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# Building homes, upholding rights: A human rights approach to housing agreements

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## List of abbreviations

CCBF: Canada Community-Building Fund

CHA: Canada Health Act

CHT: Canada Health Transfer

HAF: Housing Accelerator Fund

ICESCR: International Covenant on Economic, Social and Cultural Rights

NHC: National Housing Council

NHS: National Housing Strategy

NHSA: National Housing Strategy Act

## Summary

Canada recognized adequate housing as a fundamental human right in the 2019 National Housing Strategy Act (NHTSA). Canada's housing crisis continues to deepen.

Over 4.8 million homes are needed to restore affordability, rents are rising in double digits in most major cities, and homelessness continues to grow. More than 60% of evictions are "no-fault," meaning tenants lose their housing despite having done nothing wrong. Municipalities and service providers are struggling with insufficient structural supports, and the lack of accountability across governments leaves millions without secure housing.

## The Governance Gap

Despite housing being a fundamental human right and essential to health, economic participation, and social inclusion, there are currently no legal mechanisms to hold any level of government in Canada legally accountable for ensuring access to adequate housing:

- Housing is not assigned to any jurisdiction in the Constitution Act, 1867
- International public law instruments, while ratified, do not have clear mechanisms for enforcement
- The federal National Housing Strategy Act (NHTSA) recognizes housing as a human right, but it applies only to the federal government, is not enforceable by individuals, and does not include mechanisms that can compel provinces or municipalities to act
- The Canadian Charter of Rights and Freedoms has not been an adequate human rights vehicle to ensure housing rights

Fundamentally, all governments play important roles in the housing system, yet no shared legal framework domestically guides their obligations.

## A Proven Path: Conditional Federal Funding

Canada has faced similar jurisdictional ambiguity before: in the context of health, which, like housing, is named in the International Covenant on Economic, Social and Cultural Rights. The Canada Health Act (CHA) demonstrates that constitutional silence does not preclude national leadership. Through conditional funding, the federal government aligned provincial systems around five core principles, establishing a coordinated national approach despite divided powers.

Housing requires the same ambition.

This report proposes that the federal government use its spending power to tie housing investments directly to rights-based obligations. Through funding agreements between federal,

provincial, and municipal governments grounded in the human rights principles of the NHTS—non-discrimination, accessibility, participation, and accountability—provincial and municipal governments would be required to demonstrate concrete progress toward the right to adequate housing. These contracts would define measurable housing outcomes and rights obligations, including tenancy protections, while supporting local flexibility in policy design.

This approach does not require constitutional change. It builds on established federal powers and Canadian jurisprudence supporting cooperative federalism. Large-scale federal funding commitments are already flowing through the National Housing Strategy, creating a seamless opportunity to condition them on rights-based results. Delaying reform risks rising homelessness, worsening affordability, and higher downstream costs in health, policing, and emergency shelter systems.

<b>Feature</b>	<b>Today: Fragmented Governance</b>	<b>Proposed: Contractual Federalism Model</b>
<b>Legal responsibility for housing rights</b>	International human rights obligations are recognized in the NHTS, which cites the International Covenant on Economic, Social and Cultural Rights. However, the NHTS imposes obligations on federal actors	International human rights obligations implemented through shared, enforceable contracts that tie obligations to funding
<b>Link between funding and outcomes</b>	Limited; federal contributions not tied to human rights-based performance indicators	Federal funds contingent on rights-aligned results
<b>Role of provinces</b>	Provinces control key policy tools (tenancy, land use) but without enforceable rights obligations	Provinces maintain core powers but must meet minimum national standards
<b>Role of municipalities</b>	Frontline delivery with unstable authority and funding	Clear authority via direct contracts where needed

<b>Federal leverage</b>	Political persuasion and funding	Legal and fiscal incentives and enforcement options
<b>Transparency and reporting</b>	Variable; hard to compare jurisdictions	National standards; standard definitions on terms such as “affordable”; clear and transparent; public dashboards
<b>Accountability to individuals</b>	No enforceable right to adequate housing	Demonstrable outcomes and remedy through oversight mechanisms

## Federal Actions to Implement the Right to Housing in Canada

### 1. Public Support: Leadership in Mobilizing a National Strategy

By identifying the extent of the housing crisis, the federal government can mobilize support for a national housing strategy akin to the federal framework in health. The aim of the Canada Health Transfer is “providing the best possible health care system for Canadians and [...] making information about the health care system available to Canadians.”<sup>1</sup> In the housing context, the aim can be framed as, “to progressively realizing the right to adequate housing for all Canadians and to making information about the housing system available to Canadians.”

### 2. Conditionality: Establish a National Housing Transfer with Clear and Binding Conditions

The principle-based agreements under a National Housing Transfer would tie federal housing dollars to rights-based standards aligned with NHSA principles. To further the progressive realization of the right to housing, there would be clear targets for deeply affordable and non-market units, tenancy protections, and outcome-oriented targets to deliver reductions in homelessness and core housing need.

### 3. Fiscal Incentives: Require Transparent Public Reporting on Housing Outcomes

The new framework would standardize indicators across jurisdictions through the OPERA framework, which is used in the context of social and economic rights. OPERA focuses on four

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<sup>1</sup> Federal-Provincial Fiscal Arrangements Act, R.S.C. 1985, c. F-8 at s 24(b).

areas of analysis: outcomes, policy efforts, resources, and assessments. This would enable better tracking of progress on evictions and homelessness, housing affordability and adequacy, Indigenous-led housing, and outcomes for priority populations. The Canada-wide framework would expand the direct delivery of funding to specific municipalities using existing models. Municipalities playing a greater role in housing construction and delivery would be able to better plan with predictable funding and fewer administrative requirements. Existing federal infrastructure, such as the Federal Housing Advocate, would allow for monitoring and independent review.

