UNDERSTANDING THE INTERSECTION OF LAND USE PLANNING AND HUMAN RIGHTS: A SCOPING STUDY FOR THE CITY OF VANCOUVER

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COVER PHOTO

A boat cruising by the False Creek Seawall.
Photo by Jack Church (www.jackchurch.photo).
Retrieved from https://unsplash.com/photos/dKgk_W-UXRA (July 28, 2021).

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1. INTRODUCTION

1.1 Background to the Study

The City of Vancouver ("City") is located on the unceded traditional territory of the Xʷməθkʷəy̓əm (Musqueam), Sḵwx̱wú7mesh (Squamish), and səlilwətaɬ (Tsleil-Waututh) Peoples. The City is largely built on colonialism and the violation of the rights of Indigenous Peoples and other unrepresented groups. On April 6, 1886, the City was named after George Vancouver, a British Royal Naval officer, despite the existence and occupation by Indigenous Peoples, for centuries prior, in the area now known as Vancouver. For decades, Indigenous Peoples faced violence, discrimination, opposition, limitations, and restrictions in land ownership and practicing Indigenous culture and traditional ceremonies in their lands after these lands were forcefully ceased. Similarly, over the years, other unrepresented groups, such as the Black[1], Chinese[2], and South Asian[3] communities, have experienced various forms of human rights abuse. The City has continued to acknowledge its role in these abuses, including in the recently approved Equity Framework, and, as such, it needs to remedy these past mistakes to move forward.

Demographic Characteristics

According to the 2016 Census, the City of Vancouver had a total population of 631,486 people, representing a 4.6% increase from the 603,502 in the 2011 Census figures[4]. Uniquely, its population is well-diverse and the City is considered one of the most culturally, ethnically, and linguistically diverse cities in Canada[5]. As of 2016, there were 1,673,785 Indigenous Peoples in Canada, representing 4.9% of Canada's total population[6]. Provincially, the highest concentration (17.7%) of Indigenous Peoples in Canada live in British Columbia[7], followed by Alberta (14.0%), Manitoba (13.4%) and Saskatchewan (11.7%). At the municipal level, Vancouver (with an Indigenous population of 61,460) has the third-largest population of Indigenous Peoples in Canadian municipalities, only after Winnipeg (92,810) and Edmonton (76,205). The municipal spread is shown in the table below.

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[1] M. Nagy, "Black community calls for reconciliation over Vancouver's historic Hogan's Alley" online: https://www.ctvnews.ca/canada/black-community-calls-for-reconciliation-over-vancouver-s-historic-hogan-s-alley-1.4992430 (accessed July 19, 2021).

[2] City of Vancouver, "City of Vancouver's Official Apology to the Chinese Community" online: https://vancouver.ca/files/cov/18-112-06%20chinese-apology-media-english.pdf (accessed July 19, 2021).

[3] City of Vancouver, "Vancouver City Council apologizes for Komagata Maru racism" https://vancouver.ca/news-calendar/vancouver-city-council-apologizes-for-komagata-maru-racism.aspx (accessed July 19, 2021).

[4] Statistics Canada. 2017. Vancouver, CY [Census subdivision], British Columbia and British Columbia [Province] (table). Census Profile. 2016 Census. Statistics Canada Catalogue no. 98-316-X2016001. Ottawa. Released November 29, 2017. https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E (accessed June 14, 2021).

[5] City of Vancouver, "Our City" https://vancouver.ca/news-calendar/our-city.aspx (accessed July 19, 2021).

[6] Statistics Canada, "Aboriginal Peoples in Canada: Key Results from the 2016 Census" online: https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm (accessed June 7, 2021).

[7] *Ibid*.

Table 1: Number of Indigenous Peoples by selected census metropolitan areas, 2016.

	First Nations	Métis	Inuit
Winnipeg	38,700	52,130	315
Edmonton	33,880	39,435	1,115
Vancouver	35,770	23,425	405
Toronto	27,805	15,245	690
Calgary	17,955	22,220	440
Ottawa–Gatineau	17,790	17,155	1,280
Montréal	16,130	15,455	975
Saskatoon	15,775	14,905	80
Regina	13,150	7,975	75
Victoria	9,935	6,530	130

Source: Statistics Canada, 2016 Census of Population[8].

The City of Vancouver is also home to people from across different parts of the world, and as seen in the table below, more than half of the City's population are non-native speakers of English language.

Table 2: Vancouver's Visible Minority population[9]:

Characteristics	Population
Chinese	167,180
South Asian	37,130
Filipino	36,460
Southeast Asian	17,120
Multiple visible minorities	11,070
Latin American	10,935
Japanese	10,315
Korean	9,360
West Asian	8,630
Black	6,345
Arab	2,965
Other Visible minority	1,500
Total visible minority population	319,010

Source: Statistics Canada, 2016 Census of Population.

[8] *Ibid.*

[9] The expression "visible minority" is used by Statistics Canada to refer a person belonging to a visible minority group as defined by the Employment Equity Act. The Employment Equity Act defines visible minorities as "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour." The visible minority population consists mainly of the following groups: South Asian, Chinese, Black, Filipino, Latin American, Arab, Southeast Asian, West Asian, Korean, and Japanese.

Brief History of Land Use Planning in Vancouver

The total land area of the City of Vancouver as it is known today (114 square kilometres (44 square miles))[10] resulted from an amalgamation of Vancouver with South Vancouver and Point Grey in 1928/1929 with a population of 228,193 people[11] . Prior to this amalgamation, the Town Planning Act had been passed in 1925 by the provincial government to allow municipalities to create planning commissions. Consequently, in 1926, the Vancouver Town Planning Commission was established with the mandate to undertake formal planning and zoning of the City and develop a master plan for the City's growth[12]. The completion of the master plan, known as the Bartholomew Plan, in 1928 resulted in the 1928/9 amalgamation[13]. Although the Bartholomew Plan was "never officially adopted", it was the first document to provide for land planning in the City of Vancouver as a whole[14], and it birthed the layout and structure of the City of Vancouver as it is today. In addition to witnessing a series of reforms over the years, including a name change to Vancouver City Planning Commission, the commission has seen a change in its mandate with the creation of the City's planning department and other regulatory bodies to undertake the planning of the City of Vancouver[15]. Presently, formal planning of the City is now being carried out by the City's Planning, Design and Sustainability Department (PDS), which was established in 1952[16].

As a fast-growing and diverse city, Vancouver's population is expected to witness increasing growth over the years. Preliminary projections show that the larger Metro Vancouver will grow from 2,593,200 people in 2016 to about 3.8 million people in 2050[17]. The Burrard Peninsula (a newly categorized sub-region made up of Vancouver, Burnaby, New Westminster, and the University Endowment Lands at the University of British Columbia), which is the largest sub-region in Metro Vancouver is projected to grow from 1,014,800 people in 2016 to 1,387,800 people in 2050[18]. Naturally, this exposes the City of Vancouver to land use challenges and issues common to other growing cities across the world.

Municipalities and regional governments engage in planning in an effort to manage some of the challenges that are occasioned by development, population and employment, other socioeconomic issues, and more recently, the climate emergency. In engaging in city planning, particularly land use planning, planners have an obligation to ensure compliance with human rights laws. If human rights

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[10] City of Vancouver, "Facts about Vancouver", online: https://vancouver.ca/news-calendar/geo.aspx (accessed July 26, 2021).

[11] http://wiki.vancouverplanning.ca/index.php?title=1929_Amalgamation_of_Vancouver,_South_Vancouver_and_Point_Grey#cite_ref-1 (accessed July 26, 2021).

[12] Vancouver City Planning Commission, "History", online: http://vancouverplanning.ca/about/history/ (accessed July 26, 2021).

[13] *Ibid.*

[14] Vancouver City Planning Commission, "Bartholomew's Vancouver Plan Goes Digital", online: http://vancouverplanning.ca/blog/bartholomews-vancouver-plan-goes-digital/ (accessed July 26, 2021).

[15] Vancouver City Planning Commission, "History", online: http://vancouverplanning.ca/about/history/ (accessed July 26, 2021).

[16] *Ibid.*

[17] K. Chan, "Metro Vancouver's population now projected to reach 3.8 million people by 2050" online: https://dailyhive.com/vancouver/metro-vancouver-population-forecast-2050-subregions (accessed July 19, 2021).

[18] *Ibid.*

impacts are not carefully assessed, discrimination may arise from the way governments make land use planning decisions. This may include decisions around who uses and accesses land, public spaces and facilities; how areas are zoned; the function of restrictive covenants in land titles and land use; policies that result in discriminatory opposition to the location of certain types of housing or uses (Not-In-My-Backyard syndrome); distinct building permit requirements for certain types of housing or uses that do not apply to other types of housing or uses; regulation of safe injection sites and methadone clinics; urbanization and gentrification; restricting the location and activities of religious and other social groups; and in some cases, the actual provisions of the law and regulatory provisions might be discriminatory in themselves.

1.2 Overview and Context of this Study: The Intersection of Human Rights and Land Use Planning

This study examines the ways in which human rights interconnects with land use planning. Land use planning can be defined as the process whereby government regulates how land is to be used and what land can be used for, to achieve desirable social, community, political, and economic development outcomes. In Canada, land use planning is generally governed by provincial laws with certain powers and controls vested on municipal governments. The power of the City of Vancouver to enact bylaws, including planning and zoning bylaws, is statutorily provided in the Vancouver Charter[19] enacted by the provincial government in 1953. It is within the powers of municipalities to identify proper land uses and plan accordingly in line with the municipality's official plan[20] or other plans and regulations. Some of the standard regulatory tools within municipal authority in land use planning include official community plans and associated policies, zoning, various City bylaws, density bonusing, development guidelines, building permits, building code, licensing requirements and procedures, financing growth tools (e.g. development cost levies/charges, community amenity contributions) etc. These tools may focus on a range of areas and objectives such as environmental planning, housing, urban design, transit planning, heritage sites planning and conservation, management of natural resources, land development, public facilities planning, and social planning. However, these land use tools must be deployed in a way that does not infringe on human rights.

Municipalities use land use planning tools to achieve various planning purposes in line with the municipality's objectives. Zoning laws, for instance, generally set out how landed property can be used, located, and developed according to the government's goals and priorities[21]. Historically in North America, zoning has been regarded as originating from New York City with the city's 1916 Zoning Resolution, and Vancouver was amongst the first municipalities in Canada to use zoning to restrict development to residential use in the Point Grey area in the early 1920s[22]. Zoning has been used to achieve some essential objectives. For example, zoning is used to design and shape the

[19] [SBC 1953] Chapter 55.
[20] I. Skelton, "Keeping Them at Bay: Practices of Municipal Exclusion" 2012 at page 1.
[21] https://vancouver.ca/home-property-development/zoning-and-development-bylaw.aspx accessed June 16, 2021
[22] For a discussion of the history of zoning, see Skelton (supra).

environment; regulate the shapes and forms of buildings; control the density of buildings; protect property values; promote affordable and certain forms of housing; prevent injurious developments; protect public health and safety by reducing the risk of fire transmission; guarantee access to public facilities; increase municipal revenue generation; protecting natural heritage and places of historical significance; developing local economies; creating employment; controlling climate change, etc.[23] However, in some cases, zoning has also been used to ensure lands are developed and maintained for affluent groups[24]. Like other government policies, land use planning measures may therefore have significant human rights impacts and, if not properly conducted, might lead to discrimination, infringing on human rights.

Human rights are fundamental rights that are inherent in every human. This means that these rights automatically exist and are possessed simply by the natural existence of a person. It also means that while these rights may be protected and guaranteed by constitutional and statutory provisions, the validity and originality of human rights are not derived from such statutory or constitutional provisions. These human rights are currently guaranteed under international instruments such as the Universal Declaration of Human Rights, federal laws like the Canadian Constitution through the Canadian Charter of Rights and Freedoms, and provincial laws like the BC Human Rights Code. These laws, in addition to others, are considered in chapter two of this study.

Proper land use planning requires that planning should be done in a way that not only meets the planning goals, priorities, and objectives of the government, but also requires the protection and respect of human rights, including the right to housing, right to life, to safety, to the dignity of the human person, to personal liberty, as well as upholding the rights of Indigenous Peoples to land.

Under human rights laws, planners[25], like all other government agencies and officials, are required to conform and comply with the provisions of human rights law by ensuring that land use planning does not discriminate against certain groups of people in the society on prohibited grounds of discrimination, such as gender, race, national or ethnic origin, colour, age, mental or physical disability, religion, age, and social status. Land use planning that is considered discriminatory or in breach of any of the grounds prohibited by human rights laws is invalid. Proper land use planning, therefore, requires that planning should be done in a way that not only meets the planning goals, priorities, and objectives of the government but also requires the protection and respect of human rights, including right to life, to safety, to the dignity of the human person, to personal liberty, upholding the rights of Indigenous Peoples to land, as well as the right to housing. It is therefore essential to apply a human rights lens in land use planning to prevent land use discrimination. Planners need to understand

[23] R. Fischler, "A Century of Zoning: The Past and Present of Planning as Real-Estate Regulation" Human Rights in the City issue of Plan Canada Magazine (Vol. 57 No. 2, 2007) at 39. Online https://viurrspace.ca/handle/10613/8440 (accessed May 10, 2021).
[24] Skelton (supra) at 4.
[25] The term "planners" as used in this study refers to officials of government at all levels involve in formulating, preparing, and implementing land use planning policies.

human rights legislation to be able to do this. The use and planning of land should not restrict human rights. This study identifies the various elements that planners should consider when considering a human rights approach to land use planning.

Policy Context

Presently, the City of Vancouver is developing the Vancouver Plan, which will be a city-wide strategic plan to help guide the City's long-term planning. This comprehensive plan aims to create a strategy for a healthy, just, resilient, sustainable, and vibrant city by embracing bold actions for change. Vancouver City Council has approved ten provisional goals to guide these actions, which include the goals of (i) creating an equitable, diverse, and inclusive City; (ii) developing an affordable City with diverse and secure housing for every resident that they can afford with 30% or less of their household income; and (iii) creating complete, connected and culturally vibrant neighbourhoods. Amongst others, one of the Vancouver Plan goals acknowledges that to achieve a more fair, equitable, and vibrant future, there is a need to recognize and reconcile the City of Vancouver's colonial history that has disproportionately excluded Indigenous Peoples, Black people, and People of Colour, and the City must embrace an equitable approach to planning and transform its processes and practices.

Similarly, Vancouver has developed a Healthy City Strategy (*A Health City For All: Vancouver Healthy City Strategy 2014-2025*), which highlights a long-term social sustainability plan by the City in identifying new ways to change the conditions that impact the health and well-being of the people, places, the City, and the planet, in general. The Healthy City Strategy has three primary focus areas: (i) enabling "Healthy People" with a focus on "taking care of the basics"; (ii) enabling "Healthy Communities" with a focus on "cultivating connections"; and (iii) enabling "Healthy Environments" with a focus on "ensuring livability now and into the future". These focus areas also include twelve goals with associated targets and indicators to track the progress and outcomes over ten years. It is expected that, upon completion, the Healthy City Strategy would not only strategically position the City as a global leader in integrated decision-making but also enable healthier children and families, increased health and well-being for members of priority groups, and livable environments both now and in years to come[26].

In July 2021, the Vancouver City Council unanimously approved the City's first Equity Framework[27]. Emanating from the City's Healthy City Strategy, the Equity Framework supports and aligns with the City's Reconciliation Framework. The City's commitment to equity is broad; it articulates the need to uphold the rights of Indigenous Peoples while prioritizing communities disproportionately impacted by existing inequities. In its essence, it reflects the City's commitment to human rights. The Equity Framework also focuses on racial justice, intersectionality, and a systems approach to policy development, practice, and decision making.

[26] City of Vancouver, "A Health City For All: Vancouver Healthy City Strategy 2014-2025 Phase 1" at page 4.
[27] City of Vancouver, "Equity Framework", online: https://council.vancouver.ca/20210720/documents/p1.pdf (accessed July 28, 2021).

