Third Force Housing in Canada: Performance and Prospects

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Citation Information
THIRD FORCE HOUSING IN CANADA: PERFORMANCE AND PROSPECTS

By JEFFRY A. HOUSE*

An unassisted free market in housing is a thing of the past in Canada. Governments set housing targets, and cite, both in the House of Commons and in free-time political broadcasts,1 the number of annual housing starts as accomplishments of their administrations. Central Mortgage and Housing Corporation (CMHC), a Crown corporation, conducts myriad housing assistance programmes involving low cost loans, grants, loan guarantees, inexpensive land costs and servicing of land.

This assistance goes to home buyers, public housing tenants, entrepreneurs, provinces, and municipalities. It is also beginning to go to non-profit co-operative associations, and non-profit housing corporations, which together constitute the class of housing which is the subject of this article, third force housing.

A. THE MARKET AS DISTRIBUTOR OF HOUSING STOCK

Housing space is distributed in Canada through a market mechanism which has been modified by various governmental policy initiatives. In assessing the likely success or failure of any governmental housing programme, it is important to understand how that market mechanism would operate without the intervention of the state in distribution. A structure of market demands can only be derived from the behaviour of consumers who are equipped with money to make demands; a theory of distribution cannot be independent of the structure of the distribution of wealth as an initial premise. Consequently, we must turn to the distribution of wealth as our first clue to the tendencies inherent in the Canadian market.

In fact, the distribution of wealth and income has been exhaustively catalogued, both in Canada and in the rest of the Anglo-American world.2

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Mr. House is a member of the 1976 graduating class of Osgoode Hall Law School. The author would like to extend special thanks to Ms. Susan Tanner, whose unpublished paper, Problems of Establishing and Maintaining Co-operative Housing in Ontario, was of great assistance.


Put bluntly, wealth is very inequitably distributed in this country, and the distribution of money incomes is steadily increasing the share of the gross national product received by the comparatively rich, while diminishing the share received by the comparatively poor. Since 1951, the upper one-fifth of Canadian individual income recipients have increased their share of the national income from 45 per cent to 49.2 per cent in 1971. The poorest one-fifth of Canadians saw their share drop from 3.2 per cent to a mere 2 per cent of national income. The lower 60 per cent of income recipients experienced a decline in their share from 29.8 per cent to 24.7 per cent of all income.3

This trend has continued for at least twenty-five years, the period during which records have been kept. It has serious consequences for housing policy. Since the investment of private funds depends upon a perceived demand for housing, and that demand must be expressed by a willingness to make down payments and pay carrying charges, private production of housing is heavily directed toward the upper two-fifths of the population. Indeed, even with the present level of governmental interference in the market, 80-85 per cent of all new housing produced in Canada is directed toward that group, while the remaining 15-20 per cent of housing starts is expected to serve fully 60 per cent of the population.4

Given the distribution of wealth which now exists in Canada, the market mechanism must ignore a very substantial proportion of housing need. As long ago as 1935, a government report recognised this: "There is no apparent prospect of the low rental housing need being met through unaided private enterprise building for profit."5

It used to be thought, and it is sometimes still argued, that newly produced homes "trickle down" to the less well-off.6 The latest federal report on low income housing, however, concludes that "units aimed at the top of the pyramid do not trickle down to the bottom fast enough".7 This is especially true in urban Canada, where the land underneath a dwelling often appreciates at a rate far above the rate of depreciation of the structure resting upon it. When units do reach the poor, they are likely to be in very bad shape. For example, a 1966 Montreal study found that 16 per cent of the occupied dwellings in the city were "not habitable".8 The Paterson report, Toronto's major survey of metropolitan housing needs, found that there were 220,045 families, and 138,708 individuals living in Metro Toronto who had "inade-
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And in Canada as a whole, the Fish-Dennis Report estimated that in 1970 there were 1,115,000 dwelling units in Canada without central heating, and 500,000 units without adequate plumbing facilities.\(^9\)

If the trickle down theory does not insure that the middle and low income Canadian is properly housed, is there any other operative tendency in the economy which does? A common assumption has been that, while the proportion of the national income which goes to lower income groups will continue to decrease, the overall rate of economic growth will be sufficient to insure that the real income of the poor will rise. Unfortunately, this assumption appears not to be borne out in fact. During the past two years, there has been virtually no real growth of the Gross National Product (GNP) in Canada, and there have, at times, been substantial contractions of GNP. The federal government's wage guidelines, on the other hand, indicate an expected maximum real growth in Canadian economic output of 2 per cent per annum.\(^10\) At this rate, there is no realistic possibility that the poor will ever be provided with housing by the unassisted market.

