

A TALE OF TWO HOUSING CRISES: HOW BRITISH COLUMBIA AND ONTARIO ARE INCREASING HOUSING SUPPLY THROUGH NEW LEGISLATION

Housing affordability has been top of mind for many Canadians, and on November 21, 2022, BC's Attorney General and Minister Responsible for Housing, the Honourable Murray Rankin, introduced Bill 43 to enact the *Housing Supply Act*,¹ meant as "an important tool in reversing the housing crisis..."² and Bill 44 to enact the *Building and Strata Statutes Amendment Act, 2022*,³ to "Expand housing options... in this tight housing market"⁴ (together, the "**Housing Bills**"). The Housing Bills come several months after then-incoming Premier David Eby laid out his plan for affordable housing⁵ (the "**Housing Plan**"), and almost one month after Ontario's Minister of Municipal Affairs and Housing introduced Bill 23, enacting the *More Homes Built Faster Act, 2022*⁶ (the "**MHBF Act**") to increase housing

supply in its Province.

This article provides an overview of the Housing Bills and compares them against the Housing Plan and Ontario's *MHBF Act*.

THE HOUSING BILLS

BILL 43 - *HOUSING SUPPLY ACT*

The *Housing Supply Act* is broken down into several main parts but is ultimately centered around the concept of a "housing target," which is established by a "housing target order" (an "**Order**").

THE ORDER

An Order establishes housing targets, which

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include the availability and affordability of housing, and an Order must contain the information set out in sections 2(2)(a) to (e), such as "the housing target or housing targets established," and "performance indicators and timeline by which progress by the specified municipality toward meeting each housing target is to be assessed."⁷

PRECONDITIONS FOR MAKING AN ORDER

Under section 2(1), the minister in charge of administering the enactment (the "**Minister**") can make an Order to establish housing targets, but before doing so, the Minister must consult the municipality targeted by the Order⁸ in the manner set out in section 3(3), which includes providing "a description of the proposed [Order] to the specified municipality" and providing the municipality with an opportunity to provide comments to the Minister.

When making an Order, the Minister must consider the items set out in sections 3(1)(a) to (i), which include "current and previous housing needs reports," "current and previous official community plans or official development plans," "information in relation to the demand for and supply of housing," and any information that may be prescribed by regulation.

HOUSING TARGET PROGRESS REPORT

Under section 4, a municipality targeted by an

Order must prepare a housing target progress report for each reporting period set by the Minister. The content of a housing target progress report must include the information listed in sections 4(2)(a) to (d), and must both receive the report at a meeting open to the public and publish the report as soon as practicable.⁹

The Minister must review each submitted housing target progress report and if:

1. the municipality has not met a target; and
2. has not made satisfactory progress toward meeting the housing target,

the Minister can either, upon consulting with the municipality¹⁰:

3. appoint one or more advisors (an "**Advisor**") in relation to the municipality; or
4. issue a directive (a "**Directive**") to the municipality.¹¹

ADVISORS

The powers and duties of an Advisor are set out in section 8 of the *Housing Supply Act*. Advisors have special inspection powers and are appointed by the Minister to review one or more aspects of the municipality as listed in sections 8(1)(a) to (e) such as the actions taken by the municipality and the municipality's policies, practices and processes with respect to housing

development. The Advisor's goal is to report their activities and findings to the Minister and make recommendations.

Under section 9 of the *Housing Supply Act*, the municipality is obligated to provide the Advisor access, assistance and various information for the purposes of the Advisor's review.

DIRECTIVES

The Minister's second option, where a municipality fails to comply with an Order, is to issue a Directive to the municipality. A Directive can require a municipality to enact or amend a bylaw referred to in section 584(1) of the *Local Government Act*¹² (which include bylaws related to official community plans, zoning, and development permits), or issue or refuse to issue a permit that the municipality may issue.