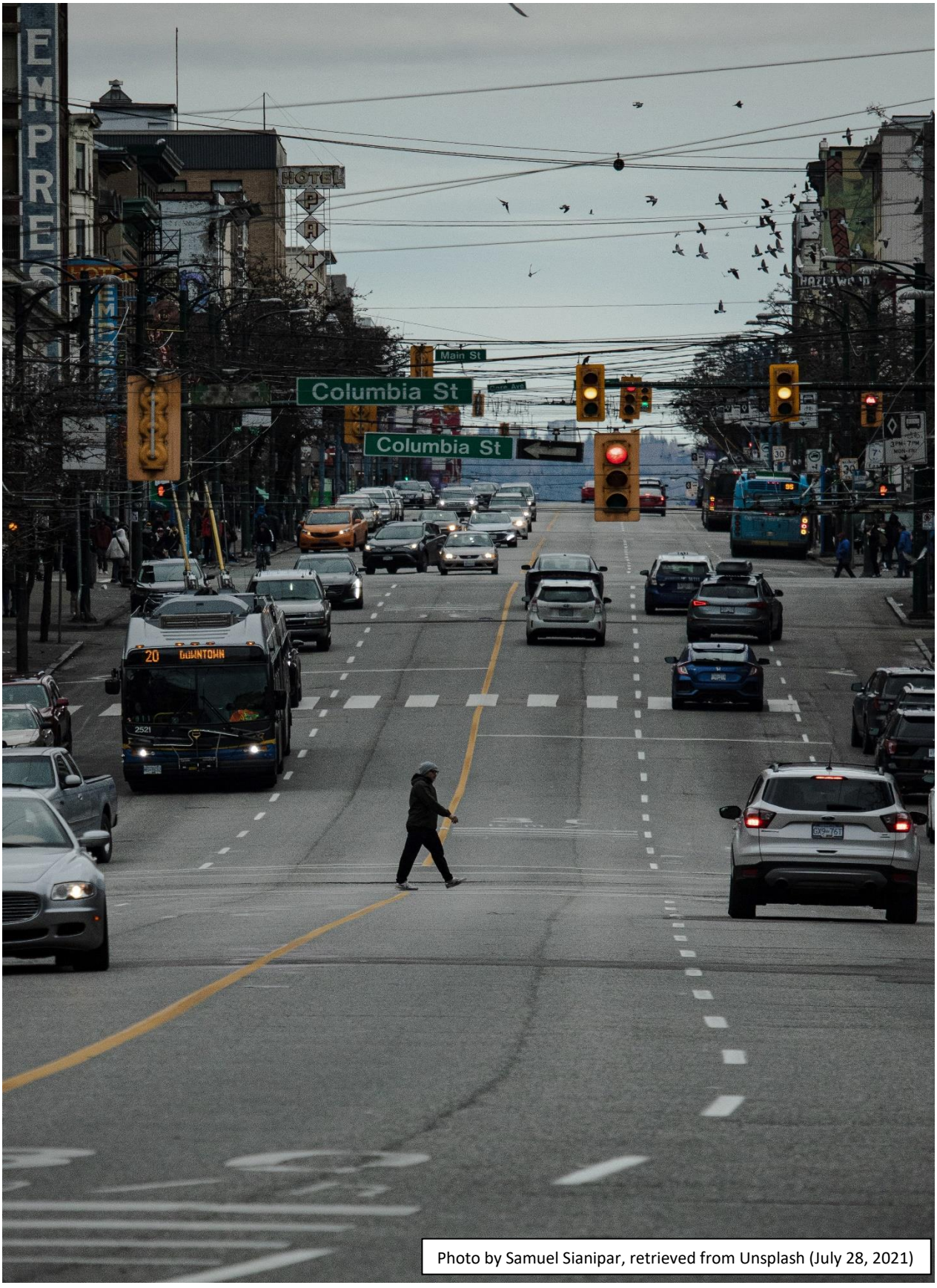

Photo by Samuel Sianipar, retrieved from Unsplash (July 28, 2021)

As part of the above steps towards building a healthy, just, resilient, sustainable, vibrant and equitable city, the City is interested in understanding how human rights connect with the way municipalities engage in land use planning. The City has therefore commissioned this study to identify the intersectionality of human rights with land use planning.

1.3 Purpose and Objectives of this Study:

The purpose and objectives of this study include:

(i) Assessing the intersection of land use planning and human rights.

(ii) Reviewing leading practices in assessing and promoting human rights through land use planning.

(iii) Identifying various regulatory tools to prevent discrimination in land use planning.

(iv) Identifying top priority areas and opportunities for action within the Vancouver Plan.

(v) Identifying other priority actions that might be beyond the scope of the Vancouver Plan, but that should be acknowledged and addressed by the City through future efforts and additional work.

Therefore, this study generally scopes the various elements that municipalities, like the City of Vancouver, should be concerned about when considering a human rights approach to land use planning.

1.4 Research Question

In line with the above aim and objectives, this study primarily answers the question: *What are the critical issues at the intersection of human rights with land use planning that the City of Vancouver should be aware of and act upon*?

To correctly answer the above primary question, this study provides answers to the following sub-questions:

(1) What is the legislative human rights framework at the international, federal, and municipal levels applicable to and binding on the City of Vancouver?

(2) What different human rights issues have arisen in land use planning by municipalities across Canada?

(3) What regulatory tools and policies are available to municipalities, like Vancouver, in land use planning that can form part of a regulatory toolkit, and what are the human rights considerations with regards to the use of these tools?

This study also intended to explore the intersection and difference between land use planning and Indigenous land ownership and use. However, due to study limitations and other circumstances as described in the concluding chapter, it was not possible to fully address this topic and further studies are recommended.

1.5 Research Methodology

Effectively answering the above questions requires examining municipal policies and identifying human rights issues and scenarios that arise in land use planning. It also requires reviewing legal provisions at the international, federal, and provincial levels protecting human rights regarding land use planning. Thus, this study adopts both the doctrinal and non-doctrinal approaches of legal research[28]. Also, because of the study objectives, this study adopts the intersectionality approach to legal research in order to identify the intersectionality of human rights with land use planning.

First, in adopting the doctrinal approach, this study reviews key concepts underpinning human rights and land use planning. The study also gives an exhaustive overview of the applicable human rights legislative framework. The legislative framework reviewed includes international instruments like the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and the United Nations Declarations on the Rights of Indigenous Peoples. At the federal level, the Canadian Charter of Rights and Freedom is also reviewed alongside the laws of other provinces like the Ontario Human Rights Code and the Ontario Provincial Policy Statement, given the work that Ontario has done on the intersectionality of human rights with land use planning. Locally and at the provincial level, the BC Human Rights Code and the Land Title Act are also discussed to understand the current position of the BC laws regarding land use planning and human rights. Finally, at the municipal level, the Vancouver charter, which regulates the City of Vancouver, was also reviewed. The study also examines other policy documents and relevant articles by various authors.

In adopting the non-doctrinal approach of legal research and as part of this study, discussions were held with identified key informants from the City of Vancouver and the City of Toronto, in addition to attending a presentation by the City of Edmonton. These engagements led to identifying critical areas and top priorities in the study. The findings from these engagements are embedded in different chapters of this study, particularly chapters four and five.

As part of its methodology, this study is also conducted using the intersectionality approach to legal research. This approach "examines the continuance of historical discrimination and the social construction of marginalization in differential treatment and discrimination within current legal adjudication"[29]. It also examines "the relationship between marginalized groups and the political

[28] The doctrinal approach of legal research is a form of desk research involving the review of statutory provisions, articles, journals, and other publications to identify the position of the law. The doctrinal approach helps in verifying and confirming the status of the law being examined, as this is necessary to build a solid foundation in legal research. Unlike the doctrinal approach, the non-doctrinal approach of legal research involves conducting field analysis or surveys through administering questionnaires, conducting interviews, holding discussions, making observations, or adopting other empirical tools to gain field insight on practical issues. The non-doctrinal approach helps in understanding how legal rules and statutory provisions apply in actual practice, and this is essential particularly for law reform. See T. Hutchinson, "*Doctrinal Research: Researching the Jury*" in D. Watkins & M. Burton (eds) *Research Methods in Law*, second edition (Routledge, London, 2018) at pages 9 and 34.

[29] C.H. Skeet "Intersectionality As Theory and Method: Human rights adjudication by the European Court of Human Rights" in N. Creutzfeldt, M. Mason, & K. McConnachie, eds., Routledge Handbook of Socio-Legal Theory and Methods (New York: Routledge, 2020) at page 274.

priorities of equality-seeking groups that might represent marginalized people"[30]. Intersectionality as an approach, therefore, involves considering and connecting the peculiar experiences of marginalized groups and examining the culture, principles, and perception of the law as to how human rights ought to apply to such groups. The approach looks at the conflicting interests and powers in the enforcement and promotion of human rights. As a form of social construction, intersectionality therefore not only identifies the ills of marginalization and discrimination but also highlights ways to social reforms and social justice. Thus, Skeet notes that "a failure to adopt an intersectional approach to human rights may lead to only a partial finding of the breach of a right, or it may fail to recognize the context or cause of the breach and therefore fail to award a remedy that goes beyond individual recompense; it may even lead to no finding of a breach at all."[31] In this study, practical illustrations and judicial decisions are used to discuss how land use planning impacts and intersects with human rights. These judicial decisions help to point out specific grounds of human rights laws for which land use planning can be discriminatory and infringed upon human rights. Conversations and engagements with municipality staff also help in the identification of this intersectionality.

1.6 Positionality

As an uninvited guest in these traditional lands that I now write about and whose history I have read about, I am grateful for the opportunity to live and study in this unceded traditional territory of the Musqueam, Squamish, and Tsleil-Waututh Peoples. As a newcomer, I am naturally influenced and limited to existing works, views, and opinions of others. In some cases, some of those works might also have been limited and influenced by the authors' perceptions. A key strength in this study is my experience growing up as a member of a marginalized ethnic nationality, Urhobo, in Nigeria's oil-rich Niger Delta area and this equips me with a nuanced perception and understanding of land ownership, planning and use, especially when communities' traditional interests and government's interest are involved. Therefore, my lived experience influences this study. Furthermore, my professional background and experience as a legal practitioner strengthens this study as I draw on my previous experience in human rights law and advocacy. All of these uniquely shape and strengthen the analysis provided in this study.

1.7 Limitations of the Study

A primary limitation of this study is time constraint. This study was conducted in a relatively short time, and as such, some of the discussions on the identified issues may not go in-depth or in detail. This study is intended to set out the scope of the issues identified. It is recommended that the City of Vancouver undertake future works and studies to further analyze the issues identified in this study.

Similarly, there was limited time to conduct interviews with Indigenous, Black, people of color and staff members with other lived experiences at the City of Vancouver. Given the time needed to create safe spaces and observe proper protocol for these conversations, it is suggested that this

[30] *Ibid.*
[31] Skeet (*supra*) page 278.

process be undertaken as another phase of this project. In particular, further extensive research is needed to understand how Indigenous rights can be better protected and upheld in land use planning and the application of Indigenous laws in land use planning.

1.8 Understanding Equity and Human Rights

The scope of this study involves a human rights approach to land use planning. The City of Vancouver has undertaken and is undertaking several equity-focused projects and initiatives. For instance, a similar study was conducted by a previous Healthy City Scholar in 2019 which discusses, amongst others, equity and justice issues in planning[32]. As indicated earlier, the City also recently concluded the development of its first Equity Framework[33] to guide work across all City departments. Human rights are an essential component of equity. This section sets the connection between equity generally (upon which equity initiatives are founded) and human rights (on which this present study is based).

Generally, equity discussions are broader and more encompassing than human rights discussions. According to the *Blacks Law Dictionary*[34], the term "Equity" means (1) fairness, impartiality, and evenhanded dealing; and (2) "The body of principles constituting what is fair and right; natural law." The dictionary also adds that "the concept of 'inalienable rights' reflects the influence of equity on the Declaration of Independence."

The same dictionary defines the term "Rights" to mean (1) "that which is proper under law, morality, or ethics"; (2) "Something that is due to a person by just claim, legal guarantee, or moral principle"; (3) "A power, privilege, or immunity secured to a person by law" and (4) A "legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong". Furthermore, the dictionary defines "Human rights" as "the freedoms, immunities, and benefits that, according to modern values all human being should be able to claim as a matter of right in the society in which they live."

From the above definitions, certain similarities and differences stand out in human rights and equity. First, human rights are inherent, inalienable and flow as a matter of right. It is easy to ascertain what human rights a person is entitled to as these naturally flow from his inherent quality as a human being existing in society. Denying such human rights is tantamount to denying a person's existence.

[32] R.T. Castaneda, "Equity and Justice Transformations" 2019, online: https://sustain.ubc.ca/about/resources/equity-and-justice-transformations (accessed June 21, 2021).
[33] City of Vancouver, "Equity Framework", online: https://council.vancouver.ca/20210720/documents/p1.pdf (accessed July 28, 2021).
[34] 8th Edition, B.A. Garner (*Ed.*).

On the other hand, equity is more encompassing and multi-dimensional. It aims to recognize and acknowledge the human rights of everyone but also ensuring that everyone is treated in a fair and just manner without impartiality. It is aimed at the full participation of every person in society. An equitable society is one in which human rights are recognized. Therefore, it can be rightly said that recognizing and protecting human rights is one of the fundamental tools and an essential pillar in an equity toolkit. An equity framework may involve cultural equity, racial equity, gender equity, intersectionality, accessibility, access, disability, accommodation, intangible cultural heritage[35], health equity, etc. For example, the BC Centre for Disease and Control notes that "health equity" means that everyone should be allowed to reach their full health potential by enjoying a fair distribution and access to health resources without experiencing any disadvantage to do so because of race, ethnicity, religion, gender, age, sex, social class, socioeconomic status or other socially determined circumstances[36]. It can therefore be seen that, in achieving such full, fair and just treatment of people in an equitable society, there must be a recognition and entrenchment of human rights. Without human rights, there can be no equity.

Recognizing and protecting human rights is one of the fundamental tools and an essential pillar in an equity toolkit

In many cases where the law seeks to engender equitable treatment, the recognition is usually under the umbrella of human rights and enforcement of same as a human right. For instance, the legal recognition of the human right that everyone should be free from discrimination based on colour, sex, race, and social status, is also on the principle that everyone should be fairly treated irrespective of their background or where they are from. Thus, where a person seeks to fight an "inequitable" treatment, a legal correlation is found chiefly on human rights laws.

Like previous and ongoing equity work at the City, this current study is, therefore, part of and in accordance with the general stand of the City to embed equity in the policies, programs, and services provided by the City. This study, however, focuses on the human rights element of a general equity approach.

[35] See City of Vancouver's guiding principles and strategies in addressing equity as discussed by Castaneda (supra).
[36] BC Centre for Disease Control, "BCCDC Covid-19 Language Guide: Guidelines for Inclusive Language for Written and Digital Content" July 2020, at page 4 online: http://www.bccdc.ca/Health-Info-Site/Documents/Language-guide.pdf (accessed June 24, 2021).

2. HUMAN RIGHTS LAWS

What is the legislative human rights framework at the international, federal, and municipal levels applicable to and binding on the City of Vancouver?

Human rights issues permeate all land use planning tools such as zoning, community engagement, building design, licensing requirements and procedures, regulatory design, etc. Applying a human rights lens to land use planning requires that all elements and processes of land use planning must conform with the provisions of human rights laws. For instance, a planning bylaw that limits, excludes or restricts a group of people must be juxtaposed against the provisions of human rights laws to identify whether such limitation, exclusion, or restriction and even the definition of the group itself is discriminatory. To effectively do this, planners need to understand the provisions of human rights laws. This chapter discusses these human rights laws at the international, federal, and provincial levels.

2.1 Human Rights Laws at the International Level

Internationally, human rights to land and housing, free from any form of discrimination, are recognized and outlined in instruments such as the Universal Declaration of Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of Persons with Disabilities, amongst others. These international instruments, having been ratified by Canada[37], form part of the law in Canada and have the force of law. All municipalities, provinces and territories in Canada are bound by these international instruments in policies formulations[38], including land use planning. These international instruments prohibit discrimination based on race, colour, national or social origin, property, birth, status, etc.

2.1.1 The Universal Declaration of Human Rights (UDHR)

The *Universal Declaration of Human Rights* (UDHR) upholds the global tenets of human rights. Article 2 of the UDHR expressly provides as follows:

[37] Department of Justice, "International Human Rights Treaties to which Canada is a Party". Online: https://www.justice.gc.ca/eng/abt-apd/icg-gci/ihrl-didp/tcp.html (accessed May 17, 2021).
[38] *Ibid.*

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

In line with the above prohibited grounds of discrimination in article 2 of the UDHR, article 7 of the UDHR provides for equal treatment of everyone before the law and equal protection of the law without any form of discrimination; article 17 recognizes the right of everyone to own property without any form of discrimination or deprivation, while article 25 recognizes the right of everyone to a standard of living adequate for the health and well-being of themselves and their family including housing and other necessary social services, and the security of these in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control. Similarly, article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* recognizes and mandates States to recognize "the right of everyone to an adequate standard of living for himself and his (*sic*) family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." This right must be exercised, recognized, and upheld without discrimination, whether race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status[39]. These rights are non-negotiable and, as earlier noted, inherent.

Where land use planning limits, excludes, and restricts any of these rights, such planning may therefore be challenged except where such limitations, exclusion and restrictions conform with the provisions of the law[40]. However, a limitation, exclusion, and restriction that applies to only a group of people and members of such group can be identified based on any of the prohibited grounds of discrimination, particularly article 2 of the UDHR, such limitation, exclusion, or restriction is likely to be discriminatory and held as such.

[39] Article 2 of the International Covenant on Economic, Social and Cultural Rights.

[40] For instance, Article 29 of the UDHR allows for limitations that are legally provided for the purpose of recognizing and respecting the rights and freedoms of other persons and for "meeting the just requirements of morality, public order and the general welfare in a democratic society."

2.1.2 The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) specifically recognizes the rights of Indigenous Peoples to their lands and territories. Article 10 of the UNDRIP prohibits the forceful removal of Indigenous Peoples from their lands or territories and prohibits the relocation of Indigenous Peoples from their lands without their free, prior, and informed consent and without fair compensation and an option of return, where possible[41]. Similarly, article 25 recognizes the rights of Indigenous Peoples to maintain and strengthen their distinctive spiritual relationship with their lands and its resources for present generations and the benefit of future generations. Specifically, in recognizing the rights of Indigenous Peoples to land, article 26 expressly provides as follows:

> *1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
> *2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.*
> *3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.*

Therefore, the above provision irrefutably upholds the rights of Indigenous Peoples to their land and for Indigenous Peoples to be involved in the use and planning of such land. This provision also imposes on governments and planners the responsibility to recognize and protect this right[42]. The UNDRIP solidifies the rights of Indigenous Peoples to land. Fortunately, at the time of conducting this study, the United Nations Declaration on the Rights of Indigenous Peoples Act received Royal Assent in Canada on June 21, 2021, and immediately came into force in Canada[43]. This means that the UNDRIP is now binding across Canada. Planners, therefore, need to take cognizance of these human rights laws when engaging in land use planning.

