



Dalhousie Legal Aid Service
A Community Service of Dalhousie University

5746 Russell Street
Halifax, NS B3K 0H8
Phone: (902) 423-8105
Fax: (902) 422-8067

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Law Amendments Committee
Nova Scotia Legislature
1726 Hollis Street
Halifax, NS B3J 2Y3

Honourable Committee:

**RE: Bill 30, An Act to Amend Chapter 401 of the Revised Statutes, 1989, the
*Residential Tenancies Act***

Please accept these submissions in regard to the above noted matter ("**Bill 30**").

These submissions focus on a crucial omission from Bill 30—namely, the failure to include in the proposed amendments enhanced protections for persons living for long periods of time in hotels and other tourist accommodations (hereafter, "**Extended-stay Residential Hotels**").

The use of Extended-stay Residential Hotels has formed a crucial aspect of the provincial government's response to the growing crisis of homelessness and housing insecurity in Nova Scotia, especially since the onset of the COVID-19 pandemic. Today, there are many Nova Scotians living for weeks, months, and even years at a time in Extended-stay Residential Hotels owing to a lack of other affordable housing options. However, with a few limited exceptions as described below, these individuals enjoy no rights or protections under the *Residential Tenancies Act*, RSNS 1989, c 401 ("**RTA**"). As a result, they can, and are, being forced out of the only place they have to live on a moment's notice.

These submissions are organized in three sections. First, I provide background regarding the current housing and homelessness crisis in Nova Scotia, describe the role of Extended-stay Residential Hotels in the continuum of affordable housing in the province, and discuss the treatment of Extended-stay Residential Hotels under the RTA.

Next, I examine how other Canadian and American jurisdictions approach the regulation of Extended-stay Residential Hotels specifically as it relates to, if and/or when, tenancy rights and protections are advanced to residents in these settings.

Finally, I offer recommendations for amendments for this Honourable Committee to consider incorporating into the changes to the RTA proposed in Bill 30. These recommendations are as follows:

- (1) The definition of “hotel” under section 2(h)(iv) of the RTA should be amended to exclude a “Extended-stay Residential Hotel.”
- (2) A new definition of “Extended-stay Residential Hotel” should be added to the RTA. This definition should provide that an Extended-stay Residential Hotel is a residential premises within the meaning of section 2(h) of the RTA that is defined as:
 - (a) A “roofed accommodation” within the meaning of the *Tourist Accommodations Registration Act*, SNS 2019, c 9, in which an individual resides, either consecutively or on an aggregate basis, for ninety (90) or more days within a one hundred and eighty day (180) day period; or
 - (b) Notwithstanding (a), a roofed accommodation in respect of which the relation of landlord and tenant is deemed to exist under section 3(2) of the RTA, judged with reference to the following factors:
 - (i) whether the roofed accommodation is the resident’s sole residence;
 - (ii) the length of the stay in the roofed accommodation;
 - (iii) the rate or method of payment; and
 - (iv) the pattern of activities carried on in the roofed accommodation.

1. Background

a. What is affordable housing?

Housing is often referred to as a continuum, capturing those who are unhoused on one end and those who rent via the market or are homeowners on the other. Thus, the housing continuum captures a range of housing types available in a community, each of which is critically important for different people at different times and stages in their lives.¹ These housing types may also be characterized by various tenure or “ownership” arrangements, spanning rental, owner-occupation, or cooperative ownership.² Housing is typically provided by the government, the private sector, or by not-for-profits.

¹ “What is the housing continuum?,” United Way of Halifax, last modified 23 July 2020, <https://www.unitedwayhalifax.ca/blog/what-is-the-housing-continuum/>

² *Ibid.*

THE HOUSING CONTINUUM

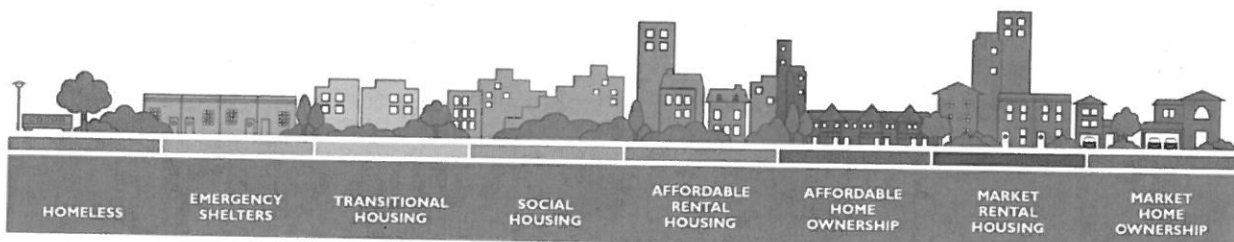


Figure 1: The Housing Continuum, Canada Mortgage and Housing Corporation.³

In the absence of housing, an individual may be considered homeless, though an increasingly used term is “unhoused.” According to the Canadian Observatory on Homelessness, homelessness “describes the situation of an individual, family or community without stable, permanent, appropriate housing or the immediate prospect, means and ability of acquiring it.”⁴ The pathways into homelessness are complex, and include factors such as “systemic or societal barriers, a lack of affordable and appropriate housing, the individual/household’s financial, mental, cognitive, behavioural or physical challenges, and/or racism and discrimination.”⁵ The recognition of housing as a human right is also grounded in an understanding of housing as a social determinant of health.⁶ Indeed, a lack of adequate housing, or situations in which individuals find themselves unhoused, are associated with numerous negative health outcomes, both physical (including diseases and chronic illnesses) and various mental health issues.⁷

According to the Canada Mortgage and Housing Company (“**CMHC**”), housing is affordable when a household spends less than 30% of its income, pre-tax, on housing. Households that spend more than 30% of their income on shelter are deemed to be in *core housing need*, and those who spend 50% or more on shelter are said to be in *severe housing need*.⁸ While more recent data is needed, in 2016 it was estimated that

³ “About Affordable Housing in Canada,” Canadian Mortgage and Housing Corporation, last modified 31 March 2018, <https://www.cmhc-schl.gc.ca/en/professionals/industry-innovation-and-leadership/industry-expertise/affordable-housing/about-affordable-housing/affordable-housing-in-canada>

⁴ Stephen Gaetz et al, *Canadian definition of homelessness* (Toronto, ON: Canadian Observatory on Homelessness Press, 2012): <http://homelesshub.ca/sites/default/files/COHhomelessdefinition.pdf>

⁵ Stephen Gaetz et al, *The State of Homelessness in Canada: 2016* (Toronto, ON: Canadian Observatory on Homelessness Press, 2016): https://homelesshub.ca/sites/default/files/SOHC16_final_20Oct2016.pdf [Gaetz, *State of Homelessness*].

⁶ Steven Rolfe et al, “Housing as a social determinant of health and wellbeing: developing an empirically-informed realist theoretical framework,” *BMC Public Health*, 20 (2020): 1138.

