

Policy Brief on Canada's National Occupancy Standards and the Right to Housing

**The Getting Home Project:
Overcoming Barriers to Housing After Violence**

May 2021





Report Produced in Collaboration By:¹

Lauryn Boag

Pro Bono Students Canada (PBSC)

Pro Bono Students Canada (PBSC) is on a mission to provide free legal support to people and communities facing barriers to justice. PBSC envisions a society with accessible legal systems, where the dignity and rights of every person are upheld. Founded in 1996 at the University of Toronto Faculty of Law, and with Chapters at 22 law schools throughout Canada, PBSC is the largest pro bono organization in the country. PBSC stands for dignity, equity and humility, through an approach that is collaborative, visionary, and responsive.

Tanyss Knowles and Amy FitzGerald

British Columbia Society of Transition Houses (BCSTH)

The BC Society of Transition Houses is a member-based, provincial umbrella organization that, through leadership, support and collaboration, enhances the continuum of services and strategies to respond to, prevent and end violence against women, children and youth.

¹ We would also like to thank Raji Mangat of West Coast Leaf for her invaluable feedback and participation in this project.



This document does not contain legal advice.

This document was prepared with the assistance of PBSC UBC law student volunteers. PBSC volunteers are not lawyers and they are not authorized to provide legal advice. This document contains general discussion of certain legal and related issues only. If you require legal advice, please consult with a lawyer.

Policy Brief on Canada's National Occupancy Standards and the Right to Housing

Purpose

This brief seeks to demonstrate changes that can be made to the National Occupancy Standards (NOS), and the operational policies surrounding it, to align with the federal legislation on the right to housing in order to enable families to secure stable, affordable and safe housing.

Background

Canada's affordable housing crisis, which is especially prevalent in British Columbia, led to the creation of essential federal legislation regarding the right to housing. Qualitative and quantitative research from the BC Society of Transition Houses (BCSTH) has identified that the use of the National Occupancy Standards (NOS) remains a significant barrier to safe, long-term and affordable housing; and can force some families seeking housing to choose unsafe living situations. These National Occupancy Standards contravene the federal legislation and prevent families from obtaining housing.

Discussion

The right to housing has now been implemented into Canadian federal legislation. This legislation recognizes that housing is a fundamental right and takes a human-rights based approach to housing. Along with this new statute, a strategy was created to make this right a reality through affordable housing measures, homeownership possibilities and increased investments. These measures are much needed and ground breaking in their scope, but not all issues have been addressed. Canada's National Occupancy Standards (NOS)² remain a significant barrier to those seeking social and community housing. Without sufficient affordable housing that meets these guidelines, some families are forced to compromise and live in unsafe situations in order to comply with the NOS. Lack of safety prevents the intention of the right to housing from being fully realized. Operational policies that strictly adhere to the NOS guidelines serve to exclude families from housing. It must be made clear that the NOS are guidelines for certain situations

² The NOS require a maximum of two persons per bedroom, couples share a bedroom, single parents have a separate bedroom, those over 18 who are not in a couple have their own bedroom, those under 18 and the same sex share a room, children under 5 may share a bedroom. See "Housing Suitability of Private Household" (3 April 2019), online: *Statistics Canada* <<https://www23.statcan.gc.ca/imdb/p3Var.pl?Function=DEC&Id=100731>>.

but should not be used as an instrument to deny housing to vulnerable communities and undermine the newly recognized federal right to housing.

The NOS were originally created to address issues of overcrowding, yet there have been no proven direct causal links to public health problems. Furthermore, most safety concerns, like fire hazards, could be addressed through building codes and regulation.³ Instead of making communities safer, these standards are now creating additional barriers for those searching for housing.⁴ With the ongoing housing crisis in British Columbia, many seeking social and community housing are struggling to acquire units that meet these guidelines.⁵ Often, there are not enough three bedroom units available, which many families require due to their familial composition.⁶ Unable to meet the requirements for the NOS, and facing difficulty in the private market, many are being forced to compromise on location and safety.⁷ Ultimately, the NOS are outdated and do not adhere to the rights of those living in Canada under *the National Housing Strategy Act*.

