UNEARTHING THE "ESTABLISHED CITIZEN": INTERNATIONAL STUDENTS' INACCESS TO JUSTICE FROM HOUSING TO STUDY PERMITS

ZACHARY JERICHO COUTURE*

This article outlines the liminal status of international students in Canada, which stems from their characterization as perpetual outsiders, or "others." This othering, caused by the intersection of Canadian law and policies, has led to greater vulnerability of international students. Canadian law serves to protect a specific beneficiary — the "established citizen" class — which results in a lack of access to justice for racialized and vulnerable groups, including international students. Historical examples include housing initiatives displacing Black tenants and the gentrification of Vancouver's Chinatown, where the interests of residents were overlooked in favour of serving the "established citizenry." International students, having been villainized as "others" responsible for the housing crisis, are unfairly viewed as a foreign threat to the interests of the "true Canadian."

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I. INTRODUCTION

The political climate in Canada is increasingly casting international students as a problem for Canadians. In a January 2024 press release, Immigration, Refugees and Citizenship Canada (IRCC) announced that it would be capping the number of international student permits issued to undergraduate and vocational students to 360,000 for a two-year period — which would represent a 35 percent year-over-year decrease in the number of study permits issued.[1] Similarly, a month prior to this in December 2023, IRCC revised its guidelines to raise the financial requirement for foreign students in Canada from CDN$10,000 to CDN$20,635 for living expenses in addition to their first-year tuition and travel costs.[2] Section 220 of the *Immigration and Refugee Protection Regulations* requires officers to deny study permits if an applicant is determined to not have sufficient financial resources.[3] Thus, this financial requirement measure would function to limit the issuance of study permits. As of September 2024, Marc Miller, who was then the acting Minister for IRCC, had said that the new targets for 2025 and 2026 will be 437,000 permits, down from the 485,000 permit target in 2024.[4] He further clarified that the Government of Canada aims to "'yield approximately 300,000 fewer study permits' over the next three years."[5] The stated reason for these restrictive measures has, in part, been to address housing instability in Canada. Minister Miller publicly stated that international students raise concern when it comes to Canada's domestic housing. In his words:

> [International study] is an ecosystem in Canada that is very lucrative and it's come with some perverse effects: some fraud in the system, some people taking advantage of what is seen as a backdoor entry into Canada, but also pressure in a number of areas — one of those is housing.[6]

In the post-pandemic context when many are struggling financially, the Minister's assessment presents a message to the Canadian public that international students are, at least partially, responsible for the ever-increasing crisis of unaffordable housing in Canadian cities. Multiple Canadian news outlets from across the country and political spectrum have reported that the increase of international students is a factor in housing shortages and rent hikes, from Toronto to Vancouver to Calgary.[7] By 2025, a year after these measures, news outlets have

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1 Immigration, Refugees and Citizenship Canada, News Release, "Canada to Stabilize Growth and Decrease Number of New International Student Permits Issued to Approximately 360,000 for 2024" (22 January 2024), online: [perma.cc/3BAF-74NK].

2 Immigration, Refugees and Citizenship Canada, News Release, "Revised Requirements to Better Protect International Students" (7 December 2023), online: [perma.cc/V7Q9-C7SL].

3 SOR/2002-227, s 220 [*IRPR*].

4 Anja Karadeglija, "Canada Further Reducing the Number of International Student Permits," *CBC News* (18 September 2024), online: [perma.cc/T79D-RGPW].

5 *Ibid*.

6 Christian Paas-Lang, "Integrity of Immigration System at Risk as International Student Numbers Balloon, Minister Says," *CBC News* (27 August 2023), online: [perma.cc/5UYY-LWQP] (quoting Immigration Minister Marc Miller in an interview with Evan Dyer).

7 *Ibid*; Ryan Tumilty, "'Out of Control': Immigration Minister Says He Wants to Reduce International Student Arrivals," *National Post* (15 January 2024), online: [perma.cc/B2RW-8WG5]; Sandrine Vieira, "Ottawa va plafonner pour deux ans le nombre d'étudiants étrangers," *Le Devoir* (22 January 2022), online: [perma.cc/X2KZ-6CTV]; Catharine Tunney, "Ottawa Considering a Cap on International Students to Ease Housing Pressure, Says Fraser," *CBC News* (21 August 2023), online: [perma.cc/W94E-DEQD].

reported that this has put particular pressure on colleges, with a vast drop in enrolment.[8] Moreover, since these policies have been enacted, Canadian public opinion has shifted, with a clear majority of Canadians by the fall of 2024 saying they think there is too much immigration, citing housing as a principle driving concern.[9]

Suggesting that "newcomers" or "foreigners" are responsible for housing shortages is not new in Canadian history. Submissions made to Parliament before the enactment of the 1976 *Immigration Act* included numerous hostile accounts of immigrants "exacerbating housing shortages [and] taxing the welfare [rolls]" which were recorded by Senate as prejudicial.[10] In fact, the Mayor of Vancouver asserted that "immigration [to Vancouver] has exerted great pressure on land and therefore on housing prices … This is primarily a spatial question, not a racial question."[11]

Over the course of 2023 and 2024, the Prime Minister took action to assure Canadians that the government does not intend to scapegoat international students for the ongoing housing crisis in the country. In fact, shortly after former IRCC Minister Marc Miller first suggested capping international study permits to the press, former Prime Minister Justin Trudeau made a public declaration that international students should not be singled out as a cause for the housing crisis, and recognized there were multiple factors at play.[12] Similarly, Minister Miller described the measure of increasing financial requirements for study as a protective mechanism for students, indicating that the bad actors are *not the students* but certain colleges, described as "the diploma equivalent of puppy mills that are just churning out diplomas," which "is fraud and abuse and it needs to end."[13] Despite these assurances that the government is not against international students themselves, the legal framework and policy choices made by the federal government seem to primarily target international students more than any other actor in the name of responding to the housing crisis. In this contemporary discourse, the root causes of the housing crisis are lost, with attention instead improperly and uniquely placed on international students.

