



Note No.: GENEV-7135

Reference: Canada's response to AL CAN 1/2020

The Permanent Mission of Canada to the Office of the United Nations and World Trade Organization at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to submit Canada's response to the Special Rapporteur on adequate housing's allegation letter AL CAN 1/2020 of 27 April 2020.

The submission consists of two Word documents.

The Permanent Mission of Canada to the Office of the United Nations and World Trade Organization at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 19 March 2021

Canada

Canada

RESPONSE OF CANADA TO THE COMMUNICATION FROM SPECIAL RAPPORTEUR ON ADEQUATE HOUSING

Introduction

1. On April 27, 2020, the former Special Rapporteur on adequate housing, Leilani Farha, sent a Communication to Canada (reference AL CAN 1/2020), raising concerns about the “...impact of Akelius Canada’s business model on the right to housing of tenants in Akelius’ apartment blocks in Toronto and Montreal.”
2. The Government of Canada, the Government of Ontario and the Government of Quebec welcome the opportunity to respond to this Communication.
3. Canada takes very seriously its international human rights obligations and is committed to maintaining a constructive dialogue with UN mechanisms, including the Special Procedures, which are a vital part of a strong and effective international human rights system. Canada thus engages with the Special Procedures in good faith, and provides the following information in response to the Communication.
4. Canada has a robust human rights legal and policy framework that works effectively to address any issues openly and accountably through the legislative policy development process, public consultations and discussion facilitated by a free press, and before Canada’s courts and tribunals.

Legal framework for the protection of human rights in Canada

5. The legislative, executive and judicial branches at all levels of government in Canada share responsibility for the protection of human rights and the implementation of international human rights treaty obligations. Relevant legislation is enacted by the Parliament of Canada and the provincial and territorial legislatures.
6. In Canada, the right to housing is not enshrined in the *Canadian Charter of Rights and Freedoms* (the Charter). However, the Charter explicitly guarantees equality rights, including the right of everyone to the equal protection and equal benefit of the law without discrimination on enumerated or analogous grounds. The Charter equality guarantee encompasses both direct and indirect discrimination, such as situations in which a law or government action has an adverse effect on a group characterized by a prohibited ground of discrimination. The *Canadian Human Rights Act* also prohibits discriminatory practices by federally-regulated entities in the provision of accommodation, in addition to prohibiting discrimination in other spheres of activity.
7. All provinces and territories in Canada have adopted human rights legislation prohibiting discrimination on various grounds in regard to employment matters, the provision of goods, services and facilities customarily available to the public, and accommodation. Generally, human rights legislation prohibits discrimination on the grounds of race or colour, religion or creed, age, sex, sexual orientation, gender identity or expression, family or marital status, physical or mental handicap or disability, national or ethnic origin and ancestry or place of origin, including in the housing sphere. However, no

Canadian province or territory enshrines housing as a stand-alone right in its human rights code or other laws.

8. In Canada, various modes of redress for human rights violations are available, depending on the nature of the right infringed and the form of remedy sought.
9. The primary means of enforcing human rights legislation is through the human rights commissions or tribunals established under them. Although the functions of these bodies vary, common functions include the determination or conciliation of complaints of discrimination brought under the relevant legislation. If the commission or tribunal concludes that a person has engaged in a discriminatory practice, it may make an order, which is enforceable through the court. The person who has engaged in the discriminatory practice may be ordered to cease such practice, to take measures to reverse the effects of discrimination, such as rehiring the victim, to pay compensation and/or to adopt an affirmative action program. Decisions of commissions or tribunals are subject to judicial review by the courts.
10. Ontario's *Human Rights Code* (the Code) establishes the right to equal treatment with respect to the occupancy of accommodation without discrimination on the basis of various enumerated grounds (s. 2(1)), including race, citizenship, age, family status, disability or the receipt of public assistance. The Code prohibits any person from infringing on a right established under the Code or from taking an action that would infringe such a right, whether directly or indirectly (s. 9). If a person identified by Code grounds has a need, which prevents or impedes access to housing, he or she should identify this need or barrier to his or her landlord or housing provider. A landlord or housing provider must then make efforts to accommodate these needs up to the point of undue hardship.
11. The Landlord and Tenant Board (LTB) may be able to consider a claim of discrimination under the Code if it relates to an application under the *Residential Tenancies Act, 2006* (RTA). In other situations, the tenant has the option to take their case to the Human Rights Tribunal of Ontario (the Tribunal), which resolves claims of discrimination and harassment brought under the Code.
12. If the Tribunal determines that the person's right, or rights, have been infringed, the Tribunal may order the party who infringed the right to pay monetary compensation or make restitution for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect, or direct any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with the Code (s. 45.2(1)). Such an order may apply to future practices and may be made even if such an order was not requested by any party to the application (s. 45.2(2)).
13. The Code also establishes the Ontario Human Rights Commission, an independent agency that protects the public interest and human rights in Ontario, and identifies and promotes the elimination of discriminatory practices (s. 29). While the Commission does

not deal with individual cases of discrimination or make legal decisions, it can make applications to the Tribunal if the Commission determines that such an application is in the public interest and an order under the Code could provide an appropriate remedy (s. 35). When an application is made to the Tribunal by the Commission, and the Tribunal determines that any one or more of the parties to the application have infringed a right under the Code, the Tribunal may direct any party to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with the Code, including in respect of future practices (s. 45.3).

