Housing Rights Implications of Hosting the 2026 FIFA World Cup in Toronto and Vancouver: Towards a Legal Framework that Effectively Protects the Right to Adequate Housing in Canada.

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ABSTRACT

Féderation Internationale de Football Association (FIFA) organizes the greatest sporting event in the history of soccer – the FIFA World Cup (FWC). The 2026 FWC starts in June 2026, with Canada, Mexico, and the US as host nations. This thesis focuses on Canada to ascertain how the hosting of the 2026 FWC could impact the right to adequate housing in the host provinces/cities of Ontario/Toronto and British Columbia/Vancouver vis-à-vis the already precarious housing situation in these provinces/cities and the anticipated high demand that would be placed on the housing market by soccer fans and spectators coming into the host cities in 2026. The thesis thus analyzes the central issue of whether or not the hosting of the 2026 FWC in Toronto and Vancouver obliges the Government of Canada and the provincial/municipal governments of these host provinces/cities to initiate immediate appropriate legislative measures that address the possible impacts the 2026 FWC could have on right to adequate housing.

To ascertain this, the thesis first provides the much needed background to the possible housing rights risks of the 2026 FWC. Given the dearth of scholarly works on the housing rights implications of past FWCs, the thesis evaluated the housing rights impacts of five different Olympic events as a precursor that highlights the possible adverse impacts on housing rights that should be of concern to the host cities of Toronto and Vancouver. The thesis further examines and discusses the immediate obligations of the government in Canada under the International Covenant on Economic, Social and Cultural Rights and under FIFA's human rights initiatives, to - through appropriate legislative measures - protect against the housing rights risks of the 2026 FWC. The thesis also analyzes the efficacy of the housing rights frameworks in the host provinces/cities, and concludes with proposals and recommendations that would facilitate a hosting experience in Toronto and Vancouver that does not violate housing rights.

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CHAPTER ONE
INTRODUCTION

1.1 General Overview

A mega sports event (MSE) is, *inter-alia*, a "...one-time...large-scale special event that is high in status or prestige…attracts a large crowd…and leave[s] behind legacies."[1] These legacies are usually human rights impacts of "...long-term consequences for the cities that stage them."[2] One of such impacts is the adverse effects it has on housing rights in host cities.[3] The housing market is mostly affected due to the need for urbanism and infrastructural developments for such events which usually necessitates criminalization of homelessness.[4] Additionally, the continued high intrusion of people into MSE host cities translates into direct and indirect eviction of low-income renters that are most times forced out of their rental units due to rent increases occasioned by the surge in demand on the housing market by spectators and temporary residents coming into the host cities of MSEs.[5]

Féderation Internationale de Football Association (FIFA) is the governing body responsible for the organization of the biggest MSE in the world of football (soccer) – the FIFA World Cup (FWC). Host nations of the FWC appear to be susceptible to human rights risks, one of which is its negative impacts on the right to adequate housing. Canada is one of the host nations of the 2026 FWC, with Toronto and Vancouver as the Canadian host cities. However, there is a situation of housing precarity in Ontario and British Columbia which, among other factors like those embedded in the housing rights frameworks discussed in chapter four of this thesis, is significantly occasioned by the trend of financialization of rental housing in these provinces, especially in the cities of Toronto and Vancouver.[6]

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[1] Martin Müller, "What makes an event a mega-event? Definitions and sizes" (2015) 34:6 Leisure Stud 627 at 629.
[2] *Ibid* at 627-29.
[3] Lucy Amis et al, *Striving for Excellence: Mega-Sporting Events and Human Rights* (London: Institute for Human Rights and Business, 2013) at 2.
[4] Gabriel Silvestre, "The Social Impacts of Mega-Events: Towards a Framework" (2009) 4:10 Esporte e Sociedale 1 at 12.
[5] *Ibid*.
[6] Financialization of housing militates against rental housing affordability in Canada. See ACORN Canada, *The Impact of Financialization on Tenants: Findings from a National Survey of ACORN Members* (Ottawa: The Office of the Federal Housing Advocate, 2022) at 8. Hence, rather than treat housing as a necessary social welfare, the current housing market trends in Canada tilt towards the commoditization of housing which undermines the enjoyment of the right to housing and further exacerbates the existing inequality gaps in access to affordable housing. The financialization phenomenon has encouraged the culture of treating rental housing properties as products that ought to yield maximum profits. See Martine August, *The Financialization of Multi-Family Rental*

There is concern that the already precarious housing situation in the host cities of Toronto and Vancouver could be further stretched by financialized landlords that engage in 'no-fault' eviction of tenants to raise their rents and make profits based on the anticipated high demand that would be placed on the housing market by soccer fans and spectators coming into these host cities in 2026.[7] In addition, it is possible that homeless people could be swept off the streets of these host cities in an attempt to hide their existence from spectators. This thesis argues that there is an immediate obligation on all levels of government in Canada to protect against these housing rights risks through appropriate legislative measures – an obligation that draws from these governments' cumulative commitments and duties arising from the international human rights law framework of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and from FIFA's own human rights initiatives.

This chapter lays the thesis foundation and thus outlines the research questions of the thesis, its structure, and the methodology it adopts. It also engages with the debate on the competing classifications of "sports law" and "sports and the law" to provide a theory-based foundation for the thesis for its application of the principles of human rights within the context of sports. The chapter further explores the concept of sports autonomy to illustrate how sports governing bodies (SGBs) such as FIFA independently regulated their affairs in ways that shielded them from external intervention and human rights accountability until the United Nations Guiding Principles on Business and Human Rights (UNGP) transitioned human rights norms into their internal governance and business activities,[8] which further facilitates the discussion on human rights in sports.

Housing in Canada: A Report for the Office of the Federal Housing Advocate (Ottawa: The Office of the Federal Housing Advocate, 2022) at iv. Landlords that engage in this are referred to as "financialized landlords" and there have been reports of constant increase in rent for housing units managed by financialized landlords, hence the emphasis on them in this thesis and the discussion in chapter four on how they take advantage of some gaps in the housing rights frameworks to facilitate their objectives.

[7] Silas Xuereb, *Estimating No-fault Evictions in Canada: Understanding BC's Disproportionate Eviction Rate in the 2021 Canadian Housing Survey* (Vancouver: Balanced Supply of Housing Research Partnership, 2023) at 10.

[8] The *UNGP* provides some general human rights obligations on states and business enterprises, and restates the need for the provision of appropriate, adequate, and effective remedies when human rights are breached. The objective of the *UNGP* is to contribute to socially sustainable globalization by enhancing human rights standards and practices of business enterprises. See *Human Rights and Transnational Corporations and Other Business Enterprises*, UNHRC, 2011, A/HRC/RES/17/4, HRC Res 17/4 at 1, paras 1 & 3.

1.2 Sports Law vs. Sports and the Law

There is a recurring debate on the use of the terms "sports law" and "sports and the law". While some scholars have taken a rather traditional position on the understanding of the concept of "sports law" as an area of law, others are more liberally inclined.[9] The traditional view is to the effect that "sports law" is nothing but a conglomeration of different conventional areas of law within the context of sports.[10] In other words, there is no separately identifiable and discrete body of law that can be classified as "sports law".[11] Thus, what exists as "sports law" is rather an "application of basic legal precepts, drawn from other substantive areas of the law", and as such, it is appropriate to not understand "sports law" as a distinct area of law but rather as "sports and the law".[12]

In contrast, the proponents of the liberal view are of the opinion that the system of law regulating the overall practice of sports has undergone some transformational changes over the years to merit being treated, within its own rights, as a separate branch of law.[13] They argue that branches of law may be rule-led or activity-led,[14] and while the rule-led branch represents the conservative understanding of what a field of law is and refers to the very nature of legal rules, the activity-led branch is a modern perspective that refers to the application of legal rules to human activities.[15] Hence, it is their understanding that "sports law" qualifies to be categorized as an area of law under the activity-led branch.[16]

However, this liberal view can be countered on the basis that the so called 'activity-led' argument appears invariably influenced by the 'rule-led' branch of law from which it adopts legal rules for application to sporting activities and thus supports the argument that there is no distinct field of law known as "sports law".[17] Regardless, the proponents of the liberal view defend their position by asserting that unlike other activity-led fields of law that rely mainly on

[9] Timothy Davis, "What is Sports Law?" (2001) 11:2 Marq Sports L Rev 211 at 212. See also Simon Gardiner, *Sports Law*, 4th ed (New York: Routledge, 2012) at 4.
[10] *Ibid*.
[11] *Ibid*.
[12] *Ibid*.
[13] Michael Beloff et al, *Sports Law*, 2nd ed (Oxford: Hart Publishing Ltd., 2012) at 6.
[14] *Ibid* at 4.
[15] *Ibid* at 2.
[16] *Ibid*.
[17] *Ibid*.

'rule-led' backing, "sports law" is a special breed as "it differs…from such other activity defined…fields of law, in that it is developing under its own impetus".[18]

Joining the debate, Jack Anderson prefers the view that the conceptualization of sports law as a field of law is only an application of the principles of law to the practices of sports.[19] He explains that the recognition of a field as an area of law is dependent on its evolution process that is highly influenced by developments traceable to an authoritative source of historical relevance.[20] Hence, an area of law may only be deemed to be a branch of law, in the real sense of it, where it is officially recognized by a renowned source or, at least, associated to that source.[21] He notes that while *Halsbury's Laws of England* is one such authoritative source, "sports law" does not appear within as a distinct *corpus* of law, and does not have a *locus* therein which implies that "sports law" is not regarded as a conventional area of law.[22]

Anderson thus tends towards the view that "…the interface between sport and the law is premised on the application of established legal principles to the circumstances of disputes involving sports participants…"[23] However, he recognizes that there are situations where the application of these traditional principles of law would be unsuitable within the context of sports which then creates "legal difficulties discrete to sport" that allow for special development of the law in that regard.[24] He acknowledges that such developments suggest that there may be an emerging independent area of law known as "sports law" as the complexities encountered in the application of the law to sports in such special cases facilitate the need for the unique principles of law developed in the process to be studied in law schools under carefully curated curricula of "sports law".[25] However, he argues that it is currently premature to advance a claim for the recognition of "sports law" as a branch of law because it is presently under-theorized and thus needs time to fully develop.[26]

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[18] *Ibid* at 6.
[19] Jack Anderson, *Modern Sports Law: A Textbook* (Oxford: Hart Publishing Ltd., 2010) at 21.
[20] *Ibid*.
[21] *Ibid*.
[22] *Ibid*.
[23] *Ibid* at 22.
[24] *Ibid*.
[25] *Ibid* at 26.
[26] *Ibid* at 22.

Tarunabh Khaitan and Sandy Steel have recently attempted to provide a more general account of what qualifies a field as an area of law.[27] They describe an area of law as "...a set of legal norms that are intersubjectively recognized by the legal complex in a given jurisdiction as a subset of legal norms in that jurisdiction".[28] Thus, on their account, the relational acknowledgment/validation (by the legal complex) of fragments of legal norms in any given legal system qualifies a field as an area of law. Intersubjective recognition by a legal complex is the core of this claim – 'intersubjective' in the sense that "...their existence depends on their shared acceptance in the consciousness of…persons comprising the legal complex in a given society."[29] In other words, for any subset of law within the totality of norms in a legal system to be validated as a discrete area of law in any jurisdiction, such subset of law must be recognized as such by a collective of stakeholders in law, that is by legal actors such as legislators, judges, scholars, lawyers, law schools, and so on.[30]

Accordingly, in determining the success of any attempt to create a new area of law, what matters is the validation by the relevant legal complex of that classification as an area of law within that jurisdiction. Khaitan and Steel maintain that the feasibility of coherent and logical theorization of a specific legal norm does not qualify it to be classified as an area of law where the categorization is not duly recognized by the various constituents of the legal complex.[31] Inversely, the lack of theorization or rational basis within a subset of law is immaterial to the determination of whether it qualifies as an area of law if such subset of law is recognized by the legal complex.[32] Thus, "the irrationality of...horse law... - if it is recognized as an area of law in some jurisdictions - ...cannot, in itself, refute the existence of that area of law until the legal complex stops recognizing it as such."[33]

Khaitan and Steel thus submit that the argument that the creation of the "Law of the Horse" results in an incomprehensible area not worthy of classification as an area of law would be

[27] Tarunabh Khaitan & Sandy Steel, "Areas of Law: Three Questions in Special Jurisprudence" (2023) 43:1 Oxford J Leg Stud 76 at 77.
[28] *Ibid* at 78.
[29] *Ibid* at 81.
[30] *Ibid* at 80.
[31] *Ibid* at 79.
[32] *Ibid* at 83.
[33] *Ibid* at 85.

flawed where the legal complex decides to recognize the "Law of the Horse" as an area of law.[34] By contrast, they argue that the special regulation of a particular activity or object does not qualify the regulatory framework as an area of law if there is no due validation of such by the legal complex.[35] In essence, no area of law can duly be taken as one in the absence of acceptance/recognition by the relevant legal actors. Thus, recognition by a "significant body of the legal complex as a whole" is crucial.[36]

Khaitan and Steel maintain that unrecognized compartments of law can only be regarded as expository categorizations and not as areas of law *per se*.[37] Hence, they argue that an area of law cannot be willed into existence by anyone but could only evolve into existence with the consensus of the legal complex within a specific legal system.[38] They also posit that it is possible for a subcategory of law to have varied recognition in legal systems.[39] Thus, the existence of 'XYZ Law' as an area of law in a given legal system does not guarantee its recognition as an area of law in another legal system where it may not be recognized by the legal complex.[40] Hence, where 'XYZ Law' is recognized in one jurisdiction and not in another, it is regarded as an area of law only in that jurisdiction where the legal complex recognizes it as an area of law.

Does "sports law" objectively satisfy these elements of an independent area of law? The answer is not straightforward, and one could end up caught in between answers and not be able to take a specific position on the debate. This is so because there are jurisdictions where all the various actors in the legal complex appear to be in agreement with regards to the recognition of "sports law" as an area of law, and to that extent, the position of the school that there is "sports law" as a branch of law would be validated. On the other hand, in jurisdictions where the legal complex rejects such recognition or the legal actors within that complex are not all in consensus as to its recognition, then the argument of the school on "sports and the law" would be further strengthened.

[34] *Ibid*.
[35] *Ibid* at 79.
[36] *Ibid* at 81.
[37] *Ibid* at 79.
[38] *Ibid* at 81.
[39] *Ibid* at 82.
[40] *Ibid*.

Relatedly, does it suffice to say that the concept of "sports law" is one to be casually used within the context of sports as a generic term to describe the playing rules governing different sports? In other words, is the term coined only for reference to the game rules of different sports? While it may be suggested by the school of "sports and the law" that such casual usage of "sports law" only qualifies it as a law in that instance but not as a field of law *per se*, the thesis, influenced by the possibility of both views being valid under Khaitan and Steel's objective test, proposes a middle ground on the basis that two truths can co-exist without contradicting each other as it is not implausible for two seemingly contradictory perspectives to be valid at the same time in relation to their contextual usages, and as such, there would be no need to choose one truth over the other. The thesis thus relies on the notions of both "sports law" and "sports and the law" as theoretical foundation for its discussions around the right to adequate housing, the exclusivities of sports autonomy, and the accountability of SGBs for human rights violations.

While these discussions are spread out in the thesis, one instant example that seems to justify the position of the proponents of "sports and the law" within the context of the subject matter of this thesis is in relation to the feasibility of showing how human rights law is applied to sports within the context of MSEs. "Sport" in this context is soccer played during the course of MSEs such as the FWC, and "the law" in this regard is the right to adequate housing (housing right) as part of human rights law which is a recognized conventional area of law. This human right to adequate housing cuts across seven main elements, which are: security of tenure; locality; availability of services; accessibility; cultural adequacy; habitability; and affordability, all of which are explained below.

Security of tenure is a component of the right that provides guaranteed legal protection against arbitrary/forced evictions. This is achieved through the preservation of the right of tenants to affordable rental housing units for a specified period of time.[41] On "locality" and "availability of services", these are basic components that insist on the need to build houses within "healthy and accessible" sites where the residents could have "...access to basic resources to fulfill everyday

[41] Office of the United Nations High Commissioner for Human Rights, "The Right to Adequate Housing", Fact Sheet No. 21 (Rev. 1) at 3.

needs...", and thus, the location of the housing structure should facilitate access to infrastructural amenities, and other related basic services that are necessary for healthy living.[42]

Similarly, housing must be accessible, and this implies that "...the specific housing needs of disadvantaged groups should be taken into account", and as such, access to housing units by all kinds of renters, irrespective of any disability, should be provided.[43] There is also another dimension of the right which requires housing to be culturally adequate with regards to taking cultural identities into consideration when designing and constructing housing units. Hence, "the way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing...".[44]

In addition, housing is expected to be habitable and this means that "...inhabitants must be provided with adequate space, protected from cold, damp, heat, rain, wind or other threats to health or structural hazards to guarantee their physical safety", and thus, the housing unit and structure must not be in a deplorable state and should further provide the much needed succor and comfort.[45] In relation to affordability, it is important to note that there is a difference between subsidized housing and affordable housing. Whereas the idea of subsidized housing relates to social housing assistance programs that provide housing units at lower market rates to those in greatest need of housing, the concept of affordable housing focuses on the rental housing market and how, in the financial sense, it is accessible to an average renter.[46] There is an income-based approach to the understanding of the concept of affordability in Canada.[47] Thus, when the monthly rent is not up to 30 percent of the gross monthly household income, the rent is said to be affordable from an income-based perspective of affordability.[48]

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[42] California Right to Housing Working Group, *Recognizing the Right to Housing: Why We Need a Human Right to Housing in California* (California: ACCE Institute, 2023) at 21.
[43] *Ibid*.
[44] *Ibid* at 22.
[45]Equality and Human Rights Commission, *Following Grenfell: The Right to Adequate and Safe Housing* (Manchester: Equality and Human Rights Commission, 2018) at 3.
[46] Affordable Housing Challenge Project*, Advancing the Right to Housing in Toronto: Critical Perspectives on the GTA's Housing Crisis and How to solve it* (Toronto: University of Toronto, 2022) at ix.
[47] *Ibid*.
[48]*Ibid* at x. For instance, where the gross monthly household income is CAD5000, any amount that is equivalent to 30 percent of this amount or more would be deemed unaffordable, and any amount below that would be considered affordable. Hence, a rent of CAD 1500 (30 percent of CAD 5000) for such household is unaffordable and only an amount lesser than that is considered to be affordable within that context.

From the above, one could then say that homelessness is a clear indication of non-realization of housing rights, and has thus been described as the "…most visible and most severe symptom of the lack of respect for the right to adequate housing".[49] Criminalization of homelessness further violates a mandatory aspect of the right to adequate housing under international human rights law that imposes an obligation on the state to identify and undertake appropriate legislative measures that, *inter-alia*, help homeless people realize their right to adequate housing.[50] The aspects of housing rights that are salient to this thesis are affordability and security of tenure in relation to "…measures that are needed to prevent homelessness [and] prohibit forced evictions…"[51] in the course of hosting mega sports events (MSEs) such as the 2026 FIFA World Cup (FWC). This is thus the basis of this thesis.

1.3 Sports Autonomy

Freedom of association permits individuals to freely come together and set up autonomous organizations across various industries. Over the years, this has allowed SGBs to progressively develop in sophisticated and complex ways that permit them to independently run their internal affairs and business activities without undue interference from external forces.[52] The word "autonomy" is derived from two Greek words - *auto* and *nomos* - which translate as "those who make their own law".[53] In sports, it is a recognized theoretical concept and norm as "voluntary sports organizations have the right to establish autonomous decision-making processes within the law [and thus] both governments and sports organizations…[are to] recognize the need for a mutual respect of…[SGBs] decisions".[54] Hence, SGBs generally have the freedom to self-regulate through their own internal governing rules, without any form of controlling influence from parties outside their sporting family.[55]

The autonomy of self-regulation in sports is thus characterized by an internally organized regulatory system for the effective administration of sports, and this has necessitated the creation of sports-specific adjudicatory bodies such as the Court of Arbitration for Sport (CAS) for swift

[49] *Ibid* at 21.
[50] *Ibid* at 23.
[51] Office of the United Nations High Commissioner for Human Rights, *supra* note 41, *ibid* at 6.
[52] Jean-Loup Chappelet, *Autonomy of sport in Europe* (Strasbourg: Council of Europe Publishing, 2010) at 7.
[53] Tom Serby, "Sports Corruption: Sporting Autonomy, *Lex Sportiva* and the Rule of Law" (2017) 15:2 Ent & Sports LJ 1 at 1.
[54] *European Sports Charter*, art. 3.
[55] Jean-Loup Chappelet, *supra* note 52, *ibid* at 49.

and effective resolution of sports-related disputes.[56] It is the jurisprudence of the CAS on sports issues that has developed into what is now known as *lex sportiva* - a collation of principles of "sports law" from the CAS within the context of sporting disputes.[57] In football (soccer), there is an autonomous "pyramidic" governance model that regulates the sport.[58] This model consists of national, regional (continental), and global regulatory authorities that serve as the governing bodies for soccer's general development, organization, and regulation.[59]

FIFA manages the game of soccer at the global level.[60] At the continental level, there are regional soccer confederations[61] that oversee the governance and administration of soccer at that level.[62] National soccer governing bodies[63] control the local organization of the sport in their various countries.[64] FIFA enjoys jurisdiction as an independent administrator of the regulatory framework for international soccer affairs,[65] and thus, FIFA insists that national soccer associations affiliated to it as member associations (MAs) must as well be in a position to control their internal affairs without any form of undue influence from third parties.[66] To further ensure the sustainability of its autonomy, FIFA makes use of an array of control mechanisms to

[56] Jack Anderson, *supra* note 19, *ibid* at 23.
[57] Leonardo de Oliveira, "Lex sportiva as the contractual governing law" (2017) 17 Intl Sports LJ 101 at 105. Questions may be asked as to why this definition of *lex sportiva* is limited to just CAS jurisprudence and why the jurisprudence of national sports dispute resolution bodies such as the Sports Dispute Resolution Centre of Canada (SRDCC) is not accounted for in this regard? While it is plausible to have a broader perspective that admits the jurisprudence of the SRDCC, the decision to focus solely on the CAS jurisprudence in defining *lex sportiva* is hinged on the understanding that the CAS is the apex sports adjudicatory body whose pronouncements are rarely challenged via appeals to national courts or other sports tribunals. Thus, the possibility of subjecting the decisions of local sports dispute resolution bodies like the SRDCC to appeals makes it less attractive for the thesis to consider their jurisprudence as being part of *lex sportiva*. However, this limited view is merely for the purposes of the discussion of this thesis here, and as such, further analysis and discussions in the future may warrant an extended understanding of the concept of *lex sportiva*.
[58]James Kitching, "International Federations", in Nick De Marco, ed, *Football and the Law*, 2nd ed (London: Bloomsbury Publishing Plc, 2022) at 27.
[59] *Ibid*.
[60] *Ibid*.
[61] These are: Asian Football Confederation (AFC); Confederation of African Football (CAF); Confederation of North, Central American, and Caribbean Association Football (CONCACAF); *Confederacion Sudamericana de Futbol* (CONMEBOL); Oceania Football Confederation (OFC); and the Union of European Football Associations (UEFA).
[62] James Kitching, *supra* note 58, *ibid* at 27.
[63] These are: the English Football Association (FA); Canada Soccer Association (Canada Soccer); Nigeria Football Federation (NFF), etc.
[64] James Kitching, *supra* note 58, *ibid* at 27.
[65] *Ibid*.
[66] Jean-Loup Chappelet, *supra* note 52, *ibid* at 15.

administer soccer, one of which is in relation to its power to exclude MAs from its competitions.[67]

Over the years, sports autonomy created tension between SGBs and third parties (such as state authorities) seeking to hold them accountable for their acts deemed to be in violation of human rights.[68] Holding SGBs accountable for their actions seems not to be an easy task, as demonstrated in such cases as *Sagen v. Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games*,[69] and *Reynolds v. International Amateur Athletic Federation*.[70] In *Sagen*, although it was acknowledged that the facts revealed that the International Olympics Committee's (IOC) exclusion of women's ski jumping from the 2010 Winter Olympics had amounted to disparity in treatment of women in relation to their male counterparts, the court could not extend the scope of protection guaranteed under Canada's *Charter of Rights and Freedoms* to the IOC due to it being a private autonomous organization registered outside of Canada.[71]

Relatedly, in *Reynolds,* Reynolds had tested positive for a prohibited performance enhancing substance – anabolic steroid - and was thus suspended from participating in competitions organized by the International Amateur Athletic Federation (IAAF). Reynolds brought an action against IAAF before a federal court in Ohio, claiming that he had been falsely accused of steroid use and wrongfully suspended as a result of that. The findings of the court and other courts in the US exonerating Reynolds were ignored by the IAAF. The IAAF refused to lift Reynolds' suspension and maintained a defiant stance even in the face of an order of the US Supreme Court.[72]

Sagen and *Reynolds* demonstrate practical difficulties of holding autonomous SGBs accountable. However, there is now new thinking along the lines that the autonomy of sport "cannot be

[67] See *Football Union of Russia v. FIFA et al*, CAS 2022/A/8708 (Held: the right of MAs to participate in a FIFA organized event is not absolute but rather limited by other competing rights and/or interests of FIFA provided for in FIFA Statutes.)
[68] Eric Windholz & Graeme Hodge, "International Sports Regulation: An Evolving Private-Public Partnership" (2019) 45:2 Monash UL Rev 298 at 300.
[69] 2009 BCSC 942.
[70] (1994) 23 F.3d 1110 (6th Cir.)
[71] See also *Martin v. International Olympic Committee*, (1984) 740 F.2d 670 at 677 (9th Cir.)
[72] David Mack, "Reynolds v. International Amateur Athletic Federation: The Need for an Independent Tribunal in International Athletic Disputes" (1995) 10:2 Conn J Intl L 653 at 678.

legitimate when connected with human rights abuse".[73] As such, it has been increasingly argued that sports autonomy ought not to be a supporting factor for evasion of human rights accountability.[74] Hence, there have been concepts of "responsible autonomy", i.e. autonomy that acknowledges that regardless of the independence SGBs may enjoy in relation to the administration of their affairs, they should still maintain "the inherent values of sport that align with respecting and promoting human rights..."[75]

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[73] Brendan Schwab, "Protect, Respect and Remedy: Global Sport and Human Rights" (2019) Intl Sports L Rev 52 at 52.

[74] William Rook, Thays Prado, & Daniela Heerdt, "Responsible sport: no going back" (2023) 23 Intl Sports LJ 85 at 86.

[75] *Ibid*. Sports autonomy is usually as provided for in the internal rules and regulations of various SGBs. This clearly supports the "sports law" school as the uniqueness of this organizational autonomy allows for certain freedoms. First, there is freedom to determine internal rules and policies that govern matters of purely sporting interest/nature, without undue influence. - See *Article 3 of the European Charter*. Second, there is freedom to regulate the labour movement of athletes/players within the transfer market. – See *FIFA Regulations on the Status and Transfer of Players*. Third, there is freedom to coordinate their economic market and activities. – See *FIFA Statutes*. Fourth, there is freedom to determine structures of governance, choose leaders, and ensure the application of the principles of good governance. See *FIFA Statutes*. Fifth, there is financial freedom in relation to sourcing for, obtaining, and retaining funds from internal and external sources without the imposition of undue obligations. For instance, the *Constitution of Guatemala* rather than impose restrictions on the autonomy of sports organizations in the country, recognized the need for an uninhibited administration of sports and also the need to constitutionally guarantee the allocation of funds to SGBs without the burden of tax assessments and imposition. – See *Articles 91 and 92 of the Constitution of Guatemala* (as amended). Sixth, there is freedom to decide internal dispute resolution systems that members/affiliates must adhere to. These are the components of sports autonomy that directly capture the essence of the "sports law" school, however, what is often obtainable is that some jurisdictions acknowledge these components of sports autonomy, while also watering down their potency through statutory/regulatory/judicial/constitutional boundaries that define their scope and limit some of their overreaching effects – this invariably upholds the tenets of "sports and the law". Thus, in the European Union (EU), sporting rules and practices in relation to economic activities within the EU are subject to prohibitory provisions of EU law - See *Article 3 of the Treaty on European Union*; *Walrave and Koch v. Association Union Cycliste Internationale* (1974) (Case 36/74 E.C.R. 1405). Relatedly, any sporting restriction on the free movement of labour (players) within the EU is only allowed when such is in furtherance of a legitimate and necessary sporting interest, otherwise it becomes void. -- See *Article 45 (1) of the Treaty on the Functioning of the European Union*; *Union Royale Belge des Societes de Football Association v. Bosman* (1996) 1 C.M.L.R. 645 (E.C.J.); *Federation Internationale de Football Association (FIFA) v. BZ* (2024) Case C-650/22. SGBs also have to show that they are committed to the principles of good governance. – See *UK Code of Sports Governance*. Arbitrary discretionary decisions of SGBs (especially National Sports Federations), together with their actions that fall under the auspices of public law, may be subjected to judicial review. – See *Zee Telefilms Ltd. v. Union of India* (AIR 2005 SC 2677); *Sushil Kumar v. Union of India and Ors* (230 (2016) DLT 427). Parties to a sporting arbitration agreement may file for a review of the arbitral award/appeal against it before the Swiss Federal Supreme Court – See *Articles 190a and 191 of the Swiss Private International Law Act*. Within the Canadian context, the jurisprudence of the Sports Dispute Resolution Centre of Canada (SRDCC) (as in the cases of *Saskatchewan Cricket Association (SCA) v. Cricket Canada* (2017) SDRCC 17-0318; and *Falcons Soccer Inc. v. Saskatchewan Soccer Association Incorporated* (2017) SDRCC 17-0333) shows how the law permeates into the sports world to address sporting issues without undermining the autonomy of sports. Thus, it appears "sports

In essence, sports autonomy ought to be negotiated in a way that imposes some constraints on SGBs' independence, especially for significant causes such as the protection and promotion of human rights.[76] Thus, FIFA has now subjected its activities to the normative guidelines from the *UNGP*. Based on this development, FIFA's autonomous nature that was hitherto a strong shield against human rights accountability has now been slightly dropped for the protection and promotion of human rights within the ecosystem of global soccer.[77] In principle, it is now the policy of FIFA to commit towards respecting all internationally recognized human rights.[78]

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law" and "sports and the law" are mutually inclusive as they rub off on each other in unique ways that facilitate the operationalization of private law within the set parameters of public law.

