

HRT0 File No: _____

ONTARIO

Human Rights Tribunal

BETWEEN:

MOHAMED YUSSUF, ET AL.

Applicants

- and -

**TIMBERCREEK ASSET MANAGEMENT, MUSTANG EQUITIES INC., TC CORE LP,
TC CORE GP and THE CITY OF OTTAWA**

Respondents

SCHEDULE A

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I. OVERVIEW

1. This Application engages human rights of the highest order. The Applicants ask the Tribunal to determine whether a landlord has the right to displace a large group of residents of a low-income, family-oriented, racialized and immigrant community in order to create a predominantly affluent, adult-oriented, white and non-immigrant community in its stead.
2. Landlords do not have this right in Ontario. The mass, forced displacement of an entire community of immigrants, people of colour, families, and people receiving public assistance amounts to systemic discrimination and violates sections 2 and 11 of the *Human Rights Code of Ontario*, RSO 1990, c.H19.
3. The Applicants are a group of former tenants evicted between May and November 2018 by the Respondent Timbercreek Asset Management and its affiliated companies. The Applicants were evicted in a second phase of mass evictions of residents of a residential complex called Heron Gate Village, which is owned by Timbercreek.
4. All 14 of the Applicants are people of colour. 13 of the Applicants are of Somali origin or decent, and one of the Applicants is ethnically Arab. Many of the Applicants received some form of public assistance at the material times. All of the Applicants cohabit with their families of varying sizes.
5. Approximately 90 percent Heron Gate residents evicted in 2018 were people of colour. People of colour comprise approximately 70 percent of residents in the wider neighbourhood.
6. The Applicants and their neighbours were evicted so that Timbercreek could redevelop Heron Gate Village. Timbercreek's vision for the new development was to "align" it with a neighbourhood on its northern border called Alta Vista. Timbercreek's objective was "to bring Herongate in line with what's north" in order to create a neighbourhood that would be attractive to wealthier residents in Alta

Vista and entice them to sell their homes and move southward to rent upscale housing in Heron Gate Village.

7. Timbercreek's objective is thus to engineer a population transfer from Alta Vista to Herongate. Its redevelopment model can be characterized as planned or 'hyper-gentrification' – that is, a process of mass and accelerated gentrification driven by a large corporate landlord financed by capital raised on capital markets and the sale of financial instruments to investors.
8. Alta Vista is composed primarily of people who do not identify as visible minorities and are therefore white or 'white passing'. According to census data, approximately 80 percent of Alta Vista self-identify as white. Bringing Alta Vista into alignment with Herongate therefore necessitates the displacing of predominantly poorer, racialized residents, many of whom rely on social assistance and have relatively larger families, in order to make room for more affluent, white residents, many of whom are retirees and do not have children at home. Bringing Herongate into 'alignment' with Alta Vista means making Herongate white, affluent, and adult-oriented.
9. Timbercreek's development plan for Herongate is consistent with a broader model of real estate development in Ontario that disproportionately affects people of colour, immigrants, people receiving public assistance, and families. This development model involves identifying real estate that is 'undervalued', displacing the existing 'low quality' occupants, renovating or building higher-end rental housing or condos, and then marketing them to 'higher quality' tenants. The replacement tenants are disproportionately white and non-immigrant, with smaller or no families, and not receiving public assistance.
10. Timbercreek's redevelopment plan for Heron Gate violates international human rights law. Under international law, ratified by Canada and binding on all levels of government, displacing existing residents, particularly those who are low-income and members of groups experiencing discrimination, for the purposes of

redevelopment, is only permitted if existing residents are fully consulted about development plans, and if those plans avoid permanent displacement of residents.

11. The Human Rights Code must be interpreted in a manner that avoids, where possible, bringing states into noncompliance with their obligations under international law. Failure to comply with these obligations has an adverse impact on groups guaranteed equal treatment with respect to the occupancy of accommodation under *Ontario's Human Rights Code*. The Applicants submit that sections 2 and 11 of the Code should be interpreted consistently with international human rights obligations so as to prohibit development-driven displacement that fails to accommodate the housing needs of existing residents who are disproportionately members of Code-protected groups.
12. The City of Ottawa also has obligations under international human rights law and the Code to ensure that developments do not displace members of marginalized and disadvantaged groups from their communities without accommodating their needs. The City of Ottawa has failed in this obligation. It has failed to ensure that the Applicants' housing needs are accommodated and incorporated into Timbercreek's development proposals and that the displacement of the Applicants and their neighbours is only temporary.
13. Timbercreek's vision for Herongate is discriminatory, and the City of Ottawa has been complicit in that discrimination. Timbercreek and the City of Ottawa have therefore infringed the Applicants' right to be free from discrimination with respect to housing under the Code.
14. For these reasons, the Applicants petition the Tribunal for relief.

II. PARTIES

15. The Applicants are all residents of Ottawa, Ontario. All of them were tenants of Timbercreek until they were evicted between May and November 2018.
16. Most of the Applicants are of Somali origin. The Somali Applicants are Mohamed Yussuf, Hussein Geire, Abdullahi Sadiq, Saido Hersi, Mohamed Faqi, Adar Haji,

Abdullahi Ali, Saido Gashan, Rukia Ali, Bile Ali, Abyan Ali, Ladan Ali, and Mustafa Ali.

17. The Applicant Maha Jabur is ethnically Arab.

18. The Respondent Timbercreek Asset Management is a real estate investment and asset management company with over \$9 billion in global assets. It owns over 18,000 Canadian apartment suites. Timbercreek purchased the rental properties formerly inhabited by the Applicants over the course of 2012 and 2013 from Transglobe Real Estate Investment Trust (REIT).

19. The Respondents Mustang Equities Inc., TC Core LP, and TC Core GP are all affiliated with Timbercreek and were involved in the redevelopment of Heron Gate Village. The corporate respondents shall be referred to collectively as “Timbercreek”.

20. The Respondent the City of Ottawa is a municipal corporation in Ontario.

III. FACTS

A) Background: Origins and Establishment of Herongate Community and Heron Gate Village and Emergence of an Ethnic Enclave

i) History of Heron Gate Village

21. Much of the residential complex now known as Heron Gate (two words) Village was initially constructed in the neighbourhood known as ‘Herongate’ (one word) in the 1960s. Additional buildings were added in the 1980s. The Herongate neighbourhood as described in this Application corresponds to the StatsCan census tract ID 5050007.02. Today, Heron Gate Village comprises approximately 92 percent of the residential area of the Herongate neighbourhood and includes an estimated 95 percent of its residential units.

22. In 2007, Heron Gate Village was purchased from the landlord at that time, Minto Properties Inc., by ‘Transglobe’, a large corporate landlord formed in 1994. Long

term residents of Heron Gate report that Heron Gate Village was well maintained under Minto's stewardship. During Transglobe's tenure as landlord, routine and basic maintenance was systematically neglected such that Heron Gate Village was allowed to deteriorate to a substandard condition before it was sold in two tranches to Timbercreek in 2012 and 2013. Transglobe's systematic neglect was an integral part of a business strategy called "squeezing," whereby a landlord reduces services and allows properties to deteriorate in order to increase profits. Neither Transglobe nor Minto are parties to this Application.