#### **4. Introduce an Enforcement Framework**

As in the health care context, a new framework would enable the federal government to withhold or redirect funding if contractual requirements are not met or to require corrective action plans with timelines. This would allow for predictable and automatic, rather than discretionary, consequences.

### **Conclusion**

Canada does not need constitutional reform to realize the right to housing; instead, it can use a contractual approach to tie federal commitments to enforceable obligations. Just as conditional funding serves as the foundation for a country-wide universal health care system, the federal government can, and should, expand the use of its spending power to bind housing rights to practice. The benefits of this approach include a transparent, accountable intergovernmental approach to housing; stronger protection of human dignity and housing rights across Canada; and the ability to target areas immediately in need of intergovernmental collaboration, including housing security, chronic homelessness, and the supply of deeply affordable, non-market housing. There is an important opportunity, as the first National Housing Strategy comes to an end in 2027–2028, to embed human rights principles as requirements in intergovernmental agreements when the NHS is renewed.

# 1. Introduction: A Housing Crisis

Canada has an alarming housing crisis, with at least 4.8 million homes needed to restore affordability levels<sup>2</sup> and rental costs rising by double digits in most metropolitan areas.<sup>3</sup> Over 60% of evictions in Canada are “no fault,” meaning the tenant hasn’t done anything wrong,<sup>4</sup> and homelessness has increased year after year since 2018.<sup>5</sup>

Unfortunately, Canada’s Constitution<sup>6</sup> is silent on who bears ultimate responsibility to address this crisis. Sections 91 and 92 detail the policy areas that apply to federal and provincial governments, with matters that are more national or international (like defence, shipping, and banking) belonging to the federal government, and local or private issues (like property and civil rights) falling under provincial authority. Housing is not explicitly included on either list. Municipal governments have no jurisdiction under the Constitution at all, other than as falling under provincial authority. While the Canadian Constitution recognizes Aboriginal and treaty rights, it also grants the federal government authority over Indigenous matters, which includes housing.<sup>7</sup> Canada’s three territories—the Yukon Territory, Northwest Territories, and Nunavut Territory—are unnamed in the Constitution but have agreements with the federal government that spell out their powers.<sup>8</sup> The result is a deeply fragmented and confusing legal framework. This ambiguity has often led to the various levels of government treating each other as adversaries rather than partners.

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<sup>2</sup> Canadian Mortgage and Housing Corporation, *Doubling Pace of Construction Over Next Decade Would Restore Housing Affordability to 2019 Levels* (Canadian Mortgage and Housing Corporation, 2025), online: <<https://www.cmhc-schl.gc.ca/media-newsroom/news-releases/2025/cmhc-releases-latest-housing-supply-gaps-report>>.

<sup>3</sup> Canadian Mortgage and Housing Corporation, *Fall 2024 Rental Market Report* (Canadian Mortgage and Housing Corporation, 2024), online: <<https://www.cmhc-schl.gc.ca/professionals/housing-markets-data-and-research/market-reports/rental-market-reports-major-centres>>.

<sup>4</sup> Silas Xuereb & Craig Jones, *Estimating No-Fault Evictions in Canada: Understanding BC’s Disproportionate Eviction Rate* (Vancouver: University of British Columbia, School of Population and Public Health, 2023), online: <<https://bsh.ubc.ca/research/estimating-no-fault-evictions/>>.

<sup>5</sup> Estair Van Wagner & Alexandra Flynn, “Human Rights Cities: Realizing the Right to Housing at the Municipal Scale” (2024) 57:1 *UBC Law Review* 235.

<sup>6</sup> *Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3, ss 91–92.

<sup>7</sup> Ryan Walker, “Aboriginal Self-determination and Social Housing in Urban Canada: A Story of Convergence and Divergence” (2008) 45(1) *Urban Studies* 185-205.

<sup>8</sup> Government of Canada, “Provinces and Territories” (2025), online: <<https://www.canada.ca/en/intergovernmental-affairs/services/provinces-territories.html>>.

Historically, the federal government had an important role in housing policy. However, since the federal government withdrew from federal housing policy in the 1980s, provinces and municipalities have been most directly responsible for the governance of housing.<sup>9</sup> Provinces manage critical areas, such as land use planning, the operation and funding of social housing, social assistance policy, and tenancy legislation.<sup>10</sup> These policies shape housing affordability and security but often fall short of meeting basic needs. For example, social assistance rates remain well below market rent levels in most jurisdictions, and tenancy protections are too weak to prevent no-fault evictions.<sup>11</sup> Municipalities also play an active role in implementing housing policy, particularly through zoning, homelessness response, and the coordination of local housing programs.<sup>12</sup> But despite these central responsibilities, no government is clearly and legally bound by positive and enforceable human rights obligations in the area of housing.<sup>13</sup>

This is not the first time that Canada has faced a constitutionally ambiguous area of national concern. The roots of Canada's public health care system serve as a helpful precedent.<sup>14</sup> Prior to World War II, health care was largely private, and as late as 1961, nearly half of Canadians lacked health insurance coverage. Rising costs and uneven access contributed to widespread financial insecurity, with health-related expenses being a leading cause of personal bankruptcy.<sup>15</sup> In 1947, the Province of Saskatchewan, under the leadership of Premier Tommy Douglas, introduced the first hospital insurance program in Canada.<sup>16</sup> A decade later, the federal

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<sup>9</sup> See: Steve Pomeroy, *Background Primer on Canada's Housing System* (Canadian Housing Evidence Collaborative, 2021), prepared for the Office of the Federal Housing Advocate, online: <<https://chec-ccrl.ca/wp-content/uploads/2022/08/Background-Primer-on-Canadas-Housing-system-APRIL-20-2021.pdf>>.