[76] *Ibid*.

[77] Antoine Duval & Daniela Heerdt, "FIFA and Human Rights – a Research Agenda" (2020) 25:1 Tilburg L Rev 1 at 1. FIFA is vested with the authority to regulate global football (soccer), and as such, it has a host of regulations that control different aspects of its dealings with various football stakeholders. One of such regulations is the Regulations on the Status and Transfer of Players (the RSTP). One subject matter that the RSTP coordinates relates to the maintenance of contractual stability in employment contracts signed between players and football clubs. The RSTP has some provisions designed to guard against instability of such employment contracts - some of which are as stipulated in article 17 of the RSTP. Article 17(1) of the RSTP provides that a party to an employment contract that breaches the contract without just cause is liable to pay compensation to the other party not in breach. Article 17(2) of the RSTP further provides that where a player is in breach of his employment contract, the player and his new employer (the new club the player signs for) shall be jointly and severally liable to pay the compensation to the party not in breach (the player's former employer - former football club). Furthermore, when a player signs an employment contract with a football club, there is usually a protected period of time within which the player is expected to remain faithful to the terms of the contract and honour it. Article 17(4) of the RSTP further strengthens this by providing that where a player, without just cause, terminates an employment contract with his football club within that protected period, and signs with another football club, the new football club of the player, until otherwise proven, is presumed to have facilitated the termination of the contract between the player and his former club, which results in registration of players ban on the new football club that engages the services of the player in breach. In *Federation Internationale de Football Association (FIFA) v. BZ* (2024) Case C-650/22, Lassana Diarra in 2013 signed a 4-year employment contract with Lokomotiv Moscow (a football club in Russia) to play for the club in his capacity as a professional footballer. However, the following year, Lassana left Lokomotiv Moscow on the basis of an alleged reduction in the salary payable under his contract with the club. This prompted Lokomotiv Moscow to officially terminate and file a claim before the FIFA Dispute Resolution Chamber (DRC) against Lassana for his indirect termination of his contract with the club without just cause. The FIFA DRC found in favour of Lokomotiv Moscow and ordered Lassana to pay compensation to the club. In the process, Lassana received an employment contract offer as a professional footballer from Sporting Charleroi (a Belgian football club); however, the offer was subsequently withdrawn by Sporting Charleroi for fear of joint liability, registration ban, and the likelihood of not getting clearance from FIFA and the Belgian Football Association for the transfer pursuant to the dissuading provisions of article 17(2)(4) of the RSTP. This prompted Lassana to file lawsuit before Belgian courts against FIFA and the Belgian Football Association on the ground that the specific provisions of article 17(2)(4) of the RSTP (created by FIFA and enforceable with the assistance of the Belgian Football Association in this instance) are incompatible with EU Law that guarantees labour mobility (right to free movement of workers) under article 45 of the *Treaty on the Functioning of the European Union* (TFEU) and a violation of the prohibition against anti-competition under article 101 of the TFEU. The issue of incompatibility of the provisions of the RSTP with EU Law was referred to the Court of Justice of the European Union (CJEU) for determination. The court ruled that the challenged rules under the RSTP indeed restricted labour mobility within the EU, and is also anti-competitive in nature. The court noted that while it is a legitimate objective for FIFA to seek to maintain contractual stability between football clubs and their employees (footballers), it can only do so within the confines of EU Law for clubs that operate within the jurisdiction of EU member states. The implication of this ruling is that FIFA is now required to revisit the challenged provisions of the RSTP, and ensure it brings them to comply with EU Law in line with the

1.4 Human Rights in Sports

Through the years, adverse human rights impacts have been associated with sporting activities (for instance, as it relates to the right to participate) and the internal governance of SGBs whose autonomous nature, to an extent, frustrated interrogation into their affairs that appeared to be in violation of human rights.[79] However, as noted above, there is a global shift towards the integration of respect for human rights into the activities of SGBs.[80] Thus, different scholarly proposals have been offered on how SGBs may be held accountable for human rights violations. Whereas Todd Carney advocates for a collaborative approach within the international scene that allows for protection against human rights violations by SGBs,[81] Carmen Gonzalez suggests that international human rights monitoring bodies should not allow SGBs to violate human rights under the guise of sports autonomy, and as such, must intervene and exercise an oversight function on the activities of SGBs.[82]

These developments appear to be generic, and their effectiveness in practice seems to be in doubt as the envisaged international frameworks are not usually effective in achieving human rights accountability within sporting contexts. Thus, while the jurisprudence of the European Court of Human Rights seem to have broadened the interpretation of international human rights law to cover SGBs and the specificity of sports,[83] the sport-specific framework of the Court of Arbitration for Sport (the apex adjudicatory body in sports as recognized by some SGBs) is not designed to effectively address human rights related issues. As a result, it offers little or no help in holding SGBs accountable for human rights violations.[84]

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ruling of the CJEU in the Lassana case. FIFA has already taken steps in this regard by calling on relevant stakeholders to make inputs on how to effectively redraft the affected portions of the RSTP. This goes to show that the autonomy of a sports governing body such as FIFA to make rules with regards to its internal affairs is not absolute in Europe, as it still submits to the overriding effects of EU Law.

[78] *FIFA Statutes* (May 2022 ed), art. 3. See also *FIFA Human Rights Policy* (May 2017 ed).

[79] For more on the right to participate in sports, see Peter Donnelly, "Sport and Human Rights" (2008) 11:4 Sport in Soc'y 381-94.

[80]Patricia Wiater, "A Human Rights Breakthrough in Sports Law?: The ECtHR Chamber Judgment in Semenya v. Switzerland" (2023) online: *VerfBlog* <https://perma.cc/8WZW-T8CL>

[81]Todd Carney, "Looking to International Law to Solve Human Rights Issues in Sports" (2021) 28:1 Willamette J Intl L & Disp Resol 65 at 65.

[82] Carmen Gonzalez, "The Effective Application of International Human Rights Law Standards to the Sporting Domain: Should UN Monitoring Bodies Take Central Stage?"(2022) 22 Intl Sports L J 152 at 162.

[83]Patricia Wiater, *supra* note 80, *ibid* at 1.

[84] Hearings are mostly held *in camera* against athletes' right to public hearing, and this closed door sessions make it easy for SGBs within CAS jurisdiction to get away with "procedural human rights violations". See Tsubasa

Hans Næss submits that this problem may be better addressed through the simple act of maintaining consistency in conceptual clarification of the human rights obligations of SGBs.[85] Other scholars urge the proactive involvement of academic researchers as a way of facilitating integration of human rights into sports.[86] These submissions seem to be more theoretical than practical, and this breeds doubts on their effectiveness. Innovative practical efforts are thus needed to ensure human rights accountability of SGBs.

The extension of the scope of international law to cover SGBs as transnational non-state actors is an important response.[87] Steven Ratner, for instance, notes that the pendulum tilts towards recognition of international corporate duties as a means of protecting human rights and ensuring corporate responsibility for all internationally recognized human rights.[88] Thus, the *Guidelines for Multinational Enterprises* were adopted by the Organization for Economic Co-operation and Development (OECD), and these *Guidelines* placed an obligation on multinational enterprises to "respect the human rights of those affected by their activities…"[89] Similarly, the International Labour Organization (ILO) adopted the *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* so as to "encourage the positive contribution which multinational enterprises can make to…social progress and to minimize…the difficulties to which their various operations may give rise [to]".[90]

These provisions of the OECD and ILO instruments on multinational enterprises, however, were operationally ineffective because they had no binding effect on the enterprises whose practices they had sought to regulate.[91] This challenge further led to the development of a set of *Norms on the Human Rights Responsibilities of Transnational Corporations and Other Business*

Shinohara, "Human Rights in Sports Arbitration: What Should the Court of Arbitration for Sport do for Protecting Human Rights in Sports?" (2023) Liverpool L Rev 185 at 187.

[85] Hans Næss, "In Pursuit of Clarity: A Critique of Sports Governing Bodies' Conceptual Inconsistency in Human Rights Work" (2020) 38:3 Nordic J Hum Rts 205 at 219.

[86] David McGillivray et al, "A Conceptual Model and Research Agenda for Bidding, Planning and Delivering Major Sports Events that Lever Human Rights" (2019) 38:2 Leisure Stud 176 at 186.

[87] David Weissbrodt, "Business and Human Rights" in David Kinley, ed, *Human Rights and Corporations* (Surrey: Ashgate Publishing Ltd., 2009) at 103.

[88] Steven Ratner, "Corporations and Human Rights: A Theory for Legal Responsibility" in David Kinley, ed, *Human Rights and Corporations* (Surrey: Ashgate Publishing Ltd., 2009) at 234-333.

[89] Oliver De Schutter, *International Human Rights Law: Cases, Materials, Commentary*, 3rd ed (Cambridge: Cambridge University Press, 2019) at 532.

[90] *Ibid*.

[91] *Ibid* at 533.

Enterprises (the Norms) that restated the human rights obligations imposed on companies under international law.[92] The development of the *Norms* served as one of the attempts on the international scene to effectively regulate transnational companies so as to promote and enhance the already diminishing human rights obligations of some of these transnational corporate entities.[93] However, following the overt hostility of the business community towards the *Norms*, there was an instant need to improve on them so as to make their inherent principles more acceptable.[94]

The response was the development of the *UNGP* as a normative framework for holding transnational corporations accountable for human rights violations.[95] With the coming into being of the *UNGP* and its reception by SGBs, the obligation of SGBs to protect and promote human rights in the course of their business activities came to be duly recognized and operationalized within sporting contexts.[96] For example, the *UNGP* influenced FIFA's commitment towards human rights protection as its normative principles serve as the foundation for FIFA's policy to respect all internationally recognized human rights. For FIFA to remain compliant in this regard, it must also ensure that third parties involved in any of its business activities are human rights compliant.[97]

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[92] U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003)
[93] David Weissbrodt, *supra* note 87, *ibid* at 112-113.
[94] Oliver De Schutter, *supra* note 89, *ibid* at 534.
[95] *Ibid*.
[96] Griffin Clark, "UNHRC Resolution 26/9: Is a New International "Red Card" Enough to Keep FIFA and Others Accountable?" (2021) 22:2 Chicago J Intl L 621 at 625.
[97] *FIFA Statutes* (May 2022 ed), art. 3. See also *FIFA Human Rights Policy* (May 2017 ed). The legal and institutional frameworks for Canada in this regard were not engaged with in the body of the thesis above because of the need to not derail from the focus on human rights in sports in relation to transnational SGBs such as FIFA. However, a brief overview of the situation in Canada is now provided for here. Canada's *Physical Activity and Sports Act* sets out the sporting objectives of the Government of Canada to, *inter-alia*, "facilitate the participation of under-represented groups in the Canadian sport system". See *Physical Activity and Sport Act*, 2003, S.C., c.2, s. 5(m). Thus, the relatively recent budgets for sports from 2019 to 2023 were improved in a bid to build a safe and accountable sports system in Canada that promotes an enhanced human rights compliance culture. See Brian Masse, "Response by the Minister of Sport and Minister responsible for the Economic Development Agency of Canada for the Regions of Quebec", (2023) online: *Parliament of Canada* <https://perma.cc/FL49-CXXX> On the other hand, some organizations have also adopted various measures designed to integrate human rights protection into sports in Canada. The University of Toronto, for instance, created the first ever Indigeneity, Diaspora, Equity and Anti-Racism in Sports (IDEAS) research lab to, *inter-alia*, develop programs that help in the promotion and dissemination of knowledge of anti-racism campaigns existing in different sports. See Craig Brown et al, "Exploring Experiences of Racism and Anti-Racism in Sport in Winnipeg: Final Report" (2021) online: *Anti-Racism in Sport* <https://perma.cc/RL8A-W6YG> at 11. Furthermore, efforts have been made towards ensuring the recognition and acceptance of disadvantaged athletes that were hitherto excluded from participating in sporting activities on the sole ground of their disabilities. See John Barnes, *The Law of Hockey*, (Markham: LexisNexis Canada Inc., 2010) at 55. Sport Canada has a 'Policy on Sport for Persons with a Disability' that promotes a "…sport system that encourages

The right to adequate housing is one of such internationally recognized human rights that FIFA is obliged to respect and get third parties connected to its business activities to protect.[98] Thus, FIFA, through a series of human rights initiatives, requires host nations of its greatest event (the FWC) to, *inter-alia*, protect against the violation of the right to adequate housing, especially during the course of the FWC. The next section of this chapter identifies the core issue and sub-issues in this regard within the context of hosting the 2026 FWC in Canada.

1.5 Research Questions

The central issue for determination is whether or not the hosting of the 2026 FWC in Canada obliges the government to immediately initiate appropriate legislative measures that address the anticipated impacts of the event on the right to adequate housing in Canada. To properly address this question, the thesis seeks to answer the following sub-questions:

a. What are the risks to housing rights that may be occasioned by the hosting of the 2026 FWC in Canada?
b. Is there an immediate state obligation to protect against the violation of housing rights in Canada within the context of the 2026 FWC?
c. How effective are the existing legal frameworks in Canada towards protecting against envisaged housing rights risks of the 2026 FWC?

1.6 Thesis Outline and Methodology

This thesis is structured into five chapters designed to answer all research sub-questions in a coherent way that ultimately addresses the central issue. As explained earlier, this first chapter is the introductory chapter that presents a general overview of the background of study, provides

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and enables persons with…disability to participate fully in sport to the extent of their abilities and interests." See Government of Canada, "Policy on Sport for Persons with a Disability", (2006) online: <https://perma.cc/R9ML-Q3K5> The policy aims to eliminate all sport-specific barriers, including discrimination, that militate against the participation of persons with disability in sports, and this has resulted in Sport Canada's funding of a good number of Canadian sporting organizations for athletes with disability so as to maintain a sporting culture that integrates athletes with disability into the activities of various sports organizations in Canada. See John Barnes, *The Law of Hockey*, (Markham: LexisNexis Canada Inc., 2010) at 56.

[98] The UNGP does not specifically mention the right to adequate housing; in fact, it sets out not to create new international human rights obligations but rather reinforces the operationalization of already existing human rights. This influenced FIFA's commitment to respect "all internationally recognized human rights". The question then becomes, what are these internationally recognized human rights? Many of these rights exist and the right to adequate housing is one of them by virtue of the ICESCR. Thus, it is the claim of this thesis that by logical inference, the right to adequate housing is obviously one of such "internationally recognized human rights" that FIFA, under its statutes, recognizes and seeks to promote.

conceptual clarifications for "sports law" and other terms associated to it, and outlines the research questions, structure and methodology.

Chapter two identifies the housing concerns/risks arising from MSEs similar to the FWC. The chapter answers the first sub-question on the possible risks to housing rights within the context of the 2026 FWC in Canada. It evaluates past MSEs (with focus on the Olympics) and characterizes the adverse impacts such events had on housing rights in their host cities. On the basis of the findings from these past MSEs, the chapter highlights possible housing rights concerns to be anticipated for the 2026 FWC in the Canadian host cities of Toronto and Vancouver.

Chapter three explores the state obligation to protect housing rights in Canada. The chapter provides a direct answer to the second sub-question on whether there is an immediate state obligation to protect against the violation of housing rights in Canada for the purposes of the 2026 FWC. Thus, it discusses the various legal/regulatory frameworks that cumulatively confer an immediate housing rights protection obligation across all levels of government in Canada. To do so, it specifically engages with the housing rights aspects of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the mandatory commitments of Canada and its host cities under FIFA's human rights initiatives.

Chapter four answers the final sub-question on the effectiveness of the housing rights frameworks in Canada. With a focus on the provincial and municipal housing rights frameworks in Ontario/Toronto and British Columbia/Vancouver, the chapter analyzes some key Acts, By-laws, and Policies designed to facilitate the right to adequate housing in Canada. The chapter ascertains the effectiveness and efficacy of these housing rights frameworks towards protecting against the envisaged housing rights risks of the 2026 FWC. The chapter uses a mainly doctrinal methodology as it engages in legal review and analysis of the relevant provisions of various primary sources of law.

Chapter five is the concluding chapter. It summarizes the findings of the thesis and outlines some key recommendations that would ensure the hosting of a 'housing rights compliant' 2026 FWC in Canada.

CHAPTER TWO
MEGA SPORTS EVENTS AND ASSOCIATED HOUSING RIGHTS RISKS FOR HOST CITIES: CONCERNS FOR TORONTO AND VANCOUVER

2.1 Introduction

As will be discussed below, the scope of housing rights guards against unaffordability of rental housing units, forced evictions, and criminalization of homelessness. However, as evident from the experiences of host nations/cities of past mega sports events (MSEs), the social impacts of MSEs on housing rights are often significant. The hosting of MSEs usually facilitates housing rights risks, especially as related to lack of affordable rental housing, evictions without just cause, and punitive approaches towards homelessness.[1] The Olympic Movement offers a good example of how an MSE adversely affects housing rights in host cities.[2] Although the FWC also appears to have a history of facilitating negative effects on housing rights,[3] the focus of this chapter is on the housing rights impacts of past Olympic events because there is no detailed scholarly attention on the housing rights impacts of past FWCs on host cities. At best, such impacts have only been casually addressed and not extensively analyzed.[4]

There is thus a need for this thesis to help fill this gap and discuss the possible housing rights adverse impacts of the 2026 FWC in the host cities of Toronto and Vancouver. The intention is to: discuss the experiences of some past MSE host cities (with a focus on the five past host cities of the Olympic Games) so as to provide insight into the housing rights problems they faced; discover their approaches towards these issues (if any); understand the practices they adopted that the host cities in Canada could either avoid or utilize to protect against housing rights violations within the context of the 2026 FWC; specifically identify the envisaged housing rights concerns related to the 2026 FWC that Toronto and Vancouver ought to proactively address.

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[1] Centre on Housing Rights and Evictions, *Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights* (Geneva: Centre on Housing Rights and Evictions, 2007) at 13.

[2] *Ibid*.

[3] Lucy Amis et al, *Striving for Excellence: Mega-Sporting Events and Human Rights* (London: Institute for Human Rights and Business, 2013) at 2.

[4] James Duminy & Thembi Luckett, "Literature Survey: Mega-Events and the Working Poor, with a Special Reference to the 2010 FIFA World Cup" (2012) Women in Informal Employment Globalizing and Organizing, Resource Document No. 2 at 40.

2.2 Housing Rights Risks of Past Olympic Games

The planning, preparation, and organization of Olympic Games seem to have almost inevitably undermined the housing rights of renters in host cities. Past Olympic Games such as the Seoul 1988 Summer Olympic Games (the 1988 Olympics), the Barcelona 1992 Summer Olympic Games (the 1992 Olympics), the Atlanta 1996 Summer Olympic Games (the 1996 Olympics), the Sydney 2000 Summer Olympic Games (the 2000 Olympics), and the Vancouver 2010 Winter Olympic Games (the 2010 Olympics) have all occasioned housing rights risks like unaffordability of rental housing, evictions, and criminalization of homelessness.

Some of the significant adverse housing rights impacts of the Seoul 1988 Olympics were forceful evictions, unaffordability of housing, and sweeps of homeless people.[5] For the 1992 Olympics, it was hosted at a time when the City of Barcelona was in dire need of constructive make over, and thus, the Olympic Games served as the much needed catalytic push that propelled the "Barcelona Model" of infrastructural developments.[6] Efforts to revamp and revitalize the city brought about displacements, homelessness, and ultimately resulted in unaffordability of rental units for low-income renters.[7] Unlike the 1992 Olympics, the key motivating factor for Atlanta's bid for the 1996 Olympics was its long term need to open the city to commercial opportunities and attract mega investors into the city.[8] To achieve this, the image of the city needed to be positively projected to the world.[9] This raised concerns that there might be an agenda to hide undesired populations which were mainly homeless African-American people.[10]

Relatedly, stakeholders in Sydney's bid for the 2000 Olympics were receptive to the idea of using the event to attract tourism and private investment to boost the local economy, however they still expressed concerns on the potential impact the event could have on the residential tenancy market, and the situation of homelessness in the city.[11] Finally, prior to the bidding for the 2010 Olympics, housing rights concerns were strongly expressed by residents and groups in

[5] Centre on Housing Rights and Evictions, *supra* note 1, *ibid* at 13.
[6] *Ibid*.
[7] *Ibid*.
[8] *Ibid* at 114.
[9] *Ibid*.
[10] It was reported that the local governments had facilitated the distribution of "…thousands of dollars in funds…[for the] purchase [of] one-way bus tickets for poor and homeless people in order to get them out of town for the Olympic Games. The poor and homeless were forced to leave Atlanta for destinations such as Birmingham, Alabama and Florida. The majority of these poor and homeless were African-American." *Ibid* at 123.
[11] *Ibid* at 129-130.

Vancouver, especially as it related to three matters: the protection of the affordable housing stock; ensuring that the event did not facilitate involuntary displacement of renters; and safeguarding of homeless people from city cleanups.[12] With this brief overview, it becomes apparent that the most evident associated housing rights risks of these past Olympics have been unaffordability of rental housing, evictions, and criminalization of homelessness, each of which now warrants closer examination.

1. Unaffordability of Rental Housing

The redevelopment projects for the 1988 Olympics improved the value of the urban areas close to the Olympic sites, with the resultant effect being increases in rent within the rental housing market in Seoul.[13] Thus, "…residents of these areas faced enormous housing stress as their ability to pay for alternative housing was limited due to the high cost of housing."[14] This was because some landlords cashed in on the circumstances of that period and thus prioritized the economic gains in high rent "...at the expense of thousands of poor residents who had no security of tenure."[15] Relatedly, the selling of the housing units at the 1992 Olympics village at market rates to private individuals facilitated rent increases, thus reducing the availability of low-cost housing in Barcelona.[16]

Furthermore, housing organizations canvassed for the amendment of the tenancy law in Sydney to temporarily allow for rent control so as to prevent the indirect eviction and displacement of tenants due to high rents.[17] For instance, in an independent study of the housing impact of hosting the 2000 Olympics in Sydney, recommendations were made by Shelter New South Wales (SNSW) calling for the amendment of the *1987 Residential Tenancy Act* to provide tenants with more legal protection and security of tenure through reforms with regards to controlling excessive rental increments.[18] Thus, as a practical measure for closing legislative gaps that facilitate unwholesome termination of tenancy agreements, it was proposed that

[12] Caitlin Pantifallo, *The City and the Spectacle: Social Housing, Homelessness, and the 2010 Winter Olympic Games* (PhD Dissertation, University of British Columbia, 2015) [unpublished] at 7.
[13] Centre on Housing Rights and Evictions, *supra* note 1, *ibid* at 79.
[14] *Ibid* at 91.
[15] *Ibid* at 79.
[16] *Ibid* at 108.
[17] Hazel Blunden, *The Impacts of the Sydney Olympic Games on Housing Rights* (Geneva: Centre on Housing Rights and Evictions, 2007) at 6.
[18] Gary Cox, *Ready! Set! Go!: One year to go. It's time for action on housing and homelessness for the 2000 Olympics* (Sydney: Shelter NSW Co-op Ltd., 1999) at iv.

"section 45 of the Residential Tenancies Act be amended to prescribe a minimum interval of 12 months between rent increases in residential tenancies...", and that "…a temporary rent cap for the period [between] January 2000 to January 2001…be applied to protect tenants from Olympic related excessive price increases...".[19]

There was also no legal or regulatory framework in place to protect against bad faith evictions in Sydney, and thus concerns were expressed that short-term temporary residents who were better positioned to pay more could be preferred over long-term permanent residents in Sydney which would result in hike in rent and ultimately occasion the eviction of low-income tenants who could not afford the new rent.[20] Thus, there was a push for legislative intervention to address this concern, but the *Residential Tenancies (Olympic Games) Bill* that sought to "…ensure that moderate to low-income residential tenants have a measure of security of tenure…affordable rents, and…are dealt with fairly during the 2000 Games"[21] was voted down as the "government did not accept that there was any need for precautionary legislative change to protect tenants from arbitrary rent increases and eviction".[22] It was thought that the "...tenancy laws already provide[d] protection for tenants against unscrupulous landlords, and [there was]…no evidence of Olympic-related rent increases."[23]

However, as predicted and forewarned, one of the impacts of the event was the unaffordability of rent by low-income renters.[24] Rent and the cost of housing in Sydney were higher than normal due to the staging of the Olympic Games in the city, and this resulted in the eviction and displacement of many low-income renters.[25] Similarly, due to the surge in demand for rental housing for the entire duration or large part of the 2010 Olympics, there were devastating consequences on vulnerable populations, especially for those in the Downtown Eastside neighborhood where the City of Vancouver then had the highest concentration of low-income

[19] *Ibid* at iv.
[20] *Ibid* at iii.
[21] Hazel Blunden, *supra* note 17, *ibid* at 28.
[22] *Ibid* at 16.
[23] *Ibid*.
[24] *Ibid* at 6.
[25] *Ibid*.

affordable rental housing units, with the resulting rent increases forcing these low-income tenants out.[26]

2. Evictions

For the 1988 Olympics, slum clearance and neighborhoods regeneration were the order of the day and "...around 100 neighbourhoods were redeveloped...[and]...between 1983 and 1988, 48,000 buildings housing 720,000 people were destroyed..." as the City of Seoul's bid to revitalize the Olympic sites and its surroundings resulted in the forceful eviction of over half a million people in the five years preceding the staging of the 1988 Olympics.[27] Similarly, the construction of the 1992 Olympic village for athletes led to the displacement of renters in Barcelona,[28] because while the national and regional governments intended to utilize the event as a means to share the values of the country with other nations and promote nationalism, the Barcelona City Council (at the municipal level) hoped to use the opportunity to transform the city's infrastructural amenities.[29]

This purpose of the Barcelona City Council translated into the demolition of shanty housing close to the 1992 Olympics village and facilitated their replacement with high-end facilities that necessitated the displacement of low-income renters.[30] Again, the *Parc de Mar* was set out for massive revitalization which added a new value to the area and the rising rents resulted in eviction of low-income tenants. Rents of other units in Barcelona also increased due to the cosmetic overhauling of the City of Barcelona. As a result, an average renter in Barcelona could no longer afford to live close to these revitalized areas and thus was systematically excluded from these areas and forced to move.[31]

In preparation for the 1996 Olympics, over 20,000 people were displaced with no affordable public housing alternatives for them.[32] This was because the City of Atlanta prioritized the revitalization of the city over provision of such social housing schemes as it channeled most of

[26] City Spaces Consulting Ltd & Urban Futures Inc., *Impact of the 2010 Winter Olympic Games on the Vancouver and Sea-to-Sky Housing Markets* (Ottawa: Canada Mortgage and Housing Corporation, 2006) at 37.
[27] Centre on Housing Rights and Human Rights, *supra* note 1, *ibid* at 79.
[28] *Ibid* at 105.
[29] *Ibid* at 103-110.
[30] *Ibid*.
[31] *Ibid*.
[32] *Ibid* at 120.

its funds to the former.[33] For example, prior to the 1996 Olympics, Techwood Homes had served as a public housing project for over 50 years, with a majority of its residents staying there for approximately 10 years. However, it was marked for demolition in preparation for the Olympic Games and its residents got evicted.[34] Furthermore, temporary residents that lived close to the 2000 Olympics sites were not assured of the security of their rental tenures.[35] There was a loss of temporary housing for those not covered under Sydney's tenancy law.[36] For instance, "...boarders [were] not covered by any law and [were] excluded from the *New South Wales Residential Tenancies Act*. This [meant] they [had] no tenancy rights and [could] be evicted with no notice whatsoever".[37] Similarly, students with temporary resident status were also made to give up their housing units for the duration of the event.[38]

3. Criminalization of Homelessness

The streets were cleansed of 'undesirable populations' deemed to undermine the City of Seoul's aesthetics project for the 1988 Olympics in Seoul. Thus, street vendors and vulnerable groups like homeless people were pushed away.[39] Similarly, in a bid to project an image of a city without homelessness issue, the City of Barcelona created a *Preventative Police Presence Plan* to ensure sweeps of homeless people away from the sight of spectators coming to the 1992 Olympics.[40] The 1996 Olympics facilitated the criminalization of homelessness as laws and ordinances were used to sweep off homeless people after it became illegal to wander around vacant buildings or parking lots.[41] Thus, in the build up to the 1996 Olympics, homeless people were arrested and incarcerated.[42]

In relation to the homelessness situation in Sydney, the government and other stakeholders showed a commitment towards guaranteeing the protection of homeless people.[43] It was agreed for there to be a *Homeless Protocol* that assured "that all people have the right to be in public

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[33] *Ibid*.
[34] *Ibid*.
[35] Sarita Kapadia, *Olympics and Housing: A Look into the Treatment of Underserved Populations Before and After the Games* (Sports Thesis, Haverford College, 2009) [Unpublished] at 32.
[36] Hazel Blunden, *supra* note 17, *ibid* at 6.
[37] *Ibid* at 8.
[38] Sarita Kapadia, *supra* note 35, *ibid* at 33.
[39] Centre on Housing and Human Rights, *supra* note 1, *ibid* at 79
[40] *Ibid* at 110.
[41] *Ibid* at 123-124.
[42] *Ibid*.
[43]Hazel Blunden, *supra* note 17, *ibid* at 6.

places and that they will not be harassed or moved on unless their safety or the security of others is being threatened".[44] This protocol tried to ensure that marginalized residents were not mistreated during the 2000 Olympics.[45] There was also "Operation Safe Haven" that provided homeless people with reasonable shelter away from the Olympics sites.[46] Hotlines were equally made available for homeless people to call and report police harassment.[47] Thus, in contrast to other editions of the Olympic Games, the City of Sydney offered more assurance and protection to the rights of homeless people.[48]

Vancouver's social housing and homelessness policy frameworks for the event in relation to the Downtown Eastside neighbourhood did not bring any "...beacon of social inclusivity..." but rather occasioned "...an intense wave of punitive urban measures intended to scrub the inner-city of those individuals most damaging to its outwardly-projected image as a clean and affluent global city".[49] Although the Downtown Eastside offered affordable rental housing to low-income renters, it was infamous for being one of Canada's poorest neighbourhoods and also for other social issues such as "homelessness, drug use, crime, unemployment...".[50] Because it was an inner-city neighbourhood within a few kilometers of the Olympic site,[51] it was deemed an eyesore - one that downgraded the positive public image sought to be projected by the City of Vancouver.[52]

Municipal policies and by-laws were thus resorted to as a way of ensuring that the visibility of the supposed 'undesired population' of the Downtown Eastside neighbourhood was limited to the barest minimum.[53] Punitive urban policies were leveraged as tools for social control, and these policies criminalized activities under the guise of maintaining orderliness and regulating urban decay.[54] For instance, while some of the measures had officially sought to eliminate homelessness by half as a way of improving the civility of the city (by transitioning homeless

[44] *Ibid* at 25.
[45] Sarita Kapadia, *supra* note 35, *ibid* at 39.
[46] *Ibid* at 37.
[47] *Ibid* at 38.
[48] *Ibid* at 6.
[49]Caitlin Pantifallo, *supra* note 12, *ibid* at 7.
[50] *Ibid* at 106.
[51] *Ibid* at 154.
[52] *Ibid*.
[53] *Ibid* at 151.
[54] *Ibid*.

people to stable housing), it was ironic that rather than help achieve this in the positive manner first hoped, these initiatives enabled a reduction in the 'visibility' of homeless people within the vicinity of the Olympic sites.[55] Thus, during the tenure of these policies, fewer people appeared to be homeless on the streets but the homelessness count rose in shelters, so "...the uptake in number of sheltered homeless indicate[d] that homelessness, while on the rise overall, was increasingly less visible".[56] In essence, the policy initiatives facilitated a fake reduction of homelessness in the city as it introduced an elimination of homeless people off the streets rather than an actual reduction by way of transitioning them into homes.