A final nail in the coffin of unassisted market distribution of housing is provided by the research of Mark Kelman, who exhaustively studied 62 Standard Metropolitan Statistical Areas in the United States. His study concludes that, so far as goods (such as housing) which demonstrate supply inelasticity are concerned, access to the goods in question is not determined by the real wealth or the real income of a given group, but by the degree of inequality in the relevant market.\(^11\) In other words, increases in real wealth of poorer groups do not necessarily put them in a better position to acquire housing through the market if inequality is simultaneously growing. As noted above, this is precisely the situation in Canada.

B. THE TRADITIONAL GOVERNMENT RESPONSE

Without government action, the market mechanism leaves gaping holes in the supply of shelter to Canadians. There are several policy approaches which may be expected to alter this situation:

1) One can do away with the market in housing entirely, and treat housing as a right, rather than a commodity to be bought and sold;
2) One can assist the market by building public housing for those people who have no chance whatever to purchase or rent housing on the market;
3) One can build public rental units for those totally unable to acquire

\(^10\) *Supra*, note 4 at 44-45.  
\(^11\) The *Anti-Inflation Act*, S.C. 1975, c. 75.

\(^12\) M. Kelman, The *Social Costs of Inequality*, Dissent (Summer 1973) at 291-98. Readers interested in the theoretical basis of these empirical conclusions are referred to A. Pigou, *The Economics of Welfare* (London: 1920).
shelter through the market, and subsidise either builders or consumers in the middle levels of the market.

The government of Canada, whether Conservative or Liberal, has steadfastly adhered to the third alternative. There has been strict adherence to the principle that different forms of housing assistance are appropriate to different income groups; generally, moderate income people are assisted with loan guarantees, low cost mortgages and grants, and allowed to find housing of their choice. Low income people usually have only one choice offered by their government: to live in state owned housing. This state owned housing has been deliberately constructed to be unappealing. As a director of CMHC put it in a letter to the President of the Corporation:

It seems to me that public housing projects should also be at a minimum standard as far as accommodation is concerned . . . . This should be deliberately used not only to achieve economy, but to make clear that we are not competing with private enterprise, who we assume will be building a more attractive product for those who can afford it.13

At present, public housing of this sort accounts for 1.9 per cent of the nation's housing stock,14 which by government policy has been deliberately populated with those who are in economic or social difficulty.15 It is usually located on marginal land, far from employment centres and social amenities. Accordingly, the Fish-Dennis Report recommended that the programme be abandoned, “at least in its present form”.16

While the public housing programme authorised under Part VI of the National Housing Act17 was virtually the only housing programme designed for the poorest group, various other programmes were created for lower-middle and middle income Canadians. Only two need concern us here: first, s. 15 “entrepreneurial full recovery housing”, the so-called Limited Dividend programme; and second, s. 34.15, the Assisted Home Ownership Programme (AHOP).

The first of these involves a sub-market level loan to an entrepreneur who agrees to rent at agreed rates; despite the connotation of the term 'Limited Dividends', there is no requirement that profits be limited, so long as the rent schedule is followed. There have been numerous problems in the programme, well summarised in the Fish-Dennis Report, and its predecessor, the Charney Report.18 In 1968, it was dropped, but subsequently reinstated. Among its drawbacks is the fact that very little is received in return for a substantial public investment. Normally, the builder is able to 'mortgage out', thereby receiving a loan from CMHC greater than the cost of con-

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13 Supra, note 4 at 174.
14 Supra, note 1 at 2628.
15 Ontario Association of Housing Authorities, Good Housing for Canadians (Toronto: 1964) at 119.
16 Supra, note 4 at 9.
18 Supra, note 4 at 225-43; M. Charney, The Production and Availability of Low-Cost Housing (CMHC, 1971 unpub.) c. 4.
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19 Standards are poor, locations bad, and a builder who has already made a profit by mortgaging out is often willing to walk away from the project entirely rather than be stuck with a sub-market rental structure. An even worse drawback has arisen recently in Ontario. CMHC has refused to enforce the agreed upon rent levels; entrepreneurs have simply raised rents above the prescribed level without getting required CMHC approval. While CMHC refuses to act, tenants cannot, as they are without standing to enforce an agreement to which they are not parties.