<sup>10</sup> Jill Atkey et al., *The Municipal Role in Housing* (The Institute on Municipal Finance & Governance, 2022), Who Does What Series, at <[https://imfg.org/wp-content/uploads/2022/04/imfgwdw\\_no1\\_housing\\_april\\_5\\_2022.pdf](https://imfg.org/wp-content/uploads/2022/04/imfgwdw_no1_housing_april_5_2022.pdf)>, (last visited 5 November 2025).

<sup>11</sup> Xuereb & Jones, *supra* note 4.

<sup>12</sup> Pomeroy, *supra* note 9.

<sup>13</sup> *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852. [Tanudjaja]

<sup>14</sup> Christopher Ruttly & Sue C Sullivan, "This is Public Health: A Canadian History" (Canadian Public Health Association, 2010).

<sup>15</sup> *Chaoulli v Quebec (Attorney General)*, [2005] 1 S.C.R. 791.

<sup>16</sup> Canadian Medical Association, "Who Started Canada's Universal Health Care System?" in *Health Care 101*, online: <<https://www.cma.ca/healthcare-for-real/who-started-canadas-universal-health-care-system>>.

government established a national hospital insurance program, incentivizing other provinces to follow suit, culminating in the passage of the Canada Health Act in 1984.<sup>17</sup>

This report considers how the approach in the health care context, called contractual federalism, can legally advance the right to housing in Canada. It sets out the main laws and rules that apply, explains how health care works, and offers a framework for housing.

## **2. Context: Canada’s Housing Crisis and Governance Failure**

Canada’s housing crisis has exposed a fundamental challenge in Canadian federalism: the absence of clear constitutional responsibility for housing. Unlike areas such as criminal law or banking, which are explicitly assigned to federal or provincial governments under the Constitution Act, 1867, housing is conspicuously absent. This omission has created an enduring ambiguity about which level of government is ultimately accountable. In practice, all orders of government play a role in shaping housing policy and delivery. Yet this multilevel engagement often occurs without a coherent constitutional or legal framework, resulting in fragmented policies and uneven accountability. Understanding the constitutional architecture and its gaps is critical to making sense of both the promise and the limitations of Canadian housing policy.

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<sup>17</sup> Marlisa Tiedemann, “The *Canada Health Act*: An Overview” (Library of Parliament, Background Paper no. 2019-54, 2019), online: <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2019-54-e.pdf>.

<b>Level of Government</b>	<b>Key Housing-Related Powers</b>	<b>Limitations</b>	<b>Accountability Issues</b>
<b>International</b>	Canada is a signatory to multiple international covenants and conventions that apply to all governments. As spelled out in the International Covenant on Economic, Social and Cultural Rights, “adequate housing” encompasses security of tenure, availability of services, affordability, habitability, accessibility, location, and cultural adequacy	While used as an interpretive tool in case law, it is not otherwise justiciable	While all governments are bound by international public law, no independent accountability measures exist
<b>Federal</b>	Funding, finance and banking rules, the Canada Mortgage and Housing Corporation, Indigenous affairs, the NHSA, Build Canada Homes	The NHSA applies only federally	No authority over zoning, tenancy protections, or provincial data
<b>Provincial and Territorial</b>	Property and civil rights, tenancy laws, municipalities	Not obligated to align with the NHSA	No national requirements related to tenancy protections and some provinces reject direct federal funding of municipalities
<b>Municipal</b>	Zoning, approvals, homelessness response, and in some cases, local housing delivery	No constitutional status; reliant on provinces	Bears responsibility for homelessness without authority or stable funding

Table 1: Today’s division of responsibilities

Sections 91 and 92 of the Constitution Act, 1867<sup>18</sup> list the policy areas that attach to the federal and provincial governments. The division of powers was intended to reflect the distinct functions of each level of government: The federal government would address matters of national scope, while the provinces would oversee areas tied to local conditions and institutions.<sup>19</sup> For example, s. 91 of the Constitution Act, 1867 lists the federal government’s authority over areas such as bankruptcy, criminal law, banking, and matters related to First Nations and reserves.<sup>20</sup> Section 92 of the Constitution Act, 1867 lists the provincial government’s authority over matters such as taxation, “the establishment and tenure of public officials in a province,”<sup>21</sup> the incorporation of companies, property and civil rights, and municipalities.<sup>22</sup> In practice, the courts have acknowledged that many of these areas overlap, meaning that both governments may legislate.<sup>23</sup>

Due to the constitutional silence on housing, some argue that housing falls under provincial jurisdiction, as it is seen as a local or private matter.<sup>24</sup> Conversely, an argument could be made that the federal government is responsible, as it creates the institutions and policies that affect housing, including banking and currency.<sup>25</sup> However, housing touches on provincial control over property and civil rights, federal jurisdiction over finance and Indigenous affairs, and municipal authority over zoning and service delivery. It also implicates governments whose powers are not specified in the Constitution, namely municipalities, and First Nations, Inuit, and Métis governments.

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<sup>18</sup> Constitution, *supra* note 6.

<sup>19</sup> Dara Lithwick, “A *pas de deux*: The Division of Federal and Provincial Legislative Powers in Sections 91 and 92 of the *Constitution Act, 1867*” (Library of Parliament, In Brief no. 2015-128, 2015) at 2, online: <<https://publications.gc.ca/site/eng/9.811510/publication.html>>.

<sup>20</sup> *Ibid* at 3.

<sup>21</sup> *Ibid*.

<sup>22</sup> *Ibid*.