With all this in mind, it becomes paramount to take a critical account of how the law exists for international students coming to Canada, especially with regard to tenancy and housing. I argue that Canada's legal infrastructure encodes structural disadvantage for international students when it comes to access to justice — not just in immigration law but as a persistent socio-legal feature across Canadian law. I argue that there is an interplay between immigration and tenancy law which must be considered. The precarity of status and minimal access to procedural rights embedded in the immigration system reinforce and instruct a construction of "otherness" and "temporality" that carries through when

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8 Emily Williams, "How the Cap on international Students is Hurting Alberta's Smaller Post-Secondary Schools," *CBC News* (12 March 2025), online: [perma.cc/R9BM-JZZG]; Pari Johnston, "Federal International Student Reforms Sting Communities Across Canada," *Policy Options Politiques* (February 13, 2025), online [perma.cc/46QE-SBPH].

9 Keith Neuman, "Canadian Public Opinion about Immigration and Refugees – Fall 2024" (17 October 2024), online (blog): [perma.cc/62DU-EB9K].

10 *Minutes of the Proceedings of the Senate,* 30th Parl, 1st Sess, No 126 (6 November 1975) at 547 (Third and Final Report of the Special Joint Committee on Immigration Policy).

11 *Ibid*.

12 Uday Rana, "'Different Factors' Fuel Housing Crisis, Not International Students: Trudeau," *Global News* (23 August 2023), online: [perma.cc/H9L3-ZMM7].

13 The Canadian Press, "Federal Government Hikes Income requirement for Foreign Students, Target 'Puppy Mill" Schools," *The Canadian Press* (7 December 2023), online: [perma.cc/7T3G-E49N].

international students make tenancy agreements. I situate this within a broader understanding of race and racial construction in the law, by understanding tenancy and immigration law in reference to the "established citizen" — or the imagined Canadian beneficiary of our laws and policies. The construction of race and belonging have significant impacts on our law, and so I use the model of the established citizen as a heuristic device to understand bias in Canadian law, both at large and in specific reference to international students. Ultimately, I argue that when we look at the intersections and interplay between legal systems in Canada with which international students interact, it becomes clear that Canadian law has excluded them from the fruits of legal protection. This can be direct, as is the case with immigration law. But it also may be indirect, in how our law constructs international students as a racialized "other."

I will advance this argument in three parts. First, I will outline my conceptual model of the established citizen. In line with Critical Race Theory, this model seeks to account for how over the course of Canadian history, law and policy have intended to affirm and protect a certain beneficiary class — the "established citizenry." I will specifically account for different aspects of this established citizen beneficiary feature with regard to select historical municipal housing policies. Though these examples are not directly referring to international students, I use them to help understand Canada's socio-legal landscape. Second, I will outline the particular vulnerabilities and insecurities created for international students within Canada's immigration law system, especially with regard to the study permit regime. This will be done in reference to the way in which international students are constructed in opposition to the established citizen. I end by discussing how the precarious status of non-citizens in our immigration law system follows international students when engaging in the Canadian rental housing market. Specifically, I outline how biases within the Canadian tenancy law system can be exacerbated when the tenant is marked as "temporary" or "deportable." I conclude that the interactions of race, immigration law, and other legal and social systems like housing intersect to create a persistent structure of inaccess to justice and an absence of legal protections for international students.

II. THE "ESTABLISHED CITIZEN" AND THE HISTORY OF EXCLUSIVE BENEFICIARIES IN CANADIAN HOUSING

A. WHY RACE MATTERS

A proper understanding of international students and access to justice must begin with a recognition of race. Race is a social structure that is embedded, recreated, and reinforced through our legal institutions and facilitates conditions of advantage and disadvantage.[14] In a direct fashion, race concerns international students as many are racialized as "non-white" and certainly as "non-Canadian." Yet, it is important to recall that race is a function of constructed hierarchies of imagined communities.[15] Here, the distinction between citizenship and non-citizenship plays a direct role.[16] Canada's border is not only an imagined frontier but, as a social consequence creates an imagined outsider and insider, a regime of who belongs and

[14] Richard Delgado & Jean Stefancic, *Critical Race Theory: An Introduction*, 3rd ed (New York: New York University Press, 2017) at 21.

[15] See generally Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, revised ed (London, UK: Verso, 2006) at 149–50.

[16] Luke de Noronha, "Hierarchies of Membership and the Management of Global Population: Reflections on Citizenship and Racial Ordering" (2022) 26:4/5 Citizenship Studies 426 at 426.

who does not belong. Citizenship and entry into Canada function not just as bastions of state sovereignty but construct the "other" through legal and spatial exclusions.[17] In this way, citizenship parallels the construction of race, as both are social constructs of belonging, membership, social separation, and physical separation.[18] Further, the condition of "othering" someone as a non-citizen (whether formal or imagined) overlaps and intersects with the construction of race and racism. Indeed, the non-citizen "other" mirrors the racial "other" — someone who does not belong and is not part of "us."

