



April 25th 2023

**ACORN Hamilton Communication regarding Renovictions Stakeholder Consultation (HSC23023) (City Wide) (Item 8.1)**

On Thursday April 20th 23 ACORN members and 6 of our allies (Hamilton Community Benefits Network, Advocacy Centre for Tenants Ontario, Federation of Metro Tenants Associations', Hamilton Community Legal Clinic, Social Planning and Research Council of Hamilton, and Brian Doucet) delegated to the Emergency and Community Services Committee to urge the city to take bold action on the renoviction crisis.

As emphasised during delegations, renoviction is not about landlords repairing or upgrading units. The goal of renoviction is to displace the current tenant in order to raise the rent and maximize profit.

At the committee tenants delegated to share what is happening on the ground in communities around the city. Landlords are using a combination of tactics to force low income and vulnerable tenants from their homes.

As stressed during the recent General Issues Committee by Steve Pomeroy "Since 2011, according to his analysis, the Hamilton census metropolitan area ... has lost 15,854 units that rented for below \$750 a month, which is considered affordable for a household income of \$30,000 a year. That amounts to a loss of 29 units for every new unit created under various affordable housing initiatives".

Hamilton must do everything to protect tenants and preserve the city's stock of affordable housing in the private rental market.

See attached in our communication:

- ACORN's new report on the state of renoviction in Hamilton, testimonials from members facing renoviction and demands for the City of Hamilton
- Legal opinion memo by RavenLaw responding to the city's legal position that an Ontario municipality has no authority to pass an anti-renoviction bylaw similar to the policy from New Westminster, BC

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# RENOVICTION IN HAMILTON

**PROTECTING TENANTS AND  
PRESERVING HAMILTON'S  
AFFORDABLE HOUSING**

APRIL 2023





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# WHAT IS ACORN?

ACORN Canada is a multi-issue, mass-based union of low- to moderate-income people. The purpose of the union is to give people power so that they can have their voices heard at the highest levels of the country. With chapters across the region, province, and across the country, ACORN is able to be both a local-based union winning local campaigns, as well as a large organization combining forces to fight national corporations and governments that are at the root of most of our problems. Hamilton ACORN started in 2017 and has four neighbourhood chapters: Downtown, East End, Stoney Creek and Mountain.



## REPORT SUMMARY

The housing crisis in Hamilton has gone from bad to worse. Low- and moderate-income tenants are facing the brunt of the crisis and Hamilton ACORN is demanding the City of Hamilton **develop bold local policies and programs to protect tenants from renovation.**

This report includes:

- How renovation is having a devastating impact on Hamilton tenants
  - Testimonials from ACORN members
  - ACORN's reaction to the report being presented at the April 20th Emergency and Community Services Committee
  - **Demands for the City of Hamilton: Anti-renoviction bylaw, improvements to the Tenant Defence Fund, proactive tenant education, tracking when buildings are sold and annual inspections of apartments to ensure healthy homes**
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# WHAT IS RENOVICTION



By renoviction we are referring to the tactics or legal efforts that lead up to a tenant being forced to move out of their home under the guise of major renovations.

**The goal of renoviction is not to repair or upgrade the unit. The goal is to displace the existing tenant and increase the rent for the next tenant. Displaced tenants will never find their affordable rents again.**

## Current provincial rules

In Ontario, landlords have the ability to secure vacancy of a unit for renovations by issuing a N13 (reason 2) to the tenants. If filed at the Landlord and Tenant Board, the landlord must demonstrate that the eviction is in good faith. Tenants have the right of first refusal after renovations which means that they have the right to return to the same unit at the same rent. Tenants can also pursue fines if the landlord rents out the unit to another tenant once the renovations are complete.

Despite these provincial regulations, it is very difficult for low income tenants to exercise their right of first refusal and maintain their affordable housing because of the following reasons:

- Difficulty to find short term lease at the same rent while renovations take place (the reality is tenants will not be able to find similar rents when they re-enter the market).
- Landlords are under no obligation to finish the renovations in a certain amount of time.
- Challenge of staying on top of the landlord's renovations to ensure the Right of First Refusal.
- Financial costs of moving twice (moving out, moving back, potential storage costs).
- If the Right of First Refusal is revoked or lost, tenants have no legal ability to get their unit back (the landlord can be fined and tenant could be awarded compensation).

HAMILTON REGION

**'People are panicking': Renoviction looms for east Hamilton tenants**

HAMILTON REGION

**These Hamilton tenants have been without running water for 29 days. And they don't know when it's coming back**

MUNICIPAL ELECTION

**Hamilton's housing crisis 'no longer something that we can ignore'**

# RENOVICTION TACTICS



Without provincial vacancy control (cap on rent between tenancies), financialized landlords are determined to get frequent turnover of units to raise the rent and maximize their profits.

Buildings with recent change in ownership and / or long term tenants paying under market rent are especially at risk.

## Typical timeline / tactics:

1. Change in building ownership (not always but often a sign of changes coming).
2. Notice to tenants of coming renovations and major inconveniences.
3. Offer of low buyout offers to pick on tenants that are vulnerable or do not know their rights.
4. Discontinuing repairs and building maintenance (make life more difficult and make buyout offers more enticing).
5. Higher buyout offers (ACORN members have received offers as high as \$50,000).
6. N13 eviction form.
7. Filing at the Landlord and Tenant Board.