23. Squeezing is a strategy often utilized by large corporate landlords to increase profits in the short term and expel lower income tenants over the long term. Once the landlord's properties attain the requisite level of dilapidation, their substandard condition is used to justify redevelopment into higher-end rentals or condos. This development strategy is known as 'repositioning' and 'add-value'. In this way, squeezing is a prelude to repositioning, which itself is embedded in an overarching strategy of hyper-gentrification, whereby the landlord jump starts an accelerated process of gentrification that would otherwise happen only incrementally.

24. The fact that Transglobe engaged in a 'squeezing' strategy is illustrated by the City of Ottawa's records of investigations and orders from its Property Standards By-Law department. Ottawa's By-Law, Property Standards branch is responsible for enforcement of Ottawa's rental housing standards. In 2006, while Minto was still the landlord, By-Law officers attended the complex on only 10 occasions. In 2009, after Transglobe had been landlord for only two years, By-Law officers attended on 150 occasions.

25. Timbercreek assumed full ownership of Heron Gate in 2013.

ii) *History of the Social and Ethnic Composition of the Herongate Community*

26. Beginning in the early 1990s and continuing into the 2000s, Heron Gate Village attracted large numbers of new migrants and their families, particularly Somali immigrants, who by the mid-1990s were fleeing civil war in Somalia. Many

immigrants of Arab ethnicity also moved to Herongate. Over the course of several decades, Herongate was transformed into a predominantly migrant community. Initially attracted by affordable rents, migrants later sought to live in Herongate in order to integrate the increasingly tight knit migrant and ethnic community that was taking root. They sought to live in close proximity to those with whom they shared certain personal characteristics such as ethnicity, culture, language, place of origin, and religion. Herongate was a community that was welcoming and familiar to new Canadians, and so the proportion of immigrants living there grew steadily over time. Currently, a majority of Herongate residents are first- or second-generation immigrants. A majority of Herongate residents are people of colour.

27. As recent immigrants, many of the residents also relied on various forms of public assistance.

28. By 2016, Herongate was composed of 70 percent visible minorities and 52.3 percent immigrants, according to Statistics Canada census data. 27.6 percent of residents were living in unsuitable housing according to StatsCan metrics, and 45.5 percent of residents lived in inadequate conditions based on the Canada Mortgage and Housing Corporation's (CMHC) Core Housing Need metric. Almost half of residents, or 49.1 percent, lived in households with a total income under \$40,000.00, while only 5.2 percent lived in households with total income of \$100,000.00 or greater. Median employment income in Herongate in 2015 was \$19,243.00. 93.3 percent of the Herongate residents were renters. 28.2 percent of Herongate households receive public assistance of various forms.

29. Herongate is thus one of the least affluent communities in Ottawa with the second-highest proportion of low-income persons in the Ottawa-Gatineau region. 48.1 percent of households have incomes below the after-tax low-income measure (as of 2015).

30. The demographic composition of those evicted largely mirrors the overall composition of the Herongate neighbourhood. 93 percent of residents evicted in the 2018 round of evictions are people of colour with an above average household

size of 5.4 persons per unit, according to statistics gathered by the Herongate Tenant Coalition. 49 percent of the evicted residents were of Somali origin or decent, and a significant proportion of the remainder were ethnically Arab. A majority of those evicted were Muslim.

iii) *Herongate is an 'Ethnic Enclave'*

31. The high concentration of immigrants and residents from a select few ethnic groups resulted, over time, in the genesis of an 'ethnic enclave'. An ethnic enclave is a term coined by the social sciences to describe the spatial concentration of a group of people that share a common heritage, such as culture, language, ethnicity and custom. In addition, an ethnic enclave implies the spatial concentration of the group's cultural institutions and businesses. It is not merely the high concentration of people from specific ethnic groups, but the resulting emergence of cultural institutions, social relationships, and ethnic businesses that cater to the specific needs of the community or communities that distinguishes an ethnic enclave from a community that merely has a high concentration of residents from one or a small subset of ethnicities.

32. Ethnic enclaves are formed voluntarily by residents and are therefore distinct from 'ghettos', which form primarily because of extreme social exclusion practiced by mainstream society. In Canadian cities, the formation of ethnic enclaves is primarily attributable to pull-factors coming from the ethnic communities themselves rather than to push or exclusionary factors emanating from the host society. Ethnic enclaves in Canadian cities tend to be formed as a result of a strategic or positive move among ethnic groups to promote their cultural goals and group identity.

33. For marginalized, low-income and minority ethno-racial groups, these enclaves are also a response to rental and housing markets that are increasingly unaffordable. Enclaves tend to form in areas of the city that are considered less desirable, with lower rents or housing costs. For lower income minority households and recent immigrants to Canada, enclaves offer the opportunity to access informal services

in one's own language – informal child care providers or hair stylists, advice and connections for finding work, assistance with managing financial and social services, car repair, schools in which children are less isolated, etc. Hence, enclaves respond to discrimination, poverty and social exclusion that are linked to the needs of code-protected groups.

34. Given the multicultural character of Herongate's social composition, it is more appropriately described as an enclave for ethno-racial minorities (given the high concentration of racialized people), an ethnic enclave of pluralism, or a mixed-minority neighbourhood. These variations of the ethnic enclave exhibit the same qualities as uni-cultural ethnic enclaves but have a multi-cultural dimension.

35. Ethnic enclaves play a key role in the socio-economic advancement of their members as well as in their integration into Canadian society. They offer their members, including the Applicants, substantial socio-economic and cultural dividends that specifically compensate for discrimination experienced as a result of being a member of a protected group. As noted by urban geographers Dr. Joseph Mensah and Christopher Williams:

“Despite the negative perceptions of minority enclaves in the minds of some Canadians, it would be erroneous to think that there is nothing good about these places. Among other things, spatial concentration allows ethno-racial minorities to maintain their cultural values and practices, strengthen their social networks and ultimately, enhance their intergroup social cohesion.”¹

36. Social science studies have shown that such clusters allow minorities to attain the requisite critical mass of population to support their ethnic-based economic enterprises and sociocultural institutions. That is, the benefits afforded to members of ethnic enclaves are only possible where they live within close proximity to one another, and after they have achieved a critical mass of population. More often than not, the social networks engendered by these enclaves give ethnic-owned businesses a competitive edge over other businesses operating in these

¹ Mensah, Joseph and Williams, Christopher (2017). Boomerang Ethics: How Racism Affects Us All (Halifax: Fernood) at p.62.

geographic spaces. This is all the more significant, given the acute dearth of economic opportunities available to ethno-racial minorities in light of growing xenophobia and Islamaphobia in Canada. The modest competitive advantages afforded to ethnic businesses are critical for their success given the lack of access to capital. Enclaves also provide a level of defense or “cushion” against racial discrimination emanating from mainstream society. That is, they act as a bulwark against discrimination in Canadian society, affording their members greater security both literally and in a socio-economic and cultural sense.

iv) Benefits to the Applicants of Living in Herongate

37. The Applicants’ experience of the benefits of living in an ethnic enclave is consistent with the broader social science research.
38. The Applicant Mohamed Yussuf and his family were among the first Somalis to move to Herongate in 1991. They lived in Herongate until they were evicted in 2018. Yussuf reports that successive phases of Somali migrants fleeing civil war were attracted to Herongate because they would find support and would be able to integrate a community with which they shared a common language and culture.
39. Yussuf reports that he has helped newcomers to Herongate find family doctors, open bank accounts, and familiarize them with the activities of daily living in Canada, such as buying food from grocery stores. He has also assisted with reading and translating letters from English to Somali or Arabic and with babysitting children free of charge when there was an urgent need. Yussuf and his family regularly participated in cultural and religious activities with neighbours such as celebrating holidays together.
40. The Applicant Hussein Ahmed Geire moved to Herongate precisely to integrate the growing Somali community. Geire had lived in Herongate in various rental units from 1994 until his eviction in 2018.
41. The Applicant Abdullahi Ali and his family moved to Heron Gate in 1999. He is a practicing Muslim and was initially drawn to Heron Gate because of affordability

concerns and proximity to a mosque. Ali reports that he and his family regularly participated in cultural activities together with his neighbours, including cultural and religious activities.

