

**Application Information**

Tribunal File Number:	2019-36509-I
Name of Applicant:	Bile Ali et al.
Name of Each Respondent:	Timbercreek Asset Management, Mustang Equities INC., TC Core LP, TC Core GP and The City of Ottawa

Identify the page or paragraph number of the Response where the new matter is raised and then explain your reply to this new matter. If you need more space please attach another sheet of paper. Number each additional page.

1A. What is the new matter raised in the Response? (page or paragraph number)

See Schedule C

1B. What is your reply to this new matter? If you will submit a version of the facts different from that set out in the Response *and which was not included in your Application*, describe these facts here.

See Schedule C

2. Signature

By signing my name, I declare that, to the best of my knowledge, the information that is found in this form is complete and accurate.

Name: Daniel Tucker-Simmons	
Signature:	Date: (dd/mm/yyyy) 26/11/2019

☒ Please check this box if you are filing your response electronically. This represents your signature. You must fill in the date, above.

Collection of Information:

Under the Ontario *Human Rights Code*, the Human Rights Tribunal of Ontario (HRTTO) has the right to collect the personal information requested on this form. We use the information to resolve your application. After you file the form, your information may also be available to the public. If you have questions about how the HRTTO uses your personal information, contact the HRTTO at 416-326-1312 or 1-866-598-0322 (toll-free.)

ONTARIO
Human Rights Tribunal

BETWEEN:

BILE ALI, ET AL.

Applicants

- and -

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

Respondents

SCHEDULE C – REPLY OF THE APPLICANTS

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1. This Reply is being submitted on behalf of the 37 Applicants listed in Appendix 1.

Reply to the Respondent Timbercreek

2. Timbercreek denies that it allowed the Applicants' units to dilapidate. It alleges that it managed Heron Gate Village responsibly and invested substantial sums to restore it to a good state of repair. Timbercreek further claims that Herongate's redevelopment will significantly increase the affordable housing stock in the community, and that the Applicants may return once complete.
3. Even if this were true, Timbercreek's displacement of the Applicants is still discriminatory. Herongate was selected for redevelopment because it is racialized, immigrant community. In selecting Herongate for redevelopment, it is not alleged that Timbercreek was animated by conscious discrimination. It is not alleged that Timbercreek is motivated by a desire to promote racial segregation. Its motivation is profit. As a corollary of its pursuit of profit, it will transform the racial and social composition of Herongate and disrupt the lives of its racialized inhabitants, thereby adversely affecting residents on prohibited grounds. That is what violates the Code.
4. It is precisely its racial and social composition that makes Herongate's redevelopment so lucrative. In order to realize its lucrative potential, the Applicants had to be displaced and their occupancy and lives disrupted. The nexus between the adverse effect of displacement and the Applicants' Code-protected identities therefore transcends mere statistical correlation; it is precisely the spatial-concentration of Code-protected groups, and the substantial profits to be realized by removing them, that has driven this development process. That alone is discriminatory. That alone adversely affects the Applicants on prohibited grounds.
5. Even if Timbercreek had not engaged in 'squeezing' (described at paragraph 22 of Schedule A to the Application) as a prelude to hypergentrification, its redevelopment of Herongate is nonetheless discriminatory. The manner in which Timbercreek has proceeded with the redevelopment is a discreet discriminatory

practice. It has been well researched and well defined by urban geographers and other experts. It is a practice that is well understood to disproportionately affect Code-protected groups by disrupting their occupancy of rental housing, and by disbursing their communities. These deleterious effects inhere in this predatory form of redevelopment. It is thus discriminatory whether or not Timbercreek had responsibly maintained Herongate. It is discriminatory whether or not Timbercreek was motivated by *mala fides*.