The programme which has seen the greatest influx of funds in past years is the Assisted Home Ownership Programme. Between 1973 and 1974, CMHC raised its expenditures on the programme from $133,100,000 to $435,200,000. Basically, the programme uses below-market loans combined with capital grants, and in some provinces, government leased land, to benefit individuals who wish to purchase a home, but are unable to do so. Among the drawbacks is the fact that while it may assist in the purchase of a home, the owner can then sell at market, making a large capital gain, with no long term benefit to the public. Also, the subsidies required are very great if the units are to go to the moderately poor, as originally proposed. The 1970 estimate was that the programme would serve the income group earning from $4,000 to $6,000; in fact 48 per cent of the beneficiaries had incomes above that. In March, 1975, the average recipient of AHOP assistance was earning $9,336 per annum, and this figure cloaked the much higher incomes of recipients in urban areas. At this writing, single income families qualify for aid if the wage earner earns $17,000 or less; if there are two wage earners, the Ontario maximum is $19,000. For comparison's sake, it is interesting to note that Toronto teachers, widely abused for their 'unreasonable' wage demands, earned in 1974-75 from $7,800 to $18,400. A new contract awarded by arbitration provides beginning teachers with a starting salary of $10,549, and those with full qualifications and twelve years' experience with $22,619, thus firmly placing nearly all teachers in a position to qualify for a programme which CMHC unabashedly calls “aid to lower income groups'. As a consequence of the extreme difficulty in building houses which can be purchased by low income people, the Fish-Dennis Report recommended that AHOP be discontinued in urban areas, where land costs

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19 A builder mortgages out when he builds for the amount of the loan or less, and consequently puts no equity into the building. Prior to 1969, loans were permitted up to 95 per cent of the proven end cost of the building; after the Act was changed in that year, the 95 per cent referred to appraised value, closely analogous to market value. Thus, if one can build for under 95 per cent of market value, a profit is assured.

20 Supra, note 4 at 227.

21 Supra, note 1 at 2622.

22 Metropolitan Toronto Negotiators and District Presidents, Metro Negotiations Newsletter, April 12, 1976.
are prohibitive. While the government has not publicly responded, it is true that no AHOP units were built in the City of Toronto in 1974, and only 191 in the Metro area.

C. THIRD FORCE HOUSING

If there is at least a private understanding that the programmes designed to provide shelter for moderate and low income Canadians have been a failure, there appears also to be a consensus as to the heir-apparent. As Toronto Mayor, David Crombie, put it in a brief to a provincial task force on housing, “Federal policies are moving in the direction of increased support for third-force, community-based, non-profit housing”. Crombie promised his support for this shift in policy. Similarly, the New Democratic Party adopted a resolution on urban policy at its Vancouver convention which stated, “The NDP will encourage co-operatives and non-profit groups to become major providers of housing in Canadian cities”. For its part, Parliament has passed three bills since 1973 which widened the possibilities for the use of third force housing in Canada’s cities. As the then Minister of Urban Affairs, the Hon. Ronald Basford said, “The Federal government believes that these organisations should be encouraged in this kind of work, and that they should get as much help as possible.”

Third force, or community based, housing is so called in order to distinguish it from housing initiated by the private sector and remaining in private hands, and also from public housing built under Part VI of the National Housing Act, that is, housing initiated by Ottawa and owned by a province. Third force housing comes in two forms: non-profit co-operative housing, and simple non-profit housing.

1. Co-operative Housing

The National Housing Act (N.H.A.) defines the phrase “co-operative housing project” as “a housing project built by a co-operative association incorporated under the laws of Canada or of any province”. The definition was subsequently broadened in 1973 by replacing the word “built” with the words “built or acquired”, thus allowing co-operatives to use federal funding to purchase older homes for the first time.

