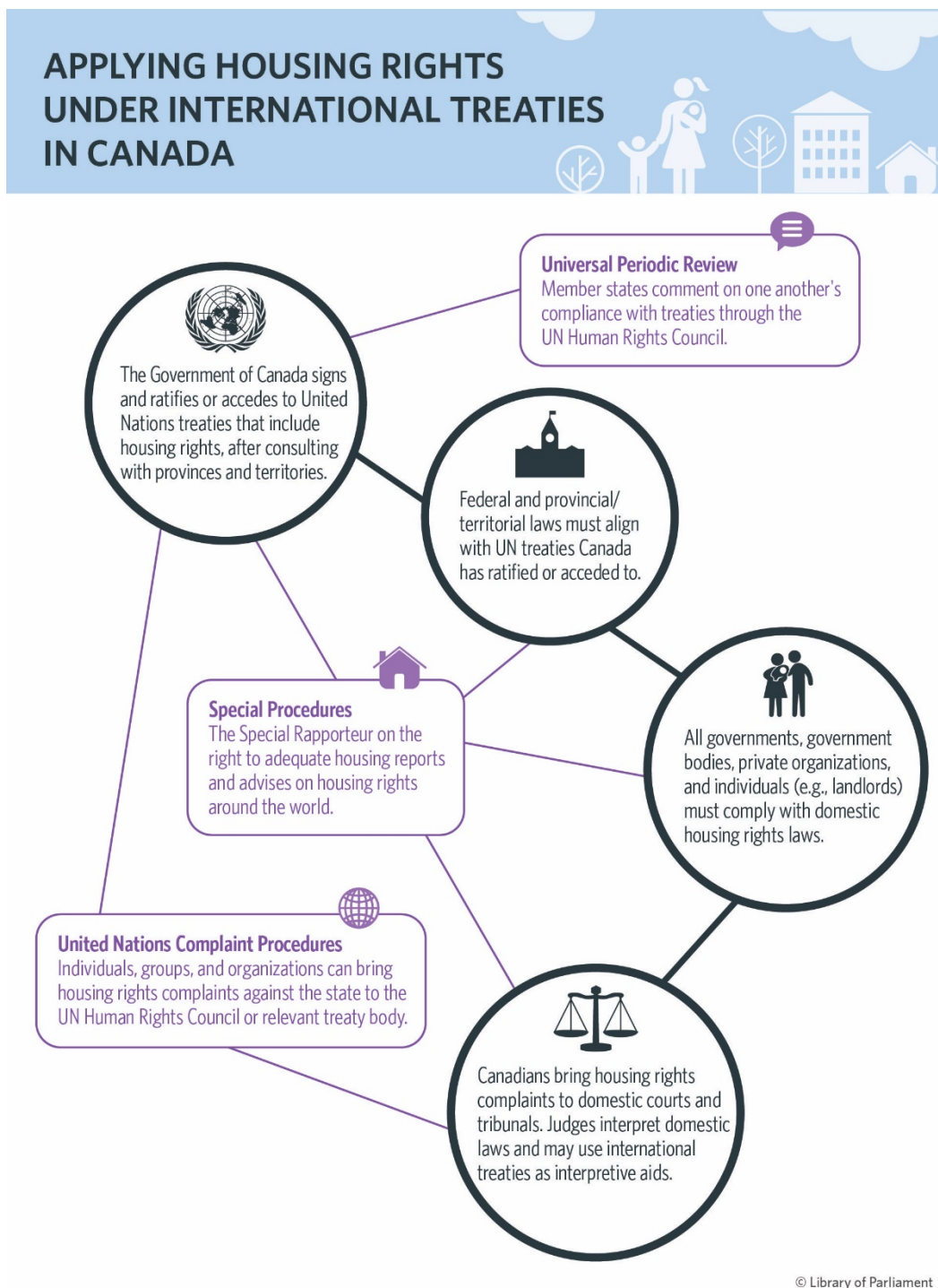
There are some exceptions to this progressive realization of housing rights. Notwithstanding resource constraints, states parties must take immediate steps to protect against housing discrimination, develop specific laws and plans of action, prevent forced evictions and guarantee some degree of security of tenure to all. States must also immediately fulfill “minimum core obligations” of social, economic and cultural rights.<sup>25</sup> Nevertheless, there is no widely accepted standard of minimum core obligations; standards may differ depending on the country or the people making rights claims.<sup>26</sup>

## 3 CANADA’S RECOGNITION OF HOUSING RIGHTS

The federal and provincial/territorial governments are all responsible for upholding international housing rights in Canada. Canada has a dualist legal system: federal and provincial/territorial laws must conform with any international treaty the Government of Canada ratifies.<sup>27</sup> However, domestic laws do not enshrine the same housing rights across the country. Indigenous peoples may also hold different housing rights. Figure 1 shows how international housing rights are legislated and enforced in Canada.



Figure 1 –Applying Housing Rights Under International Treaties in Canada



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Sources: Figure prepared by the author based on information obtained from Laura Barnett, [Canada's Approach to the Treaty-Making Process](#), Publication no. 2008-45-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 8 May 2018; United Nations, Office of the High Commissioner for Human Rights, [Special Procedures of the Human Rights Council](#); Government of Canada, [International Complaints](#); and Government of Canada, [Universal Periodic Review](#).