Notice to End your Tenancy  
Because the Landlord Wants to Demolish the Rental Unit, Repair it or Convert it to Another Use  
N13  
(Disponible en français)

To: (Tenant's name) Include all tenant names	From: (Landlord's name)
Address of the Rental Unit:	
<b>This is a legal notice that could lead to you being evicted from your home.</b>	
The following information is from your landlord	
I am giving you this notice because I want to end your tenancy. I want you to move out of your rental unit by the following termination date: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
<b>My Reason for Ending your Tenancy</b> I have shaded the circle next to my reason for ending your tenancy.	
<input type="checkbox"/> Reason 1: I intend to demolish the rental unit or the residential complex.	
<input type="checkbox"/> Reason 2: I require the rental unit to be vacant in order to do repairs or renovations so extensive that I am required to get a building permit and the rental unit must be vacant to do the work. <small>Note: You have the right to move back into the rental unit once I have completed the repairs or renovations. If you want to move back in once the work is done, you must give me written notice telling me you want to move back in. Also, you must keep me informed in writing any time your address changes.</small>	
<input type="checkbox"/> Reason 3: I intend to convert the rental unit or the residential complex to a non-residential use.	
<b>Details About the Work I Plan to do</b> I have described below the work I plan to do for the reason shown above, including specific details about how I will carry out the work.	
Work planned	Details of the Work

Landlords will use a combination of these tactics to ensure that tenants move out before the application reaches the Landlord and Tenant Board. Since the goal is to not have the tenant return to the unit, **having a tenant accept a buyout offer is the quickest and easiest path to turning over the unit.**

For tenants that want to keep their affordable homes, no amount of money is worth accepting. Low income tenants cannot afford to re-enter the rental market. Tenants on social assistance (ODSP or OW) especially cannot afford buyouts as large lump sum payouts may make them ineligible for benefits, or see a dollar-for-dollar reduction in benefit payments, thereby costing them more money.

# HAMILTON'S HOUSING CRISIS



Protecting Hamilton's affordable housing is more important now than ever. Hamilton has had the fastest growing housing prices since 2015 in Canada. More people of all income ranges are entering the rental market due to restricted access to homeownership, making the rental market more profitable for landlords and developers. This pressure on the rental market and the lack of purpose-built housing construction is making it more and more difficult for low- and moderate-income Hamiltonians to compete as market rent rates are way out of sync with average wages. The average market rent in Hamilton for a one-bedroom apartment is currently \$1,900, compared to \$875 just 7 years ago. Even non-market options are becoming more difficult to access as Hamiltonians have experienced wait times for social housing of up to 11 years, versus an average wait time of 2 years in 2013.

These variables make renoviction an increasingly profitable tactic for landlords. The number of N13 (renoviction) applications filed to the LTB in Hamilton has grown exponentially over the past few years. As a result, Hamilton has lost 15,000 units that rent for less than \$750 a month in the last decade. That is 29 affordable units lost for every new affordable unit added. Increasingly, low and moderate income earning Hamiltonians have nowhere to go when they lose their homes to renoviction. Predictably, homelessness in Hamilton is on the rise - more Hamiltonians enter the shelter system than exit it. It is becoming more and more dire that we preserve the affordable housing that we already have.

**\*NOTE - THESE #S ONLY INCLUDE CASES WHERE THE LANDLORD FILED AT THE BOARD. SITUATIONS WHERE THE TENANT DOESNT NOT CHALLENGE AT THE LTB OR FELT FORCED TO TAKE A BUYOUT ARE NOT TRACKED**

**19%** 

**INCREASE IN RENT FOR A ONE BEDROOM IN THE PAST YEAR. \$1,900 CURRENT AVERAGE MARKET RENT FOR A ONE BEDROOM**

 **29**

**AFFORDABLE UNITS LOST FOR EVERY ONE GAINED**

## RISE IN N-13 (S) FILED

# of N13s filed at the LTB *	Year
103	2022
60	2021
33	2020
21	2019
6	2012



# ACORN'S RENOVICTION CAMPAIGN



ACORN's anti-renoviction campaign started when now co-chair of Hamilton's East End chapter Elizabeth Ellis called ACORN about concerns that her new landlord wanted to displace all current tenants. Her suspicions were unfortunately well-warranted when the company began going door to door intimidating tenants into accepting low cash offers to move out.

## Tenants say Barton Street 'revitalizers' are neglecting them



Malleum Partners purchased the building at 160 Sherman Ave. N. back in July

Adam Carter · CBC News · Posted: Sep 21, 2018 5:01 PM EDT | Last Updated: September 21, 2018



HAMILTON REGION

## Fight renovictions with policy, Hamilton tenant advocates urge city

Renter says she buckled under pressure to take landlord's buyout and regrets it

By **Teviah Moro** Spectator Reporter  
▲ Mon., May 13, 2019 | ⌚ 3 min. read



Elizabeth Ellis participates at a housing protest in Hamilton, Ont. in 2018. (Adam Carter/CBC)



In 2020, ACORN members organized a campaign drive to launch our demands for the City of Hamilton to take action on renoviction. The main demand focused on Hamilton adopting a similar bylaw as New Westminster, BC which required landlords to accommodate tenants during renovations. Members held a press conference and rally at City Hall.

Hamilton Spectator

## Housing activists call on city to create bylaw to stop evictions through renovation

Aug 21, 2020



## West-coast bylaw would protect Hamilton tenants against 'renovictions', says advocacy...

Aug 20, 2020



# ACORN'S RENOVICTION CAMPAIGN CON'T



After the campaign launch, members began meeting with City Councillors to discuss the renoviction crisis and the urgent need for Hamilton to take action.

## First motion passed at Council - December 2020

Councillor Brad Clark - "That staff be directed to review reno-victions in Hamilton and report back to the Emergency and Community Services Committee by the end of March 2021 with information about what other jurisdictions have done to reduce the problem and what the City of Hamilton can do to mitigate the number of people who are affected by this practice".

## 80 person ACORN town hall on renoviction

**How Hamilton can use it's municipal powers to save the city's affordable housing**

WHEN: THURSDAY  
FEBRUARY 18TH AT 6PM

Featuring - Councillor  
Jaimie McEvoy on New  
Westminister's anti -  
renoviction bylaw

And panelists: Ali Naraghi, lawyer at HCLC &  
Merima Menzildzic, Project Coordinator at  
SPRC

Contact: [hamilton@acorncanada.org](mailto:hamilton@acorncanada.org) / 905-393-5734

Ahead of the staff report coming back to committee, ACORN hosted a virtual town hall with Councillor Jaimie McEvoy from New Westminister, BC and allies from the Hamilton Community Legal Clinic and Social Planning and Research Council.

## April 2021 - Staff report back to committee

ACORN members were deeply disappointed with the staff recommendations. The only recommendation was to expand the Tenant Defence Fund (TDF) to cover legal support for renoviction cases (ACORN's demand). Despite this initial staff proposal, ACORN was able to push for improvements to the TDF (lifting of the cap on the amount of financial support available to tenant groups) and another motion to develop local policy - **"That staff be directed to report back to the Emergency and Community Services Committee with a framework, including timeline and resources to develop a comprehensive renovictions strategy for City Hamilton as part of our recovery plan, to include: the evaluation of the tenant defense fund, proactive tenant education options, and options for a licensing and by-law regime"**.