Furthermore, the *Extreme Weather Response Plan* was another policy measure used by the City of Vancouver to ensure the cleansing of homeless people off the Olympic site.[57] The *Plan* allowed for city authorities to make extreme weather emergency calls for use of 'voluntary' shelter by all outside with no alternative shelter.[58] Specifically, "an alert will be called when weather conditions are deemed severe enough to present a substantial threat to the life or health of homeless persons..."[59] To further achieve the ultimate objective of this measure, the *Assistance to Shelter Act* (infamously branded "Kidnap the Homeless Act") was operationalized with a social control objective to facilitate forceful removal from the streets of homeless people who refused or failed to leave upon such emergency calls.[60]

In addition, there was also renewed interest in existing provincial Acts relating to public disorder.[61] Thus, the *Safe Streets Act* and the *Trespass Act* were both used to ensure the criminalization of certain acts that were stereotypical of homeless people.[62] Hence, the enforcement of the prohibitions on: walking on private properties without permission; public solicitation for funds; unlicensed street vending; and so on, appear to have been intended as a form of social control against homeless people.[63] This was the reality for homeless people in the Downtown Eastside neighborhood.[64]

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[55] *Ibid* at 156.
[56] *Ibid*.
[57] *Ibid* at 163.
[58] *Ibid*.
[59] *Ibid*.
[60] *Ibid*.
[61] *Ibid* at 159.
[62] *Ibid*.
[63] *Ibid* at 160.
[64] *Ibid* at 161.

2.3 Concerns for Toronto and Vancouver

The above adverse housing rights impacts of past MSEs could be prevented for future MSEs by being proactive and conducting a housing rights impact analysis to identify the possibility of these risks happening and how best to address them before the event.[65] Thus, amidst other possible housing rights impacts of the 2026 FWC, this section of the thesis focuses on the possibility of the event facilitating: unaffordability of rental housing due to lack of affordable rental options; evictions without just cause; and punitive approaches to homelessness.[66]

1. Lack of affordable rental options: As earlier mentioned, one of the elements of housing rights is "affordability", which in this instance connotes financial accessibility to rental housing without undue burden on/strain to the income of renters. However, with the precarity of housing in Toronto and Vancouver (facilitated by the trend of financialization of rental housing in these cities), it is anticipated that this financialization phenomenon and the wave of hosting the 2026 FWC in Toronto and Vancouver would ultimately occasion unaffordability of rental housing. A study in Ontario shows that financialized landlords are taking advantage of a regulatory gap in the province to impose exploitative rents on their tenants.[67] This has led to higher rents for low/moderate income tenants who are subsequently forced to vacate their housing units.[68]

There is also a 'no fault' eviction practice whereby some financialized landlords in British Columbia, unscrupulously and in bad faith, create housing conditions that force tenants out of their rental units for economic incentives that would accrue to them.[69] With the anticipated high demand for housing units in the host cities of Toronto and Vancouver for the 2026 FWC, the thesis predicts that there would be more pressure on the housing market that prompts increases in the average market rent in these host cities, which ultimately places housing affordability at risk unless some policy or other appropriate legislative measures are immediately put in place to help cushion the effect.

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[65] Hazel Blunden, *supra* note 17, *ibid* at 31.
[66] David Alfrey et al, "Candidate City Human Rights Proposals for the 2026 World Cup: The Promise of a Positive Legacy" (2022) 7 Bus & Hum Rts J 311 at 315.
[67] ACORN Canada, *The Impact of Financialization on Tenants: Findings from a National Survey of ACORN Members* (Ottawa: Office of the Federal Housing Advocate, 2022) at 30.
[68] Andrea Nemtin et al, *Financialization and Housing: A Social Innovation Approach to a Better Housing System* (Toronto: Social Innovation Canada, 2021) at 40.
[69] Silas Xuereb, *Estimating No-fault Evictions in Canada: Understanding BC's Disproportionate Eviction Rate in the 2021 Canadian Housing Survey* (Vancouver: Balanced Supply of Housing Research Partnership, 2023) at 5.

2. Evictions without just cause: The right to adequate housing entails habitability and further requires that renters enjoy a legal right to security of tenure for the duration of their tenancy agreements. However, this has been undermined by some landlords in Ontario/Toronto and British Columbia/Vancouver. For example, so as to facilitate the eviction of their tenants, there seem to be little or no effort by most financialized landlords in these provinces/cities towards addressing complaints by their tenants for repairs,[70] and the threat of immediate eviction has made some of these tenants decide against the protest option of withholding rent until the repairs are done. These tenants feel it is an unfair fight as they stand no chance of winning against these landlords. Hence, they have been compelled to live in uninhabitable rental housing units which eventually force them out.[71]

A study of the lived experiences of evicted residents in Ontario and British Columbia also shows that majority of the recorded evictions were due to landlord factors such as the application for repossession of the rental units by the landlord, sale of the rental unit, and need for renovation of the property.[72] Rental unit repossession for use by landlords is recorded as one of the grounds for eviction susceptible to abuse by landlords.[73] The study reveals that the landlords merely acted under the pretext of these reasons to facilitate their ulterior motive of "...increasing the profitability of their rental properties".[74] Thus, most financialized landlords relied on these false reasons as strategies for evicting renters and making more profit from their rental units.[75]

The high rate of evictions and displacements across the housing market in Ontario and British Columbia has been of great concern. A quick review of some of the leading data on housing rights suggests that financialization of rental housing in these provinces propels increases in the frequency of evictions in Ontario and British Columbia.[76] There has been lots of landlord-driven 'renovictions' (evictions occasioned by renovation of housing units) across these provinces which are reported to be these landlords' "...responses to market conditions...", and thus the

[70] ACORN Canada, *supra* note 67, *ibid* at 6, 7 & 30.
[71] *Ibid*.
[72] David Wachsmuth et al, *The Lived Experience of Evictions in Canada* (Montréal: Urban Politics and Governance Research Group, McGill University, 2023) at iii-iv.
[73] *Ibid* at vi.
[74] *Ibid* at iii.
[75] *Ibid*.
[76] Sarah Zell & Scott McCullough, *Evictions and Eviction Prevention in Canada* (Winnipeg: Institute of Urban Studies, University of Winnipeg, 2020) at iii.

strategies adopted by these financialized landlords to increase their revenue appear to be "motivated by market opportunities..." which ultimately drive eviction rates high.[77] Thus, the host provinces of Ontario and British Columbia, and also the host cities of Toronto and Vancouver should be aware that these practices by some financialized landlords pose a high risk to housing rights, and for the purposes of the 2026 FWC, both provincial and municipal authorities are expected to be proactive through the development of immediate strategic policies and appropriate legal frameworks that counter the eviction antics of these financialized landlords.

3. Punitive approaches to homelessness: Homelessness is an ostensive way of showing that the right to adequate housing has been greatly undermined. It is a social problem that has, over the years, gradually escalated across various provinces and municipalities in Canada, especially in Ontario/Toronto and British Columbia/Vancouver.[78] It is the state of being unable to afford "...stable, safe, permanent, appropriate housing..." with no real or immediate prospect of having access to it,[79] and also, it could either be absolute or relative.[80] Whereas the former refers to the state of not having access to personal shelter which pushes those experiencing such to fall back on social emergency housing systems or to sleep rough under uninhabitable circumstances, the latter is rather concealed in the sense that those experiencing it do have access to shelter (usually belonging to another) but are in such a precarious situation that their access to essentials for adequate living are limited or do not exist.[81] Although both forms of homelessness are detrimental to people living that experience, the focus here is on those visibly experiencing absolute homelessness.

A prejudiced perception of homeless people tends to link their existence to public disorder and they have been calls for them to be swept off the streets.[82] Thus, the attitude is to "clean up the

[77] *Ibid* at iv. Note that this 'eviction without cause' concern also extends to bad faith eviction of renters of single residential accommodations. The regulation in this regard would be further discussed in chapter four of this thesis.
[78]Ben Roebuck, *Homelessness, Victimization and Crime: Knowledge and Actionable Recommendations* (Ottawa: Institute for the Prevention of Crime, 2008) at 3.
[79]Nathalie Rech, "Homelessness in Canada" (2019) online: *The Canadian Encyclopedia* <https://perma.cc/8LR3-6K8U>
[80] Ben Roebuck, *supra* note 78, *ibid* at 11.
[81] *Ibid*.
[82] *Ibid* at 26.

streets, throw them in jail. I have the right to not be bothered at all".[83] In other words, the homeless have been stereotypically deemed by some people to be unwanted members of the society because of their state of affairs. This necessitates the urge to drive them off the streets, especially through legislative initiatives that make offenses out of activities usually associated with them.[84] Hence, "new or revised laws have been enacted across Canada targeting the presence and survival activities of homeless people in public spaces."[85] These are mostly prejudiced laws designed to target the homeless and the core of their existence and accommodation within cities.

Criminalization of homelessness is on the rise across different cities in Canada,[86] and it seems the aim is to "…prohibit or severely restrict [their] ability to engage in necessary life-sustaining activities in public, even when [they have] no reasonable alternative".[87] These laws usually come across as: bans on the use of vehicles as homes;[88] bans on sleeping in certain designated areas of the city;[89] vagrancy prohibitions;[90] and so on, leading to sweeps of homeless people off the streets. Thus, punitive measures under the criminal justice system are adopted as strategies for controlling the activities of homeless people.[91] Criminal laws, restrictive policies, and prejudicial enforcement practices have all been utilized as responses to ensure non-existence of homeless people across some cities in Canada.[92] For instance, anti-vagrancy laws have been used to curtail the visibility of persons perceived to be a "...threat to the prevailing social and economic order".[93] Relatedly, anti-loitering laws exist in some jurisdictions as a way of reducing the actual presence of a target group of individuals in precarious social situations (the homeless).[94]

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[83] *Ibid*.
[84] Joe Hermer & Elliot Fonarev, "Neo-Vagrancy Laws in Canada" (2020) online: *Homeless Hub* <https://perma.cc/4K6R-F429>
[85] *Ibid*.
[86] Laura Riley, *Homeless Advocacy* (Durham: Carolina Academic Press, 2023) at 114.
[87] Sara Rankin, "Punishing Homelessness" (2019) 22 New Crim L Rev 99 at 106-7.
[88] Laura Riley, *supra* note 86 at 113.
[89] *Ibid* at 114.
[90] *Ibid*.
[91] Stephen Gaetz, "The Criminalization of Homelessness: A Canadian Perspective" (2013) 7:2 Eur J Homelessness 357at 357.
[92] *Ibid*.
[93] Joe Hermer and Elliot Fonarev, *supra* note 84.
[94] *Ibid*.

Furthermore, anti-panhandling laws are part of the legislative measures that seek to entirely ban or, to a great extent, limit the act of soliciting for funds in public places by making such actions ticketable offences.[95] The intention is usually to clamp down on the begging activities of homeless people.[96] Some by-laws and policies also prohibit the obstruction of public pathways or scavenging for items from bins in public spaces.[97] Again, acts of sheltering, sleeping, or simply resting within public facilities such as parks are usually not allowed, and persons caught in the act (mostly homeless people), have in the past, been subjected to forceful eviction and prosecution.[98] These are all concerns that should bother the cities of Toronto and Vancouver for the purpose of hosting the 2026 FWC in a way that protects the housing rights of homeless people.

2.4 Conclusion

The scope of housing rights extends to having access to affordable housing, security of tenure, and freedom from prosecution for not having access to adequate housing. The realization of the right to adequate housing has, over the years, been negatively impacted by MSEs. With the spotlight on the Olympic Games across five past host cities, the potential adverse housing rights impacts of the 2026 FWC that ought to be of great concern to the host cities of Toronto and Vancouver were highlighted and discussed. The discussions were expository so as to provide the Canadian host cities with better insights on the possible housing rights risks of the 2026 FWC that should be of serious concern to them for the purposes of hosting a housing rights compliant FWC. The findings here are thus part of the broader argument of this thesis discussed in the next chapter to the effect that there is an immediate state obligation on Canada, the provinces of Ontario and British Columbia, and the host cities of Toronto and Vancouver to protect against these envisaged housing rights risks through appropriate legislative measures.

[95] *Ibid*.
[96] *Ibid*.
[97] *Ibid*.
[98] *Ibid*.

CHAPTER THREE

STATE OBLIGATION TO PROTECT HOUSING RIGHTS IN CANADA

3.1 Introduction

Where a state party accedes to or ratifies an international treaty such as a covenant, the state party commits itself at international law to uphold all express obligations stipulated therein.[1] The effect of accession to/ratification of these international treaties is that the relevant state party, on its own volition, agrees to become accountable to its citizens and the international community with regards to the obligatory provisions of the international legal instrument.[2] By extension, all inherent obligations in the treaty, sometimes, extend to other levels of government within that state,[3] and thus they also have to comply with the obligations to ensure that their domestic legislative and policy frameworks align with the existing commitments under these international treaties.[4]

With regards to international human rights treaties that impose human rights obligations, states that are parties to such treaties become duty bound to respect, fulfill, and protect these rights, and in relation to the human right to adequate housing, the duty to respect requires such states to not engage in acts that do not facilitate the enjoyment of the right to adequate housing. The duty of states to fulfill also requires them to take positive steps towards a progressive/immediate realization of the right to adequate housing,[5] which also appears to be linked to the states' duty to protect housing rights through appropriate legislative measures that guarantee their realization and enjoyment.[6]

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[1] Firman Hasan & Jean Elvardi, "Accession to the Ratification Concept Based on the 1969 Vienna Convention on International Agreement Law and Its Implementation in Law No. 24/2000 on International Treaties" (2021) 24:5 J Leg Ethical & Reg Issues 1 at 5-7.
[2] *Ibid*.
[3] For example, under the International Covenant on Economic, Social, and Cultural Rights (ICESCR), "the provisions of the present Covenant...extend[s] to all parts of federal States without any limitations or exceptions". ICESCR, art. 28
[4] *Ibid*.
[5] Centre on Housing Rights and Evictions*, Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights* (Geneva: Centre on Housing Rights and Evictions, 2007) at 37.
[6] *Ibid*.

The review of the past experiences of host cities in the preceding chapter shows that MSEs facilitate violations of housing rights.[7] States have thus been urged to, in the course of organizing MSEs, uphold their existing international housing rights obligations.[8] For instance, the Human Rights Council of the United Nations adopted a resolution as it relates to the right to adequate housing within the context of mega events,[9] and, among other things, it called upon state parties to promote the right to adequate housing in this regard by striving to ensure that domestic laws are consistent with their international obligation so as to guarantee respect for housing rights of residents, especially those that are most likely to be affected in the context of mega events.[10]

States that have dealings with sports governing bodies (SGBs) also incur obligations (under the self regulatory frameworks of these SGBs) to generally protect against human rights breaches that are envisaged for MSEs of such SGBs hosted within the jurisdiction of the affiliated states.[11] SGBs such as FIFA use authoritative foundational texts like the *FIFA Statutes* and other regulatory documents to justify their right to oblige states that associate with them to ensure, through appropriate legislative measures, the protection of human rights within their jurisdictions.[12] FIFA thus requires host nations of the FWC to ensure specific laws are in place that guarantee certain rights of FIFA, its spectators, and also for all residents of the host nation.[13]

FIFA also utilizes the terms of bidding and hosting requirements, together with contractual agreements between it and host nations, to create immediate and binding human rights obligations on prospective host nations.[14] This chapter thus explains that states bound by various international human rights treaties on housing and other general private contractual stipulations (like those imposed by FIFA) are to ensure there is an effective legal framework that: protects the security of tenure for all renters; guards against unaffordability of rental housing; prevents bad faith evictions; and stops criminalization of acts associated to "undesired" populations.

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[7] *Ibid*.
[8] *Ibid*.
[9] UNHRC, "Resolution adopted by the Human Rights Council: Adequate housing as a component of the right to an adequate standard of living, in the context of mega-events" A/HRC/RES/13/10.
[10] *Ibid*.
[11] Daniela Heerdt & Lucas Roorda, "Lessons Learned in Qatar: The Role of the Netherlands and its Businesses in Addressing Human Rights Abuses in Mega-Sporting Events" (2023) 70 Nethl Intl L Rev 19 at 28.
[12] *Ibid* at 29.
[13] *Ibid*.
[14] *Ibid*.

In essence, the later sections of this chapter discuss the dual and interconnected levels of these immediate obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and FIFA's human rights initiatives within the context of Canada as a host nation for the 2026 FWC. Thus, on the basis of the foundational notion of "sports and the law" discussed earlier in the introductory chapter of this thesis, the next sections of this chapter delve deeply into some relevant international human rights/constitutional/private association law issues.

In addition to establishing that there is an immediate obligation on all levels of government in Canada to legislatively protect against violation of housing rights amid the 2026 FWC, the discussion of these conventional issues of law further shows how such issues eventually transcend into sports and, in this instance, how they apply within the context of hosting a mega sports event such as the 2026 FWC. This reiterates the position of the "sports and the law" school as to the application of the principles of traditional areas of law *per se* within sporting contexts.

3.2 Treaty Obligations vis-à-vis the Right to Adequate Housing in Canada

Under international law, treaties are commonly understood to mean agreements between states. Accordingly, a treaty is "…an international agreement concluded between States in written form and governed by international law...whatever its particular designation".[15] Thus, a treaty could be designated as a convention, covenant, protocol, charter, or statute.[16] A treaty's legal effect is not affected by the designation it goes by, but rather by a body of international law principles known as the Law of Treaties, with the *Vienna Convention on the Law of Treaties* as the leading instrument with codified rules on the overall legal effect of treaties between states.[17]

A state's consent to be bound by the provisions of a treaty, *inter-alia*, is usually expressed through ratification or accession.[18] Ratification may be understood in two instances. First, under local constitutional requirements of a state party to a treaty, ratification signifies "an internal act

[15] *Vienna Convention on the Law of Treaties* (23 May 1969, 1155 UNTS 331, Can TS 1980 No. 37, in force 27 January 1980), art. 2(1)(a).
[16] *Ibid*.
[17] *Ibid*.
[18] Ian Brownlie, *Principles of Public International Law*, 4th ed (New York: Oxford University Press, 1990) at 608.

of approval" by a designated competent authority – usually the legislature.[19] In this instance, ratification is founded on the democratic principle of public consultation and approval of an international agreement entered into by a state on behalf of the local population.[20] Second, ratification is also a procedural step under international law that involves "…a formal exchange or deposit of instruments of ratification…an important act involving consent to be bound".[21]

State treaty ratification in the first and second instances makes such state a party to the treaty so ratified. Accordingly, "ratification results in legal obligations at the international level", and thus where a state ratifies a treaty, it accepts responsibility for the inherent obligations therein and cannot avoid the consequences of such ratification except where there is good cause to not adhere to the treaty provisions.[22] On the other hand, accession is "…when a state which did not sign a treaty, [one] already signed by other states, formally accepts its provisions" and assumes all legal obligations stipulated in the treaty as though it were, *ab initio*, a state party to it.[23]

Canada's treaty procedure and practice "…enable the government of Canada to accept any of the methods of expressing consent to be bound by a treaty…".[24] Thus, the focus here shall not be on the technicalities of the usage of the terms but rather on the operational effect of treaties that Canada has validly expressed consent to be bound by their provisions. Hence, an issue with significant legal implication here is whether or not Canada's legal system allows for direct application of treaties without domestic law to operationalize their provisions at the national level. Relatedly, in relation to international human rights treaties, does Canada's legal system require the constitutionalization of the obligations under such treaties and, where applicable, the codification of their inherent rights into provincial/territorial human rights codes/Acts, for effective implementation of such treaties rights?

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[19] James Crawford, *Brownlie's Principles of Public International Law*, 9th ed (New York: Oxford University Press, 2022) at 359.
[20] Malgosia Fitzmaurice, "The Practical Working of the Law of Treaties" in Malcolm Evans, ed, *International Law*, 3rd ed (New York: Oxford University Press, 2010) at 177.
[21] James Crawford, *supra* note 19, *ibid* at 359.
[22] Natalie Baird, "To Ratify or Not to Ratify? An Assessment of the Case for Ratification of International Human Rights Treaties in the Pacific" (2011) 12 Melbourne J Intl L 1 at 4.
[23] Ian Brownlie, *supra* note 18, *ibid* at 607-8.
[24] Reinhard Hilger et al*, Expression of Consent by States to be Bound by a Treaty: Analytical Report and Country Reports* (Strasbourg: Committee of Legal Advisers on Public International Law, 2001) at 228.

Determination of the above issues is based on the understanding that "a state needs to give effect to the treaty in its domestic law, so that individuals – the primary beneficiaries of international human rights treaties – are able to enforce their rights at home…" because "…in an ideal world, the international human rights machinery should operate as a backup monitoring system rather than the primary enforcement mechanism for human rights protection".[25] Thus, the essence of these preliminary issues is to find out if Canada is a jurisdiction that permits self-executing treaties, i.e. treaties capable of creating local rights that could be directly determined by competent local courts in Canada without additional legislative action to domesticate the treaty provisions.

Where a state party validly expresses consent to be bound by a treaty, such a state may, sometimes, indicate its intention, through the wordings of the treaty, for the treaty provisions to have a direct application within its local jurisdiction. Where such an intention is found in the treaty, the treaty becomes self-executing, domestically operative, and "…a constituent part of the domestic legal system…".[26] Canada does not generally allow for self-executing treaties, and thus, legislative action is usually required to domesticate international agreements that Canada expresses consent to be bound by.[27] Hence, in Canada "…treaties are not self-executing and do not automatically become part of the law of the land by reason of their entry into force".[28] However, for treaties that expressly require such direct application, the usual practice, where Canada intends for such direct application as well, is for the designated authorities to "…secure the enactment by Parliament of any necessary implementing legislation before the government expresses its consent to be bound by [such treaties]…"[29]

On the other hand, where there is no such prior implementing law, the relevant federal/provincial/territorial legislature may in that regard, after a valid expression of Canada's consent to be bound by such treaties, enact an implementing law afterwards that gives the treaty "same status as any other law…[in Canada]".[30] The rationale for having an implementing law in Canada that domesticates the treaty provisions is the need for Canadians to hold the government

[25] Natalie Baird, *supra* note 22, *ibid* at 4.
[26] Reinhard Hilger et al*, supra* note 24, *ibid* at 79.
[27] *Ibid* at 80.
[28] *Ibid* at 231.
[29] *Ibid*.
[30] *Ibid* at 232.

accountable for obligations stipulated in such treaties. Thus "…the Canadian government in many instances is in a position to carry out its international obligations on the basis of the existing law of Canada…", and as such, where it is desirable for the government to live up to its commitments and discharge its treaty obligations, it becomes imperative to have such treaties domesticated through appropriate legislative action.[31]

A. Need for Local Laws Implementing ICESCR's Housing Rights Obligations in Canada

Canada has ratified/acceded to some international treaties that recognize housing as a human right. However, the focus here shall be on the ICESCR. Canada acceded to the ICESCR on May 19, 1976, and it came into force on August 19, 1976. The Government of Canada acknowledges that "by acceding to a treaty, Canada accepts the obligation to domestically implement the provisions of the treaty".[32] The ICESCR provides for the right to adequate housing, and with Canada not generally being a jurisdiction that permits self-executing treaties, the question becomes, is the ICESCR one of such treaties that requires local law for direct application?

To determine this issue, an analysis of articles 2(1) and 11(1) of the ICESCR is necessary. Article 2(1) of the ICESCR provides that "each State Party to the…Covenant undertakes to take steps…to the maximum of its available resources, with a view *to achieving progressively the full realization of the rights recognized in the…Covenant…by all appropriate means, including particularly the adoption of legislative measures*."[33] Relatedly, article 11(1) of the ICESCR provides that "the State Parties to the…Covenant recognize the right of everyone to an adequate standard of living…including adequate…housing…The State Parties *will take appropriate steps to ensure the realization of this right*…"[34]

A joint reading of these two articles of the ICESCR shows that the intention is to impose an obligation on state parties in relation to the realization of the right to adequate housing. However, on whether these provisions of these articles intend for an implementing local law to be enacted for the efficacy of the obligation imposed and right created, there is need to rely on the rules of treaty interpretation.

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[31] *Ibid* at 231.
[32] See Government of Canada, "Canada's Appearance at the United Nations Committee on Economic , Social and Cultural Rights" (2017) online: <https://perma.cc/2XMC-RP3M>
[33] Emphasis supplied.
[34] Emphasis supplied.

The principles of "actuality of textuality" and the "natural and ordinary meaning" are usually the first two rules of treaty interpretation. While the former insists that "…treaties are to be interpreted as they stand, on the basis of their actual texts", the latter complements it by requiring that "particular words and phrases are…to be given their normal, natural, and unstrained meaning in the context in which they occur…".[35] This is in line with article 31(1) of the *Vienna Convention* which provides that "a treaty shall be interpreted…*in accordance with the ordinary meaning* to be given to the terms of the treaty in their context and in the light of its object and purpose".[36]

To further aid the interpretation of a treaty, the preparatory work and general comments on the treaty may be leveraged as supplementary means of discerning the intended meaning of treaty provisions.[37] In all, the courts, operating within the allowable limits of the unambiguous meaning of the treaty provisions, would lean towards an approach that allows them to opt for an "…interpretation that is most appropriate in order to realize the aim and achieve the object of the treaty", and not one that would "…restrict to the greatest possible degree the obligations undertaken by the Parties".[38] This helps in ascertaining the "…precise nature of the relevant obligations and their implications".[39]

For the purposes of the issue here, the phrase to be interpreted is "by all appropriate means, including particularly the adoption of legislative measures". Thus, do the texts and their ordinary meaning suggest a requirement for an implementing law that incorporates the ICESCR into the national laws of Canada? Although the literal understanding of the phrase clearly points to the fact that the provisions of the ICESCR were precisely intended to be domesticated into the national laws of state parties, some jurisdictions, especially those that operate an unwritten constitution (with the UK the most notable example here), have argued otherwise.

[35] Malgosia Fitzmaurice, *supra* note 20, *ibid* at 183.
[36] Emphasis supplied.
[37] Malgosia Fitzmaurice, *supra* note 20, *ibid* at 186.
[38] *Wemhoff v. Germany* (1968), 7-1 Eur. Ct. H.R. (Ser.A)
[39] Philip Alston & Gerard Quinn, "The Nature and Scope of State Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights", in Manisuli Ssenyonjo, ed, *Economic, Social and Cultural Rights* (Surrey: Ashgate Publishing Ltd., 2011) at 9.

The UK position is to the effect that upon expression of valid consent to be bound, what is required is "no more than the fulfillment of the obligations expressed in the treaty, whether by legislation, administrative action, common law, custom or otherwise" as the "international community could not ask more and had no concern with the question whether legislation was the method adopted".[40] However, the ICESCR Working Group have stressed the particular importance and role of an implementing law, and thus considered it to be "an essential first step in fulfilling the aims and provisions of the Covenant".[41] Thus, it could be said that the phrase "by all appropriate means, including particularly the adoption of legislative measures" as used in article 2(1) of the ICESCR is unambiguously intended to stress the importance of "appropriate" local legislative action. Canada is thus required to have one in this regard.