⁷ *Evidence Brief: Homelessness and Health Outcomes: What are the Associations?*, (Toronto, ON: Public Health Ontario, 2019): <https://www.publichealthontario.ca/-/media/documents/E/2019/eb-homelessness-health.pdf>

⁸ “Affordable Housing,” Homeless Hub, accessed 20 October 2021, <https://www.homelesshub.ca/solutions/housing-accommodation-and-supports/affordable-housing>

12.8% of Nova Scotians lived in core housing need, which was disproportionately experienced by those who rent.⁹

b. The ongoing housing crisis in Nova Scotia

Nova Scotia is in the midst of a housing crisis. Nationwide, Canada has been experiencing rapidly increasing housing prices, with average home prices increasing by 80% between 2009 and 2019.¹⁰ Rental market housing has also skyrocketed nationwide—in HRM, average rent for a one bedroom apartment was \$1,473 in 2020, up from \$904 in 2018.¹¹ Meanwhile, Halifax has had persistently low rental vacancy rates. In 2019, according to the CMHC's rental market survey, Halifax's rental vacancy rate was 1.0%. In 2020, this increased slightly to 1.9%, largely attributed to the absence of students as a result of the pandemic.¹²

The COVID-19 pandemic has further accelerated the housing crisis in HRM. As a result of social distancing regulations in emergency shelters, together with significant socio-economic pressures, Halifax's homeless population doubled.¹³ Amidst the pandemic, Halifax has been the second fastest growing region in Canada, having experienced steady population growth over the past five years.¹⁴ This has placed significant pressure on the HRM's already low supply of affordable housing stock. As a result, there is a tangible and urgent mood across the province that the housing crisis is becoming increasingly dire.

Although most of the statistics that I have cited in this subsection are specific to the HRM, this in no way should be taken to suggest that the ongoing housing and homeless crisis is somehow confined to the municipality. Rather, data compiled by CBC News from community organizations in every region of the province clearly indicates homelessness is a problem that stretches from Yarmouth in the southwest to Sydney in

⁹ Housing for All Working Group, *Keys to a Housing Secure Future for All Nova Scotians* (Halifax, NS: Canadian Centre for Policy Alternatives - Nova Scotia, 2021): 12, https://www.policyalternatives.ca/sites/default/files/uploads/publications/Nova%20Scotia%20Office/2021/05/CCPA-Housing-2021-Final_NS%20.pdf [*Keys to a Housing Secure Future*].

¹⁰ Michal Rozworski, "The roots of our housing crisis: Austerity, debt and extreme speculation," *Policy Note*, 14 June 2019, <https://www.policynote.ca/the-roots-of-our-housing-crisis-austerity-debt-and-extreme-speculation/> [Michal Rozworski, "The roots of our housing crisis"].

¹¹ Nicole Munro, "Report: Renting a one-bedroom apartment in Halifax will cost you 20% more than in 2020," *Chronicle Herald*, 18 February 2021, <https://www.saltwire.com/nova-scotia/news/report-renting-a-one-bedroom-apartment-in-halifax-will-cost-you-20-more-than-in-2020-554107/>; "Housing Market Information Portal," Canadian Mortgage and Housing Corporation, accessed 20 October 2021, <https://www03.cmhc-schl.gc.ca/hmip-pimh/en#Profile/0580/3/Halifax>

¹² Zane Woodford, "Apartment vacancy rate moves up to 1.9% in Halifax, but average rents are up too," *Halifax Examiner*, 28 January 2021, <https://www.halifaxexaminer.ca/province-house/apartment-vacancy-rate-moves-up-to-1-9-in-halifax-but-average-rents-are-up-too/>

¹³ Jesse Thomas, "Coronavirus: Homeless rate in Halifax doubles during pandemic, study says," *Global News*, 19 November 2020, <https://globalnews.ca/news/7473100/coronavirus-homelessness-halifax-ahans-covid19/>

¹⁴ Alicia Draus, "Halifax rated Canada's second fastest growing municipality," *Global News*, 20 January 2021, <https://globalnews.ca/news/7588836/halifax-rated-canadas-second-fastest-growing-municipality/>

Cape Breton, and everywhere in between. The latest available numbers show that 1,168 people recently sought help because they're homeless or on the verge of losing their home.¹⁵ Rural Cape Breton is the only area for which no data could be found.

c. Housing through the market

The causes of the housing crisis are a result of highly complex, interconnected factors. Researchers and academics suggest that the main drivers nationally have been increasing land values, low interest rates, rampant real estate speculation, and a long period of austerity from all levels of government in the provision of affordable housing.¹⁶

This last cause, government austerity, is one of the most consequential. Between 1945 and 1993, the federal government invested significantly in social, not-for-profit housing, resulting in a large stock of publicly owned housing.¹⁷ However, a significant period of austerity began in the 1990s, often referred to the “neoliberal retrenchment,” in which the federal government cut all of its spending on housing and subsequently downloaded this responsibility onto the provinces.¹⁸ Many provinces, including Nova Scotia, replicated this retreat, looking to the private sector, municipalities, and the not-for-profit sector to pick up the slack.¹⁹ This resulted in over two decades of little to no government investment in affordable housing, which is said to be one of the most significant causes of the present-day housing crisis.²⁰

This decline in government support occurred in tandem with the financialization of Canada's housing market.²¹ “Financialization” refers to the increasing reliance on for-profit delivery of housing. Financialization negatively impacts tenants and the affordability of housing through increases in rent, cuts to services, and the introduction of new user fees, as property owners—often large development companies—seek to recoup as much profit as possible.²² Financialization is present in Nova Scotia, which has a higher proportion of housing stock owned by financialized landlords compared to provinces such as Ontario, Manitoba, British Columbia, and Quebec.²³ In her national survey of financialization, Martine August, a scholar in the School of Planning at the University of Waterloo, found that: “provinces that are over-represented in terms of [real estate investment trust (“REIT”)] ownership have weak or no rent control, including

¹⁵ Taryn Grant, “Homelessness touches every corner of N.S., and the numbers prove it,” *CBC News*, 19 October 2021, <https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-homeless-numbers-affordable-housing-1.6212589>

¹⁶ Terry Kading and Christopher Walmsley, “Homelessness in Small Cities: The Abdication of Federal Responsibility,” in *Small Cities, Big Issues: Reconceiving Community in a Neoliberal Era* (Athabasca, AB: University of Athabasca Press, 2018).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Stephen Gaetz et al, *The State of Homelessness in Canada: 2016*, *supra* note 4.

²¹ Housing for All Working Group, *Keys to a Housing Secure Future*.

²² Martine August and Alan Walks, “Gentrification, suburban decline, and the financialization of multi-family rental housing: The case of Toronto” *Geoforum* 89 (2018): 124-136.

²³ Martine August, “The financialization of Canadian multi-family rental housing: From trailer to tower,” *Journal of Urban Affairs* 42, no. 7 (2020): 975-99.