ACORN members continued to organize and build pressure for local action, including a 120 person joint virtual town hall with Toronto ACORN which saw Hamilton City Councillors and senior city staff attend.

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# RENOVICTION CAMPAIGN CONTINUED + ACORN'S REACTION TO APRIL 20 STAFF REPORT



In **December 2021**, staff reported back to the Emergency and Community Services Committee with the resources needed to move forward local policy:

**"That the General Manager of the Healthy and Safe Communities Department or their designate be authorized to enter into contracts necessary to hire and retain a consultant to find the ways and means of implementing a New Westminster style by-law in Hamilton to deal with the issue of 'renovictions' in the approximate amount of \$100 K.."**

Throughout 2022 - 2023, ACORN members facing renovation continued to organize in their buildings to keep their homes. **Since the TDF was expanded, ACORN has organized at ten apartment buildings (56 households) to receive funding to retain a paralegal for renovation.**

In November of 2022, ACORN members had their first of two meeting with the consultant retained by the city.

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## Staff report - April 20th Emergency and Community Services Committee



**CITY OF HAMILTON**  
HEALTHY AND SAFE COMMUNITIES DEPARTMENT  
Housing Services Division

<b>TO:</b>	Chair and Members Emergency and Community Services Committee
<b>COMMITTEE DATE:</b>	April 20, 2023
<b>SUBJECT/REPORT NO:</b>	Renovictions Stakeholder Consultation (HSC23023) (City Wide) ( <b>Outstanding Business List Item</b> )
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	James O'Brien (905) 546-2424 Ext. 3728
<b>SUBMITTED BY:</b>	Michelle Baird, Director Housing Services Division Healthy and Safe Communities Department
<b>SIGNATURE:</b>	<i>Michelle Baird</i>

### RECOMMENDATION(S)

- That Council approve increasing the balance of the Tenant Defence Fund Project ID 6731841801 by \$50 K in 2023 through a transfer from Project ID 6731941901 Hamilton Portable Hsg Benefit to the Tenant Defence Fund Project ID 6731841801; and,
- That staff report back on the outcomes of the Tenant Defence Fund in 2025; and,
- That the item respecting the Tenant Defence Fund be removed from the Outstanding Business List.

After being directed to develop a comprehensive renovations strategy (the evaluation of the tenant defence fund, proactive tenant education options, and options for a licensing and by-law regime) and \$100,000 approved to increase capacity to do the work, the report is only proposing to add another \$50,000 to the TDF.

### Missing from the recommendations:

- Meaningful increase in funding to the TDF - another \$50,000 will not cover an expansion or improvements to the program
- Implementation plan for an anti-renoviction bylaw.
- Annual inspections to apartments to ensure compliance of property standards and inform tenants of their rights

# ACORN MEMBER TESTIMONIALS



## CHANTELLE

I have lived in my Hamilton Mountain townhouse for 20 years. On September 1, 2021, I received word that this property went up for sale. On September 9, I received a letter (with the wrong address on it) that the property had been sold with plans to demolish all units on the property. I asked my landlord for proof that it had been sold, but they continually refused. I later found out that it had not actually been sold, and that the anonymous number on my landlord's letter representing the buyer of the property actually represented himself. Despite this, I continued to be relentlessly pressured to take a \$18,000 buyout to move out despite my continuous refusals, have parts of my neighbouring units demolished without permits, be denied access



to the newly installed central air system because I pay less rent, and was even sued for defamation of the landlord's character for talking to my fellow tenants about their rights in this situation. This landlord's renoviction tactics negatively affected me and my family's health and well-being. It has caused my and my family significant mental health distress and we are made to live under constant fear of the loss of our long-time home.

A large, for-profit real estate company called Executive is now the new owner. This landlord was looking to renovict all 13 households in my complex, and 9 were renovicted (which is around 30 tenants), and just 3 households (including mine) remain, fighting against renoviction tactics. It is clear that the landlord's goal is to increase their profits, as I pay \$902 in rent, and the newly renovated units are on the market for around \$2799.

Me and my family believe that our situation could have been prevented with more regulation from the city. We believe that renoviction tactics such as their landlord's should come with greater consequences and be more closely monitored by the city, and that real estate companies as well as municipal governments place too much priority on economic growth and profits at the expense of the people's well-being and at the cost of taxpayers, who are being left with no choice but to move around from cubicle to cubicle. My family and I call on the city to take bold action against renoviction so that other Hamiltonians don't have to experience what we have experienced.

# ACORN MEMBER TESTIMONIALS



## DAVID

I've lived in my apartment on 1083 Main Street East for 18 and a half years at an affordable rent. Just 4 years ago, Malleum properties bought my building with intentions to evict us for renovation and rent increases.



Since then, it's been sold to executives of another large real estate company, Elevation Realty Network, one of which - Dylan Suitor - has talked about plans to turn it into a luxury 'lifestyle' building in order to double its value. I pay \$879 in rent, and the renovated units are being marketed for around \$1800. But overall, they've been quite secretive about who owns it, and they've chosen to remain anonymous for the most part. They've never presented themselves to us tenants.

This building has over 60 units, and only 7 households, including myself, are left to fight our landlords' cruel renoviction tactics. We had no water for over 80 days. 80 days in which there were multiple LTB hearings, city council meetings, news stories, and tenant actions. We had to use very limited containerized water to do most things. It took 8 litres of that water just to flush the toilet. They dropped us off occasional water, but the water didn't seem healthy - it left a strange residue when we used it. Since I'm the only tenant who drives, I was offered a motel room, but I was scared to live there for fear that they wouldn't let me back in my apartment. So I had to drive 15 minutes just to shower and carry out other basic tasks. Other tenants had to shower at rec centres. The city stopped collecting our garbage which gave us rats. We have unfinished renovations that left our building in disrepair. We were even called squatters by associates of the owners. Our landlord's paralegal claimed they gave us N13s with 120 days notice to vacate, but none of us actually received it, and we received contradictory information about how they were sent. We were offered 3 month's rent to leave, but none of us cashed them; we can't afford to leave. Market rent is too high.