<sup>23</sup> See *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 (“Cooperative federalism facilitates coordinated action between federal and provincial governments. But it cannot override the division of powers” at para. 18); *Reference re Securities Act*, 2011 SCC 66 (“The constitutional boundaries that confine the respective jurisdictions of the federal and provincial governments must be respected. However, cooperative efforts are to be encouraged where they do not compromise those boundaries” at para. 9); and *Canadian Western Bank v. Alberta*, 2007 SCC 22 (“The Constitution does not demand a strict division; rather, it contemplates interaction and overlap, which cooperative federalism recognizes” at para. 24).

<sup>24</sup> See Hoi L Kong, “The Constitutional Division of Powers” in P. Macklem (ed), *Canadian Constitutional Law* (Toronto: Emond, 2017).

<sup>25</sup> See Michèle Biss & Sahar Raza, *Implementing the Right to Housing in Canada: Expanding the National Housing Strategy* (National Right to Housing Network, 2021).

The resulting policies in these multiple jurisdictions are currently misaligned, with funding, incentives, and roles operating in silos. Given these overlapping powers and responsibilities, housing is inherently intergovernmental, requiring cooperation across jurisdictions, even in the absence of formal constitutional guidance.

Human rights obligations are sometimes thought to be “nice to have.” However, they are also legally and morally binding on governments. Canada’s federal structure poses unique challenges for implementing human rights. In the Canadian context, “human rights” refer to the fundamental entitlements that individuals possess by virtue of being human, and they are protected through instruments such as international conventions and covenants, the Canadian Charter of Rights and Freedoms,<sup>26</sup> and provincial and territorial human rights codes,<sup>27</sup> which are legally binding on all governments, including municipalities. These frameworks primarily safeguard civil and political rights, such as freedom of expression and protection from discrimination, but to date do not recognize positive rights, like the rights to housing and health, which require proactive government provision or support.<sup>28</sup> As such, the Charter has not been helpful in advancing the right to housing, other than offering minimal safeguards for those living in homeless encampments.<sup>29</sup> In addition, while Canada may sign international covenants and conventions, with agreement by provinces and territories, and may affirm that these commitments will be enshrined in law, there are few enforcement mechanisms.<sup>30</sup> The right to housing is explicitly enshrined in the NHSA but lacks enforcement mechanisms at the provincial, Territorial, and municipal levels.

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<sup>26</sup> *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to Constitution, *supra* note 5.

<sup>27</sup> See *BC Human Rights Code*, RSBC 1996, c 210; *Ontario Human Rights Code*, R.S.O. 1990, c. H.19.

<sup>28</sup> Tanudjaja, *supra* note 13.

<sup>29</sup> See *Victoria (City) v. Adams*, 2008 BCSC 1363.

<sup>30</sup> Bruce Porter, *Implementing the Right to Adequate Housing Under the National Housing Strategy Act: The International Human Rights Framework* (Office of the Federal Housing Advocate 2021).

### 3. The Policy Gap: The NHSA’s Promise and Limitations

Following years of advocacy, the federal government enacted the National Housing Strategy Act (NHSA) in 2019, recognizing “that the right to adequate housing is a fundamental human right affirmed in international law.”<sup>31</sup> The NHSA affirms that the federal government is committed to a human rights-based approach to housing and to “further[ing] the progressive realization of the right to adequate housing,”<sup>32</sup> which is recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>33</sup> Article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living, including adequate housing and the continuous improvement of living conditions.<sup>34</sup> As a signatory, Canada has committed to the “progressive realization” of these rights, meaning it must take deliberate, concrete, and targeted steps to fulfill them to the maximum of available resources.

The NHSA requires that a National Housing Strategy (NHS) is developed and maintained by the federal government. The purpose of the NHS is “to ensure everyone in Canada has access to housing that meets their needs and that they can afford.”<sup>35</sup> Moreover, the NHS must include “key principles of a human rights-based approach to housing,”<sup>36</sup> such as non-discrimination, inclusion, participation, and accountability.<sup>37</sup>

To oversee the federal government’s work in this area, the NHSA mandates a diverse group of individuals, such as those with lived experience of homelessness, to make up the National Housing Council (NHC). The responsibility of the NHC is to ensure the progression of the NHS and advise the Minister.<sup>38</sup> Additionally, the NHC is to take into consideration “civil society,

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<sup>31</sup> *National Housing Strategy Act*, SC 2019, c 29, s 313. [NHSA]

<sup>32</sup> *Ibid* at s 4(d).

<sup>33</sup> United Nations (General Assembly), *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, entered into force 3 January 1976, 993 UNTS 3, at Article 2(1).

<sup>34</sup> The United Nations Committee on Economic Social and Cultural Rights has further defined state obligations in relation to the right to adequate housing through its General Comments. See Fact Sheet 21/rev1: The Right to Adequate Housing, UN Habitat:

<[https://www.ohchr.org/sites/default/files/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FS21_rev_1_Housing_en.pdf)>

<sup>35</sup> Government of Canada, “Human Rights-Based Approach to Housing,” *National Housing Strategy*, online: <[www.placetocallhome.ca/human-rights-based-approach-to-housing](http://www.placetocallhome.ca/human-rights-based-approach-to-housing)>

<sup>36</sup> *Ibid*.