42. Ali actively assisted other new migrants, often others of Somali origin, integrate into Canadian society by introducing them to public transit, assisting with interpretation and translation, both linguistic and cultural, and by assisting others in accessing social services and financial assistance. Ali reports that members of the community take care of one another, for example, by offering tutoring and childcare services tailored to their community's specific needs and that help them preserve culture and language.

43. The Applicant Adar Haji moved to the Herongate community in 2004, when she was still in school. Haji reports that because her siblings were able to attend school nearby, they were not subject to discriminatory bullying as she would have anticipated had their school not been located in such a diverse neighbourhood. Because Haji's high school had a critical mass of Muslim students, it was able to offer Friday prayers. During the month of Ramadan, the local mosque was able to organize regular evening meals to break the fast, prepared by the many volunteers who reside in Herongate.

44. Due to the strong social relationships that formed in Herongate, residents, including the Applicants, could expect their neighbours to come to their aid in times of crisis or hardship. When a family member passed away, for example, residents of Herongate could expect their neighbours to assist in the preparation of food for the funeral and help with funeral arrangements.

45. Members of Herongate's Arab community also benefited from living in an ethnic enclave. The Applicant Maha Jabur is ethnically Arab. She was born in Iraq and migrated to Canada with her children in 2010. She moved to Heron Gate in 2011. Because she lived in close proximity to other Arabic-speakers, she reports having developed a sense of belonging that improved her personal sense of well-being. In particular, she lived close to a Syrian family whom she had known prior to

migrating to Canada and which also lived in Herongate. They ran errands together, cared for each other's children, and lent each other the use of their vehicles. Because many Somalis are also Arabic speaking, Jabur has been able to establish close social relationships with many of her Somali neighbours as well.

iv) Cultural Institutions and Businesses Emerge in Herongate

46. Due to the concentration of Somalis and, to a lesser extent, Arabs as well as a handful of other ethnic minorities, many residents of Herongate started informal businesses that catered to their communities' specific needs. These businesses included childcare services, ethnic hair salons, housekeeping services, and specialized clothing boutiques.

47. Formal ethnic businesses also formed in Herongate and the surrounding area. There is a halal grocer and an Arab restaurant in a commercial plaza located directly east of the Herongate residential area. There was also a remittance service that permitted residents to send money to family in Somalia.

48. Living in Herongate also facilitated the raising of capital for micro-financing businesses and other purposes. In Herongate, many Somali women participated in Hagbads, which permit participants to save and pool resources to fund each others' business ventures or support each other financially in times of need. Because Hagbads rely on personal connection and trust, participants of a given Hagbad must live close to one another.

49. In addition to ethnic businesses, cultural institutions and services flourished in Herongate. Somali language classes were organized for children in the neighbourhood. The Somali Centre for Family Services (SCFS) was established within walking distance to Herongate, and eventually a heritage centre was established at the SCFS that contained books and other resources in Somali.

50. Because of the concentration of Muslims, Herongate was also able to support an active mosque that was within walking distance. Following the 2018 evictions,

many residents, including many of the Applicants, were not able to relocate to neighbourhoods with mosques.

B) Herongate as an Attractive Location for Property Development in Ottawa

51. In relation to other parts of Ottawa, Herongate is auspiciously situated. It lies approximately 5 km from Centretown, or a 15-minute drive, yet average property values and rents are substantially inferior to comparably situated areas of Ottawa. Herongate is, in other words, what real estate analysts would describe as an “undervalued” housing market with potential for high returns on investment.

i) *Timbercreek’s Business Model*

52. As Timbercreek has stated publicly, it is a long-term player that conceives development plans spanning 10 to 15 years or longer. Its business model involves identifying real estate that is undervalued, often real estate that has been mismanaged by prior landlords. Timbercreek President Ugo Bizzarri has stated that Timbercreek tries to find “the local market that is getting gentrified and making an investment to create core”, which can propel the gentrification process forward in the surrounding areas.

53. Timbercreek generates returns for investors through its “value add repositioning” program, which aims to “increase operating revenues with minimal capital investment.” In addition to finding operational efficiencies, their business strategy includes “improving the quality of tenant” using “stronger disciplinary measures for problem tenants, including evictions.” [Underlining added]

54. Timbercreek's senior managing director Ugo Bizarri has stated that the company looks for “buildings in good locations that need a little TLC,” and has expressed how Timbercreek seeks to make investments in “local markets getting gentrified.” The company's intention is to capitalize on these pressures to push out existing residents and replace them with higher-income tenants. Bizarri calls their process “putting a building through a carwash.” The business model is based on plans to

displace existing residents. VP of Debt Investments Patrick Smith (in referencing a different community) put it this way: "the business plan there is to roll the tenants."

ii) *Timbercreek's Discriminatory Vision for Heron Gate Village*

55. Timbercreek's plans for Herongate are consistent with its overall business model. It plans to replace the existing 'lower' quality tenants with 'higher' quality tenants. It intends to put Herongate through a 'car wash' and to 'roll' the current residents, in order to replace them with more affluent tenants from Alta Vista.

56. Timbercreek's plan was revealed in several public statements made in 2016 and 2017. In September 2016, Timbercreek's Senior VP Development, Greg Rogers, revealed that the plan was to refashion Heron Gate Village to cater to Alta Vista homeowners. Rogers speculated that Alta Vista residents would eventually want to sell their homes in order to access additional equity for retirement, transitioning into the luxury rental market in the process. At a subsequent meeting on February 7th, 2017, Rogers revealed that one of the names being considered for the redeveloped Heron Gate Village at that time was "Vistas South". The plan was essentially to expand the borders of Alta Vista to absorb Herongate.

57. As explained by Rogers in September 2016 and during subsequent public meetings and interviews, Timbercreek planned to "build an alignment" between Alta Vista and the redeveloped Heron Gate Village. The redeveloped Heron Gate would offer "resort style" amenities. It would also be a 'safer' community. In response to concerns about crime and loitering, Rogers stated that the rents will reflect the "premium nature of the community" and that the redevelopment will "not meet any criteria for affordability." According to Rogers' reasoning, 'criminals' would be priced out of the new Heron Gate.

58. Timbercreek's plan is thus to gentrify the Herongate neighbourhood on a mass scale and at an accelerated pace. Timbercreek plans to jump start a process of gentrification that will ultimately increase its property values, rents, and profits. By redeveloping an entire complex over a concentrated period, Timbercreek will

accelerate a gentrification process that would otherwise occur only piecemeal and at a slow pace. This accelerated form of gentrification is referred to as hyper-gentrification in this Application.