14. In Quebec, the *Charter of Human Rights and Freedoms* (Quebec Charter) states the following in article 10: “Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap”.¹ Article 12 prohibits any person from refusing, on the basis of one of the above-mentioned grounds of discrimination, to carry out a legal transaction concerning goods or services normally offered to the public, including lease agreements, but excluding the non-advertised rental of a room in a private dwelling (art. 14).
15. Article 13 of the Quebec Charter prohibits any legal transaction that includes a discriminatory clause. Such a clause in a lease or building by-law is invalid. Furthermore, an apparently neutral clause may also be in violation of the Quebec Charter if it has indirectly discriminatory effects on certain people or groups of people on the basis of a ground of discrimination.
16. Article 10.1 of the Quebec Charter prohibits any person from harassing a person on the basis of any ground of discrimination mentioned in article 10.
17. In addition to protections granted against discrimination, both the Civil Code of Quebec and the Quebec Charter enshrine the sanctity of the home as well as the right to privacy, which are intimately linked to the protection of the right to housing. Therefore, the landlord may not, except in exceptional cases, enter a dwelling occupied by a tenant without the latter’s permission (art. 5, 6, 7, and 8 of the Quebec Charter; art. 36 and 1375 of the Civil Code of Quebec [hereafter CCQ]).
18. Note that article 1899 CCQ also prohibits discrimination² and reprisals.³ Punitive damages may be attributed if this provision is violated.
19. Both Quebec public services and private businesses must respect the rights protected under the Quebec Charter.

¹ CQLR, chapter C-12. <http://legisquebec.gouv.qc.ca/en/pdf/cs/C-12.pdf>

² For example, refusing to rent to a person who is pregnant or has children, unless the size of the dwelling justifies it.

³ For example, imposing a more onerous condition on a tenant who has exercised a right provided by the CCQ or the *Act respecting the Administrative Housing Tribunal* (CQLR, chapter T-15.01), or refusing to uphold those rights.

20. The Administrative Housing Tribunal (AHT) has jurisdiction in enforcing the Quebec Charter when a lease has been concluded between the parties and the alleged breach concerns a contractual obligation. When circumstances permit, the violation of a right guaranteed under the Quebec Charter may lead the AHT to issue orders to protect these rights and attribute punitive and compensatory damages.
21. Before concluding a lease on a dwelling, or when the situation does not concern rights and obligations related to the lease, respect of the Quebec Charter is enforced by the *Commission des droits de la personne et des droits de la jeunesse* (CDPDJ). Therefore, a complaint may be lodged with the CDPDJ, which will then conduct an investigation to determine whether there is enough evidence to refer the case to the Human Rights Tribunal (HRT).

The National Housing Strategy Act

22. In 2017, the Government of Canada announced Canada's first-ever National Housing Strategy which, among other things, supports the progressive realization of the right to adequate housing as recognized in the *International Covenant on Economic, Social and Cultural Rights*, to which Canada is a party. Initiatives under the National Housing Strategy prioritize people who are vulnerable, offering funding for the construction and renewal of affordable housing and other supports for affordability, research and data. As part of a human rights-based approach to housing, the Government of Canada introduced the *National Housing Strategy Act*, which came into force in July 2019. It recognizes that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities as well as a strong national economy in which Canada can prosper and thrive. *The National Housing Strategy Act* sets out that a national housing strategy must be developed and maintained to further the housing policy of the Government of Canada, taking into account key principles of a human rights-based approach to housing. It also established a National Housing Council and Federal Housing advocate as measures for accountability and inclusion.
23. *Reaching Home: Canada's Homelessness Strategy* supports the goals of the National Housing Strategy, in particular, to support the needs of the most vulnerable Canadians; to improve access to safe, stable and affordable housing; and, to reduce chronic homelessness nationally by 50 percent by 2027-28. *Reaching Home*, which replaced the Homelessness Partnering Strategy on April 1, 2019 is a community-based program aimed at preventing and reducing homelessness. It provides direct financial support to urban, Indigenous, territorial and rural and remote communities across Canada to support their efforts in addressing local needs and develop local solutions to homelessness.
24. Communities can use *Reaching Home* funding to develop and deliver housing and support services to individuals and families experiencing or at-risk of homelessness, using data-driven system plans with clear outcomes. The outcomes-based approach provides communities with the flexibility they need to address local priorities, including homelessness prevention and programming designed to meet the needs of vulnerable populations (for example, youth, Indigenous people, women and children fleeing

violence and veterans). In 2020, the *Reaching Home* program was expanded to six new communities across Canada, supporting more Canadians experiencing homelessness or at-risk of homelessness.

Legislative framework and resources specific to landlords and tenants.

Ontario

25. In Ontario, the RTA is the legislation that governs residential tenancies. The RTA establishes the framework for the regulation of rent and security of tenure and provides for the adjudication of disputes and for other processes to informally resolve disputes. The LTB, which is part of Tribunals Ontario, is the adjudicative tribunal with the authority to resolve disputes between landlords and tenants under the RTA, independently of government.

Rent increases

26. In Ontario, landlords are permitted to increase rent annually but, in most cases, only in accordance with the rent increase guideline. The annual rent increase guideline released under the RTA is based on the Ontario Consumer Price Index, an objective and transparent measure that is calculated by Statistics Canada.

27. The annual rent increase guideline ensures that the housing costs for most tenants will not increase beyond the rate of inflation (with the maximum capped at 2.5%), while allowing landlords stable and predictable increases in revenue to offset the cost increases they may experience to properly maintain and operate their buildings.