B. Assessing Canada's Legislative Path to ICESCR Housing Rights Obligations

The brief discussion above further raises the question, what might be considered an "appropriate" local legislative measure in this regard for Canada? The Special Rapporteur on adequate housing provides some clarification on this. Accordingly, states "...must ensure that the right to adequate housing is recognized and enforceable as a fundamental human right through applicable *constitutional…provisions*...".[42] In addition, "the right to housing should be incorporated into *relevant municipal laws*...local governments should consider adopting *human rights charters* that protect the right to housing and provide access to justice..."[43]

The above seems to suggest that the right to adequate housing is to be legislatively backed up in the highest possible way, which is through local constitutionalization/codification of the right as a fundamental human right. In essence, the ICESCR intends to have an implementing law in Canada and this envisages the constitutionalization/codification of the right to adequate housing into Canada's human rights system. Thus, with these expository discussions, it would misconceive the intention of the ICESCR for one to hold the view that there is no such requirement on state parties to further the right to adequate housing through inclusion in a

[40] 10 U.N. ESCOR C.4 (427th mtg.) at 10, U.N. Doc. E/CN.4/SR.427 (1954)
[41] U.N. ESCOR (2d mtg.) para. 44, U.N. Doc. E/1985/WG.1/SR.2 (Mr. Yakolev, U.S.S.R.)
[42] Guideline No. 1 (16)(a), (2019) A/HRC/43/43. Emphasis supplied.
[43] *Ibid*, Guideline No. 11(63)(c). Emphasis supplied.

written constitution (Canada's Charter of Rights and Freedoms [the *Charter*] in this instance),[44] and other relevant human rights Codes/Acts.

In Canada, the *Charter* is part of a wider supreme law – the Constitution of Canada. The effect of the *Charter* being part of the Constitution is that the principle of law on the supremacy of the constitution over any other law that may be inconsistent with it applies to the *Charter* as well.[45] The *Charter* guarantees certain fundamental freedoms and legal rights that make life with dignity possible in Canada.[46] However, the expansive human rights framework set out in the *Charter* does not have a general application status. The *Charter's* application is limited to the parliament and different recognized levels of government in Canada with regards to all matters and human rights issues arising within the exercise of their governmental authority over the public.[47]

Thus, in general, the *Charter* does not apply to private individuals or private autonomous institutions that are not required to engage in public regulation.[48] The Human Rights Codes/Acts of different provinces/territories in Canada specifically apply to human rights issues that may arise out of the daily dealings of private individuals and institutions that do not fall within the mapped out scope of the *Charter*.[49] A casual overview of the *Charter* and some provincial/territorial human rights Codes/Acts reveals that there is no *Charter*-based obligation on the various levels of governments in Canada to protect housing as a fundamental human right, and there is also no express codification of the elements of the right to adequate housing in provincial human rights Codes/Acts.

In the light of the brief exposition above, could it be said that the *National Housing Strategy Act, 2019* (*NHS Act*) that recognizes the right to adequate housing as a fundamental human right in Canada is an "appropriate" local legislative measure for the purposes of the ICESCR? Section 4(a) of the *NHS Act*, *inter-alia*, provides that "it is declared to be the housing policy of the Government of Canada to…recognize that the right to adequate housing is a fundamental human right affirmed in international law…". This seems to be a mere declaration similar to the

[44] *Part I of the Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11.
[45] *Ibid*, s. 52(1).
[46] John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc., 2010) at 37.
[47] *Part I of the Constitution Act, 1982*, *supra* note 44, *ibid*, s. 32(1).
[48] John Barnes, *supra* note 46, *ibid* at 38. See also *McKinney v. University of Guelph* (1990) S.C.J. No. 123.
[49] *Ibid* at 40.

recommendation[50] of the first ever housing conference in Canada sponsored by the Canadian Welfare Council in 1968 which was then regarded as a general principle of public policy that only offered clarification on the housing goals of Canada.[51] Thus, just like the declaration of the conference, section 4(a) of the *NHS Act* appears to be a proclamation that the right to adequate housing deserves to be treated as a human right, and as such, ought to be considered as essential.[52]

It could thus be said that section 4(a) of the *NHS Act* was not designed to make substantive provisions for the elements of a full blown right to adequate housing. The core provisions of the *NHS Act* also seem to be strategic/action plans on the operationalization of a non-domesticated right to adequate housing. This further begs the question, could the *NHS Act* be of any practical local use with regards to the state obligation to ensure the protection of the right to adequate housing in Canada?

The answer appears to be negative. This is so because, as would be extensively discussed later in this section in relation to the court's approach in *Tanudjaja*, the most probable effect the *NHS Act* could have on the courts in relation to holding the government accountable in this regard and also as it relates to justiciability of the right would most likely not alter the courts' approach towards international treaties that are yet to be expressly domesticated in Canada. The *NHS Act* ought not to be held onto as the appropriate local legislative measure here as what it does in this regard is only breed hope that the courts would change their approach while there is no assured certainty of its guarantee of the right to adequate housing.

Canadians would thus continue to hope that "...the recognition of the right to housing in the [*NHS Act*] will have a positive influence in future cases by encouraging courts to be more consistent in ensuring that the *Charter* is interpreted in accordance with international human rights law [especially now that] the Federal Housing Advocate may consider intervening as a friend of the court in particular cases to promote interpretations of the *Charter* or other law, such as human rights or tenancy law, in accordance with the right to housing under international

[50] Michael Wheeler, ed, *The Right to Housing* (Montreal: Harvest House Ltd., 1969) at 331.
[51] *Ibid* at 15.
[52] *Ibid*.

human rights law, in order to secure remedies to systemic issues."[53] However, as would be latter discussed in this section, a careful reading of the *NHS Act*, together with the court's approach in *Tanudjaja*, shows that nothing has really changed as the *NHS Act* could still be interpreted by the courts as not permitting positive obligations on the government.

Hence, regardless of whatever intervening arguments and submissions the Federal Housing Advocate may make before the courts, it is still plausible that such could be discarded the way those of the Amnesty Coalition were casually dismissed in *Tanudjaja* without extensive review, as it has been further recognized that the "...right to housing under international law is not directly enforceable in Canadian courts and the [*NHS Act*] does not change that..."[54] It has also been submitted that the commitments stipulated in the *NHS Act* are more or less considered optional and unenforceable against the government in court.[55]

One then wonders how the *NHS Act* can become effective without any substantive local law on the right that it seeks to help realize. This is problematic, and thus justifies the need for the amendment of the *Charter* and provincial/territorial human rights Codes/Acts, to respectively incorporate an obligation on the various levels of government in this regard, and also provide for elements of the right to adequate housing as a human right in Canada. Hence, for there to be a practical realization of the right to adequate housing as a human right, there is need for transition from mere recognition under the *NHS Act* to express legislative backup of the right within Canada's human rights frameworks.

This is desirable because at this advanced stage of Canada's development, the elements of human rights such as the right to adequate housing need to be explicitly provided for by taking specific steps towards ensuring that all levels of government in Canada engage with relevant stakeholders, especially those in greatest need of housing, so as to recognize their needs which would then positively inform the elements needed for the express delineation of the right to adequate housing as a fundamental human right within Canada's human rights frameworks.

[53]Bruce Porter, *Implementing the Right to Adequate Housing under the National Housing Strategy Act: The International Human Rights Framework* (Ottawa: Office of the Federal Housing Advocate, 2021) at 23.
[54] *Ibid* at ii.
[55] *Ibid*.

The position of the thesis is thus simple, rather than leveraging legislative measures that are susceptible to being treated as not imposing any positive obligation on the government and as well, do not expressly enumerate the elements of the right to adequate housing in Canada, there should be campaign for an end to the uncertain legal status of the right to adequate housing in Canada and its inherent obligations on the government, and it appears this could be settled through the constitutionalization of such obligations vis-à-vis the right to adequate housing, and the codification of the elements of the right in provincial/territorial human rights Codes/Acts across Canada.

C. Constitutionalization and Codification of ICESCR's Housing Rights Obligations

One may then ask - why is it necessary to have the provisions of the ICESCR implemented in Canada through the constitution and human rights Codes/Acts across different provinces and territories in Canada? The answer to this shall be hinged on three theories: (1) theory of enforceability; (2) theory of basic rights; and (3) theory of constitutionalization of social rights.

The enforceability theory is built on formal justiciability as an indispensable element of rights. Accordingly, Hans Kelsen states that the core element of a right is "…the legal power bestowed upon the [right bearer] by the legal order to bring about, by a law suit, the execution of a sanction as a reaction against the non-fulfillment of the obligation."[56] Hence, it has been argued that for a human right to qualify as a right *per se*, it must be enforceable.[57] The right to adequate housing was intended to be such a justiciable right as evident in some arguments at the preparatory stage of the ICESCR. For instance, it was argued that "recourse to legal proceedings [is] envisaged in the event of deprivation of enjoyment of those rights".[58] In addition, the need to ensure the enforceability of the right triggered a trend in Western Europe where countries such as Switzerland, Portugal, Greece, Sweden, Spain, and the Netherlands all tilt towards constitutionalization of rights under the ICESCR, including the right to adequate housing.[59]

[56] Hans Kelsen, *Pure Theory of Law*, 125-126 (M. Knight trans. 1967) cited in Philip Alston and Gerard Quinn, *supra* note 39, *ibid* at 16.
[57] Philip Alston and Gerard Quinn, *supra* note 39, *ibid* at 16.
[58] 7 U..N ESCOR C.4 (235th mtg.) at 17, U.N. Doc. E/CN.4/SR.235 (1951).
[59] Philip Alston and Gerard Quinn, *supra* note 39, *ibid* at 17.

Shue's theory of basic rights also provides another theoretical foundation to support the enforcement of economic and social rights like the right to adequate housing. He explains that there are basics to a right that go beyond mere proclamation of rights to an actual realization/enjoyment of these rights. The lack of these essentials, which he otherwise likened to the scheduling of an airplane flight with no boarding and eventual take off, results in no enjoyment of these rights, and thus, "a proclamation of a right is not the fulfillment of a right any more than an airplane schedule is a flight".[60] This analogy, *inter-alia*, illustrates how mere declaration of rights as mostly stipulated in international human rights treaties, does not usually translate to actual enjoyment/operationalization of such rights where there is no authoritative legal backing that guarantees its implementation within domestic settings.

Thus, the duty to protect such rights should be interpreted to "...include the design and maintenance of institutions that make it as easy as possible for people to honor [these rights]…[and as difficult as possible to get away with their violation]".[61] In essence, the state authorities responsible for law making and interpreting the law should make the operationalization of these rights, and sometimes obligations, seamless through effective legislative measures and judicial decisions that facilitate easy claims, enforcement, and accountability for their breach. In this instance, the provision of ICESCR rights and obligations within the *Charter* and human rights Codes/Acts would be the most effective way of ensuring their justiciability through the courts.

The theory of constitutionalization of social rights is based on the understanding that rights that guarantee autonomy over oneself (like social rights) should be constitutionalized. This theory provides an express and direct explanation of why social rights such as the right to adequate housing should be provided for and protected in domestic constitutions of states. Thus, "autonomy is one reason why we assign people constitutional...social rights,...[if] autonomy...makes these rights valuable...then social rights should be constitutionalized...for where they [are] left out of the constitution, the constitution would fail adequately to protect autonomy [as]....the government would have legal leeway not to fulfill the duties imposed by

[60] Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy*, 2nd ed (Princeton: Princeton University Press, 1996) at 15.
[61] *Ibid* at 173.

social rights....".[62] Accordingly, to remain autonomous and enjoy the inherent protective benefits that come with it, it becomes imperative for social rights to be constitutionalized.

There is need to facilitate the operational effectiveness of the right to adequate housing in Canada as the local operationalization of Canada's obligation in this regard seems to be frustrated by the absence of its express domestication of the ICESCR in the core legal frameworks for human rights in Canada – the *Charter* and provincial/territorial human rights Codes/Acts. The case of *Tanudjaja v Canada (AG)*[63] illustrates this. In *Tanudjaja*, with the Attorneys General of Canada and Ontario as respondents, a group of people with lived experiences of homelessness filed an application at Ontario Superior Court for a declaration that there is an obligation on both the Government of Canada and the Government of Ontario to introduce appropriate national and provincial legislative/policy measures that would effectively address the homelessness crisis occasioned by the ineffective operation of the right to adequate housing in Canada.[64]

In other words, it was claimed that the ineffectiveness of the "changes to legislation, policies, programs and services…"[65] had counter-productive effects on housing rights in Canada, especially as it relates to the situation of homeless people, and as such, the declaration of the existence of a state obligation to that effect becomes imperative to call for the attention of the governments at the different levels on their responsibility to enact laws that are necessary and incidental towards the actualization of the right to adequate housing in Canada.[66]

The various governments responded with a motion for the application to be struck out.[67] The Attorneys General of Canada and Ontario grounded their motion for the application to be struck out on the basis that the *Charter* does not expressly provide for a positive obligation on the government in relation to the right to adequate housing and it would be inappropriate for the court to read such into the *Charter* based off the ICESCR provisions.[68] They maintained that such an approach would amount to an improper attempt to "constitutionalize [the] right to

[62] Cécile Fabre, "Constitutionalising Social Rights" (1998) 6:3 J Pol Phil 263 at 267.
[63] 2013 ONSC 5410.
[64] *Ibid* at para 2.
[65] *Ibid* at para 18.
[66] *Ibid*.
[67] *Ibid* at paras 1 & 5.
[68] *Tanudjaja*, Court File No. CV-10-403688, paras 7- 8.

housing…".[69] Accordingly, the Attorney General of Canada submitted that "while international law binding on Canada may be a relevant and persuasive source for interpreting the *Charter*, it cannot be used to rewrite the text of the constitution to add new rights".[70] Relatedly, the Attorney General of Ontario argued that it is only when such an international law treaty is incorporated into the domestic laws of Canada could it have a binding effect that imposes whatever positive obligation that exists in such treaty provisions.[71]

Amnesty International Canada and the International Network for Economic, Social, and Cultural Rights (collectively referred to as 'Amnesty Coalition' here) sought leave to intervene in the case as a neutral third party with expertise and interest in international human rights, so as to help provide the court with objective submissions that would guide its findings and rulings in this regard.[72] Thus, upon being granted the leave, Amnesty Coalition, *inter-alia*, made submissions to the effect that the court's interpretation of the *Charter* in relation to the right to adequate housing must be informed by the provisions of international human rights treaties that Canada has validly expressed consent to be bound by.[73] Accordingly, "the *Charter* must be interpreted in light of, and in a way that is consistent with Canada's international human rights obligations" and "the Court's interpretation of the scope of the rights included in the *Charter* must be informed by international human rights law".[74]

In essence, Canada' s international law obligations under the ICESCR that relates to the right to adequate housing ought to be taken into consideration by the court in its interpretation of the *Charter* for the purposes of determining if Canada and the Ontario government have effectively fulfilled the positive obligations stipulated by the ICESCR. The Amnesty Coalition relied heavily on the principle of interpretive consistency to remind the court that "...when a court is faced with a choice between an interpretation of domestic law that would place the State in breach of the [ICESCR] and one that would enable the State to comply with the [ICESCR], international law requires the choice of the latter".[75]

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[69] *Ibid* at para 7.
[70] *Ibid*.
[71] *Ibid*.
[72] *Ibid* at para 1.
[73] *Ibid* at para 34(a)(b).
[74] *Ibid*.
[75] *Ibid* at para 15.

The Amnesty Coalition noted that an acceptance of other contrary submissions (like those of the Attorneys General of Canada and Ontario) would result in a flagrant denial of justice. However, on its determination of whether international treaties assist in interpreting the *Charter*, the Ontario Superior Court of Justice (OSCJ), per Laderer J, held that "in this case, in the end, whatever international treaties may say about housing as a right is not of much help…".[76] Based on this, the application was struck out. Efforts to get the Ontario Court of Appeal (ONCA) allow the application and for the claim to proceed to full trial proved abortive.

The ONCA, per Pardu J.A, upheld the dismissal of the application on the basis that it was not justiciable "given that [the] application was properly dismissed on the ground that it did not raise justiciable issues, [and thus] it is not necessary to explore the limits…of the extent to which positive obligations may be imposed on government to remedy violations of the *Charter*…Nor is it necessary to determine whether homelessness can be an analogous ground of discrimination under s. 15 of the *Charter* in some contexts."[77]

However, in a dissenting opinion, Feldman J.A noted that "…it was an error to strike this claim at the pleadings stage…This application…has been brought by counsel on behalf of a large, marginalized, vulnerable and disadvantaged group who face profound barriers to access to justice...It raises issues that are basic to their life and well-being. It is supported by a number of credible intervening institutions with considerable expertise in *Charter* jurisprudence and analysis. The appellants put together a significant record to support their application. That record should be put before the court."[78]

In essence, Feldman J.A was calling for the appellants to be given a chance at trial to advance their case, including getting into arguments as to whether the ICECSR should be of interpretive guidance to the court. This did not happen at the appellate level, including the application brought before the Supreme Court of Canada in this regard. The emphasis here shall thus be on the decision of the OSCJ for a more focused analysis.

[76] *Tanudjaja*, 2013 ONSC 5410, para 150.
[77] *Tanudjaja*, 2014 ONCA 852, para 37.
[78] *Ibid* at para 88.

The rationale behind the OSCJ discarding the interpretive guidance of international human rights treaties in this instance is one that is rather vague and appears to be an easy dismissal of the cogent submissions of Amnesty Coalition. It seems the court did not take its mind to the fact that "...what is needed most in the growing domestic engagement with international law is greater analytical rigour" as the "challenge is not just one for lawyers and scholars [but] courts too must approach international law in a principled and coherent manner, providing clarity as to precisely what effect is accorded to international law in a given case and why."[79] Thus, the quick approach of the court in this regard is not helpful for the intended analysis here.

The OSCJ in *Tanudjaja* did not engage in any critical review of the arguments of Amnesty Coalition to determine the cogency of their submissions, and one could only draw inferences from other resources on what could have been the reason(s) for refusing to leverage the ICESCR within that context. Thus, by briefly reviewing the scholarly work of Jutta Brunnee and Stephen Toope and the principles of law expounded in *R v. Prosper*,[80] with the hope of finding out general reasons why Canadian courts in similar circumstances ignored the interpretation of the *Charter* with international human rights treaties as aids that inform such, the following two reasons sprouted out:

1. Upholding legislative intention: In the spirit of upholding the principles of federalism and separation of power, the courts have rejected the use of international treaties as guides on the basis that where a right or obligation is not expressly found to be in the *Charter*, it suggests that the legislature intends to leave it out, and thus, such legislative intention ought not to be overturned by interpreting treaty provisions into the *Charter*.[81]

2. Ensuring comprehensive protection: It is inferable that the courts may presume that the *Charter* provides the much needed overall protection, and as such, there is no need for an authoritative reliance on international treaties ratified by Canada. Thus, such treaties become merely persuasive with no binding effect whatsoever. However, this supposed rationale is concerning because "...if international law is merely persuasive, it becomes purely optional and

[79] Jutta Brunnee & Stephen Toope, "A Hesitant Embrace: The Application of International Law by Canadian Courts" (2002) 40 Can YB Intl L 3 at 8.
[80] (1994) 3 SCR 236, 118 DLR (4th) 154.
[81] *Ibid.*

can be ignored at the discretion of the judge"[82], whereas where a "...treaty is in force and Canada has ratified it, the treaty is binding on Canada as a matter of international law."[83] Thus, should these two reasons form the basis of the ruling in *Tanudjaja*, the decision to strike out the application then becomes misconceived for two significant reasons.

First, the governments' claim that the *Charter* does not provide for a positive obligation in relation to the right to adequate housing is not entirely correct when juxtaposed with the ICESCR obligatory provisions on state parties. Thus, although there is no express mention of the right to adequate housing in the *Charter*, neither is there any positive *Charter*-based obligation on the various levels of government to take actions towards the realization of the right, accession to the ICESCR by the Government of Canada makes the government duty-bound to take actions that protect against the violation of the right to adequate housing, whether or not such obligations are expressly provided for in the *Charter*.[84] The government is thus required to constantly take positive actions (such as examining the legal and policy frameworks in Canada with regards to housing) so as to identify the existing gaps that facilitate breaches of housing rights and either propose constitutional amendments or pass appropriate new laws that fix the shortcomings that occasion violation of the right to adequate housing in Canada.

Second, the OSCJ's finding that the *Charter* does not provide for a fundamental human right to adequate housing (upon which the applicants could base their application for declaration) clearly shows that there is need for federal constitutionalization of the obligation to protect the right to adequate housing in Canada, and also provincial/territorial codification of the elements of the right to adequate housing in Canada because how could the applicants possibly base their

[82] Jutta Brunnee & Stephen J. Toope, *supra* note 79, *ibid* at 8.
[83] *Ibid* at 15.
[84] The Supreme Court of Canada has generally noted that "the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review." See *Baker v. Canada* (1999) 2 S.C.R. at para 70. Justice Michel Bastarache further noted that "the Court must adopt an interpretation consistent with Canada's obligations under [an international treaty]" when it is dealing with a statute the purpose of which is to implement an international treaty under consideration before the court. See *Pushpanathan v. Canada* (1998) 1 S.C.R. 982 at para 51. Recently, the Supreme Court of Canada reiterated that in Canada "…legislation is presumed to operate in conformity with Canada's international obligations…", and thus the failure of the Immigration Appeal Division (IAD) to interpret and apply s. 34(1)(e) of the *Immigration and Refugee Protection Act* "in compliance with Canada's obligation of non-refoulement under the Refugee Convention, a matter that Parliament has decreed it must consider" made the Supreme Court find the IAD's decision to be unreasonable. See *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 72 & 118.

application for such declaration on an express provision in the *Charter* when the state authorities responsible for amending the *Charter* to provide for such an obligation have not done so?

The law does not command the impossible, and requiring the applicants to base their application on a non-existent *Charter* provision which the Government of Canada (as a state party to the ICESCR) ought to have included in the *Charter*, was the courts applying the law in such a way that compels the impossible. The case was an opportunity for the court to call on all relevant governments to fulfill their international housing rights obligations to protect, through appropriate legislative means, against housing rights violations by providing for (within the *Charter*) the obligation on the various levels of government in Canada to protect against the violation of housing as a fundamental human right in Canada, and expressly enacting the elements of the right into the provincial/territorial human rights Codes/Acts.

Furthermore, commentary on this finds the OSCJ's approach in *Tanudjaja* to be problematic on the basis that sufficient evidence from case laws that emanated from other provinces in Canada were made available to the court as part of the arguments to get the court see reasons why it is important in that context to rely on international human rights treaties to ascertain the existence and justiciability of a positive obligation on the government to ensure the realization of the right to adequate housing in Canada, but the OSCJ chose to cherry pick the judicial opinions in these cases in a manner that disregarded the hallowed principle of respect for hierarchy in Canada's court system.[85] For instance, the cases of *R v Johnston*,[86] and *Victoria (City) v Adams*,[87] were presented before Justice Lederer of the OSCJ, each used to support varying arguments as to the existence of (and use of international treaties to interpret) a positive housing rights obligation in the *Charter*.

Johnston is to the effect that "...the *Charter* does not provide a positive right to affordable, adequate, accessible housing and places no positive obligation on the state to provide it".[88] On the other hand, *Adams* finds otherwise to the effect that "while the various international instruments do not form part of the domestic law of Canada they should inform the interpretation

[85] David DesBaillets, "The International Human Rights to Housing and the Canadian Charter: A Case Comment on Tanudjaja v. Canada (Attorney General)" (2015) 32 Windsor Y B Access Just 121 at 132.
[86] 2006 BCSC 1592.
[87] 2009 BCSC 1363.
[88] *R v Johnston, supra* note 86.

of the *Charter*...",[89] and thus, the ICESCR is an important international document that ought to be considered when dealing with the application of socio-economic rights in Canada.[90] On appeal, this was further reiterated by British Columbia Court of Appeal (the highest court in the province), per Justice Groberman, to the effect that "the use of international instruments to aid in the interpretation of the meaning and scope of rights under the *Charter*...is well established in Canadian jurisprudence."[91]

While *Johnston* and *Adams* were, at first, both decided by the same court (British Columbia Superior Court - BCSC), *Adams* takes priority for two reasons. First, it was decided at a later year than *Johnston* and thus deemed to be the overriding new position of the BCSC in whatever similar issues of law treated in both cases. Second, *Adams* went up on appeal to the British Columbia Court of Appeal (BCCA), which reiterated a position (as already shown above) that undermines whatever contrary view expressed in *Johnston* vis-à-vis the interpretive guidance of international treaties in relation to reading a positive housing rights obligation into the *Charter*, and because the BCCA ranks higher than the BCSC in the hierarchy of the court system in British Columbia, the new appellate stance in *Adams* becomes superior to the position taken in *Johnston*.

Although *Johnston* and *Adams* are of no mandatory authority to courts in other provinces (as they are rather deemed to be persuasive authorities), other provincial courts that choose to rely on them to guide their decisions are expected to honour the doctrine of judicial hierarchy and precedents, and thus go for the decisions of higher provincial courts over those of lower courts in cases on same issues. This notwithstanding, the OSCJ chose not to be persuaded by *Adams* but by *Johnston*.[92] Regardless of *Tanudjaja*, some scholars still express optimism for the realization of the right to adequate housing in Canada to the effect that "...there are no clear rulings that

[89] Per Justice Rose in *Victoria (City) v Adams, supra* note 87 at para 100.
[90] *Ibid* at para 87.
[91] *Victoria (City) v Adams*, [2009] BCCA 563 at para 35, 313 DLR (4th) 29. The Canadian jurisprudence include: 1. *Re section 94(2) of the Motor Vehicles Act*, [1985] 2 SCR 486 at 503 ("international conventions of human rights" aided Justice Lamer's analysis in relation to the scope of s. 7 of the *Charter*); 2. *Suresh v Canada (Minister of Citizenship and Immigration)* [2002] 1 SCR 3 at para 76 (Held: "...international jurisprudence...suggests that, barring extraordinary circumstances, deportation to torture will generally violate the principle of fundamental justice protected by s.7 of the *Charter*"); 3. *Reference re Public Service Employee Relations Act (Alta.)* [1987] 1 SCR 313 at para 59 (Held: "…the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified").
[92] David DesBaillets, *supra* note 85, *ibid* at 132.

make it certain or even likely (for the operationalization of the right to adequate housing in Canada) to fail...[as that]...can only be determined at a hearing based on a full factual record".[93] This thesis does not share in this optimism.

The reason for the rather gloomy view of this thesis is that a "…hearing based on a full factual record" would, in the absence of an express positive housing rights obligation, still revolve round the discretionary purview of judges to determine whether or not to allow the ICESCR as an interpretive document that guides their finding of a positive obligation on the government. This is so because the door to *Charter* scrutiny would most likely continue to be slammed by the courts when it has to do with novel claims not explicitly guaranteed in the *Charter*,[94] which would continue to breed uncertainty over the legal status of the right to adequate housing in Canada. Accordingly, *Tanudjaja* is only a clear message calling for the legislature to come in and expressly guarantee the obligation. Thus, the courts should, as a matter of express constitutional requirement, be mandated by the legislature, via the constitution, to only make one finding in this regard - that there is such positive housing rights obligation on the government.

Though valid arguments have been made (and could continue to be made) in relation to the interpretation of the ICESCR requirements into the *Charter*, there ought not to be need for the courts to be implored to make such findings. The Constitution should expressly require it otherwise, according to Margot Young, Canada would be caught in the "pretences of progressive change" in this regard for a long time,[95] and it would be a deceptive "...one that allows the illusion of progressive constitutional law to persist, in the face of constant denial of progressive change", especially where "…the jurisprudence has teased substantive and material content to the rights...but, at every turn where that possibility presents itself, these claims are defeated..".[96]

The thesis shares the above sentiment of Young and does not think it is time to sugarcoat that which is really needed to advance the right to adequate housing in Canada. Thus, regardless of

[93] Tracy Heffernan, Fay Faraday, & Peter Rosenthal, "Fighting for the Right to Housing in Canada" (2015) 24 J L & Soc Pol'y 10 at 36.
[94] Margot Young, "Temerity and Timidity: Lessons from Tanudjaja v. Attorney General (Canada)" (2020) 61:2 Les Cahiers de droit 469 at 487.
[95] *Ibid*.
[96] *Ibid* at 491.

the complexities of amending the constitution in this regard (obviously a herculean task), Canada should, at least start off by taking the first step and get it done with, even if it takes years to eventually materialize. The goal should be to constitutionalize the housing rights obligation of the government and embed the elements of the right in all provincial/territorial human rights Codes/Acts.

It is the obligation of the Government of Canada and the provinces/territories to take that bold step of ensuring the express protection of the right to adequate housing under the existing human rights framework in Canada as the right appears to be better protected in jurisdictions that constitutionally guarantee it as a fundamental human right. In South Africa, for instance, although the Constitutional Court was initially cautious in its approach to declare the government obligated towards the realization of the right to adequate housing and thus had reservations that such imposition of socio-economic obligations could hinder the state's ability to perform its other primary obligations,[97] the court had no other choice than to grant reliefs to aggrieved parties in *Republic of South Africa v. Grootboom*,[98] (a case with similar facts to *Tanudjaja*). The court refused to shield the government from engaging with its responsibility of facilitating the protection of the right to adequate housing as imposed under the South African constitution.