Ontario, Alberta, Saskatchewan, the North (Northwest Territories and Nunavut), and parts of Atlantic Canada (Nova Scotia, New Brunswick, Newfoundland and Labrador).²⁴

In Halifax, like many major urban centres, a significant majority of individuals rent, with the majority of rental housing provided by the private sector.²⁵ A recent survey done by the CMHC identifies only 12,341 units of public housing in Nova Scotia, and census data show that only 12.3% of renter households live in subsidized housing.²⁶ However, providing shelter predominantly via the private marketplace is in tension with shelter being both a right and a major social determinant of health.

This tension is largely attributable to the fact that private market housing providers have few incentives to make housing affordable—a fact noted in the recent report *Charting a New Course for Affordable Housing in Nova Scotia* authored by the provincially-appointed Nova Scotia Affordable Housing Commission.²⁷ In this report, a key finding is that “it is too expensive to build and operate affordable housing.”²⁸ The report argues that developers are deterred from building affordable housing for several factors, including high costs of new construction, acquiring land, and ongoing operational expenses.²⁹

While it is true that building affordable housing is expensive, the private market neglects to do so specifically because it is not profitable enough. In effect, the paradox of the housing crisis is that “it has literally created wealth under the feet of one set of Canadians and foreign property owners—many of them already wealthy—while making simple existence for another set, in particular the urban poor, increasingly difficult.”³⁰

d. The role of Extended-stay Residential Hotels in the affordable housing continuum in Nova Scotia

Extended-stay Residential Hotels have long been used in the province to fill a critical “gap” in affordable housing, especially for some of the most marginalized and vulnerable Nova Scotians. For instance, in 2017, the CBC reported that children in provincial care were staying longer in hotels and other “last resort” places of safety.³¹ Between September 1, 2014 and August 31, 2016, 20 children spent a total of 2,369 nights in hotel rooms and other alternative living arrangements, at a total cost to the

²⁴ *Ibid.*

²⁵ *Keys to a Housing Secure Future*, *supra* note 9.

²⁶ *Ibid.*, 14.

²⁷ Nova Scotia Affordable Housing Commission, *Charting a new course for affordable housing in Nova Scotia* (Halifax, NS: Government of Nova Scotia, 2021): 28, <https://beta.novascotia.ca/sites/default/files/documents/1-2679/charting-new-course-affordable-housing-nova-scotia-en.pdf>

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Michal Rozworski, “Are we addicted to debt?,” Canadian Centre for Policy Alternatives, last modified 1 November 2018, <https://www.policyalternatives.ca/publications/monitor/are-we-addicted-debt>

³¹ Michael Gorman, “Kids in provincial care staying longer in hotels and other ‘last resort’ places,” *CBC News*, 19 January 2017, <https://www.cbc.ca/news/canada/nova-scotia/community-services-children-in-care-hotels-apartments-safety-1.3941219>

province of \$2,596,421.³² The longest hotel stay during this time occurred in Antigonish County and involved a child who lived in a hotel for 200 days.³³

Since the onset of the COVID-19 pandemic, the use of Extended-stay Residential Hotels to address the acute housing needs of homeless and housing insecure Nova Scotians has increased dramatically—though there is no central tracking of how many people across the province are living in hotels for this reason at any one time.

To consider just one example, during the height of the first wave of the pandemic, there was a rapid release of people from provincial jails. Many did not have a plan or a place to go. With support from the federal and provincial governments, as well as the United Way Halifax, three local non-profits responded to this crisis together through an emergency housing program called J.E.C. (John Howard Society, Elizabeth Fry Society, Coverdale Courtwork Society).³⁴ JEC safely housed in 20 hotel rooms people exiting jail during the pandemic, for a total of over 30 people over the course of the project.³⁵ JEC offered staffing from 9:00 AM to 11:00 PM, 7 days a week, including wellness checks on the people staying in the hotels JEC offered three meals a day, with other supports being provided by the agencies themselves to the extent the limited funding would allow. Every client was also supported by a specific JEC caseworker. The caseworkers dealt with long term housing issues, mental health supports, access to medication, medical appointments, etc. Addiction support was also provided by peer mentors, who themselves were formally incarcerated. None of the individuals that were released and supported through JEC breached their conditions of release or accrued new charges during this time.³⁶

More generally, the increasing extent to which the provincial government is relying on Extended-stay Residential Hotels to house Income Assistance recipients is reflected in year-over-year spending data that CBC obtained in 2021 through a freedom of information request.

³² *Ibid.*

³³ *Ibid.*

³⁴ "United by Compassion Series: J.E.C. Program," United Way Halifax, accessed 25 October 2021, <https://www.unitedwayhalifax.ca/blog/united-by-compassion-series-j-e-c-program/>

³⁵ Adelina Iftene, *The Impact of the Pandemic on Provincially Incarcerated Individuals – Assessment and Preparation for Subsequent Waves* (Halifax, NS: Health Law Institute, Schulich School of Law, 2020): <https://www.halifaxexaminer.ca/wp-content/uploads/2020/09/COVID-19-Provincially-Incarcerated-Individuals-A-Policy-Report.pdf>

³⁶ *Ibid.*

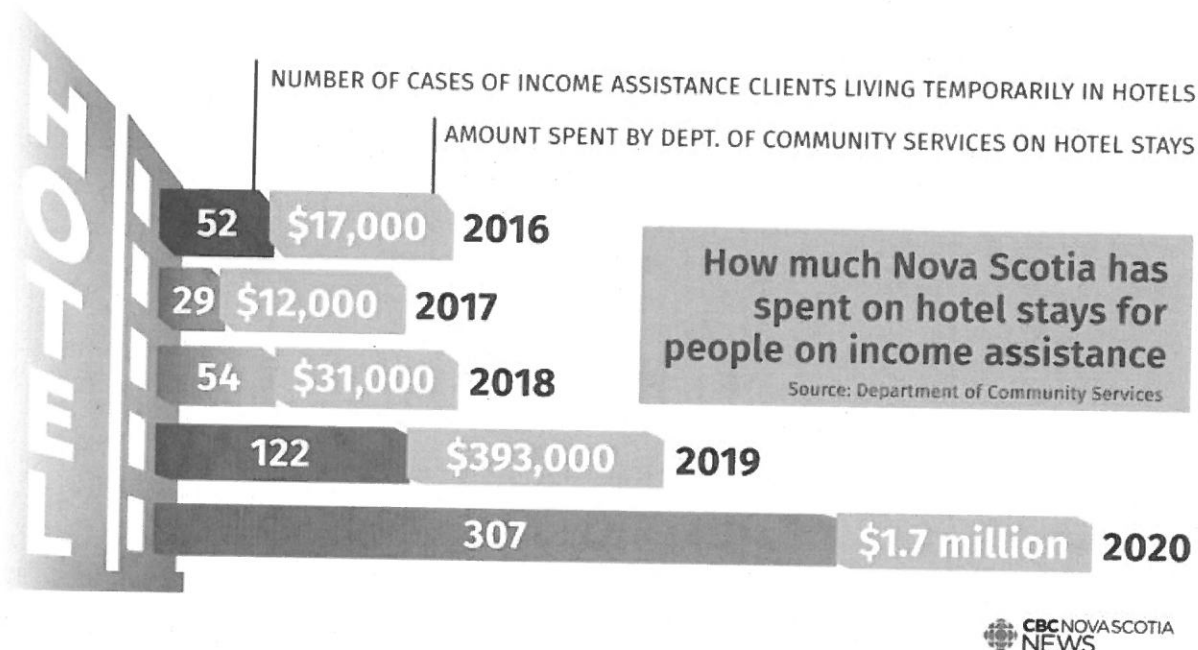


Figure 2: Year-over-year spending by the Department of Community Services on hotel rooms for clients on income assistance, 2016 to 2020³⁷