On June 21, 2019 the *National Housing Strategy Act (NHS Act)*, being Division 19 of the *Budget Implementation Act*, received Royal Assent.⁸ This Bill recognizes that “housing is essential to the inherent dignity and well-being of the person”⁹ and “access to affordable housing contributes to achieving beneficial social, economic, health and environmental outcomes”.¹⁰ With this federal legislation, the Government of Canada declared that they “recognize that the right to adequate housing is a fundamental human right” and this policy would “support improved housing outcomes for the people of Canada”.¹¹

The *NHS Act* is a strong initial step towards reaching affordable housing goals. It employs a human rights-based approach to housing, pursuing a reduction of discrimination and other barriers to housing, including

³ Elizabeth McCandless, *Cracks in the Foundation? Examining the Justifications for and Unintended Consequences of Residential Occupancy Standards in Canada* (Masters of Laws thesis, University of Manitoba, 2020) p 81–87; citing Tim Iglesias, “Clarifying the Federal Fair Housing Act’s Exemption for Reasonable Occupancy Restrictions” (2004) 31: 5 *Fordham Urban LJ*.

⁴ Tanyss Knowles et al, “Getting Home Project: Overcoming Barriers to Housing after Violence” (March 2019) at 29, online (pdf): *BC Society of Transition Houses* <bcsth.ca/wp-content/uploads/2019/06/Getting-Home-Project-Community-Needs-Assessment.pdf>.

⁵ See *ibid* at 17–18.

⁶ “Getting Home Project: 3-Bedroom Rationale” (22 October 2018) [unpublished, archived at BC Society of Transition Houses].

⁷ See *supra* note 4 at 26.

⁸ *National Housing Strategy Act*, SC 2019, c 29, s 313 being Division 19 of the *Budget Implementation Act*, SC 2019, c 29.

⁹ *Ibid* at s 4(b).

¹⁰ *Ibid* at Preamble.

¹¹ *Ibid* at ss 4(a), 4(c).

specifics on the measures for accountability.¹² The legislation includes the implementation of measures for accountability, such as the National Housing Council. This advisory body of up to 15 members, including those with lived experiences or professional knowledge, is tasked with addressing housing issues and providing feedback on the success of the *NHS Act*.¹³ The *NHS Act* also created the Federal Housing Advocate, which is an independent body that will perform research and report on barriers faced, focusing particularly on priority groups, and advise on potential improvements.¹⁴ Even though the *NHS Act* attempts to prioritize a right to housing, the NOS continue to be used to turn people seeking housing away, and they remain an impediment to the right to housing being realized.

There are several ways that the NOS become an obstacle: the lack of adequate available housing, the cost of appropriately sized housing and the access to subsidized housing inclusive of all family members.¹⁵ For example, affordable housing is defined as no more than 30% of an individual or family's before-tax income.¹⁶ With the NOS, and the composition of many families, more bedrooms are required than they can afford. With an increasing number of bedrooms, the cost increases as well, making it wholly unaffordable. In addition to this, three bedroom units are the rarest and highly sought after in many places, especially growing urban centres like the Greater Vancouver Regional District, making the waitlist for social and community housing extremely long.¹⁷ Not only are these larger units more difficult to find, but the cost increases significantly.¹⁸ Many families, who have been able to find housing, have valid concerns that the Ministry of Children and Family Development (MCFD) will become involved if the

¹² "Canada's National Housing Strategy", online (pdf): *A Place to Call Home* <eppdscrmssa01.blob.core.windows.net/cmhcprodcontainer/sf/project/placetocallhome/pdfs/canada-national-housing-strategy.pdf>.

¹³ See "Government Announces Membership of the National Housing Council" (22 November 2020), online: *Canada Mortgage and Housing Corporation* <www.cmhc-schl.gc.ca/en/media-newsroom/news-releases/2020/government-canada-announces-membership-national-housing-council>.

¹⁴ See "Housing Rights – Office of the Federal Housing Advocate", online: *Canadian Human Rights Commission* <www.chrc-ccdp.gc.ca/eng/content/housing-rights-office-federal-housing-advocate> (priority groups include those fleeing domestic violence, seniors, Indigenous peoples, people without housing, people with disabilities, people managing mental health issues, people managing addiction, veterans, young adults, racialized groups, and those new to Canada).

¹⁵ See *supra* note 4 at 17–18.

¹⁶ Sarah Labahn & Dana Salama, "Beyond Two-Persons-Per-Bedroom: Understanding the Cultural Variances of Housing Suitability in Canada" (April 2018) at 7 [unpublished, archived at BC Housing].

¹⁷ See *supra* note 6.