### 3.1 HOUSING RIGHTS AT THE FEDERAL LEVEL

The right to housing is not enshrined in either the *Constitution Act, 1867*<sup>28</sup> or the *Canadian Charter of Rights and Freedoms* (the Charter),<sup>29</sup> Canada's paramount human rights legislation. However, the *Canadian Human Rights Act* (CHRA) prohibits discrimination in employment and services under federal jurisdiction, including housing.<sup>30</sup>

In addition, as noted above, the *National Housing Strategy Act* recognizes housing as a human right. It declares that the Government of Canada's housing policy

- recognizes that the right to adequate housing is a fundamental human right affirmed in international law;
- recognizes that housing is essential to the inherent dignity and well-being of the person and to building inclusive communities;
- supports improved housing outcomes for the people of Canada; and
- furthers the progressive realization of the right to adequate housing as recognized in the *International Covenant on Economic, Social and Cultural Rights*.<sup>31</sup>

The Act requires the federal government to maintain a national housing strategy, "taking into account key principles of a human rights-based approach to housing," among other considerations.<sup>32</sup>

Moreover, the *National Housing Strategy Act* creates a Federal Housing Advocate and a National Housing Council to further the housing policy and strategy. Together, the housing advocate and council are mandated, among other duties, to monitor the implementation of the National Housing Strategy; consult stakeholders; study systemic housing issues, including by establishing a review panel to hold hearings; and advise the designated minister on systemic housing issues, including by preparing reports with recommendations for housing matters over which Parliament has jurisdiction. The designated minister must respond to the reports prepared by the housing advocate and review panels and, every three years, must report to Parliament on the effectiveness of the National Housing Strategy.

In addition to these measures, the *National Housing Strategy Act* provides funding to build, renew or repair housing units; resources for community housing providers; and support for housing research.<sup>33</sup>

### 3.2 HOUSING RIGHTS AT THE PROVINCIAL/TERRITORIAL LEVEL

Provincial and territorial human rights codes generally apply to provincially or territorially regulated organizations, businesses and non-profit organizations, and to provincial, territorial and municipal governments.

No Canadian province or territory enshrines housing as a stand-alone right in its human rights code or other laws. However, all provincial/territorial human rights codes include protections against denial of housing and/or discrimination in the

housing sphere. They all also allow for special programs that aim to reduce inequality, which may include housing programs. Some human rights codes provide protections against forced evictions.

The precise protections differ depending on the code. The appendix to this publication outlines the relevant housing rights in provincial and territorial human rights codes. In addition, many provinces and territories have introduced other housing-related laws and regulations, such as rent controls. However, these measures are normally framed as policy matters and not as components of housing rights.

Provinces and territories may also grant the authority to municipalities to undertake initiatives that may affect residents' housing rights. One example is the municipal authority over the use of certain public spaces.

### **3.3 INDIGENOUS PEOPLES' HOUSING RIGHTS**

First Nations, Inuit and Métis peoples all have unique histories and relationships with the Crown.<sup>34</sup> As a result, some Indigenous peoples claim certain housing rights as part of their inherent, collective rights (called "Aboriginal rights") or based on the treaties or agreements that they have signed with the Crown ("treaty rights").<sup>35</sup> Section 35 of the *Constitution Act, 1982* recognizes and affirms Aboriginal rights and treaty rights. In practice, however, Indigenous peoples do not always enjoy the housing rights that they have claimed.

Aboriginal rights flow from Indigenous peoples' occupancy and use of the land and from their social orders created before European arrival. Aboriginal rights are integral to – and differ depending on – the practices and traditions that inform different groups' cultures, but most relate to land, resources, culture or governance.<sup>36</sup> For example, in 2006, the Supreme Court of Canada recognized the Aboriginal right to harvest wood from Crown lands to build a house.<sup>37</sup>

Many Indigenous peoples also hold treaty rights. Treaty rights are rights set out in the roughly 95 historic treaties and modern land claims agreements signed between various groups of Indigenous peoples and the Crown since 1701.<sup>38</sup> The precise rights depend on the treaty or agreement.

Many groups representing Indigenous peoples have long argued that the federal government has a constitutional responsibility to provide housing as an Aboriginal and/or treaty right.<sup>39</sup> These rights claims vary widely. For some, fulfilling housing rights might mean the government must fully fund housing for Indigenous peoples; for others, it might mean guaranteed subsidies for on-reserve home construction under a band-operated housing program.<sup>40</sup>

Various governments, including Indigenous, federal and provincial/territorial governments, provide targeted housing programs for Indigenous peoples.<sup>41</sup> However, the federal government states that it provides these housing programs as a policy matter and not as a matter of Aboriginal or treaty rights.<sup>42</sup>

Moreover, many First Nations groups assert that the federal government has not honoured the spirit and intent of the “numbered treaties,” a series of territorial treaties covering large areas of Canada. For instance, some First Nations state that the federal government made housing commitments during oral treaty negotiations, during which all parties relied on translators for accuracy. However, these housing commitments were never reflected in the written treaty texts, which the Government of Canada has historically viewed as the only valid version.<sup>43</sup> The federal government’s position is that it has fulfilled its treaty obligations.

