HRTO File. Nos: 2019-36509-I et al.

Human Rights Tribunal of Ontario

Ali et al. v. Hazelview Investments Inc.

APPLICANTS' SUPPLEMENTARY SUBMISSIONS ON MOTION FOR SUMMARY DISMISSAL

I. INTRODUCTION

1. The evidence is overwhelming: Financialized landlords in Canada are disproportionately subjecting their properties in racialized communities to a uniquely predatory form of property development known as repositioning. To "reposition" a property towards a more affluent demographic, incumbent tenants are evicted at elevated rates, rental units are renovated or demolished and rebuilt, and rents are substantially increased to reflect the means of the target demographic. This practice systemically discriminates against racialized people in Canada.

2. Repositioning disproportionately affects racialized communities because race affects property value. Specifically, increases in the proportion of racialized residents depreciate property value, while decreases appreciate it. Properties in racialized neighbourhoods are thus appealing because they can be acquired at a discount. By extension, displacing incumbent tenants and replacing them with less racialized demographics increases value.

3. This process of acquisition, displacement, and replacement constitutes the practice of repositioning as pursued by financialized landlords in Canada, and it amounts to systemic racism in violation of section 2 of the *Human Rights Code,* RSO 1990 c H 19 (the "Code").

4. The Herongate redevelopment in Ottawa epitomizes this practice. Herongate was acquired and selected for repositioning because of the race, ethnicity, colour, and/or places of origin of its residents. The Applicants, all residents of Herongate at the material times, were evicted and displaced from their homes and their community as a result.

5. The deleterious effects of mass eviction and displacement are well understood. It has been empirically demonstrated that the disconnection from community, combined with the loss of affordable housing, cause devastating mental and material harms. Some or all of these harms have been universally reported by the Applicants.

6. In support of these allegations, the Applicants have compiled a spectacular body of empirical evidence, summarized in 5 expert reports based on expansive data sets, meticulously organized and rigorously analyzed according to the highest academic standards. This evidence establishes the following facts:

    a) Financialized landlords in Canada engage in a business practice called repositioning or value-add (referred to as “hypergentrification” in the Application) composed of the following constituents:

        a) **Acquisition of properties in racialized neighbourhoods**: Properties in racialized neighbourhoods are disproportionately more likely to be acquired and selected for repositioning because the purchase price reflects a “race discount”. That is, controlling for other factors including average income, housing type, and location, the property is discounted relative to comparable properties because of the race and related attributes of the incumbent residents.

        b) **Displacement of incumbent residents**: Following acquisition, financialized landlords treat these properties differently than their comparable acquisitions in non-racialized neighbourhoods.

Specifically, residents are evicted at a rate that is many times higher than eviction rates at properties in non-racialized areas owned by financialized landlords.

c) **Replacement of incumbent tenants:** These properties are then renovated or demolished and rebuilt, and subsequently "repositioned" to attract more affluent, less racialized tenants. The objective is to capitalize on the gentrification process already underway in adjacent neighbourhoods. Rents are increased above average, and the repositioned properties are often marketed as upscale or luxury.

d) **Increasing property values**: Repositioned properties appreciate substantially in value due to the displacement of racialized residents, offering a powerful profit incentive to financialized landlords.

b) The Respondent is a financialized landlord that engages in repositioning.

c) The Herongate redevelopment undertaken by the Respondent epitomizes the practice of repositioning.

d) The Applicants have been severely adversely affected by their eviction and displacement. They have all suffered significant material consequences such as moving costs, the loss of rent-controlled and affordable housing, as well as the deleterious psychological impact caused by the disconnection from their community.

7. The evidence marshalled by the Applicants supports an undeniable link between their adverse treatment and their race, colour, ethnicity, and place of origin, making out a *prima facie* case of discrimination. On the basis of this evidence, the Applications have a reasonable prospect of success.

8. For these reasons, the Applicants request that the Respondent's motion be rejected, and that the Tribunal schedule a full hearing at the earliest opportunity.

II. FACTS AND EVIDENCE

i) Test Case Applicants

9. The Applicants have selected three representatives amongst them for the purposes of this summary hearing: [redacted]

10. The Applicant [redacted] identifies as Arab and Middle Eastern. He was born in Iraq and migrated to Canada in 2005 with his family. [redacted]. He moved to the residential complex now owned by the Respondent, Heron Gate Village (the "Village"), in 2005. In 2006, he and his family moved to another rental unit in the Village, 2822E Sandalwood Drive. Following an eviction in 2015 from 2822E, [redacted] and his family moved to 2827A Sandalwood Drive where they resided until their second eviction in May of 2018.[1]

11. The Applicant [redacted] She was born in Iraq and identifies as Arab/Middle Eastern. In 2010, she migrated to Canada with two of her children, [redacted]. Her third child, [redacted] was born in Canada. In the spring of 2012, she and her children moved to 1544K Cedarwood Drive in the Village.[2]

12. The Applicant [redacted] identifies as Somali and Black. He and his wife are of Somali origin. They migrated from Somalia to Canada in 1991, and their first home was in the Village. They lived continuously in the Village from 1991 until their eviction in September 2018.[3]

[1] Tab 36, Applicants' Book of Documents ("ABOD").
[2] Tab 31, ABOD.
[3] Tab 29, ABOD.

ii) Background

Origins and Composition of the Herongate Neighbourhood

13. The Village is located in the neighbourhood of Herongate (one word) in Ottawa, which corresponds to Statistics Canada census tract ID 5050007.02. The Village comprises approximately 92% of the census tract and includes an estimated 95% of its residential housing. Prior to an initial phase of redevelopment commencing in 2015, in which approximately 80 units were demolished, the Village comprised 2823 rental units including townhouses, detached homes, and four apartment towers.

14. Herongate is a racialized, renter-majority neighbourhood. According to the 2016 census, 70% of Herongate residents identified as racialized. 30.9% of residents identified as Black, and 15.2% Arab. 27.5% of residents were of African origin, and 21.7% were of Middle Eastern or West Central Asian origin. 93.3% of Herongate residents were renters.

15. Due to its high proportion of racialized immigrants, Herongate qualifies as an 'ethnic enclave' in which residents developed a robust and sophisticated social network of mutual aid, which is consistent with academic research on ethnic enclaves. Residents watched each other's children, supported ethnic businesses such as clothing stores and salons, translated documents for one another, shared food, offered transportation, and assisted newcomers with administrative tasks such as opening bank accounts. All of the Test Case Applicants report having participated in and benefited from this social network.[4]

16. All of the Applicants report that the Respondent and its predecessor, Transglobe, systemically neglected their maintenance obligations. Particulars thereof are detailed in the Application and the witness statements of the Test Case Applicants.

[4] Tabs 29, 31, and 36, ABOD.

Supporting documentation where available has been included in the Applicants' book of documents.[5]

17. Just prior to the evictions in 2018, rents in the Village remained well below city averages. A four-bedroom townhome rented for approximately $1,400 to $1,500 per month. Both [redacted] paid approximately this amount for their homes in the Village. [redacted] unit was subsidized by the City of Ottawa's rent subsidy program.