59. Timbercreek is aware of its ability to jump start gentrification. During the meeting of September 2016, Rogers boasted that the Heron Gate redevelopment would “seed change” throughout the area, dictating what happens to other sections of the 14.6-hectare property. He fully expected that, as a result, “Everyone’s property values” would go up.

60. According to Timbercreek, the displacement of current residents will have the ancillary benefit of crime reduction. Gentrification will improve Herongate because criminals won’t be able to afford to live there. It will have a pleasant “coffee shop” feel, according to Timbercreek’s express vision.

iii) The Ethno-Racial Demographic Implications of ‘Aligning’ Alta Vista and Herongate

61. Alta Vista is demographically distinct from Herongate (see Table 1 below comparing census data between Ottawa, Herongate, and Alta Vista). As of 2016, residents of Alta Vista were predominantly white and substantially more affluent than residents of Herongate. According to the latest census data, white people make up 79.3 percent of Alta Vista residents. Only 23.8 percent of Alta Vista residents are immigrants. 53.3 percent of households in Alta Vista have a total income of \$100,000.00 or greater, and only 14.2 percent of households have an income of \$40,000.00 or less. Only 3.1 percent of households live in unsuitable housing, and only 22.5 percent of residents live in rental housing. In 2016, the average owner-estimated value of dwellings in Alta Vista was \$682,781.00.

TABLE 1: Data from Statistics Canada, Census profile, Census 2016

	Ottawa	Alta Vista	Heron Gate
Population, 2016	1323783	10058	4681
Percentage of households with total income under \$40,000	21.2	14.2	49.1

Percentage of households with total income \$100,000 and over	39.5	53.3	5.2
Percentage immigrants	19.7	23.8	52.3
Percentage visible minority	21.6	20.7	70.0
Percentage South Asian	3.1	3.9	11.8
Percentage Black	6.0	4.5	30.9
Percentage Arab	3.8	5.3	15.2
Percentage of households living in unsuitable housing	4.1	3.1	27.6
Percentage of dwellings with major repairs needed	5.6	6.4	10.2
Percentage renters	33.4	22.5	93.3
Percentage of tenant households spending 30% or more of income on shelter costs	40.6	50.4	51.7

62. “Aligning” Alta Vista with Herongate therefore implies a dramatic transformation of demography. Alignment necessitates the mass displacement of people of colour, immigrants, families, and people receiving public assistance so that more affluent white people may move in.

63. The implications of “alignment” and gentrification are known to and desired by Timbercreek. As illustrated by Timbercreek’s design briefs submitted to the City of Ottawa in support of its development proposals, it did not envision the future Herongate neighbourhood as a community composed primarily of immigrants and people of colour. There were no people of colour in Timbercreek’s digital mockups of the redeveloped Herongate, which are contained in its Rationale Report & Design Brief for 2816 Sandalwood Drive dated November 2016, for its Registered Plan 796 (see page 46). There are few to no discernible people of colour in Timbercreek’s “Heron Gate 7” Design Brief dated July 2016, and the models it

features are predominantly white. Timbercreek's Heron Gate 'Master Plan' dated February 11, 2019 similarly features predominantly white people.

C) The Connection between Mass Evictions, Gentrification, and Protected Grounds

64. Timbercreek's selection of Herongate for redevelopment was not random. In general, mass evictions of this type, and the process of hyper-gentrification of which they are an integral part, disproportionately affect people of colour, immigrants, and people receiving public assistance. It is precisely because Herongate is inhabited primarily by immigrants and people of colour that makes its rental properties 'undervalued' and its redevelopment potential so lucrative.

i) *Gentrification Driven by Financialized Corporate Landlords such as Timbercreek*

65. In its contemporary use, traditional gentrification is defined as:

"the influx of upper- and middle-class households into an area of old homes that were previously occupied by lower-middle and low-income individuals and households."²

66. The key hallmarks of a traditional process of gentrification are that:

- i. It is typically spontaneous, piecemeal, and unplanned, usually occurring one building at a time and may not be perceptible until a later time;
- ii. It typically occurs near the central business district;
- iii. It involves redevelopment of residential property, though some commercial redevelopment occurs as a corollary;
- iv. It is primarily driven by private investment.

67. Especially since 2008, however, a modern form of gentrification – hyper-gentrification – has been emerging. This form of gentrification is distinct from its traditional predecessor. Rather than occurring piecemeal as individual households

² Yeates, Maurice (1993). *The North American City*. New York: Harper Collins Publishers

move into neighbourhoods and gradually change its character and demographics over a long period of time, this modern form of gentrification occurs rapidly through major redevelopment projects driven by large corporate landlords such as Timbercreek. Hyper-gentrification is characterized primarily by the intentional replacement of poorer renters with higher-income tenants.³ It is hyper-gentrification that is encroaching on Herongate and displacing its current residents.

68. Hyper-gentrification disproportionately affects people of colour, immigrants, and people receiving public assistance. Due to the correlation between socio-economic status, race, and ethnicity, as well as other attributes, communities targeted for hyper-gentrification are more likely to be disproportionately composed of people of colour, immigrants, and people receiving public assistance.
69. Racialized neighbourhoods are also undervalued in real estate markets because of discriminatory stigma and stereotype, such as perceptions of higher crime rates and inferior schools. By changing the demographic composition of these neighbourhoods, large corporations can dramatically increase the value of their properties.
70. In addition, people of colour often lack the socio-economic power and knowledge of their rights with which to resist mass evictions and gentrification. This power imbalance poses less 'risk' to developers and therefore makes their communities less expensive to expel. That is, racialized residents, especially immigrants, are easier and less costly to dislodge.
71. Finally, racialized areas are particularly attractive to corporate landlords engaging in hyper-gentrification because they offer higher rates of return on investment due to the great disparity between the rents paid by existing racialized tenants and the rents that would eventually be commanded by renters with greater economic means, typically white people. In turn, the expulsion of people of colour catalyzes demand by more affluent whites, who are often reluctant to move into a primarily

³ August, Martine and Walk, Alan (2018). "Gentrification, Suburban Decline, and the Financialization of Multi-Family Rental Housing: The Case of Toronto" in *Geoforum* 89:124-136.

racialized community until it is gentrifying or gentrified. As demand from affluent whites increases, so do rents and ultimately property values.

72. For these reasons, Herongate was selected by Timbercreek as an area ideal for hyper-gentrification.

D) Timbercreek's Implementation of its Discriminatory Vision: Evictions of 2016 and 2018

i) *The Evictions of 2016 and 2018*

73. In 2015, Timbercreek began implementing a plan of phased demolitions of Heron Gate Village. The first phase of demolitions began in 2015 and targeted 80 units ("Phase 1"). Some of the Applicants were evicted during Phase 1 but were relocated to other units in Heron Gate Village.

74. The second phase of demolitions, which is the phase in which the Applicants were evicted, began in May 2018 ("Phase 2") when Timbercreek provided notices of eviction to approximately 120 units. A total of approximately 150 units, both occupied and unoccupied, were marked for demolition. The May notice indicated an eviction date of September 30th, 2018. The notices complied with the minimum notice requirements and other obligations under the *Residential Tenancies Act*. The tenants of the affected units saw no other choice but to comply with the notice. As a result, Timbercreek did not need to initiate eviction proceedings at the Landlord and Tenant Board.