These past few months have been physically and emotionally very stressful, even traumatic. A lot of us are more short-tempered and in lower moods. It's caused mental health declines for a lot of us. It's a disgrace that the city has permitted this. We went from one slumlord to another who squeezed whatever they could out of the building, didn't do repairs, and got away with it. Everyone in our building is either sick, disabled, elderly, on ODSP, or a combination. We are marginalized enough as is.



# ACORN MEMBER TESTIMONIALS



## DAVID CONTINUED

This situation was grotesque from start to finish. It's clear that we need a stronger tenant protections bylaw regime, and to actually enforce the tenant protections we already have. I believe the vital services bylaw should have been invoked - that could have solved this overnight. It is my understanding that initially bylaw officers were going to use the vital services bylaw but for some reason changed their mind.. Those are questions, like so many others, that we just don't have answers to right now. I want the city to investigate this whole situation and how it went so wrong. And more importantly, make some serious changes to make sure tenants have access to basic human rights. Our landlord has walked out of this situation without so much as a slap on the wrist and not a penny of fines. Of course I am angry with my landlord, but I am most angry with the city's departments that are meant to protect us, and failed to do so with any effectiveness, urgency, or enthusiasm. I want the City Council to take some steps and speed up some of the tenant protections they've been talking about and make sure landlords don't get away with so much. I want to make sure nothing like this ever happens again.



# ACORN MEMBER TESTIMONIALS



## MARIE

I was renovicted from my east end home of 15 years in the winter of 2020. My building was owned and run by Collard Properties who renovicted 12 households in total over the course of about a year. During that time, my landlord was demolishing and renovating vacant units, changing our heating systems without a permit, handed out N13s, offered buyouts of up to \$6,000 for us to move out, and entered the property and our units to do invasive repairs without proper notice. We received letters upon letters trying to convince us to move out.

Fed up, myself and two other households in the building decided to take it to the Landlord Tenant Board; we did not want to move out of our homes. However, things did not go in our favour and we were left with the option to accept an offer from our landlord to move into a different unit in the building for \$850 a month, nearly \$200 more than what I was currently paying. Further, they were renting out newly renovated units, including my previous unit, for \$1700 not including utilities. So, I was given 120 days notice to vacate.

Even after I moved out, the stress did not end. My landlord kept trying to get more money out of me, such as dismissing that I had paid last month's rent when I first moved in, my move-out date was delayed for 5 months, and my new unit was not even fully finished when I moved in.

This process took a bad toll on my mental health. I became ill because of the amount of stress I was being put under.

I believe experiences like mine can be prevented. The law needs to change to protect tenants, we need more intervention from the city. Landlords get away with too much. And it's not just here in Hamilton, it's happened all over the world. Homelessness is on the rise. I think one thing the city can do is collect better data and keep track of the number of affordable housing units and homelessness rates in the city so they know what they're dealing with.



# ACORN MEMBER TESTIMONIALS



## TONY

Last summer, I received a note on my door offering me \$3000 to move out of my apartment. I pay \$658 in rent in a building that has 12 units. I have lived here since 2008, but everything has changed here in just the past year when our building got new owners. Just a few months after I was offered money to move, I got an N13 notice to vacate that also offered me 3 months' rent to leave. I got a second buyout offer just a few months after that, and just a few weeks ago, another N13. Needless to say, these owners and their paralegal have been pretty pushy in trying to get us out of our homes. They even came to us in person one by one, door to door, to ask us how much money it would take for us to move out. But this just isn't an option for many of us. After all, those buyouts won't last. It's not about the money - this is my home. If I had to move, it'd be really tight for me. I'd probably have to move out of this neighbourhood and live with my mom while I try to find another place within my budget, which would be very difficult if at all possible in this market.



Ever since these renoviction tactics have been taking place, I've constantly had the worry of losing my home in the back of my mind, and I find myself scared. It's been cripplingly stressful, to say the least, for me and all my co-tenants. The mood is so much lower, it's like there's a grey cloud over the building. I've lived in Hamilton all my life, and it was never this bad growing up. I see stories on the news about homelessness in this city, or landlords shutting off tenants' water so that they'll move out, and I worry that that could be me, which I've never had to do before - I'm working all the time. Overall, I feel very threatened.

It's clear that the intention of these new owners is to buy us out in order to up the rent and make a profit; that's what's going on. There's people who have homes here, and we pay our rent. They don't care about our livelihoods; they just want to make money.

The city needs to be more involved, stop these renovictions and prioritize the wellbeing of its people over profit. They should promote organisations that advocate for tenant rights and affordable housing. We can't have more people losing their homes in a time where they're so unaffordable and unavailable.



# ACORN'S DEMANDS



## **ACORN members are extremely disappointed by the recommendations in the April 20th report.**

It's been almost 2.5 years since the initial Council direction to investigate and pass a local policy to protect tenants from renoviction. Despite this generous timeline, the April 20th report received lacks an accurate reflection of the lived experience of Hamiltonian renters, and fails to put forth any recommendations that provide tangible support to communities at risk of homelessness in the mounting face of the renoviction crisis.

Since 2019, ACORN has been calling on the city to adapt a set of common-sense bylaws and programs already championed by other cities to protect vulnerable low-income tenants and the city's existing affordable housing stock. **Bold action is needed.**

### **1) A city-wide landlord licensing program to ensure healthy housing conditions and restrict renoviction (Based on the RentSafe program from Toronto, Ontario and the anti-renoviction bylaw based from New Westminster, BC).**

- The burden of tenant placement is put on the landlord. If landlords want vacancy for renovations, they must accommodate tenants in alternative housing (comparable size and location) for the duration of the work at the **SAME** rent **OR** with the tenant's agreement enter into a new lease at a different but similar unit at the **SAME** rent.
  - Moving assistance (tenant's choice of an insured moving company arranged by the landlord OR compensation), and additional support provided for vulnerable tenants (including but not limited to: transportation to temporary housing unit and packing assistance for individuals with mobility impairments).
  - **ANY** tenant engagement and required tenant meetings are mandated to permit the attendance of a representative from the City of Hamilton and community groups that support tenant rights if requested by the tenants (ie; Hamilton Community Legal Clinic, ACORN).
  - Any written communications must be provided in tenant's native language, and the presence of translation services at tenant meetings are mandatory at **no cost** to the tenant.
  - Building maintenance cannot be permitted to deteriorate after delivering notice of renovations to tenants.
  - Frequent communication in trackable mediums must be made available to tenants with regard to renovation progress and return timelines in order to protect tenants' right of first refusal.
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# ACORN'S DEMANDS CONTINUED



- Annual inspections to apartment buildings should include proactive tenant education (information communicated / left at doors informing tenants of their rights and available city programs and contact information for community groups i.e. ACORN and the Hamilton Community Legal Clinic). This must be provided in tenants' native language.