6. Where a clearly definable, discreet development practice creates an adverse impact on prohibited grounds, it violates the Code. It is not real-estate development *per se*, or the “ordinary evolution of residential communities” that is alleged by the Applicants to create the Code violation. That is a mischaracterization of the Applicants’ arguments, imputed to them by Timbercreek at paragraphs 12 to 17 of its Response.
7. Rather, the Applicants argue that the Code is offended by development that creates an adverse and disproportionate impact on prohibited grounds, and in particular, development that does not accommodate existing residents to the point of undue hardship. It is this pernicious form of development, which the Applicants have labelled hyper-gentrification, and the contours of which are painstakingly delineated in the Application, that amounts to systemic discrimination and violates the Code.
8. The Applicants’ could have been accommodated. The accommodations offered by Timbercreek to current Herongate residents, and which were not offered to the Applicants, satisfy some of its Code obligations in the circumstances. In its Response, Timbercreek has stated that there “will not be future demolition of occupied units unless tenants are able to transfer their leases within the community to newly constructed units at the same rents.” (see Timbercreek Response at para 107). It is now carrying out the Herongate redevelopment in a manner that accommodates current residents and minimizes the disruption of their occupancy.

9. The Applicants submit that these accommodations could have and should have been offered to them. The redevelopment could have and should have been carried out consistently with Timbercreek's obligations under the Code from the beginning. It is Timbercreek's failure to accommodate the Applicants that is the crux of this Application.
10. At paragraph 105 of its Response, Timbercreek alleges that the Applicants were offered a right of return on a priority basis upon completion of new housing units. This allegation is somewhat misleading. On September 6, 2018, then-counsel for Timbercreek, Michael Polowin of Gowling WLG, wrote to Applicants' counsel stating specifically that "Timbercreek has again gone above and beyond what is required by law, and has offered the ability to request to return to all the currently affected residents..." [underlining original]. The letter was silent with respect to what returning tenants would pay in rent.
11. The Herongate redevelopment will radically change the social and ethnic composition of Herongate, to the detriment of its current and former residents. The fact that the townhomes demolished in 2018 represent a minority of the total homes in Herongate is immaterial. Several if not all of the 5 high-rise towers in Herongate, which together comprise 70% of existing homes according to Timbercreek, have been subjected to multiple above-guideline rent increases in recent years, and more are still to come. As rents in these units increase by as much as 3% above the statutory guideline each year, more and more current residents will be forced to relocate. Timbercreek's demolition of 105 townhouse units in 2018 is but one incremental step in its plan to gentrify Herongate and realize the enormous profits associated with gentrification. That the transformation is happening incrementally makes it no less discriminatory.
12. The Applicants deny paragraphs 41 to 71 of Timbercreek's Response. The Applicants deny that Timbercreek responded to their maintenance requests in a timely manner.

Reply to the Respondent the City of Ottawa

13. The City of Ottawa acknowledges that it is obligated by the Residential Tenancies Act (RTA) to enforce property standards. The RTA, however, does not mandate that the City carry out its enforcement activities by means of a complaint-driven process. It is the City that has implemented a reactive enforcement process that is driven primarily by individual complaints. That is not a legal requirement.
14. Regardless of the type of enforcement mechanism selected by the City, it must carry out its obligations under the RTA in a manner that does not create an adverse impact on prohibited grounds. That is a legal requirement. It arises from the Code.
15. Where a municipality carries out a statutory obligation in a manner that creates an adverse impact on prohibited grounds, then it violates the Code. In the instant case, as set out in the Application, the City has violated the Code by failing to adequately enforce minimum property standards in Herongate. That failure adversely affected the Applicants on prohibited grounds. The City's enforcement mechanism was simply inadequate to ensure that rental housing in Herongate met minimum standards, and it was generally inadequate to safeguard the right of Code-protected persons in Ottawa to equal treatment with respect to enforcement of minimum property standards. As a result, the City's enforcement of property standards in Herongate has failed miserably.
16. 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 substandard housing conditions due to the letter lack of social and economic power and their unwillingness to complain for fear of reprisal. [Underlining added]
17. Because Code-protected groups are less likely to complain, a complaints-based enforcement system does not adequately serve their needs. The abject failure of the complaint-based system is what facilitated the dilapidation of Herongate as

well as the dilapidation and neglect of numerous other racialized, ethnic and immigrant neighbourhoods and communities across Ontario.