75. Timbercreek stated publicly that it sought to demolish the units because they were no longer economically viable and beyond their building lifecycle.

76. The Applicants agree that the affected units, and the Heron Gate complex as a whole, was in an advanced state of dilapidation, but not so much as to be beyond repair. As is set out further below, the responsibility for the dilapidation is shared by Timbercreek, its predecessor, Transglobe, and the City of Ottawa.

77. Despite the condition of the complex, the Applicants and their fellow residents preferred to stay rather than be dislocated. The reason for this preference is the substantial social and economic costs of dislocation that would be incurred by the Applicants and their neighbours. As a result of dislocation, the Applicants stood to lose the social, economic, and cultural benefits of living in an ethnic enclave.

78. Living in Herongate buttressed the Applicants' ability to resist the effects of discrimination in Canadian society. The poverty and socio-economic disadvantage caused by that discrimination was partially compensated for by the benefits of living Herongate. Living away from Herongate threatened to remove that cushion and expose the Applicants to increased disadvantage and discrimination.

79. For these reasons, the Applicants and their neighbours organized to resist the evictions.

E) The Applicants' Request for Accommodation and Timbercreek's Refusal

i) *The Applicants' Accommodation Request*

80. Having obtained legal advice from various sources that Timbercreek had complied with and exceeded the requirements of the *Residential Tenancies Act*, the Applicants requested accommodation from Timbercreek for discrimination based on race and related grounds and on the basis of receipt of public assistance.

81. The accommodation requests were made for several reasons. Firstly, the Applicants were experiencing substantial difficulty obtaining affordable housing given the sudden massive influx of rental housing seekers into the rental market, especially in the context of Ottawa's extremely low rental vacancy rate of 1.7 percent (as of November 2017), steep continuous increases in average rents, and just after the 150 Heron Gate rental units had been removed from the rental market. These conditions caused the Applicants particular difficulties because they are people of colour. Those of the Applicants who are Muslim or have Arabic sounding names experienced even greater difficulty. People of colour, Muslims and people with Muslim or Arabic sounding names face acute challenges in

securing rental housing, especially in the context of a tight rental market. They are more likely to be passed over by landlords due to discriminatory selection criteria.

82. Secondly, the Applicants requested accommodation to help them mitigate the effects of displacement from their community, which were particularly onerous for the Applicants as people of colour and immigrants. For the Applicants, displacement entailed the loss of access to the protections and supports afforded by the ethnic enclave. Further, it undermined the enclave's institutions and businesses' ability to survive by depriving them of potential clientele and participants. As these businesses compensate for the lack of economic opportunities available to many ethno-racial minorities and immigrants, they are essential to counteract the effects of discrimination in the wider society. These negative effects are set out in greater detail below.

83. Because the Applicants were being adversely impacted on prohibited grounds as a result of the evictions, their counsel sent Timbercreek a letter on August 10th, 2018 requesting:

- i. The preservation and repair of the residential complex; and/or
- ii. Additional support securing comparable housing in Herongate in a way that avoids disbursing community members throughout Ottawa; and/or
- iii. A right of return in the form of a right of first refusal on comparably priced units in the redeveloped complex.

ii) *The Respondent Timbercreek's Perfunctory Response*

84. Accommodation i) was refused by Timbercreek.

85. Accommodation ii) was provided in a diluted form such that it did not qualify as a reasonable accommodation. The Applicants and other evictees were offered the assistance of an 'agent', who helped them identify potential rental properties on Kijiji.com.

86. In June 2018, prior to the request for accommodation, Timbercreek had circulated a notice announcing that there were no units available in Heron Gate. Shortly after receiving Applicant counsel's letter requesting accommodation, units in Heron Gate that were previously unavailable were made available and were offered by Timbercreek to some of the Applicants and other residents.

87. Accommodation iii) was allegedly offered, but details have not been provided. Timbercreek allegedly made representations to Ottawa Mayor Jim Watson that it would offer a right of first refusal for units in the redeveloped complex at the same rent, but no further information has been provided. Watson conveyed this information in a tweet from his Twitter account on September 28th, 2018. No further details have been provided to the Applicants.

F) The Deleterious Effects of Displacement on the Applicants

i) *Negative Effects of Displacement of Ethno-Racial Communities Generally*

88. In addition to being disproportionately *subject* to mass evictions through hyper-gentrification orchestrated by large corporate landlords, people living in ethnic enclaves are also disproportionately *harmed* by such mass evictions. Aside from the purely economic costs, mass dislocation erodes the ethnic enclave and undermines its ability to form the social and cultural institutions and businesses that define it. Whereas members of majority society can easily integrate other majority neighbourhoods while incurring fewer social and economic costs, people of colour and immigrants do not enjoy that luxury. Not only do they face difficulties integrating majority neighbourhoods, their displacement away from the ethnic enclave deprives them of access to the institutions that have developed there along with the socio-economic benefits enjoyed by enclave members. The benefits of living in an ethnic enclave are all the more critical for those living on low income or receiving public assistance.

89. Dislocation also has deleterious effects on physical and mental health. It causes those dislocated to feel mental distress, and it undermines their sense of well-being

and connection to their community. These psychological effects can also manifest as psychosomatic symptoms that compromise physical health as well.

ii) Deleterious Effects of 2018 Evictions on the Applicants Specifically

90. The effects of dislocation described in social science literature are consistent with the Applicants' lived experience.

91. The Applicants who had to move out of Herongate have experienced a sense of loneliness and social isolation. All of the Applicants except Haji, Faqi, and Geire had to move to areas far away from Herongate. The Applicants who had to relocate away from the community have lost the social supports and other benefits that they previously enjoyed, such as ready access to childcare, participation in cultural activities and events, and other benefits.

92. In addition, the process of eviction caused the Applicants significant distress. Timbercreek humiliated the Applicants by forcing them to compete with one another for scarce rental housing at a time of low vacancy rates. Many of them were unable to find adequate and suitable housing at a comparable cost. The Applicant Saido Hersi developed such significant stress that she had to be hospitalized and go off work. She developed a heart condition and has yet to recover.

G) Timbercreek's Discriminatory Neglect of Maintenance Obligations

i) Timbercreek's Neglect Amounts to Systemic Discrimination

93. Since assuming ownership of the Heron Gate complex in 2012, the Respondent Timbercreek has routinely neglected its maintenance obligations towards the Applicants and towards the complex as a whole. Since 2012, Timbercreek has allowed Heron Gate Village to continue to dilapidate. It ignored the blatant and extensive dilapidation of the common areas, and its response to maintenance problems and specific maintenance requests of the Applicants and other residents was perfunctory.