The Minister may only issue a Directive upon being satisfied that:

1. the benefit of issuance outweighs the benefit of not issuing the Directive;
2. there is no less onerous alternative for the municipality to meet, or make satisfactory progress of a housing target; and
3. such issuance is in the public interest.¹³

Following the Minister issuing the Directive, the municipality must report back to the Minister the actions it has taken to comply with the

Directive.

If a municipality fails to comply with its Directive, under Part 5 [*Order in Council*] of the *Housing Supply Act*, the Lieutenant Governor in Council may, by order in council ("**OIC**"), enact or amend a bylaw referred to in section 584(1) of the *Local Government Act*, or issue or refuse to issue a permit that the municipality may issue. The municipality cannot amend or repeal the bylaw, or amend, cancel or issue a permit, as applicable, for a period of time specified in that OIC.

The Lieutenant Governor in Council, however, similar to the Minister in issuing Directives, can only make such an OIC if it is satisfied that:

1. the benefit of issuance outweighs the benefit of not issuing the OIC;
2. there is no less onerous alternative for the municipality to meet, or make satisfactory progress of a housing target; and
3. issuing the OIC is in the public interest.¹⁴

OTHER REQUIREMENTS

Part 6 [*Information Requirements*] of the *Housing Supply Act* sets out information the Minister may request a municipality to provide in relation to the demand for and supply of housing in the municipality, as well as deadlines for submitting Housing Needs Reports, as set out in the *Local Government Act*, to the minister.

Part 7 [*Publication and Annual Report*] of the *Housing Supply Act* sets publication requirements for Orders, Directives and orders of the Lieutenant Governor in Council, and Part 7 requires the Minister to publish an annual report with respect to the same.

Part 8 [*General*] of the *Housing Supply Act* sets standards of review for the decisions made under the *Housing Supply Act*, provides immunity to advisors, and enables the Lieutenant Governor in Council to enact regulations.

GENERAL THOUGHTS ON THE HOUSING SUPPLY ACT

The *Housing Supply Act* can be largely described as inclusive. At the same time, it is also unlikely to bring any immediate changes to housing supply or municipal housing bylaws, policies or guidelines. If a municipality is not increasing housing supply or affordability in a desirable manner, the Minister must first consult with the municipality before targeting that municipality with an Order. Upon being subject to an Order, the municipality will only be assessed through their housing target progress report, which the municipality must prepare and submit to the Minister within a specified reporting period. Upon contravention of an Order, the Minister must consult the municipality again, following which the Minister may issue a Directive. Given the balancing of considerations in issuing a

Directive, however, the Minister is more likely to appoint an Advisor. The Advisor is then required to review the municipality's policies, plans, and other relevant information and ultimately submit a report to the Minister with recommendations. Since orders by the Lieutenant Governor in Council can only be issued if a municipality fails to comply with a Directive, if a municipality fails to comply with an Advisor's recommendations, the Minister will likely have to first issue a Directive. Non-compliance with a Directive could then result in the Lieutenant Governor in Council issuing an OIC pursuant to section 12 of the *Housing Supply Act* if the balancing of considerations favours such an OIC. These steps likely mean that, despite an ongoing housing crisis, an immediate impact of this new legislation may not be seen. There are also several reporting obligations that will take some time for the relevant parties to meet, and even if a Minister intends to issue an Order targeting a municipality, there will be many opportunities for the municipality to comply.

BILL 44 - BUILDING AND STRATA STATUTES AMENDMENT ACT, 2022

A portion of this legislation is dedicated to amending the process for holding annual general meetings, but the most relevant sections regarding housing options are clauses 16 to 18. These clauses amend sections of the *Strata Property Act*¹⁵ to:

1. prohibit a strata corporation from passing a bylaw that restricts a resident's age, with the exception that a strata corporation may pass a bylaw requiring a resident to be 55 years of age or older subject to certain conditions; and
2. prohibit a strata corporation from restricting the rental of a strata lot, such restrictions including screening tenants and requiring the approval of tenants.