28. In addition, the RTA allows landlords to negotiate starting rents with new tenants. This permits landlords to establish market rents and offset any increased costs upon unit turnover. The ability to establish new rents on turnover provides an important incentive for landlords to invest in rental housing.

29. Landlords must give tenants at least 90 days' notice in writing of any increase in rent, and the rent can only be increased once every 12 months in accordance with the rent increase guideline.

30. Under the RTA, landlords can also apply to the LTB for a rent increase above the guideline if the landlord did extraordinary or significant renovations, repairs, replacements or new additions that have an expected benefit of at least five years (called a 'capital expenditure').

31. Above guideline rent increases allow landlords to invest in repairs and upgrades to their aging rental buildings and ensure that tenants can continue to have access to well-maintained and secure rental housing.

32. Landlords cannot require the tenant to pay an above guideline rent increase unless or until it has been approved by the LTB (s. 126(5) of the RTA). The maximum rent increase that

can be awarded by the LTB for capital repairs undertaken by a landlord is 3% above the guideline for each of three years. In addition, once a landlord recoups their cost for capital repairs, the RTA requires that the above guideline rent increase be removed from a tenant's rent. This provision ensures that tenants are not burdened with paying above guideline rent increases after the costs are no longer borne by a landlord (s. 129 and s. 38 of O. Reg. 516/06 under the RTA).

33. If a landlord applies for approval of an above guideline increase in rent, the RTA requires that every tenant who will be affected by the increase receive notice of the landlord's application and the date on which the LTB will hear the application. Tenants may attend the hearing and provide evidence and arguments opposing the application. Landlords are required to provide the tenant, upon request, evidence of all costs and payments for the amounts claimed for capital work and details about each invoice and payment for each capital expenditure item (s. 23 and 22 of O. Reg. 516/06 under the RTA).
34. Under O. Reg 516/06, the RTA prescribes the type of capital expenditures that are not eligible for above guideline rent increases, including work that is substantially cosmetic or designed to enhance the level of prestige/luxury, or routine or ordinary maintenance work (s. 18 of O. Reg. 516/06 under the RTA).

Repairs and maintenance

35. Under the RTA, landlords are responsible for keeping their rental property in a good state of repair and complying with health, safety and maintenance standards (s. 20 of the RTA). In addition, most municipalities have passed by-laws establishing property standards, which set out maintenance standards for rental housing. Where the municipality has not established such property standards, there are provincial maintenance standards under the RTA that apply (Part XIV of the RTA and O. Reg. 517/06 under the RTA). In either case, tenants can contact the municipality if they believe their rental building is not being maintained adequately and may request that a municipal property inspector be sent to examine the premises. A municipal property inspector can issue an order requiring the landlord to make necessary repairs to bring a rental unit, or the building, into compliance with the by-law for property standards or the provincial maintenance standards under the RTA, as the case may be, within a specified time-frame.
36. Further, a landlord must not interfere with vital services (hot or cold water, fuel, electricity, gas and, during certain months of the year, heat). If a landlord provides any vital service to a tenant, the landlord cannot withhold the reasonable supply of it (s. 21 of the RTA). This rule applies even if the tenant's rent is overdue, or the tenant has damaged the property.
37. In addition, the RTA requires that a landlord shall not substantially interfere with the reasonable enjoyment of the rental unit or the residential complex for all usual purposes by a tenant or members of their household (s. 22 of the RTA).

Available remedies and recourse

38. Tenants may file an application with the LTB for a remedy on the basis that the landlord is not properly maintaining the rental unit or complex, that the landlord is in breach of the RTA vital service requirements, or that the landlord has interfered with the tenant's reasonable enjoyment of the rental unit. Remedies that the Board can order include restoration of vital services, repairs/maintenance, rent abatement and early termination of the lease if requested by the tenant.
39. The Rental Housing Enforcement Unit (RHEU) of the Ministry of Municipal Affairs and Housing responds to complaints from landlords or tenants about alleged offences under the RTA, which include failure to comply with an order concerning maintenance issued by the LTB (s. 234(y)) and interfering with the supply of a vital service (s. 233(a)).
40. RHEU recently enhanced enforcement activities to proactively educate landlords about lawful eviction procedures when tenants express concerns about their landlords' plans to renovate or sell their rental units.

Recent legislative measures taken

41. On July 21, 2020, the *Protecting Tenants and Strengthening Community Housing Act, 2020*, which amends four laws related to housing, including the RTA, was passed. The amendments to the RTA introduce measures to enhance the rental experience for both landlords and tenants.
42. These measures strengthen protections for both landlords and tenants, support balanced and accessible adjudication to help resolve disputes, and cut red tape by creating more effective rules and processes.
43. The changes would enhance tenant protections by:
 - Increasing maximum fines for RTA offences to \$50,000 for an individual and \$250,000 for a corporation
 - Requiring landlords to disclose to the LTB if they have previously filed for an eviction so they can move into or renovate the unit, and
 - Requiring landlords of small buildings to give tenants one month's rent in compensation for evictions for renovations or repairs, or when they evict a tenant on behalf of a home buyer who wants to use the unit for themselves.
44. These changes are in support of the *More Homes, More Choice: Ontario's Housing Supply Action Plan*, which seeks to increase the supply of housing that is affordable and provide families with more meaningful choices on where to live, work and raise their families.