[41] See also Articles 28 and 29 of the UNDRIP.
[42] See also Article 27 and 32 of the UNDRIP.
[43] Government of Canada, "Backgrounder: United Nations Declaration on the Rights of Indigenous Peoples Act", online: https://www.justice.gc.ca/eng/declaration/about-apropos.html (accessed August 2, 2021).

2.2 Human Rights Laws at the Federal level and in Ontario

2.2.1 The Canadian Charter of Rights and Freedoms, and the Human Rights Act

Human rights are protected and recognized at the federal level under Canada's Constitution through the Canadian Charter of Rights and Freedoms ("Canadian Charter"). Generally, the Canadian Charter recognizes certain fundamental rights and freedoms such as the freedom to conscience and religion, freedom of thought and expression, freedom of association, as well as other democratic, mobility and legal rights such as the right to life, liberty, and security of the person. The Canadian Charter also recognizes the equality of everyone before the law and prohibits the discrimination of persons on identified characteristics. Specifically, article 15(1) of the Charter expressly provides as follows:

> *every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

Thus, based on the above provision, government policies, including land use planning, are required to equally apply to all members of the society without discriminating against a particular group of people based on the grounds prohibited by the charter, which are race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The prohibited grounds of discrimination under the Canadian Charter are further extended by the *Canadian Human Rights Act*[44] to include sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, and conviction for which pardon has been granted or a record suspension ordered[45]. Land use planning which deprives these identified groups of people from using land and its resources may be challenged under the Canadian Charter and other relevant laws. Except where such land use policies are of such reasonable limits prescribed by law and can be demonstrably justified in a free and democratic society[46]. Noticeably, the Canadian Charter applies to all matters and relationships involving the government, particularly regarding matters within the authority of provincial governments[47]. It must also be noted that the Canadian Charter goes further to recognize the rights of Indigenous Peoples to land by preventing any abrogation or derogation from any aboriginal, treaty or other rights and freedom that pertain to Indigenous Peoples, including any rights or freedoms that exists by way of land claims agreements[48].

[44] R.S.C., 1985, c. H-6.
[45] See section 3(1) of the Canadian Human Rights Act.
[46] Article 1 of the Canadian Charter subjects the rights under the Charter "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".
[47] See Article 32 of the Charter.
[48] See Article 25(b) of the Charter.

Photo by William Recinos, retrieved from Unsplash (July 28, 2021).

2.2.2 The Ontario Human Rights Code (Ontario Code)

Canadian provinces, like Ontario, have taken steps to expressly recognize land as a human right, which should be free from discrimination. As later seen in chapter four of this study, Ontario has done a remarkable job in providing for the recognition and entrenchment of human rights in land use planning. Section 2(1) of the Ontario Human Rights Code[49] ("Ontario Code") expressly recognizes the right of persons to occupy any accommodation of their choice without any form of discrimination. Section 2(1) provides as follows:

> *Every person has a right to equal treatment with respect to the occupancy of accommodation without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability, or the receipt of public assistance.*

Thus, a person in Ontario cannot be denied accommodation of any form of housing based on the grounds prohibited by the Ontario Code, including their marital and family status, sexual

[49] Ontario Human Rights Code, R.S.O. 1990, c. H. 19

orientation, age, disability, etc. Specifically, the Ontario Code further defines these terms. "Age" is defined to mean "18 years or more"; "family status" is defined to mean "the status of being in a parent and child relationship"; "marital status" is defined to mean the "status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage"; while "disability" is defined in relation to physical disability, infirmity, malformation or disfigurement, mental impairment or a developmental disability, etc.[50]

The Ontario Code also expressly provides that a person's human right is infringed by a requirement or qualification, which although is not in itself discriminatory on a prohibited ground but is capable of resulting in the exclusion, restriction, or preference of a group of persons who can be identified by a prohibited ground of discrimination and of whom the person is a member, except as otherwise provided by the code[51]. Thus, based on this provision, planners need to not only consider whether land use planning policies are directly discriminatory or infringes on any human right but are also required to ensure that such land use planning is not capable of excluding, restricting, or preferring a group of persons that are identifiable based on any of the grounds discrimination prohibited by the Ontario Code.

2.3 Human Rights Laws in British Columbia

2.3.1 The BC Human Rights Code (BC Code)

Like Ontario, BC has also recognized various sets of human rights under the BC Human Rights Code[52] ("BC Code"). Amongst other rights, the BC Code prohibits discriminatory treatments in accommodation, service, facility, purchase of property, and tenancy of premises based on any grounds identified by the BC Code as discriminatory. Article 8(1) of the BC Code expressly provides as follows:

> *A person must not, without a bona fide and reasonable justification,*
> *(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or*
> *(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public, because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons.*

[50] See section 10 of the Ontario Human Rights Code.
[51] See section 11(1) of the Ontario Human Rights Code.
[52] [RSBC 1996] Chapter 210

In the same vein, article 9 of the BC Code prohibits denying a person or class of persons from purchasing a property or acquiring land or an interest in land based on prohibited grounds of discrimination. Article 9(b) expressly provides as follows:

> *A person must not …*
> *(b) deny to a person or class of persons the opportunity to acquire land or an interest in land,…because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability, sex, sexual orientation, or gender identity or expression of that person or class of persons.*

Furthermore, article 10 prohibits denying a person or class of persons from occupying or renting a space "because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, age, or lawful source of income of that person or class of persons, or of any other person or class of persons." Therefore, none of these prohibited grounds can be a reason for denying a person or class of person from using or owning land. Thus, similar to other human rights laws earlier discussed, the BC Code identifies specific prohibited grounds for which there can be no discrimination, including race, marital status, family status, physical disability, mental disability, sexual orientation, gender identity expression, and age[53]. Consequently, in Tenants' Rights Action Coalition v. Corp. of Delta (1997), the BC Supreme Court set aside a bylaw that allowed secondary suites only when occupied by family members[54]. Thus, planning policies that negatively distinguishes housing by using discriminatory words suggesting family, unmarried individuals, spouse, LGBTQ community, adults, single parents, persons experiencing homelessness, elderly, biological or marital family relations, or words of similar meanings negates the BC Code and, as such, are invalid.

Planning policies that negatively distinguishes housing by using discriminatory words suggesting family, unmarried individuals, spouse, LGBTQ community, adults, single parents, persons experiencing homelessness, elderly, biological or marital family relations, or words of similar meanings negates the BC Code and, as such, are invalid.

Noticeably, discrimination in contravention of the BC Code does not require an intention to contravene the code. Article 2 of the BC Code expressly provides that "discrimination in contravention of this Code does not require an intention to contravene this Code." Thus, land use planning may be held to be in contravention of the BC Code, even when there was no intention to discriminate against land users on the prohibited grounds of discrimination. Also, the BC Code rightly provides that in the event of any conflict

[53] The BC Code defines "age" to mean "19 years or more".
[54] S. Agrawal, "Human rights 101 for Planners" *Human Rights in the City* issue of Plan Canada Magazine (Vol. 57 No. 2, 2007) at page 7. Online: https://viurrspace.ca/handle/10613/8440 (accessed May 10, 2021).

between the code and any other enactment, the code will prevail[55]. Thus, where land use planning, whether provided for in bylaws such as zoning bylaws, licensing bylaws, and other planning laws, conflicts with any of the BC Code provisions, the BC Code will override such enactments. Planners must therefore make sure that land use planning is consistent with the provisions of the BC Code by being aware of the Code provisions and the prohibited grounds of discrimination.

Flowing from the above, discriminatory land use and restrictive covenants are expressly voided under the BC Land Title Act[56]. Section 222(1) of the Land Title Act, in providing for this invalidation, states explicitly as follows:

> *A covenant that, directly or indirectly, restricts the sale, ownership, occupation or use of land on account of the sex, race, creed, colour, nationality, ancestry or place of origin of a person, however created, whether before or after the coming into force of this section, is void and of no effect.*

Where any of the above discriminatory restrictive covenants is present in a land title, the Registrar is required to cancel such covenant[57].

2.3.2 The Vancouver Charter

The Vancouver Charter[58] is one of the most critical pieces of legislation in Vancouver's history. Enacted by the BC government in 1953, the Vancouver Charter sets out, amongst other provisions, the powers of the City of Vancouver to enact laws regulating the city, including planning and zoning by-laws/regulations to regulate constructions, uses, or occupancy of buildings and lands within designated district or zones[59]. Although the Vancouver Charter does not contain any express provision preventing possible human rights abuse and discrimination in such construction, use or occupancy of buildings and lands, however, section 272(1)(q) of the Vancouver Charter provides that a licensee "*shall not refuse to sell any goods or furnish any service or accommodation to a person by reason only of such person's race, creed, colour, religion, sex, marital status, physical or mental disability, nationality, ancestry, place of origin or political beliefs*." To expressly cater for and prevent discriminatory land use planning that may arise from planning the City of Vancouver, the Vancouver Plan that the City is currently developing presents an opportunity to rightly align and provide for the requirement for land use planners to apply human rights lens in land use planning. To do this, the Vancouver Plan should expressly prohibit all forms of discrimination in land use

[55] Section 4 of the BC Code.
[56] [RSBC 1996] Chapter 250.
[57] See section 222(3) of the BC Land Title Act.
[58] [SBC 1953] Chapter 55.
[59] see subsection 565(1) of the Vancouver Charter.

planning and expressly require planners to consider the human rights impact of land use planning before proceeding with any planning decision.

In summary, the following table sets out the grounds that have been identified in this chapter as prohibited grounds for discrimination under human rights laws. Planners must pay attention to these grounds of discrimination.

Table 3: Prohibited Grounds of Discrimination

Prohibited Ground of Discrimination	Prohibiting Statute
Race	Universal Declaration of Human Rights International Covenant on Economic, Social and Cultural Rights Canada Charter of Rights and Freedoms Ontario Human Rights Code BC Human Rights Code Vancouver Charter
Colour	Universal Declaration of Human Rights International Covenant on Economic, Social and Cultural Rights Canada Charter of Rights and Freedoms Ontario Human Rights Code BC Human Rights Code Vancouver Charter
Sex	Universal Declaration of Human Rights International Covenant on Economic, Social and Cultural Rights Canada Charter of Rights and Freedoms Ontario Human Rights Code BC Human Rights Code Vancouver Charter
Language	Universal Declaration of Human Rights International Covenant on Economic, Social and Cultural Rights
Religion	Universal Declaration of Human Rights International Covenant on Economic, Social and Cultural Rights Canada Charter of Rights and Freedoms BC Human Rights Code Vancouver Charter
Political or other opinion	Universal Declaration of Human Rights International Covenant on Economic, Social and Cultural Rights Vancouver Charter
Citizenship or Nationality	Universal Declaration of Human Rights International Covenant on Economic, Social and Cultural Rights

	Canada Charter of Rights and Freedoms Ontario Human Rights Code Vancouver Charter
Social or ethnic origin	Universal Declaration of Human Rights International Covenant on Economic, Social and Cultural Rights Canada Charter of Rights and Freedoms Ontario Human Rights Code
Disability, including mental or physical disability	Canada Charter of Rights and Freedoms Ontario Human Rights Code BC Human Rights Code Vancouver Charter
Property	Universal Declaration of Human Rights International Covenant on Economic, Social and Cultural Rights
Birth	Universal Declaration of Human Rights International Covenant on Economic, Social and Cultural Rights
Age	Canada Charter of Rights and Freedoms Ontario Human Rights Code BC Human Rights Code
Sexual orientation	Canadian Human Rights Act Ontario Human Rights Code BC Human Rights Code
Gender identity or expression	Canadian Human Rights Act Ontario Human Rights Code BC Human Rights Code
Marital status	Canadian Human Rights Act Ontario Human Rights Code BC Human Rights Code Vancouver Charter
Family status	Canadian Human Rights Act Ontario Human Rights Code BC Human Rights Code
Genetic characteristics	Canadian Human Rights Act
Conviction for which pardon has been granted or record suspension ordered.	Canadian Human Rights Act
Ancestry	Ontario Human Rights Code BC Human Rights Code Vancouver Charter
Place of origin	Ontario Human Rights Code BC Human Rights Code Vancouver Charter

Creed	Ontario Human Rights Code Vancouver Charter
Receipt of public assistance	Ontario Human Rights Code
Other status	Universal Declaration of Human Rights International Covenant on Economic, Social and Cultural Rights
Indigenous peoples	UN Declaration on the Rights of Indigenous Peoples Canada Charter of Rights and Freedoms

Planners need to be conscious of these prohibited grounds and ensure land use planning does not restrict, limit or exclude a person or group of persons from using or owning land based on any of the above prohibited grounds of discrimination. The next chapter discusses instances where these human rights are held to have been infringed by various forms of land use planning.

3. HUMAN RIGHTS IN LAND USE PLANNING

What different human rights issues have arisen in land use planning by municipalities across Canada?

As seen in the previous chapter, human rights laws set out prohibited grounds for discrimination. Where government policies and actions are inconsistent with any of these prohibited grounds, such policies and actions become unconstitutional and invalid. This is also applicable in land use planning. Where land use planning, inclusive of zoning bylaws, building codes and licensing, environmental policies, social planning, urban design, transit planning, etc., is inconsistent with human rights laws, such land use planning becomes unconstitutional. As discussed in chapter two, it is irrelevant whether such land use planning is intended or unintended to be discriminatory. Human rights have become a sensitive and strategic tool in gathering public support and group mobilization against perceived social ills, including perceived wrongful and discriminatory land use planning. Part one of this chapter examines various land use planning issues that affect human rights, while part two discusses Indigenous considerations in land use planning.

3.1 Part One: General Human Rights Issues in Land Use Planning

Land is naturally available, fixed, and sufficient to accommodate everyone, given the Earth's total land surface area. For instance, despite the City of Vancouver's population density of 54 persons per hectare as of 2016, large areas of land in the City are used for conservation, agriculture and other unpopulated reasons[60]. However, land is now scarce in many places and often challenging to acquire due to its high cost. In many cases, land scarcity is artificial and sometimes caused by various human activities and regulatory restrictions[61]. For instance, a study by the London School of Economics showed that land use regulations in West End of London inflated the price of office spaces by 800%[62]. For residential homes, priority groups[63] are more likely to suffer from any such increase in the cost of housing and lack of affordable housing caused by land use planning and regulatory restrictions. In addition to priority groups, which is the focus group of this study, high cost of land and lack of affordable spaces also pose a significant challenge for essential services and groups such as non-profit groups renting space, cultural spaces, artists, social services, and small businesses.

[60] City of Vancouver, "Vancouver City Social Indicators Profile 2020" at page 10, online: https://vancouver.ca/files/cov/social-indicators-profile-city-of-vancouver.pdf accessed July 26, 2021.
[61] The Economist, "Space and the City", online: https://www.economist.com/leaders/2015/04/04/space-and-the-city (accessed May 25, 2021).
[62] *Ibid.*
[63] In this study, "priority groups" means persons who are less economically stable and are more likely to be unable to afford average monthly rent in Vancouver. These persons may include Indigenous Peoples, People of Colour, Blacks, single parents, newcomers to Canada, persons with disabilities and special needs, elderly, visible minorities, women, children, LGBTQ community members, students, and refugees many who are susceptible to becoming homeless due to the high cost of housing.

The following sections discuss various forms of land use planning that might lead to discrimination.

3.1.1 Discriminating against Group Homes and Supportive Housing

Priority groups, which includes Indigenous Peoples, Black people, racialized communities, single parents, newcomers to Canada, persons with disabilities and special needs, older adults, visible minorities, women, children, LGBTQ community members, students, and refugees, are more likely to live in poverty and be unemployed. As such, these groups are often in need of affordable housing, which becomes difficult or expensive to get where planning bylaws impose too many regulatory restrictions and barriers[64]. In this way, such planning bylaws indirectly discriminate against priority groups by restricting their access to affordable housing of choice. The 2019[65] and 2020[66] Vancouver Homeless Count shows that Indigenous and Black People are disproportionately represented in the number of persons experiencing homelessness, and they are more likely to become homeless than other groups in Vancouver. Thus, when land use planning makes it difficult and onerous for these groups to access affordable housing, it constitutes discrimination based on their circumstances of birth, status, and other discriminatory grounds prohibited by human rights laws.

> *In this study, "priority groups" means persons who are less economically stable and are more likely to be unable to afford average monthly rent in Vancouver. These persons may include Indigenous Peoples, People of Colour, Black People, single parents, newcomers to Canada, persons with disabilities and special needs, elderly, visible minorities, women, children, LGBTQ community members, students, and refugees many who are susceptible to becoming homeless due to the high cost of housing.*

Priority groups in need of group homes and supportive housing[67] often face regulatory discrimination due to requirements for such homes/housing to go through special planning or licensing requirements or approval process that do not generally apply to other forms of housing in the same area[68]. This occurs when group homes or supportive housing providers are required to adopt burdensome special designs or restrictions that do not apply to other housing. The added

[64] J. Pegg & R. Bennett "*Planning and human rights – We have something in common*", *Human Rights in the City* issue of Plan Canada Magazine (Vol. 57 No. 2, 2007) at page 22. Online https://viurrspace.ca/handle/10613/8440 (accessed May 10, 2021).

[65] Report for the City of Vancouver by the Homelessness Services Association of BC, the BC Non-Profit Housing Association and Urban Matters CCC, "Vancouver Homeless Count, 2019" Online: https://vancouver.ca/files/cov/vancouver-homeless-count-2019-final-report.pdf (accessed May 10, 2021).