Race is also highly relevant to the discussion of homeownership and the law. If race, like citizenship, invokes borders of belonging and unbelonging,[19] housing functions as a prime manifestation of this dichotomy.[20] The home is the physical manifestation of family and community. Where you live determines the proximity of those with whom you share daily interactions and exchanges. Housing has been associated with determining the legal, political, and social dimensions of a community. Indeed, homeownership itself is seen as a "marker of commitment to community and foundation for active and participatory citizenship."[21] Ultimately then, law must look at housing in reference to those who are beneficiaries of housing law and protections, and those who fall outside of that beneficiary group.

B. DEFINING THE "ESTABLISHED CITIZEN"

The "established citizen" is a theoretical model I advance. The established citizen represents the abstract ideal of someone "belonging" in the legal or political polity and thus deserving of rights. I refer to this person in terms of "citizenship" because "citizens" can be considered the ultimate political and legal subject-agents of democratic states. As such, by using the language of citizenry, the concept of the established citizen can invoke an understanding of social relations, power dynamics, and, of course, race.

So, who is the established citizen? Within our legal landscape, the established citizen is the imagined intended beneficiary of legal protections and policy initiatives. By this, I do not mean to refer exclusively to those with formal citizenship, nor even to those who are racialized as "white" and who have formal citizenship. That would be too simple. The established citizen is a concept that is flexible and not constant in the same way that "whiteness" as a social category has been shifting and dynamic over history and geographies.[22] A lot of people think of and discuss race in terms of genetics or physical characteristics. While these factors certainly play a role in how we have constructed race, it is important to recall that race has always reflected the social relations and power dynamics of a specific time and place.[23] The established citizen is nuanced in parallel.

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17 *Ibid* at 427; E Tendayi Achiume, "Racial Borders" (2022) 110:3 Geo LJ 445.

18 Achiume, *ibid* at 449, 480.

19 See generally Achiume, *supra* note 17.

20 Nestor M Davidson, "Property and Identity: Vulnerability and Insecurity in the Housing Crisis" (2012) 47 Harv CR-CLL Rev 119 at 125; Sarah Buhler & Patricia Barkaskas, "The Colonialism of Eviction" (2023) 36 J L & Soc Pol'y 23 at 36.

21 Davidson, *ibid* at 125.

22 Ian Haney López, *White by Law: The Legal Construction of Race*, revised ed (New York: New York University Press, 1996) at xxi–xxii.

23 *Ibid*.

The established citizen draws similarity with Cheryl Harris' idea of "whiteness as property."[24] Harris' seminal theory holds that over the history of settler-colonialism and slavery in North America, property law has worked in tandem with the social construction of race to imagine whiteness as granting in and of itself a property right — a right to enjoy citizenship, to use and enjoy space, and to have rights recognition by the legal polity.[25] This is premised on the fact that property is a fundamentally social aspect of law. It is designed to inform us who can enjoy and use certain objects and places, and most importantly assert the right to exclude others from such objects and places. However, we can expand our understanding of whiteness as a property right to encompass the various aspects of racialization that may garner *proximity* to whiteness aside from just being formally racialized or categorized as white. This includes the ability to integrate within Canada, access to English or French language, and economic establishment in Canada — all of which are concepts that underpin requirements deemed necessary for economic immigration into Canada under the *IRPR*.[26]

Unearthing the established citizen helps us situate groups that are "othered" within the Canadian legal landscape. The established citizen is an abstract person against whom we judge belonging and "deservedness" within the community, which shifts depending on context and other variables. In Canada, there is a formal overlap between the values and characteristics associated with closer proximity with whiteness, and the economic immigration requirements for permanent residence. As such, some of the rights of citizenship that Harris describes as having constructed whiteness can be attained where economic migrants display characteristics associated with whiteness. In this perspective, the established citizen can include those who display these imagined features of whiteness — features that demonstrate belonging in the polity. But this is an unstable category, and can and does shift and change in different settings. For example, permanent residents who arrive as economic immigrants are subject to residency requirements and can still be deported, unlike citizens.[27] Yet they also have a right to move and work in ways parallel to citizenship.[28] As a class, they are at times part of the established citizenry and at times apart. Simultaneously, permanent residents hold the legal and social protections of mobility within Canada as a community, but still are subject to a constant and latent threat of potential exclusion from the community altogether.

C. THE ESTABLISHED CITIZEN AS A BENEFICIARY TO THE EXCLUSION OF OTHERS: THE PALL PROJECT IN MONTREAL AND ANTI-BLACK AFFORDABLE HOUSING

The benefits of housing initiatives have never truly been universal in Canada. Certain persons are intended to benefit in the housing market over others. The history of tenants' rights and affordable housing in Montreal serve a poignant case in point. In the late 1980s,

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24 Cheryl I Harris, "Whiteness as Property" (1993) 106:8 Harv L Rev 1707 at 1709.

25 *Ibid* at 1716, 1744.

26 *IRPR*, *supra* note 3, ss 75(1)–(2) (these provisions of the *IRPR* set out the necessary requirements for entry into Canada under the Federal Skilled Workers Program).

27 *Immigration and Refugee Protection Act*, SC 2001, c 27, ss 33–42 [*IRPA*] (which cement the right of the Canadian state to remove permanent residents for various grounds of "inadmissibility" such as involvement in crime or posing a public health risk).