Applicants Evicted from Herongate

18. On or around May 30, 2018, the Applicants received notices of eviction setting out an eviction date of September 30, 2018. The notices complied with the requirements of the *Residential Tenancies Act,* 2006, SO 2006 c 17.

19. [redacted] experienced substantial difficulty finding a suitable rental unit for his family. He called about many prospective rental units. When he revealed that he was moving from Herongate, he was repeatedly told that the units were no longer available. On one occasion, he was asked what his ethnicity was and did not receive a call back. He was eventually advised by the Respondent's "relocation consultant", Suzanne Valiquet, not to say he was from Herongate. Ultimately, Ms. Valiquet called prospective landlords on his family's behalf since she received responses when [redacted] and his family members did not.

20. [redacted] and his family ultimately relocated to [redacted] in Ottawa, approximately 15 minutes by car from his former home on Baycrest Drive. His rent was approximately $800.00 more per month, plus utilities.

21. [redacted] moved to a rent subsidized unit at [redacted] in Orleans, approximately 20 minutes by car to Herongate.

[5] Tabs 29-40, ABOD.

22. [redacted] and his family moved to a townhouse at Albion and Heatherington, approximately 5 minutes by car from his home on Sandalwood Drive. It cost approximately $200.00 to $400.00 per month more in rent.

23. All of the Applicants report having lost their connection to the Herongate community. The Applicants' evictions disrupted their relationships and deprived them of the substantial social and material benefits of living in an ethnic enclave. The Applicants universally report having suffered serious psychological impacts from the disconnection.[6]

Construction of Vista Local

24. Construction of the Respondent's first multi-residential building in Herongate, comprising 348 units, was completed in 2020 and named 'Vista Local', evocative of Alta Vista, a neighbourhood bordering Herongate

25. According to 2016 census data, 80% of residents in Alta Vista identified as white, well above the Ottawa-wide average of 73.7%.

26. Rents for Vista Local ranged, in 2020, from $1395/month for a bachelor apartment to **$2,985/month** for a three-bedroom. Four-bedroom units were not offered.[7]

iii) <u>Evidence that Practice of Repositioning Constitutes Systemic Racism</u>

27. In support of the assertion that the practice of repositioning amounts to systemic racism, the Applicants rely on a) expert reports, and b) public statements by representatives of financialized landlords, including the Respondent, about their redevelopment strategies and practices.

a) <u>Expert Reports Substantiate that Practice of Repositioning Amounts to Systemic Racism</u>

[6] Tab 29 at paras 26-29, Tab 31 at paras 24-25, Tab 36 at paras 16-20, ABOD.
[7] Tab 57, ABOD.

28. The Applicants have retained five experts to opine on various aspects of the business practices of financialized landlords based on an expansive volume of primary and secondary source material. Together, the expert reports demonstrate that the business practice known as 'repositioning' disproportionately negatively affects racialized (and particularly Black and Arab) tenants in Canada, and that this practice has been pursued in Herongate.

Proposed Evidence of Dr. Joseph Mensah

29. Dr. Mensah is a professor emeritus of urban geography at York University in Toronto. His report, based on secondary source literature and census data, describes the mechanics and negative impacts of housing discrimination on racialized people, and particularly on Black people, in Canada. Dr. Mensah's report canvasses the academic literature on the financialization of rental housing in Canada and opines that financialized landlords "often push for turnover rates as high as 20 percent per year, or more, through the willful promotion of tenant attrition." According to Dr. Mensah,

> …given the empirically verifiable overlap between race, class, and space in urban Canada (Mensah and Williams, 2017; Hulchanski, 2010), and more so in the United States, it is unsurprising that such low-income neighbourhoods [which attract large-scale evictions and demolitions leading to gentrification] are mostly inhabited by ethno-racial minorities and new immigrants who generally struggle to find housing outside of the neighbourhood, due to both their exposure to housing discrimination and their lack of financial resources – there lies the damaging interplay between socioeconomic status and race in such large-scale demolitions and evictions.[8] [Brackets added.]

30. The negative health consequences of large-scale evictions have been well documented. Citing Dr. Fullilove's research on urban renewal and how displacement can affect health, Dr. Mensah notes that "large-scale demolitions and displacements engender emotional and psychological trauma on incumbent residents…[B]y **destroying their social networks and their individual and collective identities**, such displacements shake up, if not destroy, the basic roots of the displacees and their communities."[9] [Emphasis added.]

[8] Tab 10, ABOD, *Dr. J. Mensah Expert Opinion,* p. 25.
[9] *Ibid,* p. 28.

Proposed Evidence of Dr. David Wachsmuth

31. Dr. Wachsmuth is Canada Research Chair in Urban Governance and a professor of sociology at McGill University. Examining the effect of race on real estate prices, rents, and their respective rates of increase across six Canadian Metropolitan Areas ("CMAs"), Dr. Wachsmuth makes the following findings:

    a) A 1% increase in the share of census-tract residents who identify as a member of a discriminated-against racial group (Indigenous, Black, Arab, Latin, Filipino, South Asian, or West Asian) is associated with a -0.4% decrease in the rate of change of owner-occupied dwelling values between 2006 and 2016.

    b) A 1% increase in the share of residents from these groups is associated with, on average, a $5,150.00 decrease in owner-occupied dwelling values over the same period.

    c) A 1% increase in Caribbean, African, or Middle Eastern residents in a census tract is associated with a -0.5% or $13,640.00 decrease in average dwelling values over the same period.

    d) A 1% increase in African Immigrants in a census tract results in a -1.3% or $144,630.00 decrease in dwelling values over the same period.

    e) Increases in discriminated-against racial groups as indicated above result in a slight decrease in average rents ($3.90 per month per percentage increase).

    f) These results are valid when controlling for other factors such as income, housing type, and location.[10]

[10] Tab 14, ABOD, *Dr. D. Wachsmuth, N. Ottenhof, I. Hillel Expert Report*.

32. On the basis of these findings and relevant secondary source material, Dr. Wachsmuth concludes that:

a) Neighbourhoods with higher concentrations of specific racialized and ethnic residents experience lower growth in property values, even after accounting for income, housing type, and location.

[…]

b) [Real Estate] Developers are incentivized to target racialized areas due to depressed land values, with profits tied to demographic turnover rather than physical investment.

[…]

c) Developers have a clear business incentive to alter the demographic composition of their properties. This incentive operates through a racialized market logic in which neighbourhoods with higher shares of racialized tenants are devalued, allowing developers to acquire the property at a *race discount.* By displacing these residents and attracting white populations, developers can realize substantial gains in property value, not from physical improvements but from demographic transformation (*race bonus*).[11]

Proposed Evidence of Sneha Sumanth, PhD Candidate

33. Sneha Sumanth is a PhD candidate in the Department of Geography and Environmental studies at Carleton University. Using a sample of 4,585 residential rental properties across Canada owned by 21 of the largest financialized landlords and comprising 374,611 units, Ms. Sumanth analyzed the demographic statistics of Statistics Canada Dissemination Areas[12] ("DA") in which these rental properties are located. She found that:

> …financialized DAs show higher concentrations of racialized populations than both their CMAs and the national average. Nationally, financialized Das have a visible-minority share of 38.4%, against a national DA average of 26.4% and a CMA average of 30.9%. Black residents make up 8.2% and Arab residents 3.0% of financialized-DA populations, compared with national averages of 4% and 1.6% respectively. These raw differences are substantial and consistent across nearly every province. For Black populations, financialized Das exceed the corresponding CMA average in every province. The same holds for Arab populations, with Alberta showing the narrowest margin (+11.3%). No province shows a pattern in which financialized Das have a lower share of Black and Arab populations than the corresponding CMA average.[13]

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[11] *Ibid*, p. 10-11.