The Constitution of South Africa specifically guarantees the right to adequate housing by providing that "Everyone has the right to have access to adequate housing."[99] It goes on to provide some guidelines on how the South African state must fulfill its obligation in this regard. Thus, "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right."[100] Hence, the right to adequate housing is a constitutional matter in South Africa rather than a mere social issue that the government can discard.[101] In a related analysis of the operationalization of the right to health (another socio-economic right) in South Africa, it was noted that "...the starting point of the conversation is not whether health care in South Africa should be mandatory - the Constitution makes clear that it is - but how health care in South Africa should be implemented in a way that

[97] Isabel Masanque, "Progressive Realization without the ICESCR: The Viability of South Africa's Socioeconomic Rights Framework, and Its Success in the Right to Access Health Care" (2013) 43:2 Cal W Intl LJ 461at 472.
[98] (2000) 11 BCLR 1169 (CC)(S.Aft.)
[99] *Constitution of South Africa*, s. 26(1).
[100] *Ibid*, s. 26(2).
[101] Isabel Masanque, *supra* note 97, *ibid* at 469.

fulfills constitutional obligations. South Africa's ability to skip the debate over whether health care is a human right puts it ahead of many countries that have not provided health care as a basic human right."[102]

This shows the importance of guaranteeing such socio-economic rights in the highest legislative ways possible. For South Africa, this constitutional guarantee has ever since proven to be invaluable to the courts in developing jurisprudence on the justiciability of socio-economic rights and their accompanying constitutional obligations on South Africa's government. The state's obligation to ensure the achievement of the right to adequate housing has thus been stretched within the acceptable limits of the law to the benefit of those in greatest need of realizing the right, although the court in *Grootboom* found the obligation not to be one of immediate effect within the local circumstances of South Africa, i.e. it has to be progressively realized.

D. Need for Immediate Realization of ICESCR Housing Rights Obligations

What does the progressive realization of the ICESCR obligation mean for Canada within the context of short-term situations like the hosting of the 2026 FWC that require immediate protection against violation of the right to adequate housing amid the requirement of progressive realization of the right? This is rather an interesting one in that the ICESCR requires state parties "to [achieve] progressively the full realization of the rights recognized in the…Covenant…". What then does it mean to "achieve progressively"? – is it to be understood as postponing the obligations of state parties to "an indefinite time in the distant future"?[103]

It seems a revisit to the preparatory works and the submissions therein would help in this regard. Thus, while acknowledging that the word "progressively" suggests lack of intention for immediate fulfillment, French representative, Mr. Jovigny, noted that "…care should be taken not to distort its meaning [as]…progressive realization of the rights set forth in the Covenant…should not be invoked by States as grounds for failing to implement a right when resources were available."[104] Also, the rationale for deliberately inserting the word "progressively" was explained by the Guatemalan representative who noted that it was for the purpose of enabling "…certain States to ratify the Covenant, even if they were quite unable to

[102] *Ibid*.
[103] Philip Alston & Gerard Quinn, *supra* note 39, *ibid* at 19.
[104] 8 U.N. ESCOR C.4 (307th mtg.) at 5, U.N. Doc. E/CN.4/SR.307 (1952).

implement its provisions forthwith…it did not in any way mean that states whose social development was adequate would not be bound by the obligations laid on them in the Covenant. It was all a matter of good faith. If socially developed States failed to fulfill the obligations they assumed, they would be guilty of contravening the Covenant…".[105] Hence, the word was used as a "necessary accommodation to the vagaries of economic circumstances."[106]

Canada is neither socially nor economically disadvantaged, and as such, should not be held to the "progressive realization" standard but rather to an "immediate realization" standard, most especially as it relates to the right to adequate housing which is actually not intended to be subjected to the progressive realization standard. This is evident in the provisions of article 11(1) of the ICESCR. Recall that in relation to the specific right to adequate standard of living (from which the right to adequate housing is derived), article 11(1) of the ICESCR provides that "…State Parties *will take appropriate steps to ensure the realization of this right*…". It is obvious that in this instance, there is no qualification of the word "realization", which suggests an intention to allow the realization of the right to adequate housing to be without the "progressive realization" limitation, and for it to be of immediate effect. This view is supported by the General Comment on the ICESCR to the effect that "while the Covenant provides for progressive realization…it also imposes various obligations which are of immediate effect…"[107]

Relatedly, there is also foreign jurisprudence that supports this view. In *Ministry of Health v. Treatment Action Campaign*,[108] the court rejected the argument that the obligation imposed on South Africa as a nation-state in relation to healthcare is subject to progressive realization. The court found that the obligation is one that is immediate and justiciable. These discussions generally show that there is an immediate positive obligation in this regard on Canada, especially as it relates to the protection of the right to adequate housing. The immediate requirement for the realization of the ICESCR obligation within short-term contexts like the 2026 FWC is also further mandated under the human rights initiatives of FIFA vis-à-vis its relationship with Canada as a host nation for the 2026 FWC. The next section discusses this.

[105] 7 U.N. ESCOR C.4 (237th mtg.) at 10, U.N. Doc. E/CN.4/SR.237 (1951) (Mr. Dupont-Willeman).
[106] Philip Alston & Gerard Quinn, *supra* note 39, at 22.
[107] General Comment No. 3, U.N Doc. E/1991/23.
[108] Case CCT 8/02, 2002(5) SALR (S Africa Const. Ct.)

3.3 Commitments under FIFA's Human Rights Initiatives

FIFA's approaches to human rights issues are built on the normative principles of the *UNGP*.[109] Thus, the *UNGPs* serve as the foundational basis for FIFA's commitment towards respecting all internationally recognized human rights in its business activities.[110] This is so because, as an association involved in commercial activities, FIFA qualifies as a business enterprise for the purposes of using the *UNGP* as a reference standard for its obligation to respect human rights.[111] FIFA thus has "…a responsibility to respect human rights…[and] to avoid people's human rights being violated through their activities or business relationships, and to address harms that do occur."[112] Hence, FIFA acknowledges that it has human rights obligation in this regard, and as such, amended its statutes to integrate its commitment towards respecting and promoting the protection of all internationally recognized human rights.[113]

In furtherance of this new commitment, FIFA further engaged the services of a human rights expert (John Ruggie) to develop "recommendations on what it means for FIFA to embed respect for human rights across its global operations."[114] Using the *UNGP* as a normative model, it was, *inter-alia*, recommended that FIFA should transition its policy framework from being reactive to becoming proactive.[115] FIFA was thus required to put systems in place that address all foreseeable human rights risks associated with its business activities.[116] Ruggie pointed out that FIFA could only operationalize its new human rights commitments by adopting a clear and coherent human rights policy for all of its commercial and business relationships with third parties.[117]

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[109] Andrew Spalding, *A New Megasport Legacy: Host-Country Human Rights and Anti-Corruption Reforms* (New York: Oxford Academic, 2022) at 299.
[110] *Ibid*.
[111] John Ruggie, *For the Game. For the World: FIFA and Human Rights* (Cambridge: Harvard University, 2016) at 5.
[112] Brendan Schwab, "Protect, Respect and Remedy: Global Sport and Human Rights" (2019) Intl Sports L Rev 52 at 58.
[113] *FIFA Statutes*, art. 3.
[114] John Ruggie, *supra* note 111, *ibid* at 4.
[115] *Ibid*.
[116] *Ibid*.
[117] *Ibid* at 29.

Acting on this, FIFA developed an operative Human Rights Policy that further reiterates its human rights obligations and outlines how the fulfillment of these obligations are tied to it ensuring that state parties it has business relationships with are human rights compliant. FIFA thus strives to remain human rights compliant by ensuring that it extracts obligatory human rights commitments from host nations through some unique human rights initiatives.[118] For instance, FIFA requires human rights impact assessment reports from countries bidding to host its World Cup events.[119] Thus, prospective host nations of the FWC have to actively engage with all relevant stakeholders in the development of inclusive reports on the human rights risks of hosting the FWC within their jurisdictions, and must also disclose how they intend to properly address and effectively mitigate all identified human rights concerns.[120]

Relatedly, FIFA also imposes immediate human rights obligations on state governments through host nation contracts and guarantees, in which FIFA obligates host nations, as signatories and parties to the agreement, to protect against human rights violations within their respective jurisdictions.[121] National governments that sign such contracts are thus obliged to self inspect their local human rights framework to find out and immediately address the legislative gaps that exist and also fix provisions that are not at par with internationally recognized human rights.[122] The overall intention is to make sure that host nations are not advancing abuse of human rights (of which the right to adequate housing is part of) and are also taking steps to prevent or mitigate the adverse human rights impacts their business relationships with FIFA may occasion.[123]

Under the "United Bid" of the North American countries of Canada, the US, and Mexico for hosting the 2026 FWC, one of the goals of the bid was to ensure "that the 2026 FIFA World Cup does not directly or indirectly contribute to an increase in homelessness in a Host City, or adversely impact the human rights of those who may be temporarily displaced due to the Competition."[124] The United bid acknowledged the possibility of the FWC occasioning adverse housing rights impacts on low-income renters, as well as the displacement of transient

[118] Andrew Spalding, *supra* note 109, *ibid* at 299.
[119] *Ibid*.
[120] *Ibid*.
[121] *Ibid* at 302.
[122] *Ibid*.
[123] *Ibid* at 300.
[124] The United Bid, *Proposal for a United Human Rights Strategy: United 2026* (Zurich: FIFA, 2018) at 49.

populations.[125] Thus, host cities are now required to "…develop a plan that will identify and address the risk of extreme upward pressures on the rental market, and the activities of...rental services and private landlords in this regard..."[126] This also further extends to the accommodation of homeless people and protection of their rights to ensure that these rights are well respected, especially "…during the activities leading up to and during the event...[the 2026 FWC]".[127]

Accordingly, FIFA leverages the massive economic significance of its events to oblige contracting governments to review their human rights framework to address any possible lacuna in their laws that could facilitate abuse of human rights.[128] FIFA understands that there are human rights risks inherent in the hosting of the World Cup, and thus utilizes the economic importance of the event as a strong bargaining tool for demanding an enhanced human rights system.[129] Hence, through contractual commitments and guarantees from prospective host nations towards the provision of a legal protective framework for the advancement of human rights, human rights compliance becomes a pre-condition for FIFA to stage its event in any nation,[130] and this ensures proactive protection against violations of human rights.[131] One of such required human rights protections relates to the right to adequate housing, and in relation to what the ICESCR obligation means for Canada within the context of short-term situations like the hosting of the 2026 FWC, the obligation of Canada in this regard could be interpreted to be immediate, especially on the basis of the following FIFA's enforcement mechanisms:

1. Elimination of Bidders and Hosts: The bidding process for the 2026 FWC took approximately two years due to the need to ensure that the hosting requirements were met, most especially as it relates to compliance with internationally recognized human rights principles.[132] During this process, FIFA tried as much as possible to enforce its hosting requirements on

[125] *Ibid* at 66.
[126] *Ibid* at 50.
[127] *Ibid*.
[128] Eric Windholz & Graeme Hodge, "International Sports Regulation: An Evolving Private-Public Partnership" (2019) 45:2 Monash UL Rev 298 at 306.
[129] Griffin Clark, "UNHRC Resolution 26/9: Is a New International "Red Card" Enough to Keep FIFA and Others Accountable?" (2021) 22:2 Chicago J Intl L 621 at 659.
[130] *Ibid*.
[131] *Ibid* at 643.
[132] Nicole-Amanda Brandofino, "Kicking the Law: The Effects of FIFA Regulations on a World Cup Host Country's Legislative Process in Regards to Intellectual Property Protection" (2019) 45:1 Brook. J. Intl L 301 at 301.

prospective host nations and cities.[133] This is more of a proactive than reactive enforcement mechanism whereby FIFA uses its economic advantage[134] (as the producer of the greatest soccer tournament of massive value) to get prospective host nations to review their local laws, and where necessary, enact new laws or amend existing ones to bring them in conformity with FIFA's human rights demands.[135]

FIFA reserves the right not to award the hosting rights to any nation that fails to meet its human rights standards. Thus, "in the event that a bid is unable to demonstrate that it can meet any of these requirements, FIFA is entitled, and reserves the right, to determine that such bid has materially failed to meet the minimum requirements to host the Competition and that such bid is not eligible for consideration by, nor presentation to, the FIFA Council/FIFA Congress."[136] In essence, this is one of FIFA's enforcement tools leveraged to initiate or facilitate immediate protection against violation of human rights prior to the hosting of the FWC.

More specifically, member associations of FIFA representing prospective host nations are required to publicly commit towards respecting all internationally recognized human rights in line with the *UNGP*.[137] This is achieved through a self-executing mechanism whereby FIFA demands that a comprehensive report on the prospective host nation's human rights strategy proposal be provided - one that is unique to the local realities of the nation and explicitly outlines its own inherent enforcement mechanisms.[138]

FIFA also requires its member associations (as representatives of prospective host nations) to expressly secure the support of their government, especially through "the issuance of government guarantees" expressing the political willingness to provide operational, fiscal, and administrative support in a way that helps in the immediate realization of human rights within

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[133] *Ibid* at 302.
[134] "Studies have shown actual boosts from tourism on the economies of host countries, especially for the hospitality, retail, and service sectors of the host nation's economy". See Sarah Longhofer, "Contracting away Sovereignty: The Case of Brazil, FIFA, and the Agreement for the Right to Host the 2014 World Cup" (2014) 23:1 Transnatl L & Contemp Probs 147 at 153.
[135] Nicole-Amanda Brandofino, *supra* note 132, *ibid* at 302.
[136] See *FIFA World Cup 2030™: Overview of Hosting Requirements*, art. 1.2.
[137] See *Guide to the Bidding Process for the 2026 FIFA World Cup* at 1-35.
[138] *Ibid*.

the context of the FWC.[139] Although these requirements appear to undermine the sovereignty of prospective host nations,[140] FIFA is careful to deploy diplomacy and collaboratively work with these nations in a way that does not foster the feeling that the nation is ceding its sovereignty but rather focuses on the goal of promoting respect for and protection of human rights in line with FIFA's human rights policy to "...engage with external stakeholders in a structured manner and...communicate regularly and transparently with its stakeholders and the general public about its efforts to ensure respect for human rights."[141]

2. Termination of Hosting Rights: Host nation/city agreements form "an integral part of the legal framework for the hosting of the Competition and are fully binding obligations, with the consequence that any material breach could give grounds for the right of termination of hosting rights".[142] Thus, FIFA, as seen in its 'Host City Agreement' with the City of Vancouver, could terminate the hosting rights of the City of Vancouver where the City is shown to be in material breach of the terms of the agreement - one of such terms is the obligation to protect against human rights violations (by extension, the right to adequate housing).[143]

Where there is such termination, under the terms of the agreement, the City has no compensatory or indemnity claims against FIFA provided it is evident that the termination is a result of material violation of the agreement by the City.[144] Daniela Heerdt, however, argues that "this drastic consequence in case of non-performance of bidding or hosting requirements cannot be regarded as [an] enforcement mechanism, since terminating the hosting contract would not help to enforce the human rights clauses, but instead relieve the contracting parties from their obligations".[145] While there are some truths in this, the threat of termination and the accompanying consequences of it, would always serve as a deterrent that sustains the eagerness of host nations/cities to fulfill their immediate obligations under the agreement, which would ultimately facilitate protection against human rights violations.

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[139] *Ibid*.
[140] Sarah Longhofer, *supra* note 134 at 159.
[141] *FIFA Human Rights Policy*, art. 12.
[142] *FIFA World Cup 2030™: Overview of Hosting Requirements*, art. 1.2.
[143] *FIFA 26 Vancouver Host City Agreement*, art. 14.3.1(ii)(e)
[144] *Ibid*.
[145] Daniela Heerdt, "Tapping the potential of human rights provisions in mega-sporting events' bidding and hosting agreements" (2018) 17 Intl Sports LJ 170 at 180.

3. Application for Specific Performance: Under the 'Host City Agreement' with the City of Vancouver, FIFA incorporated a package of measures that reasonably allow it apply for specific performance of the agreement without many hitches. For instance, "all disputes in connection with [the] Host City Agreement, including disputes as to its conclusion [and] binding effect...are to be promptly settled between the parties by negotiation".[146] Where this fails, FIFA is to resort to arbitration, the seat of which is not in the jurisdiction of the host nation/city but in Zurich, Switzerland where the administrative headquarters of FIFA is.[147] The arbitral tribunal is to be set up in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce,[148] and is required to apply "the laws of Switzerland, to the exclusion of any choice of law principles...".[149] The decision of the arbitral tribunal "shall be final and binding on the parties".[150]

Where FIFA resorts to this, the host nation/city is precluded under the agreement from relying on its immunity as a way of frustrating the application for immediate specific performance. Thus, "the Host City Authority will not claim any immunity from proceedings brought by FIFA and/or the Member Association against the Host City Authority in relation this Host City Agreement and the Host City Authority ensures that no such claim is made and waives all rights of immunity in respect of itself and its assets".[151] The essence of the whole package of enforcement measures here is to provide FIFA with the much needed authority to challenge for an immediate specific performance of the human obligations imposed on host nations/cities.

4. Exclusion from Participation: FIFA, as the recognized governing body for international soccer, exercises "regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide", in line with its oversight functions and powers under the *FIFA Statutes*.[152] One of such measures FIFA could take is the expulsion of member associations from its future competitions or any of its

[146] *FIFA 26 Vancouver Host City Agreement*, art. 14.21.
[147] *Ibid*.
[148] *Ibid*.
[149] *Ibid*, art. 14.20.
[150] *Ibid*, art. 14.21.
[151] *Ibid*, 14.1.5.
[152] *FIFA Statutes* (May 2022 ed),art. 34(3). See also *FIFA Governance Regulations* (December 2022 ed), art. 8.2(c).

competition in progress.[153] To illustrate, in *Football Union of Russia v. FIFA et al*,[154] the commencement of a military conflict between the Russian State and Ukraine on 24 February 2022 emitted widespread global reactions which mostly came in the form of condemnation channeled towards the operations of the Russian State in Ukraine, the nature of which was largely classified as an 'invasion of Ukraine' by different international bodies and governments.

International punitive measures were thus taken against Russia and her people by way of imposition of a package of sanctions and travel bans. Within the soccer family, the Russian national team (under the auspices of the Football Union of Russia - FUR) had impending 'playoffs' for qualification to the 2022 FIFA World Cup in Qatar. However, going with the international trend to boycott and sanction Russia and Russians, the Football Associations (FAs) of the scheduled opponents of Russia for the playoffs, published statements refusing to play against the Russian national team, citing the military conflict between Ukraine and Russia as the ground for their refusal.

There were also calls from other sports governing bodies for Russia to be suspended and athletes with Russian nationality to be prevented from participating in global sporting activities. On 28 February 2022, the Bureau of the FIFA Council took the decision to suspend all Russian teams (and all teams affiliated to the FUR) from participating in FIFA competitions 'until further notice and until the situation improves sufficiently to allow their participation'. Upon appeal by the FUR to the Court of Arbitration for Sport, it was held that FIFA has a statutory objective under article 2(b) of its Statutes to organize its own international competitions such as the FIFA World Cup, and that the complementary right of member associations to participate in such competitions is not absolute but rather limited by the objectives of FIFA set out in article 2 of its Statutes. By extension, this means that FIFA could take disciplinary actions against a host nation's FA that is under FIFA's authority as a member association, and this could be in the form of exclusion of the national team of such member association from participation in ongoing/future FIFA organized competitions like the FWC.

[153] *Ibid*, art. 55(3)(i).
[154] CAS 2022/A/8709.

It then becomes imperative for a host nation/city to not be in breach of its immediate contractual obligations under any of its agreement with FIFA as FIFA could resort to any of the above measures, and (depending on the stage of the organization of the competition) dissociate itself from the host nation/city. Thus, for a continued partnership with FIFA, the host nation/city is held to immediate realization of its obligations which, in this context, includes: the regulation of the housing market to ensure spread out evenness in housing affordability; protection against bad faith evictions; and protection of the homeless from criminal prosecution on the sole basis of their social status.[155] Hence, in Canada "…government…at all levels have [an immediate]…obligation to protect this right for everyone...especially for people whose right to housing is being violated".[156] Thus, appropriate legislative partnership between federal, provincial, and municipal governments is required for a proper coordination of their efforts towards ensuring effective protection of the right to adequate housing in Canada amid the 2026 FWC.

3.4 Conclusion

There is an immediate obligation on the Government of Canada and other levels of government in Canada to facilitate protection against the violation of housing rights in Canada. To ensure this is achieved, particularly in the context of hosting the 2026 FIFA World Cup, appropriate legislative action is essential. While the *National Housing Strategy Act* acknowledges the right to adequate housing, it lacks the necessary provisions for effective enforcement. *Tanudjaja* highlights the limitations of relying on international human rights treaties to impose positive housing rights obligations on the government in the absence of an explicit provision to that effect in the *Charter*. Canada must thus amend its Constitution to explicitly include a housing rights obligation on the government. The provinces/territories in Canada must also codify the elements of this right in their respective human rights Codes/Acts.

While the above may not be feasible for the purposes of ensuring housing rights protection during the course of the 2026 FWC, FIFA's human rights initiatives (host nation/city contractual

[155] National Law Center on Homelessness & Poverty, *"Simply Unacceptable": Homelessness and the Human Right to Housing in the United States 2011* (Washington, DC: National Law Center on Homelessness & Poverty, 2011) at 19.

[156] Office of the Federal Housing Advocate, *Upholding Dignity and Human Rights: The Federal Housing Advocate's Review of Homeless Encampments – Final Report* (Ottawa: Office of the Federal Housing Advocate, 2024) at 1.

agreements with Canada and its enforcement mechanisms) provide a channel for some immediate realization of the right to adequate housing within the context of the 2026 FWC. Canada is encouraged to leverage this to fulfill its international housing rights obligation under the ICESCR and thus provide an overall robust protection for housing rights in Canada. This will ensure that the hosting of the 2026 FWC in Toronto and Vancouver does not further exacerbate the already precarious housing situation in Canada but instead promotes immediate realization of housing rights while demonstrating Canada's commitment to setting a positive and forward-looking precedent for future FWC events.

CHAPTER FOUR
LEGAL FRAMEWORK FOR HOUSING RIGHTS PROTECTION IN CANADA

4.1 Introduction

A number of provincial and municipal laws have ideal provisions that appear to adequately protect the housing rights of renters in Canada. However, a closer examination shows that some lapses exist, and, if left unattended to, would affect the ultimate protection of tenants against MSE-induced unaffordability of rental units and evictions. The analysis in this chapter then becomes imperative so as to point out these loopholes in the existing legal frameworks across the relevant levels of government in Canada (Ontario/Toronto and British Columbia/Vancouver), and show how financialized landlords exploit them for their ulterior purposes, to the detriment of renters. These legislative lacunae exist because the provisions of these laws sometimes lack the much needed specificity and accountability for the obligations of landlords towards tenants, and has thus allowed landlords to find ways to navigate the provisions without being in breach of them, especially by relying on different unscrupulous practices.

This chapter further highlights some of the provisions that are (or could serve as) catalysts that exacerbate the ordeals of homeless people in Toronto and Vancouver. Hence, the objective is to analyze these laws and also discuss their provisions that help facilitate the envisaged risks to homeless people. The aim here is to provide analytical insight into the housing laws, policies, and initiatives of the provincial governments of Ontario and British Columbia, and the municipal governments of the host cities of Toronto and Vancouver, and point out their efficacy level vis-à-vis the anticipated housing rights risks of the 2026 FWC. This chapter thus engages in a relatively extended analysis of the relevant provincial and municipal housing rights frameworks of the host provinces/cities of Ontario/Toronto and British Columbia/Vancouver.[1]

[1] The thesis does not claim to have conducted an exhaustive review of the legislative frameworks for housing rights in these provinces and municipalities. Rather, the few reviewed were selected because their purposes appear to be connected to issues of affordability of rental housing, bad faith evictions, and criminalization of homelessness - the crux of this thesis. Hence, the need to scrutinize them and analyze how they could potentially influence (either in a negative or positive manner) the housing rights concerns of hosting the 2026 FWC in Ontario/Toronto and British Columbia/Vancouver.

4.2 Protection against Unaffordability of Rental Housing and Bad Faith Evictions

A. Ontario and British Columbia

Rent control is one of the measures under Ontario's *Residential Tenancies Act* (Ontario's RTA),[2] adopted to ensure the protection of affordable rental housing stocks in Ontario.[3] It is an initiative that regulates the amount charged as rent by landlords in the province.[4] The way it works in practice is that caps are placed on the maximum rent to which a landlord could possibly increase the rent of a rental unit within a given period of time. Thus, landlords may, not more than once per year, be allowed to increase their rents within a certain percentage.[5] Under Ontario's RTA, rent control is designated as 'guidelines' under which no landlord is allowed to increase the rent a tenant is charged above the stipulated percentage.[6] However, Ontario's RTA has some shortcomings in this regard - it facilitates practices that impose rent increases on tenants above prevailing market rates because its provisions on rent control are only in relation to the rent charged a "tenant" (not the rental unit), which is a precursor for eviction of existing tenants and hike in rent for subsequent tenants.

Rent control could either be tied to tenants or the rental units.[7] Where the former is the case, the landlord is restricted from increasing (above the set percentage) the rent for the rental unit until the tenancy relationship in operation is duly ended.[8] In other words, the landlord could only raise the rent above the stipulated maximum limits if only the existing tenant leaves the rental unit.[9] This sometimes incentivizes "economic evictions" by financialized landlords who prematurely end tenancy agreements in a bid to get in new tenants whose rent would not be subjected to the maximum limit set by rent control rules.[10] On the other hand, where rent control is tied to rental units, new tenants fall under the legislative protection of the rent control rules and as such, are to be charged increased rents only within the maximum limits.[11] Hence, the preference for this rent control model.

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[2] 2006, S.O. 2006, c. 17
[3] Richard Feldman, *Residential Tenancies*, 11th ed (Toronto: Thomson Reuters Canada Ltd., 2018) at 3.
[4] *Ibid*.
[5] *Ibid*.
[6] *Residential Tenancies Act*, 2006, S.O. 2006, c. 17, s. 120(1)
[7] Richard Feldman, *supra* note 3, *ibid* at 2.
[8] *Ibid* at 329.
[9] *Ibid* at 330.
[10] *Ibid* at 3.
[11] *Ibid* at 2-3.

Furthermore, landlords may be allowed to increase the rent of their units above the guideline by applying to the Landlord and Tenant Board and providing evidence to the effect that they had incurred some capital expenditures in relation to the rental unit.[12] This could be in the form of significant repairs/renovations of the rental unit.[13] The practical effect of this provision is that some landlords may engage in purposeful neglect of their rental units so as to have cause for repairs, which then grounds their application for increase in rent above the guidelines. There is thus need for this provision of Ontario's RTA to be revisited so as to ensure landlords are prevented from engaging in such unscrupulous practices.

Relatedly, British Columbia's *Residential Tenancies Act (*B.C's RTA*)* is the provincial law that, *inter-alia*, provides the statutory basis for the rights and obligations that exist between landlords and tenants under a tenancy agreement in the province.[14] B.C's RTA is divided into 7 parts but the focus here shall be on few specific provisions of part 3. Under part 3, increase in rent is allowed where such increment comes after a period of at least 12 months from "the date on which the tenant's rent was first payable for the rental unit" or from "the effective date of the last rent increase..."[15], and the landlord provides the tenant with a notice of such increment in rent "...at least 3 months before the effective date of the increase."[16] Although an increment in rent is one that could be agreed on between landlords and tenants on the basis of freedom of contract, where such is not the case, B.C's RTA places a cap on the amount that may be unilaterally imposed by a landlord on the tenant as rent increment.[17]

Notwithstanding the above provisions, some landlords have imposed increased rates in excess of the threshold on the understanding that B.C's RTA merely places a cap on rent increases between landlords and tenants in existing tenancy agreement, and such does not necessarily limit further increment of rent in relation to a vacant rental unit when such tenancy expires or becomes

[12] *Residential Tenancies Act*, 2006, S.O. 2006, c. 17, s. 126(1)
[13] Richard Feldman, *supra* note 3, *ibid* at 349.
[14] *Residential Tenancies Act* [SBS 2002], Cap. 78, s. 6(1).
[15] *Ibid*, s. 42(1)(a)(b).
[16] *Ibid*, s. 42(2).
[17] Thus, "a landlord may impose a rent increase only up to the amount...calculated in accordance with the [rent] regulations...", *Ibid*, s. 43(1)(a), and "for the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2024 and before January 1, 2025, a landlord may impose a rent increase that is no greater than 3.5%", see *Residential Tenancies Regulation*, s. 22.2(2)

terminated.[18] Hence, similar to Ontario's RTA, the cap imposed by B.C's RTA does not apply to rental units and thus does not prevent landlords from increasing their rents beyond the market rent where such is not during the life time of an already existing tenancy agreement, i.e. landlords can charge a higher rent above the limit whenever the rental unit gets vacant, and this has necessitated evictions and rent increases up to 100% of the original rent, and forced many low-income tenants out (most times into homelessness).[19]

This provision is one that financialized landlords have leveraged, and it is anticipated that they would further use it to ensure they get maximum profits due to the expected surge in demand for housing that would be occasioned by the 2026 FWC in Vancouver. However, it appears the province now understands the need to close this gap, and thus, the Premier of British Columbia proposed some changes to B.C's RTA,[20] on the understanding that "...too many people in B.C. are still facing unfair rent hikes and evictions under false pretenses [and] that's why we're taking action to protect...renters with stronger rules designed to ensure the law is respected...and bring more fairness for everyone in the rental market."[21] Accordingly, the proposed changes seek to address bad faith evictions and limit undue rent increases.