94. Timbercreek's neglect of maintenance was systematic, and it was a condition precedent to its plan of hyper-gentrification. Timbercreek subsequently used the dilapidated state of Heron Gate Village to justify its demolition and gentrification. As a component of its plan of hyper-gentrification, Timbercreek's neglect of maintenance therefore amounts to systemic discrimination on prohibited grounds.

ii) Neglect of Common Areas and Exteriors of the Complex

95. Obvious disrepair in the common areas and exteriors of the units in Heron Gate that Timbercreek was aware of or ought to have been aware of includes:

- i. Severely dilapidated roofs with many faulty and missing shingles;
- ii. Outdoor common areas strewn with deteriorated shingles and broken glass;
- iii. Broken fences;
- iv. Broken bricks;
- v. Unusable recreational facilities, including a weight room that was in a state of disrepair and a filthy indoor pool not fit for use;
- vi. Broken windows and rotting window frames;
- vii. Damaged siding;
- viii. Repeated and predictable flooding due to faulty landscaping and drainage;
- ix. Degrading walkways with missing bricks and perfunctory repair work;
- x. Missing addresses on units;
- xi. Ongoing garbage pile up due to insufficient garbage disposal facilities;
- xii. Hazardous steps due to large cracks and gaping holes;

- xiii. Overheating in entryways to buildings due to faulty heating systems;
- xiv. Boarded up windows;
- xv. Abandoned units left to deteriorate, attracting squatters and creating dangerous conditions for children drawn to playing in them;

iii) Neglect of Individual Maintenance Requests and Unit Interiors

96. Disrepair in the interior of units included:

- i. Random holes in drywall and ceilings;
- ii. Dysfunctional essential appliances, such as fridges;
- iii. Major leaks, ceilings left stained;
- iv. Flooding basements;
- v. Moisture-induced mould;
- vi. Cockroach and bedbug infestations;
- vii. Leaking faucets and showerheads;
- viii. Broken and dysfunctional windows and doors;
- ix. Loose railings;
- x. Poor paint jobs;
- xi. Large gaps in doors and window frames, allowing penetration of wind and moisture;
- xii. Cracks in foundations;
- xiii. Mice infestations;
- xiv. Lack of heat and poor insulation;

xv. As well as numerous other maintenance issues.

97. These maintenance issues were systematically disregarded by Timbercreek. They were either completely ignored or only cursorily addressed. Often when Timbercreek did make repairs, they were poorly done and required further repair work later.

iv) *Specific Maintenance Issues and Neglect in the Applicants' Units*

98. The Applicant Ali's unit had several maintenance problems, including a hole by the doorway, extreme basement flooding and a broken handrail. Each of these problems was reported to Timbercreek, both verbally and in writing. Ali also complained to Ottawa Property Standards By-Law, which inspected the unit and ordered repairs. Timbercreek was apathetic. It ignored the maintenance requests or made only insufficient, cursory repairs. The flooding therefore continued for over a year from July 2017 until October 2018 when Ali was evicted.

99. The Applicant Adar's unit had faulty windows. They would not close, and the screens were broken. Though maintenance requests were made right away, it took Timbercreek approximately 2 to 3 months to repair the windows.

100. The Applicant Yussuf experienced maintenance problems in all three of the units he lived in in Heron Gate. At his Sandalwood address, the basement flooded constantly, causing mould growth. Every winter, Yussuf had to cover his windows with plastic sheeting to prevent water infiltrating the unit. In September 2017, Yussuf's bathroom ceiling began to leak. Despite having submitted a maintenance request immediately and contacting By-Law, the ceiling was not repaired until approximately 10 months later, shortly before he was evicted. In addition, the railing in Yussuf's Baycrest townhouse was faulty. It pulled away from the wall easily and had to be fixed multiple times. However, each repair was poorly executed, and the problem persisted. Yussuf's front door at Baycrest was also faulty. It did not open or lock properly and had to be forced closed. The lock was

inspected by maintenance staff, but it was determined that it could not be fixed and needed replacement. The lock was never replaced.

101. The Applicant Jabur reported numerous maintenance issues to Timbercreek that were ignored. She repeatedly submitted work orders and followed up, but the issues were never conclusively resolved. There was a crack in her foundation and in the wall. Her heating was dysfunctional and her front door had gaps that let in cold air during the winter, both of which worsened her rheumatism. In addition, her basement ceiling leaked, causing mould. As a result of the leak, Jabur had to dispose of many of personal possessions that had been stored in the basement.

102. The Applicant Geire reported sewage pipe blockages causing slow drainage in his sink and broken basement windows. Geire filed numerous work orders over the course of his tenancy. Geire's requests were ignored. When Timbercreek maintenance staff finally attended the property to inspect the windows, it fixed only one of them.

103. A Heron Gate resident Ahmed Alarat reported a cracked window to Timbercreek in the winter of 2017. The window was in his daughter's bedroom, and he feared that she would fall ill. When Timbercreek maintenance attended the property, it installed a plastic covering over the window rather than replacing it. The repair job did not restore the heat in the room, but Timbercreek refused to make any further repairs.

104. After moving into her unit in February 2012, Amina Atteyeh, who is not an Applicant but whose situation illustrates Timbercreek's approach to maintenance in Herongate, reported numerous maintenance issues to Timbercreek. She reported:

- i. Defective windows and screens, and missing screens;
- ii. A faulty bedroom doorframe;

- iii. Defects in her kitchen ceiling;
- iv. Required repair work to tubs in bathtub;
- v. Holes in her bathroom vanity;
- vi. Holes in cupboards, defective cupboard doors;
- vii. Vermin living in the walls; and
- viii. Leaking showerhead.

105. Atteyeh's issues were not resolved, so in 2014, she obtained a By-Law order requiring Timbercreek to effect repairs. The repairs were either not done or were ineffective, and so Atteyeh obtained a virtually identical order from By-Law in 2016. Again, the disrepair was not definitively resolved by Timbercreek. The issues persisted until Atteyeh's eviction in 2018. They were never fully resolved.

H) City of Ottawa's Discriminatory Neglect of Heron Gate

106. The dilapidated state of the Heron Gate complex was known to the City of Ottawa's Property Standards By-Law enforcement branch. By-Law became aware or ought to have become aware that Heron Gate's landlords were systematically neglecting their maintenance obligations at least by 2009 when it was aware that within a two-year period after Transglobe assumed ownership, visits by By-Law inspectors increased from 10 in 2006 under Minto ownership to 150 in 2009 for just three buildings.

107. In 2010, then Program Manager of By-Law enforcement's Property Standards Branch, Craig Calder, acknowledged that the Landlord's neglect of Heron Gate had increased the workload of his department substantially.

108. In 2011, Ottawa's By-Law, Property Standards Enforcement Branch ("By-Law") was lobbied by the Association of Community Organizations for Reform Now (ACORN) to conduct proactive property standards inspections in Herongate. By-

Law agreed and conducted dozens of inspections of dilapidated units in Heron Gate, issuing dozens of work orders against Timbercreek. By-Law's frequent attendance in Herongate would have made it aware of the extreme degree of dilapidation of the common areas and exteriors of the units as well as the racial and ethnic composition of the Herongate neighbourhood.

109. Comparatively high rates of By-Law inspections and orders related to the Heron Gate complex have persisted until the present.

110. Despite By-Law's knowledge of the dilapidated state of Heron Gate and of Timbercreek's neglect of that dilapidation, it has never taken any further corrective action to ensure that Timbercreek fulfills its maintenance obligations. Despite knowing that Heron Gate is a racialized, immigrant community, the City has not taken action to ensure that residents' basic housing rights are respected.

111. The City's failure in this regard amounts to systemic discrimination based on race and related grounds.

I. The City of Ottawa's Failure to Take Measures to Prevent the Dissolution of Heron Gate

112. On August 10th, 2018, the Applicants made a request for accommodation from the City of Ottawa identical to the request it had made to Timbercreek. The request was sent on behalf of the Applicants and their neighbours by counsel to the Applicants. The accommodation request was ignored by the City of Ottawa. It took only symbolic and modest action to mitigate the adverse impact of the mass evictions.