[12] A Dissemination Area is the smallest standard geographical unit for which Statistics Canada disseminates census data. Census tracts are composed of several dissemination areas.

[13] Tab 20, ABOD, *A Geostatistical Analysis of Financialized Residential Rental Property Ownership and Racialization in Canada*, p. 12

34. Further, this pattern holds even when controlling for financialized landlords' preference for urban, rental-dense markets that are generally more racially diverse.[14]

35. Ms. Sumanth therefore concludes that "financialized real estate investment firms hold rental properties in neighbourhoods with higher-than-average concentrations of racialized people."[15]

Proposed Evidence of Dr. Nemoy Lewis

36. Dr. Nemoy Lewis is an assistant professor of urban and regional planning at Toronto Metropolitan University (TMU) and head of TMU's Housing and Eviction Lab. His report analyzes data obtained from the Landlord and Tenant Board of Ontario ("LTB") on eviction filings in Toronto and Ottawa, segregated by landlord type, and cross-referenced with Statistics Canada demographic data.

37. Dr. Nemoy's report finds that financialized landlords operating in Ontario, including the Respondent, file eviction applications in respect of properties in neighbourhoods with relatively higher concentrations of Black renters at rates that are many times city averages. These rates are also many times the eviction rates at properties owned by other landlord types (sole proprietor, small company, etc.) and even at properties owned by financialized landlords in non-racialized neighbourhoods.[16]

38. For instance, Dr. Lewis finds that "[b]etween 2016-2019 in Black-majority DAs where the median household after-tax income was above the citywide median [for Toronto], the **average eviction rate was 33%, more than five times the average of 5.6% at comparable properties**."[17] [Brackets and emphasis added.] Given that these disproportionately high rates persist in moderate-income Black-majority

[14] *Ibid,* p. 15.
[15] *Ibid*, p. 19-20.
[16] Tab 18, ABOD, *Dr. N. Lewis, D. Panou, & R. Maaranen TMU Housing and Eviction Lab,* pp. 6-11.
[17] *Ibid*, p. 8.

neighborhoods, he concludes that “race, more than income, plays a defining role in shaping exposure to eviction.”[18]

39. These findings apply to Ottawa. Applying the same analytical method to eviction statistics in Ottawa, Dr. Lewis finds that “[t]he two most consistent and statistically significant predictors of elevated eviction rates at the DA level were (1) the presence of financialized landlords and (2) the proportion of Black renter households.” Further, “[t]hese two factors consistently had a stronger effect on eviction rates than median renter household income.”[19]

40. In addition to his analysis of eviction data, Dr. Lewis analyzes the real estate acquisition preferences of landlords in Toronto from 1995 to 2022 and discerns a “clear and consistent preference amongst financialized landlords (FLs) for properties situated in socioeconomically marginalized and racially diverse neighbourhoods”.[20]

41. Comparing these findings on evictions and acquisitions to the Respondent’s purchase and redevelopment of the Village, Dr. Lewis ultimately opines that “Hazelview’s acquisition of the Herongate properties does align with the acquisition strategies of other financialized landlords in Ontario.”[21]

Proposed Evidence of Dr. Martine August

42. Dr. Martine August is an associate professor within the University of Waterloo’s School of Planning and is a leading scholar on the financialization of rental housing in Canada.

43. Dr. August’s report describes the business strategy of “repositioning” as practiced by financialized landlords in Canada. She opines that financialized landlords are

[18] *Ibid*, p. 9
[19] *Ibid*, p. 10.
[20] *Ibid*, p. 11.
[21] *Ibid,* p. 16.

most likely to pursue repositioning, which includes pursuit of tenant turnover and above-average rent increases, in racialized neighbourhoods.

b) Financialized Landlord Statements about Repositioning

44. Similar development strategies are deployed by all major financialized landlords, including the Respondent, and advertised to investors publicly.

Centurion

45. Centurion – which as of 2023 possessed $5.7 billion in assets and owned or operated 20,457 properties – emphasized the importance of attracting a "higher class of tenant". In a confidential offering memorandum from May 2023, it stated:

> It is the experience of the Asset Manager that by purchasing or repositioning properties to be the 'best in class' in a community that **they will attract a higher class of tenant** that is respectful and will take pride living in these buildings.[22] [Emphasis added.]

46. In this way, it can "close the gap" between potential and current rents, as stated in its 2022 annual report:

> "Closing its gap between potential market rents and current in place rents; **this includes product repositioning in localized markets where there is an opportunity to deploy capital in the apartment units and realize rental lift**. Management estimates that its potential gap to market rents is approximately $22.0 million as it has moved to capitalize on its significant capital investments in the portfolio, significant stabilization of the properties therein, and significant market demand. Given the severe shortage of housing in some of the markets in which the Trust operates, Management believes there may be outsized opportunities for growth as Management pushes for **rent increases**."[23] [Emphasis added.]

Mainstreet

47. Mainstreet[24] similarly centres repositioning as its core business strategy (emphasis added):

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[22] Tab 23, ABOD, *Centurion Apartment REIT Confidential Offering Memorandum*, p. 44.
[23] Tab 24, ABOD, *Centurion Apartment REIT. Annual Report 2022.*
[24] $2.8 billion in assets and 16,000+ properties.

> "The Corporation **focuses on the acquisition of underperforming properties, renovating them and repositioning the renovated properties** in the market at current market rents. Underperforming properties have typically been poorly managed, with substantial deferred maintenance and rents that are often well below current market rental rates."[25]

Pulis

48. Lankin[26], formerly Pulis, is explicit about its designs to engineer a demographic shift. In a 2022 offering memorandum, it boasted:

> "As [Pulis] intends to **vacate all apartment units in the property and reposition the Property** by performing significant renovations and improvements **in order to lease the Property to a new demographic of tenants**."[27]

Hazelview Practices Repositioning

49. The Respondent has been similarly transparent about its pursuit of repositioning. It considers itself a "long-term player" that conceives development plans spanning 10 to 15 years or longer.[28] Its business model involves identifying real estate that is "undervalued" and then redeveloping it. The Respondent's President Ugo Bizzarri has stated that Hazelview tries to find "the local market that is getting gentrified and making an investment to create core[29]. Our goal is to find opportunities to create value, not to buy core."[30]

50. Bizzarri has stated that the Respondent looks for "buildings in good locations that need a little TLC," and has expressed how it seeks to invest in "local markets getting gentrified."[31] The Respondent thus aims to improve "**the quality of tenant**" using "stronger disciplinary measures for problem tenants, including evictions." The Respondent's VP of Debt Investments Patrick Smith has stated publicly in

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[25] Tab 22, ABOD, *Mainstreet Equity Corp. Annual Report 2022*, p. 29.
[26] $500 million in assets and 1,250 units.
[27] Tab 7, Applicants' Supplemental Book of Documents, *Pulis Investments 2022 Offering Memorandum*, p. 29.
[28] Tab 25, ABOD, Slate to add to rapidly growing Calgary office portfolio.
[29] "Core" refers to properties that are already gentrified and have achieved their optimal value.
[30] Tab 27, ABOD, City Focus, Toronto: Cranes on the skyline.
[31] *Ibid.*

reference to a development project in Vancouver that "the business plan there is to **roll the tenants**."[32] [Brackets and emphasis added.]

