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# A Policy Analysis of National Occupancy Standards with a Focus on Their Impact on Women Who Have Experienced Gender-Based Violence in British Columbia

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## Abstract

For the past three decades, National Occupancy Standards (NOS) have been the default standard used by government and non-governmental housing organizations in Canada to assess housing suitability. However, there is growing concern that the prescriptive nature of these standards limits access to housing for those most in need, including women+ who have experienced gender-based violence and their families (Knowles et al., 2019). In this paper, we draw on Ginsberg and Miller-Cribbs' (2005) framework for policy analysis that explores the feasibility, efficacy, quality, access, and ethics of NOS. This work also draws on a feminist ethics of care framework (Tronto, 1994) that places human relationships at its centre (Walker, 2007) and critically explores the extent to which government policies effectively

care for its citizens (Sevenhuijsen et al., 2003). Together these frameworks help demonstrate the limitations of NOS, and the role they play as a barrier to housing. This has important implications, especially in light of Canada's National Housing Strategy Act that recognizes the right to adequate housing as a "fundamental human right affirmed by international law" (National Housing Strategy Act, 2019). We conclude by outlining four recommendations for future policy, including the need to recognize NOS as guidelines, create new housing suitability policies that prioritize safety, create housing suitability policies with families, and reduce family poverty. This policy analysis provides an important reminder of the need to critically examine policies that shape social work practices and the colonial and neoliberal values that are often embedded in them.

Keywords: National Occupancy Standards, Gender-Based Violence, Housing Policy, Feminist Ethics of Care, Policy Analysis

## Background

As lockdowns swept across Canada in March of 2020, the UN Special Rapporteur on the right to adequate housing, Leilani Farha, urged states to take action. She noted, "housing has become the frontline defence against the coronavirus. Home has rarely been more of a life-or-death situation" (Farha, 2020). As the pandemic has continued to circle the globe it has become increasingly apparent that precarious housing increases people's vulnerability to COVID-19; yet, the burden of precarious housing is not evenly shared. Feminist scholars have noted that neoliberal and colonial policies have long been the cause of housing precarity that disproportionately impact women<sup>4</sup> and Black, Indigenous and People of Colour (BIPOC) communities

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<sup>4</sup> The term women+ is used in this article to recognize that gender-based violence disproportionately impacts people who self-identify as women as well as the full range of under-represented genders including trans and non-binary people.

(Parker & Levitenreid, 2021). For women+ who have experienced gender-based violence the risk of homelessness and housing precarity is especially high after they leave violence. Without safe and secure housing, they also become more vulnerable to poor health and wellbeing, including COVID-19 infection. One of the barriers to housing for this group is National Occupancy Standards (NOS) (Knowles et al., 2019). NOS provide a striking case in point of a policy that has contributed to housing precarity and disproportionately impacted women+ and their dependents.

This policy analysis draws on Ginsberg and Miller-Cribbs' (2005) framework which calls for exploration in six areas:

1. Problem formation and identification
2. Historical perspectives
3. Assessment of values and ethics
4. Description of various elements
5. Assessment of feasibility and discussion of alternatives
6. Evaluation.

This is paired with a feminist ethics of care lens that focuses on the attentiveness (i.e., recognition of a need), responsibility (i.e., identifying responsibility), competence (i.e., to what extent is the need for care met?) and responsiveness (i.e., of the care-receiver to the care) of NOS (Tronto, 1994). Together these frameworks provide an overview of NOS and highlight the extent to which new policies are needed that better meet the needs of women+ who have experienced gender-based violence and their dependents.

This policy analysis also has important ethical implications for social work practices. In this paper, we work to demonstrate the prescriptive nature of NOS. While there are health and safety concerns associated with residential crowding (Dyck & Patterson, 2017; Goodyear et al., 2012), NOS is also embedded with western values of personal space and privacy that need to be critically examined, especially when these values potentially place families at a greater risk of precarious housing and separation. Social

workers and front-line providers often play an important role in navigating policies, and the consequences are especially high for families involved in the child welfare system (Native Women's Association of Canada, 2021; Tiderington et al., 2021). As they navigate the child welfare system, social work practitioners and front-line workers exercise street-level bureaucratic discretion (Tiderington et al., 2021) where they juggle the mandates of the organization they work within as well as local, provincial, and national mandates. There is a general perception that NOS are mandated when in fact they are guidelines. Within the context of the current housing crisis in British Columbia (BC), Canada, we advocate for the creation of more flexible guidelines that recognize the right to housing of women+ and their dependents and facilitates their safety and stability, while also increasing the supply of housing to meets families' needs.