<sup>37</sup> Jeff Morrison, “Right to Housing is Now Law in Canada: So Now What?” (2019), *Canadian Housing and Renewal Association*, online: <[https://chra-achru.ca/blog\\_article/right-to-housing-is-now-law-in-canada-so-now-what-2/](https://chra-achru.ca/blog_article/right-to-housing-is-now-law-in-canada-so-now-what-2/)>. [Morrison]

<sup>38</sup> NHSA, *supra* note 29 at s 6.

stakeholders, vulnerable groups, and persons with lived experience of housing need and homelessness in housing policy discussions.”<sup>39</sup>

The NHSA also calls for a Federal Housing Advocate to monitor the progress of the NHS and its impacts on those it is trying to assist and to consult with these individuals.<sup>40</sup> The Advocate can initiate research and studies on housing, accept submissions regarding housing, and provide advice and recommendations to the Minister. Further, the Advocate is to submit annual reports of their work and findings to the Minister, which then the Minister tables and responds to in Parliament.<sup>41</sup>

While the NHSA creates a roadmap for federal housing policy with accountability mechanisms that can investigate systemic barriers to accessing housing at the federal level, it does not expressly create an enforceable individual right to access housing, is not constitutionally protected, and does not obligate provincial, territorial, or municipal governments.<sup>42</sup> This is the case despite governments having affirmed commitments to implement obligations enshrined in international instruments, including the ICESCR. Thus, any participation from other levels of government is voluntary and there is no legal obligation for other levels of government to participate in or respond to the Federal Housing Advocate’s recommendations. This is problematic, because housing policy and delivery rely on the coordinated actions of all levels of government, and without binding obligations or enforcement mechanisms, the federal vision for the right to adequate housing risks being undermined by uneven or inconsistent implementation across jurisdictions.

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<sup>39</sup> Government of Canada, *supra* note 35.

<sup>40</sup> NHSA, *supra* note 31 at s 13.

<sup>41</sup> *Ibid* at ss 13, 16.

<sup>42</sup> Morrison, *supra* note 37.

## 4. The Challenge of Municipal-Federal Relationships

Under section 92(8) of the Constitution, provinces have authority over municipalities.<sup>43</sup> This means that the federal government cannot design municipalities or determine their responsibilities.<sup>44</sup> Nonetheless, in recent years, the federal government has begun to engage municipalities more directly through funding programs.

A key example is the 2023 launch of the \$4-billion Housing Accelerator Fund (HAF), designed to encourage zoning and permitting reform by municipalities.<sup>45</sup> While the program has enabled cities to enter into direct agreements with the federal government, it has drawn sharp criticism from some provinces, with the Ontario Premier denouncing the program as “jurisdictional creep.”<sup>46</sup> Other provinces have taken firmer action. Quebec’s approach, codified in its Act Respecting the Ministère du Conseil Exécutif (M-30),<sup>47</sup> prohibits municipalities from entering into agreements with other governments without provincial approval, a model some provinces have considered emulating.<sup>48</sup>

The dispute reflects a deeper constitutional tension: While cities are key actors in housing policy, they lack direct constitutional recognition and remain dependent on provincial legislation to govern their powers. Notably, Canada has seen some innovation in this space. The Canada Community-Building Fund (CCBF) provides federal transfers for municipal infrastructure and has evolved into a more stable and flexible funding mechanism.<sup>49</sup> Though most CCBF funds flow through provincial or territorial governments, provinces like Ontario and British Columbia have developed legislative and administrative frameworks to facilitate more direct municipal

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<sup>43</sup> Constitution, *supra* note 6.

<sup>44</sup> See: Alexandra Flynn, “Un-Democratizing the City? Unwritten Constitutional Principles and Ontario’s Strong Mayor Powers” (2024) 115 *The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference* at 85.

<sup>45</sup> Katherine DeClerq, “Jurisdictional Creep: Doug Ford Slams Feds for Directly Giving Municipalities Funding for Housing” in *CP24* (6 November 2023).

<sup>46</sup> *Ibid.* See also Laura Stone, Lindsay Jones & Bill Curry, “Provinces, Federal Government Feud Over Ottawa’s Housing Accelerator Fund amid Affordability Crisis”, *The Globe and Mail* (8 November 2023).

<sup>47</sup> c M-30 [Act M-30].

<sup>48</sup> John Paul Tasker, “Canada’s Premiers United in Their Criticism of Federal Housing Policy, Carbon Tax Changes”, *CBC News* (6 November 2023).

<sup>49</sup> Geneviève Gosselin & Emmanuel Preville, “Overview of Canada’s Long-Term Infrastructure Plan” (Library of Parliament, Publication no. 2019-38-E, 2019) at 1, online: [https://publications.gc.ca/collections/collection\\_2020/bdp-lop/bp/YM32-2-2019-38-eng.pdf](https://publications.gc.ca/collections/collection_2020/bdp-lop/bp/YM32-2-2019-38-eng.pdf).

engagement.<sup>50</sup> The City of Toronto, operating under the City of Toronto Act, 2006, remains the only municipality to receive CCBF funding directly from the federal government.<sup>51</sup>

These examples illustrate a growing movement toward direct federal-municipal collaboration. While provinces continue to exercise constitutional control over municipalities, the increasing practical importance of cities in national policy challenges the adequacy of Canada's existing intergovernmental framework.<sup>52</sup> However, without clear mechanisms for cooperation, tensions between levels of government are likely to persist, particularly in areas like housing that demand coordinated action.

## 5. Precedent: Lessons from the Canada Health Act

The federal government has used its spending power to shape national policy in areas of shared or contested jurisdiction. The Canada Health Act<sup>53</sup> (CHA) remains the most developed example of this model: a federal statute supported by conditional funding and negotiated agreements that has profoundly influenced provincial behaviour despite limited enforceability. Health, like housing, is named in the International Covenant on Economic, Social and Cultural Rights. Therefore, the experience of health care offers important lessons for housing.