51. The ultimate objective of repositioning is to drive up rent and real estate values. This strategy comprises the Respondent's core business model. The fact that repositioning was also practiced by competitor InterRent REIT was a key factor motivating its acquisition by the Respondent. As stated in the Respondent's 2022 Q4 report:

> "[InterRent REIT] has a strong value-add focus acquiring older, under-managed properties in gentrifying neighbourhoods and selectively deploying capital to improve the amenity base and renovate suites on resident turnover, driving strong valuation and rent growth in the process."[33] [Emphasis and brackets added]

iv) Evidence that Respondent has been Respositioning Herongate

52. To demonstrate that the Respondent pursued repositioning in Herongate, the Applicants rely on a) public statements by the Respondent's executives; and b) the expert opinions of Dr. Lewis and Dr. Wachsmuth.

a) Public Statements by Respondent's Executives

53. The Respondent's executives have made the following public statements suggesting that it has planned to reposition Herongate since at least 2016:

    i. In a meeting held by the Respondent on September 27, 2016, the Respondent's senior Vice President of Development at the time, Greg Rogers, stated its plan for Herongate was to "build an alignment" with Alta Vista, a more affluent and gentrified adjacent neighborhood where 80% of residents identify as White according to 2016 census data, well above the city of Ottawa average of 73.7% as of 2016. Mr. Rogers also stated that the new development would offer "resort style" amenities, and that rents will reflect the "premium

[32] August, M. (2020). The financialization of Canadian multi-family rental housing: From trailer to tower. *Journal of Urban Affairs*, *42*(7), p. 987.
[33] Tab 21, ABOD, *Hazelview Global Real Estate Fund Quarterly Manager Commentary as of December 31, 2022.*

nature of the community" and will "not meet any criteria for affordability." Mr. Rogers also stated that the redevelopment would "seed change" through the area and increase real estate values.

ii. In a local news article published in the *Ottawa South Weekender* on February 21, 2017 covering a community meeting held by the Respondent about the new development in Herongate, Mr. Rogers is quoted as stating that the Respondent had 30 new developments under its belt, and that as a result of those developments "[e]veryone's property values went up." He is also quoted as stating that a name being considered for the new community was "Vistas South", echoing the name Alta Vista, and that "[t]he intent is to bring the community in line more with what's north", i.e. Alta Vista.

b) Expert Opinions

54. The expert reports of Dr. Wachsmuth and Dr. Lewis both conclude that Herongate fits the mold of properties in racialized neighbourhoods that are typically targeted for repositioning by financialized landlords.

55. Dr. Wachsmuth's report finds that owner-occupied dwelling values and rents in Herongate increased at a slower rate than the Ottawa average between 2006 and 2016: 6.9% in the case of real estate values in Herongate versus 49.2% Ottawa-wide; and 23.5% in the case of rents in Herongate versus 27.1% Ottawa-wide. This is due, controlling for other factors, to the particular races and places of origin of Herongate's residents. As such, Herongate qualified as an undervalued real estate market reflecting the "race discount", and which could be redeveloped to achieve the "race bonus".[34]

56. Comparing eviction statistics and acquisition data, Dr. Lewis similarly concludes that the Respondent's acquisition of the Village aligns closely with the acquisition and development strategies of other financialized landlords outlined in his report:

[34] Tab 14, ABOD, *Dr. D. Wachsmuth, N. Ottenhof, I. Hillel Expert Report*, p. 9.

it is located in a highly racialized neighborhood, has a high proportion of Black residents, and was subjected to substantially higher rates of eviction over the relevant time period.

57. **THE LAW**

Test on Summary Hearing is Whether Applications have Reasonable Prospect of Success

58. The Applicants agree with Hazelview's statement of the applicable legal test for a summary hearing. The test is whether they have a reasonable prospect of success. This assessment is made by "assuming the applicant's version of events is true unless there is some clear evidence to the contrary or the evidence is not disputed by the applicant."[35] In this regard, the Tribunal has instructed that it must be

> … very careful to ensure that an application is not dismissed at this early stage, before any evidence has been heard, on the basis that the respondent has an alternative explanation of the events. Apart from the dangers inherent in determining facts without the benefit of evidence, the Tribunal is mindful of the fact that in some cases the respondent is the party who has control over the evidence which could support the applicant's case.[36]

59. This Tribunal has also previously cautioned that the test for summary dismissal should be applied "in only the clearest of cases since it can significantly delay the hearing on the merits and add procedural layers to the proceeding and additional burdens on the parties".[37] Further, the Tribunal, in rejecting requests for summary hearings, has stated that it is not appropriate to make a determination at a summary hearing where evidence would be needed to determine the application, noting:

> The applicant has no direct evidence of discrimination however that it is not unusual. In this case not unlike many others the Tribunal may be called upon to consider whether an inference might be drawn from some of the circumstances alleged by the applicant. There also appear to be disputes about the facts. In cases where there are competing accounts of what actually happened, it may not be possible to determine whether there is no

[35] *Chin Quee v March of Dimes Canada*, 2025 HRTO 1732 at paras 24, 27; *Anantharajah v Teva Canada*, 2014 HRTO 313 at paras 3-5, 7
[36] *Grange v Toronto (City)*, 2014 HRTO 633 at para 55, see also paras 54-59 generally
[37] *Lewis v Toronto Transit Commission*, 2016 HRTO 1200 at para 21; see also *Grange v Toronto (City)*, 2014 HRTO 633 at para

> reasonable prospect that the Application could succeed without hearing some evidence. In those cases it may not be possible to determine if there is no reasonable prospect that the Application could succeed based on the summary hearing process.[38]

60. The Applicants also agree that the Tribunal has no jurisdiction to hear allegations of general unfairness that are unconnected to a prohibited ground of discrimination.