## **2) Tracking when apartment buildings are sold**

- Track when apartment buildings are sold (transfer of license)
- Tenant outreach must be proactive and comprehensive, informing tenants of their rights and all applicable laws protecting them from renoviction through the City of Hamilton. This information must be made available in tenants' native language.

## **3) Improvements to the Tenant Defense Fund**

- Allocate appropriate funding to TDF proportional to the felt needs of vulnerable communities. The TDF was originally \$50, 000 when it was implemented in 2019. Without a significant increase in funding, the improvements and expansion the program desperately needs will not be possible.
- Expand the TDF to cover N12s, tenant maintenance applications (T6) and allow tenants to pursue other legal processes at the Landlord and Tenant Board, Local Planning Appeal Tribunal, Divisional Court, or other administrative tribunal or court with the intent of preserving affordable rental housing in Hamilton.
- Provide funding to tenant groups facing renoviction to hire a professional to dispute need for vacancy
- Add staff capacity to the TDF for tenant groups that need help with outreach and organising in their buildings.
- Create a vetted list of paralegals that have expertise and experience in representing tenants in Above Guideline Rent Increases (AGIs), N13s, N12s and T6s to be shared with tenant groups.

## **Long term improvement:**

- Transition the TDF to be similar to the City of Toronto Tenant Defense Program (now called Tenant Support Program) where under the new program, tenant groups can directly access legal services from a designated legal organization (Canadian Centre for Housing Rights). For example, in Hamilton, the designated service could be the Hamilton Community Legal Clinic. This transition would reduce barriers for tenant groups accessing legal representation.
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# CONCLUSION



The rise in renovations has and will continue to have a devastating impact on Hamilton, at both the individual and systemic level. Renovation shatters the lives of families, breaks long-held community bonds, undermines all efforts at stemming the ongoing housing crisis, and irreversibly slashes Hamilton's affordable housing stock with no plan or intention to replenish it.

Thanks to the tireless mobilization of ACORN's membership of low and moderate-income tenants, important steps have been taken by the Council to protect Hamiltonians. This crisis, however, requires more significant action, and the data and lived realities of ACORN members reflect this.

ACORN has been fighting for bold municipal tenant protection policies - **an anti-renoviction bylaw and a strong Tenant Defence Fund** - for 3 years.

ACORN members and allies will be delegating to the April 20th Emergency and Community Services Committee to urge the City of Hamilton to be a leader in Ontario in protecting tenants.





# SOURCES



orporation of the City of New Westminster. (2019). Business regulations and licensing (rental units) bylaw no. 6926, 2004. New West City.  
[https://www.newwestcity.ca/database/files/library/6926\\_Business\\_Regulations\\_and\\_Licensing\\_\(Rental\\_Units\)\(1\).pdf](https://www.newwestcity.ca/database/files/library/6926_Business_Regulations_and_Licensing_(Rental_Units)(1).pdf)

Davy, D. (2013, January 21). Wait times for subsidized housing on the rise in Hamilton. CBC News.  
<https://www.cbc.ca/news/canada/hamilton/headlines/wait-times-for-subsidized-housing-on-rise-in-hamilton-1.1323410>

Last, A. (2022, April 26). Hamilton residents struggle to secure affordable housing. CHCH.  
<https://www.chch.com/hamilton-residents-struggle-to-secure-affordable-housing/>

McManus, T. (2021, November 8). New west makes changes to protect renters from 'unscrupulous' landlords. New Westminster Record.  
<https://www.newwestrecord.ca/local-news/new-west-makes-changes-to-protect-renters-from-unscrupulous-landlords-4735558>

Moro, T. (2020, January 31). City makes headway on Hamilton social housing wait list. The Hamilton Spectator.  
<https://www.thespec.com/news/hamilton-region/2020/01/31/city-makes-headway-on-hamilton-social-housing-wait-list.html>

Moro, T. (2022, May 12). When there's not much of a choice, Hamilton renters hold on to what they have. The Hamilton Spectator.  
<https://www.thespec.com/news/provincial-election/2022/05/12/hamilton-housing-affordability-rental-crisis.html>

Moro, T. (2023, March 20). 'Renoviction' applications on the rise in Hamilton. The Hamilton Spectator.  
<https://www.thespec.com/news/hamilton-region/2023/03/20/renoviction-applications-are-on-the-rise-in-hamilton.html>

The City of New Westminster BC. (2023). Renovictions, tenant protections, and resources. New West City.  
<https://www.newwestcity.ca/housing/renovictions-tenant-protection-and-resources>

Zumper Inc. (2023, April 6). Hamilton, ON rent prices. Zumper.  
<https://zumper.com/rent-research/hamilton-on>

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April 18, 2023

**BY EMAIL [hamilton@acorncanada.org]**Olivia O'Connor  
Head Organizer  
Hamilton ACORN  
56 Mulberry St, Suite 8

Dear Ms. O'Connor:

**Re: Municipal Powers to Regulate Against Renovictions**

We write further to your request for our opinion regarding the scope of the City of Hamilton's powers to regulate against "renovictions", following a recent Report to the City's Emergency and Community Services Committee on this matter.

A renoviction is a type of eviction in which a tenant is displaced due to extensive renovations in the rental unit. While the *Residential Tenancies Act* (RTA) provides that a landlord may evict tenants in order to perform certain major renovations,<sup>1</sup> the RTA also invites municipalities to regulate in areas of local concern, for example, by appropriately limiting when permits for renovations can be issued. To this end, ACORN has emphasized the need for further regulation at the municipal level.