## Problem Formation and Identification

National Occupancy Standards (NOS) are used by the Canadian Mortgage and Housing Corporation (CMHC) to measure housing suitability (Canada Mortgage and Housing Corporation, 2013), which is ultimately a measure of crowding. NOS stipulates that family size and composition should determine the number of bedrooms required by the household. Housing is deemed suitable if it meets the following requirements (Housing Suitability, 2017):

1. No more than two people share a bedroom
2. Lone parents have a separate bedroom
3. Household members age 18 + have a separate bedroom, except those living as a married or common-law couple
4. Household members under 18 years of age, of the same sex, may share a bedroom
5. Household members under 5 years of age, of different sex, may share a bedroom

The NOS is useful as a measure of suitability that CMHC can draw on to assess whether housing stock meets the needs of Canadian households. However, one of the unintended uses of NOS is that they have been adopted as policy by housing providers, and in many cases are a barrier to housing for those in desperate need of affordable housing options. While this policy analysis focuses on the impacts of NOS in BC, Canada, it should be noted that countries around the world, including New Zealand and Australia, have also adopted NOS (Goodyear et al., 2012). In countries where NOS has been adopted, many of the same issues apply (New Zealand Government, 2018; Pat Dudgeon, Helen Milroy, 2014).

The lack of housing affordability in BC is a crisis. In 2018, 14.6 percent of households in BC experienced core housing needs<sup>5</sup>, which was the highest rate among Canadian provinces (CMHC/SCHL, 2020). When female renters with dependants are considered this number jumps up dramatically; according to census data from 2016, 51.3 percent of lone-parent female-led households that rented experienced core housing needs in BC (CMHC/SCHL, 2020).

Women+ and their children, who are impacted by gender-based violence, are especially at risk of experiencing core housing needs. BC Society of Transition Houses (BCSTH) is a non-profit society that represents organizations in BC working to house women who have experienced gender-based violence. In 2018 BCSTH completed a survey of their members. 52% of BCSTH's 114 members responded to the survey and 87% of respondents

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<sup>5</sup> Core housing needs are defined by the CMHC in relationship to affordability, suitability and adequacy (Canada Mortgage and Housing Corporation, 2013). Housing is deemed affordable when no more than 30% of income goes to housing costs, suitable if it meets NOS, and adequate if it is not in need of any major repairs.

identified NOS as a barrier to housing for the women they worked with (Knowles et al., 2019). Through four focus groups held with BCSTH members, it was clarified that women+ who were fleeing violence found it difficult to find housing that was considered suitable according to NOS. This created a backlog in transition home spaces. It also forced many families to turn to market rental housing where they were precariously housed because of the threat of eviction they faced due to crowding and unaffordability (Knowles et al., 2019). Recent research by the Native Women's Association of Canada (Native Women's Association of Canada, 2021) also highlights the vicious cycle that occupancy standards create. Women may not be able to gain custody of their children until they have suitable housing but are not eligible for larger subsidized housing units until they have custody. Based on these findings and BCSTH's work it is clear that there is an urgent need to assess NOS and its alternatives (Knowles et al., 2019).

## Historical Perspectives

As Elizabeth McCandless (McCandless, 2020) documents, NOS were not used by CMHC until 1991, when they became part of the Census and National Housing Survey data collected to measure core housing needs. NOS arrived after a decade of divestment from subsidized housing by CMHC and concerns that subsidized housing clients were over housed (McCandless, 2020, p. 56). In other words, CMHC was concerned that recipients of subsidized housing were living in units that had more rooms than were needed, given the family size and composition. Yet, over the last three decades, there has been raising alarm over the punitive use of NOS to limit access to housing (Miraftab, 2000).