Law of Systemic Discrimination

61. Systemic racial discrimination is one of the most insidious forms of racial discrimination. It cannot be narrowed down to simplistic facts or propositions, particularly insofar as it often results from unseen and unintentional actions. The law is crystal clear on this point:

> A thorough study of "systemic discrimination" in Canada is to be found in the Abella Report on equality in employment. The terms of reference of the Royal Commission instructed it "to inquire into the most efficient, effective and equitable means of promoting employment opportunities, eliminating systemic discrimination and assisting individuals to compete for employment opportunities on an equal basis." (Order in Council P.C. 1983-1924 of 24 June 1983). Although Judge Abella chose not to offer a precise definition of systemic discrimination, the essentials may be gleaned from the following comments, found at p. 2 of the Abella Report:
>
> > "Discrimination ... means practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics....
> >
> > It is not a question of whether this discrimination is motivated by an intentional desire to obstruct someone's potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory.
> >
> > This is why it is important to look at the results of a system…"[39]

62. In *Prieur v. Alberta Health Services,* 2025 AHRC 33, citing *Willer v. Law Society of Alberta,* the Commission stated that:

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[38] Hussein v. Woodgreen Red Door Family Shelter, 2012 HRTO 2129 (CanLII) at para 5.

[39] *CN v Canada (Human Rights Commission)*, [1987] 1 SCR 1114 ["*CNR*"] at 1138-9; see also *Radek v Henderson Development Canada and Securiguard Services (No. 3)*, 2005 BCHRT 302 ["*Radek*"] at para 501.

> …"systemic …discrimination results from interconnected policies, practices, and attitudes that underlie an organization's structure, and which create or perpetuate disadvantage…" Systemic discrimination is often not intentional but its effects might be seen in the underrepresentation or the **disproportionate impact of certain policies and procedures** on women or other protected groups. Systemic discrimination is **demonstrated with information showing a pattern of behavior and an analysis of statistical patterns**….[40] [Emphasis added.]

63. Moreover, as the Federal Court of Appeal stated in *Public Service Alliance of Canada v Canada (Department of National Defence)*:

> Systemic discrimination is a continuing phenomenon which has its roots deep in history and in societal attitudes. It cannot be isolated to a single action or statement. By its very nature, it extends over time.[41]

64. These guiding observations are particularly applicable to systemic racial discrimination. In its *Policy and guidelines on racism and racial discrimination,* systemic racial discrimination is defined by the Ontario Human Rights Commission as:

> …patterns of behaviour, policies or practices that are part of the social or administrative structures of an organization, and which create or perpetuate a position of relative disadvantage for racialized persons. These appear neutral on the surface but, nevertheless, have an exclusionary impact on racialized persons.[42]

65. In *National Capital Alliance on Race Relations*, the Canadian Human Rights Tribunal accepted that systemic racial discrimination arises from the unintended consequences of established systems and practices, which block opportunities and benefits for protected groups, such as racialized persons. The Tribunal went on to instruct, "Since the discrimination is not motivated by a conscious act, it is more subtle to detect and it is necessary to look at the consequences or the results of the particular… system."[43]

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[40] *Prieur v Alberta Health Services*, 2025 AHRC 33 at para 72.
[41] *Public Service Alliance of Canada v Canada (Department of National Defence)*, 1996 CanLII 4067 (FCTAD) at para 16; see also *CNR, supra* at 1145.
[42] Ontario Human Rights Commission. *Policy and guidelines on racism and racial discrimination* (2005), p. 30.
[43] *National Capital Alliance on Race Relations (NCARR) v Canada (Health and Welfare)*, 1997 CanLII 1433 (CHRT) at 29 [*NCARR*]; see also *RL v Kids & Company*, 2022 HRTO 914 at paras 49-50; *Peel Law Association v Pieters*, 2013 ONCA 396 at paras 72-73; *Radek, supra* at para 475-482.

Allegations of Systemic Racism Should Generally not be Dismissed Summarily

66. Racial discrimination has been recognized as a particularly subtle and nuanced form of discrimination to detect, given that it arises from learned attitudes and biases and often operates on an unconscious level.[44] Layered on top of the similarly subtle and nuanced nature of systemic discrimination, this Tribunal has repeatedly cautioned against rejecting allegations of systemic racial discrimination without a careful evaluation of a full evidentiary record. In *Grange*, for instance, this Tribunal stated:

> The Tribunal has observed on a number of occasions that allegations of discrimination, particularly those related to systemic racial discrimination and intersections of more than one prohibited ground, can be subtle, nuanced, and difficult to prove and that there is rarely direct evidence upon which to find a breach of the Code. A finding that the *Code* has been breached is more often the result of the Tribunal conducting a careful evaluation of the evidence of both parties and applying its expertise to draw the appropriate inferences from circumstantial evidence. For that reason alone, the **Tribunal should take a cautious approach to disposing of allegations of systemic discrimination before the evidence is fully considered**.[45] [Emphasis added.]

67. This principle has been affirmed repeatedly by the Tribunal: see *RL v Kids & Company Ltd*[46] at paras 51 and 73; and *Association of Ontario Midwives v Ontario (Health and Long-Term Care)*[47] at para 40.

Evidence in Cases of Systemic Discrimination

68. There is no single form of evidence required to make out a case of systemic racial discrimination. In all circumstances, however, the "focus is always on whether the complainant has suffered arbitrary adverse effects based on a prohibited ground," regardless of whether the nature of the discrimination is individual or systemic.[48]

69. Dealing with issues of systemic discrimination under the comparable analytical framework of section 15 of the *Charter*, the Supreme Court in *Fraser* and *Kanyinda, supra,* identified two forms of evidence that are helpful, though not

[44] *WS v Ottawa Catholic School Board*, 2019 HRTO 619 at para 26.
[45] *Grange v Toronto (City)*, *supra* at para 30.
[46] *RL v Kids & Company Ltd*, 2022 HRTO 914 [*RL*].
[47] *Association of Ontario Midwives v Ontario (Health and Long-Term Care)*, 2014 HRTO 1370 [*Midwives #1*].
[48] *CNR, supra* at 1134, 1136-1139; *RL, supra* at para 50.

required, to establish systemic discrimination where it manifests as a disproportionate adverse impact on a group: 1) evidence about a protected group's situation, including physical, social, cultural or other barriers faced by the group; and 2) evidence about the results produced by the challenged actions, law, or practice.[49] The Court went on in *Fraser* to explain:

> Ideally, claims of adverse effects discrimination should be supported by evidence about the circumstances of the claimant group and about the results produced by the challenged law. Evidence about the claimant group's situation, on its own, may amount to merely a "web of instinct" if too far removed from the situation in the actual workplace, community or institution subject to the discrimination claim (Taypotat, at para. 34). Evidence of statistical disparity, on its own, may have significant shortcomings that leave open the possibility of unreliable results. The weaknesses with each type of evidence can be overcome if they are both present….
>
> This is not to say, of course, that both kinds of evidence are always required. In some cases, evidence about a group will show such a strong association with certain traits — such as pregnancy with gender — that the disproportionate impact on members of that group "will be apparent and immediate"…
>
> Similarly, clear and consistent statistical disparities can show a disproportionate impact on members of protected groups, even if the precise reason for that impact is unknown. Prof. Sandra Fredman has argued forcefully against requiring claimants to specify "the reason why" they are being disadvantaged by a rule or policy:
>
> > "To require the complainants to show the 'reason why' the PCP [policy, criteria or practice] disadvantages the group as a whole is to fundamentally misunderstand the meaning of indirect discrimination. It is the disparate impact on the group of a PCP itself which constitutes the prima facie discrimination…."
>
> …Both evidence of statistical disparity and of broader group disadvantage may demonstrate disproportionate impact; but neither is mandatory and their significance will vary depending on the case.[50]