28 *Canadian Charter of Rights and Freedoms*, s 6, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (where permanent residents are granted a constitutional right to movement within Canada between the provinces).

the Rassemblement des Citoyens de Montréal (RCM) had gained prominence as a local political party, running a campaign that centred on the ideals of housing as a right and the protection of tenancy interests.[29] In 1989, after being elected to municipal government, the RCM implemented its first major housing initiative called the Programme d'acquisition de logements locatif (PALL). Under this initiative, the city would purchase run-down housing, renovate these residences, then re-sell them to any of the city housing authority, non-profits, or tenants' co-operatives to both create more affordable housing and stimulate a new "sense of attachment" for residents of these areas.[30] PALL particularly targeted neighbourhoods with significant Black presence — which policy-makers and politicians would label as "ghettos" — such as Côte-des-Neiges, Notre-Dame-de-Grâce, and Cartierville.[31] PALL initiatives also accompanied increased police surveillance, and co-operation between the city and public housing authorities to evict tenants suspected of drug dealing or allowing drug deals to occur in their units.[32] This had the particular racialized impact of displacing numerous Black tenants. These evictions were supported by article 1618 of the *Civil Code of Québec* prohibiting tenants from changing the "form" of rented property through illicit activities — and landlords only had to provide enough evidence to meet the threshold of a balance of probabilities (as opposed to the criminal threshold of beyond a reasonable doubt).[33]

Law and policy functioned to displace Black tenants for the benefit of other Montreal renters, who could feel a new "sense of attachment" to their living quarters.[34] Indeed, the Black tenants in these areas were not imagined as part of the public intended to benefit from PALL, and so any concerns they had around police presence or their rights to tenancy were negated. In this light, Black Montrealers effectively had to be "unimagined" altogether from the community in order to justify PALL as for the community benefit.[35]

Yet, to truly grasp the anti-Black exclusions of PALL, we must consider the socio-political racial landscape of Montreal at that time. In the early 1970s just before PALL, Black people in Quebec were often assumed to not be able to speak French — as Anglo-Caribbean Montrealers composed the majority of Black people in Montreal at that time.[36] Over time, waves of Haitian migrants began to come to the city.[37] Black migrants, namely Haitians, who arrived in the mid-1970s and 1980s were largely defined as being working class, seeking employment in service, manufacturing, or domestic work, and some arrived in Canada irregularly without status.[38] Thus, PALL, as an initiative that sought to benefit the Montreal community through the displacement of Black persons, existed in a landscape where Black Montrealers were imagined comparatively to other Montrealers as non-French speaking, working class or otherwise less capable of economic establishment, or even quite literally "illegal" non-citizens. It was in a social context that saw Black persons as necessarily outside

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29 Ted Rutland, "Nowhere Land: The Evicted Space of Black Tenants' Rights in Montreal" (2022) 40:2 Society & Space 208 at 214.
30 *Ibid* at 216.
31 *Ibid*.
32 *Ibid* at 216–17.
33 *Ibid* at 218.
34 *Ibid* at 216.
35 Rob Nixon, "Unimagined Communities: Developmental Refugees, Megadams and Monumental Modernity" [2009]:69 New Formations 62.
36 Sean Mills, *A Place in the Sun: Haiti, Haitians, and the Remaking of Quebec* (Montreal: McGill-Queen's University Press, 2016) at 135.
37 *Ibid* at 135–136.
38 *Ibid* at 136.

of the established citizenry where the legal landscape for Black evictions and displacement ensued under PALL.

The established citizen serves to help justify certain policy initiatives as beneficial and for the "greater good" when principally intended only to benefit certain persons. We can imagine our law or policy as benefitting the community as a whole while simultaneously "unimagining" excluded persons as community members. This leaves those who are excluded outside of the protections and benefits of such law and policy.

D. VILLAINIZING THE "OTHER": THE VANCOUVER "MONSTER HOUSE"

The case of Black Montrealers and PALL is demonstrative of how housing policy may come to benefit some at the express exclusion or even displacement of others. This is an obvious and clear way in which the established citizen may manifest in practice. Yet, the established citizen also matters in actively *constructing certain people as an "other,"* and not merely just as a reflection of pre-existing racial prejudices. Indeed, the way in which law is shaped expressly informs not just who is *legally* outside of the realm of protected benefits, but also who is *socially* imagined to not belong in the community. This is markedly evident in the case of the "Monster House" controversies in late 1990s Vancouver.

Following the 1997 handover of Hong Kong back to the People's Republic of China, there was a massive exodus of Hongkongers, many of whom re-settled in Vancouver.[39] This was a class of migrant that had more established capital when arriving to Canada, as many worked in business and came as investor immigrants — an immigrant category designed to boost Canada's economic profile through an infusion of new capital.[40] Many came to Vancouver's West Side — neighbourhoods largely and almost uniquely composed of wealthy single families of Anglo background — and began purchasing lots and in some cases redeveloping new, larger houses there.[41] The development of these new homes was viewed by longstanding wealthy Vancouverites as unbecoming and "unneighbourly,"[42] and newspaper articles across the city began to characterize these homes as "Monster Houses."[43] Anglo-Canadian property owners even began to lobby for municipal zoning bylaws to get rid of the Monster House and protect the British character of the neighbourhoods' homes.[44] In 1996, Vancouver City Council passed the RS-6 District Schedule and accompanying Design Guidelines that underscored the importance of preserving a neighbourhood's "character" and specified new developments ought to take account of how they would fit in with the neighbourhood.[45]

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39 Katharyne Mitchell, "Fast Capital, Race, Modernity, and the Monster House" in Rosemary Marangoly George, ed, *Burning Down the House: Recycling Domesticity* (Boulder, Colo: Westview Press, 1998) 187 at 187.

40 *Ibid* at 208.

41 Linda Joy Horan, *Beauty is in the Eye of the Beholder: "Monster Houses" in Vancouver* (MA Thesis, University of British Columbia, 2000) [unpublished] at 1–3; *ibid* at 188.