[66] C. Mauboules, "Presentation on Homelessness & Supportive Housing Strategy. Online: https://council.vancouver.ca/20201007/documents/pspc1presentation.pdf (accessed May 10, 2021).

[67] A supportive housing is a non-market housing (provided for low and moderate income singles and families, usually subsidized through a various mechanisms, including senior government support) to make housing affordable through rental subsidy and ongoing and targeted support for persons who cannot live independently due to health problems or other disability.

[68] Pegg & Bennett (supra)

cost, barriers, and uncertainty of such different or extra requirements could increase affordable housing costs, dissuade developers, and frustrate such projects[69]. Specifically, discrimination may arise when planning bylaws[70]:

(i) Add special requirements, building features, or require design compromises only for affordable and supportive housing, which prevent occupants of the homes from viewing and accessing the community or preventing community members from equal view and access to the group homes, e.g., by requiring high walls and fencing around the property, setting curfews, adding visual buffers or removing balconies, or restricting the use of windows to prevent the residents of the homes from looking out on their neighbours.

(ii) Require group homes to go through public hearings or lengthy approval processes before receiving permits or before allowing them into a neighbourhood, when other houses in the same area are not so required.

(iii) Limit rental housing or secondary units around certain areas (i.e., universities) to the periphery of residential zones based on unsubstantiated parking or infrastructure rationales.

(iv) Exclude group homes and supportive housing from residential neighbourhoods despite comparable density and form.

(v) Aim to decentralize special housing by excluding them from certain areas, without considering the costs and proximity to public facilities, services and other housing support needed by the affected groups.

(vi) Impose extra and onerous design requirements (such as floor area and bedroom cap requirements and on-site parking requirements based on mere estimation and projection rather than actual data) that do not apply to other housing or services of similar size and land use.

(vii) Put arbitrary caps on the numbers of residents in affordable and group homes per project, ward or municipality.

In many cases, these restricting, limiting, and excluding planning policies have no proper planning purpose but are only targeted at the users of the land – in which case they become discriminatory against the users. Land use planning should only regulate how land should be used but should not regulate who uses the land.

Land use planning should only regulate how land should be used but should not regulate who uses the land.

[69] Ontario Human Rights Commission, "In the Zone: Housing, Human Rights and Municipal Planning" at 14. Online: http://www3.ohrc.on.ca/sites/default/files/In%20the%20zone_housing_human%20rights%20and%20municipal%20planning_0.pdf.

[70] Pegg & Bennett (supra) at page 23; see also Ontario Human Rights Commission (*Ibid).*

Discrimination in land use planning also arises in the use of minimum separation distance (MSDs) to limit group homes and supportive housing, whereas privately owned homes and condominiums are not subject to similar limitations[71]. Again, these limitations are based on "who" lives in these houses, thereby suggesting "people zoning" based on disabilities or special needs rather than proper planning purposes[72]. For instance, methadone clinics are often subject to the MSDs and restricted from locating near certain facilities, e.g., schools and parks, yet other clinics are not subject to the same restriction. The only difference is people zoning based on the users of the services rather than proper land use planning[73].

It is not acceptable to restrict land use by reference to the attributes of those who may use the land. This was noted by the court in Alcoholism Foundation of Manitoba v. Winnipeg (City), where the Manitoba Court of Appeal held that a zoning bylaw which restricts the location of group homes for aged persons, people with disabilities, persons recovering from addictions and discharged penal inmates, to a limited number of zones and required minimum separation distances was in breach of Canada Charter of Rights and Freedoms.

In *Alcoholism Foundation of Manitoba v. Winnipeg (City)*[74] , a zoning bylaw defined "care home" (as an accommodation with care or treatment for not more than six aged, convalescent or disabled persons), "neighbourhood care home" (as an accommodation with care or treatment for six to twelve aged, convalescent or disabled persons), "neighbourhood rehabilitation home" (as an accommodation with supervision or treatment of up to twelve people discharged from a penal institution or recovering from alcohol or drug addiction) and "family" (as persons voluntarily associated living together but excluding care homes, group foster homes, neighbourhood care homes, neighbourhood rehabilitation homes, etc.) and imposed minimum separation distance for these. In invalidating the by-law, the court noted that *"the disputed by-law's wording amounts to people zoning and that under the Canadian Charter and its current interpretations, is objectionable and discriminatory."* The court further held as follows:

> *…the definitions of care and rehabilitation homes contained in the impugned by-law are discriminatory…It is simply not acceptable since the advent of the Charter to prohibit a use of land with reference to the attributes of those who may use it, at least where the attributes are those which distinguish members of a disadvantaged group…*

Thus, the powers of municipalities to determine how land is to be used do not include determining the attributes of persons who may use the land. Similarly, in Bell v the Queen,[75] it was held that

[71] Pegg & Bennett (supra) at page 23.
[72] *Ibid.*
[73] *Ibid.*
[74] [1990] M.J. No 212 (C.A.) the Supreme Court of Canada denied leave to appeal, and the decision was upheld [1990] S.C.C.A. No. 267.
[75] [1979] 2 S.C.R. 212.

determining who uses land is prohibited within the powers of land use planning as that amounts to people zoning.


Photo by Eric Ward, retrieved Unsplash (July 28, 2021).

People-zoning can have the effect of increasing the welfare and social cost for priority groups and affect the public attitude towards such people. The Ontario Human Rights Commission notes that restrictions that prohibit low-income housing in certain areas and restrict them to specific neighbourhoods have the unintended consequence of over-concentrating such housing in these neighbourhoods, thereby leading to stigmatized and excluded communities[76]. In many cases, public facilities like bus stations, postal services, etc., are often limited in such areas. Even when such public facilities are available, they are often overstretched because of the number of users. Businesses and shops may also view such neighbourhoods as poor, inferior, and unprofitable to do business. Thereby posing a barrier to the ability of such neighbourhoods to access these services, which in many cases are essential[77]. Thus, although some of the main issues of human rights and land use planning are related to essential affordable housing, these issues go beyond housing and extend to issues of gentrification, displacement, transportation, accessibility to public facilities such as working transit systems, availability of postal services, hospitals, schools, etc. These are subsequently discussed below.

Land use planning should therefore be done to promote diversified, healthy, livable, and safe communities. Connecting human rights to planning decisions is one way to overcome the barriers of affordable housing and inclusive communities, where everyone feels welcome[78].

[76]Ontario Human Rights Commission (supra) at 23.
[77] *Ibid*
[78] Ontario Human Rights Commission (supra)at 4.

3.1.2 Accessibility and Use of Public Facilities

Another area of human rights concern in land use planning is the universal use and accessibility to public facilities and freedom of expression in public spaces[79]. Concerns arise from limitations and restrictions to public spaces for persons with disabilities and special needs, inaccessible parking spaces or transit stations, inaudible announcements for transit stops, etc. Certain restrictions on the use of public spaces for certain public activities, such as public demonstrations, advertisements, and display of signs, may result in a restriction on the exercise of freedom of expression[80]. Every person should have equal access under the law to make use of public spaces and public facilities. Planning bylaws that restrict this right may be held invalid. This was the case in Abbotsford (City) v. Shantz[81].

In the *Abbotsford City's case,* the BC/Yukon Association of Drug War Survivors (representing a group of people experiencing homelessness) relied on the Canadian Charter of Rights and Freedoms to challenge the validity of various bylaws passed by the City of Abbotsford, which prohibited sleeping or being present in any park overnight and erecting any form of shelter without permits in such parks. Relying on these bylaws, the City sought to remove a group of persons experiencing homelessness who erected tent camps in a park. The BC Supreme Court held that the portions of the bylaws (which prohibited sleeping or being in a park overnight without permits or erecting a temporary shelter without permits) violated the right to life, liberty and security of a person guaranteed under s. 7 of the Canadian Charter to the extent that they apply to people experiencing homelessness.

Like everyone else, persons experiencing homelessness have a right to make use of public parks and public spaces. In the Abbotsford City's case the BC Supreme court, in addressing the issue of ownership and use of public space in a city, held that based on the Canadian Charter, people experiencing homelessness have a constitutional right to sleep overnight under temporary erected overhead shelters in parks, where there is insufficient accessible shelter space for them.

Land use planning should therefore be aimed at improving and not reducing universal accessibility to public spaces. In fact, in the *Abbotsford's case*, the court recommended the designation of particular places for persons experiencing homelessness by noting as follows:

> (277) … *While the designation of specific public parkland for use by the homeless would afford a degree of certainty to the homeless, and the City, as well as to residents of the City, it is my view, that this is a legislative choice, and not an order that is open to me to make.*

[79] S. Agrawal (2021) Human Rights and the City: A View From Canada, Journal of the American Planning Association, 87:1, at page 3, DOI: 10.1080/01944363.2020.1775680 .
[80] Agrawal (2021) (supra) at page 7.
[81] (2015) BCSC 1909.

> *[278] Distinguishing non-developed parks and other public spaces from developed parks may allow the City to legislate areas where more than overnight camping is permitted. A balanced and minimally impairing approach would take into consideration the proximity of such spaces to services for the City's homeless and whether certain areas should be designated as environmentally sensitive, while ensuring that space exists in which the City's homeless can sleep, rest, shelter, stay warm, eat, wash and attend to personal hygiene. Whether such areas may be occupied on a consistent or rotating basis must be determined after consideration of each unique area.* (Emphasis added)

In line with the above recommendation, it is important for planners to look for ways at guaranteeing and expanding, instead of limiting, universal accessibility and benefits of parks and other public facilities, including where it involves designating certain parks for which persons experiencing homelessness can take up night shelter. However, as rightly noted by the court above, this should be done in a balanced way that does not prevent other persons in the City from accessing and using such parks and public facilities. In all, there should be a balancing of human rights in land use planning.

Similarly, security zones created during special events, such as the Vancouver 2010 Olympics, which restricted access to streets and shopping malls, have also been argued to violate a "right to the city"[82]. Human rights issues were also raised when Downtown Vancouver Ambassadors told persons experiencing homelessness to move along or relocate from the streets[83].

The concept of "accessibility" to public facilities, however, goes beyond catering to only people with disabilities or special needs. It extends to people without special needs but requires housing near accessible public services and facilities, like public transits, hospitals, etc[84]. Housing accessibility to public transit is key if individuals are to keep their employments. Where public transit is costly, it affects housing affordability, as individuals need to weigh the cost of such public transit and the closeness of housing to their place of work vis a vis the financial burden which any of these may pose.[85] For instance, a 2015 Metro Vancouver Housing and Transportation Costs Burden Study showed that depending on a householder's circumstances, householders spend between 40% to 67% of their pre-tax income on housing and transportation costs, and this leaves

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[82] D. Clement: "*Legally Speaking: Human Rights Law and The City"* Human Rights in the City issue of Plan Canada Magazine (Vol. 57 No. 2, 2007) at page 11. Online https://viurrspace.ca/handle/10613/8440 (accessed May 10, 2021).
[83] T. Burgmann, "*Downtown Vancouver Ambassadors Discriminated Against Homeless*" (2015), online https://www.cbc.ca/news/canada/british-columbia/downtown-vancouver-ambassadors-discriminated-against-homeless-1.3029392 (accessed May 25, 2021). See also, J. Peng "*Court Upholds Dismissal Alleging Downtown Bia Ambassadors Were Discriminatory*" (2018), online: https://www.thestar.com/vancouver/2018/04/17/court-upholds-dismissal-alleging-downtown-bia-ambassadors-were-discriminatory.html (accessed May 25, 2021).
[84] S. Leisk & S. Moher "Can we plan for affordable housing?" Human Rights in the City issue of Plan Canada Magazine (Vol. 57 No. 2, 2007) at page 34. Online https://viurrspace.ca/handle/10613/8440 (accessed May 10, 2021).
[85] *Ibid.*

them with less income to spend on food, clothing, child care and other living expenses[86]. Planners, therefore, need to consider the cost implication of housing proximity to public facilities when engaging in land use planning.

3.1.3 Urbanization and Gentrification

Systemic and institutional discrimination is also evident in the way municipalities plan for urbanization. An example is the displacement of Hogan's Alley, a notable black neighbourhood in Vancouver, to pave way for urbanization and the construction of an interurban freeway. Regrettably, housing discrimination in other parts of Vancouver had led to the concentration of black migrants in the Hogan's Alley neighbourhood[87]. But when the City planned to construct an interurban freeway (Georgia and Dunsmuir viaducts), the City came for Hogan's Alley and demolished it to pave way for the construction. The demolition of Hogan's Alley, which was close to other present-day neighbouring communities like Strathcona, Chinatown and Gastown, led to the dispersion of the once vibrant black community members[88]. Such forced forms of urbanization and gentrification, which can have significant displacement impacts that can exacerbate existing vulnerabilities faced by certain groups or communities, should be discouraged.

There is a need to apply cultural and traditional lenses in planning and maintaining a people's cultural and traditional heritage. Unlike formal and modern planning that views and understands neighbourhoods through maps, boundaries and property lines, a cultural and traditional planning lens considers and engages people with lived experiences and their relationships and connections to their communities when engaging in land use planning.[89] For Indigenous Peoples, it may mean indigenizing planning to protect cultural, traditional and heritage sites and helping to preserve intergenerational learning. For migrants and non-indigenous people, it may mean maintaining their ties to the sense of identity in their communities. For example, ensuring that the values of what makes Chinatown what it is, are protected[90]; protecting black communities like the Hogan's Alley, etc. Only by engaging and collaborating with these groups can planning experts effectively apply a cultural and traditional lens to planning.

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[86] Metro Vancouver: Services and Solutions for a Livable Region, "The Metro Vancouver Housing and Transportation Cost Burden Study: A New Way of Looking at Affordability" (2015) at page 4, Online: http://www.metrovancouver.org/services/regional-planning/PlanningPublications/HousingAndTransportCostBurdenReport2015.pdf (accessed July 23, 2021).

[87] The Canadian Encyclopedia. "Hogan's Alley", online: https://www.thecanadianencyclopedia.ca/en/article/hogans-alley (accessed May 19, 2021).

[88] See O. Makinde, "*Towards a Healthy City: Addressing Anti-Black Racism in Vancouver*". A 2019 report for the City of Vancouver. Online: https://sustain.ubc.ca/sites/default/files/2019-68_Towards%20a%20Healthy%20City%20-%20Addressing_Makinde.pdf (accessed May 10, 2021).

[89] A. Lao & H. Ma, "A Cultural Lens in Community Planning – Vancouver's Chinatown" at page 20. In Planning Institute of British Columbia (PIBC) "Planning West" Vol 63, No 2 (2021)

[90] *Ibid.*

Lastly, in seeking urbanization, land use planning should not be engaged to price out priority groups, from securing suitable housing of their choice and needed support services at different circumstances and life stages.

3.1.4 Regulatory Provisions

Bylaws passed by City councils have significant impacts on municipalities and shape the long-term health and well-being of communities[91]. When engaging in law-making function, Councilors need to take cognizance of human rights laws, such as the Canadian Charter of Rights and Freedoms, the Human Rights Code and Municipal laws. For instance, paragraph 7 of the *Ontario Municipal Councillor's Guide 2018* reminds Councilors to make bylaws and decisions consistent with the Constitution Act, 1982; Canadian Charter of Rights and Freedoms; Human Rights Code and Municipal laws. Therefore, planning bylaws should not be enacted to contain provisions and definitions that discriminatorily apply to a group of people. An example of discriminatory provisions in planning bylaws may involve defining or using attributes to identify a group of people. For example, restrictive family definitions have been used in zoning bylaws since the 1960s to limit residential facilities and living arrangements to people related by blood, marriage, or adoption[92]. These restrictions have the effect of limiting housing options for single individual households, female-led households, elderly persons, persons with disabilities, young adults, single parents, and students that are unrelated.

In *Bell v The Queen*[93], a by-law made by the Council of the Borough of North York, in providing for the uses of land in a residential zone, permitted the use of a "dwelling unit" (a separate set of living quarters) when it is used by an "individual" or "one family" alone. The by-law proceeded to define a "family" to mean "*a group of two or more persons living together and inter-related by bonds of consanguinity, marriage or legal adoption, occupying a dwelling unit*". The Appellant, as a tenant, shared one of such housing units with two other persons unrelated to him and they jointly paid the household's operation cost. The Appellant was convicted for violating the by-law. The Supreme Court of Canada, in setting aside the conviction and invalidating the bylaw, noted that by using the expression "family" to reference the relationship of permitted occupants of a self-contained dwelling unit, the bylaw was oppressive and gratuitously interfered with the rights of persons subject to the bylaw without any reasonable justification. The court noted that the bylaw "was not regulating the use of the building but who used it."

[91] Ontario, "The Ontario Municipal Councillor's Guide" Online https://www.ontario.ca/document/ontario-municipal-councillors-guide/7-councillors-lawmakers accessed May 31, 2021
[92] Skelton (supra) at page 18.
[93] [1979] 2 SCR 212.

Similarly, in the earlier quoted portion in the *Alcoholism Foundation of Manitoba's case*[94], the court noted that:

> *It is simply not acceptable since the advent of the Charter to prohibit a use of land with reference to the attributes of those who may use it, at least where the attributes are those which distinguish members of a disadvantaged group*

Planning laws, therefore, need to be examined against human rights laws before such planning laws are enacted, and for those already enacted, a review should be done to identify possible discriminatory provisions, whether as it regards definitions, limitations, restrictions, and exclusions. For example, a provision that unreasonably limits certain family sizes from taking an accommodation simply because of the size of the family will likely be held as discriminatory.