As a measure of suitability, it is often assumed that occupancy standards are based on the link between overcrowding and poor health. Concerns about overcrowding are important to consider, as overcrowding can play a role in the spread of communicable diseases, and limit the spaces available for children to study and play (Goodyear et al., 2012; Patterson & Dyck,

2015). However, the focus on crowding in racialized communities must also be taken into account, especially when overcrowding is used to create policies that disproportionately impact people living in poverty (Harwood & Myers, 2002). This overlap between poverty and race cannot be ignored, especially because the relationship between crowding and poor health is likely confounded by both of these factors (Gray, 2001). Rather, NOS more accurately reflects societal norms that dictate what a “family” should look like, as well as how they should occupy space (Lauster & Tester, 2010). This is reflected in the research that has consistently demonstrated that NOS disproportionately negatively impacts the housing options available to BIPOC communities (Miraftab, 2000; Sherrell, 2011; Native Women’s Association of Canada, 2021).

The research that has documented Canadian refugee families’ struggles to find adequate housing is a strong reminder of how difficult it is to untangle poverty and race from concerns about overcrowding (Carter et al., 2008; Hiebert et al., 2005; Miraftab, 2000; Sherrell, 2011). This research has demonstrated that refugees often find it difficult to secure suitable housing, due in part to family size and composition. The affordability crisis in BC, paired with a lack of 3 and 4-bedroom units, has contributed to long waitlists for subsidized housing, ironically forcing many families to live in smaller units where they experience overcrowding. Women who have experienced gender-based violence face similar waitlists when looking for suitable housing. BCSTH focus group participants reported that a lack of suitable housing often contributed to women returning to the violent situations they had fled (Knowles et al., 2019).

While there is a lack of research that explores NOS as a barrier to housing for women+ who have experienced gender-based violence, BCSTH’s work with transition houses across the province brought this issue to our attention (Knowles et al., 2019). The research is clear that NOS is a barrier to housing for immigrant and refugee families, many of whom identify as part of BIPOC communities (Hiebert et al., 2005; Miraftab, 2000; Sherrell, 2011). Furthermore, BIPOC families are more likely to experience poverty



(FirstCallBC, 2020), as are lone female-led households (Fox & Moyser, 2018). Race, poverty, and gender-based violence all act as risk factors for homelessness and precarious housing among lone-female led households. This does not mean that all lone-female-led households have experienced gender-based violence, or are racialized, or face poverty, but when these factors intersect it increases the risk that NOS will be experienced as a barrier to safe and secure housing.

## Assessment of Values and Ethics

Policy analysis through the lens of feminist ethics of care seeks to explore the extent to which government policies fulfil their responsibility to care for the welfare of citizens (Sevenhuijsen et al., 2003). Feminist approaches recognize the need to incorporate contextual factors into the analysis of a particular problem. Specifically, feminist approaches recognize that gender, race, sexuality, ability and socioeconomic status, among other things, contribute to different levels of access to power and resources. An ethics of care is further shaped by an understanding of morality that places human relationships and the negotiations between people over responsibility for things in need of care at its center (Walker, 2007). Four elements of an ethic of care are identified by Tronto (1994) and drawn on to assess the values and ethics of NOS: attentiveness, responsibility, competence and responsiveness.

**Attentiveness:** Care requires the recognition of a need. Through BCSTH's work with women who have experienced gender-based violence, and the organizations that serve them (Knowles et al., 2019), and NWAC's work with their members (Native Women's Association of Canada, 2021) attention was brought to the way that NOS was being used to limit women's housing options.

**Responsibility:** To take care of something, requires responsibility. CMHC is responsible for the creation of NOS and use it to measure housing suitability and core housing need. Provincial housing providers, including

BC Housing, have incorporated NOS into their policy framework. While BC Housing promotes flexibility in the use of NOS, the lack of alternative guidelines has left a void in the sector. In most cases, social and community housing providers have followed BC Housing's lead and use NOS as a policy either explicitly or implicitly. While CMHC has always maintained that they are not responsible for enforcing NOS, the lack of an alternative measure of suitability has meant that NOS have become the default policy in cases where there is ambiguity about how to measure housing suitability.