Quebec

The legislative framework for the lease of a dwelling

45. In Quebec, the rules relating to the lease of a dwelling, including the rights and obligations of the landlord and the tenant, lease renewal, and rent increase, are provided by the CCQ and the *Act respecting the Administrative Housing Tribunal* (AAHT).⁴ To promote greater harmony between landlords and tenants, the legislator has entrusted a dual mandate to the AHT⁵: first, to provide citizens with appropriate information, and second, to provide effective recourse when one party does not fulfill its obligations. More specifically, article 5 of the AAHT states that:

“5. The Tribunal shall exercise the jurisdiction conferred on it by this Act and decide the applications that are submitted to it.

The Tribunal is also responsible for

- (1) informing lessors and lessees on their rights and obligations resulting from the lease of a dwelling and on any matter contemplated in this Act;
- (2) promoting conciliation between lessors and lessees;
- (3) conducting studies and compiling statistics on the housing situation;
- (4) publishing, from time to time, a compendium of the decisions rendered by the Tribunal members.”

The Administrative Housing Tribunal

46. To inform tenants and landlords of their rights and obligations, the AHT provides an information service. In 2019-20, it fulfilled this mandate by hosting 133,647 in-person interviews or visits and answering 154,267 phone calls. In addition to this, 961,220 calls were handled by its interactive voice response system, and its website⁶ was consulted 2,815,664 times.

⁴ CQLR, chapter T-15.01. Furthermore, recourse relating to residential rentals with a value in excess of \$85,000 falls under the jurisdiction of the Court of Quebec.

⁵ On August 31, 2020, the Régie du logement changed its name and became the Administrative Housing Tribunal (*An Act mainly to regulate building inspections and divided co-ownership, to replace the name and improve the rules of operation of the Régie du logement and to amend the Act respecting the Société d'habitation du Québec and various legislative provisions concerning municipal affairs*, 2019, chapter 28, art. 76, and Order in Council No. 597-2020 of June 10, 2020).

⁶ Administrative Housing Tribunal, 2019-20 Annual Management Report: <https://www.tal.gouv.qc.ca/en/news/2019-2020-annual-management-report>.

47. Regarding access to justice, note that the beneficiary of last-resort aid is exempt from paying the costs of opening an application, upon presentation of a beneficiary slip (art. 4 of the Tariff of costs exigible by the Administrative Housing Tribunal⁷).
48. Finally, the AHT provides conciliation services, which allows parties to have a discussion in the presence of a conciliator to try to find a solution to the dispute. This process is rapid, free, voluntary, and confidential. However, an application must be filed with the Tribunal before a conciliation session can be held.

More modern and accessible justice

49. Legislative changes were recently made to the evidence and procedure applicable before the AHT in order to: allow notifications to be sent via technological means, which makes it easier to receive notifications about an application to the Tribunal and reduces costs; replace expert testimony (doctor, police officer, firefighter, inspector) with a report signed by the expert, which prevents pointless hearing postponements; authorize a hearing to take place if the parties make the request or if they consent; and allow a person to be helped by a trusted third party, free of charge, during the hearing for any reason deemed sufficient by a member of the Tribunal, such as the person's age, health status, situation of vulnerability, or language proficiency. The legal framework applicable to conciliation was also revised.
50. Last spring, when the global pandemic required the Quebec government to impose a general lockdown, the AHT continued to serve the population remotely. Recourse forms are available on the Tribunal's website, and applications can be filed online by paying the fees stipulated in the Tariff of costs exigible by the Administrative Housing Tribunal. The parties may also send an application to the AHT to hold an audience by technological means.

Right to maintain occupancy

51. As a general rule, in Quebec, the tenant of a dwelling enjoys a personal right to maintain occupancy.⁸ This right provides the tenant with the option to renew the lease and remain in the dwelling as long as the obligations of the lease are respected.⁹ However, the law provides exceptions to this rule. In fact, in some circumstances, a landlord may prevent the renewal of their tenant's lease.¹⁰

⁷ CQLR, c. T-15.01, r. 6.

⁸ Art. 1936 of CCQ. <http://legisquebec.gouv.qc.ca/en/showdoc/cs/ccq-1991>

⁹ Art. 1941 CCQ If the term of the initial lease exceeds 12 months, the lease can be renewed for a period of 12 months. However, the parties may agree to a different renewal period.

¹⁰ Art. 1944, 1957, and 1959 CCQ

Lease renewal

52. The landlord may, at renewal, modify the conditions of the lease such as the rent or the length of the lease, as long as the tenant receives notice of the changes. This notice must be sent within the timelines provided by the CCQ and must satisfy the conditions provided. For example, it must indicate the new proposed rent in dollars, or the rent increase in dollars or as a percentage, as well as the deadline provided to the tenant to object to the increase.¹¹ A tenant who objects to the proposed change must notify the landlord. In that case, the lease will be renewed without changes, unless the landlord appears before the Tribunal within a month of receiving the notice of objection to set the rent or, depending on the case, rule on any other changes to the lease.¹² When the Tribunal receives an application to set or readjust the rent, it determines the rent payable, keeping in mind the standards set by regulations.¹³ If it grants a rent increase, it can schedule the payment of arrears over a period that does not exceed the term of the renewed lease.¹⁴

Rent control: Regulation respecting the criteria for the fixing of rent

53. Rent control is needed to ensure the right to maintain occupancy, which constitutes the cornerstone of residential rental in Quebec. Otherwise, a tenant facing an abusive rent increase could be forced to move.

54. Since the parties are free to negotiate and agree on a rent increase, the state will only intervene in the absence of an agreement and at the request of the landlord (art. 1947 CCQ). The legislator therefore wanted to give priority to rent control that is not generalized. Consequently, there is no fixed rate of increase in Quebec. Instead, rent is determined in accordance with the Regulation respecting the criteria for the fixing of rent.