However, there have been scholarly debates on the effects of rent control policies, with the most common relating to the notion that "rent control discourages the construction of rental housing".[22] Thus, while the proponents of rent control rely on the understanding that "rent control protects the poor" and as such is a necessary "social good" mechanism, as well as economic tool, that should be used by the government to curb the exploitation of low-income renters by financialized landlords,[23] the opponents counter-argue to the effect that rent control is an inequitable and ineffective way of assisting the poor which tends to disincentivize landlords

[18] Sophy Chan, *Unveiling the 'Olympic Kidnapping Act': Examining Public Policy and Homelessness in the 2010 Vancouver Olympic Games* (MA Thesis, The University of Western Ontario) [unpublished] at 47.
[19] *Ibid*.
[20] Courtney Dickson, "B.C. proposes protections for renters and landlords alike" (2024) online: *CBC News* <https://perma.cc/X5SL-SZZD>
[21] Amy Judd, "B.C. government takes steps to protect residents from 'bad-faith' evictions" (2024) online: *Global News* <https://perma.cc/7VAC-9Q6D>
[22] Richard Ault, "The Presumed Advantages and Real Disadvantages of Rent Control", in Walter Block & Edgar Olsen, eds, *Rent Control Myths & Realities: International Evidence of the Effects of Rent Control in Six Countries* (Vancouver: The Fraser Institute, 1981) at 66.
[23] Ted Dienstfrey, "The Politics of Rent Control in the United States: A Program at the Yellow Light", in Walter Block & Edgar Olsen, eds, *Rent Control Myths & Realities: International Evidence of the Effects of Rent Control in Six Countries* (Vancouver: The Fraser Institute, 1981) at 6.

and investors from adding to the available housing stock in the long term[24] as investors appear to be more motivated by profit-yielding ventures than by projects that require financial concessions from them.[25]

Is this counter-argument really the case? There is a contrary view to the effect that rent control is not the only profit-determining factor that induces investors' construction of housing units in this regard, and as such, it is feasible for other factors outside the supposed limiting implications of rent control to propel investors to add to the housing stock.[26] Thus, the investment to be made into the construction of rental housing is not solely dependent on rent control. For instance, at some point, "…the Canadian experience with rent control produc[ed] evidence that seems to conflict with the view that rent control increases housing shortages [because]…in spite of rent control, vacancy rates [rose] – especially in Toronto and Vancouver…",[27] and one factor that necessitated such was the "government policy to make production of rental accommodation attractive" by allowing landlords write off "the capital cost of buildings against their other income".[28]

This thus creates a certain level of reasonable doubt that the introduction of rent control ultimately dissuades investors from adding to the housing stock. As the above reported Canadian experience shows that with the right incentives to counter whatever dissuading effects rent control purports to have, investors would most likely tilt towards adding to the rental housing stock where there are other measures that propel them to do so regardless of the operation of rent control. In essence, where conflicting interests of tenants and landlords/investors are properly balanced and protected, rent control may not be a dissuading factor that clogs the wheel in relation to the construction of rental housing units and thus would not disincentivize addition to the available housing stock.

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[24] Richard Ault, *supra* note 22, *ibid* at 57.
[25] *Ibid* at 66.
[26] *Ibid*.
[27] Edgar Olsen, "Alternatives", in Walter Block & Edgar Olsen, eds, *Rent Control Myths & Realities: International Evidence of the Effects of Rent Control in Six Countries* (Vancouver: The Fraser Institute, 1981) at 272. NB: It is necessary for this archival rent control resource to, *inter-alia*, be used as a foundational tool for dispelling some of the myths about rent control, especially as it relates to the notion that rent control dissuades investors from adding to the housing stock. The relatively recent resources discovered in the course of research were not leveraged because they were not helpful in this regard.
[28] *Ibid*.

However, what is the best option for purposes of short-term situations like the 2026 FWC that pose housing rights risks to low-income renters? Is rent control ideal for such situations?, and will such lead to a reduction in the available housing stock? Generally, a surge in demand for housing (which is expected for the 2026 FWC) leads to rent increases – which is the housing market's natural way of attracting capital into the housing sector of the economy, and where the reverse is the case and supply exceeds demand, then there is reduction in rent. This relationship between demand and supply of housing continues until equilibrium is attained.[29] Walter Block thus argues that the introduction and implementation of rent control policies distorts the natural market-oriented flow and results in unintended long-term losses for tenants who could enjoy the benefit of lower rents when supply of housing units exceeds the demand or when reasonable market rates prevail when equilibrium is reached.[30]

The practicality of the above view appears implausible for the purposes of the 2026 FWC. First, it is almost certain that short-term MSEs like the 2026 FWC would occasion a high demand for housing in Canada, considering the number of audience the FWC commands. Hence, leaving the housing market to operate without any sort of rent control would definitely result in hike in rents and leave vulnerable groups such as low-income renters at the mercy of financialized landlords. Second, within such a period of high demand, attaining equilibrium becomes utopian as the prevailing circumstances erode the slightest expectation for a market-induced reasonable rate for rent. Outside such short-term situations, it is also highly unrealistic to expect "equilibrium, an exact balancing of supplies and demand, in the real world" as such only exist as "…an artificial theoretical construct" because "equilibrium is possible only when all human action, as we know it, vanishes completely", which is highly implausible.[31]

The need to have an independent factor (outside of market forces) come in and regulate the housing market thus becomes imperative, and this is where government regulation through rent control proves useful, especially now that housing is internationally recognized as a human right that requires such protection from the government. Thus, the state should not allow landlords to

[29] Walter Block, "Rent Control: A Case Study of British Columbia" (1994) 30:3 Mid-Atlantic J Bus 299 at 302.
[30] *Ibid* at 300.
[31] Walter Block, "Postscript: A Reply to the Critics", in Walter Block & Edgar Olsen, eds, *Rent Control Myths & Realities: International Evidence of the Effects of Rent Control in Six Countries* (Vancouver: The Fraser Institute, 1981) at 294.

treat housing as a purely economic venture without some sort of balance to ensure the right to adequate housing is duly protected. European courts in *James and others v. U.K*[32]., and in *Mellacher and others v. Austria*,[33] made findings to this effect.

In *James*, the court recognized that housing is a social necessity that ought not to be left entirely to the dictates of the housing market. Hence, the court justified the rent control programs by the state. Similarly, in *Mellacher*, the court found that public interest protected by the state (through regulation of rent reduction programs) superseded the property rights of landlords, and was not in violation of their right to peaceful enjoyment of their property. Relatedly, the court in *Guzzardi v. Italy, European Commission on Human Rights*[34] further extended this to mean that states must take measures to ensure that housing conditions are not burdensome on renters.

The above cases go to persuasively support the need for state regulation of rental housing via rent control. However, for the purposes of this thesis, the intention is to focus on the appropriateness of such rent control measures within the context of the 2026 FWC, and not to broadly address Canada's housing policy on rent control as the aim is not for there to be an obligation in perpetuity on landlords to rent out their units below market rates but for there to be a protective measure that balances the interests of both landlords and low-income renters amid the 2026 FWC. Thus, the intention is to make a case for an effective rent control mechanism that guards against unaffordability of rental units during the 2026 FWC by providing landlords with the right incentives that discourage them from bad faith rent increments.

The thesis thus suggests the introduction of a percentage cap (to be determined by economic experts) under optional temporary rent control programs specifically designed for the host cities of Toronto and Vancouver. These rent control programs are to offer participating landlords tax returns at a fixed percentage (to be determined by economic and tax experts) slightly above the percentage cap under the optional temporary rent control programs. This would incentivize landlords to sign up under these programs knowing that they would get back, in tax returns, more money than whatever amount they had foregone under the rent control programs. Thus, the

[32] (1986) 98 Eur. Ct. H.R. (Ser. A)
[33] (1989) 169 Eur. Ct. H.R. (Ser. A)
[34] Application No. 7367/76. Report of December 7, 1978, at 34.

government indirectly gets to bear the associated costs but invariably ends up fulfilling its obligation to protect against the envisaged risk of unaffordability of rental housing units.[35]

For non-participating landlords, introduce a tax program that monitors the rental units of these landlords and disincentivize their economic desire to exploit the surge in demand amid the 2026 FWC by introducing a special temporary tax regime that specifically targets all income accruing to the rental units of such landlords. The taxable income under the tax program should be any profit accruing to the rental units that is independently determined to be above what is expected as increase in rent for rental units reasonably operating at the frequency of an average housing market in Canada not influenced by the surge in demand occasioned by the 2026 FWC. Funds realized from these landlords should be applied towards offsetting the associated costs borne by the government for landlords participating under the optional rent control programs.[36]

B. Toronto and Vancouver

Toronto's *Residential and Rental Property Demolition and Conversion Control by-law* has provisions that prohibit the demolition or conversion of dwelling units except the landlord intending to engage in such applies for a 'Rental Housing Demolition and Conversion Permit' and gets approval for same from the City.[37] Thus, where the landlord of a residential rental property seeks to materially alter all or part of a set of rooms in such residential rental property or transform any part of the property to other purposes outside its original purpose of being a residential rental property - which includes "interior renovations or alterations that will result in a change to the number of dwelling units by bedroom type" - such a landlord is required to apply

[35] The inspiration for this proposal is the need to balance the property rights of landlords and the housing rights of renters. This is a novel idea of this thesis that is yet to be tested. However, it is hoped that proper operationalization of this proposal by economic and tax experts would help curb the risk of unaffordability of rental housing and bad faith evictions amid the 2026 FWC. This would thus strengthen renters' right to affordable housing and security of tenure.

[36] There is a similar, yet different, approach in the US under the *Housing Is a Human Right Act of 2023,* H.R.1708 currently under review by the US Congress. Thus, for the purpose of effectively tackling the factors that facilitate homelessness across the United States, the bill, *inter-alia*, proposes the amendment of the *Internal Revenue Code of 1986* to introduce a 1 percent rental tax on the rental value of dwelling units of landlords with multiple rental housing properties. The funds realized from taxation of the sale or exchange of property transactions and the rental tax, are to be allocated in stipulated percentages to the housing programs of the Department of Housing and Urban Development to assist in the construction of more affordable housing units for people at risk of homelessness. Online: *Congress.gov* <https://perma.cc/28U8-LLWG>

[37] *Toronto Municipal Code, Residential and Rental Property Demolition and Conversion Control,* cap. 667, ss. 667-3 and 667-4.

for an approval and permit to do so from the City's designated authority.[38] The goal for having these provisions is to protect the affordable housing stock in the City of Toronto. Hence, the need to place City authorities in a position to ensure that residential tenants (usually low-income renters) of such dwelling units are not unduly evicted.

The administrative requirements of applying for approval and permit (to demolish or convert) allows the City of Toronto to set out housing rights protective conditions that must be fulfilled before such demolition or conversion is allowed.[39] These conditions are mostly in the form of commitments from the landlords to produce replacement units at similar rents.[40] However, the by-law is limited in scope as it only applies to the demolition or conversion of residential rental properties with a minimum of six dwelling units.[41] In other words, there is no such requirement of applying for permit for landlords whose residential rental properties have less than six dwelling units,[42] which means that dwelling units in such residential rental properties that fall outside the scope of the by-law are subject to exploitation by the landlords of such rental units who could feed on the lapse to evict tenants on the guise of wanting to alter such units.

Relatedly, on 14 November 2024, the City of Toronto Council adopted the *Rental Renovation Licence By-law* (an anti-renoviction by-law) scheduled to come into effect on 31 July 2025. This by-law appears to be modeled after a similar by-law of the City of Hamilton.[43] With a clear set out purpose of preserving affordable and mid-range homes (by curbing against bad faith evictions under the guise of renovation), the new framework would, *inter-alia*, require landlords to apply for rental renovation licence which, under the scrutiny of the City, is intended to forestall unscrupulous and deceitful practices of landlords that evict tenants on the basis of wanting to renovate, when in the actual sense, the rationale is based on the need for a hike in rent.[44]

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[38] *Ibid*, s. 667-1B.
[39] Melissa Goldstein et al, *Fixing the Leaky Bucket: A Comprehensive Policy & Program Framework to Preserve Toronto's Supply of Deeply Affordable Housing* (Toronto: Neighbourhood Land Trust, 2020) at 39.
[40] *Ibid*.
[41] *Toronto Municipal Code, Residential and Rental Property Demolition and Conversion Control,* s. 667-2A(1).
[42] *Ibid*.
[43] Toronto City Council, "Item - 2024.PH13.7" (2024) online: <https://perma.cc/2R35-UAKC> See also "Rental Renovation Licence By-law" online: *City of Toronto* <https://perma.cc/4M37-7BEU>
[44] *Ibid*.

One way to ensure the effectiveness of the *Rental Renovation Licence By-law* is to require landlords to provide tenants with the option to return to the rental unit at the same rate of rent prior to renovation.[45] However, demanding for such requirement seems not to be within the jurisdiction of the City Council as the requirement stands to invariably create landlord-tenant relationships which fall within the legislative purview of the provincial government of Ontario. Hence, there is need for a collaborative and coordinated engagement between the provincial and municipal authorities so as to ensure that all relevant housing rights frameworks are effectively tightened up to protect the housing rights of tenants through legislative initiatives in a way that complements the efforts of the government at the municipal level.[46] Thus, the government of Ontario is called upon to initiate the amendment of Ontario's RTA in this regard to reflect provisions that guard against abuse of tenancy agreements by landlords.[47]

The City Council understands the need for this and thus has requested Ontario's provincial government to amend Ontario's RTA (and also operationalize the *Helping Homebuyers, Protecting Tenants Act, 2023*) to, *inter-alia*, make provisions that require landlords of residential units to make arrangements for temporary accommodations and/or provide option to return to the rental units after renovation for tenants sought to be evicted on the grounds of intended renovation.[48] The provincial government is also asked to enable the jurisdiction of the municipality by amending Ontario's RTA to require landlords to obtain building permits from the City before issuing N13 notice of termination in furtherance of renovation plans.[49] These amendments are necessary to facilitate the efforts at the municipal level and would ensure better protection of tenants from the risks of unaffordable rental housing and bad faith evictions envisaged for the 2026 FWC in Toronto.

Furthermore, under the *Toronto Housing Charter – Opportunity for All*, all residents in the City of Toronto have a right to adequate housing which includes the elements of the right, especially as it relates to security of tenure, affordability, habitability, and accessibility.[50] Notwithstanding the desirability of having these elements in place, it seems not to be within the municipal powers

[45] *Ibid*.
[46] City of Toronto, "Item -2022.PH35.18" online: <https://perma.cc/GC9A-MY4Z>
[47] Toronto City Council, *supra* note 43.
[48] *Ibid*.
[49] *Ibid*.
[50] *Toronto Housing Charter – Opportunity for All*

of the City to make provisions in this regard. Hence, it is foreseeable that whatever ideal right to adequate housing the *Toronto Housing Charter* may wish to provide for would be susceptible to be challenged as being non-existent on the ground that the City has no jurisdiction to make determinations in that regard. At best, the City could liaise with the provincial government to introduce the ideal provisions of the *Toronto Housing Charter* into the human rights code of the province.[51]

In addition, there is the *HousingTO 2020-2030 Action Plan* which has six city action plans but none of them relates to how to effectively ensure the operationalization of the existing framework on the protection of tenants from the bad faith practices of financialized landlords. On security of tenure, of the six actions outlined, there is only one stand out provision that proactively seeks to "protect tenants in private rental buildings."[52] Thus, it requests for the establishment of a Tenant Advisory Council charged with the advisory and guidance responsibility towards the City, especially as it relates to how the council may take "...proactive actions to support residents living in vulnerable circumstances..." and also "protect and preserve multi-tenant dwelling homes including security of tenure for their tenants."[53] This appears to be in tandem with the need to proactively ensure that the 2026 FWC does not occasion bad faith evictions in the City of Toronto.

On the other hand, for Vancouver, there is a *Standards of Maintenance By-law*, the purpose of which, *inter-alia*, is to ensure that the standards of maintenance in certain designated buildings in the City of Vancouver (especially those under the occupancy of a resident) are safe in accordance with accepted safety requirements. The by-law imposes an obligation on the owner of such properties to carry out maintenance work, when required, in line with the stipulations of the by-law.[54] In relation to the maintenance of vacant land and buildings, the owner of the property is required to keep such land clean and free from wasteful dumps.[55] Similar maintenance requirements also exist with regards to structural conditions, foundations, exterior

[51] If this is achieved, then there would be the 'right to adequate housing' as a standalone right with well-defined elements as to its justiciability.
[52] *HousingTO 2020-2030 Action Plan,* at 67.
[53] *Ibid*.
[54] *Standards of Maintenance By-law*, s. 3.1
[55] *Ibid*, s. 4.1(1)

walls/doors/windows, and other matters necessary and incidental to the ownership of land/buildings.[56]

The by-law, with regards to its enforcement and stipulation of penalties, seems to have deterring provisions that are intended to get property owners to comply with its provisions.[57] However, there is a provision in the by-law that appears to be susceptible to abuse by property owners who could take advantage of the loophole to engage in unwholesome rental practices. Section 23.4 of the by-law provides that "no person shall use or occupy, or permit to be used or occupied, any premises which do not comply with the provisions of this By-law". Although this provision appears to be innocuous, it is however an open-ended provision that allows landlords to issue bad faith eviction notices to tenants on the basis that the by-law does not allow them to permit tenants' continued occupation of their rental units that are supposedly in need of 'maintenance'.

Rental units could thus be willfully neglected in a way that generates a need for repairs and grounds justification for eviction on the basis of maintenance, and for the purpose of the City of Vancouver hosting the 2026 FWC, it is envisaged that some financialized landlords could rely on this as a strategy to get rid of old tenants, readjust their rental units to the allowable standards of the by-law, and then lease them out, at high rates, to spectators coming into the City for the 2026 FWC games.

The City Building Inspector, under the provisions of the by-law, is also allowed to enter premises to carry out inspections in this regard to ensure that units are properly maintained,[58] and where such is below par, the City Council (where it is a dwelling unit) is allowed to give a grace period of 60 days before its order (that allows the City of Vancouver to carry out work in such premises at the expense of the owner) kicks in.[59] This is problematic and further facilitates the abuse alluded to earlier. 60 days is more than enough time for a landlord to allow the deterioration of a unit in a manner that forces renters out, after which the landlord would then engage in such maintenance work before the expiration of the grace period, or the landlord could start up work prior to the expiration of the time frame as an insincere way of forestalling the

[56] *Ibid*, ss. 5-19.
[57] *Ibid*, s. 23. For instance, violation of the by-law qualifies as an offence that subjects one to liability of "...a fine not less than $250.00 and not more than $50,000.00 for each day such offence continues." *ibid*, s. 23.7
[58] *Ibid*, s. 23.1
[59] *Ibid*, s. 23.8A

execution of the City order. It then becomes imperative that this gap is addressed by the City Council.

Furthermore, Single Residential Accommodations (SRAs) in Vancouver are usually the ones most susceptible to abuse through conversion of units for "higher income tourist use".[60] Vancouver's *Single Residential Accommodation By-law* is one designed to regulate the conversion or demolition of designated rooms within the scope of the by-law.[61] Hence, unless the City Council permits, no owner of a designated room is allowed to, *inter-alia*, alter the form, term, nature of occupancy or tenancy of a designated room for the purpose of changing such from a living accommodation under the occupation of long-term users of the room – "permanent residents", to one used by transient guests (or for any other purpose that takes away the occupation of such rooms from long-term users).[62]

The by-law has some deterring provisions that seek to discourage undue conversation/demolition of single room accommodations in Vancouver. For instance, to allow for the conversion of a designated room, the City Council could require the owner to locate "comparable or better accommodation at a comparable or lesser rent for the permanent resident of the designated room during the course of the repair or alteration".[63] The City Council could as well demand (as a condition for a conversion permit) that the owner arranges and pays for the relocation of the tenant.[64] The City Council could also extract commitment from the owner to provide the tenant with the preemptive right to return to the designated room after conversion.[65] The condition may be extended to require the owner to compensate tenants for the termination of their tenancy with the owner.[66] This would help reduce the number of evictions in this regard in relation to the anticipated 2026 FWC-induced demand for single room accommodations.

Again, notwithstanding that the provisions in this regard may raise issues of legislative jurisdiction, they are still laudable requirements that could serve as model provisions for other cities like the City of Toronto that may wish to discourage unwholesome practices by owners of

[60] Sophy Chan, *supra* note 18, *ibid* at 55.
[61] *Single Residential Accommodation By-law*, s.4.1
[62] *Ibid*, ss. 1.2, 4.1(b) & 4.1A.
[63] *Ibid*, s. 4.8(e)(i)
[64] *Ibid*, s. 4.8(e)(ii)
[65] *Ibid*, s. 4.8(e)(iii).
[66] *Ibid*, s. 4.8(i).

single room accommodations that may wish to use conversion or demolition of the property as an excuse to evict tenants, when in actual fact, they intend to do so for unwholesome profiteering purposes.[67] To address this potential issue of jurisdiction, there is need for collaboration between the provincial and municipal governments so as to ensure that these ideal provisions are effectively operationalized through provision in the right framework of the right legislative authority.

It is important to stress that there is a federal government 'Short-Term Rental Enforcement Fund' that seeks to provide "grant funding to municipalities and Indigenous communities with existing strict regulatory regimes to support the local enforcement of short-term rental restrictions in an effort to make more long-term housing units available in Canada".[68] This is designed to "support municipal and Indigenous community enforcement of existing restrictions on short-term rentals".[69] Thus, the City of Vancouver could leverage this to facilitate its enforcement of the *Single Residential Accommodation By-law.* Toronto ought to key into this too by enacting a similar by-law so as to be eligible to apply under the 'Short-Term Rental Enforcement Fund'.

4.3 Protection against Criminalization of Homelessness

Informal settlements - encampments - across various city sites in Canada have since being a reality associated with homelessness.[70] In other words, once there is any mention of homelessness, encampments usually come to mind. City responses to these encampments are most times largely punitive.[71] Thus, in recent years, municipal authorities have relied on restrictive provincial/municipal Acts/by-laws to criminalize different camping activities in public spaces - especially those typical of homeless people that set up shelters in city parks.[72] This is mostly done without regard to the housing rights of residents of encampments.[73]

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[67] It is important to note that the recently enacted bylaws in Toronto - *Toronto Municipal Code, c. 547, Licensing and Registration of Short-Term Rentals* and *Toronto Municipal Code, c. 575, Multi-Tenant Houses* - are not (for the purposes of the intended analysis here) considered to be similar to Vancouver's *Single Residential Accommodation By-law*. This is because they have no restrictive provisions on rental conversions and also appear to have no apparent protective provision against evictions without just cause - a significant theme of the thesis.
[68] Government of Canada, "Short-Term Rental Enforcement Fund", online: <https://perma.cc/WJ99-THBM>
[69] *Ibid*.
[70] Alexandra Flynn et al, *Overview of Encampments Across Canada: A Right to Housing Approach*, (Ottawa: Office of the Federal Housing Advocate, 2022) at 7.
[71] *Ibid* at 8.
[72] *Ibid*.
[73] *Ibid*.

Calls have been made for a human rights approach to homeless encampments, especially as it relates to decriminalization of homelessness.[74] Hence, the *National Protocol on Homeless Encampments in Canada* provides all levels of government in Canada with a framework that adopts a human rights approach in relation to encampment residents.[75] The government is reminded that it has a positive obligation to, *inter-alia*, "recognize residents of homeless encampments as rights holders", "prohibit forced evictions of homeless encampments", and "explore all viable alternatives to eviction".[76] This has been justified on the basis that "the right to housing is more than the right to a thing...[it is] also a right to be protected against the legal condition of homelessness and its ensuing unfreedom, subordination, and second-class citizenship".[77]

However, efforts towards the operationalization of the above protocol across various Canadian provinces and cities have not really been effective as expected.[78] Hence, homeless encampments have been plagued with legal issues emanating from the enforcement of provincial/municipal Acts/by-laws that appear to be prejudiced against the status of homelessness.[79] The municipalities of Toronto and Vancouver offer great contrasting examples here. Thus, whereas the City of Toronto "has refused calls to repeal or amend the bylaw prohibiting sheltering in parks to address the reality that many people have no option but to live in encampments…",[80] the City of Vancouver has an encampment exception for homeless people.[81] This section provides an analysis of selected provincial and municipal Acts and by-laws that are used to police the activities of the homeless, which most times violate and erode their housing rights.

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[74] *Ibid* at 13.
[75] Leilani Farha & Kaitlin Schwan, *A National Protocol for Homeless Encampments in Canada: A Human Rights Approach*, (United Nations, 2020) at 6.
[76] *Ibid* at 2-3.
[77] Terry Skolnik, "Homeless Encampments: A Philosophical Justification", (2023) 36 J L & Soc Pol'y 97 at 117.
[78] Alexandra Flynn et al, *supra* note 70, *ibid* at 14.
[79] The Office of the Federal Housing Advocate, *Upholding Dignity and Human Rights: The Federal Housing Advocate's Review of Homeless Encampments - Final Report*, (Ottawa: Office of the Federal Housing Advocate, 2024) at 7. See also Nikita Tafazoli, "Recovering from the Inequality Virus: Gimme Shelter or Protection from Discrimination for Lack Thereof", (2024) 19 Appeal 123 at 123-152.
[80] Kaitlin Schwan et al, *Case Study: Toronto - A Human Rights Analysis of Encampments in Canada*, (Ottawa: The Office of the Federal Housing Advocate, 2022) at 7.
[81] Alexandra Flynn, *Case Study: Vancouver - A Human Rights Analysis of Encampments in Canada*, (Ottawa: The Office of the Federal Housing Advocate, 2022) at 9.

A. Ontario and British Columbia

In Ontario, there is the *Safe Streets Act*[82] (Ontario's SSA), a provincial law that seeks to regulate, to an extent, certain social activities deemed to be undermining the safety of the public. It generally prohibits aggressive solicitation for funds in public,[83] and more specifically, other subtle acts of solicitation for funds from persons considered to be within the scope of a "captive audience".[84] Any person in violation of Ontario's SSA is liable to be punished, upon conviction, with a fine that ranges from CAD 500 to CAD 1,000, or to a term of imprisonment of not more than six months, or to both fine and term of imprisonment.[85]

Ontario's SSA may be categorized as an anti-vagrancy law that criminalizes homelessness and the state of being poor, as its provisions specifically target acts usually associated to poor and homeless people on the streets panhandling for their survival. Hence, there have been calls for Ontario's SSA to be repealed. For instance, in 2017, the Chief Commissioner of Ontario Human Rights Commission, in a letter to the Attorney General of Ontario, urged the government to repeal the Act on the basis of obvious concerns to the effect that the criminal provisions of the Act stigmatizes an already vulnerable group (the homeless) and stands as a barrier to any hope of them accessing secure housing in future, or even getting employed, as convicted persons under the Act are most likely to find it difficult to make the much needed transition out of the street due to the conviction status that clogs their chances of getting jobs and securing rental/social housing.[86]

These concerns were expressed before the Ontario Superior Court in *Fair Change v. His Majesty the King in Right of Ontario*.[87] The court, on a public interest standing application made by Fair Change, was called to nullify the provisions of sections 2, 3, and 5 of Ontario's SSA for being a contravention of the *Charter* as it, *inter-alia*, relates to presumption of innocence and freedom of expression. The court was thus tasked with determining whether or not these provisions of the Act are constitutional. It was found that the clause in the Act as it specifically relates to section

[82] *Safe Streets Act*, S.O. 1999, c. 8.
[83] *Ibid*, s. 2(2)
[84] *Ibid*, s. 3(2)
[85] *Ibid*, s. 5(1)(a)(b)
[86] "Repeal of Safe Streets Act, 1999: OHRC letter to Attorney General Naqvi" online: *Ontario Human Rights Commission* <https://perma.cc/88BR-LTJB>
[87] 2024 ONSC 1895.

2(3)5 (that makes it an offence for a person intoxicated by drugs or alcohol to solicit for money) violates the constitutional guarantee of the principle of presumption of innocence. The clauses in section 3(2)(a)(e) that prohibit solicitation from a captive audience were also found to be in breach of freedom of expression and, to that extent, the provisions were declared to be of no effect for being in contravention of this constitutionally guaranteed protections.

Although the above decision is still subject to an appeal, for the time being, it is a welcome development that is consistent with international calls for decriminalization of homelessness and the status of being poor. Hopefully it would further influence the operation of similar municipal by-laws across various cities in the province of Ontario, especially the City of Toronto where, as shown in chapter two, homeless people could be at risk of being swept off the streets through such laws as a result of the 2026 FWC slated to be held in the City.

In a similar vein, British Columbia also has a *Safe Streets Act* (B.C's SSA)[88] that prohibits public aggressive solicitation for money.[89] B.C's SSA shares almost identical provisions as the operative one in Ontario. Hence, it further prohibits solicitation for funds from captive audiences.[90] However, unlike the position in Ontario, it seems there is no penalty for such acts except for the provision that anyone engaging in such acts outside the permissible limits of B.C's SSA is deemed to have committed an offence and a peace officer may, without warrant of arrest, proceed to arrest such person.[91] This breeds uncertainty as to what the peace officers are expected to do with an offender under the Act after an arrest is made. A closer look at the case of *Myer Franks Agencies Ltd. v. Vancouver (City)*[92] may provide an expository guidance on this.

In *Myer Franks Agencies Ltd.*, an aggrieved company had, *inter-alia*, sought for an order of mandamus against the City of Vancouver, compelling the city to enforce the provisions of B.C's SSA in response to the labour exchange activities close to its premises that it deemed to constitute public nuisance. The court found that B.C's SSA did not apply to the facts of the case; however, the court did not turn its mind to the absence of punitive provisions in B.C's SSA, and this allowed a lacuna that could be leveraged by law enforcement to target vulnerable groups and

[88] *Safe Streets Act*, SBC 2004, c. 75.
[89] *Ibid*, s. 2.
[90] *Ibid*, s. 3.
[91] *Ibid*, s. 4(2)
[92] 2010 BCSC 1637.

have homeless people swept off the streets. This gap prompts the question, can law enforcement, without any penal provisions under the Act, merely effect arrests and not charge the offenders?

If the answer is yes, then it is not ideal as it may create an avenue for law enforcement to delve into arrests of supposed offenders without any penal section under which they could be charged. It is thus of great concern that the hidden objective of B.C's SSA could be to empower law enforcement with a tool to sweep homeless people off the streets. Hence, there is need for this issue to be immediately addressed by amending B.C's SSA in this regard to protect homeless people against the undesirable possibilities of the Act, and also by halting the operation of the Act during the 2026 FWC.