Some Inuit assert that Canada’s provision of housing services on First Nations reserves under section 91(24) of the *Constitution Act, 1867* should also apply to Inuit.<sup>44</sup> In the 1950s and 1960s, the Government of Canada encouraged Inuit to relocate to permanent settlements in the High Arctic, which was connected to Ottawa’s plan to extend social services and education to Inuit, and by “offering housing at very low rents.”<sup>45</sup> The houses were of poor quality and contributed to serious health problems like the spread of tuberculosis. Some Inuit argue they were resettled “with the clear understanding that the [f]ederal [g]overnment would provide the necessary housing.”<sup>46</sup>

First Nations people living on reserve have only enjoyed protection under the CHRA since 2008, despite it being enacted in 1977. As a result, they can now bring complaints to the Canadian Human Rights Commission about discrimination they may experience while accessing federal services, including in the housing sphere.<sup>47</sup>

The CHRA protections apply to housing provided under targeted federal programs for Indigenous peoples. They also apply to housing administered by a First Nation government or band council. Nevertheless, housing protections in provincial human rights laws generally do not apply on First Nations reserves due to the fact that the land set aside for these reserves falls under federal jurisdiction.<sup>48</sup>

At the international level, Article 21 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) proclaims that “Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including ... housing.”<sup>49</sup> Also, Article 23 states that “[I]ndigenous peoples have the right to be actively involved in developing and determining ... housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”<sup>50</sup> UNDRIP is non-binding, but the Government of Canada has stated that it fully supports the declaration “without qualification.”<sup>51</sup> Thus, UNDRIP may inform federal and provincial laws and guide Canadian court decisions.

## 4 COMPLIANCE WITH HOUSING RIGHTS IN CANADA

Human rights are only meaningful if there are ways to protect and uphold them. Canada’s court system is the country’s primary means of protecting housing rights. The UN has other compliance tools that individuals and states can use, but they do not bind states.

## 4.1 CANADIAN COURTS

When Canadian law – especially the Charter – is unclear, judges are expected to interpret it using international treaties and obligations as “persuasive sources.” However, Canadian courts have not consistently considered the housing rights contained in international treaties when deciding domestic housing rights cases.<sup>52</sup>

Although the Charter does not explicitly enshrine a right to housing, some Canadians have argued that certain sections include housing rights. Judges in recent cases have ruled that section 7 (the right to life, liberty and security of the person) includes specific housing rights.

In *Victoria (City) v. Adams* (2008) and *Abbotsford (City) v. Shantz* (2015), the Supreme Court of British Columbia decided whether cities were justified in shutting down temporary shelters set up by homeless people in public parks. In both cases, the court considered Canada’s international human rights obligations, among other sources, when interpreting section 7 of the Charter. Also in both cases, the court decided that shutting down the temporary shelters unjustifiably violated the occupants’ section 7 rights, mainly because no other shelters were available.<sup>53</sup>

In two very similar cases, *British Columbia v. Adamson* (April 2016) and *British Columbia v. Adamson* (July 2016), the Supreme Court of British Columbia decided whether the province was justified in giving trespass notices to people who had set up a temporary camp on the grounds of the courthouse.<sup>54</sup> In the April 2016 case, the judge decided that the lack of other shelter for the camp occupants justified them staying at the camp. In the July 2016 case, the judge deemed the same camp had become unsafe. He decided that the occupants must leave the camp – but only once the province had provided alternative shelters to meet its residents’ needs.<sup>55</sup>

Each of these decisions suggests that Canadians enjoy a limited, “negative” right to shelter.<sup>56</sup> Negative housing rights protect people from certain violations of their housing rights. However, none of these cases directly addresses whether “positive” housing rights exist. Positive housing rights oblige governments to actively provide shelter or housing-related services. The UN Special Rapporteur on adequate housing (see next section) argues that courts must uphold both the “negative” and “positive” rights guaranteed by international housing treaties.<sup>57</sup>

Canadian courts grappled with this distinction in *Tanudjaja v. Canada (Attorney General)* (2014).<sup>58</sup> The plaintiffs before the Ontario Court of Appeal argued that inadequate provincial and federal social housing regimes violated their housing rights under sections 7 and 15 of the *Constitution Act, 1982* and under international rights norms. Among other remedies, they sought a court order obliging Canada and Ontario to create strategies addressing homelessness and adequate housing. In essence, this would require the court to interpret the Charter to include positive housing rights.

The Ontario Court of Appeal dismissed the appeal at the pleadings stage. The majority stated that, among other issues, this form of broad economic policy was not justiciable. The majority considered the positive rights claims too complex and

political for the court system. The minority opinion was that it was too early to dismiss the appeal; they held that other cases provide precedence to recognize positive obligations for social and economic rights under the Charter. The Supreme Court of Canada refused the plaintiffs' appeal.<sup>59</sup>

The ruling in *Tanudjaja* suggests that courts are not likely to recognize the existence of positive housing rights in the Charter. However, the *Adams*, *Shantz* and both *Adamson* decisions recognized some negative housing rights when the province had no adequate shelter available. Thus, it appears that infringements on negative housing rights can sometimes be legally remedied with positive government action. This is not the same as recognizing a positive right to housing, but it leaves some grey area in future housing rights cases.

## 4.2 INTERNATIONAL COMPLIANCE MECHANISMS

The UN has also established mechanisms to protect and promote housing rights. They include the special procedures, two complaints procedures and the Universal Periodic Review.

### 4.2.1 SPECIAL PROCEDURES

The UN Human Rights Council (HRC) is a body within the UN system made up of 47 states. It aims to protect and promote human rights around the world. The HRC has mechanisms called “special procedures” to monitor and strengthen human rights. Special procedures are human rights experts in a specific field. They may be individuals – called “special rapporteurs” or “independent experts” – or five-member working groups. They work independently from the UN but report to the HRC annually.<sup>60</sup>

The Special Rapporteur on adequate housing is mandated to promote housing as a human right. To fulfill this mandate, the Special Rapporteur carries out country visits, raises public awareness, develops housing rights standards, and advises the UN and its member states, among other duties. The Special Rapporteur's recommendations do not bind states. However, they may identify areas of concern and help states uphold housing rights.