In this opinion, we were asked to assess whether the City of Hamilton's (the "City's") recent report accurately reflects its by-law making powers under the *Municipal Act*, and particularly, whether a by-law similar to the one in New Westminster would exceed the City's authority.

For the reasons which follow, it is our view that the City could enact a by-law similar to the one in New Westminster which regulates against renovictions by proactively disincentivizing them, and removing the costs of displacement from tenants. New Westminster's by-law was challenged twice in British Columbia, and upheld. In our view,

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<sup>1</sup> *Residential Tenancies Act*, SO 2006 c 17 [RTA], s 50.

the differences between British Columbia's legislation and Ontario's *Municipal Act* are unlikely to yield a different result if a similar by-law in Ontario was created and challenged. If properly drafted, such a by-law would be unlikely to run afoul of the City's authority within the *Municipal Act* and would be very unlikely to frustrate the purpose of the RTA. The case law has consistently confirmed that the scope of municipal authority is broad, and challenges to cities' by-law making powers are rarely successful.

## **FACTS**

In preparing this opinion, we have spoken with ACORN to understand the circumstances of recent tenant renovictions in Hamilton. We have also reviewed Enterprise Canada's April 3, 2023 document entitled "Renovictions: Stakeholder Consultation", which is Appendix A to the City's Housing Services Division Report (the "Report") to the Emergency and Community Services Committee. That Committee has a meeting scheduled on April 20, 2023.

We understand from ACORN that the issue of renovictions has become an increasing problem for tenants, who report that landlords are evicting them for cosmetic reasons rather than health and safety concerns.

Enterprise Canada's document notes that "Issuance of N13 notices began to climb sharply in 2016, and increased an astounding 775 per cent between 2010 and 2021."<sup>2</sup> Enterprise Canada further notes that some of Hamilton's buildings are old. The document also includes a section entitled "Legislative Situation" which states that the *Municipal Act* in Ontario and BC's comparable *Community Charter* are not the same.<sup>3</sup>

The City Report's "Analysis and Rationale for Recommendation" section indicates that the main reasons why the City will not pursue an anti-renovictions by-law are (1) unlike BC's *Community Charter*, the *Municipal Act* does not explicitly provide the City with authority to protect people and property in relation to rental units, and (2) the City cannot interfere with RTA requirements.

## **ANALYSIS**

Municipalities are empowered to regulate matters like housing which raise local concerns.

The Supreme Court has clarified that express authority is not required for municipalities to enact valid by-laws. Rather, to be valid, those by-laws must address areas of local concern. To the extent that the City is concerned about its express authority, section 10 of the *Municipal Act* confers both broad and specific authority to enact local by-laws.

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<sup>2</sup> Enterprise Canada, Appendix "A" to Report HSC23023, "Renovictions: Stakeholder Consultation" at 12.

<sup>3</sup> *Ibid* at 14.



The City's Report provides no basis for its conclusion that the *Municipal Act* is insufficient to allow it to enact a valid anti-renovictions by-law. Further, the *Residential Tenancies Act* in Ontario does not in any way oust the City's by-law making power. Rather, the RTA's express provisions invite municipal regulation.

### **The *Municipal Act* confers broad powers of municipal regulation**

The Supreme Court and courts of appeal have repeatedly emphasized that municipalities have a broad scope of power to regulate local concerns, as authorized by the legislation under which they operate.<sup>4</sup> The City's authority to enact by-laws is derived from Ontario's *Municipal Act*.<sup>5</sup>

In Canada's leading case on municipal authority, *Spraytech*, the Supreme Court ruled that a town in Quebec had jurisdiction to prohibit pesticide use through a by-law.

The Court in *Spraytech* decided that express authority was not required. The municipality's by-law was within its authority even without an express legislative provision that it could regulate pesticide use.<sup>6</sup>

The Court further analyzed whether any provincial legislation conflicted with that by-law and found that it did not. The Court ruled that "[a]s a general principle, the mere existence of provincial (or federal) legislation in a given field does not oust municipal prerogatives to regulate the subject matter".<sup>7</sup> The Court emphasized that a by-law would have to "directly" contravene the purpose of a provincial statute in order to be inoperable. By-laws that aim to "enhance" the purpose of the statutory scheme or provide "stricter" regulations that "coexist" with other legislation are appropriate exercises of municipal authority.<sup>8</sup> The Court found that the pesticide by-law did not contravene any statute and its enhancement of existing legislation was entirely within the scope of the municipality's regulatory power.

### **A by-law limiting renovictions would not conflict with the RTA**

A by-law limiting renovictions would not frustrate the purpose of the RTA because the RTA does not require or even encourage renoviction, it merely provides conditions for permissible renoviction. Meanwhile, municipalities may enact valid by-laws in addition to provincial legislation where "dual compliance" is possible. The "dual compliance" test requires that courts first attempt to read the statutory instruments together before deciding to quash a by-law.<sup>9</sup>

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<sup>4</sup> 114957 *Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40 ["*Spraytech*"] at para 42; *United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19 at paras 6-7; *Toronto Livery Association v Toronto (City)*, 2009 ONCA 535 at paras 44-49; *Croplife Canada v Toronto (City)*, 2005 CanLII 15709 (ON CA) at paras 36-37; 1193652 *BC Ltd v New Westminster (City)*, 2021 BCCA 176 (CanLII) ["*New Westminster BCCA*"] at para 79; *Toronto & City of Hamilton v Goldlist*, 2003 CanLII 50084 (ON CA) ["*Goldlist*"] at paras 55-56 and 67.

<sup>5</sup> *Municipal Act*, SO 2001 c 25 ["*Municipal Act*"], ss 7 and 8-10.

<sup>6</sup> *Spraytech*, *supra* at paras 22-23.

<sup>7</sup> *Ibid* at para 39.

<sup>8</sup> *Ibid* at paras 36-37 and 42.

<sup>9</sup> *Ibid* at 20.

The “dual compliance” test, as articulated by the Ontario Court of Appeal and reiterated in cases involving landlord licensing by-laws, is as follows:<sup>10</sup>

- 1) Is it impossible to comply simultaneously with the by-law in question and provincial legislation (in this case the RTA)? and;
- 2) Does the by-law frustrate the purpose of the Ontario Legislature in enacting the provincial legislation in issue?