B. Toronto and Vancouver

To facilitate transition from reactive to proactive framework, the *HousingTO 2020-2030 Action Plan* outlines strategic actions needed to ensure that the housing needs of current and future residents of Toronto are met with the intended outcomes.[93] The plan advocates for a range of opportunities that, *inter-alia*, ensures: the prevention of homelessness through improvement of pathways to housing stability; affordability of rental housing units; and security of tenure for renters.[94] However, in relation to the prevention of homelessness, of all the nine future actions outlined in that regard, none relates to the decriminalization of homelessness, which invariably points to the fact that it may not be in the plans of the City of Toronto to ensure the protection of homeless people against punitive provisions that criminalize certain acts of survival associated to homelessness.

Furthermore, the past decade statistics in Canada show that an estimate of over 235,000 Canadians were homeless, with over 14 percent of that number reported to be homeless on a daily basis.[95] These vulnerable populations resorted to varying unavoidable conducts such as sheltering in municipal parks, panhandling, etc., as acts of necessity to ensure their survival. However, a good number of municipal by-laws across Canada usually prohibit such acts and categorize them as offences that attract administrative penalties.[96]

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[93] *HousingTO 2020-2030 Action Plan,* at 8.
[94] *Ibid* at 11.
[95] Pivot Legal Society, "Homeless Rights in Canada" (2016) online: <https://perma.cc/6MVL-8CV9> at 4.
[96] *Ibid*.

Under the *Toronto Municipal Code, c. 8, Parks* there are provisions that prohibit encampments in public parks. Thus, only those with city permits are allowed to "dwell, camp or lodge in a park" or "place, install, attach or erect a temporary or permanent tent, structure or shelter at, in or to a park".[97] It then becomes illegal for one to engage in any of these acts without permit, and where such is the case, the person in contravention of the by-law is deemed to be "...guilty of an offence or is liable to an administrative penalty punishable with a fine".[98]

These provisions appear to be targeted at homeless people. Hence, in *Black et al. v. City of Toronto*,[99] a motion from a group of people experiencing homelessness was brought before the court for an injunction to restrain the City from enforcing the provisions of the by-law during the COVID pandemic. The motion was, among other things, dismissed on the ground that "...parks are public resources, intended to be available and used by everyone", the purpose of which would be defeated by allowing for encampments. The dismissal was further substantiated with the reasoning that the City has taken steps towards ensuring the availability of shelters that complied with the safety protocols of the pandemic.

On the other hand, under Vancouver's *Park Control By-law*, there is a similar general prohibition on the setting up of encampments in public parks, and as such "no person shall erect, construct or build or cause to be erected, constructed or built in or on any park any tent, building, shelter, pavilion or other construction whatsoever without permission..."[100] However, this does not apply to anyone experiencing homelessness as such a person is allowed to set up a temporary shelter in a park as a place of abode provided it is done in accordance with the regulatory provisions of the by-law.[101] This was reiterated in *Bamberger v. Vancouver (Board of Parks and Recreation)*,[102] where (on the validity and enforceability of two City orders that mandated homeless campers to leave the park, and also limited the usage of the park for overnight sheltering) the court set aside city imposed orders against encampments, on the understanding that they had the effect of limiting homeless people in Vancouver from seeking shelter in public parks.

[97] *Toronto Municipal Code, c. 8, Parks*, ss. 608-13 and 608-14.
[98] *Ibid*, s. 608-54A&E.
[99] 2020 ONSC 6398
[100] *Park Control Bylaw,* s. 11.
[101] *Ibid*, s. 11A
[102] 2022 BCSC 49.

The ruling in *Bamberger* is in line with the jurisprudence across some cities in British Columbia where the courts have watered down the effects of such by-laws by upholding the right of the homeless people to the usage of such public spaces as a necessary act of survival tied to their constitutionally guaranteed right to life. For instance, two municipal by-laws in the cities of Victoria and Abbotsford (both in British Columbia) that sought to clamp down on the usage of public spaces by homeless people as shelter were held to be unconstitutional.

Thus, in *Victoria (City) v. Adams*,[103] homeless people had erected shelters in city parks.[104] The City of Victoria, on the basis of its anti-camping by-laws that prohibited the usage of public spaces in such manner, sought an eviction order from the court to facilitate the removal of the shelters. The argument of the homeless was that the unavailability of enough spaces to serve as adequate shelter for them, i.e. one that shields them from external life threatening elements, necessitated their use of public spaces as an act of survival. Hence, they argued the unconstitutionality of the anti-camping by-law as its prohibition of park camping had a direct impact on the constitutionally guaranteed right to life of homeless people. The court found in favour of the homeless, and they were thus allowed to set up tents at night in public parks, on the condition that they are taken down every morning. A similar decision was reached in *Abbotsford (City) v Shantz*,[105] where the court found an anti-camping by-law unconstitutional for its violation of the right to life, liberty, and security of homeless people.

Although the exemptive provisions of the by-law in Vancouver, the decision in *Bamberger*, and the jurisprudence across some cities in British Columbia may not offer a quick fix to the homelessness crisis, they, however, provide the much needed succor and beacon of hope to homeless people. This goes to show that having an accommodating framework that does not criminalize acts associated to homelessness is the foundation upon which other ameliorative measures could stand to address the plight of homeless people and possibly put an end to homelessness.

[103] 2009 BCCA 563; 2008 BCSC 1363.
[104] *Ibid*.
[105] 2015 BCSC 1909

It bothers the mind as to why the court in *Black et al* (during a pandemic) was not disposed to temporarily suspend the enforcement of the by-law. One then could almost predict the outcome should such a motion for injunction be sought under non-emergency short-term circumstances influenced by the socio-economic implications of hosting an MSE like the 2026 FWC. It is hoped that the provincial courts would be influenced by the jurisprudence in British Columbia on this and thus restrain the City of Toronto from enforcing the by-law as it has the ability to propel sweeps of homeless people that resort to living in parks during the course of the 2026 FWC. However, recent developments in Ontario in this regard suggest this hope may be hanging by the thread.

This is so because the status of the housing rights of encampments residents in Ontario has recently been largely uncertain in relation to the responses of the courts on the approach cities across the province are taking in this regard. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*[106] and *Heegsma v. Hamilton (City)*[107] illustrate this. In *The Regional Municipality of Waterloo*, following the settlement of homeless people within the region's property in the City of Kitchener, the region brought an application before the Ontario Superior Court of Justice (OSCJ), seeking a declaration that such encampments violate the *By-Law Respecting the Conduct of Persons Entering Upon Buildings, Grounds and Public Transportation Vehicles Owned or Occupied by the Region* (By-Law number 13-050) that, *inter-alia*, regulates the use and enjoyment of certain designated premises in the city by other persons.

The region also sought the court's direction on how it might go about enforcing its legal right to evict the encampment residents pursuant to *By-Law number 13-050* without being held to be in violation of the *Charter* rights of the encampment residents. The OSCJ, per Valente J, *inter-alia*, found that where there are no adequately safe alternatives for encampment residents, their eviction off public spaces would amount to a violation of their right to life, liberty, and security of person under section 7 of the *Charter*. Thus, for such intended eviction of the encampment residents at the region's property to be human rights compliant, city shelter spaces must be truly available with little or no barrier to accessing them by the homeless population.

[106] 2023 ONSC 670.
[107] 2024 ONSC 7154.

On the other hand, in *Heegsma*, a group of homeless people brought an application before the OSCJ seeking a declaration from the court to the effect that an enforcement of the City of Hamilton's Parks by-law against homeless encampment residents in public parks is in violation of their *Charter* rights. The OSCJ, per Ramsay J, was tasked with the responsibility of making findings in this regard. *The Regional Municipality of Waterloo* was presented to the court and it found that the 'no adequately safe alternatives' rationale of the decision in that case ought not to be used to deny enforcement of municipal by-laws against encampments in public spaces as "there is no logical connection between availability of shelter space and harm caused by eviction from encampments".[108] The court further found that the *Charter* rights of encampment residents are not at risk by virtue of such enforcements.[109]

The court also adapted to the Canadian context the recent decision of the US Supreme Court in *City of Grants Pass v. Johnson*,[110] and thus insisted that "we must not lose sight of the

[108] *Ibid*, para 75.
[109] *Ibid*, para 76.
[110] 603 US _ 144 S. Ct. 2202 (2024). The spirit of this decision appears to be roaming free and now seem to have possessed a Canadian court. In *City of Grants Pass*, following a municipal ordinance (the *Grants Pass Municipal Code*) that prohibits activities related to sleeping overnight in public parks or setting up encampments therein, a class action was filed (on behalf of homeless people in the City of Grants Pass) against the City, on the ground that the punitive provisions of the municipal code contravenes the constitutional guarantee of the Eight Amendment against "cruel and unusual punishment", and thus ought not to be enforced. At the District Court level, an injunction was issued barring the City of Grants Pass from enforcing the code against homeless people, as the circumstances show that the available shelter units/beds in the city are less than the number of homeless people in Grants Pass which make it impossible for all homeless people to utilize the shelters. The punitive provisions of the code were thus considered to be cruel and dispensing unusual punishment by criminalizing acts of survival of homeless people who resort to the use of public spaces to survive due to lack of alternative shelters. On appeal to the ninth circuit court, the central issue was hinged on "...whether municipalities can penalize individuals for residing outside when they lack alternative shelter". It was held that the punitive provisions of the code, in the absence of alternative shelters, were contrary to the Eight Amendment as it amounts to cruel and unusual punishment. On further appeal to the US Supreme Court, the *Amici Curiae* in the case, in support of homeless people, condemned such laws (like the Grants Pass municipal code) that "...force human beings to make a choice between keeping themselves alive through life-sustaining activities due to lack of available alternatives, or subjecting themselves to arrest or other punishment that becomes a slippery slope of escalating vulnerability." It was argued that the code was cruel and set out to unusually punish an already vulnerable group. Hence, the court was urged to hold that such provisions violate the Eighth amendment. On the other hand, the City of Grants Pass maintained that injunctions that restrain it and other cities from enforcing their municipal codes in this regard are inadvertently contributing to exacerbation of the homelessness crisis as such rulings prevent cities from trying out different strategies to curb their homelessness crisis. The US Supreme Court found in favour of the City, and gave an opinion to the effect that it is the right of city authorities to "...experiment with one set of approaches [and later find out] another set [that] works better; they may find certain responses more appropriate for some communities than others", and as such, the courts should not concern themselves with "the collective wisdom the American people possess in deciding "how best to handle" a pressing social question like homelessness". In other words, the court found that the enforcement of the municipal code on the regulation of the activities of homeless people on the use of public spaces does not constitute "cruel and unusual punishment" prohibited under the Eighth Amendment. This is a radical departure from the judicial state of affairs in the US. Prior to this case, the courts in the US were averse to similar municipal codes that criminalized

countervailing interest of preserving public parks".[111] The City's compromise to allow for night encampments further propelled the court to find that the City ought to be allowed enforcement against daytime encampments. Accordingly, the balance of convenience ought to be in favour of the City in this instance regardless of the harm it occasions on encampment residents.

The OSCJ has shown in *Black et al*, *The Regional Municipality of Waterloo*, and *Heegsma* that its position is rather volatile and thus susceptible to change. This seems to have created uncertainty at the provincial level and across other municipalities as to what might be the right way to go about enforcing anti-encampment by-laws. Hence, there is recent debate as to whether the notwithstanding clause in the constitution could be leveraged to facilitate the enforcement of anti-encampment by-laws regardless of the findings of the courts. Some mayors across different municipalities in Ontario have called on the Premier of Ontario to use to clause to nullify the effects of future decisions similar to *The Regional Municipality of Waterloo* that prevent cities from evicting encampment residents. The Premier now appears to be keen on this approach.[112]

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activities that were stereotypical of homeless people. For instance, a *Los Angeles Municipal Code* (LAMC) that prohibited (in section 85.02) residents from living in their vehicles, had its constitutionality successfully challenged in *Desertrain v. City of L.A*, 754 F.3d 1147, 1150-1152 (9th Cir. 2014). In that case, Steve Jacobs-Elstein (a law-abiding resident of Los Angeles with no criminal record) used to own a home and a company that sustained his living; however, following an economic crash, he lost his source of earning and livelihood, and thus could no longer afford shelter as a necessity of life. He resorted to living in his car, and during that period, fell into depression. While still dealing with this, he got arrested for using his vehicle as living quarters. He challenged the constitutional validity of the provisions of section 85.02 of the LAMC, and the court found in his favour, holding the provisions to be unconstitutional. Similarly, the provision of the LAMC (section 56.11) that prohibits leaving of personal properties unattended to in public spaces was challenged for being in violation of the Fourth Amendment rights. Hence, in *Lavan v. City of L.A*, 693 F.3d 1022, 1024 (9th Cir. 2012), the court watered down the regulatory authority of the City of Los Angeles with regards to how it could regulate public activities pursuant to the provisions of the LAMC. The court held that the City's immediate seizure and destruction of the properties of a group of homeless people was unreasonable and amounted to a violation of their Fourth Amendment rights. Also, a *New York State Penal Law* (*New York State Penal Law (McKinney 1989)*, s. 240.35(1)) that makes it an offence for one to loiter, remain, or wander in public spaces for the purpose of begging, was challenged on the basis of its infringement of the First Amendment. See *Loper v. New York City Police Department*, 999 F.2d 699 (2d Cir. 1993). Relatedly, the *Las Vegas, Nev., City Code*, Tit. VI, Ch. 1, s. 11, that provides that "persons within the limits of the City who have the physical ability to work, not having visible means of support, living idly, or who are found loitering or loafing about the streets…or public spaces of the City…shall be deemed disorderly persons and shall be guilty of a misdemeanor" was, in *Parker v. Municipal. Judge of Las Vegas*, 427 P.2d 642 (1967) successfully challenged and found to be unconstitutional for criminalizing the status of poverty. All these cases, including the decisions of the lower courts in *City of Grants Pass*, go to show that US courts understood the need to protect against criminalization of homelessness prior to the rather surprising decision of the Supreme Court in *City of Grants Pass.* Thus, the court in *Heegsma* ought to have considered these cases for an enhanced perspective before relying on *City of Grants Pass* as a persuasive authority.

[111] *Heegsma v. Hamilton (City)* 2024 ONSC 7154, para. 77.

[112] Desmond Brown, "Why Cambridge's mayor wants Ford to use notwithstanding clause for encampment action" (2024) online: *CBC News* <https://perma.cc/6XVE-RF66>

It is interesting to note that the Mayor of the City of Toronto appears not to be in support of using the notwithstanding clause as a way to facilitate encampment evictions as she sees such as not being the much needed solution to address the housing crisis that occasions such encampments.[113] Thus, while accepting that "we don't need to clog up our courts to deal with encampments", she emphasized that "the notwithstanding clause is not a solution for our housing crisis...the solution is housing. It does not matter if you have the ability to remove people if they have nowhere to go".[114] This is quite encouraging to an extent, considering that the City of Toronto is a host city for 2026 FWC and thus it would have been worrisome where the mayor is inclined to the 'notwithstanding clause' approach that has the potential of criminalizing homelessness which is a housing rights concern identified by this thesis. However, should such an approach be adopted, can it really be used to undermine housing rights?

Section 33 of the *Charter* allows the legislative body of a province to make an express declaration in its Act that enables the operation of a legislative provision contrary to whatever the interpretation of the courts may be in relation to *Charter* rights and freedoms guaranteed under section 2 and sections 7 to 15 of the *Charter*. In other words, "...it allows a legislature to determine that a law will continue to have full force and effect notwithstanding that it may infringe fundamental, legal, or equality rights...[and]...it removes from the judiciary the balancing task involved in determining whether a legislated limit on a guaranteed right or freedom is reasonable, giving the final word on that to the legislature".[115] Dwight Newman describes this provision of the *Charter* as a historic compromise during Canada's constitutional development that is largely intended to facilitate democratic decision-making in Canada.[116]

Accordingly, the clause "maintains a much more complex scheme that sees both courts and parliaments engaging in interpretation of rights, with democratic electors serving as an ultimate check on the system and thus maintaining a democratic legitimacy and democratic responsibility

[113] Laura Sebben, "'Enough is enough': Doug Ford says municipalities will be given 'enhanced tools' to respond to encampments" (2024) online: *CTV News* < https://perma.cc/J7K6-FDUL>
[114] *Ibid*.
[115] Gregory Bordan, "Are There Constitutional Limits on the Use of the Notwithstanding Clause?", in Peter Biro, ed., *The Notwithstanding Clause and the Canadian Charter Rights, Reforms, and Controversies*, (Montréal: McGill-Queen's University Press, 2024) at 320.
[116] Dwight Newman, "Key Foundations for the Notwithstanding Clause in Institutional Capacities, Democratic Participatory Values, and Dimensions of Canadian Identities", in Peter Biro, ed., *The Notwithstanding Clause and the Canadian Charter Rights, Reforms, and Controversies*, (Montréal: McGill-Queen's University Press, 2024) at 79.

on the entire system".[117] The implication of this, which is rather problematic and raises serious human rights concerns, is that where this becomes a legislative routine, it undermines the courts and makes the legislature the sole and final interpreter of rights in such instances as recourse to the courts becomes limited.[118] The question then becomes, are there reasonable limits to the use and operation of the clause? Following the reluctance of the Supreme Court of Canada in *Ford v. Quebec (Attorney General)*[119] to read restrictive requirements into the notwithstanding clause, technical and normative scholarly debates surround the issue of whether or not constitutional limits should be read into the clause.[120] The intention here is not to get entangled in these debates but to rely on Gregory Bordan's theory of broader *Charter* rights protection to propose that the notwithstanding clause ought not to be leveraged to undermine housing rights in Canada.[121]

Bordan posits that where the legislature adopts the notwithstanding clause and uses it to nullify *Charter* rights in a way that the rights have no justiciable operative function, the primary purpose of the *Charter* which is to guarantee the protection of these rights should be used to limit the operation of the clause.[122] He explains that the *Charter* is designed to facilitate the protection of *Charter* rights and as such section 33 of the *Charter* ought not to be interpreted in a way that contradicts the essence of the *Charter*.[123] Thus, "...it should be outside the power of a legislature to use section 33 to enact and enforce a law whose very purpose or object is incompatible with a liberal, democratic society respectful of the entrenched rights and freedoms".[124] In other words, section 33 of the *Charter* permits the use of the notwithstanding clause only when such is within the context of broader *Charter* rights protection, and as such, its use is not intended for the purpose of undermining *Charter* rights. Hence, where the notwithstanding clause is used for a purpose that violates *Charter* rights, it ought not to be precluded from the possibility of judicial scrutiny and nullification.

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[117] *Ibid* at 80.
[118] *Ibid*.
[119] [1988] 2 SCR 712.
[120] See Kristopher Kinsinger, "The Evolving Debate over Section 33 of the Charter", in Peter Biro, ed., *The Notwithstanding Clause and the Canadian Charter Rights, Reforms, and Controversies*, (Montréal: McGill-Queen's University Press, 2024)
[121] Gregory Bordan, *supra* note 115, *ibid* at 316.
[122] *Ibid* at 322.
[123] *Ibid*.
[124] *Ibid*.

The thesis proposes that Bordan's theory above should extend to rights guaranteed under international human rights treaties that Canada has validly expressed consent to be bound by (whether or not they are domesticated as part of the *Charter*) and also to rights currently (and subsequently) protected under the human rights Codes/Acts of provinces and territories across Canada. Thus, the notwithstanding clause ought not to be used to undermine rights in these frameworks but should rather be used to protect them within a broader rights protection system. Where this happens, the legislature would then not be able to leverage the clause in violation of housing rights.

4.4 Conclusion

This chapter provides an analysis of the relevant provisions of the housing rights frameworks in the host provinces/cities of Ontario/Toronto and British Columbia/Vancouver. It appears the laws in this regard are not entirely effective in protecting the housing rights of residents. The loopholes in the frameworks in the province of Ontario and the City of Toronto, to an extent, demand urgent legislative attention so as to effectively protect the housing rights of residents within the province and the city. However, for this to be achieved, collaboration between the different levels of government is essential due to the lapses in jurisdictional authority that may frustrate efforts towards realization of the tenets of the right. This would obviously help address the housing rights concerns for the 2026 FWC. Relatedly, the province of British Columbia and the City of Vancouver have frameworks similar to those of Ontario and Toronto, and thus seem to share same experiences with them. However, with regards to the treatment of homeless people, the provisions in British Columbia and Vancouver, and the judicial attitude towards the homeless, appear to be forward-looking and thus Ontario and Toronto could draw lessons from that.

CHAPTER FIVE
RECOMMENDATIONS

5.1 Summary of Findings

The core question of this thesis is whether or not the hosting of the 2026 FWC in Canada obliges the government to immediately initiate appropriate legislative measures that address the anticipated impacts of the event on the right to adequate housing in Canada. This led to three other specific questions: (1) What are the risks to housing rights that may be occasioned by the hosting of the 2026 FWC in Canada?; (2) Is there an immediate state obligation to protect against the violation of housing rights in Canada within the context of the 2026 FWC?; (3) How effective are the existing legal frameworks in Canada towards protecting against the envisaged housing rights risks of the 2026 FWC? Chapters two to four of this thesis respectively researched these sub-questions.

First, chapter two investigated the research question on the anticipated risks to housing rights most likely to be associated with the hosting of the 2026 FWC in Toronto and Vancouver. Using the Olympics as a reference point towards generally determining the adverse housing rights impacts of MSEs, the thesis discovered that the host cities of some past Olympic events suffered from housing rights risks with regards to unaffordability of rental housing for low-income renters, evictions without just cause, and sweeps of homeless people off the streets through criminalization of homelessness. These findings necessitated concerns for the host cities of Toronto and Vancouver where there is a trend of financialization of the rental housing market - a factor that appears to facilitate housing rights risks similar to those of past Olympic events.

Second, to address the research question on state obligation to protect against the violation of housing rights in Canada within the context of the 2026 FWC, Chapter three examined and discussed Canada's obligations and commitments under international human rights treaties (with focus on the ICESCR) and FIFA human rights initiatives. It argued that all levels of government in Canada have an immediate housing rights obligation under the ICESCR that is yet to be effectively operationalized in Canada, especially in the light of the *NHS Act* and the decision in *Tanudjaja* not being helpful in that regard, which necessitates the need to respectively constitutionalize and codify this obligation and the elements of the right to adequate housing under the *Charter* and provincial/territorial human rights Codes/Acts.

The chapter further posited that FIFA's human rights initiatives and host nation/city agreements with Canada provide a framework for immediate fulfillment of Canada's housing rights obligations within the context of the 2026 FWC, and Canada should leverage them to fulfill its ICESCR housing rights obligations in a way that sets positive precedent for future FWC events by effectively protecting against the envisaged housing rights concerns of the 2026 FWC in Toronto and Vancouver.

Finally, to ascertain how effective the existing housing rights frameworks in Ontario/Toronto and British Columbia/Vancouver are, especially as it relates to protecting against the envisaged housing rights risks of the 2026 FWC, Chapter four provided an analysis of the provincial and municipal housing rights frameworks. Following the analysis of the relevant provisions of these frameworks, the chapter identified the existence of legislative gaps that are susceptible to exploitation by financialized landlords, with the finding to the effect that the operational efficacy of some of these laws is not ideal for the purpose of effectively protecting against the anticipated housing rights risks associated with hosting of the 2026 FWC in Toronto and Vancouver.

5.2 Recommendations

The housing rights impacts of MSEs on tenants depend on the existing legal framework in place that guarantees the protection of housing rights of residents. States sometimes are not aware of their shortcomings in the fulfillment of their housing rights obligations, and this affects their responses towards these housing rights concerns. Hence, this thesis serves as an advocacy tool to push for the implementation of the recommendations in this section to aid the relevant levels of government in Canada in effectively regulating the housing rights implications of hosting the 2026 FWC in Toronto and Vancouver.

The focus then turns to how residents in the host cities of Toronto and Vancouver could be protected from the envisaged housing rights risks of the 2026 FWC. This section recommends how the state could effectively address some of these in ways that mitigate or entirely eliminate the housing rights risks of the 2026 FWC. In essence, this section makes suggestions on how the housing rights frameworks could be enhanced through fundamental tenant protection initiatives that would stop, ameliorate, and if possible, completely obliterate the negative impacts of financialization of rental housing in Ontario/Toronto and British Columbia/Vancouver.

A. Protection against Unaffordability of Rental Housing and Bad Faith Evictions

1. As suggested in chapter four, introduce a percentage cap (to be determined by economic experts) under optional temporary rent control programs specifically designed for the host cities of Toronto and Vancouver. These rent control programs are to offer participating landlords tax returns at a fixed percentage (to be determined by economic and tax experts) slightly above the percentage cap under the optional temporary rent control programs. This would incentivize landlords to sign up under these programs knowing that they would get back, in tax returns, more money than whatever amount they had foregone under the rent control programs. Thus, the government indirectly gets to bear the associated costs but invariably ends up fulfilling its obligation to protect against the envisaged risk of unaffordability of rental housing units.

For non-participating landlords, introduce a tax program that monitors the rental units of these landlords and disincentivize their economic desire to exploit the surge in demand amid the 2026 FWC by introducing a special temporary tax regime that specifically targets all income accruing to the rental units of such landlords. The taxable income under the tax program should be any profit accruing to the rental units that is independently determined to be above what is expected as increase in rent for rental units reasonably operating at the frequency of an average housing market in Canada not influenced by the surge in demand occasioned by the 2026 FWC. Funds realized from these landlords should be applied towards offsetting the associated costs borne by the government for landlords participating under the optional rent control programs.

2. Revisit the RTA in Ontario and amend the provisions that permit increase in rent above the guidelines (on grounds of capital expenditure for repairs/renovations) in a way that guards against landlords that engage in purposeful maintenance neglect so as to have cause to engage in such repairs/renovations which then provides justification for hike in rent above the guidelines. Similar lapses exist in B.C's RTA, and this recommendation made in relation to Ontario's RTA would come in handy in British Columbia, while helping to protect against the anticipated housing rights risks of the 2026 FWC in both Toronto and Vancouver.

3. In the City of Vancouver, there is a *Single Residential Accommodation By-law* that guards against bad faith eviction of long-term tenants under the guise of conversion or demolition by landlords who hope to replace such tenants with high-rent paying short-term transient tenants. This is a framework that would most likely be effective in addressing the possibility of owners of single room accommodations evicting their tenants during the course of the 2026 FWC in hope of replacing them with soccer spectators that are willing to pay more for their units.

However, with regards to some of the deterring provisions of the by-law, provisions such as asking landlords (as a condition precedent to the approval of their permit to convert or demolish their units) to provide tenants with the option to return to their units at same rent after the conversion or demolition, would create a landlord-tenant relationship that falls under the legislative purview of the province. Thus, for there to be no issue of lack of legislative subject matter jurisdiction, there is need for collaboration in this regard between the provincial and municipal governments for an effective protection of single room residents within the context of the 2026 FWC.

It appears there is no express by-law on this in the City of Toronto, and thus, the City of Toronto should work towards enacting such by-law that protects single room renters from bad faith conversions/demolitions. At best, there is the City of Toronto's *Residential and Rental Property Demolition and Conversion Control By-law*, which, like the provisions of the *Single Residential Accommodation By-law* in Vancouver, guards against bad faith evictions under the guise of conversion or demolition of rental units. However, there is still need for the scope of the by-law to be extended by removing the limit of the by-law which makes it apply to just residential rental properties with a minimum of six dwelling units. Thus, the provisions of the by-law should be amended to apply to landlords whose residential rental properties have less than six dwelling units. This would make the by-law all encompassing and thus prevent the dwelling units not currently covered by the by-law from being subjected to exploitation by financialized landlords who may, in bad faith, leverage the lapse to evict tenants for increased rent under the guise of wanting to alter their dwelling units.

4. The newly adopted *Rental Renovation Licence By-law* in Toronto appears to have taken the above concern into cognizance as it covers all rental units in Toronto, except where such units are exempted. Furthermore, while it is recommended that the *Rental Renovation Licence By-law* could be better operationalized by requiring landlords to provide tenants with the option to return to the rental unit at the same rate of rent prior to renovation, there is still need for the provincial and municipal governments of Ontario and Toronto to collaborate in this regard for an effective operation of this recommendation without issues of subject matter jurisdiction. This ensures that the housing rights framework in this instance is effectively tightened up to protect the housing rights of tenants. This is crucial for the ultimate protection of renters from the envisaged housing rights risks of the 2026 FWC in Toronto.

5. To the effect that it requires landlords not to allow continued occupation or use of their premises where their property is not in compliance with maintenance standards, Vancouver's *Standards of Maintenance By-law* facilitates purposeful neglect of maintenance requests whereby landlords intentionally leave their rental units to fall into deplorable states so as to have justification to evict tenants under the guise of not wanting to have their rental units occupied in such conditions that are below the by-law's standards, and then go on to achieve their ulterior motive of hiking the rent of their units after renovation.

Thus, the by-law should be reviewed so as to protect against landlords using this provision of the by-law as part of their unscrupulous strategy to get rid of their low-income tenants, and replace them with high-rent paying renters anticipated to come into the City for the 2026 FWC. Relatedly, the City of Vancouver should consider removing the grace period of 60 days before an order of the City to go in and clean up rental units could take effect. This is so because, 60 days is more than enough time for some landlords to start false work on their units just to forestall the operation of the order before proceeding to frustrate tenants out through purposeful neglect.

B. Protection against Criminalization of Homelessness

1. The Government of Ontario should show commitment towards the decriminalization of homelessness, and with the court decision in *Fair Change* holding some provisions of Ontario's SSA to be contrary to the *Charter* for criminalizing certain acts associated with the status of being poor and homeless, the government is advised to not appeal against the court's decision, and should rather leverage it to encourage its municipalities (the City of Toronto in this instance) to decriminalize acts usually associated with homeless people. This would go a long way in ensuring the prevention of the envisaged 2026 FWC-induced sweeps of homeless people.