In order to be a co-operative housing project for the purposes of the N.H.A., one must incorporate either federally, under the Co-operative Associations Act, or provincially under the relevant statute. While each of the

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28 Supra, note 4 at 20.
27 Supra, note 1 at 2628.
28 Brief to the Ontario Housing Advisory Task Force (Comay Commission) at 16.
29 Urban Policy Resolution #1, Housing As a Human Right at 2.
31 Supra, note 17, s. 2.
32 By S.C. 1973-74, c. 18, s. 1.
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provincial acts has slightly different requirements concerning what actually constitutes a co-operative association, the concept is most clearly presented in the Manitoba Companies Act,\textsuperscript{34} which requires that in a co-operative, every person has one vote, which may not be cast by proxy, and that "the surplus funds arising from the business of the corporation be distributed wholly or in part amongst the members, or among members and patrons, in proportion to the volume of business which they have done with or through the corporation". In housing corporations which are organised on a co-operative basis, this distribution to the membership normally takes the form of lower rentals rather than cash payments, although the outcome is identical.\textsuperscript{35}

Other provinces have more elaborate definitions, as does the federal legislation. Saskatchewan requires that a co-op operate "as nearly as possible at cost",\textsuperscript{36} while Ontario requires the same thing in principle, and then itemises expenditures which will be considered as coming under the rubric of "cost".\textsuperscript{37}

Housing co-operatives are usually set up on a membership loan basis, although they may be created with share capital. A person wishing to be housed in a co-operative signs an 'occupancy agreement', which is analogous to a lease. The first condition of the agreement is that the prospective resident agrees to loan a specified sum to the co-operative association. The signing of the agreement, together with the payment of the loan, makes the signee a member of the co-operative with all privileges, including the right to occupy designated premises. The original function of the member loan was to provide the co-operative with funds for a down payment on real property; since co-operatives were eligible for a loan of 95 per cent of the full cost of the property from CMHC, each member's loan was usually equal to 5 per cent of the total value of the project, divided \textit{pro rata} by the number of units. Since CMHC now has statutory authority to provide 100 per cent mortgage loans to co-operatives,\textsuperscript{38} the original purpose of the member loan has disappeared. Many co-operatives still use it to supplement liquidity and to signify a commitment to the co-operative; insofar as it does remain, of course, it acts as a bar to the use of the co-operative as a shelter device for most poor Canadians.

The member loan makes one a member of the co-operative association. A co-operative resident is therefore a voting member of the organisation which has managerial authority over the premises, and, at the same time, a so-called 'proprietary lessee' of the premises occupied. Popularly (but inaccurately) put, the tenant is the landlord. In fact, the co-operative corporation is the landlord, and the givers of member loans have powers similar to shareholders in joint stock corporations to effect co-operative policy. The

\textsuperscript{34} R.S.M. 1964, c. 3, s. 396.
\textsuperscript{35} Although there is a difference for tax purposes, which encourages co-operative housing projects to lower rents rather than raise incomes.
\textsuperscript{36} The Co-operative Associations Act, R.S.S. 1965, c. 246, s. 2.
\textsuperscript{37} The Co-operative Corporations Act, R.S.O. 1973, c. 101, s. 1(1)(6)(iv).
\textsuperscript{38} By s. 15.1 of the present National Housing Act, as am. by S.C. 1973-74, c. 18, s. 7.
major distinction is that in the case of co-operatives, each member has one vote, rather than voting rights being proportional to investment in the corporation.

In Ontario, it is required by statute that every Ontario incorporated co-operative have at least five directors who are to be elected from the membership for terms not to exceed five years; re-election is permitted. *The Co-operative Corporations Act,*\textsuperscript{39} sets out subjects on which directors may pass by-laws, with provision made for confirmation or variation of by-laws by the members at general meetings, which are to take place at least annually. Ten per cent of the members may requisition the directors to pass a by-law within their powers; if the directors fail to act within twenty-one days, the requisitioning members may call a general meeting to be held within sixty days for the purpose of putting the issue to a vote of the members. The decisions of the co-operatives, democratically made, are expressed in by-laws. The by-laws of a housing co-operative establish the size of the member loan, and the size of the monthly housing charge which is applied to the mortgage. By-laws may establish a procedure to be used to select new members, express limitations on the right to alienate the member's interest, define what constitutes default in a member's obligations, and establish a schedule of maintenance duties.