3.1.5 Restriction on the Location and Activities of Religious and Social Groups

Human rights issues may also arise in relation to the exercise of the right to freedom of religion and association. Just like other human rights actions, "legal proceedings that assert claims based on freedom of religion are bound to excite passion"[95]. Human rights actions arise when land use planning restricts the location of religious buildings; prohibits certain religious, political and social activities, whether in public or private; prohibits the public display of religious, political, or other group signs, etc. For instance, a bylaw that prohibits or restricts public gatherings in a public or private space may be challenged to be inconsistent with the right to freedom of peaceful assembly guaranteed by the Canadian Charter of Rights and Freedoms.

In Rosenberg v. Outremont (City)[96], the city's right to protect and plan public space while remaining religiously neutral was considered *vis a vis* the right to freedom of religion guaranteed under the Canadian Charter. This case involved the members of the Orthodox Jewish faith, which challenged the actions of the City of Outremont in removing structures known as "*eruvin*" installed by the petitioners in the practice of their religion. Under Jewish law, Orthodox Jews are prohibited from carrying objects between private and public domains during the Sabbath and religious holidays. This prohibition could make Orthodox Jews, like young children and older adults (who need to be pushed in stroller/wheelchairs or in need of medication) become housebound and even unable to visit other homes. However, the concept of an *eruv* involves the use of barely visible wires or strings to demarcate and integrate several private and public properties into becoming a "larger private property" such that Orthodox Jews could freely move around and carry objects within such integrated private properties, which are by virtue of the *eruv* regarded as a single private property. Following complaints from its residents, the City Outremont began dismantling the *eruv*. Upon a petition by the members of the Orthodox Jewish faith for an infringement on their freedom of

[94] (supra).
[95] Per Hilton J.C.S, Rosenberg v. Outremont (City), 2001 CanLII 25087 (QC CS).
[96] 2001 CanLII 25087 (QC CS).

religion, the City argued that it has a legal obligation to remain religiously neutral without favoring one religion to other and that its dismantling of the *eruv* wires was not in violation of the free exercise of freedom of religion but was done to regulate the use of public domain, including the air over the City. In upholding the freedom of religion of the petitioners, the court held as follows:

> *[25] In this case, the City of Outremont is not being asked to expend public funds, to advance the precepts of Orthodox Judaism, or to associate itself or its citizens in any way with the erection of eruvin. It is being asked to tolerate the barely visible wires or lines traversing City streets, and not to take them down when they are erected. In doing so, it is not being asked to associates itself with the Orthodox Jewish faith any more or less than it is associates itself with Christianity when it allows Christmas decorations to be displayed on City property, including City Hall, or when it tolerates the ringing of church bells on Sunday morning to summon Christians to worship.*

Furthermore, the court, in recognizing the right of the City to regulate the city *viz a viz* the right of the petitioners to freedom of religion, held that:

> *(the City) can properly regulate the erection of eruvin in a manner that facilitates the exercise of the right while all the while prescribing the means by which the right is exercised. This would undoubtedly include matters such as the height of the structures and the number of eruvin that might be erected on each street within the affected area. It remains an option for the City to exercise such regulatory control.*

Thus, although a city can make laws that regulate the exercise of the freedom of religion, such laws cannot limit, exclude or restrict the exercise of freedom of religion. In another case also involving a religious group[97], the Supreme court of Canada, although not expressly holding for a breach of the right of the religious members to freedom of religion, noted the need for municipalities to judiciously exercise their land use planning discretion in a manner that prevents the breach of any human right, including the right to fair hearing. Thus, although municipalities generally have the discretion in land use planning, e.g., determining whether to grant or refuse zoning change applications, however in exercising such discretion, municipalities should be careful to ensure that there is no infringement of any human rights. Where municipalities infringe on human rights while exercising their planning discretions, the courts might interfere and set aside any decision resulting from the exercise of such discretion.

[97] Congrégation des témoins de Jéhovah de St Jérôme Lafontaine v. Lafontaine (Village) [2004] 2 S.C.R. 650, 2004 SCC 48.

The above decision was in the case of *Congrégation des témoins de Jéhovah de St Jérôme Lafontaine v. Lafontaine (Village)*[98]. In this case, a religious group was looking for a suitable land in Lafontaine to build a place of worship. The zoning bylaw allowed places of worship to be built in a regional community use zone, however, the religious group could not find suitable land in the permitted zone. Consequently, they purchased a land located in a commercial use zone and applied twice for an amendment for a zoning change, but the municipality refused the application without giving any reasons for the refusal. The religious group instituted an action alleging violation of their rights under the Canadian Charter. The Supreme Court of Canada held that the municipality exercised its discretion to grant or refuse rezoning applications in a way that infringed on the right of the group to fair hearing, when it failed to give reasons for the refusal.

The above case illustrates the interconnection amongst different human rights and how land use planning decisions may directly or indirectly affect other human rights, which may not directly relate to housing or land use. For instance, section 7 of the Canadian Charter provides for legal rights such as the right to life, liberty and security. In the *Abbotsford City's* case[99], this section was relied upon to set aside bylaws that prevented people experiencing homelessness from sleeping overnight under temporary erected overhead shelters in parks. Planners, therefore, need to be aware of all these rights as protected by the Canadian Charter, the various human rights codes, and other human rights laws (including under international law). In making land use policies and planning decisions, such policies and decisions should be assessed against all provisions of the human rights laws to ensure that none of the provisions of these laws are being breached.

[98] [2004] 2 S.C.R. 650, 2004 SCC 48.
[99] Supra.

3.1.6 Not in My Backyard

> *"The bottom line is that people do not have the right to choose their neighbours"*
>
> *Ontario Human Rights Commission*

Another discriminatory opposition to housing is the "Not in My Backyard" (NIMBY) syndrome, where community members hold negative views or stereotypes about other community members and certain housing projects by considering these groups of people or people who live in such housing, as unfit to live in the same neighbourhood. If not properly conducted, municipal land use planning may encourage such stereotypes and prejudice. For instance, where land use planning bylaws make it mandatory for group homes and supportive homes to go through public hearings, this gives an opportunity for people who hold such negative views to air these opinions at the detriment and discrimination of the occupants of such homes. No one asks for permission in determining whether a Canadian family, whether Christian or Muslim, should live within 500meters of another family. It is also of no concern whether a family house can be built across the street from a school. There are no concerns whether a new grocery shop will attract strange customers into the neighbourhood. Public hearings are not conducted for these to be built in a neighbourhood. However, when any of these will house members of priority groups, especially persons experiencing homelessness or disabilities, concerns arise regarding "who is going to live there?" or "who is going to make use of the facility?", in this way, discrimination is evident. Many people believe that group homes or supportive housing should not be in their neighbourhood. This is wrong.

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In some cases, there is even stiff opposition and protest against the location of certain housing projects in certain areas due to the prejudice against the occupants of such houses. A recent example of such discrimination occurred in Vancouver. In December 2017, protesters blocked the City of Vancouver's attempt to locate a homeless housing project in the Marpole area of the city, noting that the project is only fit for a place like Stanley Park instead of the Marpole

neighbourhood[100]. The City had intended to build three two-storey buildings to provide 78 homes for persons experiencing homelessness. Concerned about the project's proximity to three Marpole schools and likely increase in crime and drug use, the protestors resisted the City's effort. Such NIMBY attitude is discriminatory against the members of priority groups. The Mayor of Vancouver at the time, Gregor Robertson, rightly condemned the incident as unfortunate and having a "bad stigma" on the potential residents of the homes[101].

Just as there would not be a public hearing before locating other forms of housing in a neighbourhood, there should be no such special requirements for group homes and supportive housing.

Many people believe that group homes or supportive housing should not be in their neighbourhood. This is wrong. It is discriminatory in the same way it is for a person to say that they do not want Indigenous, Black, LGBTQ, Chinese, Muslim, Christian, or unmarried people to stay close. The HomeComing Community Choice Coalition rightly summed up this view in the following words[102]:

> Many school boards have committed themselves to anti-racist education. But if a family of black children (or any racial minority) was preparing to enroll in a school, we would not expect the principal to write a letter to all parents, calling them to a public meeting to "learn more about the new family, and discuss any concerns you might have." We would not expect the family to be quizzed about their history or household affairs, or to make a presentation about the merits of their race. And we would certainly not expect the principal to respond to parents' concerns by telling the family to go to school somewhere else. We take for granted the rights of all children to an education. One day, we may take the right to housing for granted too.

Thus, just as there would not be a public hearing before locating other forms of housing in a neighbourhood, there should be no such special requirements for group homes and supportive housing. Freedom from discrimination means that[103]:

[100] J. Ferreras, "Marpole modular housing protester says Stanley Park is the best place for homeless people" (2017), online: https://globalnews.ca/news/3855932/marpole-temporary-modular-housing-stanley-park/ (accessed May 10, 2021).
[101] *Ibid*
[102] HomeComing Community Choice Coalition "Yes, in my backyard" at 5, Online: https://yesinmybackyard.ca/wp-content/uploads/2016/12/YIMBY-2.pdf (accessed July 23, 2021).
[103] *Ibid.*

Photo by Visual Stories || Micheile, retrieved Unsplash (July 28, 2021).

(i) Although supportive housing providers may need planning approvals for land use, they should not need permission for the people they house.

(ii) Supportive housing providers should not ask favour from neighbours in allowing tenants to live next door.

(iii) The planning approval process should not be the time to educate the community about issues of mental illness, poverty, crime, inclusive communities, etc.

(iv) Supportive housing providers should not have to make compromises or trade-offs or reveal confidential information about tenants due to community opposition.

As noticed from the 2017 Marpole protest in the City of Vancouver, these discriminatory oppositions often arise out of misconceived believes and unjustified assumptions that certain people will not fit into a neighbourhood or the negative impacts such homes will have on the neighbourhood, such as increase in crime, increase in traffic, strain on public services and infrastructure, and that such homes do not fit into the character and planning of the neighbourhood[104]. In reality, many of these assumptions are untrue and unproven[105]. Studies have shown that there is no evidence that supportive housing leads to increased crimes in neighbourhoods where they exist, nor do they cause any of the misconceived beliefs[106].

The HomeComing Community Choice Coalition's Kit contains valuable and practical information on preparing for and navigating through neighbourhood opposition to supportive housing. The Kit also offers detailed responses to most predictable objections to supportive housing. Although the Kit seems to have been primarily directed at supportive housing providers, the answers to oppositions to supportive housing can be helpful for planners in community engagements[107].

3.1.7 Restrictive Covenants

Discrimination in land use planning also arises from restrictive covenants and clauses in land titles and housing agreements to restrict the sale, lease, rent, assignment or transfer of land or housing to certain groups of people, based on their identity, race, gender, status, colour, ethnicity or other factors identified by human rights codes as discriminatory. In some cases, these restrictive covenants and clauses were statutorily imposed years ago into land titles and agreements to statutorily regulate land ownership. Although some of these statutes might have been amended or repealed, many of such land titles still exist with such clauses. In the 1950 case of Noble et al. v. Alley[108], a restrictive covenant in a 1933

Can governments at all levels go a step further to specifically identify restrictive covenants with a view to delete and invalidate them, and remedying their effects over the years?

[104] Pegg & Bennett (*supra*) at page 24.
[105] See the Affordability and Choice Today; "*Housing in my Backyard: A Municipal Guide for Responding to NIMBY, ACT*" on how municipalities can respond to NIMBY.
[106] *Ibid*.
[107] HomeComing Community Choice Coalition (supra).
[108] Noble et al. v. Alley, 1950 CanLII 13 (SCC), [1951] SCR 64.

deed provided that lands should never be sold, transferred, leased, or rented to any person who is Jewish, Hebrew, Semitic, Negro or coloured race or blood. The Supreme Court of Canada held that the restrictive covenant was invalid. Planners need to identify land use titles, deeds and agreements still containing these discriminatory provisions and invalidate them accordingly. It is also essential to determine the long-term impact the existence of these restrictive covenants has had on targeted groups with a view to remedying such effects.

In BC, section 222(1) of the BC *Land Title Act*[109] invalidates such covenants which "directly or indirectly, restricts the sale, ownership, occupation or use of land on account of the sex, race, creed, colour, nationality, ancestry or place of origin of a person, however created". The Act further empowers the Registrar to cancel all such discriminatory restrictive covenants[110]. Planners should make a conscious effort in identifying these discriminatory land use titles and agreements. Despite being invalid, as earlier noted, the existence of these restrictions has caused long-term harm to targeted groups, and there is a need to remedy these wrongs. As discussed in chapter two of this study, no person should be restricted or prevented from land use based on any of the prohibited grounds of discrimination. Can governments at all levels go a step further to specifically identify restrictive covenants with a view to delete and invalidate them, and remedying their effects over the years?

3.1.8 Safe Injection Sites

Another way discrimination may result from land use planning is the regulation of safe injection sites and medical facilities, which come under the planning powers of municipalities. Human rights actions have been brought where there is any government policy capable of infringing on the rights of the users of such safe injection sites and medical facilities. In Canada (Attorney General) v. PHS Community Services Society[111], the refusal of the Federal Minister of Health to exempt a supervised injection facility in Vancouver Downtown East Side and its clients from the prohibitions on possession and trafficking of controlled substances under the Controlled Drugs and Substances Act, SC 1996, was challenged under section 7 of the Canadian Charter of Rights and Freedoms as violating the life, liberty, and security rights of the safe injection site and its clients. In ordering the exemption, the Supreme Court of Canada held that the benefits to the health of those experiencing drug addiction outweigh any detriment to society. Similarly, in Allard v. Canada[112], the Federal Marihuana for Medical Purposes Regulations, which prohibited growing medical marihuana at home and restricted the right to grow and distribute same to licensed commercial facilities, was declared unconstitutional after it was challenged for infringing on the rights to liberty and security of the person under section 7 of the Canadian Charter of Rights and Freedoms.

Thus, in planning for safe injection sites and medical facilities, planners must consider the human rights of the users of such sites and facilities. Where land use planning is capable of restricting users' rights, they may be challenged on human rights grounds.

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[109] [RSBC 1996] Chapter 250.
[110] See section 222(3) of the BC Land Title Act.
[111] 2011 SCC 44, [2011] 3 S.C.R. 134.
[112] (2016) FC 236.

The analysis in this part of the chapter has shown that there is no limit to how far discriminatory policies might arise in land use planning. In fact, any planning policies and bylaws that tend to restrict, limit, or exclude certain people from accessing land and its features may come under close human rights watch and scrutiny. The planning powers of municipalities must be exercised within the confines of the law (including human rights law). Where this is done, land use planning will be held to be constitutional.

The following part is a brief overview of the intersection and differences between land use planning and Indigenous land ownership and use.

3.2 Part Two: Indigenous Land Use Planning

> *"To the Indigenous peoples of this place we now call British Columbia: Today we turn our minds to you and to your ancestors. You have kept your unceded homelands strong. We are grateful to live and work here."*
>
> *BC Office of the Human Rights Commissioner*

Land use planning presents an opportunity to contribute towards reconciliation with Indigenous Peoples and to build stronger and healthy relationships with Indigenous Peoples[113] in a way that respects Indigenous cultures, traditions, and values. Human rights of Indigenous Peoples in land use planning issues arise in different ways, such as respect of Aboriginal title to land, preservation of heritage sites and sacred sides, the duty to consult Indigenous peoples on decisions that affect Aboriginal and Treaty rights[114], etc. Before proceeding to discuss how planners can engage in Indigenous planning and the duty to consult, it is necessary to set a brief historical background on why this type of planning is essential.

3.2.1 The Indian Act

History shows the systemic and institutional appropriation of land from Indigenous Peoples through legislations, prominently through the Indian Act, targeted at depriving Indigenous Peoples of land use. First enacted in 1876, the Indian Act is a Canadian federal law that has been used to govern and control various aspects of the lives of First Nations[115]. Over the years, the Indian Act has been amended at different times to provide for matters relating to band councils, land use and ownership, residential school system, use of natural resources, taxation, governance, assimilation, Indian status, gender discrimination, reserves, fishing, alcohol consumption, amongst others. In these areas, the Indian Act has been used to perpetrate oppression and great injustice against

[113] In this study, the terms "Indigenous People(s)" and "Aboriginal People(s)" generally and collectively refers to the First Nations, Métis and Inuit people of Canada.

[114] S. Agrawal (2021) (supra) at 7.

[115] First Nations & Indigenous Studies, The University of British Columbia, "The Indian Act", Online: http://indigenousfoundations.arts.ubc.ca/the_indian_act/ (assessed June 7, 2021).

Indigenous Peoples. Notably, between 1911 and 1951, under the Indian Act, the government could forcefully take lands from Indigenous People without their consent and lease such land to non-indigenous people without Indigenous Peoples' consent[116].

International organizations, such as the United Nations and Amnesty International, and the Canadian Human Rights Commission have criticized the Indian Act for its abuse of the human rights of Indigenous Peoples[117]. Yet, the Indian Act has continued to exist, with various amendments over the years, notably because of its historical and legal significance for Indigenous Peoples by acknowledging the historical and constitutional relationship that Indigenous Peoples have with Canada[118]. Efforts to abolish the Indian Act in 1969 by Prime Minister Trudeau through a proposed "white paper" policy with the aim of achieving greater equality for Indigenous Peoples, was overwhelmingly rejected by Indigenous Peoples who felt assimilation into mainstream Canadian Society was not the way to achieve equality[119]. Indigenous Peoples wanted to maintain their identity and legal distinction as Indigenous peoples instead of assimilation into mainstream Canadian society[120]. Hence, the Indian Act continues to exist to date. However, Indigenous Peoples have expressed commitment to help devise a new legislation with the active involvement and participation of First Nations[121].