THE HOUSING PLAN

The Housing Plan, which then-incoming Premier David Eby released in September 2022, has six main components:

1. providing unhoused and precariously housed people adequate shelter and support;
2. funding and supporting non-profit entities to purchase and operate more affordable rental housing while preventing international corporations from acquiring existing rental housing;
3. partnering with various groups and municipalities to incentivize the building of affordable housing to BC-residents quickly;
4. implementing a flipping tax to minimize profits made to those who purchase and sell property in quick succession;
5. investigating suspicious real estate transactions and limiting the use of loopholes to avoid taxes; and
6. making more homes available by amending or enacting new legislation.

COMPARING THE HOUSING BILLS AND THE HOUSING PLAN

The last component of the Housing Plan, making more homes available through amending or enacting new legislation, contains multiple commitments:

- allowing more dwelling units by default on a single lot;
- reforming municipal approval processes;
- limiting a strata corporation's ability to enact bylaws that have age requirements for residents and restricting rentals;
- requiring municipalities to meet minimum housing delivery targets, rewarding municipalities that exceed such targets, and intervening where municipalities fail to meet their targets; and
- requiring short-term rental companies to provide local governments with the information necessary for such governments to balance the accommodation needs of residents against the accommodation needs arising out of tourism.

The Housing Bills, if enacted, will address some of the objectives of the Housing Plan: the *Housing Supply Act* will address housing delivery targets, and the *Building and Strata Statutes Amendment Act, 2022* will address strata bylaws. The commitments in the Housing Plan, however, include allowing more dwelling

units by default on a single lot, reforming municipal approval processes, and requiring short-term rental companies to provide information to local governments. Those latter objectives are not included in the Housing Bills, but Premier Eby has stated that they are coming. And while the *Housing Supply Act* does require municipalities to meet minimum housing delivery targets, it does not set out if and “how” municipalities will be rewarded for exceeding their targets. As such, the Housing Bills only address some portions of the Housing Plan.

ONTARIO'S *MAKING HOMES BUILT FASTER ACT, 2022*

If enacted, the *MHBF Act* will amend to a number of statutes. Issues it purports to remedy, while focused on land use, are diverse, ranging from conservation to housing and planning. Notable amendments include the following:

- The minister may limit a municipality's ability to prohibit and regulate the demolition and conversion of residential rental properties.
- Municipalities are limited in their ability to regulate exterior design.
- Ministerial approval is no longer required in a conservation authority's disposition of land where Minister has made grant in respect of such land.
- Activities in certain areas of jurisdiction of a conservation authority are generally prohibited, but prohibitions no longer apply for activities related to development authorized under the *Planning Act* or where certain conditions are met.
- Development charges, which are similar to development cost charges in British Columbia under the *Local Government Act*,¹⁶ are eliminated for certain developments such as non-profit housing and affordable residential units.
- Official plans, which are similar to official community plans in British Columbia under the *Local Government Act*,¹⁷ cannot prohibit certain types of development.
- Municipalities are required to update their zoning bylaws within one year after official plan policies come into effect.
- The minister can directly amend official plans by order instead of being required to first invite proposals from a municipality's council to amend its official plan to resolve a specific issue.
- Municipalities are prohibited from passing bylaws that prohibit building up to three residential units on a single lot, and with respect to those residential units, municipalities cannot pass bylaws that allow more than one parking spot per unit or regulate their minimum floor area.

- A formula has been provided for calculating the community benefits charge on a development—similar to density benefits under the *Local Government Act*¹⁸ and community amenity contributions used by municipalities throughout British Columbia—and the maximum chargeable amount is reduced if the development includes certain types of units such as affordable residential units.
- The amount of parkland to be dedicated or cash in-lieu as a condition of development or subdivision has been lowered, and the amount can be reduced depending on the inclusion of certain types of units such as affordable residential units.
- Public meeting requirements are removed for subdivision approval.
- The ability to consent to land severances (a practice not found in British Columbia) can be delegated.