The relationship of the corporation to its member residents is further outlined in the occupancy agreement mentioned above. Since it is likely to be the only legal document which a member resident will see, it normally sets out the amounts of the loan, housing charge, incidental fees and other costs. It also specifies which expenses are not covered, such as telephone, television cable, and so on. Since the loan is a loan, the occupancy agreement provides for its repayment upon termination, with or without an increment to replace purchasing power eroded by inflation. Default is defined, and notice requirements are set out for those who wish to terminate without penalty. Some occupancy agreements allow the co-operative to use the member-loan as a security deposit to be set off against damage to the premises; it is uncertain whether such a provision is legal in provinces such as Ontario, Quebec and British Columbia, whose Landlord and Tenant Acts forbid security deposits.

Many Co-operative Associations Acts specify that a resident may not alienate his interest in the co-operative under any circumstances, except by resolution of the board of directors. This is necessary to prevent a member from entering a co-operative which has below-market rents, and simply assigning his interest to someone else at market rates. Often, occupancy agreements reiterate the prohibition against alienation, and set out the circumstances under which directors may exercise their discretion to allow an alienation. Making a profit is never allowed, at least by a co-operative which intends to remain on good terms with CMHC; a rather common provision allows a member to sublet his premises for three months every second year. In co-operatives with substantial turnover, a similar result is achieved by

\textsuperscript{39} *Supra,* note 37.
agreeing to grant priority status on the waiting list to ex-members who return to the co-operative within a specified time period.

The most difficult legal questions affecting the affairs of housing cooperatives are undoubtedly those of characterising the interest of a member resident in the occupied premises. Is the interest a real property interest primarily, or an interest in personalty? Is the resident protected by the sections of The Landlord and Tenant Act which apply to residential tenancies?

In Ontario, “tenant” is defined to include “lessee, occupant, subtenant, undertenant, and his and their assigns and representatives”; "landlord" is also defined very broadly, to include, among other things “the person giving or permitting the occupation of the premises in question". Clearly, there is nothing on the face of the statute which prevents the co-operative-resident relationship from being covered by the Act. Since common law has long held tenancy to be an estate in land, however, the wide terms of the definitions have been narrowly construed. A court has held that rooming house occupants are licensees, not tenants, and do not fall within the ambit of the term “occupant” in the definition, at least for the purposes of a quasi-criminal prosecution of a rooming house owner who changed locks on an overholding resident. Similarly, in cases where employees received an apartment as partial consideration for their employment, or where apartments were available only to employees, the intervention of the contingency was held to create a licence rather than a tenancy. The question is what is “the true and dominant relationship”? While both personality and real property considerations are involved, it is clear that in the case of a non-profit housing corporation, the exchange of the member loan for a member loan certificate is not the primary, or dominant aspect of the interactions: a contractual relationship is entered into in order to secure shelter, not for the usual stock market considerations; while the contracting party would likely forego receipt of the member loan certificate if an exemption were granted, he would not omit to take possession of the premises if that were not required.

If the true and dominant relationship in the dealings of a non-profit housing corporation with a prospective resident is that of landlord and tenant, a convenient basis is available for distinguishing Freeborn v. Goodman, the only Supreme Court of Canada decision in which the nature of the co-operative interest has been considered. In that case, purchasers of shares in a co-operative corporation were held to have acquired “an equitable title to the exclusive right of occupancy of their respective suites, and to quiet possession thereof, so long as they remain owners of the shares allotted to

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40 The Landlord and Tenant Act, R.S.O. 1970, c. 236, s. 1(e).
41 Id., s. 1(b).
If this reasoning is applied to non-profit co-operatives as well as commercial co-operatives of the type which is based on share capital, as in Freeborn v. Goodman, it amounts to a conclusion that the member loan is a prime element in the transaction. This leads to the conclusion that Ontario's Landlord and Tenant Act, explicitly designed for modern urban conditions, would have no application to those who reside in what the government assures us will be a major form of new housing. In that case, the only statute directly bearing upon the rights of co-operative members would be The Co-operative Corporations Act, or a version of it, which was fashioned largely for the regulation of agricultural co-operatives. While the National Housing Act requires that co-operatives be incorporated under co-operative corporations statutes, surely it does not require that they be governed in every respect by them.