42 Horan, *ibid* at 2, 52.

43 Mitchell, *supra* note 39 at 187; *Ibid* at 52.

44 Horan, *supra* note 41 at 59.

45 City of Vancouver, revised by-law No RS-6, *Zoning and Development By-Law: District Schedule*, Consultation Draft (April 2022), s 1.1 [RS-6 Schedule]; City of Vancouver, by-law No RS-6, *Zoning and Development Design Guidelines* (26 March 1996), s 2.1 [RS-6 Design Guidelines].

The public and legal response to the perceived threat of the Monster House was deeply racialized in the most obvious sense of the term. The public pushback against the Monster House represented a modern form of "Yellow Peril" — or fear of a cultural decay resultant from the arrival of East Asian migrants.[46] However, the racial "othering" with the Monster Houses did not attach itself directly to persons and their bodies; it instead attached to the spaces and buildings in which they occupied as a proxy. But while it was formally only property in and of itself that was not belonging, monstrous, and "alien," — the Monster House was inextricably associated with Chinese migrants and an "Asian invasion."[47] In response to this, the RS-6 bylaws emphasized the need to protect "residential character."[48] At face value this is neutral language, but it is language that underscores implicit ideas of belonging in terms conducive to constructing the established citizen. This is compounded by the fact that neighbourhoods largely associated as white, single-family, and affluent were the ones deemed important enough to have their character preserved.[49]

Beyond the mere unimagining that occurred in the context of PALL in Montreal, the Vancouver Monster House shows the demonization of the "other" as a constant yet abstract threat to the established citizen. It is for this reason that the law is justified to target the "other," whether direct or indirect, for the "protection" of the established community. This reinforces the ideas of membership and non-membership in the community.

E. THE DIFFERENTIAL LEGAL PROTECTIONS OF THE NON-ESTABLISHED CITIZEN: THE GENTRIFICATION OF VANCOUVER'S CHINATOWN

The Monster House saga bears connection to the modern Canadian housing landscape, as it shows a social atmosphere and policy foundation already rife for characterizing certain groups and people as belonging, and others as threatening outsiders. International students and other temporary residents in Canada bear a particular racialization as unbelonging today, in large part owing to their legal status as temporarily authorized to be in Canada. Yet, it is important to remember that racialization exists and functions in terms of class as well as citizenship status.

In the case of the Monster House, the incoming Hong Kong migrants were largely affluent and held capital. In these circumstances, race was invoked to protect the Canadian public and homeowner against the undue influence of foreign capital. In terms of the Canadian housing market today, the threat of harmful capital is never directed against established domestic influence. This is evident by the ongoing case of gentrification in predominantly and historically immigrant or ethnic neighbourhoods, as will be further detailed. Ultimately, the way certain peoples or communities are valued and granted protection can differ. People who

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46 Horan, *supra* note 41 at 6, 29.

47 Gillian Creese & Laurie Peterson, "Making the News, Racializing Chinese Canadians" (1996) 51 Studies in Political Economy 117 at 132–33. See also Isabel Minty, "Let's Fight These Monsters: Neighbourhoods Have to Take Action — Before Huge New Houses are Built," *Vancouver Sun* (16 January 1992) A15; Kevin Griffin, "A Monster Problem in Shaughnessy," *Vancouver Sun* (17 November 1992) B1; Holman Wang, "Chinese Scapegoats for 'Monster Houses'," *Vancouver Sun* (10 May 1996) A2; Mitchell, *supra* note 39.

48 RS-6 Schedule, *supra* note 45, s 1.1; RS-6 Design Guidelines, *supra* note 45, s 2.1.

49 Horan, *supra* note 41 at 1, 31.

would otherwise be outsiders may be granted legal protection and benefit primarily on the basis of perceived economic benefit to the larger community.

Chinatowns and other Asian ethnic enclaves have historically been considered "slums" ridden with uncleanliness and criminality, yet they were a locus of early Asian-Canadian community settlement.[50] Residents of Chinatowns in cities such as Vancouver and Montreal have been subject to displacement due to the rising unaffordability of these areas. In the case of Montreal, this has been in part owed to 1980s zoning bylaws restricting commercial development, and in turn encouraging mass residential development in the area driving forward a non-Chinese residential influx.[51]

In a similar trend, Vancouver's Chinatown and Japantown partially compose the Downtown East Side, an area of the city known for its low-income status and large houseless population.[52] While Vancouver passed some zoning bylaws to try and protect affordable Single Room Accommodations, Vancouver's Chinatown has seen the incursion of avant-garde restaurants and businesses alongside new residential developments, that simultaneously impose a raising cost-of-living standard in the area while capitalizing on the "affordability" of being in close proximity to poverty in the city.[53] Commercial practice and city oversight has meant the continued disruption of housing and community for historically racialized neighbourhoods through gentrification. This has come at the expense of Asian-Canadian communities and risks their continued community existence in certain spaces.

Between 2011 and 2018, zoning regulations over Vancouver's Chinatown explicitly allowed for the construction of larger developments, specifically intended to stimulate development and "revitaliz[ation]."[54] It was only years later that zoning regulations and policy revisions in the city were curated to protect the "character" of Chinatown — a stark contrast to the rapid need to crack down on the Monster House in "established" neighbourhoods as discussed earlier. But even with the policy of today, Chinatown is given differential protective treatment compared to the affluent West Side Vancouver neighbourhoods. City initiatives, such as the 2022 Motion for Urgent Measures to Uplift Vancouver's Chinatown, have targeted Chinatown for increased policing and city clean-up with particular attention to the stimulation of local businesses — emphasizing less the protection of property rights and residential interests, but more the survival of businesses and a desire for the Chinatown to be named a UNESCO World Heritage Site (which are explicitly mentioned in the motion itself).[55] In other words, the value of Chinatown seen through these measures is its potential to stimulate the local economy. It is only where there is an interest-

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50 Kay J Anderson, "The Idea of Chinatown: The Power of Place and Institutional Practice in the Making of a Racial Category" (1987) 77:4 Annals Assoc Am Geographers 580 at 586, 591–92.