In general, by-laws are rarely struck down on the basis that they were enacted outside of the scope of municipal authority. Even when a city’s by-law does frustrate provincial legislation, it will only be invalidated to the extent of its breach. For example, in *Cash Converters*, Oshawa’s by-law requiring second hand stores to collect personal information from customers was invalid only to the extent that its provisions conflicted with the *Municipal Freedom of Information and Protection of Privacy Act*, and only the offending sections were quashed.<sup>11</sup>

### **The RTA expressly contemplates concurrent municipal regulation**

The City’s Report is premised on the idea that the RTA limits the City’s authority to enact a by-law. This is incorrect. The RTA itself contemplates that municipal by-laws could be enacted regarding maintenance issues<sup>12</sup> and vital services.<sup>13</sup> Further, the City has engaged in a pilot project to license landlords, which contradicts its implicit assertion that it cannot regulate in housing matters while the RTA exists.<sup>14</sup> Many other municipalities have engaged in landlord licensing, and efforts to strike down these by-laws consistently fail.<sup>15</sup>

The section of the RTA governing evictions for the purposes of renovations explicitly invites municipal regulation. Section 50 provides that eviction for the purpose of renovation is only allowed if the landlord requires possession of the unit to “(c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit”.

The Notice that a landlord must provide when evicting a tenant due to renovations under section 50 of the RTA is clear that building permits—issued by a municipality—may be required before a renovation is possible.

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<sup>10</sup> *Cash Converters Canada Inc et al v The Corporation of The City of Oshawa*, 2007 ONCA 502; *London Property Management Association v City of London*, 2011 ONSC 4710 at paras 35-37.

<sup>11</sup> *Cash Converters Canada Inc et al v The Corporation of The City of Oshawa*, 2007 ONCA 502.

<sup>12</sup> RTA, *supra*, s 224.

<sup>13</sup> RTA, *supra*, ss 215-216.

<sup>14</sup> City of Hamilton, “Rental Housing Licensing Pilot Program”, online:

<https://www.hamilton.ca/build-invest-grow/starting-small-business/business-licences/rental-housing-licensing-pilot-program>.

<sup>15</sup> *Toronto & City of Hamilton v Goldlist*, 2003 CanLII 50084 (ON CA); *London Property Management Association v City of London*, 2011 ONSC 4710; *Fodor v North Bay (City)*, 2018 ONSC 3722; *1736095 Ontario Ltd v Waterloo (City)*, 2015 ONSC 6541.

The eviction Notice form, N13, includes the following section [emphasis added]:<sup>16</sup>

Necessary permits

I have shaded the circle to indicate whether

- I have obtained any necessary building permits.
- I have obtained the necessary building permits or other authorization to convert, demolish **or repair** the rental unit.
- I will obtain the necessary building permits or other authorization to convert demolish **or repair** the rental unit.
- No permits or other authorization are necessary in this case to convert the rental unit or demolish it.

The RTA, both as a whole and within section 50, contemplates that municipalities can play a role in regulating renovations.<sup>17</sup>

### **The Anti-Renoviction By-Law in New Westminster and the *Municipal Act***

New Westminster's anti-renovictions by-law required landlords to maintain their buildings and obtain all necessary permits before the municipality would authorize a landlord to renovate or repair the building.<sup>18</sup> The by-law further required that the landlord enter into a new tenancy agreement with the tenant "on the same terms as the tenancy agreement pertaining to the dwelling unit being renovated or repaired, or, terms that are more favourable to the tenant, in respect of a comparable dwelling unit in the same building...", or, make "other arrangements in writing for the tenant's temporary accommodation during the course of the renovation or repair, and for their return to the original dwelling unit following completion of the renovation or repair..."<sup>19</sup> The New Westminster by-law also prohibited a rent increase after the renovation was complete.

This by-law was challenged twice in BC, and courts found that the municipality did not exceed its authority.<sup>20</sup> Particularly, the British Columbia Court of Appeal found that the by-law did not frustrate BC's *Residential Tenancy Act*, which limits bad faith evictions for renovations in a similar manner as Ontario's RTA.<sup>21</sup> Rather, the Court found that the city was within its authority when it enacted its by-law which legislated additional requirements alongside BC's *Residential Tenancy Act*. We have quoted at length from this case because

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<sup>16</sup> Landlord and Tenant Board, "Notice to End your Tenancy because the Landlord Wants to Demolish the Unit, Repair it or Convert it to Another Use N13", online: <https://tribunalsontario.ca/documents/lrb/Notices%20of%20Termination%20&%20Instructions/N13.pdf>.

<sup>17</sup> See multiple case law examples in which landlords have tried and failed to quash licensing by-laws at footnote 15, above.

<sup>18</sup> Corporation of the City of New Westminster, Bylaw No 8085, 2019, "A Bylaw to Amend Business Regulations and Licensing (Rental Units) Bylaw No 6926, 2004".

<sup>19</sup> *Ibid.*

<sup>20</sup> *New Westminster BCCA, supra; VIT Estates Ltd v New Westminster (City)*, 2021 BCSC 573.

<sup>21</sup> *New Westminster BCCA, supra; Residential Tenancy Act*, SBC 2002 c 78, s 49; *RTA, supra*, s 50. Note: In the condominium context, a similar by-law was upheld in Ontario in *Toronto & City of Hamilton v Goldlist*, 2003 CanLII 50084 (ON CA).



it represents a sound assessment of how a similar by-law would likely be analyzed by a court in Ontario:<sup>22</sup>

[79] To repeat, under the subsidiarity principle the level of government closest to a subject matter may choose to respond to local needs by introducing complementary legislation in an area of jurisdictional overlap. The City has a long-standing concern with the need to preserve local affordable rental housing and has recently become particularly concerned with a perceived increase in the risk of renovictions in New Westminster. In my view, the City's conclusion that it was authorized by the *Community Charter* to address those local concerns by enacting the Impugned Bylaw aligns with Justice L'Heureux-Dubé's statement in *Spraytech* that "the mere existence of provincial ... legislation in a given field does not oust municipal prerogatives to regulate the subject matter": at para. 39. It also aligns with Chief Justice McLachlin's statement in *Reference re Assisted Human Reproduction Act* that, so long as complementary local laws do not frustrate other legislation, "in an area of jurisdictional overlap, the level of government that is closest to the matter will often introduce complementary legislation to accommodate local circumstances": at para. 70.