These historical injustices to Indigenous Peoples have affected Indigenous Peoples for decades, and the horrors stories of these injustices are still being heard today, especially stories of the Residential School system. The Residential School system was funded by the Canadian government and ran by certain Christian Churches to assimilate Indigenous children into the Euro-Canadian society and separate Indigenous children from their parents and villages. Many of the children that attended these Residential Schools died, and many suffered abuse. The Truth and Reconciliation Commission (TRC) was later set up to, amongst others, investigate the atrocities committed in Residential Schools against Indigenous children. While the TRC has officially identified the names and information of about 4,100 children who died while attending these schools[122], that appears to be far from the exact number of deaths that occurred at the Residential Schools. New discoveries of mass graves sites continue to emerge revealing the death of Indigenous children at Residential Schools. At the time of this study, Indigenous communities revealed various discoveries of the remains of Indigenous children found at various sites across the country: about 200 children at the former Kamloops Indian Residential School in British Columbia, 751 unmarked graves were identified on the site of the former Marieval Indian Residential School in Saskatchewan, and 160 "undocumented and unmarked" graves were also announced by the Penelakut Tribe in B.C.'s

[116] City of Vancouver, "First Peoples: A Guide for Newcomers" (2014) online: https://vancouver.ca/files/cov/First-Peoples-A-Guide-for-Newcomers.pdf (accessed June 7, 2021).
[117] First Nations & Indigenous Studies, The University of British Columbia (Supra).
[118] *Ibid.*
[119] *Ibid*.
[120] *Ibid*.
[121] *Ibid.*
[122] Truth and Reconciliation Commission of Canada, "Missing Children Project" Online: http://www.trc.ca/events-and-projects/missing-children-project.html (accessed June 4, 2021).

Southern Gulf Islands[123]. The TRC had previously only identified 51 dead students in the Kamloops Residential School, which was the largest school in the Indian Affairs residential school system[124].

3.2.2 Reconciliation

An important lesson from the TRC report is that failure to look through the lens of cultural genocide would lead to an incomplete understanding of Indigenous Peoples[125]. Reconciliation is a long-term relationship-building, learning, and healing process committed to establishing and maintaining a mutually respectful relationship between Indigenous and non-Indigenous peoples[126]. "*Reconciliation involves recognizing the very lands that we stand on were built on traditional territory and that as we go about our daily lives, the first peoples are struggling for basic provisions and protections"*[127]. There must be a genuine commitment to and action on reconciliation.

As part of the reconciliation process, land use planning must be "indigenized". Indigenizing planning requires that the process of planning and the contents of a land use plan should involve Indigenous Peoples and for planners to apply a cultural and traditional lens to land use planning. To apply such an Indigenous lens to land use planning, it is first essential for planners to understand Aboriginal title and right to land in Canada, BC and Vancouver.

3.2.3 Aboriginal Title and Right to land

Indigenous Peoples have long lived in what is now known as Canada for thousands of years before even the arrival of the first Europeans, and they have managed these lands and resources in accordance with their unique traditions, cultures, identities, institutions, and customs[128]. Since the 1700s, the British Crown (now the Canadian government – Federal, provincial, and territorial) has entered treaties with Indigenous Peoples for the purpose of peaceful economic and military relations. These treaties are negotiated between and entered by the Crown (Canadian government) and First Nations as independent nations[129]. Following the Royal Proclamation of October 7, 1763, the treaty-making process was formally established, and since then, "historic treaties"[130] have been

[123] A. Sterritt & C. Dickson, "'This is heavy truth': Tk'emlúps te Secwépemc Chief says more to be done to identify unmarked graves" https://www.cbc.ca/news/canada/british-columbia/kamloops-residential-school-findings-1.6084185 (accessed July 19, 2021).

[124] National Centre for Truth and Reconciliation, University of Manitoba, "Memorial" Online: https://memorial.nctr.ca/?p=1452 (accessed June 4, 2021).

[125] R. Vaugeois "Indigenous peoples, human rights and the city" in Human Rights in the City issue of Plan Canada Magazine (Vol. 57 No. 2, 2007) at page 30. Online https://viurrspace.ca/handle/10613/8440 (accessed May 10, 2021).

[126] The Canadian Institute of Planners', "Policy on Planning Practice And Reconciliation", at page 2, online: https://www.cip-icu.ca/getattachment/Topics-in-Planning/Indigenous-Planning/policy-indigenous-eng.pdf.aspx (accessed June 7, 2021)

[127] R. Vaugeois (supra) at page 31.

[128] Government of Canada, "Treaties and Agreements" online: https://www.rcaanc-cirnac.gc.ca/eng/1100100028574/1529354437231 (accessed June 9, 2021).

[129] City of Vancouver, "First Peoples: A Guide for Newcomers" (2014) (supra) at page 49.

[130] These are treaties signed with Indigenous people between 1701 and 1923. BC Treaty Commission, "FAQs" online: https://bctreaty.net/files_3/faqs.html (accessed June 9, 2021)

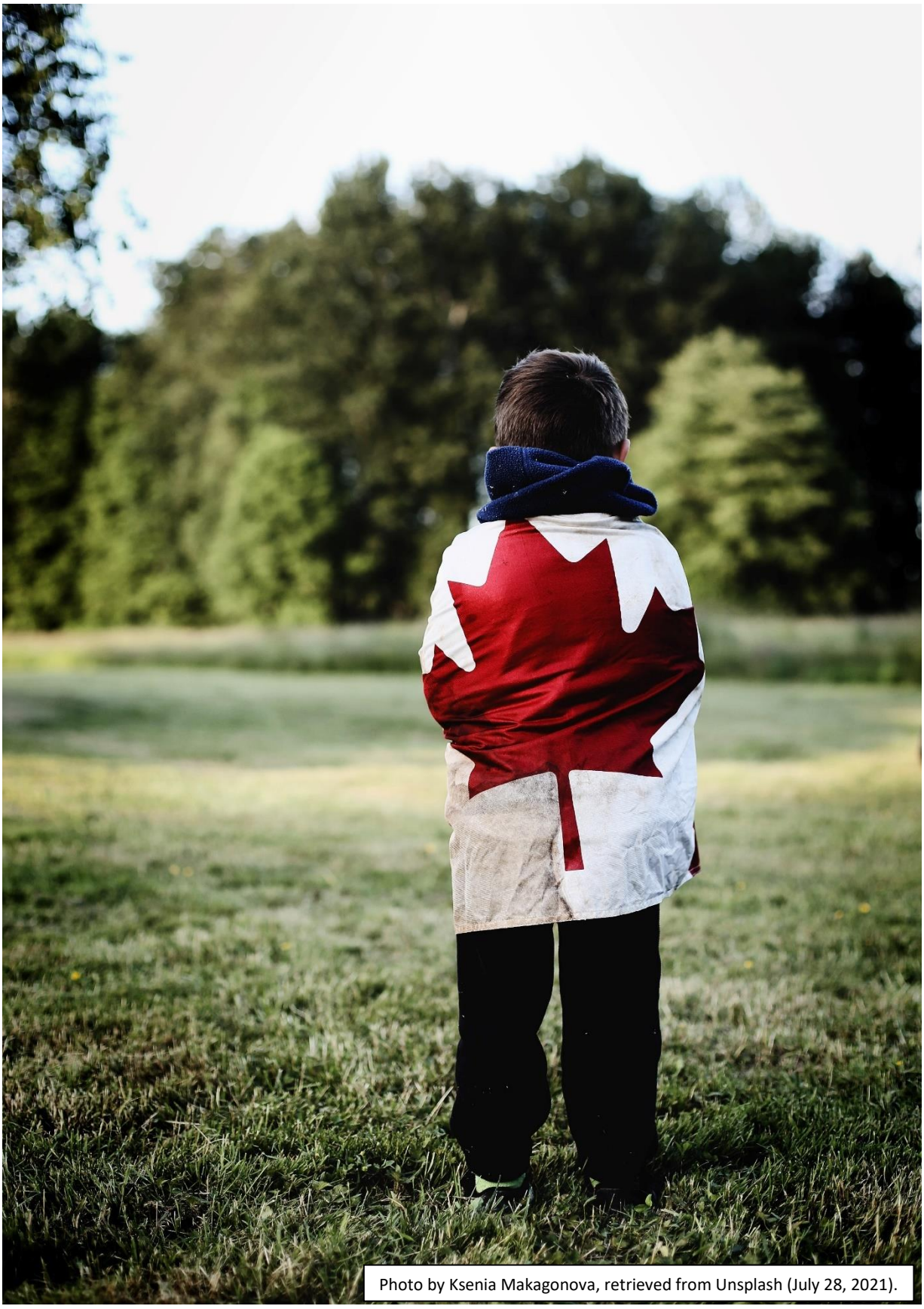

Photo by Ksenia Makagonova, retrieved from Unsplash (July 28, 2021).

signed in respect of lands occupied by Indigenous Peoples and forming the relationship between the Crown and Indigenous Peoples[131].

Following the Supreme Court of Canada's decision in *Calder et al. v. Attorney-General of British Columbia*[132], there has been growing recognition of the rights of Indigenous Peoples to land in the form of "modern treaties"[133]. In the *Calder case,* the Nisga Tribal Council and four Indian bands brought an action against the Attorney-General of British Columbia for a declaration "that the Aboriginal title, otherwise known as the Indian title, of the Plaintiffs to their ancient tribal territory… has never been lawfully extinguished". Since 1975, Canada has signed modern treaties with Indigenous groups in Canada providing for matters such as Indigenous ownership of land, reserves[134], protection of traditional ways of life, financial settlements, participation in decisions relating to land and resources management and right to self-government. Rights contained in these historic and modern treaties are collectively known as treaty rights, and these rights are recognized and protected under section 35 of the Constitution Act, 1982[135], Aboriginal law[136], treaties and agreements with Indigenous Peoples.

Historically, only a few of these treaties have been signed in British Columbia[137], and following an agreement between the First Nations Summit and the Governments of Canada and BC, an independent body known as the British Columbia Treaty Commission was established in 1992 to facilitate and oversee treaty negotiations among Treaty Nations in BC and the Governments of Canada and BC[138]. In fact, because of the earlier mentioned 1973 *Calder's case*, which acknowledged the legal right of First Nations to lands, the Nisga'a Nation in northern British Columbia became the first Indigenous people to complete a modern treaty[139] in BC in 1999, following years of negotiation, persistence, conviction, and a lot of work[140]. Subsequently, after

[131] Government of Canada, "Treaties and Agreements" (supra).
[132] [1973] S.C.R. 313.
[133] These are treaties that are not historic treaties, and they are negotiated today with Indigenous people. BC Treaty Commission, "FAQs" (supra).
[134] Land set aside for exclusive use by First Nation
[135] BC Treaty Commission, "FAQs" (supra).
[136] Aboriginal law specifically refers to the body of Canadian law which concerns the various issues related to Indigenous people in Canada, while Indigenous law generally refer to the legal traditions and customs of Indigenous people. The Canadian Institute of Planners', "Policy on Planning Practice And Reconciliation", at 4 Online: https://www.cip-icu.ca/getattachment/Topics-in-Planning/Indigenous-Planning/policy-indigenous-eng.pdf.aspx
[137] Generally, the Royal Proclamation of 1763 declared that only the Crown could acquire land from First Nations, usually through treaties, and many of these treaties were established in most part of Canada before Confederation and continued by the new Dominion. However, this process was not completed in BC. "When BC joined (the) Confederation in 1871, only 14 treaties on Vancouver Island had been signed, and aboriginal title to the rest of the province was left unresolved" and most First Nations could not pursue their aboriginal rights until 1993. See BC Treaty Commission, "FAQs" (supra).
[138] *Ibid.*
[139] Nisga'a Lisims Government, " Treaty Documents", online: http://www.nisgaanation.ca/treaty-documents (accessed July 23, 2021).
[140] City of Vancouver, "First Peoples: A Guide for Newcomers" (2014) at 49 https://vancouver.ca/files/cov/First-Peoples-A-Guide-for-Newcomers.pdf accessed June 7, 2021

years of negotiation, the Tsawwassen First Nation has also negotiated a treaty with the Governments of Canada and BC[141], which took effect from April 3, 2009.

Once a treaty is signed between a First Nation and the Government of Canada, the Indian Act no longer applies to such First Nation. Thus, both the Nisga'a and Tsawwassen First Nations are no longer governed by the Indian Act due to the modern treaty they now have with Canada and BC[142]. The primary purpose of these treaties is to provide certainty for land ownership and jurisdiction[143]. Although the Government has often required First Nations in the past to surrender their Aboriginal rights in exchange for treaty rights (often referred to as "extinguishment model"), this has often been rejected by First Nations in the treaty-making process. In the Nisga'a treaty, a modification model was developed, which instead of extinguishing those rights, the rights were modified into rights defined by the treaty[144]. More than 75 interim measures agreements have now been signed, including agreements to protect land that would be potentially included in final treaties[145].

Ninety-five percent of British Columbia is unceded land, which means that First Nations did not sign treaties or otherwise give this land to Britain or Canada[146].

"Aboriginal Title" therefore means the inherent Aboriginal right to land or a territory resulting from the long history that Indigenous Peoples have had with the land[147]. On the other hand, "Aboriginal Right" means the authority of Indigenous people to access and use land, water, and natural resources without needing the permission of another person or government[148]. Aboriginal title and rights differ from those of non-Indigenous people, and these title and rights do not originate from the Canadian government, even though the government recognizes and guarantees them. These rights and title originate from Indigenous Peoples' relationships with their territories and land, even before Canada became a country[149].

"Aboriginal Title" means the inherent Aboriginal right to land or a territory resulting from the long history that Indigenous people have had with the land.

On the other hand, "Aboriginal Right" means the authority of Indigenous people to access and use land, water, and natural resources without needing the permission of another person or government.

[141] Tsawwassen First Nation, "Tsawwassen First Nation Final Agreement", online: http://tsawwassenfirstnation.com/wp-content/uploads/2019/07/1_Tsawwassen_First_Nation_Final_Agreement.pdf (accessed July 23, 2021).
[142] City of Vancouver, "First Peoples: A Guide for Newcomers" (supra) at 52
[143] BC Treaty Commission, "FAQs" (supra).
[144] BC Treaty Commission, "FAQs" (supra).
[145] *Ibid.*
[146] City of Vancouver, "First Peoples: A Guide for Newcomers" (supra) at 49
[147] City of Vancouver, "First Peoples: A Guide for Newcomers" (supra) at 50
[148] *Ibid.*
[149] *Ibid.*

The Crown has a duty to consult when considering actions that may adversely affect Aboriginal or treaty rights as guaranteed under section 35 of the Constitution. Although the Constitution does not expressly define Aboriginal rights under section 35, these rights generally include the Aboriginal title (ownership rights to land), rights to occupy and use lands and resources, such as hunting and fishing rights, self-government rights, and cultural and social rights[150]. These rights and freedoms cannot be derogated or abrogated.

The principles relating to Aboriginal title were well discussed in the case of Delgamuukw v. British Columbia, where the Supreme Court of Canada held that Aboriginal title is *sui generis*, especially regarding its source, communality, and inalienability. The Supreme Court of Canada noted that:

(i) Aboriginal title is a right to the land itself, and it encompasses all rights existing on the land, including the right to exclusive use, occupation, fish, hunt, gather and do other various activities on the land.
(ii) It arises because of the prior and continued occupation and use of the land as part of Indigenous Peoples' traditional way of life even before the assertion of British sovereignty.
(iii) It is held communally and not just by individual Indigenous persons.
(iv) Aboriginal title cannot be transferred, sold, or surrendered to anyone other than the Crown, and as such, it is inalienable to third parties.

The Supreme Court of Canada further noted that Aboriginal rights still exist and cannot be extinguished by a provincial law of general application. Regarding land use, Aboriginal lands cannot be used for a purpose or in a manner that may impair the use of such lands by future generations since it is communal and based on the relationship of First Nations with the land[151].

3.2.4 Indigenizing Land Use Planning

As seen above, the right of Indigenous Peoples to land in Canada is something unique, and this must always be considered in land use planning. Governments at the federal, provincial, and municipal levels must be conscious of this right. To overcome some of the challenges Indigenous Peoples have faced and are still facing, particularly in respect of land use, there is a need not only to recognize but also to enforce the rights of Indigenous Peoples to land, and this is one of the key principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[152], discussed in chapter two of this study.

In showing its commitment to recognize the rights of Indigenous Peoples and develop a relationship with Indigenous peoples, the BC government enacted the *Declaration of the Rights of Indigenous Peoples Act*[153]*(DRIPA)* in November 2019, which domesticated the provisions of the UNDRIP. Section 3 of the DRIPA requires the BC government to take all necessary measures to make BC laws

[150] Government of Canada, "Treaties and Agreement" (supra).
[151] BC Treaty Commission, "FAQs" (supra).
[152] R. Vaugeois (supra) at 31.
[153] S.B.C. 2019 c. 44

Photo by Danika Perkinson, retrieved from Unsplash (July 28, 2021).

consistent with the UNDRIP. The DRIPA requires the Minister to prepare an annual report showing the progress that has been made in implementing the measures to align BC laws with the UNDRIP and an action plan aimed at achieving the objectives of the UNDRIP. The DRIPA also requires that the consent of the Indigenous governing body must be obtained before a statutory power of decision is exercised[154]. The requirement to obtain the consent of the Indigenous governing body extends to matters even within the planning powers of local governments, and although local governments may not necessarily be parties to agreements with Indigenous communities, they are often consulted[155]. Thus, actions relating to community planning and land use planning, or other actions which may affect the rights of Indigenous Peoples, cannot be implemented by municipalities without the consent of and consultation with Indigenous Peoples[156].