According to research conducted by the School of Social work at Dalhousie University, the hotel model works well.³⁸ The study examined homelessness during the COVID-19 pandemic focusing on the Halifax and Cape Breton regional municipalities, speaking with service providers and those experiencing homelessness. In Cape Breton, four comfort centres were opened to provide basic needs like washrooms, showers, laundry and a bit of human connection. In Halifax, some hotels started a harm reduction initiative where they provided regular doses of alcohol to those with alcohol addiction. The study found that hotels provided a “more dignified, healthy, quick, and efficient way” to house people, and that “consistent, trustful partnerships between different organizations” made an important difference in terms of program success.³⁹

The use of Extended-stay Residential Hotels is also an essential feature of the provincial government’s recently announced housing and homelessness plan, *A Healthy Nova Scotia: Solutions for Housing and Homelessness*.⁴⁰ In particular, of the \$10.1

³⁷ Taryn Grant, “With nowhere to go, number of income assistance clients living in hotels skyrockets,” *CBC News*, 16 April 2021, <https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-income-assistance-hotel-housing-1.5987016>

³⁸ Haley Ryan, “People in Halifax homeless camps welcome new hotel funding as cold sets in,” *CBC News*, 21 October 2021, <https://www.cbc.ca/news/canada/nova-scotia/people-in-halifax-homeless-camps-welcome-new-hotel-funding-as-cold-sets-in-1.6218853>

³⁹ *Ibid.*

⁴⁰ *A Healthy Nova Scotia: Solutions for Housing and Homelessness* (Halifax, NS: Province of Nova Scotia, 2021): <https://beta.novascotia.ca/sites/default/files/documents/1-2738/healthy-nova-scotia-solutions-housing-and-homelessness-en.pdf>

million that will be spent over the next two years to help people experiencing homelessness and housing insecurity, \$1.3 million has been set aside for hotel stays with 24/7 staffing support.⁴¹

e. The treatment of Extended-stay Residential Hotels under Nova Scotian law

Currently, “residential premises” are defined under section 2 of the RTA as:

- (h) “residential premises” includes any house, dwelling, apartment, flat, tenement, manufactured home, land-lease community, manufactured home space or other place that is occupied or may be occupied by an individual as a residence or that part of any such place that is or may be occupied by an individual as a residence, but does not include
 - (i) a university, college or institution of learning, a hospital, psychiatric hospital or maternity hospital, a municipal home, or a jail, prison or reformatory,
 - (ii) a maternity home that is licensed under the *Children’s Services Act*,
 - (iii) a nursing home to which the *Homes for Special Care Act* applies,
 - (iv) a hotel that is licensed under the *Hotel Regulations Act*,
 - (v) a residential care facility licensed under the *Homes for Special Care Act*, or
 - (vi) any other class of premises prescribed by regulation.

The exclusion of a “hotel” under section 2(h)(iv) from the definition of “residential premises” means that, presumptively, a hotel is not a dwelling in respect of which the relation of landlord and tenant exists. In turn, this means that the rights and protections under the RTA do not apply.

Section 2(h)(iv) refers to the *Hotel Regulations Act*, which is a piece of legislation that has not been in force for some time. The *Hotel Regulations Act* was repealed and replaced by the *Tourist Accommodations Act*, SNS 1994-95, c 9, which was in turn repealed and replaced by the *Tourist Accommodations Registration Act*, SNS 2019, c 9 (“**TARA**”). Bill 30 has thankfully addressed this oversight by replacing all references to the *Hotel Regulations Act* with TARA.

Notably, whereas the *Hotel Regulations Act* referred to “hotels,” TARA uses the much broader term “roofed accommodation,” which it defines as:

- (d) “roofed accommodation” means
 - (i) every building, part of a building, group of buildings or place of accommodation that provides one or more residential units used mainly for the reception of the travelling or vacationing public,

⁴¹ Haley Ryan, “N.S. pledges \$10M to support people experiencing homelessness,” *CBC News*, 20 October 2021, <https://www.cbc.ca/news/canada/nova-scotia/n-s-pledges-10m-to-support-people-experiencing-homelessness-1.6218019>

- (ii) cottages or cabins, or
- (iii) any building or part of a building designated as a roofed accommodation by the regulations.⁴²

In our submissions, any use of the word “hotel” should be understood to be equivalent to “roofed accommodation” under TARA.

Currently, there are no sections in TARA that allow for prolonged occupancy in a roofed accommodation to lapse into a residential tenancy under the RTA. However, it is possible for a prolonged tourist occupancy to lapse out of the “short-term rental” designation, with which TARA is concerned. Under section 2(a), a host is “a person who carries on the business of offering short-term rental of roofed accommodations to the travelling or vacationing public in the Province.” A “short-term rental” is “the provision of roofed accommodations to a single party or group, for payment or compensation, for a period of 28 days or less.”⁴³ Under section 3(1), anyone who carries on business as a host must register under TARA.

This means that, once an accommodation is provided for more than 28 days, it is no longer a “short-term rental.” Consequently, the person carrying on the business of providing accommodations is no longer a “host” within the meaning of TARA. While the business operator may no longer be a “host” of a roofed accommodation, nowhere in the legislation does it state that they are now a landlord under the RTA.

However, the exclusion of hotels from the definition of residential premises under section 2(h) of the RTA does not mean that a hotel can *never* fall within the jurisdiction of the RTA. This is because of the wording of section 3, which reads (emphasis added):

3 (1) Notwithstanding any agreement, declaration, waiver or statement to the contrary, this Act applies when the relation of landlord and tenant exists between a person and an individual in respect of residential premises.

(2) For the purposes of subsection (1), the relation of landlord and tenant is deemed to exist in respect of residential premises between an individual and a person when an individual

- (a) possesses or occupies residential premises and has paid or agreed to pay rent to the person;
- (b) makes an agreement with the person by which the individual is granted the right to possess or occupy residential premises in consideration of the payment of or promise to pay rent;
- (c) has possessed or occupied residential premises and has paid or agreed to pay rent to the person.