70. In *Kanyinda*, the Court further explained that evidence of a protected group's situation will often be led through an affected individual's own testimony, expert witnesses, and appropriate judicial notice. Evidence regarding the results of a challenged practice will often take the form of statistics, expert testimony, case

[49] *Fraser v Canada (Attorney General)*, 2020 SCC 28 at paras 60-63 [*Fraser*]; *Quebec (Attorney General) v Kanyinda*, 2026 SCC 7 at paras 52- [*Kanyinda*].
[50] *Fraser, supra* at paras 60-63.

studies or other qualitative evidence. Appropriate inferences can also be made by the decision-maker from the evidence available.[51]

71. Mirroring this approach in the *Charter* jurisprudence, this Tribunal has confirmed that "the nature of the evidence necessary to establish systemic discrimination will vary with the nature and context of the particular complaint in issue".[52] In this regard, the Tribunal has recognized that statistical evidence is often "important and powerful evidence" in systemic discrimination cases, but so is an examination of the "interrelationships between actions (or inaction), attitudes and established organizational structures".[53]

72. A similar approach has been adopted by human rights tribunals across the country. In *National Capital Alliance on Race Relations*, for instance, the Canadian Human Rights Tribunal relied predominantly on statistical and expert evidence regarding hiring and staffing practices to conclude that the employer's approaches resulted in the systemic "ghettoization" of racialized employees, which resulted in the overrepresentation of these employees in low level positions with minimal advancement opportunities.[54]

73. In the frequently-cited British Columbia Human Rights Tribunal decision in *Radek*, the Tribunal engaged in a thorough review of the type of evidence that can and should be considered in assessing claims of systemic discrimination. The Tribunal began by affirming that "evidentiary requirements must be sensitive to the nature of the evidence likely to be available" and "must not be made so onerous that proving systemic discrimination is rendered effectively impossible for complainants".[55] In this regard, the Tribunal confirmed that statistical evidence would often be "extremely helpful" in cases of systemic discrimination but was not essential.[56] It also cautioned against turning the use of statistical evidence into an

[51] *Kanyinda*, *supra* at paras 53-56.
[52] *RL, supra* at para 50.
[53] *Ibid* at paras 51-53; *Midwives #1*, *supra* at para 33.
[54] *NCARR, supra* at 2-3, 26-27, 30.
[55] *Radek, supra* at para 509.
[56] *Ibid* at para 504.

exacting mathematical exercise and thereby losing sight of the overarching purpose of examining the disproportionate impact on the claimant group.[57] In summary, the Tribunal concluded:

> For these reasons, I do not agree with the respondents' submission that statistical evidence of disproportionate effect is essential to a claim of systemic discrimination, either generally or in the present case. Rather, to return to first principles, what is necessary is evidence of "practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics ….": *Action Travail des Femmes* at para. 34. Statistics may be a "signal" of such effects, but they are not necessary in every case. The signal should not be confused with the thing signified. The evidence as a whole should be considered to determine if practices or attitudes are present which have the effect of limiting persons' opportunities due to their membership in one or more protected groups. In this regard, evidence about the attitudes of the respondents and their employees, evidence of the written and unwritten policies of the respondents, and evidence of the respondents' actual practices, both generally and in particular circumstances, may all be relevant to, and probative of, the question of whether systemic discrimination is present.[58]

III. SUBMISSIONS

Applicants Present Evidence Capable of Supporting Allegations of Systemic Racism

74. The Application plainly has a reasonable prospect of success. Looked at holistically and globally, the Applicants have established that there is evidence available to support their allegations that their evictions not only constituted individualized discrimination against each Applicant, but exemplify a larger pattern of systemic racial discrimination carried out through the practices of financialized landlords like the Respondent, across Canada.

75. It must be recalled that, at this stage, the question is whether there is *some evidence* that, if assumed to be true, would establish the requirements of a *prima facie* case. This exercise does not involve consideration of any defence or alternative explanation that the Respondent might offer. Rather, the Tribunal must be satisfied that there is *some evidence* to support the three criteria that make out *prima facie* discrimination:

[57] *Ibid* at para 512.
[58] *Ibid* at para 513.

a) Do the Applicants have a characteristic protected from discrimination under the Code?
b) Have the Applicants experienced an adverse impact with respect to accommodation?
c) Was the protected characteristic a factor in the adverse impact?[59]

76. Notably, in establishing the final stage of the *prima facie* test, claimants are not required to demonstrate that a protected characteristic was the sole or main cause of their adverse treatment. The protected ground need only be one factor in the adverse treatment to render the whole of the action or practice discriminatory. Indeed, the Supreme Court and Ontario Court of Appeal have both confirmed that a claimant does not need to prove that adverse treatment was caused by a discriminatory factor, or that there was intent to discriminate, to establish *prima facie* discrimination. It is sufficient to demonstrate a nexus or connection between the protected ground and the adverse impact.[60]

77. Applying these principles to the evidence marshalled in this proceeding, there can be no dispute that the Test Case Applicants, like the other Applicants in this cluster, are members of a protected group based on race and related grounds. Nor can it be disputed that the Applicants experienced adverse impacts in accommodation due to their evictions, loss of affordable housing, and loss of the community structures and social networks inherent in ethnic enclaves like the former Herongate community. As the evidence outlined above also establishes, many suffered both financial and mental/emotional harms and losses due to the manner in which the Respondent carried out the repositioning of Herongate and the evictions of the Applicants.

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[59] *Moore v British Columbia (Education)*, 2012 SCC 61 at para 33.
[60] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc*, 2015 SCC 39 at paras 40, 44, 48-49, 51-52; *Imperial Oil Limited v Haseeb,* 2023 ONCA 364 at paras 51, 54; see also *Basi v Canadian National Railway*, 1998 CanLII 108 (CHRT) at IX.

78. The Respondent's pursuit of repositioning in Herongate – which its own statements at the time confirm it was engaged in throughout the relevant period – satisfies the third step of the *prima facie* test. Whether intentional or not, the Respondent engaged in a systemically discriminatory process of evictions, tenant attrition, and large-scale demolition in pursuit of the "race bonus" it could achieve by dismantling a racialized neighbourhood in favour of a new, less racialized demographic.

79. Indeed, the expert evidence establishes that the strategy of repositioning by financialized landlords, including the Respondent, in itself satisfies the *prima facie* test. Repositioning is disproportionately pursued in racialized neighbourhoods due to the financial incentive for financialized landlords to achieve "race bonuses" by flipping the properties for an affluent, less racialized demographic. Repositioning is achieved through tactics that inherently create adverse impacts for the former tenants, including practices intended to encourage attrition and/or through large-scale evictions. Finally, the process is cemented by the imposition of above-average rent increases as part of the strategy to reposition the neighbourhood for an affluent, white demographic, supported by marketing strategies, while ensuring that the former tenants cannot return.