Two sections of Ontario's Co-operative Corporations Act suggest the difficulties if housing co-operatives are to fall within its ambit. Section 64(1) requires that those who wish to withdraw from a co-operative must give notice of their intention to do so to the secretary of the co-operative six months before withdrawal takes place. It is clear that this is utterly impractical for housing co-operatives, especially those designed to house moderate and low income people in an urban environment.

Similarly inappropriate is s. 66, which establishes the procedure for expulsion of a member from the co-operative. Under the section, a co-operative must give a member ten days written notice of the fact that a meeting of the board of directors is to be convened for the purpose of considering a resolution expelling that member from the co-operative. The reasons for which the expulsion is sought must be set out in the notice, and the member is given the right either to appear at the hearing personally, or to be represented by agent or counsel. In Ontario, the full rights of The Statutory Powers Procedure Act are applicable. There is, in the event of an adverse decision by the board of directors, a right of appeal to the membership of the co-operative at large to confirm, vary or set aside the resolution. A member committed to delay could certainly frustrate the decision of the board for several months, even without utilising the courts.

This provision is inappropriate for non-profit housing co-operatives. First, the rights it establishes are, in some crucial particulars, narrower than those under The Landlord and Tenant Act. Specifically, it requires only that "the grounds upon which it is sought to expel" be set out in writing, whereas s. 10 of The Landlord and Tenant Act requires that the ground for expulsion from premises be one of the 'specified' grounds, such as undue damage, contravention of health standards and the like. Clearly, then, co-operative residents would be unprotected from expulsion on trivial grounds, provided that the directors could be sure that their expulsion resolution had the backing of 51 per cent of the membership. On the other hand, the unlimited right

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40 Id. at 406.
47 S.O. 1971, c. 47.
48 This was enacted by S.O. 1975, (2nd Sess.) c. 13, s. 3.
of appeal in *The Co-operative Corporations Act*, s. 66, could allow an undue prolongation of an expulsion by a member. Since the members of the co-operative are collectively responsible for the mortgage, the result of a long-standing unresolved expulsion could be to raise rents for people who can ill afford it. It seems clear that the procedure in *The Landlord and Tenant Act*, s. 103(f) more closely approximates the needs of both the co-operative and the resident in an expulsion situation.

The underlying difficulty, of course, is the assumption that the affairs of all types of co-operative can be covered by the same legislation. Only the Saskatchewan *Co-operative Associations Act* has a specific part dealing solely with housing co-operatives, and the issues canvassed above are not treated there. Thus, in the rest of Canada we have, on the one hand, stirring calls to use co-operatives as a major mode of shelter provision; on the other, they are expected to run their affairs as if they were identical to feed-supply or marketing co-operatives.

Supporters of co-operatives have clearly been guilty of overstating the benefits of this kind of community democracy; nonetheless, its benefits are real and tangible. The long term tendency in Canada has been the proportionate decrease in independent proprietors and increase in wage labourers as the early English democrats knew, this increasing dependency implied a less firm position from which to take part in political life. An analogous tendency exists in housing; tenancy is replacing home ownership at a rapid rate, and tenants who wish to take part in local affairs are liable to lose their homes if their landlord disapproves.

Co-operatives go some distance toward the goal of firmly re-establishing this independence in the residential area. The oft-expressed desire to have control over the decisions which affect one's daily life is more likely to be satisfied in a democratic co-operative than under virtually any form of tenancy.

2. *Non-Profit Housing*

The other member of the class called third force housing is 'non-profit' housing. For the purposes of the *National Housing Act*, a non-profit organisation is one “no part of the income of which is payable or is otherwise available for the personal benefit of any proprietor, member, or shareholder thereof”. The *N.H.A.* recognises two kinds of non-profit corporation. The first is one which is “constituted exclusively for charitable purposes”;

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49 R.S.S. 1965, c. 246, Part V.