In short, section 3(2) of the RTA allows for “deemed tenancy,” which is when the relationship of landlord and tenant is *deemed* to exist in respect of a residential tenancies even absent a formal lease agreement between the parties. Once a

⁴² *Tourist Accommodations Registration Act*, SNS 2019, c 9, s 2(d).

⁴³ *Ibid*, s 2(e).

relationship of landlord and tenant is deemed to exist, the rights and protections of the RTA apply. Some cases where deemed tenancies have been found in the past include:

- An agreement to pay for expenses in consideration of being allowed to stay in a residential unit is sufficient to constitute rent and support a finding of a landlord-tenant relationship;⁴⁴ and
- Payment by someone living in rental premises of all or part of a bill related to the rental premises (e.g., a power bill), or agreement to pay such a bill, counts as rent and is sufficient to constitute a landlord-tenant relationship.⁴⁵

Notably, residential tenancy officers have been willing to exercise their authority under section 3(2) of the RTA to find deemed tenancies in respect of Extended-stay Residential Hotels in the past. Residential tenancies decisions are not publicly reported, so we have no way of knowing how frequently this happens, but Dalhousie Legal Aid Service was involved in two such cases in 2021, both of which involved long-term residents at a hotel in HRM.

The facts of both cases were very similar. In each case, individuals had been living at a hotel for extended periods of time (since 2015 and 2019 respectively) before being given notice to vacate by the owner. Subsequently, the individuals filed applications with the Director of Residential Tenancies requesting that a landlord-tenant relationship be deemed to exist and the notice to vacate be set aside. At the hearing for each, the owner argued that the hotel was registered under TARA, and so exempt from the application of the RTA.

In both cases, the Residential Tenancy Officers (“**RTOs**”) assigned to hear the matters made the following findings of fact:

- The residents did not receive services such as the cleaning of the unit, provision of meals, or changes of bedding and towels;
- The residents were not subject to any restrictions regarding guests or pets;
- The residents both regarded the hotel room as their permanent address, as exemplified by the fact that they used same for government records and personal mail;
- The residents paid a monthly amount which had no correlation to the daily rate charged to other guests; and
- Neither resident provided a date of departure when they moved into the hotel room, and they did not check in and check out on a daily, weekly, or monthly basis.

⁴⁴ *Johnstone v. Helpard*, 2016 NSSM 66.

⁴⁵ *Vallee v Balsom*, 2007 NSSM 57.

As a result of these findings, the RTOs held that the pattern of activities carried on by the resident and the owner strongly indicated that the hotel room was a living accommodation used or intended for a residential purpose within the scope of the RTA.

2. Approaches to regulating Extended-stay Residential Hotels in other jurisdictions

a. Canadian jurisdictions

i. The role of Extended-stay Residential Hotels across Canada

There is no comprehensive nationwide record-keeping regarding the extent to which Extended-stay Residential Hotels are currently being used. However, like in Nova Scotia, since the onset of the COVID-19 pandemic, many cities have taken this approach to housing homeless and housing insecure people. For example, with funding provided by the Canadian Medical Association Foundation, a number of cities have been able to keep vulnerable people safe by converting unused hotel rooms into housing, including:

- **Quebec City:** A small portion of the \$226,000 in funding for the city is providing overnight stays for people who cannot find accommodation.
- **Peel Region:** \$98,000 in funding is helping create overflow space at local hotels so regional shelters can adhere to physical distancing protocols by limiting their capacity to 50%.
- **Niagara Region:** \$62,500 in funding is being used to provide emergency shelter in hotels until March 2021.⁴⁶

Several other municipalities have also adopted this approach, including Toronto, Ontario;⁴⁷ London, Ontario;⁴⁸ Victoria, British Columbia;⁴⁹ and Kingston, Ontario.⁵⁰

ii. The treatment of Extended-stay Residential Hotels under Canadian law

Many provinces and territories have exclusions in their respective residential tenancies statutes for individuals who are being accommodated on a “transient” basis in hotels and similar tourist accommodation. However, some jurisdictions have provided for

⁴⁶ “Hotels in tourism hotspots shelter vulnerable people during pandemic,” Canadian Medical Association, last modified 20 November 2020, <https://boldly.cma.ca/stories/sheltering-vulnerable-people-during-pandemic>

⁴⁷ Liam Casey, “Toronto launches program to move homeless in encampments into hotel rooms,” *Global News*, 17 March 2021, <https://globalnews.ca/news/7701858/toronto-program-homeless-encampments-hotels/>

⁴⁸ Andrew Lupton, “Winding down hotel homeless program could be ‘devastating,’” *Global News*, 19 April 2021, <https://www.cbc.ca/news/canada/london/winding-down-hotel-homeless-program-could-be-devastating-1.5990350>

⁴⁹ “Victoria opening new COVID-19 isolation shelter spaces as outbreak worsens,” *CBC News*, 1 October 2021, <https://www.cbc.ca/news/canada/british-columbia/victoria-new-covid-isolation-shelter-1.6196812>

⁵⁰ John Lawless, “Kingston, Ont. to provide homeless population with motel rooms in winter,” *Global News*, 14 October 2021, <https://globalnews.ca/news/8267316/kingston-ont-homelessness-shelter-overflow/>

different means through which residency in an Extended-stay Residential Hotel can be “converted” into a tenancy, and so made to fall within the scope of tenancy legislation.

1. Jurisdictions that permit deemed tenancy

In keeping with the approach under the RTA, some jurisdictions provide for statutory mechanisms through which a residency—including residency in a hotel or other form of tourist accommodation—can be deemed a tenancy on a case-by-case basis.

For example, in British Columbia, section 59(6) of the *Residential Tenancy Act*, SBC 2002, c 78, reads: “[a]n individual occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that this Act applies to that living accommodation.”

Further, in Prince Edward Island, under section 1(1)(b)(v) of the *Tourism Industry Act*, RSPEI 1988, c T-3.3, a “tourism establishment” will continue to be defined as such for a 30-day accommodation, after which it is no longer covered by the Act. This is plainer and clearer language than in TARA, which merely says that, once an accommodation is provided for more than 28 days, it is no longer a “short-term rental,” and so does not need to be *registered* under the Act. When this aspect of PEI’s *Tourism Industry Act* is read in tandem with section 6 of their *Rental of Residential Property Act*, RSPEI 1988, c R-13.1, which similarly permits deemed tenancies, these two statutes together provide a framework that allows for a transition between an occupancy at a tourist accommodation and a residential tenancy.

2. Jurisdictions that set a time limit on the exemption of tourist accommodations from tenancy laws

However, other jurisdictions have adopted a different approach that provides for greater certainty on the part of both guests and owners—namely, setting clear time limits after which point tourist accommodations cease to be exempt from tenancy law.

For example, in Alberta, section 2 of their *Residential Tenancies Act*, SA 2004, c R-17.1, reads in part (emphasis added):

2(1) Subject to subsection (2), this Act applies only to tenancies of residential premises.

(2) This Act does not apply to ...