113. The City of Ottawa's failure to take action to prevent Timbercreek's implementation of a discriminatory development plan makes it jointly liable under the Code.

114. The City of Ottawa was aware of and engaged with Timbercreek's development process. It understood that Timbercreek was seeking to dislocate the

Applicants and their neighbours, and it failed to prevent that dislocation or otherwise ensure that the Herongate community was not further eroded.

115. The City of Ottawa could have taken action. It was open to the City of Ottawa to refuse authorization for demolition, or to issue an executive order prohibiting Timbercreek's demolition of the Heron Gate complex. Had it done so, then Timbercreek would not have been able to evict the Applicants under the *Residential Tenancies Act*.

116. The City of Ottawa's refusal to prevent the demolitions and accommodate the Applicants was a factor in the adverse treatment experienced by the Applicants as a result Timbercreek's redevelopment of Heron Gate.

IV. SUBMISSIONS

l) Breaches of International Law Causing Adverse Impact on Prohibited Grounds

i) The Right to Housing in International Law

117. The right to adequate housing is protected under various international law instruments, including the International Covenant on Economic Social and Cultural Rights (ICESCR), The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and The International Covenant on Civil and Political Rights (ICCPR). Canada has acceded or ratified all these of international protocols.

118. Article 11 of the ICESCR recognizes the right of all individuals to an adequate standard of living and includes the right to adequate housing. This right is further elaborated in General Comment 4 on Article 11, which explains that housing must be affordable, culturally appropriate, and located such that residents have access to employment, public services, and other life necessities.

119. Article 2 of the ICESCR places responsibilities on States to put in place progressive measures to ensure all individuals have access to housing without discrimination based on race, ethnicity, and other prohibited grounds.

120. Article 5 (e)(iii) of the ICERD requires States to “eliminate racial discrimination in all of its forms”, including by ensuring that individuals are treated equally under the law with respect to their access to housing.

121. Article 12(1) of the ICCPR states individuals lawfully residing in a State must have the freedom to move within that territory and take up residence where they choose. This right includes the right to be free from dislocation. If a State authorizes a mass urban eviction, by either an act or an omission, it may be violating Article 12(1) of this covenant by preventing individuals from freely living in their chosen residence.

ii) The Right to be Free from Displacement

122. According to the United Nations Guiding Principles on Internal Displacement, Internally Displaced Persons (IDPs) are individuals or groups who have been pushed out of their homes and communities.

123. Principle 6 of the UN Guiding Principle on Internal Displacement guarantees the right to be “free from arbitrary displacement”. This includes displacement that arises from development projects, particularly if such projects cannot be justified for reasons of compelling public interest.

124. During development projects, the State must take measures to avoid displacement altogether.

125. If displacement is required, Guiding Principle 7.1 states that the State must take measures to ensure that the negative impacts associated with the displacement are minimized.

126. Guiding Principle 7.3 requires States to provide displaced people with information about their displacement, a compensation package that accounts for the losses associated with the displacement and an opportunity for people in the community to meaningfully participate in the decisions that impact their displacement, including where they are relocated.

127. Guiding Principle 8 requires States to commit to a standard that arbitrary displacement of people should be avoided entirely. If displacement is necessary, States should ensure these moves do not violate the life, dignity, liberty and security of persons.

iii) *The Application of the Right to Housing in Ontario Law*

128. Though the right to housing has not been transposed into domestic law in Ontario, it must inform the interpretation and application of domestic law, especially the Code.

129. The interplay between international law and the Code is explained by the Ontario Human Rights Commission's policy on Human Rights in Rental Housing:

Housing is a human right. International law states that Canada must work towards making sure everyone has access to adequate and affordable housing. But some people, based on factors such as race, ancestry, disability, sex, family status and social and economic status, do not receive the housing rights they are entitled to. When multiple factors intersect, the disadvantage increases and people are at even greater risk of discrimination, poverty and even homelessness.

...

The international community has long recognized that housing is a fundamental and universal human right that must be protected in law. Both the *Universal Declaration of Human Rights*^[3] and the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR)^[4] recognize the right to housing.^[5] Other international treaties that have affirmed the right to housing include *the International Convention on the Elimination of All Forms of Racial Discrimination*, *the Convention on the Elimination of All Forms of Discrimination Against Women* and *the Convention on the Rights of the Child*.

Canada has ratified all of these treaties, and in doing so, has endorsed the view that housing is a human right. The challenge for Canada is to make these high-level principles a lived reality for Canadians. Human rights bodies across Canada play a key role in making this happen. In Ontario, the Ontario Human Rights Commission (the OHRC) has a special responsibility to help Canada fulfill its international human rights commitments. In this *Policy*, the OHRC brings the principles contained in international covenants into communities and homes across Ontario.

130. Thus, where a breach of the right to housing creates an adverse impact on prohibited grounds, the Code is engaged. Practically, the Code is engaged where the right to be free from displacement is violated by a "requirement, qualification or factor" – such as hyper-gentrification – and that violation creates an adverse impact on prohibited grounds. Where such a violation creates adverse impact, then those

adversely impacted are entitled to accommodation up to the point of undue hardship.

iv) Timbercreek's Redevelopment of Heron Gate Violates International Law in a Manner that Adversely Impacts People on Prohibited Grounds

131. Timbercreek's redevelopment plan for Heron Gate Village violates the right to housing in international law. The reengineering of the social and ethnic composition of Herongate from a low-income, migrant community to one that is primarily white and affluent cannot be justified by an overriding public interest. Further, this violation is compounded by Timbercreek's failure to take steps to minimize the impact of displacement.

132. Timbercreek's violation of international law, and the City of Ottawa's complicity in that violation, have created adverse an impact on the prohibited grounds of skin colour, race, ethnicity, place of origin, and receipt of social assistance. To summarize, the impacts include:

- i. Selecting the Applicants' community for redevelopment for reasons related to skin colour, race, ethnicity, place of origin, and receipt of public assistance;
- ii. Causing the Applicants the loss of social and economic supports and access to social and cultural institutions derived from living in an ethnic enclave;
- iii. Eroding the Applicants' community;
- iv. Causing the Applicants to experience housing discrimination by removing 150 units from the rental market all at once, placing increased pressure on the rental housing market and forcing the Applicants to search for alternative housing within a compressed period of time;
- v. Causing the Applicants mental anguish, loneliness, and other psychological harm;

- vi. Causing the Applicants embarrassment and a loss of their sense of dignity because of the symbolic message sent by the redevelopment; namely, that the Applicants and those that share their Code-protected characteristics are not worthy of adequate housing.

133. Despite having been made aware of these adverse impacts, the Respondents have failed to reasonably accommodate the Applicants to the point of undue hardship.

J) The Respondents have Infringed the Code By Engaging in Demographic Engineering

134. Even if the Respondents' violation of international law does not infringe the Code, they have infringed the Code by conceiving and implementing a development plan premised on the displacement of a low-income community composed overwhelmingly of people of colour, immigrants, and people from specific ethnicities and places of origins, as well as people receiving public assistance, in order to replace them with more affluent whites from a neighbouring community.