The CHA represents a successful federal effort to shape policy in a constitutionally decentralized domain.<sup>54</sup> Though health care is not explicitly assigned to either level of government in the Constitution Act, 1867, provinces have jurisdiction over hospitals, property and civil rights, and matters of a local nature.<sup>55</sup>

The federal government, lacking direct jurisdiction, has exercised influence through its spending power and taxation authority. Subsection 36(2) of the Constitution Act, 1982 commits the federal government to “making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at

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<sup>50</sup> Government of Canada, “Gas Tax Fund: Permanent, flexible funding for municipalities” (Infrastructure Canada, 2008) at 6, online: <[https://www.infrastructure.gc.ca/site/alt-format/pdf/gtf-fte/Infrastructure\\_Canada\\_ENG.pdf](https://www.infrastructure.gc.ca/site/alt-format/pdf/gtf-fte/Infrastructure_Canada_ENG.pdf)>.

<sup>51</sup> SO 2006, c 11, Sch A [COTA].

<sup>52</sup> Alexandra Flynn & Nathalie Des Rosiers (eds), *Cities and the Constitution: Giving Local Governments in Canada the Power They Need* (Montreal: McGill-Queen's University Press, 2024).

<sup>53</sup> RSC 1985, c C-6 [CHA].

<sup>54</sup> *Ibid.*

<sup>55</sup> Constitution, *supra* note 6 at ss. 92(7), 92(13), 92(16).

reasonably comparable levels of taxation.”<sup>56</sup> This provision authorized the federal government to enact the Canadian Health Act<sup>57</sup> and to introduce the Canada Health Transfer (CHT).<sup>58</sup>

The CHA establishes the national framework for publicly funded health care in Canada:

- It sets out the criteria and conditions that provinces and territories must meet to receive full federal health transfers under the Federal-Provincial Fiscal Arrangements Act.<sup>59</sup>
- The CHA’s primary purpose is to ensure that all eligible residents of Canada have reasonable access to medically necessary hospital and medical services without direct charge.
- The CHA has five foundational principles: public administration, comprehensiveness, universality, portability, and accessibility.<sup>60</sup>
- The legislation also emphasizes the importance of transparency, requiring the provinces to make information about their health systems publicly available.<sup>61</sup>

While the federal government provides the funds, the conditions attached to those funds are the result of agreements that are negotiated between federal and provincial governments. This model reflects the principle of “cooperative federalism.”<sup>62</sup>

In terms of enforceability, the CHA authorizes the federal government to withhold transfer payments from provinces that violate the legislation’s conditions, such as by permitting extra-billing or user fees.<sup>63</sup> In practice, however, this enforcement mechanism is used sparingly and operates more as a political instrument than a legal one. Most courts have found that the CHA imposes political, not legal, obligations.<sup>64</sup>

Thus, the CHA operates at the intersection of law and politics. It uses agreements to ensure equitable health care access across the country. It creates an infrastructure that enables federal

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<sup>56</sup> *Ibid.*

<sup>57</sup> CHA, *supra* note 53.

<sup>58</sup> *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8 at ss 24, 24.1.

<sup>59</sup> See *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8; *Canada Health Act*, R.S.C. 1985, c. C-6 at Part V.1.

<sup>60</sup> CHA, *supra* note 53 at s. 7.

<sup>61</sup> *Ibid* at s. 13.

<sup>62</sup> *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48, [2018] 3 S.C.R. 189.

<sup>63</sup> CHA, *supra* note 53 at ss 18–20.

<sup>64</sup> *Morgentaler v. Prince Edward Island (Minister of Health & Social Services)*, [1995] P.E.I.J. No. 52 (P.E.I. S.C.T.D.); *Lexogest Inc. v. Manitoba (Attorney-General)*, [1993] M.J. No. 441 (Man. Q.B.).

and provincial governments to share the responsibility over universal health care, thus enabling the broader public to have access to this essential public service. While the legal enforcement of these commitments is limited in terms of individuals bringing actions, the symbolic importance of universal health care compels governments to justify their policy decisions in the court of public opinion.<sup>65</sup>

## 6. Solution: Contractual Federalism for the Right to Housing

Health, like housing, is constitutionally ambiguous and involves multiple governments. Yet Canada has managed to develop a nationally coordinated health care system through conditional federal transfers, negotiated agreements, and public pressure.<sup>66</sup> The NHSA, like the CHA, expresses a national commitment to a human right, in this case, the right to adequate housing. But unlike the CHA, the NHSA only applies accountability to federal actors and lacks mechanisms to compel participation from provinces or municipalities. While the federal government can fund programs and establish standards, it cannot mandate cooperation or compliance from other orders of government. Without the leverage of conditional transfers, the NHSA's implementation by other governments remains voluntary.

The CHA shows that national frameworks can shape provincial behaviour through political accountability, fiscal incentives, and public expectation. However, these tools require institutional architecture and stable funding.<sup>67</sup> They also require a political commitment. The CHA's success was built on widespread public support and political consensus.

There are five key preconditions for strengthening the NHSA: public support, conditionality to funding, fiscal incentives, reporting and oversight, and enforcement mechanisms. These elements are essential to operationalizing the NHSA's human rights framework across all levels of government, including municipalities.

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<sup>65</sup> Sujit Choudhry, "The Enforcement of the Canada Health Act" (1996) 41 McGill Law Journal 461.

<sup>66</sup> Tiedemann, *supra* note 17.

<sup>67</sup> Canadian Medical Association, "Health Care Funding in Canada" (2022) *Canadian Medical Association*, online: <<https://www.cma.ca/news/health-care-funding-canada>>.