53 S.C. 1974-75, c. 38, s. 1.

54 Supra, note 17, s. 15.1(1)(a).
generally, these non-profits are incorporated by service clubs, unions, or religious organisations. The second kind of non-profit corporation recognised by the Act is “a housing corporation, all of the shares of which are owned by a municipality”.66

Generally, non-profit housing corporations are of much less interest from a legal standpoint than are co-operatives. The residents of the former are the tenants of the corporation, and are governed by the law applicable to tenants. They normally have no voice in the administration of their buildings, and are unlikely to regard themselves as owners of their units. Unfortunately, non-profit units of this sort are providing the lion’s share of third force housing in Canada, while non-profit co-operatives are slowly being shunted into the background.

D. LEGISLATIVE ASSISTANCE FOR THIRD FORCE HOUSING

To see how this has happened, it is necessary to examine the assistance mechanisms which have been adopted to aid the expansion of third force housing, and the application of those mechanisms to urban Canada.

In 1972, Susan Fish and Michael Dennis published the results of their CMHC study on low income housing, which had been undertaken to provide background material for revisions of the N.H.A. in 1972, and a later possible complete rewriting of the Act. As noted above, it recommended that Part VI public housing and Limited Dividend housing be abandoned, and AHOP excluded from urban areas. It was much more favourably disposed to third force housing. Five recommendations were made:

1) Make 100 per cent loans to co-operatives and to other non-profit institutions and groups;
2) Provide seed money for organisation and development;
3) Provide technical expertise directly, through the establishment of independent advisory bodies and by funding groups to hire directly the necessary expertise;
4) Adopt internal procedures which make [third force housing] far more accessible and receptive to those groups;
5) Make shelter subsidies available for non-governmental non-profit housing, and require a broad income mix.68

In January, 1973, the minority Liberal government introduced a package of amendments to the N.H.A., many of which have implications for third force housing.67

First, s. 34.18 gives CMHC authority to loan money to co-operatives which are constructing, acquiring, or improving a housing project. While

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65 Id., s. 15.1(1)(c).
66 Supra, note 4 at 21-22.
CMHC has previously had this authority for forms of home ownership which included co-operatives, the creation of a separate section allows the creation of separate, favourable interest rates for co-operatives. Section 15.1 empowers CMHC to make loans to third force housing groups up to 100 per cent of the lending value of the project, in contrast to the usual 95 per cent maximum. Section 15.1(2) allows the Corporation to make grants of up to 10 per cent of capital cost to third force groups in unspecified circumstances. Finally, s. 34.1 creates authority for $10,000 'start-up' grants to be given to co-operatives and non-profit corporations. It is expected that this money will go for such expenses as research and organisation, incorporation, professional fees, site selection, options and tenant selection.

While this package had a substantial effect on third force housing, the lack of legislative authority to allow CMHC to lease federal land to co-operatives was seen as a major difficulty. During the 1974 election campaign, the government announced that, if re-elected, it would bring in legislation on this point. On January 27, 1975, Bill C-46 was introduced by the Minister of Urban Affairs, the Hon. Barnett Danson. It gives CMHC authority to acquire land, and lease it back to third force groups. Although Mr. Danson avoided saying so in his discussion of the Bill, this new power vested in CMHC is made conditional upon the beneficiary not having received any contribution under s. 15.1(2). What was clearly promised as an additional benefit to co-operatives became, in s. 21.1, an alternate benefit, to be received if previously existing sections were not utilized. An amendment striking out the words which made the two forms of relief alternate was offered by Mr. Gilbert (NDP-Broadview) but was defeated.

In December, 1975, a third set of changes in the N.H.A. was passed by Parliament. By a new version of s. 34.19, CMHC was empowered to make yearly contributions to co-operatives to assist in paying municipal taxes, or to assist in meeting mortgage obligations.

There has, then, been substantial recent activity in the area of legislation concerning third force housing. However, the actual impact upon the housing situation has not been considerable.

E. THE CONTRIBUTION OF THIRD FORCE HOUSING TO THE SOLUTION OF THE HOUSING PROBLEM

Any assessment of the actual impact of the government's third force housing programme must begin with the admission that all the relevant data do not yet exist. At this writing, CMHC's 1975 Annual Report is not available; nor is there any possibility of assessing the usefulness of Bills C-46 and C-77, which have only recently become law. Still, the 1973 amendments to the N.H.A. have had time to begin to work; if they are to be judged a success, they should have begun to show results.