The Special Rapporteur may also send a letter, called a “communication,” to governments that have violated, are violating or are likely to violate housing rights. The letter identifies housing violations and may request follow-up action. The Special Rapporteur on adequate housing has sent the Government of Canada three communications. They addressed living conditions of Indigenous peoples in Canada (2016),<sup>61</sup> Canada's homelessness record (2017)<sup>62</sup> and its proposed national housing strategy (2018).<sup>63</sup>

#### 4.2.2 UNITED NATIONS COMPLAINT PROCEDURES

The UN also provides two ways for individuals to launch complaints if they believe the state has violated their rights: individual complaint procedures under the UN human rights treaties (“treaty body complaints”) or the HRC complaint procedure.<sup>64</sup> Neither can be used until domestic remedies have been exhausted.

Anyone who believes the state has violated their core UN treaty rights can bring confidential complaints to the relevant treaty body, such as the CESCR. The state in question must have ratified the treaty and its optional protocol, which contains the complaint process. If the complainant’s rights have been violated, the treaty body can issue non-binding recommendations to the state. The treaty body complaints procedure may be used in relation to alleged violations of housing rights and alleged violations of other core rights that happen in the housing sphere (e.g., freedom from discrimination in housing).

In addition, individuals, groups or non-governmental organizations can bring confidential complaints to the HRC if they believe the state has consistently engaged in gross violations of human rights. One example of a gross violation is a mass eviction of a minority population. The country in question does not need to have ratified any UN treaty to be the subject of a rights complaint. The HRC complaint procedure is not mandated to seek remedies or provide compensation to individual victims. However, the HRC may recommend cooperation, dialogue and technical assistance to the state.

#### 4.2.3 UNIVERSAL PERIODIC REVIEW

Every four-and-a-half years, each UN member state is reviewed through “an interactive dialogue between state representatives, members of the [HRC] working group, and other UN member states.”<sup>65</sup> Participants may raise questions about and make recommendations on the state’s human rights record. The Universal Periodic Review does not bind the government. However, the HRC can take steps to address states that persistently fail to cooperate.<sup>66</sup>

During Canada’s 2018 Universal Periodic Review, stakeholders and member states made recommendations on Canada’s implementation of its international housing rights obligations.<sup>67</sup> In its response, Canada supported all recommendations concerning housing, except three – all concerning legislating or recognizing a human right to housing – which it accepted “in part” or “noted.”<sup>68</sup>

### 5 TAKING STOCK OF HOUSING RIGHTS

It takes legislation and compliance tools to recognize and uphold rights. Currently, Canadians enjoy some housing rights, which flow from international law; federal and provincial/territorial human rights codes and housing laws; and Indigenous treaties and agreements. As a state party to seven core human rights treaties that address housing, Canada is expected to implement housing rights progressively (i.e., over time and to the maximum of its available resources).

Canadian courts and human rights tribunals uphold the rights recognized under domestic laws. In recent years, courts have also interpreted the Charter – sometimes in light of international treaties – to protect certain housing rights as part of security of the person (section 7). Should other housing rights cases be taken up by the court system, it may become clearer which “minimum core obligations” of international housing rights Canada must uphold.

Although compliance tools at the UN level do not bind states, they have moral power. Domestic rights-holders, international experts and other states may use these tools to ensure Canadian governments uphold housing rights according to the standards in international law.

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## NOTES

1. [Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures](#), Part 4, Division 19, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament (S.C. 2019, c. 29).
2. Government of Canada, [Canada’s National Housing Strategy: A Place to Call Home](#).
3. Government of Canada, “National Consultation on a Human Rights-Based Approach to Housing,” [Consulting with Canadians](#).
4. United Nations [UN], [Universal Declaration of Human Rights](#). The International Labour Organization [ILO], the UN’s only tripartite agency, also recognizes some housing rights. See ILO, [Social Policy \(Basic Aims and Standards\) Convention, 1962 \(No. 117\)](#), 22 June 1962, art. 5(2).
5. UN, Office of the High Commissioner for Human Rights [OHCHR], [International Covenant on Economic, Social and Cultural Rights](#), 16 December 1966, art. 11.
6. Countries with justiciable housing rights include: Armenia, Belgium, Burkina Faso, Congo, Ecuador, Equatorial Guinea, Guyana, Haiti, Honduras, Maldives, Mali, Mexico, Nicaragua, Paraguay, Russia, Sao Tome and Principe, Seychelles, South Africa, Spain, Uruguay, Venezuela and Vietnam. See S. M. Atia Naznin, [Researching the Right to Housing](#), Hauser Global Law School Program, November/December 2018.
7. Michelle Oren, Rachelle Alterman and Yaffa Zilbershats, “Housing Rights in Constitutional Legislation: a conceptual classification,” *Contemporary Housing Issues in a Globalized World*, Pdraig Kenna, ed., Ashgate Publishing Ltd., Surrey, United Kingdom, 2014.
8. [“Venezuela \(Bolivarian Republic of\) 1999 \(rev. 2009\)”](#), *Constitute* [database], accessed 6 March 2019, art. 82.
9. OHCHR, [Committee on Economic, Social and Cultural Rights](#) [CESCR]. Some have criticized the CESCR’s definition of adequate housing. A common critique is that this definition is not sufficiently sensitive to gender-based concerns. See Ingrid Westendorp, “Women’s Housing Rights: Is anything wrong with the international norm?” in Patricia Kennett and Kam Wah Chan, eds., *Women and Housing: An International Analysis*, Routledge, London, United Kingdom, 2010.
10. OHCHR, [CESCR General Comment No. 4: The Right to Adequate Housing \(Art. 11\(1\) of the Covenant\)](#), UN Doc. E/1992/23, Sixth Session, 13 December 1991, para. 8.
11. *Ibid.*, para. 9.