51 Kwok B Chan, "Ethnic Urban Space, Urban Displacement and Forced Relocation: The Case of Chinatown in Montreal" (1986) 18:2 Can Ethnic Studies 65 at 70.

52 Jeffrey R Masuda et al, "After Dispossession: An Urban Rights Praxis of *Remaining* in Vancouver's Downtown Eastside" (2020) 38:2 Society & Space 229 at 231, 241.

53 Katherine Burnett, "Commodifying Poverty: Gentrification and Consumption in Vancouver's Downtown Eastside" (2014) 35:2 Urban Geography 157 at 162, 168.

54 Dan Fumano, "Vancouver Chinatown: Council Approves revisions Reducing Building Size in Historic Area," *Vancouver Sun* (10 July 2018), online: [perma.cc/ZP5G-3LMX].

55 City of Vancouver, *Member's Motion B.3 (Urgent Measures to Uplift Vancouver's Chinatown)*, (16 November 2022), motion, moved by Councillor Kirby-Yung.

convergence in Chinatown as an economic hub for the city that it may be worthy of protection.[56]

Thus, the concern of the intrusion of "capital" in the case of Chinatowns is not a comparable fear concern as it was with the Monster House. In fact, in Chinatown there is no concern of the harmful and gentrifying effects of fast-paced intrusive capital. This is not owing to any objective standard for valuing particular Vancouver neighbourhoods or their character, but rather, value shifts of what can benefit or harm the established citizenry. Historic structures may be preserved where they demonstrate a benefit for the "established" Vancouver community, as here, where Chinatown represents an imagined space of economic boom and potential tourism. Yet, this need not align with the actual protection of the residents or community members. Indeed, the rate of gentrification and lack of construction of affordable housing has left many Chinese seniors who were long-term residents of Chinatown without adequate access to appropriate protections.[57] In fact, many have faced serious threats of eviction over the process of gentrification, and there is an absence of culturally appropriate senior care services.[58]

F. CONCLUDING REMARKS ON THE ESTABLISHED CITIZEN AND INTERNATIONAL STUDENTS

We must unearth the established citizen and how this abstract figure tacitly shapes Canadian law and racial paradigms in order to grasp how international students are situated in Canada. Indeed, the construction of the "other" is paramount in understanding our societal institutions and legal frameworks. The Canadian legal system has intended beneficiaries, especially for housing, and those who are outside of this class must be legally and socially constructed as "non-established citizens" — be they Chinese or Black, with or without formal citizenship, and irrespective of the actual length of time lived here. The dividing lines between race and citizenship blurs as both construct imaginings of belonging and non-belonging in the Canadian polity. That being so, international students tread overlapping lines of "otherness" in reference to both race and citizenship.

Policies that target international students as a particular non-citizen group are not divorced from existing racial paradigms in Canada. From Calgary to Toronto, the modern Canadian housing market has widespread documentation of anti-Black, anti-Arab, and Islamophobic biases — especially for renters.[59] We must be mindful of the latent and tacit privileging of established citizens in law and society. The established citizen necessarily and systematically requires constructing a racialized non-established "other" who is undeserving of these same rights to property, status, and recognition. It is within this landscape that international students exist in Canada, shaping how they interact and engage in the Canadian housing market. Like

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[56] Derrick A Bell Jr, "*Brown v. Board of Education* and the Interest-Convergence Dilemma" (1980) 93:3 Harv L Rev 518.

[57] Joanne Lee-Young, "Critical Need for Culturally Appropriate Seniors Housing in Vancouver Chinatown: Report" *Vancouver Sun* (25 January 2023), online: [perma.cc/3X2E-XEMM].

[58] *Ibid*.

[59] See e.g. Bernie Hogan & Brent Berry, "Racial and Ethnic Biases in Rental Housing: An Audit Study of Online Apartment Listings" (2011) 10:4 City & Community 351; Jason Hackworth, "Anti-Black Residential Preferences in Toronto" (2025) 47:1 J Urban Affairs 195; Ransford K Danso & Miriam R Grant, "Access to Housing as an Adaptive Strategy for Immigrant Groups: Africans in Calgary" (2000) 32:3 Can Ethnic Studies 19 at 39.

Black Montrealers under PALL, international students are unimagined as having relations or a direct part in the community in Canada. In parallel fashion to the Monster House, current debate and policies villainize the international student in the name of protecting Canada's housing market. And much like Vancouver's Chinatown, the legal protections provided to international students are differential depending on perceived economic benefit to Canada. All of this will be further detailed in what follows.

III. STUDY PERMITS, IMMIGRATION STATUS, AND VULNERABILITY

To understand the situation of international students in Canada with regard to housing and the housing crisis, we must understand the scope of migrant status. Immigration law does not exist in a vacuum, and the status and conditions imposed on international students here follow them when engaging in other legal systems. This will be explored further in the next section, but first an overview of the temporary resident and study permit system is necessary.