[80] In addition, as the Chief Justice [of the BC court below] recognized, s. 10 of the *Community Charter* contemplates overlapping municipal and provincial jurisdiction by providing that a municipal bylaw is inconsistent with a provincial enactment only if it requires contravention of that enactment: at paras. 70, 75–77. Accordingly, it was reasonable for the City to conclude that the Impugned Bylaw would not frustrate the *Residential Tenancy Act* scheme unless it required contravention of the provisions of that Act, which it did not.

[81] Further, as the Chief Justice [of the BC court below] stated, regardless of whether the *Residential Tenancy Act* scheme is all-inclusive regarding the circumstances in which a landlord may terminate a residential lease, that Act contemplates the applicability of other legislative and regulatory schemes in the residential tenancy context. In other words, like the *Community Charter*, the *Residential Tenancy Act* contemplates the prospect of overlapping and complementary jurisdiction. In addition, regardless of what the common practice may be among landlords, the *Residential Tenancy Act* does not expressly grant them a statutory right to charge market rent when a tenant exercises the right of first refusal following a renoviction. Had the Legislature intended to grant such a significant right, in my view it is reasonable to conclude that it would have said so. In the absence of an express provision to this effect, there is no "statutory disharmony" or operational conflict of potential concern.

We note that the court's analysis above did not turn on the specific provision of the *Community Charter* which allowed New Westminster to pass its by-law. New Westminster had not exceeded its authority for the same reasons that the City likely would not: municipalities have broad authority to regulate in areas of local concern. Ontario's *Municipal Act* conveys a similarly broad scope of by-law making power.<sup>23</sup>

### **Hamilton's Authority as a Single Tier Municipality**

Section 10 of Ontario's *Municipal Act* provides explicit authority to pass by-laws in a broad range of circumstances. British Columbia's *Community Charter*'s provisions are not the same, but the relevant subsection is similar. Further in section 8, the *Community Charter* grants licensing powers. Relevant subsections are emphasized below:

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<sup>22</sup> *New Westminster BCCA*, *supra*.

<sup>23</sup> *Municipal Act*, *supra*, ss 8-10, and in particular ss 8(1) and 151.

Ontario's <i>Municipal Act</i> section 10(1) <sup>24</sup>	British Columbia's <i>Community Charter</i> section 8(3) <sup>25</sup>
<p>1. Governance structure of the municipality and its local boards.</p> <p>2. Accountability and transparency of the municipality and its operations and of its local boards and their operations.</p> <p>3. Financial management of the municipality and its local boards.</p> <p>4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act.</p> <p><b>5. Economic, social and environmental well-being of the municipality, including respecting climate change.</b></p> <p><b>6. Health, safety and well-being of persons.</b></p> <p>7. Services and things that the municipality is authorized to provide under subsection (1).</p> <p><b>8. Protection of persons and property, including consumer protection.</b></p> <p>9. Animals.</p> <p>10. Structures, including fences and signs.</p> <p><b>11. Business licensing.</b></p>	<p>(a) municipal services;</p> <p>(b) public places;</p> <p>(c) trees;</p> <p>(d) firecrackers, fireworks and explosives;</p> <p>(e) bows and arrows, knives and other weapons not referred to in subsection (5);</p> <p>(f) cemeteries, crematoriums, columbariums and mausoleums and the interment or other disposition of the dead;</p> <p><b>(g) the health, safety or protection of persons or property in relation to matters referred to in section 63 [protection of persons and property];</b></p> <p>(h) the protection and enhancement of the well-being of its community in relation to the matters referred to in section 64 [nuisances, disturbances and other objectionable situations];</p> <p>(i) public health;</p> <p>(j) protection of the natural environment;</p> <p>(k) animals;</p> <p>(l) buildings and other structures;</p> <p>(m) the removal of soil and the deposit of soil or other material.</p>

<sup>24</sup> *Municipal Act, supra*, s 10(1).

<sup>25</sup> *Community Charter, SBC 2003 c 2, s 8(3)*.

Section 10 of Ontario's *Municipal Act* includes a marginal note: "Broad authority, single-tier municipalities". A leading annotated guide to the *Municipal Act* clarifies just how broad municipalities' authority is:<sup>26</sup>

Section 10 (together with subs. 11(1) and (2)) represents a significant expansion of municipal powers. The authority for single-tier municipalities to provide any service or thing that they consider necessary or desirable for the public under subs. 10(1) not only encompasses the various traditional areas of municipal jurisdiction as enumerated under the spheres of jurisdiction in subs. 11(3) of the Act but potentially extends to other areas and subject matters. There is therefore no need to retain the spheres of jurisdiction for single-tier municipalities.

A single-tier municipality is one which does not have a two-tiered structure, rather, all jurisdiction is contained within just one tier.<sup>27</sup> In other words, while the term "single-tier" refers to the municipality's jurisdiction, it is broad, not limited.

The City's Report argues that the tier system in the *Municipal Act* differs from the framework in BC's *Community Charter*. While there are differences, these differences are not determinative of the City's authority to enact a valid by-law regulating renovations. A close review of both province's provisions, in the table above, shows the City has multiple bases for authority to enact a by-law to limit renovations.

## **CONCLUSION**

The City has taken the position that its authority is limited under section 10 of the *Municipal Act* and that the RTA further limits its authority. However, our review of the extensive case law on these issues shows that the City's authority is broad, and that, with a properly drafted by-law, the City *can* take action to prevent renovations.

We trust this is responsive to your request. Please do not hesitate to contact the undersigned in the event that you have any questions regarding any aspect of this opinion.

Yours truly,

**RAVENLAW LLP/s.r.l.**



Claire Michela

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<sup>26</sup> John Mascarin & Stephen Auerback, *The Annotated Municipal Act*, 2nd Ed (online: Thomson Reuters) at § 99.1.

<sup>27</sup> See Ontario, "List of Ontario Municipalities", online: <https://www.ontario.ca/page/list-ontario-municipalities>.