12. Protections against forced evictions include the following:
  - freedom from discrimination in forced evictions;
  - the right to available legal recourses and remedies by people who have been forcibly evicted;
  - freedom from forced evictions as a punitive measure;
  - the right to consultations about feasible alternatives in view of minimizing or eliminating the use of force;
  - the right to adequate compensation for any affected property (personal and real);
  - freedom from unreasonable and disproportionate evictions; and
  - the right to appropriate procedural protections.

States parties must ensure eviction laws specify when forced evictions are permitted. They must also take appropriate measures to protect those affected by forced evictions from homelessness or vulnerability. See UN, “Annex IV: General Comment No. 7 (1997) – The right to adequate housing (article 11, paragraph 1 of the Covenant: forced evictions),” [\*Committee on Economic, Social and Cultural Rights: Report on the Sixteenth and Seventeenth Sessions \(28 April – 16 May 1997, 17 November – 5 December 1997\)\*](#), Supplement No. 2, UN Doc. E/1998/22, paras. 2 and 10–16, pp. 113–117.
13. OHCHR, [\*International Convention on the Elimination of All Forms of Racial Discrimination\*](#), 21 December 1965.
14. OHCHR, [\*International Covenant on Civil and Political Rights\*](#), 16 December 1966.
15. OHCHR, [\*Convention on the Elimination of All Forms of Discrimination against Women\*](#), 18 December 1979.
16. OHCHR, [\*Convention on the Rights of the Child\*](#), 20 November 1989.
17. OHCHR, [\*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families\*](#), 18 December 1990.
18. UN, [\*Convention on the Rights of Persons with Disabilities and Optional Protocol\*](#) [13 December 2006].
19. *International Covenant on Civil and Political Rights*, art. 17.
20. *Convention on the Rights of the Child*, art. 27.
21. *Convention on the Rights of Persons with Disabilities*, art. 9(1).
22. *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, s. 43(1)(d). The convention does not grant project-tied workers and specified-employment workers’ housing rights. See articles 2(2)(f) and 2(2)(g).
23. *Ibid.*, art. 43(3).
24. OHCHR, [\*The Right to Adequate Housing\*](#), Fact Sheet No. 21 (Rev. 1), p. 6.
25. *Ibid.*, pp. 7 and 31.
26. CESCR’s two sets of general comments (nos. 4 and 7) on housing do not explicitly clarify “minimum core” obligations. See Nico Moons, *The Right to Housing in Law and Society*, Routledge Research in Human Rights Law, Routledge, New York, 2018, pp. 167–170.

27. The Government of Canada has sole authority to sign and ratify treaties, but the federal and provincial/territorial governments share constitutional responsibility for housing. As a policy, the Government of Canada consults all provinces before signing treaties touching on provincial jurisdiction. See Laura Barnett, [Canada's Approach to the Treaty-Making Process](#), Publication no. 2008-45-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 8 May 2018.
28. [Constitution Act, 1867](#), 30 & 31 Victoria, c. 3 (U.K.).
29. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
30. Prohibited grounds of discrimination are “race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.” See [Canadian Human Rights Act](#), R.S.C. 1985, c. H-6, s. 2.
31. *National Housing Strategy Act*, s. 4.
32. Ibid.
33. Canada Mortgage and Housing Corporation, [National Housing Strategy: About the Initiatives](#), 2 May 2018.
34. Canada’s constitution refers to Indigenous peoples as “aboriginal peoples,” a term that includes “Indian [the collective legal term for all First Nations], Inuit and Métis peoples.” See [Rights of the Aboriginal Peoples of Canada](#), Part II of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 35.
35. The Crown exercises its governing powers in Canada through the federal, provincial and territorial governments. The federal government is the jurisdiction primarily responsible for upholding Aboriginal and treaty rights and for providing services to Indigenous peoples (mainly First Nations people living on reserve and Inuit). However, provinces and territories are party to modern agreements with Indigenous communities. See Brittany Collier, [Spending and Jurisdiction for First Nations, Métis and Inuit Peoples](#), HillNotes, Library of Parliament, 26 January 2016.
36. [R. v. Van der Peet](#), [1996] 2 SCR 507; and William B. Henderson and Catherine Bell, [Rights of Indigenous Peoples in Canada](#), *The Canadian Encyclopedia*, 7 February 2006.
37. Among other factors, the court considered shelter construction to be a domestic (rather than commercial) need and recognized that the logs were cut from lands traditionally harvested by Maliseet and Mi’kmaq people. Both were central to the Aboriginal rights claim. See [R. v. Sappier; R. v. Gray](#), 2006 SCC 54.
38. Government of Canada, [Treaties and agreements](#).
39. See Assembly of First Nations, [National First Nations Housing Strategy](#); Canadian Housing and Renewal Association Indigenous Caucus, [Recommendations for an Urban and Rural Indigenous Housing Strategy](#), June 2017, p. 3.; and Government of Canada, [Volume 3: Gathering Strength](#), *Report of the Royal Commission on Aboriginal Peoples*, October 1996, pp. 348–352.
40. Chelsea Vowel, *Indigenous Writes: A Guide to First Nations, Métis & Inuit Issues in Canada*, Highwater Press, Winnipeg, 2016, p. 145.