(d) a hotel, motel, motor hotel, resort, lodge or tourist camp, a cottage or cabin located in a campground, or a trailer park, tourist home, bed and breakfast establishment or farm vacation home, if a person resides there for less than 6 consecutive months.

Similarly, in New Brunswick, section 1(1) of their *Residential Tenancies Act*, SNB 1975, c R-10.2, reads in part (emphasis added):

1(1) In this Act, ...

“premises” means premises used for residential purposes ...

(b) but does not include ...

(v) living accommodations provided in a tourist establishment as defined under the *Tourism Development Act, 2008*, if a person resides in the living accommodations for less than ninety consecutive days.

b. American jurisdictions

i. The role of Extended-stay Residential Hotels in the United States

In the United States, researchers have long identified Extended-stay Residential Hotels as a key segment of the affordable housing continuum that cater especially to very low-income people.⁵¹ Indeed, the use of hotels as permanent or semi-permanent housing has a long history in the United States, dating back to the late 19th century.⁵²

Even as of 30 years ago, Extended-stay Residential Hotels represented such an important segment of the American housing market that between one and two million people were living in hotels, which meant that more Americans were living permanently in hotels than were living in public housing during that time.⁵³ This imbalance, and the more consistent role that Extended-stay Residential Hotels play in providing accessible and affordable housing to low-income individuals who are shut out of higher-rent markets, has only grown since.

In tandem with the demolition of public housing across the country, the generally rising cost of housing, and rising rent burdens—particularly since the 2008 financial crisis—Extended-stay Residential Hotels of various kinds have steadily become havens for the working poor. The economic instability introduced by the COVID-19 pandemic has in turn led to even further considerable housing insecurity for many low-income renters.

According to research published by the *New York Times* that looks only at hotels formally classified as extended-stay residences, there are approximately half a million such hotels in the United States—a number up from just 200,000 in the early 2000s.⁵⁴ While all other hotels had a combined occupancy rate of just 44% during the 2020 calendar year due to the COVID-19 pandemic and associated closures of tourist accommodations, the Extended Stay America chain, for example, remained open and

⁵¹ Paul Groth, *Living Downtown: The History of Residential Hotels in the United States* (Berkeley, CA: University of California Press, 1990): 1 [Groth, *Living Downtown*]; Barbara Ehrenreich, *Nickel and Dimed: On (Not) Getting By in America* (New York, NY: Picador, 2001); Eric Eckholm, “As Jobs Vanish, Motel Rooms Become Home,” *New York Times*, 10 March 2009, <https://www.nytimes.com/2009/03/11/us/11motel.html> [Eckholm, “As Jobs Vanish”].

⁵² Groth, *Living Downtown*, *supra* note 51, 1.

⁵³ *Ibid.*

⁵⁴ Mya Frazier, “When No Landlord Will Rent to You, Where Do you Go?: How extended-stay hotels and motels became the last housing option for thousands of low-income Americans,” *New York Times Magazine*, 20 May 2021, 13, <https://nyti.ms/3ADUngF> [Frazier, “When No Landlord”].

reported an occupancy rate of 74% across the country,⁵⁵ signaling its importance and the consistent demand for permanent and semi-permanent hotel accommodations due to the major lack of other affordable housing options.

A key aspect that makes these accommodations accessible to low-income renters are the less strict credit requirements compared to private apartment markets. According to its 2001 annual report to the Securities and Exchange Commission, Efficiency Lodge, a major provider of Extended-stay Residential Hotels across the country, indicated that “persons who cannot meet the credit standards of apartments” are among the most typical guests.⁵⁶

Extended-stay Residential Hotels are not simply used as housing for single individuals. In fact, many residents are families with children. According to a 2019 survey of residents in nine Norcross, Georgia residential hotels, approximately 40% of tenants have children living with them. Extended-stay Residential Hotels are so ingrained in the housing fabric of metro Atlanta that Gwinnett County school buses make over 90 stops each day at extended stay hotels, serving more than 600 students living full-time in these buildings.⁵⁷ This is in no way unique to the metro Atlanta area, however, as families across the country with school-aged children—including cities like Anaheim, California; Orlando, Florida; and Columbus, Ohio—have been pushed into Extended-stay Residential Hotels due to the lack of accessible and affordable housing.⁵⁸

Despite increasing reliance on Extended-stay Residential Hotels to address the housing needs of the poorest and most marginalized segments of society, there exists no comprehensive database of such hotels—much less, an accounting how many people are living in them or the conditions under which they are living.⁵⁹

ii. The treatment of Extended-stay Residential Hotels under US law

Consistent with the RTA’s approach to “deemed tenancy,” many American states apply a “totality of the circumstances” test to determine whether a resident of an Extended-stay Residential Hotel is a tenant or a guest.⁶⁰

⁵⁵ *Ibid.*

⁵⁶ Efficiency Lodge, Inc. (2001), *Annual Report, Form 10k-SB*, (2002), <https://bit.ly/37FywJb>.

⁵⁷ Frazier, “When No Landlord,” *supra* note 54, 46.

⁵⁸ Kate Santich & Caroline Glenn, “Families living in Central Florida hotels fear homelessness during coronavirus pandemic,” *Chicago Tribune*, 17 April 2020, <https://www.chicagotribune.com/os-ne-coronavirus-central-florida-hotel-motel-families-evicted-20200417-dnsmmavdvhsrfinbguddwcmxustory.html>; Eckholm, “As Jobs Vanish,” *supra* note 51; Frazier, “When No Landlord,” *supra* note 54.

⁵⁹ Eric Seymour & Joshua Akers, “Our Customer Is America”: Housing Insecurity and Eviction in Las Vegas, Nevada’s Postcrisis Rental Markets, *Housing Policy Debate* 31, no. 3 (2020): 516–539; S.O. Thompson, “Higher Risk of Homelessness for Extended-Stay Hotel Residents,” *Journal of Affordable Housing and Community Development Law* 29, no. 2 (2020): 245-255.

⁶⁰ *Baker v. Rushing*, 104 N.C. App. 240, 247, 409 S.E.2d 108, 112 (1991) (“Whether the Plaintiffs here were residential tenants must be determined by looking at all of the circumstances, and the fact that a building is identified as a “hotel” and those who reside in it as “guests” is not determinative”); *HSH Eastgate, LLC v. Sheriff of Osceola Cty., Fla.*, 6:13-CV-1902-ORL-31, 2015 WL 3465795, at 4 (M.D. Fla.

As the North Carolina Court of Appeal established in *Baker*, the label attached to a particular type of housing is insufficient to determine the nature of the relationship between the owner and the resident. Instead, the tests that have been developed in the American jurisprudence weigh various factors, which, as the summary of the relevant case law provided above demonstrates, include, but are not limited to:

- whether the dwelling unit is the guest's sole residence;
- the length of the stay;
- the existence of a special contract;
- the rate or method of payment; and
- manifested intention on the part of the the guest to remain as residents for an indefinite period of time.