55. The main objectives of the rent-fixing method used in Quebec are to:

- Protect tenants from abusive rent increases that result in their eviction;
- Maintain the interest of property owners in renting dwellings; and
- Encourage conservation and promote the improvement of the quality of dwellings.

56. The calculation method used to fix rent is based on the property's revenue and expenses.

57. The method of fixing rent is essentially an exercise in economic regulation. The state of the dwelling is therefore not taken into account for the calculation. However, if the tenant believes that the landlord is not fulfilling their obligations regarding the state of the dwelling, the former must exercise the recourse provided by the law if they want to assert their rights (e.g. a reduction in rent, lease termination for substantial prejudice, order for specific performance, etc.).

¹¹ Art. 1943 CCQ

¹² Art. 1947 CCQ

¹³ *Regulation respecting the criteria for the fixing of rent* (CQLR, chapter T -15.01, r.2).

¹⁴ Art. 1953 CCQ

58. It should be noted that every year, the AHT makes a calculation¹⁵ form available to citizens. This form can be used to evaluate the rent adjustment for the dwelling in question, subject to certain conditions (e.g. expense qualification and eligibility). This form, which includes general explanations, is also available as an interactive tool¹⁶. This allows landlords to anticipate the rent increase to which they are entitled. As well, this tool can be used during negotiations between the parties before undertaking a legal proceeding, since it also enables the tenant to understand the grounds for the landlord to justify a rent increase.

*Eviction for the purpose of dividing the dwelling, enlarging it substantially, or changing its destination:*¹⁷ *an exception to the right to maintain occupancy*

59. The owner of a dwelling may evict a tenant to subdivide the dwelling, enlarge the dwelling significantly, or change its destination.¹⁸ The landlord must give written notice to the tenant.¹⁹ Upon the tenant's request, the AHT may set a later eviction date for the tenant.²⁰

60. A landlord who wants to re-rent the dwelling must ask for permission from the AHT, regardless of the number of months or years that have passed since eviction. If the AHT authorizes the re-rental, it will set the new rental price.²¹

61. If, after leaving the dwelling, the tenant observes that the enlargement or subdivision work is not taking place, and they are able to prove that the landlord was acting in bad faith, the tenant may recover damages from the landlord for the material and non-material harm suffered, as well as punitive²² damages. The tenant must apply to the AHT to do so.

¹⁵ https://www.tal.gouv.qc.ca/sites/default/files/CSAL_2020_A.pdf

¹⁶ <https://www.tal.gouv.qc.ca/fr/calcul-pour-la-fixation-de-loyer/outil-de-calcul>.

¹⁷ Eviction to subdivide or substantially enlarge the dwelling necessarily means work will be done, but its objective must not be to improve or repair the dwelling. The purpose behind the eviction is lucrative. In fact, the landlord then seeks to increase either the number of dwellings (subdivision) or the size of the dwellings (enlargement), hence the granting of an indemnity to the evicted tenant (art. 1965 CCQ).

¹⁸ However, it should be noted that, subject to certain situations, the owner may not evict a tenant if the tenant or the tenant's spouse is 70 years old or older at the time of eviction, has occupied the dwelling for at least 10 years, and has an income equal to or less than the maximum threshold qualifying the tenant or spouse for a dwelling in low-rental housing according to the *By-law respecting the allocation of dwellings in low rental housing* (art. 1959.1 C.C.Q.).

¹⁹ Art. 1960 C.C.Q.

²⁰ Art. 1961, para. 4, C.C.Q.

²¹ Art. 1970 C.C.Q.

²² Art. 1968 C.C.Q.

*Major work on the dwelling*²³

62. A landlord has the right to carry out improvements or make major repairs to one or more of the dwellings during the lease, provided that this work and the conditions of execution are reasonable, and that the landlord respects the conditions provided under the law.²⁴ However, the landlord may not change the form or destination of a rented dwelling, for example by changing it into a commercial space.²⁵
63. Before the work begins, the landlord must give the tenant 10 days' notice, if no temporary vacancy is required or as long as the work does not exceed one week. If the dwelling is required to be temporarily vacated, and the vacancy will last more than one week, notice must be given at least three months before the vacancy.
64. The landlord's notice must not only be given within the deadline set by law, but must also include all of the following information:
- the nature of the work planned (e.g. redoing the entire electrical system);
 - the start date for the work, and its estimated duration; and
 - any other conditions of the work, if they are likely to severely reduce enjoyment of the dwelling.²⁶
65. Furthermore, when temporary vacancy of a dwelling is required, the notice must include:
- The vacancy period; and
 - The amount offered to the tenant as compensation²⁷ to cover expenses (e.g. moving fees, storage, rent surplus paid for temporary housing) the tenant must assume during vacation of the dwelling.
66. In all cases where temporary vacancy of the tenant is required, the latter has 10 days from receipt of the notice to advise the landlord whether they agree or refuse to vacate the dwelling. If the tenant does not respond, it is assumed that the tenant has refused to vacate the dwelling.²⁸ The landlord may then, in the 10 days following the tenant's refusal, to apply to the AHT, which will rule on the vacancy proposal and may set conditions it deems fair and reasonable.²⁹

²³ Major work here means carrying out major repairs or improvements in a dwelling, such as kitchen renovation, which will generally confer added value to a dwelling and improve the quality of life for its occupants. In this case, the work does not terminate the lease, and the tenant has the right to move back in once work is completed, if a temporary vacation is required (art. 1922 and ss. C.C.Q.).