41. Housing programs may differ, depending who seeks to benefit from them and where. For example, the federal government and band councils share responsibility for housing on First Nations reserves. By contrast, in Inuit Nunangat (the four northern regions where Inuit live), the federal and/or territorial or provincial governments may deliver housing programs based on a web of modern agreements. See Inuit Tapiriit Kanatami, [Inuit Nunangat Housing Strategy](#), April 2019.
42. Although not all housing on First Nations reserves is regulated federally under the *Indian Act*, many people living on reserve access federally subsidized housing. See Vowel (2016), p. 145.
43. Sheldon Kirk Krasowski, "[Mediating the Numbered Treaties: Eyewitness Accounts of Treaties Between the Crown and Indigenous Peoples, 1871-1876](#)," Ph.D. Thesis, University of Regina, June 2011; Jessica Stuart, "Aboriginal Rights & Treaty Research in Canada," *Canadian Law Library Review*, Vol. 42, No. 3, 2017; and Jean-Pierre Morin, [Perceptions of Implementation: Treaty Signatory Views of Treaty Implementation](#), Aboriginal Policy Research Consortium International (APRCi), University of Western Ontario, Paper 108, 2007, pp. 123 and 143.
44. Inuit Tapiriit Kanatami, "[Backgrounder on Inuit and Housing: For Discussion at Housing Sectoral Meeting, November 24 and 25<sup>th</sup> in Ottawa](#)," Backgrounder, 1 November 2004, p. 4.
45. Qikiqtani Inuit Association, [Qikiqtani Truth Commission: Thematic Reports and Special Studies 1950–1975 and QTC Final Report: Achieving Saimaqatiingniq](#), 2013, pp. 22-24.
46. Inuit Tapiriit Kanatami (2004), p. 4.
47. Indigenous and Northern Affairs Canada, [Canadian Human Rights Act – Repeal of Section 67](#).
48. *Constitution Act, 1867*, s. 91(24). Provincial jurisdiction over other housing-related activities, such as building codes and contract enforcement, does not necessarily extend onto reserves. This may make it difficult to protect and uphold certain housing rights on reserve.
49. UN, [United Nations Declaration on the Rights of Indigenous Peoples](#) [2007].
50. *Ibid.*, art. 23.
51. Indigenous and Northern Affairs Canada, [United Nations Declaration on the Rights of Indigenous Peoples](#). See also Department of Justice, [Principles respecting the Government of Canada's relationship with Indigenous peoples](#).
52. Benjamin Oliphant, "[Interpreting the Charter with International Law: Pitfalls & Principles](#)," *Appeal*, Vol. 19, 2014, pp. 105–129.
53. [Victoria \(City\) v. Adams](#), 2008 BCSC 1363 (CanLII); and [Abbotsford \(City\) v. Shantz](#), 2015 BCSC 1909 (CanLII).
54. [British Columbia v. Adamson](#), 2016 BCSC 584 (CanLII); and [British Columbia v. Adamson](#), 2016 BCSC 1245 (CanLII).
55. *British Columbia v. Adamson*, 2016 BCSC 1245 (CanLII), para. 83.
56. Scott McAlpine, "More than Wishful Thinking: Recent Developments in Recognizing the Right to Housing under S 7 of the *Charter*," *Windsor Review of Legal and Social Issues*, Vol. 38, No. 1, 2017.
57. UN, General Assembly, Human Rights Council [HRC], [Access to justice for the right to housing: 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](#), UN Doc. A/HRC/40/61, Fortieth Session, 15 January 2019.

58. [\*Tanudjaja v. Canada \(Attorney General\)\*](#), 2014 ONCA 852 (CanLII).
59. [\*Jennifer Tanudjaja, et al. v. Attorney General of Canada, et al.\*](#), 2015 CanLII 36780 (SCC).
60. OHCHR, [\*Special Procedures of the Human Rights Council\*](#).
61. OHCHR, [\*Mandates 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; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the human rights to safe drinking water and sanitation\*](#), Reference no. AL CAN 2/2016, 4 November 2016.
62. OHCHR, [\*Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on extreme poverty and human rights\*](#), Reference no. AL CAN 1/2017, 16 May 2017.
63. OHCHR, [\*Mandate 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\*](#), Reference no. OL CAN 2/2018, 22 June 2018.
64. Government of Canada, [\*International Complaints\*](#).
65. Karine Azoulay and Julian Walker, [\*Canada's Third Universal Periodic Review Before the United Nations Human Rights Council\*](#), HillNotes, Library of Parliament, 10 May 2018.
66. The HRC's normal course of action for persistent non-cooperation is to rely on states to reiterate unfulfilled recommendations in the next Universal Periodic Review [UPR] cycle. However, observers have criticized this as ineffective, suggesting that the HRC take further action within the UPR framework. See International Service for Human Rights, [\*Joint Civil Society Paper: Strengthening the Human Rights Council at 10\*](#), April 2016.
67. UN, General Assembly, HRC, [\*Report of the Working Group on the Universal Periodic Review: Canada\*](#), UN Doc. A/HRC/39/11, Thirty-ninth Session, 11 July 2018.
68. UN, General Assembly, HRC, [\*Report of the Working Group on the Universal Periodic Review: Canada – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review\*](#), UN Doc. A/HRC/39/11/Add. 1, Thirty-ninth Session, 18 September 2018, p. 4.