For BC's SSA that shares similar provisions with those of Ontario's SSA, it is worrisome that the Act has no punitive section under which violators of the Act may be charged. Thus, law enforcement, acting under the provisions of the Act that empowers it to arrest without warrant, could use this as a means of clearing homeless people off the streets, without charging them to court, but rather leveraging the Act to sweep them off the streets. The Government of British Columbia should immediately address this by halting the operationalization of the Act before going on to integrate provisions into the Act that protect homeless people from such possibilities of getting swept off the street.

2. The City of Toronto should endeavour to correct the notion of its seemingly unwilling stance to decriminalize homelessness by revisiting its outlined future actions under the *HousingTO 2020-2030 Action Plan*. Hence, the action plan should reflect the willingness of the municipality to facilitate the protection of homeless people by showing commitment towards ensuring that they are not unduly penalized for acts usually associated with their status.

3. In relation to the *Toronto Municipal Code, c.8, parks* that penalizes encampments in city parks and other public spaces, there is need to create exceptions for homeless people. This is so because the *Park Control By-law* in Vancouver (with similar penal provisions like the parks by-law in Toronto) provides an exception for those experiencing homelessness. Thus, where done in compliance with the provisions of the by-law, homeless people are allowed to erect tents in public parks in Vancouver and not be penalized for it. This stance was reiterated by the court in *Bamberger* which shows the commitment of the City of Vancouver and the provincial court to promote decriminalization of acts usually associated to homelessness.

This also reassures the homeless that the possibility of them getting cleared off public parks for the purposes of the 2026 FWC is almost non-existent in Vancouver. Thus, Toronto's public parks by-law should be reviewed and re-couched in a manner that is more accommodating of the plight of homeless people and their unavoidable acts of survival that include encampments in public parks. The City of Toronto should take cues from the approach adopted by the City of Vancouver in this regard. Also, the courts in Ontario should look towards taking away lessons from the judicial decisions of the courts in British Columbia as it relates to their approach towards decriminalization of homelessness so as to avoid an unrestrained application of these punitive measures that would most likely result in homeless people being swept off the streets for the purpose of projecting a city devoid of "undesirable" populations during the 2026 FWC in Toronto.

4. The host cities of Toronto and Vancouver should consider adopting measures similar to City of Sydney's *Homeless Protocol* and *Operation Safe Haven* that, among other things, made hotlines available for reporting police harassment of homeless people in Sydney during the 2000 Olympics. The practical cumulative effect of these measures adopted at the 2000 Olympics in Sydney was that homeless people in Sydney were not prejudicially targeted, neither were they chased off the Olympic sites through criminalization of their status. The situation of homeless people in Toronto and Vancouver will thus not be negatively impacted by the 2026 FWC should these initiatives be developed and operationalized as soon as possible.

5.3 The Way Forward

This thesis is not intended as a holistic fix for the entirety of the housing rights problems in Canada, but only as an advocacy tool to further the legal protection of renters and the homeless from any adverse impacts on housing that could be occasioned by the hosting of the 2026 FWC in Canada. Thus, the above recommendations may be likened to fixing an offshore leaking old boat that requires urgent replacement (so as to avoid losing lives on board) pending the arrival of a brand new one that guarantees the safety of all. The brand new boat in this context that guarantees the right to adequate housing for all in Canada is the constitutionalization of the state obligation in this regard and the codification of the elements of the right to adequate housing in provincial/territorial human rights Codes/Acts in Canada.

This proposal is, however, intended as a long-term response because it is unrealistic for the associated constitutional/legislative amendment processes involved to happen within the short space of time before the 2026 FWC. Thus, considering the intricacies of engaging in nationwide consultations before Canada's constitution could be validly amended, it is not feasible that such an amendment could be done in time to have any effect for the purposes of the 2026 FWC,[1] but the thesis nevertheless creates awareness in this regard for more guaranteed protection which serves as a point of departure for further related research on the need to constitutionalize the state obligation to protect housing rights in Canada, and for codification of the elements of the right into various provincial/territorial human rights Codes/Acts for long-term purpose of adequately guarding against the violation of housing rights in Canada beyond the 2026 FWC.

[1] See Emmett Macfarlane, ed, *Constitutional Amendment in Canada* (Toronto: University of Toronto Press, 2016).

BIBILIOGRAPHY

Legislation

Assistance to Shelter Act SBC 2009, c. 32.
Constitution of the Republic of South Africa, No. 108 (1996); Government Gazette, 378 (17678).
Helping Homebuyers, Protecting Tenants Act, S.O. 2023, c. 10.
Housing Is a Human Right Act of 2023, H.R.1708.
Las Vegas, Nev., City Code, Tit. VI, Ch. 1.
Los Angeles Municipal Code
National Housing Strategy Act, S.C. 2019, c. 29, s.313.
New York State Penal Law (McKinney 1989)
Park Control By-law, City of Vancouver.
Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11.
Physical Activity and Sport Act, 2003, S.C., c.2.
Rental Renovation Licence By-law, City of Toronto.
Residential and Rental Property Demolition and Conversion Control By-law, City of Toronto.
Residential Tenancies Act 2006, S.O. 2006, c. 17.
Residential Tenancies Act SBS 2002, c. 78.
Safe Streets Act S.O. 1999, c. 8.
Safe Streets Act, SBC 2004, c. 75.
Single Residential Accommodation By-law, City of Vancouver.
Standards of Maintenance By-law, City of Vancouver.
Toronto Municipal Code, c. 8
Trespass Act, RSBC 2018, c.3.

Jurisprudence

Abbotsford (City) v Shantz 2015 BCSC 1909.
Baker v. Canada (1999) 2 S.C.R.
Bamberger v. Vancouver (Board of Parks and Recreation) 2022 BCSC 49.
Black et al. v. City of Toronto 2020 ONSC 6398.
City of Grant's Pass v. Johnson, 603 US _ 144 S. Ct. 2202 (2024)
Desertrain v. City of L.A, 754 F.3d 1147
Fair Change v. His Majesty the King in Right of Ontario 2024 ONSC 1895.
Falcons Soccer Inc. v. Saskatchewan Soccer Association Incorporated (2017) SDRCC 17-0333)
Federation Internationale de Football v. Association (FIFA) v. BZ (2024) Case C-650/22.
Football Union of Russia v. FIFA et al CAS 2022/A/8709.
Ford v. Quebec (Attorney General), [1988] 2 SCR 712.
Guzzardi v. Italy, European Commission on Human Rights Application No. 7367/76. Report of December 7, 1978.
Heegsma v. Hamilton (City) 2024 ONSC 7154.
James and others v. U.K (1986) 98 Eur. Ct. H.R. (Ser. A).
Lavan v. City of L.A, 693 F.3d 1022, 1024 (9th Cir. 2012)
Loper v. New York City Police Department, 999 F.2d 699 (2d Cir. 1993)
Martin v. International Olympic Committee, (1984) 740 F.2d 670 at 677 (9th Cir.).
Mason v. Canada (Citizenship and Immigration), 2023 SCC 21
McKinney v. University of Guelph (1990) S.C.J. No. 123.

Mellacher and others v. Austria (1989) 169 Eur. Ct. H.R. (Ser. A).
Ministry of Health v. Treatment Action Campaign Case CCT 8/02, 2002(5) SALR (S Africa Const. Ct.).
Myer Franks Agencies Ltd. v. Vancouver (City) 2010 BCSC 1637.
Parker v. Municipal. Judge of Las Vegas, 427 P.2d 642 (1967)
Pushpanathan v. Canada (1998) 1 S.C.R. 982
R v Johnston 2006 BCSC 1592
R v. Prosper 1994 3 SCR 236, 118 DLR (4th) 154.
Re section 94(2) of the Motor Vehicles Act, [1985] 2 SCR 486
Reference re Public Service Employee Relations Act (Alta.) [1987] 1 SCR 313
Republic of South Africa v. Grootboom (2000) 11 BCLR 1169 (CC)(S.Aft.).
Reynolds v. International Amateur Athletic Federation, (1994) 23 F.3d 1110 (6th Cir.).
Sagen v. Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games, 2009 BCSC 942.
Saskatchewan Cricket Association (SCA) v. Cricket Canada (2017) SDRCC 17-0318.
Suresh v Canada (Minister of Citizenship and Immigration) [2002] 1 SCR 3
Sushil Kumar v. Union of India and Ors (230 (2016) DLT 427).
Tanudjaja v Canada (AG) 2013 ONSC 5410; Court File No. CV-10-403688; 2014 ONCA 852; 2015 SCCA No 39 (SCC).
The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained, 2023 ONSC 670.
Union Royale Belge des Societes de Football Association v. Bosman (1996) 1 C.M.L.R. 645 (E.C.J.).
Victoria (City) v. Adams 2009 BCCA 563; 2008 BCSC 1363.
Walrave and Koch v. Association Union Cycliste Internationale (1974) (Case 36/74 E.C.R. 1405).
Wemhoff v. Germany (1968), 7-1 Eur. Ct. H.R. (Ser.A).
Zee Telefilms Ltd. v. Union of India (AIR 2005 SC 2677).

Secondary Material: Monographs

Alston, Philip & Gerard Quinn, "The Nature and Scope of State Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights", in Manisuli Ssenyonjo, ed, *Economic, Social and Cultural Rights* (Surrey: Ashgate Publishing Ltd., 2011).

Anderson, Jack, *Modern Sports Law: A Textbook* (Oxford: Hart Publishing Ltd., 2010).

Ault, Richard, "The Presumed Advantages and Real Disadvantages of Rent Control", in Walter Block & Edgar Olsen, eds, *Rent Control Myths & Realities: International Evidence of the Effects of Rent Control in Six Countries* (Vancouver: The Fraser Institute, 1981).

Barnes, John, *The Law of Hockey* (Markham: LexisNexis Canada Inc., 2010).

Beloff, Michael et al, *Sports Law*, 2nd ed (Oxford: Hart Publishing Ltd., 2012).

Block, Walter, "Postscript: A Reply to the Critics", in Walter Block & Edgar Olsen, eds, *Rent Control Myths & Realities: International Evidence of the Effects of Rent Control in Six Countries* (Vancouver: The Fraser Institute, 1981).

Bordan, Gregory, "Are There Constitutional Limits on the Use of the Notwithstanding Clause?", in Peter Biro, ed, *The Notwithstanding Clause and the Canadian Charter Rights, Reforms, and Controversies*, (Montréal: McGill-Queen's University Press, 2024)

Brownlie, Ian, *Principles of Public International Law*, 4th ed (New York: Oxford University Press, 1990).
Chappelet, Jean-Loup, *Autonomy of sport in Europe* (Strasbourg: Council of Europe Publishing, 2010).
Crawford, James, *Brownlie's Principles of Public International Law*, 9th ed (New York: Oxford University Press, 2022).
De Schutter, Oliver, *International Human Rights Law: Cases, Materials, Commentary*, 3rd ed (Cambridge: Cambridge University Press, 2019).
Dienstfrey, Ted, "The Politics of Rent Control in the United States: A Program at the Yellow Light", in Walter Block & Edgar Olsen, eds, *Rent Control Myths & Realities: International Evidence of the Effects of Rent Control in Six Countries* (Vancouver: The Fraser Institute, 1981).
Feldman, Richard, *Residential Tenancies*, 11th ed (Toronto: Thomson Reuters Canada Ltd., 2018).
Fitzmaurice, Malgosia, "The Practical Working of the Law of Treaties" in Malcolm Evans, ed, *International Law*, 3rd ed (New York: Oxford University Press, 2010).
Gardiner, Simon, *Sports Law*, 4th ed (New York: Routledge, 2012).
Kelsen, Hans, *Pure Theory of Law*, 125-126 (M. Knight trans. 1967).
Kinsinger, Kristopher, "The Evolving Debate over Section 33 of the Charter", in Peter Biro, ed, *The Notwithstanding Clause and the Canadian Charter Rights, Reforms, and Controversies*, (Montréal: McGill-Queen's University Press, 2024)
Kitching, James, "International Federations", in Nick De Marco, ed, *Football and the Law*, 2nd ed (London: Bloomsbury Publishing Plc, 2022).
Macfarlane, Emmett, ed, *Constitutional Amendment in Canada* (Toronto: University of Toronto Press, 2016).
Newman, Dwight, "Key Foundations for the Notwithstanding Clause in Institutional Capacities, Democratic Participatory Values, and Dimensions of Canadian Identities", in Peter Biro, ed, *The Notwithstanding Clause and the Canadian Charter Rights, Reforms, and Controversies*, (Montréal: McGill-Queen's University Press, 2024)
Olsen, Edgar, "Alternatives", in Walter Block & Edgar Olsen, eds, *Rent Control Myths & Realities: International Evidence of the Effects of Rent Control in Six Countries* (Vancouver: The Fraser Institute, 1981).
Ratner, Steven, "Corporations and Human Rights: A Theory for Legal Responsibility" in David Kinley, ed, *Human Rights and Corporations* (Surrey: Ashgate Publishing Ltd., 2009).
Riley, Laura, *Homeless Advocacy* (Durham: Carolina Academic Press, 2023).
Shue, Henry, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy*, 2nd ed (Princeton: Princeton University Press, 1996).
Spalding, Andrew, *A New Megasport Legacy: Host-Country Human Rights and Anti-Corruption Reforms* (New York: Oxford Academic, 2022).
Weissbrodt, David, "Business and Human Rights" in David Kinley, ed, *Human Rights and Corporations* (Surrey: Ashgate Publishing Ltd., 2009).
Wheeler, Michael, ed, *The Right to Housing* (Montreal: Harvest House Ltd., 1969).

Secondary Material: Articles

Alfrey, David et al, "Candidate City Human Rights Proposals for the 2026 World Cup: The Promise of a Positive Legacy" (2022) 7 Bus & Hum Rts J 311.

Baird, Natalie, "To Ratify or Not to Ratify? An Assessment of the Case for Ratification of International Human Rights Treaties in the Pacific" (2011) 12 Melbourne J Intl L 1.
Block, Walter, "Rent Control: A Case Study of British Columbia" (1994) 30:3 Mid-Atlantic J Bus 299.
Brandofino, Nicole-Amanda, "Kicking the Law: The Effects of FIFA Regulations on a World Cup Host Country's Legislative Process in Regards to Intellectual Property Protection" (2019) 45:1 Brook. J. Intl L 301
Brunnee, Jutta & Stephen Toope, "A Hesitant Embrace: The Application of International Law by Canadian Courts" (2002) 40 Can YB Intl L 3.
Carney, Todd, "Looking to International Law to Solve Human Rights Issues in Sports" (2021) 28:1 Willamette J Intl L & Disp Resol 65.
Clark, Griffin, "UNHRC Resolution 26/9: Is a New International "Red Card" Enough to Keep FIFA and Others Accountable?" (2021) 22:2 Chicago J Intl L 621.
Davis, Timothy, "What is Sports Law?" (2001) 11:2 Marq Sports L Rev 211.
De Oliveira, Leonardo, "Lex sportiva as the contractual governing law" (2017) 17 Intl Sports LJ 101.
DesBaillets, David, "The International Human Rights to Housing and the Canadian Charter: A Case Comment on Tanudjaja v. Canada (Attorney General)" (2015) 32 Windsor Y B Access Just
Donnelly, Peter, "Sport and Human Rights" (2008) 11:4 Sport in Soc'y 381.
Duval, Antoine & Daniela Heerdt, "FIFA and Human Rights – a Research Agenda" (2020) 25:1 Tilburg L Rev 1.
Fabre, Cécile, "Constitutionalising Social Rights" (1998) 6:3 J Pol Phil 263.
Gaetz, Stephen, "The Criminalization of Homelessness: A Canadian Perspective" (2013) 7:2 Eur J Homelessness 357.
Gonzalez, Carmen, "The Effective Application of International Human Rights Law Standards to the Sporting Domain: Should UN Monitoring Bodies Take Central Stage?"(2022) 22 Intl Sports L J 152.
Hasan, Firman & Jean Elvardi, "Accession to the Ratification Concept Based on the 1969 Vienna Convention on International Agreement Law and Its Implementation in Law No. 24/2000 on International Treaties" (2021) 24:5 J Leg Ethical & Reg Issues 1.
Heerdt, Daniela "Tapping the potential of human rights provisions in mega-sporting events' bidding and hosting agreements" (2018) 17 Intl Sports LJ 170
Heerdt, Daniela & Lucas Roorda, "Lessons Learned in Qatar: The Role of the Netherlands and its Businesses in Addressing Human Rights Abuses in Mega-Sporting Events" (2023) 70 Nethl Intl L Rev 19.
Heffernan, Tracy, Fay Faraday, & Peter Rosenthal, "Fighting for the Right to Housing in Canada" (2015) 24 J L & Soc Pol'y
Khaitan, Tarunabh & Sandy Steel, "Areas of Law: Three Questions in Special Jurisprudence" (2023) 43:1 Oxford J Leg Stud 76.
Longhofer, Sarah, "Contracting away Sovereignty: The Case of Brazil, FIFA, and the Agreement for the Right to Host the 2014 World Cup" (2014) 23:1 Transnatl L & Contemp Probs 147
Mack, David, "Reynolds v. International Amateur Athletic Federation: The Need for an Independent Tribunal in International Athletic Disputes" (1995) 10:2 Conn J Intl L 653.

Masanque, Isabel, "Progressive Realization without the ICESCR: The Viability of South Africa's Socioeconomic Rights Framework, and Its Success in the Right to Access Health Care" (2013) 43:2 Cal W Intl LJ 461.
McGillivray, David et al, "A Conceptual Model and Research Agenda for Bidding, Planning and Delivering Major Sports Events that Lever Human Rights" (2019) 38:2 Leisure Stud 176.
Müller, Martin, "What makes an event a mega-event? Definitions and sizes" (2015) 34:6 Leisure Stud 627.
Næss, Hans, "In Pursuit of Clarity: A Critique of Sports Governing Bodies' Conceptual Inconsistency in Human Rights Work" (2020) 38:3 Nordic J Hum Rts 205.
Rankin, Sara, "Punishing Homelessness" (2019) 22 New Crim L Rev 99.
Rook, William, Thays Prado, & Daniela Heerdt, "Responsible sport: no going back" (2023) 23 Intl Sports LJ 85.
Schwab, Brendan, "Protect, Respect and Remedy: Global Sport and Human Rights" (2019) Intl Sports L Rev 52.
Serby, Tom, "Sports Corruption: Sporting Autonomy, *Lex Sportiva* and the Rule of Law" (2017) 15:2 Ent & Sports LJ 1.
Shinohara, Tsubasa, "Human Rights in Sports Arbitration: What Should the Court of Arbitration for Sport do for Protecting Human Rights in Sports?" (2023) Liverpool L Rev 185.
Silvestre, Gabriel, "The Social Impacts of Mega-Events: Towards a Framework" (2009) 4:10 Esporte e Sociedale 1.
Skolnik, Terry, "Homeless Encampments: A Philosophical Justification", (2023) 36 J L & Soc Pol'y 97
Tafazoli, Nikita, "Recovering From the Inequality Virus: Gimme Shelter or Protection from Discrimination for Lack Thereof", (2024) 19 Appeal 123
Windholz, Eric & Graeme Hodge, "International Sports Regulation: An Evolving Private-Public Partnership" (2019) 45:2 Monash UL Rev 298.
Windholz, Eric & Graeme Hodge, "International Sports Regulation: An Evolving Private-Public Partnership" (2019) 45:2 Monash UL Rev 298.
Young, Margot , "Temerity and Timidity: Lessons from Tanudjaja v. Attorney General (Canada)" (2020) 61:2 Les Cahiers de droit 469

Other Materials

ACORN Canada, *The Impact of Financialization on Tenants: Findings from a National Survey of ACORN Members* (Ottawa: Office of the Federal Housing Advocate, 2022).
Affordable Housing Challenge Project*, Advancing the Right to Housing in Toronto: Critical Perspectives on the GTA's Housing Crisis and How to solve it* (Toronto: University of Toronto, 2022).
Amis, Lucy et al, *Striving for Excellence: Mega-Sporting Events and Human Rights* (London: Institute for Human Rights and Business, 2013).
August, Martine, *The Financialization of Multi-Family Rental Housing in Canada: A Report for the Office of the Federal Housing Advocate*, (Ottawa: The Office of the Federal Housing Advocate, 2022)
Blunden, Hazel, *The Impacts of the Sydney Olympic Games on Housing Rights* (Geneva: Centre on Housing Rights and Evictions, 2007).
California Right to Housing Working Group, *Recognizing the Right to Housing: Why We Need a Human Right to Housing in California* (California: ACCE Institute, 2023).

Centre on Housing Rights and Evictions, *Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights* (Geneva: Centre on Housing Rights and Evictions, 2007).

Chan, Sophy, *Unveiling the 'Olympic Kidnapping Act': Examining Public Policy and Homelessness in the 2010 Vancouver Olympic Games* (MA Thesis, The University of Western Ontario) [unpublished].

City Spaces Consulting Ltd & Urban Futures Inc., *Impact of the 2010 Winter Olympic Games on the Vancouver and Sea-to-Sky Housing Markets* (Ottawa: Canada Mortgage and Housing Corporation, 2006).

Cox, Gary, *Ready! Set! Go!: One year to go. It's time for action on housing and homelessness for the 2000 Olympics* (Sydney: Shelter NSW Co-op Ltd., 1999).

Duminy, James & Thembi Luckett, "Literature Survey: Mega-Events and the Working Poor, with a Special Reference to the 2010 FIFA World Cup" (2012) Women in Informal Employment Globalizing and Organizing, Resource Document No. 2.

Equality and Human Rights Commission, *Following Grenfell: The Right to Adequate and Safe Housing* (Manchester: Equality and Human Rights Commission, 2018).

Farha, Leilani & Kaitlin Schwan, *A National Protocol for Homeless Encampments in Canada: A Human Rights Approach*, (United Nations, 2020)

Flynn, Alexandra et al, *Overview of Encampments Across Canada: A Right to Housing Approach*, (Ottawa: Office of the Federal Housing Advocate, 2022)

Flynn, Alexandra, *Case study: Vancouver—A Human Rights Analysis of Encampments in Canada*, (Ottawa: The Office of the Federal Housing Advocate, 2022).

Goldstein, Melissa, et al, *Fixing the Leaky Bucket: A Comprehensive Policy & Program Framework to Preserve Toronto's Supply of Deeply Affordable Housing* (Toronto: Neighbourhood Land Trust, 2020).

Hilger, Reinhard, et al, *Expression of Consent by States to be Bound by a Treaty: Analytical Report and Country Reports* (Strasbourg: Committee of Legal Advisers on Public International Law, 2001).

Kapadia, Sarita, *Olympics and Housing: A Look into the Treatment of Underserved Populations Before and After the Games* (Sports Thesis, Haverford College, 2009) [Unpublished].

National Law Center on Homelessness & Poverty, *"Simply Unacceptable": Homelessness and the Human Right to Housing in the United States 2011* (Washington, DC: National Law Center on Homelessness & Poverty, 2011).

Nemtin, Andrea et al, *Financialization and Housing: A Social Innovation Approach to a Better Housing System* (Toronto: Social Innovation Canada, 2021).

Office of the Federal Housing Advocate, *Upholding Dignity and Human Rights: The Federal Housing Advocate's Review of Homeless Encampments – Final Report* (Ottawa: Office of the Federal Housing Advocate, 2024).

Office of the United Nations High Commissioner for Human Rights, "The Right to Adequate Housing", Fact Sheet No. 21 (Rev. 1).

Pantifallo, Caitlin, *The City and the Spectacle: Social Housing, Homelessness, and the 2010 Winter Olympic Games* (PhD Dissertation, University of British Columbia, 2015) [unpublished].

Porter, Bruce, *Implementing the Right to Adequate Housing under the National Housing Strategy Act: The International Human Rights Framework* (Ottawa: Office of the Federal Housing Advocate, 2021).

Roebuck, Ben, *Homelessness, Victimization and Crime: Knowledge and Actionable Recommendations* (Ottawa: Institute for the Prevention of Crime, 2008).
Ruggie, John, *For the Game. For the World: FIFA and Human Rights* (Cambridge: Harvard University, 2016).
Schwan, Kaitlin et al, *Case Study: Toronto - A Human Rights Analysis of Encampments in Canada*, (Ottawa: The Office of the Federal Housing Advocate, 2022).
The Office of the Federal Housing Advocate, *Upholding Dignity and Human Rights: The Federal Housing Advocate's Review of Homeless Encampments - Final Report*, (Ottawa: Office of the Federal Housing Advocate, 2024)
The United Bid, *Proposal for a United Human Rights Strategy: United 2026* (Zurich: FIFA, 2018).
Wachsmuth, David et al, *The Lived Experience of Evictions in Canada* (Montreal: Urban Politics and Governance Research Group, McGill University, 2023).
Xuereb, Silas, *Estimating No-fault Evictions in Canada: Understanding BC's Disproportionate Eviction Rate in the 2021 Canadian Housing Survey* (Vancouver: Balanced Supply of Housing Research Partnership, 2023).
Zell, Sarah & Scott McCullough, *Evictions and Eviction Prevention in Canada* (Winnipeg: Institute of Urban Studies, University of Winnipeg, 2020).

Internet Resources

"Rental Renovation Licence By-law" online: *City of Toronto* <https://perma.cc/4M37-7BEU>
"Repeal of Safe Streets Act, 1999: OHRC letter to Attorney General Naqvi" online: *Ontario Human Rights Commission* <https://perma.cc/88BR-LTJB>
Brown, Craig et al, "Exploring Experiences of Racism and Anti-Racism in Sport in Winnipeg: Final Report" (2021) online: *Anti-Racism in Sport* <https://perma.cc/RL8A-W6YG>
Brown, Desmond "Why Cambridge's mayor wants Ford to use notwithstanding clause for encampment action" (2024) online: *CBC News* <https://perma.cc/6XVE-RF66>
City of Toronto, "Item -2022.PH35.18" online: <https://perma.cc/GC9A-MY4Z>
Dickson, Courtney, "B.C. proposes protections for renters and landlords alike" (2024) online: *CBC News* <https://perma.cc/X5SL-SZZD>
Government of Canada, "Canada's Appearance at the United Nations Committee on Economic , Social and Cultural Rights" (2017) online: <https://perma.cc/2XMC-RP3M>
Government of Canada, "Policy on Sport for Persons with a Disability", (2006) online: <https://perma.cc/R9ML-Q3K5>
Government of Canada, "Short-Term Rental Enforcement Fund", online: <https://perma.cc/WJ99-THBM>
Hermer, Joe & Elliot Fonarev, "Neo-Vagrancy Laws in Canada" (2020) online: *Homeless Hub* <https://perma.cc/4K6R-F429>
Judd, Amy, "B.C. government takes steps to protect residents from 'bad-faith' evictions" (2024) online: *Global News* <https://perma.cc/7VAC-9Q6D>
Masse, Brian, "Response by the Minister of Sport and Minister responsible for the Economic Development Agency of Canada for the Regions of Quebec", (2023) online: *Parliament of Canada* <https://perma.cc/FL49-CXXX>
Pivot Legal Society, "Homeless Rights in Canada" (2016) online: <https://perma.cc/6MVL-8CV9>

Rech, Nathalie, "Homelessness in Canada" (2019) online: *The Canadian Encyclopedia* <https://perma.cc/8LR3-6K8U>
Sebben, Laura "'Enough is enough': Doug Ford says municipalities will be given 'enhanced tools' to respond to encampments" (2024) online: *CTV News* < https://perma.cc/J7K6-FDUL>
Toronto City Council, "Item - 2024.PH13.7" (2024) online: <https://perma.cc/2R35-UAKC>
Wiater, Patricia, "A Human Rights Breakthrough in Sports Law?: The ECtHR Chamber Judgment in Semenya v. Switzerland" (2023) online: *VerfBlog* <https://perma.cc/8WZW-T8CL>

International Documents

10 U.N. ESCOR C.4 (427th mtg.) at 10, U.N. Doc. E/CN.4/SR.427 (1954).
7 U..N ESCOR C.4 (235th mtg.) at 17, U.N. Doc. E/CN.4/SR.235 (1951).
7 U.N. ESCOR C.4 (237th mtg.) at 10, U.N. Doc. E/CN.4/SR.237 (1951).
8 U.N. ESCOR C.4 (307th mtg.) at 5, U.N. Doc. E/CN.4/SR.307 (1952).
Constitution of Guatemala
European Charter
European Sports Charter, Recommendation CM/Rec (2021) 5.
FIFA 26 Vancouver Host City Agreement
FIFA Governance Regulations (December 2022 ed).
FIFA Human Rights Policy (May 2017 ed).
FIFA Regulations on the Status and Transfer of Players.
FIFA Statutes (May 2022 ed).
FIFA World Cup 2030™: Overview of Hosting Requirements,
General Comment No. 3, U.N Doc. E/1991/23.
Guide to the Bidding Process for the 2026 FIFA World Cup
Guideline Nos. 1 & 11 (2019) A/HRC/43/43.
Human Rights and Transnational Corporations and Other Business Enterprises, UNHRC, 2011, A/HRC/RES/17/4, HRC Res 17/4.
Norms on the Human Rights Responsibilities of Transnational Corporations and Other Business Enterprises, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003)
Swiss Private International Law Act.
Treaty on European Union
Treaty on the Functioning of the European Union;
U.N. ESCOR (2d mtg.) para. 44, U.N. Doc. E/1985/WG.1/SR.2 (Mr. Yakolev, U.S.S.R.).
UK Code of Sports Governance
UNHRC, "Resolution adopted by the Human Rights Council: Adequate housing as a component of the right to an adequate standard of living, in the context of mega-events" A/HRC/RES/13/10.
Vienna Convention on the Law of Treaties (23 May 1969, 1155 UNTS 331, Can TS 1980 No. 37, in force 27 January 1980).