3. Recommendations

a. Including Extended-stay Residential Hotels under the RTA

As noted at the outset, I recommend that the following amendments be made to Bill 30:

- (1) The definition of "hotel" under section 2(h)(iv) of the RTA should be amended to exclude an "Extended-stay Residential Hotel."
- (2) A new definition of "Extended-stay Residential Hotel" should be added to the RTA. This definition should provide that an Extended-stay Residential Hotel is a residential premises within the meaning of section 2(h) of the RTA that is defined as:
 - (a) A "roofed accommodation" within the meaning of TARA, in which an individual resides continually, either consecutively or on an aggregate basis, for ninety (90) or more days within a one hundred and eighty day (180) day period; or
 - (b) Notwithstanding (a), a roofed accommodation in respect of which the relation of landlord and tenant is deemed to exist under section 3(2) of the RTA, judged with reference to the following factors:
 - (i) whether the roofed accommodation is the resident's sole residence;

June 1, 2015) (finding that although statutory scheme does not define with certainty line between transient and non-transient, "the most important indicator of this intent is whether the dwelling unit is the guest's sole residence"); *Stone v. Clow*, A13-0984, 2014 WL 902724, at 3 (Minn. Ct. App. Mar. 10, 2014) ("The length of the stay, the existence of a special contract, the rate or method of payment, and the possession or nonexistence of a home or permanent residence elsewhere are all material, but not necessarily controlling, factors to be considered in determining the question"); *McNeill v. Estate of Lachmann*, 285 N.J. Super. 212, 217, 666 A.2d 996, 999 (App. Div. 1995) (explaining that most important factors in determining whether one was domiciled at a hotel, or was a transient guest were "the length of the actual residence coupled with the clear manifested intention of the plaintiff and his family to remain as residents at the hotel for an indefinite period").

- (ii) the length of the stay in the roofed accommodation;
- (iii) the rate or method of payment; and
- (iv) the pattern of activities carried on in the roofed accommodation.

These recommendations do two things. First, they exclude an Extended-stay Residential Hotel from the definition of a hotel under section 2(h)(iv) of the RTA. As explained early, a hotel is excluded from the definition of a residential premises under section 2(h), and so presumptively does not fall within the scope of application of the RTA. Making thing change would provide for an exclusion within the existing exclusion, such that Extended-stay Residential Hotels would be considered residential premises and thus presumptively within the scope of the RTA.

Second, these recommendations provide for a definition of an “Extended-stay Residential Hotel.” This definition draws on the different Canadian and American approaches to regulating Extended-stay Residential Hotels, and incorporates the best elements of each. Functionally, the definition provides two different ways that an Extended-stay Residential Hotel can be defined.

On the one hand, the definition incorporates and improves on the “time limit” approach adopted in New Brunswick and Alberta. Specifically, it allows for the time limit to be reached either consecutively or on an aggregate basis over a specified time period (180 days). This part of the definition is intended to address the risk that hotel owners may remove guest at day 89 in order to “restart the clock,” so to speak.

On the other hand, and notwithstanding the first “arm” of the definition, the definition allows that, at any time before the prescribed time limit is met, a relationship of landlord and tenant may be deemed to exist where the circumstance permit. So doing qualifies the living unit as an Extended-stay Residential Hotel and brings it under the jurisdiction of the RTA. A set of factors are enumerated, drawn from both the American jurisprudence and Nova Scotian residential tenancies decisions, in order to guide this exercise of administrative decision-making by RTOs. This part of the definition is intended to provide sufficient flexibility in keeping with the existing “deemed tenancy” approach under the RTA.

The remainder of these submissions are devoted to legal and policy arguments in favour of this proposed approach to regulating Extended-stay Residential Hotels.

i. Ensuring stability in housing and protecting residents

Failure to protect the rights and remedies of residents exploits the vulnerability of low-income individuals and families who reside at Extended-stay Residential Hotels as a last resort. To illustrate, Extended-stay Residential Hotels can presumptively disregard the statutory conditions under section 9 of the RTA, including requirements to fix flooding, electrical, molding or other issues in tenants’ individual units that it would otherwise be the landlord’s duty to address in service of ensuring a habitable residence.

Automatic eviction also causes residents to lose everything—physical shelter, at least temporarily all of their personal possessions housed by that shelter, and the stability that their residence offers.

Finally, it permits hotel owners to remove residents from the only home they know through the intervention of law enforcement or private security, or through other “self-help” methods such as turning off a resident’s power or water or changing the locks. Currently, a resident subject to any of these abusive practices would not automatically enjoy the rights and protections under the RTA, but would instead need to have the wherewithal and capacity to apply to the Director of Residential Tenancies to request that a landlord-tenant relationship be deemed to exist.

Effectively, businesses that operate Extended-stay Residential Hotels are permitted to reap all the financial benefits of a traditional landlord-tenant relationship while avoiding its costs. This state of affairs encourages other businesses to enter the increasingly unaffordable housing market to find ways to profit while depriving extremely vulnerable individuals and families of the rights and protections afforded under the RTA.

All of these abuses and more are already ongoing in Nova Scotia. For example, in February 2020, residents at the Travelodge Suites in Dartmouth were provided two days notice that they needed to vacate their units. Speaking to Alexa Maclean from Global News, a single mother with five children whose hotel stay was being paid for by the provincial Department of Community Services said that the notice left her with nowhere to go.⁶¹ “My children are completely off balance, they’re not on schedule, they don’t sleep properly. Myself, I’m not eating properly. This is an extremely stressful situation as it is, to be placed in a hotel and be in a two-bedroom place with my five young children.”⁶² In response to questions from Global News, the general manager for the hotel said that the people staying at the hotel through Community Services are guests not tenants, such that the notice was not an “eviction,” and that the rooms were needed for the busy upcoming tourist season.⁶³

⁶¹ Alexa Maclean, “‘They’re basically giving us the boot’: Dartmouth hotel terminates reservations with social assistance guests,” *Global News*, 20 February 2020, <https://globalnews.ca/news/6575187/theyre-basically-giving-us-the-boot-dartmouth-hotel-terminates-reservations-with-social-assistance-guests/>