Indigenous peoples, therefore, need to be heard and have a voice and representation in land use planning decisions. Land use planning "expertise" goes beyond planning expertise acquired in the

[154] Section 7(1)(b)
[155] J. Hemphill & B. Buholzer, "BC's UNDRIP Legislation: An Opening for Better Relationship Building?" at 11, In Planning Institute of British Columbia (PIBC) "Planning West" Vol 63, No 2 (2021).
[156] *Ibid*

four walls of an educational institution. Indigenous people have expertise in cultural and traditional land use, and as such, this expertise should neither be ignored nor taken for granted. In setting up committees to work on land use planning, such committees should have a proper representation of persons with lived experience as members of priority groups, especially the Indigenous community[157].

Another way to indigenize land use planning is for planners to be abreast with Indigenous planning traditions and practices. By understanding Indigenous planning traditions and practices, planners can show respect and support for the rights of Indigenous people. This also enhances the planning profession and projects it as a profession committed towards reconciliation[158]. Planning happens on land connected to Indigenous people, and as such, planners have a responsibility to understand the implications of planning practices on Indigenous communities and adopt collaborative planning approaches that recognize and respect Indigenous rights[159].

Although the 94 Calls to Action of the TRC, which are championing the national process of reconciliation do not directly speak to the planning profession, the Calls to Action address various bodies (such as governments, institutions, and businesses) that planners work with, and thus present an opportunity for planners to champion the realization of the Calls to Action and the TRC principles in interacting with these bodies[160]. Planners should implement the principles of the UNDRIP and Aboriginal law when engaging in land use planning. "*Planners have a unique role to play in reconciliation, as their profession connects people, land, livelihoods, and governance*[161]. To do this, planners must understand the UNDRIP and Aboriginal and Indigenous law and their impact on land use planning[162]. Thus, as recommended by the Canadian Institute of Planners', to fully realize this crucial role in reconciliation, planners need to embed reconciliation in their practice by:

The TRC Calls to Action address various bodies (such as governments, institutions, and businesses) that planners work with, and thus present an opportunity for planners to champion the realization of the Calls to Action and the TRC principles in interacting with these bodies.

- Demonstrating awareness and respect for Indigenous communities.
- Identifying challenges to and opportunities for reconciliation in planning practices.
- Understanding the historical lack of Indigenous participation in the public policy process.
- Practicing with cultural safety and cultural humility.

[157] R. Vaugeois (supra) at 31.
[158] The Canadian Institute of Planners', "Policy on Planning Practice And Reconciliation", at 2, online: https://www.cip-icu.ca/getattachment/Topics-in-Planning/Indigenous-Planning/policy-indigenous-eng.pdf.aspx accessed June 7, 2021.
[159] The Canadian Institute of Planners (supra) at 4.
[160] The Canadian Institute of Planners (supra) at 3.
[161] The Canadian Institute of Planners (supra) at 6.
[162] See the Policy objectives of the CIP, online: https://www.cip-icu.ca/getattachment/Topics-in-Planning/Indigenous-Planning/policy-indigenous-eng.pdf.aspx (accessed June 7, 2021).

- Striving to understand the Indigenous context and history of the region they work in.
- Understanding their role in informing the government's duty to consult.
- Understanding court rulings that impact planning.
- Advocating for changes in planning policy and legislation to be more respectful of the rights and knowledge of Indigenous peoples.
- Understanding and integrating the principles of the TRC Calls for Actions and the UNDRIP.
- Actively and deliberately engage Indigenous people, communities, and nations in land use planning or any activity that affects Indigenous rights[163].

As part of the BC's government commitment to collaborate with indigenous people to modernize land use planning in the province, the BC Government committed $16 million over three years (2018-19 to 2020-21) to modernize land use planning by setting a strategic direction to guide sustainable resource stewardship and management of provincial public land and waters that meet economic, environmental, social, and cultural objectives[164]. It is aimed that land use planning will advance reconciliation efforts, promote dialogue between the BC government and Indigenous governments; ensure communities and stakeholders engagement in land use and resource planning, supporting economic opportunities with land use planning, increasing certainty for those who operate on land and provide trusted stewardship of B. C's natural resources.

The City of Vancouver has also been involved in reconciliation activities. Amongst other initiatives[165], notably, June 21, 2013, to June 20, 2014, was declared as the Year of Reconciliation in the City of Vancouver to help mend the past, share more on the understanding of the history of Indigenous people, and create a legacy for meaningful change in society[166]. Following the declaration of the Year of Reconciliation in Vancouver, the City of Vancouver was designated a City of Reconciliation when Council adopted the framework on July 8, 2014[167].

[163] For other ways planners can effectively carry out this role, see the CIP's Policy on Planning Practice And Reconciliation.

[164] BC Government "Modernizing Land Use Planning in British Columbia", online: https://www2.gov.bc.ca/gov/content/industry/crown-land-water/land-use-planning/modernizing-land-use-planning (accessed June 2, 2021).

[165] City of Vancouver, "First Peoples: A Guide for Newcomers" (supra) at 80.

[166] *Ibid.*

[167] City of Vancouver, "City of Reconciliation", Online https://vancouver.ca/people-programs/city-of-reconciliation.aspx (accessed June 7, 2021).

4. MUNICIPAL REGULATORY TOOLS

What regulatory tools and policies are available to municipalities, like Vancouver, in land use planning that can form part of a regulatory tool kit, and what are the human rights considerations with regards to the use of these tools?

This chapter discusses provincial and municipal regulatory efforts at applying a human rights lens in land use planning. The chapter focuses on efforts by Ontario, BC, and the Cities of Toronto, Vancouver, and Edmonton. Findings from discussions with the Cities of Toronto, Vancouver and Edmonton staff also form part of the chapter.

First, the following table highlights some of the key steps taken by some provinces and municipalities to recognize and expand human rights in land use planning.

Table 4: Progress made on the human rights front in various Canadian provinces and municipalities.

Provinces	Steps taken
Ontario	Mandates every municipality under the Provincial Policy Statement to adhere to the Canadian Charter of Rights and Freedoms, and the Ontario Human Rights Code. The Ontario Human Rights Commission provides resources and toolkits to guide planners in applying human rights lens in land use planning. Provides legal aid to eligible individuals who have experienced discrimination that contravenes provincial human rights legislation.
British Columbia	Passed the Declaration of the Rights of Indigenous Peoples Act to domesticate the UN Declaration on the Rights of Indigenous Peoples, thereby becoming the first province in Canada to do so.
Alberta	Revised its human rights legislation to include, as grounds of discrimination, age (in relation to the provision of goods, services, accommodation, or facilities), sexual orientation, and gender identity.
Municipalities	Steps taken
Toronto	Conducted a review of its zoning bylaw to:

	• Change the definition and description of group homes. • Remove separation distances associated with group homes and municipal shelters. Provided for The HousingTO 2020-2030 Action Plan to improve and better protect housing rights in the city. Updated the Toronto Housing Charter to require land use planning to be done in a way that recognizes the rights of residents to safe, secure, and affordable homes. Established the Human Rights Office to provide advice, information, and assistance regarding human rights and accommodation issues involving city services and facilities.
Calgary	Removed its prohibition on secondary suites in residential areas.
Edmonton	Conducting a review of its zoning bylaw through the City's Zoning Bylaw Renewal Initiative to, amongst others, re-evaluate how, what, when, and why land use is regulated in terms of zoning and land development. Similarly, it would remove user-based or people-based regulations and adopt a hybrid of use-based zoning regulations in addition to performance-based and incentive-based zoning. Developing a Gender-Based Analysis Plus and Equity Toolkit (GBA+ & Equity Toolkit) as part of the Zoning Bylaw/land use regulation renewal process. Lifted a funding pause on supportive housing in certain inner-city neighborhoods. Added a separate land use class for supportive housing, partly based on the human rights concerns raised by a planning expert (Sandeep Agrawal) with the Edmonton City Council.
Montreal	Adopted its Charter of Rights and Responsibilities that • Allows its citizens to initiate a public consultation on a municipal matter. • Led to the establishment of the municipal Office of the Ombudsman, which hears complaints from the Montreal residents who believe they are adversely affected by a decision, act, or omission of the city.

Winnipeg	Created the Human Rights Committee of the City Council, which serves as an advisory body to the mayor and city council on human rights, equity, diversity, peace, access and disability-related issues and emerging trends as they affect residents of Winnipeg
Sarnia[168]	Following a human rights complaint, the City of Sarnia amended its bylaws in 2010 by: • Removing distancing requirements for all group homes. • Removing the requirement that group homes with more than five residents be located on an arterial or collector road. • Including group homes in all zones allowing residential use. • Permitting residential care facilities use in any residential zone.
Vancouver	Developed an Equity Framework to provide a common understanding and a united approach to equity to be used by all City departments. Simplifying and removing conflicting provisions in the City's planning regulations. Developed the Vancouver's Housing and Homelessness Strategy (2012 – 2021) – A Home For Everyone, aimed at ending street homelessness and providing more affordable housing choices.

Source: Table reproduced from Sandeep Agrawal (2021)[169] with changes.

4.1 Ontario

Ontario has taken commendable steps in enshrining human rights principles in land use planning across the province by recognizing the intersection of human rights and land use planning in the Ontario Provincial Policy Statement.

First, under the Planning Act of Ontario, municipalities and planners are required to make land use planning decisions in a manner consistent with the Provincial Policy Statement. In this regard, the Provincial Policy Statement, 2020 (PPS) provides clear policy direction on matters involving land use planning and development, which are of interest to the province by setting the policy foundation to regulate the development and use of land[170]. The PPS was introduced at the provincial level based on strong advocacy from the Ontario Human Rights Commission and the City of Toronto, following a human rights case involving the City of Toronto on the requirement of

[168] Ontario Human Rights Commission (supra) at 28.

[169] S. Agrawal (2021) Human Rights and the City: A View From Canada, Journal of the American Planning Association, 87:1, at page 8, DOI: 10.1080/01944363.2020.1775680 . See also S. Agrawal "Edmonton's Zoning Bylaw Under The Lens of Equity", online: https://www.edmonton.ca/sites/default/files/public-files/assets/PDF/ZoningBylaw_ThroughLensofEquity_Report.pdf , (accessed August 2, 2021).

[170] See Preamble to the PPS.

minimum separation distance[171], and it provides for a uniform land use planning framework for municipalities in Ontario. The PPS provides for ways planners can build strong and healthy communities, promote wise use and management of natural resources, and protect public health and safety in their land use planning. In doing these, the PPS recognizes and expressly reminds planners of the need to apply a human rights lens in their land use planning. Policies 2.3 and 4.4 of the PPS expressly provide as follows:

> 4.3 This Provincial Policy Statement shall be implemented in a manner that is consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982.
> 4.4 This Provincial Policy Statement shall be implemented in a manner that is consistent with Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms.

Based on the above provisions of policies 4.3 and 4.4 of the PPS, any land use planning that is to be carried out in Ontario must not infringe on the rights of Indigenous Peoples and the human rights enshrined in the Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms.

During our meeting with one of our discussants, they noted that including the PPS in land use planning toolkit deliberately and daily reminds planners of the need to conform with human rights when engaging in land use planning. It is like "basically putting it (human rights) in front of planners, and they can't forget, it's right there. Also, you know, sometimes you have to remind them (planners) that it applies to everything in planning and policies" they added.

Thus, although the PPS does not create any new rights or legal requirements, the provision is a meaningful inclusion as it underlines the significance of human rights in our society, particularly in land use planning, and it daily reminds planners to pay constant attention to human rights in carrying out their planning duties[172]. During our meeting with one of our discussants, they noted that including the PPS in land use planning toolkit deliberately and daily reminds planners of the need to conform with human rights when engaging in land use planning. It is like "basically putting it (human rights) in front of planners, and they can't forget, it's right there. Also, you know, sometimes you have to remind them (planners) that it applies to everything in planning and policies" they added.

In addition to the PPS, the Ontario Human Rights Commission has taken a strong lead in human rights recognition and entrenchment in government activities including land use planning, by providing resources and toolkits to guide land use planners in applying human rights lens in land

[171] Information from with one of our discussants.
[172] A. Ceddia "*Integrating Human Rights with Land Use Planning: Now a Cornerstone of the Ontario Provincial Policy Statement, 2014*" Human Rights in the City issue of Plan Canada Magazine (Vol. 57 No. 2, 2007) at 19. Online https://viurrspace.ca/handle/10613/8440 accessed May 10, 2021.

use planning[173]. Specifically, the Commission identified the following human rights principles which planners must consider when engaging in land use planning[174]:

(1) Everyone has the right to housing, free from discrimination.
(2) Everyone has the right to live in their choice community without discrimination.
(3) Healthy and inclusive communities provide housing options for all income levels.
(4) Everyone has an obligation to make sure that people are not discriminated against in housing.
(5) Discriminatory opposition to affordable housing often exists in laws, policies, actions, and language used to create housing barriers to priority groups.
(6) In carrying out their planning responsibilities, municipalities are to ensure there is no violation of the human rights code.

The positive commitment of the province in seeking human rights recognition in land use planning has also influenced municipalities in Ontario, like the City of Toronto, to take positive and conscious steps in requiring planners to apply human rights lens in land use planning.

4.1.1 City of Toronto

The City of Toronto has taken steps to consider human rights issues in land use planning. For instance, the City engaged an expert to review its zoning bylaw to identify human rights issues related to group homes, including the requirement of a separation distance between them[175]. This review followed an action at the Human Rights Tribunal against the City of Toronto that the City's draft zoning bylaw, which imposes mandatory separation distances for group homes and residential care homes, was contrary to the Ontario Human Rights Code as it discriminates against persons with disabilities. Similarly, during a meeting with one of our discussants, they questioned the rationale for minimum separation distances (MSDs) in group homes. They noted that before the City of Toronto was amalgamated, each

Following an expert report, the City of Toronto amended the definition of the group homes and removed the requirement for a minimum separation distance between group homes as there was no reasonable justification for such restriction under proper and good land use planning principles.

[173] See, for example, the Ontario Human Rights Commission report In the Zone: Housing, Human Rights and Municipal Planning available at: http://www3.ohrc.on.ca/sites/default/files/In%20the%20zone_housing_human%20rights%20and%20municipal%20planning_0.pdf; See also Ontario Human Rights Commission, "Planning and Human Rights: Legal Cases and Resources", online: http://www.ohrc.on.ca/en/planning-and-human-rights-legal-cases-and-resources .

[174] Ontario Human Rights Commission (supra) at 15; See the OHRC's "Policy on Human Rights and Rental Housing" which provides extensive details on the rights and responsibilities relating to rental housing in Ontario. Online: www.ohrc.on.ca/en/resources/Policies/ housing/pdf.

[175] City of Toronto, "Final Report on the City-wide Zoning By-law: Supplementary Report on Human Rights Challenge to Group Home Zoning Regulations", online https://www.toronto.ca/legdocs/mmis/2013/pg/bgrd/backgroundfile-56473.pdf (accessed July 22, 2021).

merging municipality had its different MSD requirements (ranging from 250meters to 800meters), however upon amalgamation, the least MSD was adopted for all the amalgamated cities. If the least MSD is adopted across board, even for municipalities with previously higher MSDs, what then is the necessity and rationale for MSDs in the first place?

Following the expert report[176], the City of Toronto amended the definition of the group homes and removed the requirement for a minimum separation distance between group homes as there was no reasonable justification for such restriction under proper and good land use planning principles[177].

Photo by Kyle Ryan, retrieved from Unsplash (July 28, 2021).

4.2 British Columbia and the City of Vancouver

4.2.1 British Columbia

Little work has been done in BC and Vancouver on the express recognition and application of human rights lens in land use planning. Commendable, however, is that the BC government has shown strong commitment towards recognizing the rights of Indigenous Peoples to land use planning and to collaborate with Indigenous Peoples to modernize land use planning in the province

[176] City of Toronto, "Final Report on the City-wide Zoning By-law: Supplementary Report on Human Rights Challenge to Group Home Zoning Regulations" (supra).
[177] S. Agrawal (2021) "Human Rights and the City: A View From Canada" (supra).

in line with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the BC Declaration on the Rights of Indigenous Peoples Act and the TRC Calls to Action[178]. Noticeably, BC became the first province in Canada to domesticate the UNDRIP through the *Declaration of the Rights of Indigenous Peoples Act*[179] discussed in the preceding chapter of this study.

Nevertheless, BC needs to do more in consciously and deliberately protecting human rights and preventing possible discrimination in land use planning. In line with its mandate to promote and protect human rights and addressing issues of systemic discrimination in BC, the BC Office of the Human Rights Commissioner (BCOHRC), created in 2019 as an independent voice, is well-positioned to advocate and advance works on the application of human rights lens in land use planning in the province. The BCOHRC is still a young organization and this presents a good opportunity for the commission to be involved, early on, in works advocating for the entrenchment of human rights in land use planning for the benefit of the entire province. We hope that this study would assist the work of the BCOHRC and enable it to build more human capacity in this regard.

The BCOHRC is still a young organization having only been created in 2019 and this presents a good opportunity for the commission to be involved, early on, in works advocating for the entrenchment of human rights in land use planning, for the benefit of the entire province.

4.2.2 City of Vancouver

At the municipal level, on July 20, 2021, the City of Vancouver Council approved the City's Equity Framework to provide a shared understanding and united approach to equity to be applied by all City departments. The Equity Framework lays a foundation for actions by each of the City's departments (including those involved in land use planning) and broadly for a culture change within the City of Vancouver as an organization.