<b>Component</b>	<b>Federal Role</b>	<b>Provincial / Municipal Role</b>	<b>Outcome</b>
<b>Public support</b>	Provide national leadership	Support a cooperative approach	Public support for a national approach
<b>Conditionality</b>	NHSA principles become funding conditions	Align strategies and legislation	Clear tenancy and homelessness protections
<b>Fiscal incentive</b>	Funding tied to measurable outcomes	Local delivery flexibility; less burdensome applications; greater reliability of funding	More non-market housing; long-term affordability
<b>Reporting and oversight</b>	Mandate particular frameworks, such as OPERA, and housing need assessments, like Housing Assessment Resource Tools (HART); provide monitoring and oversight	Comply with reporting requirements, including with standardized definitions and use of HART assessments	Clear and transparent national-level information and data; compliance with federal requirements
<b>Enforcement mechanisms</b>	Track results; withholding or redirecting funds if standards are not met	Demonstrate progress; corrective action needed in some cases	Transparency and accountability; rights protection; less discretionary oversight

Table 2: Components of contractual federalism in housing

## Shifting Public Perception as a Precondition for Policy Alignment

A shift in the public's understanding of housing as a human right rather than a commodity is a necessary precondition to implementing a contract-based housing policy in federal legislation. When looking at the history of health care in Canada, initially there was no universal health care. Moreover, prior to World War II, health care was privately funded.<sup>68</sup> Prior to 1961, only 53% of Canadians were covered by some form of health insurance, leaving approximately 8 million Canadians without insurance coverage.<sup>69</sup> During that period, the cost of health care was the leading cause of bankruptcy.<sup>70</sup>

Thus, due to the social and economic climate of the country, people recognized the system was not working and were open to change.<sup>71</sup> More people and provinces became onboard with universal health care. This transformation laid the groundwork for the CHA, which consolidated the principles of universal access into federal legislation in 1984.<sup>72</sup> The notion of health care based on need rather than ability to pay has since become the norm, and indeed a point of pride, in Canada.<sup>73</sup>

This kind of normative shift is imperative for a national approach to housing. There has been daily media coverage of issues related to housing, with terms like “crisis” used to describe the current status.<sup>74</sup> Experts also point to systemic drivers of the crisis, including the financialization of housing and the decline in non-market housing.<sup>75</sup> The most recent election placed housing at the top of crucial federal issues.<sup>76</sup> However, it remains to be seen whether there is sufficient

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<sup>68</sup> Chaoulli, *supra* note 15.

<sup>69</sup> *Ibid* at para 171.

<sup>70</sup> *Ibid*.

<sup>71</sup> Laura Santhanam, “How Canada got universal health care and what the U.S. could learn” (31 August 2020), *PBS News Hour*, online: <<https://www.pbs.org/newshour/health/how-canada-got-universal-health-care-and-what-the-u-s-could-learn>>.

<sup>72</sup> Ruty & Sullivan, *supra* note 14.

<sup>73</sup> *Cambie Surgeries Corporation v British Columbia (Attorney General)*, 2022 BCCA 245 at para 283; Chaoulli *supra* note 15 at para 172.

<sup>74</sup> See Policy Options, “How Does Canada Fix Its Housing Crisis” (Policy Options Series, 2023), online: <<https://policyoptions.irpp.org/series/fix-housing-crisis/>>.

<sup>75</sup> See Martine August, “The Financialization of Canadian Multi-Family Rental Housing: From Trailer to Tower” (2020) 42(7) *Journal of Urban Affairs* 975-997.

<sup>76</sup> Erin N Davis, “Why Housing Remains One of Canada's Biggest Election Issues”, *Storeys* (2025), online: <<https://storeys.com/housing-real-estate-election-issue/>>.

political support and political leadership to introduce sweeping reform such as the one proposed here.

## Conditionality and Federal Funding

The CHT provides financial support to provinces and territories contingent upon adherence to the CHA’s five principles (public administration, comprehensiveness, universality, portability, and accessibility).<sup>77</sup> These principles function as criteria for compliance and are embedded into bilateral funding agreements between the federal government and each province. Existing federal-provincial-territorial tables already exist and can be mobilized in the housing context as well.

There are analogies in the housing context. The NHTA affirms that Canada is committed to a human rights-based approach to housing and to “further[ing] the progressive realization of the right to adequate housing,”<sup>78</sup> which is recognized in the ICESCR.<sup>79</sup> The NHTA must also comply with a human rights-based approach to housing, including with principles of non-discrimination, inclusion and participation, accountability, and adequacy.<sup>80</sup> These principles can serve as requirements in intergovernmental agreements as the NHTA is renewed.

<b>NHTA Human Rights Principle</b>	<b>In Practice</b>	<b>Proposed Funding Condition</b>
<b>Non-discrimination and equity</b>	People most in need are prioritized	Percentage of units allocated to priority populations (for example, women, Indigenous people, disabled tenants)
<b>Inclusion and participation</b>	Opportunities for engagement	Participatory mechanisms built into program design

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<sup>77</sup> CHA, *supra* note 53 at s 7.

<sup>78</sup> NHTA, *supra* note 31 at s 4(d).

<sup>79</sup> United Nations (General Assembly), International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, entered into force 3 January 1976, 993 UNTS 3, at art. 2(1).

<sup>80</sup> Government of Canada, “Human Rights-Based Approach to Housing,” *National Housing Strategy*, online <<https://www.placetocallhome.ca/human-rights-based-approach-to-housing>>.