135. Timbercreek's expulsion of the Applicants from Heron Gate, and the City of Ottawa's complicity in that expulsion, in order to replace them with more affluent and white residents of Alta Vista, amounts to systemic discrimination in violation of the Code.

136. Despite being aware of this systemic discrimination, the Respondents have failed to adequately accommodate the Applicants to the point of undue hardship.

K) The Respondents have Breached the Code by Systematically Neglecting Maintenance Obligations and Allowing the Applicants' Rental Complex to Dilapidate Beyond Repair

137. Timbercreek's systematic neglect of its maintenance obligations towards Heron Gate Residents amounts to systemic discrimination. The City of Ottawa's

utter failure to address Timbercreek's systematic neglect of maintenance also amounts to systemic discrimination in violation of the Code.

138. As explained in the Ontario Human Rights Commission's *Policy on Human Rights and Rental Housing*:

Housing providers may engage in systemic discrimination if they systematically fail to maintain buildings inhabited primarily by people identified by Code grounds. This phenomenon has been seen particularly in low-income housing complexes. People who live in these dwellings may be especially vulnerable to sub-standard housing conditions due to their lack of social and economic power and their unwillingness to complain for fear of reprisal.

V. CONCLUSION

139. The Applicants were occupants of Heron Gate Village. Their occupancy and their lives were disrupted by Timbercreek's redevelopment because it requires their displacement. The form and objectives of the redevelopment are such that it amounts to discrimination under either or both s. 2 and s. 11 of the Code. Timbercreek, as the owner/landlord and redeveloper, is the primary party to the discriminatory action and so is liable on that basis. The City of Ottawa is also liable because it has failed to take action, either through regulatory services such as By-Law enforcement, or regulatory intervention such as permit and planning approvals, to prevent or mitigate the discrimination.

140. The Applicants were subjected to unequal treatment because their housing was deliberately and expressly selected and managed for redevelopment it was 'undervalued', which in turn is because the inhabitants are identifiable by a mix of Code-prohibited grounds. The mix of Code-prohibited grounds (racialized, ethnic difference, larger families, social assistance, and place of origin) means that the former occupants, both individually and as a community, are vulnerable to discrimination in society in general and in the residential rental market more specifically, and so they are more easily exploited by predatory forms of redevelopment such as hyper-gentrification.

141. The Applicants' community has been selected for redevelopment, and the associated disruption of occupancy, precisely because it is racialized, ethnically different, has larger families and a disproportionate number of recipients of public assistance. These attributes mean that the community is likely to possess the two key qualities that make it attractive for predatory redevelopment. First, the community is likely to be low-income, which means there is potential to upgrade the housing to generate and capture higher value and income from the property. Second, the community is unlikely to be able to effectively safeguard its housing rights, or to seek meaningful housing alternatives, as the housing undergoes a managed decline in quality (squeezing) in preparation for redevelopment. This type of 'predatory redevelopment' is not as economically or strategically feasible in residential rental housing complexes where the occupants are differently situated in terms of Code-prohibited grounds of discrimination; i.e where they are white, non-newcomers, have smaller families, and do not receive public assistance.

142. The Applicants were subjected to systemic discrimination in relation to their continued occupancy. The redevelopment in this instance will maintain the function of the property as residential but will subject it to a process of 'hyper-gentrification'. This process will result in a transformation in the nature and terms of occupancy in ways that will both:

- i. exclude the displaced occupants who are identified by a mix of Code-prohibited grounds of discrimination (racialized, ethnic difference, immigrant, larger families, and in receipt of social assistance); and
- ii. prefer new occupants who are also identified by a mix of Code-prohibited grounds of discrimination (white, non-newcomer, small-family, higher-income).

143. In addition, the displacement will contribute to and reinforce the exclusion of the Applicants, because it will erode the elements of the community that cushioned them against the effects of discrimination in the wider society and supported their socio-economic and cultural advancement.

144. Pursuant to international human rights prohibitions on unfettered displacement, the landlord has an obligation to avoid discriminatory exclusion and preference, based on prohibited grounds, for occupancy of housing, by accommodating existing residents up to the point of undue hardship. The Code must be interpreted in a manner that avoids bringing states into non-compliance with these international obligations.

145. On the basis of the foregoing, the Applicants allege the following independent but interconnected violations of the Code:

- i. Timbercreek has systematically neglected its maintenance obligations towards the Applicants in a manner that amounts to systemic discrimination on prohibited grounds.
- ii. Despite knowledge of this systemic discrimination, the City of Ottawa has failed to take corrective action, compounding the adverse impact.
- iii. Timbercreek has violated the Code by pursuing a discriminatory development model based on hyper-gentrification that disproportionately affects people identifiable by a mix of code-prohibited grounds and has disproportionately affected the Applicants. Herongate was selected for redevelopment because it was considered an undervalued housing market. It was undervalued precisely because it was primarily inhabited by people of colour, immigrants, people receiving public assistance, and people with families, such as the Applicants. In cases where an area selected for redevelopment qualifies as an ethnic enclave, such as the instant case, displaced occupants experience the additional adverse impact of being separated from a source of socio-economic and cultural support that shields them from discrimination in the wider society and facilitates their social advancement. This is what has happened to the Applicants.

- iv. In addition, Timbercreek's development model discriminates by preferring tenants identifiable by a different mix of code-prohibited grounds (white, affluent, small/no family, non-immigrant) over the displaced occupants, who are identifiable by a different mix of code-prohibited grounds (racialized, immigrant, with larger families, and in receipt of public assistance). This exclusion and preference has adversely impacted the Applicants.
 - v. The City of Ottawa has been complicit in Timbercreek's discriminatory development of Heron Gate Village in that it has failed to take measures to prevent the erosion of the Herongate community and prevent their permanent displacement.
146. The Applicants submit that a *managed* process of inclusive redevelopment, including a right of return to new units of sufficiently similar size and affordability, is the appropriate accommodation and does not cause undue hardship.
147. Relying on the Code and international law, the Applicants petition the Tribunal for relief from the foregoing discrimination.

VI. RELIEF SOUGHT

148. The Applicants seek the following remedies:
- i. A Declaration that the Applicants' rights under sections 2 and 11 of the Code have been infringed by the Respondents;
 - ii. A order for the Respondent Timbercreek to build and then offer the Applicants similarly sized rental units as they occupied prior to the evictions and at the same rent as they previously paid (a 'right of return');
 - iii. An award of \$50,000.00 in damages to each Applicant to compensate them for injury to dignity, feelings, and self-respect, for which the Respondents are jointly and severally liable;

- iv. An order for future compliance against the Respondent Timbercreek to refrain from engaging in the discriminatory development practices described above in Ontario;
- v. An order for future compliance against the Respondent Timbercreek requiring it to refrain from systematically neglecting its maintenance obligations under the *Residential Tenancies Act* and to refrain from 'squeezing' residential complexes it owns or operates in Ontario in ways that adversely impact people on prohibited grounds or amount to discrimination;
- vi. An order for future compliance against the Respondent the City of Ottawa to take measures to prevent the destruction of ethnic enclaves and the mass displacement of protected persons on prohibited grounds; and
- vii. An order for future compliance against the Respondent the City of Ottawa to ensure that ethno-racial communities, communities inhabited primarily by people of colour, people receiving public assistance and/or immigrants are maintained according to the standards established by the *Residential Tenancies Act* and the City of Ottawa's Property Standards By-Law.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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