18. Municipalities in Ontario are therefore required by the Code to engage in more proactive enforcement activities in neighbourhoods and communities inhabited primarily by Code-protected groups in order to ensure that all rental accommodations meet minimum property standards requirements regardless of who lives there. While the Code does not mandate any specific enforcement mechanism, it requires that the selected mechanism to enforce housing standards equally for Code-protected groups.
19. With respect to the City's submissions about its role in the eviction process under the RTA, the Applicants agree that municipalities in Ontario have no explicit authority to prevent an eviction.
20. However, obtaining a permit or "other authority" from a municipality to demolish a rental unit is a condition precedent to being granted an order by the Landlord and Tenant Board for termination of a tenancy under section 73 of the RTA. The City could have, as a prerequisite to granting authority to Timbercreek to demolish Herongate prior to the evictions, ensured that the demolition did not contravene the Code. The requirement that a demolition not contravene the Code is, in the Applicant's submission, a prerequisite for obtaining a demolition permit pursuant to section 8(2) of the *Building Code Act*, which requires that the proposed demolition not contravene the Building Code and "any other applicable law." Had the City refused to grant authority for demolition on the basis that Timbercreek had not complied with the Code, then an order of eviction could not have been granted by the Board.
21. It was thus open to the City to intervene in Herongate in order to safeguard the Applicants' rights to rental housing without discrimination. Its failure to do so violates the Code.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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APPENDIX 1

Bile Ali et al. v. Timbercreek Asset Management Inc., et al.

	Applicant	HRT0 File Number	Herongate Address
1	Sherifa Khalefa	2019-38308-I	2835-B Sandalwood Dr
2	Abtesam Aoda	2019-38479-I	2827-A Sandalwood Dr
3	Zahrah Al Jourani	2019-38480-1	2827-A Sandalwood Dr
4	Falah Rashed	2019-38481-I	2827-A Sandalwood Dr
5	Fatemah Rashed	2019-38483-I	2827-A Sandalwood Dr
6	Sshala Rashed	2019-38484-I	2827-A Sandalwood Dr
7	Jeen Hillant Fils	2019-38107-I	2825-G Baycrest Dr
8	Amina Hassan	2019-38305-I	2835-E Sandalwood Dr
9	Hawa Gas	2019-38109-I	1566 Heron Rd
10	Enab Hussein Mohamed	2019-38300-I	2821-B Baycrest Dr
11	Sucaad Hussein	2019-38301-I	2821-B Baycrest Dr
12	Khalid Hussein Ahmed	2019-38302-I	2821-B Baycrest Dr
13	Sagal Ahmed	2019-38303-I	2821-B Baycrest Dr
14	Sara Ahmed	2019-38309-I	2821-B Baycrest Dr
15	Abdiaziz Ahmed	2019-38310-I	2821-B Baycrest Dr
16	Hussein Ahmed Geire	2019-36517-I	2821-B Baycrest Dr
17	Mirlaine Saintil	2019-38306-I	1530-B Heron Rd
18	Gislaine Jean-Baptiste	2019-38307-I	1530-B Heron Rd
19	Ali Banayan	2019-38312-I	1586-G Heron Dr
20	Abdullahi Abdullahi	2019-38311-I	2825-H Baycrest Dr
21	Margeret Alluker	2019-38304-I	2831-E Sandalwood Dr
22	Omar Zaid	2019-38115-I	1544-K Heron Rd
23	Diana Zaid	2019-38116-I	1544-K Heron Rd
24	Mona Zaid	2019-38114-I	1544-K Heron Rd
25	Bile Ali	2019-36509-I	2827-D Sandalwood Dr
26	Abyan Ali	2019-36510-I	2827-D Sandalwood Dr
27	Abdullahi Ali	2019-36511-I	2827-D Sandalwood Dr
28	Ladan Ali	2019-36512-I	2827-D Sandalwood Dr
29	Mustafa Ali	2019-36513-I	2827-D Sandalwood Dr
30	Ruki Al	2019-36514-I	2827-D Sandalwood Dr
31	Saido Gasha	2019-36515-I	2827-D Sandalwood Dr
32	Mohamed Faqi	2019-36516-I	2837-F Baycrest Dr
33	Maha Jabur	2019-36518-I	1544-K Heron Rd
34	Adar Haji	2019-36519-I	2837-F Baycrest Dr
35	Saido Hersi	2019-36521-I	2821 D Baycrest Dr
36	Mohamed Yussuf	2019-36522-I	2821-J Baycrest Dr
37	Abdullahi Sadiq	2019-36523-I	2821-D Baycrest Dr