## APPENDIX – HOUSING RIGHTS IN PROVINCIAL AND TERRITORIAL HUMAN RIGHTS CODES

**Table 1 – Housing Rights in Provincial and Territorial Human Rights Codes**

Province or Territory	Human Rights Code	Housing Rights
B.C.	<a href="#">Human Rights Code</a> , R.S.B.C. 1996, c. 210	<ul style="list-style-type: none"> <li>• Section 8 protects people on grounds listed in that section from denial of or discrimination with respect to accommodation, services or facilities normally available to the public, with some exceptions for sex, disability or age.</li> <li>• Section 9 protects people on grounds listed in that section from denial of the opportunity to purchase or acquire an available commercial unit, dwelling, land or interest in land. It also protects people from discrimination with respect to a term or condition of the purchase or acquisition of a commercial unit, dwelling, land or interest in land.</li> <li>• Section 10 protects people on grounds listed in that section from denial of the right of tenancy in available space and from discrimination regarding terms of tenancy in that space, with some exceptions for age, family status or disability,</li> </ul>
Alta.	<a href="#">Alberta Human Rights Act</a> , R.S.A. 2000, c. A-25.5.	<ul style="list-style-type: none"> <li>• Section 4 protects people on grounds listed in that section against denial of or discrimination with respect to services, accommodation or facilities normally available to the public, with some exceptions for age and family status.</li> <li>• Section 5 protects people on grounds listed in that section from denial of occupancy or discrimination in terms of tenancy in any available commercial or self-contained dwelling unit, with some exceptions for age and family status.</li> </ul>
Sask.	<a href="#">The Saskatchewan Human Rights Code, 2018</a> , S.S. 2018, c. S-24.2	<ul style="list-style-type: none"> <li>• Section 11 protects people on section 2 grounds from denial of occupancy or discrimination with respect to terms of occupancy in commercial units or any housing accommodation, with some exceptions for sex and age.</li> <li>• Section 12 protects people on section 2 grounds from denial of or discrimination with respect to accommodation, services or facilities normally available to the public, with some exceptions for sex, age marital status and family status.</li> <li>• Section 41(1)(b) protects people who violate the Code from court-ordered eviction if that person obtained their accommodation in good faith.</li> </ul>
Man.	<a href="#">The Human Rights Code</a> , C.C.S.M., c. H175	<ul style="list-style-type: none"> <li>• The section 1 definition of “social disadvantage,” a characteristic protected against some forms of discrimination, means “diminished social standing or social regard due to [characteristics including] homelessness or inadequate housing.”</li> <li>• Section 13 protects people on section 9(2) grounds from unreasonable discrimination with respect to any service, accommodation, facility, program or privilege normally available to the public, with some exceptions for age.</li> <li>• Section 16 protects people on section 9(2) grounds from unreasonable discrimination with respect to lawful occupancy of any residence or commercial premises or any terms or conditions of their occupancy, with some exceptions for boarders in private residences and tenants in duplexes.</li> </ul>

## A PRIMER ON HOUSING RIGHTS IN CANADA

Province or Territory	Human Rights Code	Housing Rights
		<ul style="list-style-type: none"> <li>Section 44 protects people who violate the Code from court-ordered eviction if that person obtained their accommodation in good faith.</li> </ul>
Ont.	<a href="#">Human Rights Code</a> , R.S.O. 1990, c. H.19	<ul style="list-style-type: none"> <li>Section 2 protects people on grounds listed in that section from discrimination with respect to occupancy of accommodation and from harassment by the landlord, the landlord's agent or other residents of the building, with certain exceptions for sex, dwellings where the owner resides and certain business practices (as set out in section 21).</li> <li>Section 7 protects people on the grounds listed in that section from harassment by the landlord, the landlord's agent or other residents of the building.</li> </ul>
Que.	<a href="#">Charter of Human Rights and Freedoms</a> , C.Q.L.R., c. C-12	<ul style="list-style-type: none"> <li>Section 6 declares that "every person has a right to the peaceful enjoyment and free disposition of his property, except to the extent provided by law."</li> <li>Section 7 provides that "a person's home is inviolable."</li> <li>Section 8 stipulates that "no one may enter upon the property of another."</li> <li>Section 12 protects people on section 10 grounds from denial of or discrimination with respect to goods or services normally available to the public, with some exceptions for leasing private or unadvertised homes (as set out in section 14).</li> <li>Section 13 protects people on section 10 grounds from discriminatory contracts or clauses, with some exceptions for leasing private or unadvertised homes (as set out in section 14).</li> <li>Section 15 protects people on section 10 grounds from denial of access to public transportation or a public place.</li> <li>Section 45 declares that "every person in need has a right, for himself and his family, to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living."</li> </ul>
N.B.	<a href="#">Human Rights Act</a> , R.S.N.B. 2011, c. 171	<ul style="list-style-type: none"> <li>Section 5 protects people on section 2 grounds from denial of occupation of a commercial or dwelling unit; discrimination with respect to terms or conditions of occupancy in a commercial or dwelling unit; refusal of an offer to buy property or interest in property or discrimination with respect to terms or conditions of the sale of or interest in property; and imposition or enforcement of contract terms contrary to section 2 grounds, with some exceptions for age.</li> <li>Section 6 protects people on section 2 grounds from the denial of or discrimination with respect to accommodation, services or facilities available to the public, with some exceptions for age.</li> <li>Section 10(5) protects occupants and people seeking occupancy of a premise from sexual harassment by the person providing that residential premises or their representative.</li> <li>Section 11 protects a person from eviction, denial of benefits and other forms of discrimination because that person made a complaint under this Act.</li> </ul>