**Competence:** Tronto (1994) writes that "intending to provide care, even accepting responsibility for it, but then failing to provide good care, means that in the end the need for care is not met." Women who have experienced gender-based violence continue to be disproportionately impacted by a lack of affordable housing, compounded by NOS that limit their access to subsidized housing.

**Responsiveness:** BCSTH has documented that there continues to be a lack of responsiveness to the need for suitable housing for women who have experienced gender-based violence. This has resulted in many women and their families remaining 'stuck' in safe homes, transition houses and second-stage housing across the province that are intended for temporary stays.

While attention has been brought to the ways that NOS limit housing options for women who have experienced gender-based violence, there continues to be a lack of responsiveness, especially by housing providers who employ NOS as an operational policy.

While a feminist ethics of care framework helps identify where policy changes can be implemented at the provincial level, there is also a wider national conversation concerning the right to housing that needs to be considered. Canada's National Housing Strategy Act (NHS Act) received Royal Assent on July 21, 2019 (The National Right to Housing Network, 2019). The Act takes a human rights approach to housing and recognizes that "housing is essential to the inherent dignity and well-being of the person" and "access to affordable housing contributes to achieving beneficial social, economic,

health and environmental outcomes” (National Housing Strategy Act, 2019). The NHS Act is also aligned with the International Covenant on Economic, Social and Cultural Rights, to which Canada is party and has International obligations (National Housing Strategy Act, 2019). In June of 2021 the National Housing Council, which has been charged with implementing the National Housing Strategy released their priorities, which include the “progressive realization of the right to adequate housing” (National Housing Council, 2021). Given this progressive policy framework, there is a need to consider the extent to which NOS impedes the right to housing being realized. Operational policies that strictly adhere to the NOS serve to exclude families from housing. It must be made clear that the NOS should not be used as an instrument to deny housing to vulnerable communities and undermine the newly recognized federal right to housing.

The right to housing as outlined in the National Housing Strategy also ties into the Canadian Association of Social Workers (CASW) Code of Ethics (Canadian Association of Social Workers (CASW), 2005). Just as the NHS recognizes the importance of housing to the inherent dignity and well-being of a person, the CASW Code of Ethics' first value is respect for the inherent dignity and worth of persons. This value also calls for social workers to uphold the human rights expressed in the *Canadian Charter of Rights and Freedoms* and the United Nations *Declaration of Human Rights* (Canadian Association of Social Workers (CASW), 2005, p. 4). The second value outlined by CASW is the pursuit of social justice, which states that “social workers uphold the rights of people to have access to resources to meet basic human needs”(Canadian Association of Social Workers (CASW), 2005, p. 5). Again, this directly aligns with the NHS call to action. NOS provide a clear example of a policy that has perpetuated injustice and disproportionately affected the vulnerable and disadvantaged. It is within the CASW Code of Ethics that social workers advocate for equal treatment for the communities they serve and challenge the injustice that is caused by NOS.

## Description of NOS

As has been described in this analysis thus far, NOS was first conceptualized by CMHC to assess the suitability of Canada's housing stock, given the size and composition of Canadian families. What has become clear through the work of BCSTH and other organizations working with marginalized Canadians (Sherrell, 2011a), is that NOS have become a barrier to housing for those most in need of care.

Within a province experiencing a housing affordability crisis, BC Housing is the primary provider of subsidized housing. BC Housing uses NOS to assess the suitability of housing for families on its waitlists ("Subsidized Housing," 2021). BCSTH's partner organizations have also reported that when in doubt landlords and community housing providers often follow BC Housing's lead and defer to NOS, even though occupancy standards are meant as guidelines for housing suitability, not as enforceable policy. This can have tragic consequences for women who have experienced gender-based violence and their families and may result in women returning to the abusive situation they fled (Knowles et al., 2019). For Indigenous families across Canada, it is also part of a system that has disproportionately placed Indigenous children in protective services and prolongs family separation (Native Women's Association of Canada, 2021)