80. The evidence of multiple experts and the direct evidence of the Test Case Applicants confirm that precisely such a strategy was deployed in Herongate, where the Respondent disproportionately evicted, pushed out, and priced out existing, racialized community members while simultaneously rebranding and reorienting the neighbourhood for an affluent, white demographic similar to Alta Vista.

81. The Applicants present evidence of both their "situation" as a protected group and the "results produced" by the system, as per the guidance in *Kanyinda* and *Fraser*, *supra.* The Applicants are able to explain the "how" and "why" of the adverse treatment as well as demonstrate their disproportionate risk exposure to repositioning with compelling statistical evidence. Their experts have meticulously deconstructed the mechanics of the system and demonstrated its disproportionate

effects on specific racial groups. This evidence is entitled to deference at this stage and deserves to be rigorously scrutinized.

82. It is essential to consider both the systemic pattern of discriminatory practices and their individualized impacts on the tenants of Herongate in a case such as this. As the case law outlined above establishes, systemic racial discrimination is subtle. It can rarely, if ever, be detected without a detailed assessment of the Respondent's decision-making process.[61] Human rights tribunals have regularly approached the assessment of individual cases of systemic discrimination with the understanding that systemically discriminatory practices are not only violations of the Code in themselves but must be examined and brought to light in order to properly evaluate individualized claims.[62]

83. Indeed, in *Kearney*,[63] the Board of Inquiry found that the practice of using income criteria to screen tenants amounted to a discriminatory practice across multiple landlords. As the Board summarized, the applicants were able to make out their individual claims by establishing that an industry-wide, systemically discriminatory practice had been applied in their individual cases:

> …we have decided that the respondents' use of income criteria to exclude the complainants from housing in their respective buildings constitutes adverse effect or constructive discrimination. The Commission and complainants' evidence established a *prima facie* case for each complainant. The evidence was clear that the use of income criteria is not a valid predictor of default. There was substantial evidence that the use of the criteria disproportionately excludes groups protected by the Code from rental housing.[64]

84. When the same approach is applied to the present case, there can be no doubt that the Application discloses a reasonable prospect of success. Once again, at this stage, the allegations must be taken as true, and the Respondent's alternative explanations are of no moment. Dismissal should only occur in clearest of cases and must be approached with significant caution, given the nuanced nature of

[61] *Pieters, supra* at para 72.
[62] *Radek, supra* at paras 1, 3-5, 59-61, 500
[63] *Kearney v Bramalea Ltd. (No. 2)*, 1998 CanLII 29852 (ONHRT).
[64] *Ibid* at para 195.

systemic racial discrimination and need to assess this type of discrimination holistically, on a full evidentiary record. This case plainly does not constitute a clear case for summary dismissal.

Code Informed by International Legal Obligations

85. The Respondent caricatures the Applicants' arguments by falsely asserting that they are grounded solely in international law. It advances that the Applicants' reliance on international instruments, including the International Covenant on Economic, Social and Cultural Rights ("ICESCR") "simply highlights that there is currently no enacted legislation which would imbed a statutory right to housing." The Respondent accepts that "international law recognizes a right to housing," and that international law may inform interpretation of the Code, but argues that "the right to housing has not been enshrined in domestic law" and that the Code "does not guarantee a right to housing."[65]

86. As outlined above, the Application survives summary dismissal on the basis of domestic legal principles alone. Nevertheless, the Applicants properly rely on the ICESCR and other international legal principles to inform the interpretation and application of the Code, particularly with respect to remedy and the appropriate accommodation.

87. The Application states that "the Human Rights Code must be interpreted in a manner that avoids, where possible, bringing states into noncompliance with their obligations under international law," and that sections 2 and 11 should be interpreted consistently with international human rights obligations so as to prohibit development-driven displacement that fails to accommodate the housing needs of existing residents who are disproportionately members of Code-protected groups.

88. Nor are the Respondents correct that the right to adequate housing as affirmed in international human rights law has not been incorporated into any domestic

[65] Timbercreek Response, paras 131-132, https://www.socialrights.ca/Herongate/Response%20%28s.34%29%20Timbercreek.pdf

legislation. Parliament incorporated Canada's commitment to the right to adequate housing as affirmed in international human rights law into the *National Housing Strategy Act,* SC 2019, c 29, s 313 (NHSA). Section 4 of the NHSA declares that the Government of Canada recognizes the right to adequate housing as "a fundamental human right affirmed in international law" and is committed to further the progressive realization of that right as recognized in the ICESCR. Section 5 of the NHSA requires the Minister to develop and maintain a national housing strategy that takes into account the key principles of a human rights-based approach, establishes goals, priorities, timelines and desired outcomes, focuses on persons in greatest need, and provides for participatory processes including vulnerable groups and persons with lived experience of housing need and homelessness.

89. This point was recognized by Justice Gibson in the recent decision in *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*. He held that section 7 must be interpreted consistently with "Canada's international human rights obligations which have been adopted into domestic law through the National Housing Strategy Act, SC 2019, c 29 ('NHSA')."[66] He further held that "Canada's international obligations, as adopted through the NHSA, establish a basic human right to adequate shelter centered in human dignity."[67] He further held that Canada's decision to enact the NHSA "necessarily strengthens the force" that Canada's international obligations should play in interpretation, because the NHSA codifies Canada's commitment to housing as a fundamental human right and recommits Canada to the progressive realization of the right to adequate housing as defined in the ICESCR.[68]

90. The ICESCR is also binding on Ontario. Justice Gibson confirmed that federal, provincial, territorial, and municipal governments are all equally bound by international human rights instruments ratified by Canada. Ontario has also

[66] *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*, 2026 ONSC 2971 at para 109 [*Waterloo*].
[67] *Ibid* at para 110.
[68] *Ibid* at para 126.

accepted obligations to progressively realize the right to adequate housing under the National Housing Strategy framework through the CMHC-Ontario bilateral agreement. That agreement states that Ontario must adopt action plans that "will include support for those in greatest need, will be consistent with the principles of participation and inclusion; equality and non-discrimination; and accountability, and will speak to the federal human rights-based approach to housing. In so doing, the Action Plan will complement the NHS goal of helping advance the progressive realization of Canada's obligations in relation to housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR)."[69]

91. The Code is the primary source of legislation that regulates the actions of private housing providers with respect to compliance with human rights. It must therefore be interpreted and applied, where possible, to ensure compliance with Ontario's international human rights obligations to protect disadvantaged groups from the adverse effects of development-based displacement and ensure the progressive realization of the right to adequate housing for Code-protected groups.