## A PRIMER ON HOUSING RIGHTS IN CANADA

Province or Territory	Human Rights Code	Housing Rights
P.E.I.	<a href="#"><i>Human Rights Act</i></a> , R.S.P.E.I. 1988, c. H-12	<ul style="list-style-type: none"> <li>• Section 2 protects people on section 1(d) grounds from discrimination with respect to accommodation, services and facilities available to the public, or the way these accommodations, services and facilities are accessed, with some exceptions for age.</li> <li>• Section 3 protects people on section 1(d) grounds from denial of occupancy in or discrimination with respect to terms of occupancy in any commercial unit, self-contained dwelling unit or rental unit, with some exceptions for sex.</li> <li>• Section 4 protects people on section 1(d) grounds from the refusal of an offer to purchase a property or interest in property and discrimination with respect to the terms of any sale of property or interest.</li> <li>• Section 5 protects people on section 1(d) grounds from discriminatory contracts or conditions regarding the sale, ownership, occupation or use of real property or interest in property.</li> </ul>
N.S.	<a href="#"><i>Human Rights Act</i></a> , R.S.N.S. 1989, c. 214	<ul style="list-style-type: none"> <li>• Section 5 protects people on grounds listed in that section from discrimination in respect of the provision of or access to services or facilities, accommodation, and the purchase or sale of property, with some exceptions (as set out in section 6).</li> </ul>
N.L.	<a href="#"><i>Human Rights Act, 2010</i></a> , S.N.L. 2010, c. H-13.1	<ul style="list-style-type: none"> <li>• Section 11 protects people on section 9 grounds from denial of or discrimination with respect to services, accommodation or facilities normally available to the public, with some exceptions for disability, sex, age and most private residences.</li> <li>• Section 12 protects people on section 9 grounds from denial of occupancy in a commercial or self-contained dwelling unit and against discrimination with respect to a term or condition of occupancy of a commercial or self-contained dwelling unit, with some exceptions for disability, age and family status and for landlord business practices.</li> <li>• Section 13 protects people on section 9 grounds from harassment during their occupation of a commercial unit or self-contained dwelling unit.</li> <li>• Section 20 protects a person from eviction and other forms of discrimination because that person made a complaint under this Act.</li> <li>• Section 21 protects people on section 9 grounds from discriminatory contracts or discriminatory terms of a contract, with some exceptions for disability, age and family status.</li> </ul>
Y.T.	<a href="#"><i>Human Rights Act</i></a> , R.S.Y. 2002, c. 116	<ul style="list-style-type: none"> <li>• Section 8 requires people to make reasonable provisions with respect to accommodations and services for the special needs of people with a physical disability, with exceptions for some structures.</li> <li>• Section 9 protects people on section 7 grounds from discrimination with respect to the provision of public services, goods and facilities; the occupancy, possession, lease or sale of property to the public; and the negotiation or performance of any contract open to the public.</li> <li>• Section 24(2) protects people who violate the Act from court-ordered eviction if that person obtained their dwelling in good faith.</li> </ul>



## A PRIMER ON HOUSING RIGHTS IN CANADA

Province or Territory	Human Rights Code	Housing Rights
N.W.T.	<a href="#"><i>Human Rights Act</i></a> , S.N.W.T. 2002, c. 18	<ul style="list-style-type: none"> <li>• Section 11 protects people on section 5 grounds from denial of or discrimination with respect to services, accommodation and facilities normally available to the public, with some exceptions for family status.</li> <li>• Section 12 protects people on section 5 grounds from denial of occupation as a tenant of any commercial unit or self-contained dwelling advertised to the public and from discrimination with respect to the terms of occupancy as a tenant in these units, with some exceptions for family status.</li> <li>• Section 14 protects people on section 5 grounds from harassment in the provision of services, facilities, accommodation, commercial premises or residential accommodation.</li> <li>• Section 15 protects people from eviction and from the denial of other rights for having made or helped make a complaint under this Act.</li> </ul>
Nun.	<a href="#"><i>Consolidation of Human Rights Act</i></a> , S.Nu. 2003, c. 12	<ul style="list-style-type: none"> <li>• Section 7 protects people on grounds listed in that section from harassment in the provision of services, facilities, contracts, commercial premises and residential accommodation.</li> <li>• Section 12 protects people on section 7 grounds from the unreasonable denial of services, facilities, and the ability to enter into contracts normally available to the public, and from unreasonable discrimination with respect to services, facilities, the ability to enter into contracts and the terms of contracts normally available to the public, with some exceptions for disability, age, sex, marital status or family status.</li> <li>• Section 13 protects people on section 7 grounds from unreasonable denial of occupancy as a tenant of commercial or residential accommodations advertised to the public and from unreasonable discrimination with respect to the terms of occupancy of these accommodations, with some exceptions for duplexes, boarders in private residences and other prescribed accommodations.</li> </ul>

Source: Table prepared by the author based on information contained in the relevant provincial/territorial legislation.