Unfortunately, BC's Residential Tenancy Act does little to protect lone-parent families from discrimination. The BC Human Rights Code recognizes family status and should technically protect families from being discriminated against based on their size and composition (The British Columbia Law Institute, 2012), however, a report that explored discrimination cases associated with family status in BC specifically identified *tenancy discrimination linked to young children* as a key theme in B.C. cases (The British Columbia Law Institute, 2012). While Vancouver bi-laws stipulate the minimum amount of space required per occupant (50 square/feet) (City of Vancouver, 2014), these rules apply primarily to single room accommodations and do little to help families secure suitable housing. The lack of protections

for families, paired with BC's affordability crisis is at the crux of the problem of using NOS to determine housing suitability for women and their children. As McCandless (2020) writes:

“If residential occupancy limits are in place to limit internal density for public health and safety (as in the case of governmental standards) or maintenance costs, wear and tear, etc. (for private housing providers), then only the number of occupants should matter not the composition of the household.”

## Assessment of Feasibility and Discussion of Alternatives

When considering the right to housing and its implementation within the National Housing Strategy, it is important to carefully consider what the implications of NOS are to women+ and their children. It is clear that NOS, when used by housing providers to assess suitability, is a barrier to housing for women+ and their families who have experienced gender-based violence. Logically, this should lead to alternative measures of housing suitability. One alternative to NOS that has already been identified is placing limits on the number of occupants per room, rather than focusing on the composition (i.e., age and gender) of occupants. For example, occupancy limits of 2 people/room would allow a female-led lone-parent family with three children to occupy a 2-bedroom unit. This situation is not without precedence. In 2003, the *Ontario Human Rights Tribunal* ruled in favour of a mother of three renting a two-bedroom apartment in the case, *Cunanan v. Boolean Developments* (McCandless, 2020). In the ruling, it was noted that:

“The [Ontario Human Rights Code] does not permit landlords to impose their vision of a “normal” family to deny equal access to accommodations to single parents solely because of their family status.” (McCandless, 2020, p. 116)

The two-person per room standard falls within UN recommendations that would classify dwellings with a density of 3 or more persons per room as overcrowded under any circumstances (United Nations, 2008, p. 301).

A second approach that has been taken is to identify the space (e.g., 10 square meters or ~100 square feet) required per person. While there is a patchwork of different by-laws and standards that are used to regulate crowding across the United States, the city of Santa Ana's history with crowding provides an interesting case in point. In 1991 Santa Ana implemented a new ordinance that required 150 square feet of space for the first two people, and 100 square feet of space for each additional person (Harwood & Myers, 2002). This ordinance would effectively limit the occupancy of a 1-bedroom apartment to 5 people. The City of Santa Ana was taken to court by the Briseño family, who would have been evicted under the new policy from their one-bedroom apartment. While the City won their case in the Superior Courts, the California Court of Appeals reversed the judgement stating that the ordinance would "criminalize a level of occupancy density that the state has determined as safe" (Harwood & Myers, 2002).

Both the Santa Ana and Ontario cases are interesting because they provide examples of the disparity between the lived reality of families, and housing suitability standards. Both examples also provide insights into the difficulty in untangling issues around affordability and suitability. In the Ontario case, it is easy to make the logical jump between choosing a 2-bedroom unit as a family of four, over a 3-bedroom unit, because it is more affordable, however, availability likely also plays into these types of decisions. Provincial data from BC consistently shows that there is a limited number of rental units with more than three bedrooms (CMHC-SCHL, 2017). Only 2.6% of private rental apartments in BC had more than 3-bedrooms, according to data from October of 2020 (CMHC-SCHL, 2017). Affordability also likely played a role in the Briseño family's choice to live in a 1-bedroom unit, rather than more "suitable" housing. In proposing that housing suitability standards should be relaxed it must be acknowledged that affordability is often at the root of families choosing the safety and stability of secure housing over concerns about housing suitability.