92. International human rights law is a relevant and persuasive source for interpreting sections 2 and 11 of the Code under the ordinary presumption that domestic law should, where possible, be interpreted consistently with Canada's international obligations. In *Baker*, the Supreme Court held that "the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review," and that interpretations reflecting customary and conventional international law are to be preferred where possible.[70] In *Hape*, the same Court explained that "as a matter of law, courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations, unless the wording of the statute clearly compels that result."[71] The same principle has been reaffirmed in the administrative law context: in *Vavilov*, the Court stated that international law may

[69] CMHC-Ontario Bilateral Agreement under the 2017 National Housing Strategy, ss 3.1, 4.1-4.2, 6.1 and Schedule F [CMHC].
[70] *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at paras 69-70.
[71] *R v Hape*, 2007 SCC 26 at para 53.

operate as an important constraint on administrative decision-makers, and that even treaties not implemented directly by statute may inform whether a decision is a reasonable exercise of statutory power.[72]

93. This interpretive principle applies with particular force to human rights legislation, which is quasi-constitutional, remedial, and to be given a broad, liberal, purposive and contextual interpretation.[73] The Supreme Court in *Montréal (City)* confirmed that international instruments may be relevant in interpreting domestic human rights protections.[74] The HRTO has applied the same approach under the Ontario Code: in *RC v District School Board of Niagara,* the Tribunal relied on *Baker*, relying on Article 18 of the ICCPR and commentary from the UN Office of the High Commissioner on Human Rights, to interpret "creed" under the Cod*e,* holding that international human rights law supported a broad, purposive interpretation of the Code.[75]

International Legal Obligations Require Respondent to Minimize Impact of Development-Driven Displacement on Code-Protected Groups

94. The Applicants rely on international human rights law, as incorporated through the NHSA, to identify the rights-based standards that should inform the interpretation of sections 2 and 11 of the *Code* in the context of private redevelopment, inclusive of urban development, and development-based displacement. The relevant international law and jurisprudence applies directly to states and not to private actors, but the right to adequate housing under the ICESCR requires Canada to take steps "by all appropriate means, including particularly the adoption of legislative measures," toward progressive realization of Covenant rights.[76] Human rights legislation is one of the most important "appropriate means" through which those commitments are realized, because it provides rights-holders with access to

[72] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 114.
[73] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Montréal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Boisbriand (City)*, 2000 SCC 27 at paras 28-32.
[74] *Ibid* at paras 72-73.
[75] *RC v District School Board of Niagara*, 2013 HRTO 1382 at paras 29, 40-43.
[76] International Covenant on Economic, Social and Cultural Rights, art 2(1) [IECSR].

adjudication and remedies. Conversely, private action in the housing market produces discriminatory exclusion, restriction, or preference that may frustrate the realization of the right to adequate housing for disadvantaged and Code-protected groups.[77]

a) Robust Right of Return

95. Where displacement cannot be avoided, international law requires more than compensation or a nominal right of return. The Special Rapporteur's development-based eviction guidelines state that resettlement includes provision of housing that meets criteria of "accessibility, affordability, habitability, security of tenure, cultural adequacy" and suitability of location.[78] They also provide that resettlement must protect vulnerable groups, include affected persons in planning, and ensure that affected groups do not suffer detriment in their human rights.[79] The security of tenure guidelines apply these principles to business actors: where people have been displaced and return is impossible, businesses should take all possible steps to provide secure alternative housing of the "same or better quality and location."[80]

96. The Code should accordingly be interpreted so that a redevelopment practice with adverse racial impact is not justified by a bare right to apply for future units. The relevant question is whether the redevelopment preserves equal access for the affected racialized, immigrant, and ancestry/place-of-origin community to appropriate, affordable housing and in a location that maintains access to the community supports and institutions that made the housing adequate.

b) Prioritization of Disadvantaged Groups

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[77] *Ibid*; *National Housing Strategy Act*, SC 2019, c 29, s 313 at 4(a), 4(d), 5(2) [*NHSA*]; Special Rapporteur, Access to Justice for the Right to Housing at paras 13-15, 20-26, 58-64; Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 24 on State Obligations under the ICESCR in the Context of Business Activities at paras 1-5, 14-19, 23-24, 49-50, 58-59.
[78] Special Rapporteur, Basic Principles and Guidelines on Development-Based Evictions at paras 16, 43-44, 55-56; CESCR, General Comment No. 4 at para 8.
[79] Special Rapporteur, Development-Based Evictions at paras 52-56, 63-68; CESCR, General Comment No. 7 at paras 10, 13, 15-16.
[80] Special Rapporteur, Guiding Principles on Security of Tenure for the Urban Poor at paras 29, 66-70, 81; Special Rapporteur, Access to Justice for the Right to Housing at paras 38-39, 58-64.

97. Redevelopment must prioritize the housing needs of disadvantaged groups, including racialized tenants, recent immigrants, and communities identified by ancestry, ethnic origin and place of origin. CESCR General Comment No. 4 states that disadvantaged groups must receive priority consideration in the housing sphere.[81] The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) requires equality in the enjoyment of economic, social and cultural rights, including "the right to housing," without discrimination based on race, colour, descent, or national or ethnic origin.[82] The NHSA's domestic framework echoes these requirements: the National Housing Strategy must focus on persons in greatest need.[83] The Financialization Review Panel appointed under the NHSA identified priority populations as including racialized groups and recent immigrants, and concluded that protecting affordable rental housing from the effects of financialization is essential to the progressive realization of the right to adequate housing.[84] Sections 2 and 11 of the Code should therefore be interpreted to prevent redevelopment from replacing an existing affordable racialized and immigrant community with housing designed, priced, and marketed for a more affluent and predominantly white population.

Application of International Legal Principles to this Case

98. In sum, international law requires that redevelopments like Herongate be undertaken in a manner that minimizes both interim and permanent displacements and attenuates their deleterious effects on incumbent residents, particularly where they belong to Code-protected groups.

99. Herongate was not developed in a manner consistent with these obligations. The Applicants were displaced and were offered neither interim nor permanent rental housing at the same rent that would have allowed them to remain integrated within

[81] CESCR, General Comment No. 4 at paras 8(e), 11; CESCR, General Comment No. 7 at para 10.
[82] International Convention on the Elimination of All Forms of Racial Discrimination, art 5(e)(iii); Committee on the Elimination of Racial Discrimination, General Recommendation XXX at para 32.
[83] *NHSA*, *supra* at s 5(2)(c); CMHC, *supra* at ss 3.1, 4.1-4.2, 6.1 and Schedule F.
[84] Review Panel Report, The Financialization of Purpose-Built Rental Housing, pp. 2-5, 21-24; Supplementary Materials, Review Panel Report, pp. 5-7, 24-25, 49-51; Minister's Response to the Review Panel, pp. 1, 3, 5, 7.

the community. Their displacement severed them from the Herongate community and cost them tens of thousands of dollars in moving expenses, lost economic opportunities, and increased rent.

100. There is no principled basis for interpreting and applying the Code inconsistently with these obligations. The Code should be interpreted as requiring the Respondent to accommodate the housing needs of residents in racialized communities subjected to repositioning by minimizing displacement and ensuring ongoing and uninterrupted access to affordable and suitable housing within the community, both on an interim basis during the redevelopment and permanently at its conclusion, up to the point of undue hardship. This is the minimum standard required by international law.

Conclusion

101. This Application has a reasonable prospect of success. It is not tethered solely to the right to housing under international law but to established principles of human rights law under the Code.

102. The Applicants have presented cogent and compelling evidence that meets the low evidentiary threshold required to survive summary dismissal. This evidence demands further inquiry. The Applicants ask that it be heard.

103. The Applicants submit that the Respondent's motion should therefore be rejected, and the Application should be scheduled for a full hearing on the merits without delay.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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SCHEDULE B

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