²⁴ Arts. 1857, 1922 to 1929, and 1930 to 1935 C.C.Q.

²⁵ Art. 1856 C.C.Q.

²⁶ Art. 1923, para.1, C.C.Q.

²⁷ This compensation is paid on the date of vacancy. If it is insufficient, the tenant may be reimbursed for reasonable expenses beyond the amount paid (art. 1924 C.C.Q.).

²⁸ Art. 1925 C.C.Q.

²⁹ Art. 1927 C.C.Q.

67. When a temporary vacancy is not requested, or when the tenant agrees to the vacancy but wishes to contest certain conditions mentioned in the notice, the tenant must apply to the AHT within 10 days following receipt of the notice to modify or suppress any harmful conditions.³⁰ It will then be up to the landlord to show that the work and conditions are reasonable, and that the vacancy is required.³¹
68. It is important to specify that the landlord may not increase the rent of the dwelling during the lease under the pretext of having carried out major work. However, the landlord may do so at the end of lease by giving notice required by law.³² A tenant who receives such a notice has three choices: agree to the proposed increase, refuse the increase and remain in the dwelling, or refuse the increase and leave the dwelling. If a tenant refuses the increase and wants to remain in the dwelling, it is up to the landlord to ask the AHT to set the price of rent. Failing that, the lease will be renewed with the same conditions. The requested increase must respect the criteria provided in the *Règlement sur les critères de fixation du loyer* (c. R-8.1, r.2), which provides a certain percentage for capital expenditures.
69. The landlord may not modify other conditions of the lease during the lease either. It goes without saying that the landlord must return the dwelling to the tenant in a state of cleanliness after work is complete. Otherwise, the tenant may contest the state of things before the AHT.³³

(a) *The tenant's obligations*

70. Concerning major works, the tenant is expected to allow the landlord or the landlord's representative, as well as workers, to access the dwelling in the following cases:
- If the tenant has received a notice from the landlord and does not oppose it, within the legal deadlines;
 - If the bailiff authorizes the work in their decision; and
 - If the tenant has made an agreement with the landlord.
71. The landlord is expected to carry out works between 7 a.m. and 7 p.m.³⁴ That said, nothing prevents the landlord from coming to an agreement with the tenant about different working hours, if it benefits both parties.

(b) *Tenant's rights*

72. Both the tenant who undergoes work without having to vacate the dwelling and the tenant who must vacate the dwelling may, in the event that the work is not completed within the planned deadline or does not respect the conditions provided in the landlord's notice,

³⁰ Art. 1926 C.C.Q.

³¹ Art. 1928 C.C.Q.

³² Art. 1942 and ss. C.C.Q.

³³ Art. 1911, para. 2, C.C.Q.

³⁴ Art. 1933 C.C.Q.

pursue recourse before the AHT (e.g. reduction in rent, termination of lease in the event of serious harm).³⁵

73. This is also the case if, once work is completed, the landlord leaves the dwelling in a state of poor cleanliness³⁶ or services are reduced.³⁷
74. A landlord re-renting the dwelling to a new tenant³⁸ must provide the new tenant with a notice indicating the lowest rent paid in the 12 months preceding the start of the lease or, if applicable, the rent fixed by the AHT over the same period, as well as any other statement required by government regulations.
75. The new tenant or a subtenant may have the rent fixed by the Tribunal if they are paying a rent above the lowest rent paid in the 12 months preceding the start of the lease or, if applicable, the sublease, unless the rent has already been fixed by the Tribunal.
76. The request must be submitted within 10 days of the conclusion of the lease or sublease. It must be submitted within two months following the start of the lease or sublease when it is presented by a new tenant or subtenant who did not receive a notice indicating the lowest rent of the preceding year at the time the lease or sublease was concluded. If the landlord submitted a notice with a false declaration, the request must be submitted within two months of the new tenant or subtenant becoming aware of this fact.
77. That being said, nothing prevents the parties from agreeing on a rent increase during the lease due to work carried out on the dwelling. If no agreement can be made, the landlord will have to proceed with a lease modification and respect the rules provided in articles 1942 and onwards of the CCQ

(c) *Harassment*

78. The landlord or any other person may not resort to harassment towards a tenant to restrict their right to peaceful enjoyment of the dwelling or to convince the tenant to leave the dwelling.³⁹ The tenant, if harassed, may ask the AHT to order the harasser to pay punitive damages.
79. Harassment is defined as a voluntary behaviour, usually repeated and continued, by a person, manifesting as harmful or derogatory words, acts, or actions towards another person, directed against that person, their loved ones, or their property.

³⁵ Art. 1924, para. 3, C.C.Q.

³⁶ Art. 1911, para. 2, C.C.Q.

³⁷ Art. 1863 C.C.Q

³⁸ For example, since the previous tenant decided, of their own will or following an agreement, not to return to the dwelling after having been removed for major work.

³⁹ Art. 1902 C.C.Q.

80. The tenant must establish the alleged facts on the balance of probabilities to prove that the harassment is restricting their right to peaceful enjoyment of the dwelling or caused them to leave the dwelling, or that their departure is the goal. The harassment must be serious and significant, and is assessed objectively based on the standard of a reasonable person.
81. Therefore, work that stretches over time, harmful conditions during work (e.g. excessive noise, failure to respect working hours), and workers' inappropriate behaviour towards the tenant are all elements that may, in some circumstances, constitute harassment.
82. These are the main rules governing eviction from a dwelling or the completion of major works to a dwelling. However, it is important to remember that each application is assessed on its own merit, based on the evidence retained by the court and applicable law.