A. THE STUDY PERMIT REQUIREMENTS

With little exception, foreign nationals require a study permit to come into Canada and engage in a program of study of more than six months under the *Immigration and Refugee Protection Act*.[60] The study permit requires that a foreign national present themself to a visa officer before entry into Canada. Visa officers are obliged to issue a study permit to a foreign national if they meet certain requirements, including that: they have been accepted to a study program at a designated learning institution, the foreign national is compliant with the requirements for a study permit and general entry into Canada, and most importantly, they will leave Canada after the authorized period of stay.[61] The specific requirements for a study permit include a written acceptance letter from the designated learning institution,[62] sufficient financial resources,[63] a requirement to have not previously engaged in unauthorized work or study in Canada,[64] and a continuous condition to remain enrolled and actively pursue their study program.[65] This is in addition to general grounds of inadmissibility to which any foreign national may be removed, including for having a criminal conviction or being a perceived danger to the Canadian public.[66]

Amongst these, the financial requirement is notable for constructing a class-based condition for international study in Canada. The requirement of sufficient funds mandates that applicants have pre-existing available finances to pay for tuition, fees, and for livelihood expenses that are made "without working in Canada."[67] Canada has long historically privileged affluent migrants that can bring in and stimulate capital. This has been evident since the introduction of a points system for economic migration in 1967, which has since

60 *IRPA*, *supra* note 27, s 30(1).
61 *IRPR*, *supra* note 3, s 216(1).
62 *Ibid*, s 219.
63 *Ibid*, s 220.
64 *Ibid*, s 221.
65 *Ibid*, s 220.1.
66 *IRPA*, *supra* note 27, ss 34, 36(2)(a).
67 *IRPR*, *supra* note 3, s 220.

been amended, but whose overall selective character is still in place.[68] However, in the context of international students, there is a further logic to ensuring they have sufficient independent funds by virtue of the statutory scheme — that they should be primarily engaged in study and not work. As mentioned, study permit holders are required to continuously and actively pursue their studies in order to maintain their permit.[69] Further, in order to work in Canada without a work permit, international students must be full-time students and cannot work off-campus more than 24 hours per week during academic sessions.[70] Breaking these conditions can be grounds for a removal order.[71] These restrictions on work and the requirement of serious study inherently limit international students' ability to earn a living in Canada while holding their study permit, and so requiring funds seems sensible.

Even still, despite limited work hours for international students, the *IRPR* allows for an applicant to be denied entry even if they nonetheless are able to afford their studies and their living expenses through work offered by their program or within the authorized off-campus work arrangements in Canada.[72] Indeed, measuring the practical ability of an applicant to maintain their living expenses is ignored in favour of pre-existing financial capital. True, it can be argued that this is nonetheless a logical arrangement. It would be inhumane to allow international students into Canada where they would be in a situation of financial struggle, endlessly working in order to afford continuing their studies here. Be that as it may, the current system effectively denies human capital in favour of an idealized economic temporary resident, who can come in already with financial capital.[73]

Before recent changes, the IRCC set the required funds at CDN$10,000 for study permit applicants.[74] This was not an adequate amount to live on, and it is certainly the case that many international students had arrived finding difficulties with living expenses.[75] Government officials cited this as the reason behind increasing the required funds to CDN$20,635 for living costs, based on the annually calculated low-income cut-off.[76] The Government of Canada announced intentions to implement strategies later on to aid underrepresented cohorts of international students in light of these new amendments, and encouraged Designated Learning Institutions (DLIs) to only accept international students they are prepared to adequately support, *including with regard to housing*.[77] The irony behind these measures is that while calling on universities and learning institutions to ensure they provide better support for international students — which is, of course, welcome and needed — the immediate legal policy result is *punitive against applicants* who may well be promising and

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68 Yasmeen Abu-Laban, "Keeping 'em Out: Gender, Race, and Class Biases in Canadian Immigration Policy" in Veronica Strong-Boag et al, eds, *Painting the Maple: Essays on Race, Gender, and the Construction of Canada* (Vancouver: UBC Press, 1998) at 75.

69 *IRPR*, *supra* note 3, s 220.1.

70 *Ibid*, ss 186(f), 186(v). Note that over the pandemic period, this restriction to 24 hours was temporarily waived such that students could work unlimited hours. ICEF Monitor, "Canada: New Limits on Off-Campus Work During Studies" (1 May 2024) online: [perma.cc/MEB9-HF6K].

71 *IRPA*, *supra* note 27, s 41.

72 *IRPR*, *supra* note 3, s 220.

73 See also Asha Kaushal, "Do the Means Change the Ends? Express Entry and Economic Immigration in Canada" (2019) 42:1 Dal LJ 83.

74 Moira J Calder et al, "International Students Attending Canadian Universities: Their Experiences with Housing, Finances, and Other Issues" (2016) 46:2 Can J Higher Education 92 at 101.

75 *Ibid*.

76 Immigration, Refugees and Citizenship Canada, News Release, "Revised Requirements to Better Protect International Students" (7 December 2023), online: [perma.cc/2697-GAGB].

77 *Ibid*.

qualified students but who lack independent finances. DLIs escaped this same level of legal surveillance and inquiry.

So how are DLIs held to account? Legally, Canada already has a mechanism for ensuring that study permits are uniquely issued to qualified institutions. Study permits are only issued where there is an acceptance letter to study at a DLI.[78] As such, international study is only possible, legally speaking, to attend institutions named as a DLI. A post-secondary institution can only be designated as a DLI if the institution is either directly administered by the federal government, or through an agreement between the federal government and a province if a province designates an institution as a DLI.[79] This becomes a function of co-operative federalism in that provinces ultimately designate many DLIs, and indeed, following the study permit cap, British Columbia and Ontario in particular have vowed to "crack down" on fraudulent institutions with accredited DLI status.[80] Neither the federal legal framework nor guidelines concern DLI designation. They instead function by naming the "international student" the subject of administrative questioning and discretion. Administrative officials under our immigration system are only looking at foreign students, their finances, and their total numbers — irrespective of genuineness of the institution — in the "cap." In short, the federal legal infrastructure ultimately singles out international students, and in turn they become the principal object of scrutiny.