⁶² *Ibid.*

⁶³ *Ibid.*

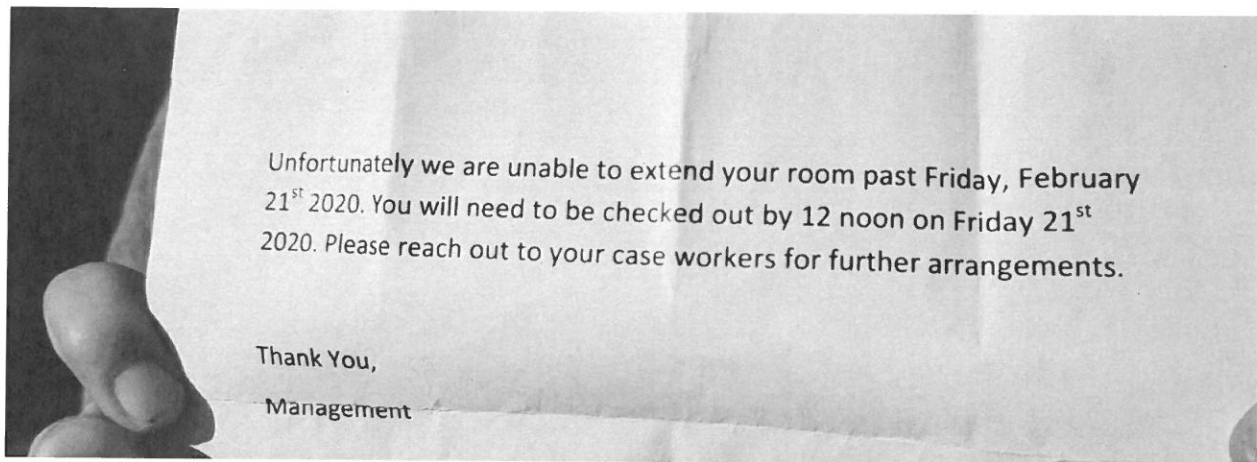


Figure 3: The “notice” residents at the Travelodge Suites in Dartmouth were given two days before they were removed from their living accommodations⁶⁴

Similar accounts of homeless people being evicted without notice from hotels made headlines in July 2021, with Campbell McClintock of Halifax Mutual Aid saying “[w]e’re really in the height of hotel season right now and unfortunately the hotel is [favouring] the tourists over the livelihoods of the people who actually need housing.”⁶⁵

Outside of HRM, in September 2021, low-income residents of the Harbourview Inn and Suites in Sydney—many of whom were on social assistance—were given two days notice that they needed to vacate their units after a new owner purchased the hotel.⁶⁶

ii. Promoting compliance with provincial human rights legislation

In their 2021 report, the Affordable Housing Commission argued that “acknowledging the right to housing, we need to ensure tenants are treated fairly and without discrimination, including protections against involuntary displacement.”⁶⁷ However, the current failure of the RTA to regulate Extended-stay Residential Hotels presents a multitude of opportunities for exploitation and human rights abuses to proliferate.

Section 5(1)(a) of the *Human Rights Act*, RSNS 1989, c 214 prohibits discrimination on the basis of protected grounds in “the provision of or access to services or facilities.” “Source of income” is one such protected ground of discrimination under section 5(1)(t).

Consider, however, the example provided above regarding the treatment of residents at the Travelodge Suites in Dartmouth. It could be argued that, in forcing these residents out with limited notice in order to free up space for higher-paying tourists, the hotel

⁶⁴ *Ibid.*

⁶⁵ Andrew Rankin, “Homeless people being kicked out of temporary accommodations: advocate,” *Chronicle Herald*, 8 August 2021, <https://www.saltwire.com/atlantic-canada/news/homeless-people-being-kicked-out-of-temporary-accommodations-advocate-100621578/>

⁶⁶ Nicole Sullivan, “Low income monthly renters at Sydney hotel forced out after new owners make changes,” *Chronicle Herald*, 30 September 2021, <https://www.saltwire.com/atlantic-canada/news/low-income-monthly-renters-at-sydney-hotel-forced-out-after-new-owners-make-changes-100640760/>

⁶⁷ *Charting a New Course*, *supra* note 27, 38.

discriminated against these individuals on the basis of their source of income—namely, the fact that their hotel rates were being paid by the Department of Community Services through social assistance. Social assistance has been recognized by the Nova Scotia Court of Appeal as a source of income that falls within the scope of the protected ground under section 5(1)(t).⁶⁸

iii. Promoting compliance with Canada's international human rights obligations

Finally, regulating Extended-stay Residential Hotels under the RTA would also be in keeping with Canada and Nova Scotia's international human rights obligations. It is a longstanding principle of statutory interpretation that legislation is presumed to conform to international law. As Justice Lebel explained in *R v Hape*, this presumption has two aspects: first, that the legislature is presumed to act in compliance with Canada's international obligations and, second, that the legislature is presumed to comply with the values and principles of customary and conventional international law.⁶⁹

Housing is recognized as a human right under international human rights law. In 1948, the United Nations recognized housing as part of the right to an adequate standard of living in the Universal Declaration of Human Rights.⁷⁰ Canada is also signatory to the 1966 International Covenant on Economic, Social, and Cultural Rights, which compels nations to advance human rights, including the right to housing.⁷¹ This text has since been clarified by the United Nations to include housing that provides:

- Security of tenure (freedom from forced eviction);
- Availability of services and infrastructure (acceptable sanitation and utilities);
- Affordability;
- Habitability (suitable space and protection against the elements);
- Accessibility (meeting the specific needs of disadvantaged and marginalized populations);
- Acceptable location (safe, and proximate to employment, healthcare, childcare and education); and
- Culturally adequate (accounting for and respecting cultural identity).⁷²

In this regard, I echo a call from the Housing for All Working Group's 2021 report, *Keys to a Housing Secure Future for All Nova Scotians*, that governments must implement a human-rights based approach to housing. In practice, this approach:

Emphasizes justice, dignity, and equality, understands housing as key to creating opportunities for all residents to participate and thrive in their communities, and rejects stop-gap solutions in favour of taking a proactive stance on prevention

⁶⁸ *Disability Rights Coalition v. Nova Scotia (Attorney General)*, 2021 NSCA 70.

⁶⁹ 2007 SCC 26, [2007] 2 SCR 292 at para 53.

⁷⁰ *Charting a New Course*, supra note 27.

⁷¹ *Keys to a Housing Secure Future*, supra note 9, 19.

⁷² *Ibid.*

and early intervention. Unlike a market approach to housing in Nova Scotia, a rights-based approach to housing makes evident that human rights are interdependent, indivisible and interrelated.⁷³

4. Conclusion

Across the province, Extended-stay Residential Hotels house some of the most vulnerable and marginalized Nova Scotians, including single mothers with children, homeless people, and children in care.

Indeed, the use of Extended-stay Residential Hotels has become such a cornerstone of the provincial government's plan to respond to the growing housing and homelessness crisis in Nova Scotia that the failure to provide tenancy protections to residents in such settings risk undermining the very efficacy of this plan.

The recommendations presented here set out a two-pronged approach to defining Extended-stay Residential Hotels which (1) provides for clarity and certainty for hotel owners and residents by setting out a clear time limit on the presumptive exemption of roofed accommodations from the RTA, while also (2) ensuring sufficient flexibility so as to allow a landlord-tenant relationships to be deemed before this time limit is met where the circumstances permit.

This definition is intended to ensure stability in housing, to protect residents, and to promote compliance with both provincial human rights legislation and Canada's international human rights obligations. Importantly, this proposed approach achieves these goals without unduly encroaching on the legitimate business interests of hotel owners.

All of which is respectfully submitted,



Harry Critchley
Senior Law Student

⁷³ *Ibid*, 20.