(d) *Policies and other measures*

83. The Government of Quebec has implemented measures to help some tenants find affordable housing, through social and community housing programs. Low-rental housing, funded by the government, provides tenants in a precarious financial situation with access to a dwelling at a rental price determined by the *By-law respecting the conditions for the leasing of dwellings in low-rental housing*⁴⁰ (CQLR, chapter S-8, r. 3) or the *By-law respecting the conditions for the leasing of dwellings in low-rental housing in Nunavik*⁴¹ (CQLR, chapter S-8, r. 4). Some dwellings also benefit from rent supplements, enabling tenants of those dwellings to pay a rental price based on their income. Additionally, subsidies are granted to build or renovate community housing. The rent for these dwellings must be affordable for the tenants living there.

Tax laws

84. Canadian corporations, including subsidiaries of foreign companies, are taxable on their worldwide income from all sources. In addition to directly taxing the profits of Canadian corporations, Canada imposes withholding taxes on certain amounts paid or credited to non-residents. These amounts include: management fees, interest, dividends, rents, royalties, etc. when these amounts are paid or credited to individuals, trusts, or corporations that are not resident in Canada. This tax is therefore payable when Canadian corporations pay such amounts to offshore shareholders. The rate of this tax is 25 percent.
85. Any profits paid out by a Canadian corporation directly to an entity resident in a jurisdiction with which Canada does not have a tax treaty would be subject to the full statutory rate of withholding tax. Payments made from a Canadian corporation to a shareholder resident in a country with which Canada has a tax treaty may be eligible for a reduced rate of withholding tax. Canada has tax treaties in force with 94 jurisdictions. In addition, to help combat tax avoidance and evasion, Canada has a large network of

⁴⁰ CQLR, chapter S-8, r. 3.

⁴¹ CQLR, chapter S-8, r. 4.

agreements allowing for the exchange of tax information that covers more than 150 jurisdictions.

86. More generally, concerns about aggressive international tax avoidance by multinational enterprises are being addressed through continued strengthening of Canada's existing safeguards related to tax planning, including Canada's continued participation in multilateral initiatives through the Organisation for Economic Development and Co-operation to coordinate responses to base erosion and profit shifting. For example:
- The past four federal budgets invest over \$1.2 billion combined for the Canada Revenue Agency to enhance its efforts to crack down on tax evasion and combat tax avoidance. In November 2020, the Government proposed investing an additional \$606 million over five years, starting in 2021-22 to allow the Canada Revenue Agency to fund new initiatives to extend existing programs targeting international tax evasion and aggressive tax avoidance.
 - Canada has ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting—also known as the Multilateral Instrument or MLI. The MLI entered into force for Canada on December 1, 2019, and entered into effect with respect to more than 20 of Canada's tax treaties on January 1, 2020.
87. Like the Canada Revenue Agency, Revenu Québec notes that some taxpayers manage to avoid their tax obligations by relying, in some cases, on planning that does not comply with the spirit of tax law or by resorting to an offshore tax-haven. This situation is characterized by additional difficulty due to the new business context, marked by the shift towards the digital and towards marketing via the internet. The complexity of the structures of multinational companies as well as the use of transfer pricing makes it increasingly difficult to enforce the rules of Quebec tax law.
88. To tackle these issues, Revenu Québec, like other tax administrations around the world, is increasingly relying on information sharing and concerted actions. To that end, the Canada Revenue Agency is a key partner for Revenu Québec in the fight against aggressive tax planning and the use of tax havens. In addition to intensifying the exchange of information between the two organizations and optimal use of such information, Revenu Québec and the Canada Revenue Agency are working together to develop advanced expertise in processing and identifying aggressive tax planning and to implement new auditing methods.
89. Various measures taken by Revenu Québec to fight against aggressive tax planning, including setting up a specialized international tax planning intervention group, allowed it in 2019-20 to recover a total of \$198.3 million from 354 taxpayers (individuals and companies). The amounts recovered in this manner have increased considerably over five years, from \$53.4 million in 2015-16 to \$128.3 million the following year, \$119.3 million in 2017-18, and \$178.4 million in 2018-19. Furthermore, Revenu Québec recovered \$205.2 million in 2019-20 through its voluntary disclosure program.

Information regarding Akelius Canada.

90. In Ontario, residential landlords and tenants have recourse to the LTB to resolve disputes that may arise between them.
91. Ontario is aware of 15 orders issued by the LTB in response to an application by Akelius Canada for an above guideline rent increase between January 1, 2014 and June 9, 2020. In each case, the parties either consented to an above guideline rent increase or the Board determined that an above guideline rent increase had been justified by the landlord. Above guideline rent increases were granted for extraordinary increases in costs for municipal taxes and charges or for capital expenditures. As of June 9, 2020, there were also two applications for above guideline increases that had not yet been heard.
92. Ontario is also aware of 1,257 applications involving Akelius Canada that have been filed by either the landlord or a tenant between January 1, 2014 and June 9, 2020. Of these, 26 applications were still active as of June 9, 2020. The majority of these applications (1,129) were filed by the landlord to end a tenancy, obtain an eviction order or collect rent owed, and as mentioned above, 18 applications were for an above guideline increase in rent. Of the applications filed by tenants, the majority pertained to tenant rights and maintenance issues.
93. Ontario officials found one reported decision of the Human Rights Tribunal of Ontario involving Akelius Canada (see *Djossu v. Akelius Canada Ltd.*, 2020 HRTO 65). The decision pertains to an application filed under s. 34 of the *Human Rights Code* alleging an infringement of the applicant's rights under the Code; the decision does not indicate which rights were alleged to be infringed, nor does it speak to the facts of the case. The parties agreed to mediation; however the applicant did not appear or inform the Tribunal that she was not able to attend. The applicant also did not respond to follow up communications from the Tribunal asking whether she wished to proceed with the application. The applicant was deemed to have abandoned the application, and as a result, the Tribunal dismissed it.
94. Ontario officials also located a reported decision from the Superior Court of Justice pertaining to an appeal of a 2017 order of the LTB and a subsequent 2018 review order by the Board confirming the original order (see *Akelius Canada Ltd., v. Barret*, 2018 ONSC 7144).⁴² An LTB order or decision may be appealed to the Superior Court of Justice, but only on a question of law.
95. The case pertained to the appellant's terminated tenancy in a residential complex purchased by Akelius Canada. The appellant had entered into a lease agreement with the previous owners of the building and subsequently entered in to an employment contract with those owners to become the superintendent of the building in exchange for rent-free accommodations. Upon the sale of the building to Akelius Canada, the previous owners