The link between housing affordability and suitability points to a larger issue at play that cannot be addressed by simply changing policies

around occupancy. Creating more flexible occupancy standards will help open more housing options for women+ who have experienced gender-based violence, however often the underlying issue limiting women's housing options is poverty. According to census data from 2018, 1 out of every 5 children in BC lives in poverty. Poverty is often also a cause of family separation. As Dr. Mary Ellen Trupl-Lafond has testified, "There is nothing that is more significantly associated with the removal of children from their families – than poverty" (FirstCallBC, 2020, p. 5). Furthermore, poverty and family separation disproportionately impacts Indigenous families (Native Women's Association of Canada, 2021).

Thankfully, there are proven solutions to help families living in poverty. The BC Child and Youth Advocacy Coalition, FirstCall, set out twenty-three recommendations in their 2020 *Child Poverty Report Card* (FirstCallBC, 2020). The recommendations include increasing the minimum wage, child tax credits for low and middle-income families, and a significant increase in income and disability assistance (FirstCallBC, 2020). These align with policies implemented in Britain more than a two-decades ago that helped half child poverty rates by 2010 (Waldfoegel, 2010). There is also a need to target policies that enhance BIPOC outcomes. This need is reflected by the much higher child poverty rates found among British Columbian's that are also visible minorities. Drawing on Statistics Canada data from the 2016 census, FirstCall reported that more than half of rural Indigenous children (ages 0-17) are living in poverty (FirstCallBC, 2020). Furthermore, child poverty rates among Arab, Korean and West Asian children are double to triple that of children that are not a visible minority (FirstCallBC, 2020). This again points to the intersection between race and poverty that needs to be taken into account when applying NOS.

## Evaluation

At the heart of this policy analysis, is the question: what good is gained by the use of NOS? While crowding has often been identified as a public health

and safety concern, there is little evidence to support restrictions to housing based on family composition. Within the context of BC's affordability crisis, women who have experienced gender-based violence are disproportionately negatively impacted by NOS. There is substantive academic and legal evidence that NOS has acted as a barrier to housing. Federal, provincial and municipal governments should limit their use of NOS to measure housing suitability. As such, this policy analysis has identified four overarching recommendations:

1. **Recognize NOS as guidelines:** CMHC needs to clearly state that NOS are guidelines for housing suitability and not legally mandated. There also needs to be stakeholder engagement that helps identify alternatives to NOS. Without an alternative, NOS will continue to be the default policy that housing providers fall back on when measuring suitability. An alternative to NOS needs to be identified that takes into account the diverse experiences of women+ and BIPOC communities. This information needs to be communicated to both governmental and non-governmental housing organizations.
2. **Prioritize Safety:** The safety and security of women who have experienced gender-based violence should be prioritized over family size or composition. Given the affordability crisis and long wait times for larger subsidized housing units, it may be necessary to find short-term solutions that include ensuring that families have secure housing. This also aligns with Canada's National Housing Strategy Act and the right to adequate housing (National Housing Strategy Act, 2019).
3. **Create Housing Policies for Families:** There is a need to create guidelines for suitable housing that recognize the diversity found within Canadian families (Rachelson et al., 2018). Current



guidelines penalize non-nuclear families and are often the grounds for discrimination, rather than acting as protection against it.

4. **Reduce Family Poverty:** The upstream cause of a limited supply of suitable housing is linked to a housing affordability crisis that has contributed to high levels of child poverty. Social assistance rates fall well below the average housing costs in BC. BCSTH has documented that this is a problem across the province, not just in urban centres (Knowles et al., 2019).

Each of these recommendations has on-the-ground implications for social work practitioners. In child protection cases, social workers and front-line providers informed by social work practices play an important role as gatekeepers to subsidized housing. In their role as gatekeepers, they exercise a large amount of discretion when deciding how to implement rules and regulations (Tiderington et al., 2021). Unfortunately, there is evidence that this discretion is not always in the favour of BIPOC communities (Miraftab, 2000; Native Women's Association of Canada, 2021; Sherrell, 2011). This is a clear example of the ways that gender and race intersect and shape policy implementation. Given the current policy environment, the odds are against women who have experienced gender-based violence finding suitable housing, especially if they identify as a BIPOC. Through recognizing the ways that NOS limit women's housing options and working with families to identify their housing priorities there is an opportunity to secure the right to housing for women and children across the province of British Columbia and Canada.

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