COMPARING THE HOUSING PLAN TO THE *MHBF ACT*

There are very similarities between the *MHBF Act* and the Housing Plan; namely, both intend to allow up to three dwelling units on the same lot as of right (though the Housing Plan limits this increase to major urban centres), and both intend to allow secondary suites throughout

their respective provinces.

COMPARING THE HOUSING BILLS TO THE *MHBF ACT*

As for the Housing Bills, no similarities exist between them and the *MHBF Act*. The *MHBF Act* is far more comprehensive in reforming housing development rules. At the same time, the *MHBF Act* has drawn significant concerns, particularly around the reduction of development charges,¹⁹ which the Association of Municipalities of Ontario argues "could leave communities short \$5 billion"²⁰ as well as the change in conservation authorities' powers, which some argue is a weakening of their abilities to safeguard conservation land from development. However, its wide ranging amendments mean that the *MHBF Act* is not business-as-usual with respect to housing supply—Ontario has set an immediately actionable path forward for housing development. On the other hand, the Housing Bills do set measurable affordability and availability goals that each municipality targeted by an Order will have to meet.

CONCLUSION

Compared to Ontario, British Columbia's approach is far less aggressive and heavy handed. News articles earlier this year suggested that the Province was considering removing some permitting powers from municipalities,²²

but in our review of the Housing Bills, it is clear that the Province is not yet ready to take that step. The Housing Bills show that the Province is taking a measured approach and is willing to collaborate with municipalities on increasing housing supply in the Province; however some may argue that the Housing Bills also lack the urgency desperately needed in a housing crisis. While Premier Eby has stated that the other commitments in the Housing Plan are coming, their omission in the Housing Bills, of which “the [Housing Supply Act, if passed] is scheduled to be brought into force in mid-2023”²³ suggests that British Columbians may be waiting a bit longer for more housing.

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1. Bill 43, *Housing Supply Act*, 3rd Sess, 42nd Parl, British Columbia, 2022.
2. British Columbia, *Draft Report of Debates of Legislative Assembly (Hansard)*, 42nd Parl, 3rd Sess (21 November 2022) (Hon M Sinclair) [*Hansard*].
3. Bill 44, *Building and Strata Statutes Amendment Act, 2022*, 3rd Sess, 42nd Parl, British Columbia, 2022.
4. *Hansard*, *supra* note 2.
5. “All hands on deck to deliver affordable housing across British Columbia” (28 September 2022), online: *David Eby* <davideby.ca>.
6. Bill 23, *An Act to amend various statutes, to revoke various regulations and to enact the Supporting Growth and Housing in York and Durham Regions Act, 2022*, 1st Sess, 43rd Leg, Ontario, 2022.
7. See *ibid*, cl 2(2).
8. See *Housing Supply Act*, *supra* note 1, cl 3(2).
9. See *ibid*, cls 4(3)-4(4).
10. See *ibid*, cl 7(2).
11. See *ibid*, cl 6(2).
12. RSBC 2015, c 1.
13. See *ibid*, cl 11(2).
14. See *ibid*, cl 12(2).
15. SBC 1998, c 43.
16. *Local Government Act*, *supra* note 12, s 559.
17. See *ibid*, ss 471-478.
18. See *ibid*, s 482.
19. See Don Mitchell, “Hamilton mayor says end of development charges on housing builds could be problematic” *Global News* (21 November 2022), online <<https://www.globalnews.ca>>.
20. Allison Jones, “Ontario housing bill to short municipalities by \$5 billion: AMO” *The Canadian Press* (17 November 2022).
21. See Shawn Jeffords, “Ford’s housing bill limits protection of watersheds, greenspaces, conservation authorities warn” *CBC News* (28 October 2022), online: <<https://www.cbc.ca>>.
22. See Dirk Meissner, “B.C. prepares to remove some housing approval powers from local governments: minister” *The Canadian Press* (21 February 2022).
23. British Columbia, Office of the Premier, *New premier delivers action to expand housing supply within first days* (Victoria: Office of the Premier, 2022).



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