¹⁸ In 2018, the average cost of a three bedroom unit was \$1,529 per month so those earning the least typically spend 144% of their income on larger units. Not only are the costs prohibitive, but there were approximately 1,000 more two bedroom units in social housing compared to three bedroom units. See *supra* note 6.

housing does not meet the NOS guidelines.¹⁹ In general, “an overly restrictive occupancy standard captures living arrangements that many not actually lead to any increased health or safety risk”.²⁰

Beyond the number of children in a family, there are many reasons individuals may choose to live with many people. For example, there are intergenerational families, cultural practices. In addition, living with more people can save money and help pool together services like childcare or sharing of household tasks.²¹

Even though the NOS are guidelines and not regulations, they are adhered to and implemented by many agencies, such as the Canadian Mortgage Housing Corporation (CMHC), some co-ops and some non-profit housing providers in ways that exclude larger families from access to affordable housing options.²²

Limitations

Though the *NHS Act* is taking steps in the right direction, there are still limitations in the legislation. The right to housing is still an abstract concept in society -- instead of a right, which is legally enforceable.²³ In addition, it is a federal statute. This means that due to the distribution of powers, the provinces and territories are not required to implement it into their own legislation.²⁴ Finally, this legislation is not entrenched in the Constitution, making it vulnerable to the potential of being repealed in the future.²⁵

Conclusion and Recommendations

There are several steps that can be taken to overcome the National Occupancy Standards (NOS) as a barrier to housing and align provincial practices with the federal right to housing.

Recommendation 1: CMHC and BC Housing should clarify that the National Occupancy Standards are simply guidelines and are not legally mandated.²⁶ These organizations should publish definitive statements on their website to make this information publicly accessible.

¹⁹ See *supra* note 4 at 21.

²⁰ McCandless, *supra* note 3 at 15.

²¹ See generally *supra* note 16.

²² See *supra* 4 at 17 (as a note, BC Housing no longer strictly adheres to the NOS).

²³ Jeff Morrison, “Right to Housing is Now Law in Canada: So Now What?” (5 July 2019), online: *Canadian Housing and Renewal Association* <chra-achru.ca/blog_article/right-to-housing-is-now-law-in-canada-so-now-what-2/>.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ See *supra* 4 at 29–30.

Recommendation 2: Safety should be the top priority considered by all social and community housing providers when evaluating the eligibility of those looking for housing, instead of the focus on the number of bedrooms.²⁷ This can be accomplished through the creation of new operational policies that take these critical considerations into account.

Recommendation 3: These standards should be modified by municipal and provincial government actors to align with our modern-day standards, an understanding of cultural differences and the “economic realities”.²⁸ For this, we can look beyond our borders to other nations who have implemented more flexible guidelines that cause fewer barriers for those seeking housing.²⁹ Using these guidelines, flexible and localized occupancy standards should be developed that reflect the affordable housing crisis while recognizing current societal patterns and embodying a true right to housing.

²⁷ See *supra* 4 at 29–30.

²⁸ McCandless, *supra* note 3 at 142.

²⁹ See e.g. “Fair Housing Enforcement-Occupancy Standards Statement of Policy; Notice” (18 December 1998), online (pdf): *Department of Housing and Urban Development* <www.hud.gov/sites/documents/DOC_35681.PDF> (in the United States: generally 2 people per bedroom, avoid social judgement on a family’s sleeping arrangements, can be housed in a smaller unit until a bigger unit becomes available); “Poste logement” (19 October 2012), online: *Unaf* <www.unaf.fr/spip.php?article15087#:~:text=%C2%AB%20La%20surface%20et%20le%20volume,habitant%20suppl%C3%A9mentaire%20au%2Ddel%C3%A0%20du> (in France: Living room for the household, one room for each couple, one room for each single person aged 19+, children over the age of 7 of opposite genders should have separate rooms); “Social Housing Allocations in Scotland: A Practice Guide” (February 2019) at 41, online (pdf): *Scottish Government* <<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2019/02/social-housing-allocations-scotland-practice-guide/documents/social-housing-allocations-scotland-practice-guide-february-2019/social-housing-allocations-scotland-practice-guide-february-2019/govscot%3Adocument/social-housing-allocations-scotland-practice-guide-february-2019.pdf>> (in Scotland: Any couple, person aged 21+, or children of over 10 of opposite genders should have separate rooms); “Laws and Bylaws”, online: *Tenancy Services* <<https://www.tenancy.govt.nz/maintenance-and-inspections/laws-and-bylaws/>> (in New Zealand: Sufficient number of rooms, usable floor area, and volume of space are considered. They also consider prevailing cultural and social patterns of the region. Generally, there is a separation of rooms for adolescents and adult members of the opposite sex, except for a couple).