⁴² Two other reported court decisions were also identified; however, those decisions do not deal with the issue of evictions or other landlord-tenant matters. See *Akelius Canada v. 2436169 Ontario Inc.*, 2018 ONSC 6138 and 2019 ONSC 372.

terminated the appellant's employment as superintendent effective the day before Akelius Canada was to take ownership and required him to provide vacant possession of the rental unit by that date. The appellant did not comply with the notices provided by the previous landlord and remained in the unit, and Akelius Canada filed an application with the Landlord and Tenant Board for an order evicting the appellant from the rental unit. The LTB allowed the application and made an order terminating the tenancy and ordering an eviction pursuant to section 93 of the RTA. The Board's decision was based on a provision of the employment contract that provided for the landlord to abide by provisions of the RTA applicable to superintendents in the event of the sale of the building or the termination of the appellant's employment. The Court ultimately dismissed the appeal of the Board's decisions, finding that the questions brought forward on appeal were questions of mixed fact and law and thus were not reviewable.

96. In Québec, Akelius Canada does not appear as a party in complaints investigated by the *Commission des droits de la personne et des droits de la jeunesse*.⁴³
97. According to the list of applications introduced between January 1, 2013, and June 15, 2020, prepared by the AHT, Akelius appeared as a party to 1179 applications: 225 relating to setting or reviewing rent, 758 relating to non-payment of rent, and 196 civil cases. It was Akelius that introduced nearly all of the applications, except for the civil cases, in which it is the defendant in 139 cases, plaintiff in 50 cases, and an interested party in seven cases. Although the list goes back to 2013, the vast majority of the applications were introduced beginning in 2015. Only 36 claims against Akelius in defence have led to a decision by the AHT, usually due to discontinuance on the file or the conclusion of an agreement between the parties.
98. Submitted claims are addressed by the AHT in hearings. The parties receive a notice of meeting, which specifies the date, time, and place they must appear (art. 60 AAHT). The AHT takes the parties' availabilities into consideration as much as possible (art. 61 AAHT) and, if circumstances permit, also holds hearings in the evening.
99. The AHT may render a decision even if one duly convened party is absent (art. 30 para. 2 Rules of procedure of the Administrative Housing Tribunal). However, the AAHT provides the option to request the revocation of a decision by a party that was unable to appear before the court for a serious reason (art. 89 AAHT).
100. Depending on the nature of the dispute, AHT decisions are also subject to review (art. 90 AAHT), to the right of appeal before the Court of Quebec (art. 91 AAHT), or to judicial review by the Superior Court (art. 34 of the Code of Civil Procedure).
101. Rent is fixed at the request of the landlord, if the tenant objects in accordance with the explanations provided above regarding the implementation of this process (art. 1947 CCQ). In summary, when the AHT receives such a request, it will apply the Regulation respecting

⁴³ Information obtained under sections 1, 47, para. 1, para. 3°, and 41.2, para. 1, para. 4°, of the Act respecting access to documents held by public bodies and the protection of personal information (RLRQ, chapter A-2.1). <http://legisquebec.gouv.qc.ca/fr/showdoc/cs/A-2.1>

the criteria for the fixing of rent and exercise economic regulation powers. The burden of proof falls to the landlord, who must demonstrate all the expenses that justify the request to increase the rent. After assessing the submitted evidence, the AHT may then determine the rent payable (art. 1953 CCQ), which may be lower or higher than the increase that had been requested. Furthermore, if operating expenses decrease (e.g. municipal or school taxes), the rent may be decreased, meaning that the AHT could determine a lower rent for the lease in effect.

102. The majority of claims submitted to the AHT by Akelius concern a dispute over non-payment of rent. In such cases, when the tenant fails to pay rent or frequently pays rent late, the landlord may seek recourse through the AHT (art. 1971 CCQ). The AHT may reject the application, grant it and order the tenant to pay the rent at a set date (art. 1973 CCQ), pay the sums owed, or even terminate the lease and order the eviction of the tenant and all occupants.
103. Of the decisions rendered against Akelius, five concluded that the landlord had failed in its obligation to repair and maintain the dwelling or ensure the tenant's full enjoyment of the rented premises. The AHT awarded the tenant either a reduction in rent or compensatory damages, or ordered Akelius to proceed with various work projects.
104. One decision ordered Akelius to return the security deposit it required from the tenant, as this practice is officially prohibited in Quebec (art. 1904 CCQ).