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58 Supra, note 1.
59 The amendments were passed as S.C. 1974-75, c. 38.
60 S.C. 1974-75, c. 82, s. 5.
The following table shows the number of housing units expected to result from loans approved in each year.61

ALL THIRD FORCE HOUSING

<table>
<thead>
<tr>
<th>Year</th>
<th>Self-contained Units</th>
<th>Hostel Accommodation</th>
<th>Non-Profit Units</th>
<th>Co-operative Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>2237</td>
<td>5940</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>1970</td>
<td>3022</td>
<td>9150</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>1971</td>
<td>3280</td>
<td>5523</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>1972</td>
<td>1981</td>
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</tr>
<tr>
<td>1973</td>
<td>*</td>
<td>*</td>
<td>4314</td>
<td>4210</td>
</tr>
<tr>
<td>1974</td>
<td>*</td>
<td>*</td>
<td>4388</td>
<td>3645</td>
</tr>
</tbody>
</table>

It is important to recognise that several thousand low income starts are an accomplishment in an economy which would otherwise produce virtually none; however, the conclusion is unavoidable that the amount is far from that required to meet the need. The socially important element of third force housing is its capability to provide an alternate source of inexpensive housing, thereby acting as a drag upon the speculative private market. Yet this can occur only where a substantial share of the housing stock is third force. At present, Canada produces about 220,000 new units annually; the Minister of Urban Affairs has set a 1976 target of 235,000.62 At existing levels of production, then, co-operatives account for about 0.3 per cent of housing starts, and non-profit housing about 2 per cent. This 2.3 per cent of housing starts constitutes only 0.5 per cent of housing stock. If a substantial departure from present trends is not made, the year 2000 will see only about 2 per cent of stock in the form of third force housing. Based on present levels of funding and construction, Mr. Eric LeBourdais of the real estate developers' lobby, the Urban Development Institute, will likely be correct in his assessment: “And as for non-profit housing providing a pool of inflation-free housing, it won't be a pool, it'll be a puddle.”63

It appears unlikely that co-operatives will be able to increase significantly their share of the total housing stock. Countries with the most successful co-operative movements are often those with strong labour movements, such as in Scandinavia. These non-governmental organizations have been able to provide personnel, technical resources and an ongoing commitment to co-operatives well above what Canadian co-operatives have been able to muster. The third and fourth recommendations64 of the Dennis-Fish Task Force have

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61 CMHC Annual Reports (Ottawa: 1969-74).
62 Toronto Star (Mar. 5, 1976) at C-10.
63 The quotation is from “Homeowners Who Aren’t”, Toronto Life (Jan. 1976) at 23.
64 3) Provide technical expertise directly, through the establishment of independent advisory bodies and by funding groups to hire directly the necessary expertise;
4) Adopt internal procedures which make [third force housing] far more accessible and receptive to those groups.
not, so far as co-operatives are concerned, been implemented. But the under-
lying reality is that there are not enough community based groups with the 
cohesion and perseverance required to establish and maintain a co-operative. 
This becomes more true as one descends the ladder of income and status; 
a neighbourhood unable to retain a lawyer, or an accountant, or anyone who 
has ever completed a real estate transaction is unlikely to be successful in 
creating a co-operative. In other words, the greater the need, the less likely 
that it can be filled by co-operatives.

As for non-profit housing of the co-operative sort, the future is brighter 
even if the benefits are not as great. Because of the greater involvement of 
municipalities in its creation, the problems of expertise and perseverance are 
largely solved. The major drawback remains funding from CMHC. Since 
it does not incorporate the self-management provisions of co-operatives, it is 
possible that its residents will feel themselves to be without a stake in the 
success of the project; the active community which co-operatives promise is 
sacrificed in order to achieve the benefit associated with an appreciable 
number of units.

Co-operatives and non-profit housing were originally considered in 
Canada because of the growing numbers of people unable to afford privately 
developed housing, and the perceived failure of public housing programmes, 
which involved the concentration of the poor in ghettos. If the pitiful level 
of co-operative production continues, it must be viewed as an interesting 
experience for a lucky few, rather than a major housing programme. The 
alternative, non-profit housing built by Crown or municipal corporations, 
if carried out on a massive scale, has a chance of making an impact on the 
housing crisis. So far, it has not lived up to its promise.