<b>Accountability</b>	Clear responsibilities and oversight	Annual public reporting; audit triggers
<b>Adequacy</b>	Homes must be affordable, habitable, and suitable and provide for security of tenure	Building condition standards; tenancy protections that include affordability and tenancy and vacancy protections; accessibility targets
<b>Affordability</b>	Housing costs must not force poverty	Deep affordability benchmarks, in addition to requirements under the adequacy principle
<b>Security of tenure</b>	Tenants protected from unjust eviction; implementation of the federally promised renters' bill of rights	Minimum eviction protection rules and reporting on evictions
<b>Progressive realization</b>	Year-over-year improvement required	Binding targets for homelessness reduction and non-market supply growth; data requirements

Table 3 – Human rights principles in the NHSA and methods of applying them to conditional funding

The CHA exemplifies how conditional federal funding can be used to align provincial policy with national rights-based objectives. The same logic of conditionality could be included in housing agreements. A housing transfer program would require provinces, territories, and municipalities to adopt core NHSA principles in their housing strategies as a condition of receiving federal funds. Doing so would help operationalize the NHSA’s rights-based commitments while providing financial support for implementation.

## Financial Incentives

It is important to note that Canada does not have one national health care plan; it has 13 different plans, one with each province and territory.<sup>81</sup> This allows for interpretation and flexibility in each province and territory to create a health care plan and adjust it in a way that makes sense for their region.<sup>82</sup> However, the foundation of each provincial health plan is to meet the objectives of the CHA.<sup>83</sup>

With the NHSA, a similar approach can be taken so that provincial, territorial, and municipal governments have some flexibility when creating housing legislation for their specific areas all while adhering to the core objectives of the NHSA. At the same time, flexibility in implementation can ensure that local governments retain discretion to design housing policy tailored to local needs. So long as housing strategies uphold core human rights principles, a flexible, decentralized approach can still support national alignment.

## Enforcement Mechanisms

While the CHA offers a model of cooperative federalism, it also reveals the limitations of federal influence when enforcement is weak or financial contributions decline. As Professors Flood, Thomas, and Lahey have observed, federal enforcement of the CHA has been sporadic. Over time, the federal share of health funding has decreased—from roughly 50% in 1968 to about 15.5% in 2015, which in turn diminished federal leverage.<sup>84</sup> And even though the federal government signed political accords<sup>85</sup> with the provinces and territories, which involved the federal government substantially increasing the CHT to provinces and territories in exchange for some reforms, the federal government's contributions do not meet the significant health care costs of Canadians.

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<sup>81</sup> Sara Allin, Greg Marchildon & Allie Peckham, "International Health Care System Profiles: Canada" (2020), *The Commonwealth Fund*, online: <<https://www.commonwealthfund.org/international-health-policy-center/countries/canada>>.

<sup>82</sup> Tiedemann, *supra* note 17 at 3.

<sup>83</sup> Chaoulli, *supra* note 15 at para 174.

<sup>84</sup> Colleen M M Flood, Bryan P Thomas & William Lahey, "Federalism and Health Care in Canada: A Troubled Romance?" (2017), *Dalhousie University: Research Papers, Working Papers, Conference Papers* at 5, online: <[https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1016&context=working\\_papers](https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1016&context=working_papers)>.

<sup>85</sup> *Ibid* at 6.

Similar risks apply in the area of housing. If the federal government intends to use funding as a mechanism to advance the NHSA's rights-based objectives, it must commit to sustained financial investment and develop clear, enforceable accountability structures that are tied to both legal standards and the progressive realization of housing rights across jurisdictions. If provincial, territorial, and municipal governments are expected to adhere to the NHSA through funding agreements, the federal government will have to create a strong enforcement strategy that clearly includes a long-term federal financial commitment.

An intergovernmental approach could also allow for better, standardized data across Canada, including information on tenancies and evictions, homelessness, housing starts, and public lands. This would enable greater transparency and accountability for housing in Canada.

## 7. Conclusion

Canada's constitutional framework may be silent on the right to housing, but that silence should not preclude action. The NHSA provides a powerful starting point by recognizing adequate housing as a human right and reintroducing the federal government as a key player in housing policy. Yet the NHSA's reach is limited: it is non-justiciable and applies only to the federal government.

This report suggests that intergovernmental agreements are an effective way to translate the NHSA's principles into enforceable commitments. Through agreements, the federal government can operationalize the NHSA by tying funding to concrete obligations, accountability structures, and human rights benchmarks. There is an important opportunity, as the first NHS comes to an end in 2027–2028, to embed human rights principles as requirements in intergovernmental agreements when the NHS is renewed.

The CHA serves as a promising model ripe for 21<sup>st</sup>-century renewal. Though health care, like housing, is not explicitly assigned to a single level of government in the Constitution, the federal government has successfully used its spending power to shape national policy through the CHA. The CHA demonstrates how conditions tied to federal transfers can generate compliance across jurisdictions, despite the absence of constitutional obligation. It also shows that intergovernmental agreements, supported by a shared, normative vision and strong public support, can overcome federalism's inherent fragmentation. As with health, housing could be guided by clear, mandatory criteria and funding conditions that require local adaptation while upholding national principles of equity, accessibility, and inclusion.

Although provinces constitutionally govern municipalities, evolving administrative practices have enabled cities and municipal associations to enter into direct agreements with the federal government in areas of shared concern. The increasing policy capacity of municipalities—combined with their frontline role in responding to the housing crisis—makes them vital partners in realizing housing rights. By leveraging federal spending power and designing contractually binding agreements that reflect NHSA principles, the federal government can

empower municipalities to implement human rights-based housing policy, even in the absence of constitutional or statutory mandates at the provincial level.

Ultimately, contracts serve as a helpful tool to address Canada's housing crisis. In a legal and political system defined by jurisdictional complexity and fiscal interdependence, they offer a justice-oriented tool to close the gap between human rights rhetoric and material outcomes. Contracts grounded in the NHSA could transform federal housing transfers from discretionary acts into instruments of accountability. Moreover, they would serve as a starting point for a coherent intergovernmental framework to guide housing decisions in Canada. This would mark a significant shift in Canada's approach to housing by grounding housing as a right that must be institutionally realized through collaborative, conditional, and principled action.