The Equity Framework requires planners, like other City officials, to apply four lenses when engaging in land use planning. These lenses are:

1. Indigenous Rights: with a focus on upholding, recognizing, and protecting inherent and constitutionally protected Indigenous Rights.
2. Racial justice: with focus on understanding and explicitly discussing the implications of race in any given situation, and actively working to elevate racialized voices and dismantle racism in its personal, interpersonal and systemic manifestations.

[178] Ministry of Forests, Lands, Natural Resource Operations and Rural Government, "Modernizing Land Use Planning in British Columbia: Working with Communities", Online: https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/land-use-plans-and-objectives/factsheets/mlup_working_with_communities_factsheet_mar2020.pdf (accessed June 2, 2021).
[179] S.B.C. 2019 c. 44.

3. Intersectionality: with focus on recognizing how different systems of marginalization compound each other, and designing ways to specifically benefit those situated at the intersections.
4. Systems orientation: with focus on recognizing embedded discrimination within systems, and the redesign of the rules and incentives of a system, in order to lead to more equitable outcomes.

This Equity Framework constitutes a significant step in the entrenchment of human rights in the City. As noted in chapter one of this study, recognizing and enforcing human rights is essential in achieving an equitable city. To effectively achieve the City of Vancouver's Equity Framework objectives, planners, like all other city staff to which the Framework applies to, need to apply a human rights lens in land use planning.

Commendably, the Regulation Redesign team at the City is also currently working to simplify and remove conflicting provisions in the City's planning regulations and make it more accessible in line with the City's commitment to equity and accessibility.

Furthermore, recognizing the growth rate of Vancouver, the high cost of housing, and the increasing number of people experiencing homelessness in the city, the City of Vancouver developed the *Vancouver's Housing and Homelessness Strategy (2012 – 2021) – A home for everyone*. The Housing Strategy has the primary goals of ending street homelessness and providing affordable housing choices to all Vancouver residents suitable for all income levels, ages, family sizes and persons with disabilities. To do this, the Housing Strategy identified three strategic directions and their priority areas. These strategic directions are (i) increasing the supply of affordable housing, (ii) encouraging a housing mix across all neighbourhoods that enhance the quality of life, and (iii) providing strong leadership and support partners to enhance housing stability. It is pictured that by 2021, the City should have enabled 2,900 new supportive housing units, 11,000 new market rental housing units, and 20,000 market ownership units with high quality, well-maintained housing stock and a complete mix of housing in each of the City's neighbourhoods.

As seen above, besides the recently completed Equity Framework, there has been no direct measure introduced by the City of Vancouver to specifically require planners to apply human rights lens in land use planning. The Equity Framework properly positions the City to advance human rights entrenchment in land use planning.

4.3 City of Edmonton

In concluding this chapter, it is also important to speak briefly about an ongoing work at the City of Edmonton. The City of Edmonton is conducting a review of its zoning bylaw through the City's

Zoning Bylaw Renewal Initiative to overhaul the City's planning laws. The initiative is aimed, amongst others, to[180]:

- Re-evaluate how, what, when, and why land use is regulated in terms of zoning and land development.
- Remove user-based or people-based regulations and adopt a hybrid of use-based zoning regulations in addition to performance-based and incentive-based zoning.
- Overhaul and revise the current zoning bylaw in the city, which amongst others does not foster vibrant and inclusive communities; and includes systemic discrimination.
- Remove distinctions between different living arrangements to provide for more standard zones that accommodate various building forms and uses.
- Provide for less control of development and for more flexible zones and regulations.
- Address discriminatory processes in planning.
- Make the zoning bylaw more accessible and simpler.
- Regulate land use through the lenses of inclusivity, accessibility, reconciliation, age and gender.

The review is noted to be long overdue and has systematically been carried out over the years[181]. For instance, in June 2020, following a Comprehensive Parking Review which led to the conclusion that the City's zoning bylaw ineffectively regulated parking, the City of Edmonton Council approved an Open Option Parking as an amendment to the bylaw to remove minimum parking requirements from zoning bylaw[182]. The Open Option Parking allows landowners and businesses the discretion to determine the amount of on-site parking needed based on their specific needs and circumstances.

Consequently, the Zoning Bylaw Renewal Initiative seeks to establish two fundamental questions in land use planning:

(i) Should the Zoning Bylaw regulate this?

(ii) If yes, then to what degree should it be regulated?

Answering the above questions would help establish a new zoning bylaw decision-making framework.

As part of the zoning bylaw/land use regulation renewal process, the City of Edmonton is also developing a Gender-Based Analysis Plus and Equity Toolkit (GBA+ & Equity Toolkit), which will guide how best to consider and apply equity and diversity in drafting land use regulations. This first of its kind toolkit in Canada also provides an opportunity to offset the disproportionate impacts

[180] City of Edmonton, "Zoning Bylaw Renewal Initiative – Philosophy of the New Zoning Bylaw", online: https://engaged.edmonton.ca/zoningbylawrenewalinitiative (accessed July 12, 2021).
[181] *Ibid.*
[182] *Ibid*.

which are experienced by priority groups by considering the unintended impacts of land use regulations. At an information session with members of staff of the City of Edmonton[183], it was noted that as part of the application of the toolkit upon completion, it would be used to draft and continuously refine the zoning bylaw regulations and help to review/refine the role of key internal/external stakeholders, including planners.

Expectations are high on the City of Edmonton's Zoning Bylaw Renewal Initiative. It is expected that the initiative will result in simplified, strategic, inclusive, and equity-focused planning bylaws free from discrimination against priority groups.

[183] Information session between members of staff of the City of Vancouver and City of Edmonton held on Thursday June 10, 2021.

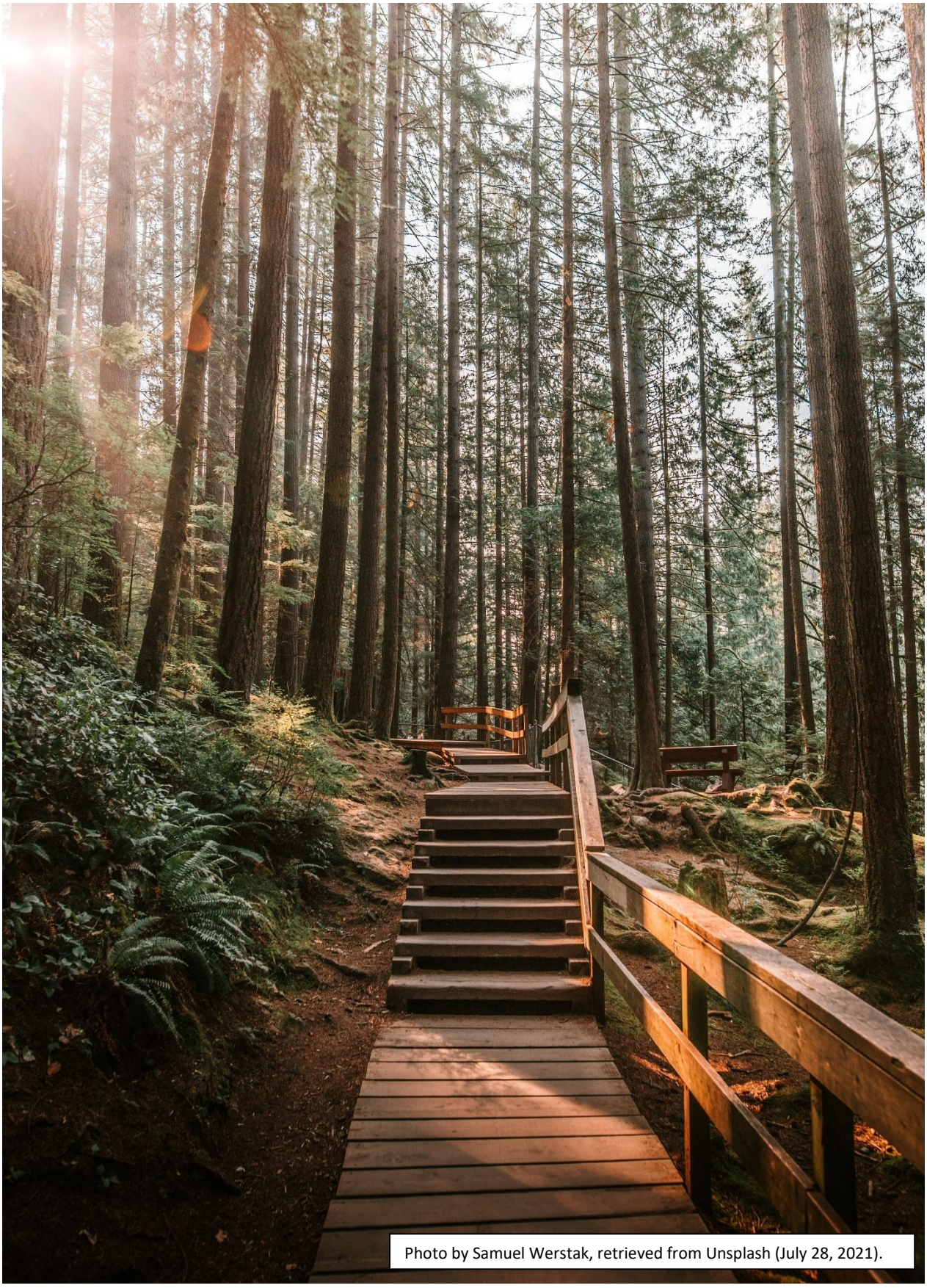

Photo by Samuel Werstak, retrieved from Unsplash (July 28, 2021).

5. CONCLUSION AND RECOMMENDATIONS

To the best of our knowledge, this study is the first in BC to analyze the intersection of human rights and land use planning. This study examined the general human rights legal framework in Canada, as applicable to the City of Vancouver. It considered judicial cases, scenarios and instances which identify how human rights issues arise in land use planning and the need for planners to engage in land use planning through a human rights lens. Ontario and the Cities of Toronto and Edmonton, plus other municipalities identified in chapter three, present useful examples for BC and the City of Vancouver on human rights considerations and enforcement in land use planning.

A land use planning framework that reflects and upholds human rights is an important building block for equitable and just communities and, "in fact, a human rights perspective forces equity into the same legal realm in which land use regulation lies"[184]. The legal obligation to uphold human rights can legitimize changes in processes and policies, which in turn can help municipalities achieve equitable outcomes. The application of a human rights lens, therefore, reflects and supports the City of Vancouver's commitment to equity, as reflected in the Equity Framework.

Even though it is a duty of municipal governments to ensure that land use and municipal planning practices are consistent with human rights law, there is still a general lack of awareness of this obligation and a lack of understanding of human rights, particularly among planners and municipal leaders. The objective of this study is to highlight the importance of this topic, which hopefully will become more present in the day-to-day activities of municipal planning in Vancouver – through discussions, policies, and actions.

Based on the literature review and engagement with members of staff at the Cities of Vancouver, Toronto and Edmonton, the following are the recommendations from this study:

1. Create Awareness and Education on Human Rights:

   As a municipal government, the City of Vancouver has an obligation to uphold and protect human rights, as outlined in the various human rights laws, particularly the Canadian Charter of Rights and Freedoms and the BC Human Rights Code. This obligation starts with educating and creating awareness among City leadership, including Mayor and Council. Education and awareness also need to be reflected among staff across City departments to ensure that a human rights lens is embedded across all aspects of the City – across all programs, policies, procedures, and decision-making. This recommendation aligns with the Equity Framework commitment to create spaces for accountable learning.

   Examples of how the City of Vancouver can promote education and awareness around human rights include the following:

[184] Agrawal, 2014, 2020. (Agrawal, S (2014). Balancing Municipal Planning with Human Rights: A Case Study. Canadian Journal of Urban Research, 23(1), 1-20) and (Agrawal S. (2020) Human Rights and the City: A View from Canada. Journal of the American Planning Association, 1-8.)

(i) Provide human rights training and ongoing education for staff at all levels of the organization, including Mayor, Council and General Managers.

(ii) Create a module on human rights and land use planning for planning staff. Such a module would introduce human rights laws and prohibited grounds of discrimination that planning staff should consider while engaging in land use planning.

(iii) Establish a multi-stakeholder shared learning process in which the Planning Institute of BC, the Canadian Institute of Planners and other relevant bodies can work with planners to jointly review current legal challenges to planning bylaws and keep planners updated on these challenges in the province and across the region.

2. Conduct Human Rights Impact Assessments:

(i) Develop a Human Rights Impact Assessment Guide to provide a united approach to considerations of human rights and land use planning. Such a Human Rights Impact Assessment Guide may be designed in collaboration with the BC Office of the Human Rights Commissioner, Provincial authorities, and other municipalities, as well as in collaboration with communities that identify as priority groups, such that the guide becomes a land use planning standard across the province.

(ii) Include a human rights impact assessment in all proposals and reports pertaining to land use planning. Similar to a financial implications statement, this could help ensure compliance with human rights law. This assessment should use an intersectional lens focusing on the impacts of the proposed planning policies/actions on priority groups such as women and gender diverse people, people with disabilities, racialized groups, sex workers and other members of priority groups considered in this study.

(iii) In alignment with the City of Reconciliation Framework, work with Indigenous partners to assess how Indigenous rights and laws can be upheld in land use planning.

(iv) The Vancouver Plan, currently in development, should expressly prohibit all forms of discrimination in land use planning and require planners to consider the human rights impact of land use planning before proceeding with any planning decisions.

3. Hire Dedicated Staff with Human Rights Expertise:

(i) Hire dedicated staff with expertise in human rights and land use planning. These staff could be situated in the Legal Services department and another at a senior-level within the Equity Office. The goal would be to ensure that planning staff apply a human rights lens in all land use planning projects.

(ii) Hire diverse staff in the planning department, including persons with relevant lived experience such as Indigenous, Black, persons of colour and other members of priority groups. Work closely with other teams and committees in the City, such as the Urban Indigenous Peoples' Advisory Committee and People with Disabilities Advisory Committee that have expertise on issues related to land use planning. Similarly, committees working on land use planning would benefit from adequate representation from persons with lived experience as members of priority groups.

(iii) Set up a Human Rights Committee to regularly interface with the BC Office of the Human Rights Commission on general human rights work, land use planning and other City operations. The Committee could be part of the Equity Council currently in development under the Equity Office and part of its mandate could be address human rights complaints arising from land use planning.

4. Review Land Use Planning Processes and Bylaws

In addition to the ongoing simplification and accessibility work by the Regulation Redesign team at the City, conduct a review of all planning laws and regulations, including licensing laws, to identify and address any possible discriminatory provisions in such laws, similar to the City of Edmonton's ongoing Zoning Bylaw Renewal Initiative. For instance, special requirements, designs or approval processes that are aimed only at members of priority groups such as group homes and supportive housing, and not other forms of housing in a neighbourhood, should be reconsidered/eliminated.

(i) Conduct an internal assessment of land use planning processes and procedures to identify requirements that may have the potential to discriminate against members of priority groups.

(i) Work with the province to identify discriminatory and restrictive covenants in land use titles and agreements, and invalidate and delete them accordingly, as a form of redress.

(ii) Study the long-term impacts of discriminatory provisions on targeted groups and seek ways to remedy these impacts.

5. Advocate and Conduct Further Studies

Given that this study only scratches the surface of most of the issues in the intersection of human rights and land use planning, it is recommended that future work and advocacy be carried out by the City of Vancouver, particularly in the following areas:

(i) Additional priority groups that might need targeted work such as children, youths, seniors, single parents, recent migrants, etc. The City's Equity Framework and other equity-focused work such as the Accessibility Strategy, work on Anti-racism, etc., set a good foundation to build on and further these studies;

(ii) Alignment between land use planning and Indigenous laws, customs, and traditions and;

(iii) Including human rights laws as part of the University curriculum for planners so that they are abreast with human rights at an early stage of their careers.

Finally, the following three tests may be considered to help planners effectively apply a human rights lens to land use planning[185]:

(i) First, consider whether a particular planning policy has a proper purpose. That is, why a particular planning policy or process is being conducted. For instance, ponder whether the planning is simply to people zone (i.e., regulate the type of people using or accessing a space in a certain area) or it is aimed at planning for the way the land is used, or aimed at the users of such land and whether this conforms with the general policies and objectives of the municipality.

(ii) Secondly, consider the human rights impact of such planning policies and whether the policy has the potential of creating an exclusion, restriction, or preference for persons protected by human rights laws. In which case, such policy may be held to be discriminatory on its face.

(iii) Where such policy appears to be discriminatory by excluding, restricting, or limiting certain groups, then it should be considered whether the discrimination is reasonable and justified in a fair and democratic society.

Where these tests are applied, discrimination will be avoided in land use planning. It is important to acknowledge that applying these tests and assessing for adverse human rights impacts can be a complex task that requires specific skills, knowledge, and experience. As noted in the recommendations above, planners may require assistance with this process from professionals with expertise in human rights. However, planners still have a responsibility to understand their human rights obligations, and should be aware of the significance of human rights in land use planning so that assistance can be sought when needed.

As discussed in this study, where land use planning policies and practices have an adverse impact on persons or groups protected under human rights laws, such policies or practices could be considered to be discriminatory, whether or not there was an intention to discriminate. It is hoped that this study can assist planners to better understand the ways in which human rights interconnects with land use planning, so that discrimination can be avoided. It is also hoped that the findings and recommendations will help the City of Vancouver and other municipalities engaging in land use planning to take the steps necessary to uphold their human rights obligations.

[185] Ceddia (supra) at 20.

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