In effect, in the context of a political debate where international students are blamed for the housing crisis, domestic actors are shielded from scrutiny for their role in facilitating the shortage of affordable housing. Indeed, much can be said about the role of long-lasting policy decisions in the housing sector by Canadian governments.[81] This shielding of domestic culprits is bolstered by the fact that recent legislation seems to locate causes of the housing crisis as something foreign or non-Canadian. For example, in December 2022, Parliament enacted the foreign buyers ban, which largely prohibited those without citizenship or permanent resident status from purchasing residential property with the express aim of protecting domestic buyers and regulating housing prices amid the housing crisis.[82] This shifting of focus away from domestic agents responsible for housing insecurity is ultimately a function of the villainizing and "othering" aspect of the established citizen. In the end, from the vantage point of federal law, the burden of proving one is "not a burden" rests on the international student.[83]

B. THE FOREIGN NATIONAL CONTRACT: INTERNATIONAL STUDENTS AND THE ESTABLISHED CITIZEN MODEL

International students who are present and living in Canada are relatively advantaged compared to other foreign nationals in terms of being seen as recognizable and effectively

78 *IRPR, supra* note 3, s 216(1)(e).

79 *Ibid*, s 211.1(a)(i)–(ii).

80 Kevin Maimann, "B.C., Ontario Vow to Crack Down on Diploma Mill Schools Exploiting International Students," *CBC News* (23 January 2024), online: [perma.cc/8VLZ-BA4N].

81 E Alkim Karaagac et al, *Making a Home in Canada: Learning from International Student Families* (Making a Home in Off-Campus Housing Research Team, 2024), online: [perma.cc/T28M-3PXF].

82 *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, SC 2022, c 10, s 235.

83 The end-result of the cap on study permits and financial requirements is increased focus on the regulation of the international student. It is the international student at the moment they are applying for a study permit and entry into Canada who must contend with the burden of the cap, and of the various requirements, in order to gain entry.

middle class to the Canadian polity, with class being understood in relation to status. This is not to say they are accepted as full-fledged members of the established citizenry, but rather, that their educational experiences and high skill levels make them cognisable in Canada — especially in terms of the free market. Indeed, the idea of belonging in the established citizenry is often mapped out in employment contexts. Canadian employers prefer to hire those with "familiar" educational backgrounds and work experience — often to the exclusion of qualified candidates from the global south who lack domestic Canadian credentials.[84] This kind of market bias is reflected in the very structure of our economic immigration system.

The Canadian Experience Class (CEC), which was first implemented in 2008, was intended to provide a route of entry into Canada to attract more temporary foreign workers and students to Canada and later retain them as permanent residents.[85] While the CEC only provides entry for work experience and not study, international students can readily apply for a post-graduate work permit to gain access to the CEC stream following the completion of their program of study in Canada.[86] But this is not the only place where educational experience in Canada is rewarded. After qualifying under an economic immigration stream (such as the CEC), applicants are entered into the Express Entry pool. Express Entry uses a Comprehensive Ranking System (CRS) of points to periodically issue invitations to apply for permanent residency to the highest points earners. An additional 30 points under the CRS are granted for those with Canadian educational experience, with an average cut-off for invitations in a given period being around 450 points.[87]

Indeed, Canadian immigration has long valued international students. Since 2001, the federal government ensured that immigration policy could facilitate studying in Canada as a possible "first step on a path to citizenship."[88] This marked a shift to seeing international students as lucrative for the Canadian economy. 2012 reports made to the then Department of Foreign Affairs and International Trade affirmed that international students translated to a CDN$4.2 billion gross domestic product contribution to Canada.[89] This demonstrated both a significant economic benefit and entailed considerable labour market employment for Canadians with jobs pertaining to student recruitment and services.[90] Correspondingly, the federal government announced its international education strategy in 2014 which explicitly sought to increase international student recruitment as a matter of Canada's *economic interests*.[91] For a long time, the Canadian immigration system has valued international students as *consumers* for the benefit of the Canadian economy.

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84 Kaushal, *supra* note 73 at 119; France Houle & Geneviève Saint-Laurent, "Privatisation du processus de sélection des travailleurs migrants au Canada: Un retour vers des pratiques discriminatoires ?" in Adèle Garnier, Loïc Pignolo & Geneviève Saint-Laurent, eds, *Gèrer les migrations face aux dés identitaires et sécuritaires* (Genève: Université de Genève, 2018) 13 at 22–26.

85 Immigration, Refugee and Citizenship Canada, *Evaluation of the Canadian Experience Class* (Ottawa: IRCC, 2016), online: [perma.cc/GV5J-ZHEP].

86 *IRPR*, *supra* note 3, s 186(w).

87 Immigration, Refugees and Citizenship Canada, "Express Entry: Comprehensive Ranking System (CRS) Criteria," online: [perma.cc/SA5P-54HA].

88 Dale McCartney, "'A Question of Self-Interest': A Brief History of 50 Years of International Student Policy in Canada" (2021) 51:3 Can J Higher Education 33 at 39.

89 Roslyn Kunin & Associates, Inc, *Economic Impact of International Education in Canada — An Update: Finals Report* (Vancouver: Roslyn Kunin & Associates, 2012) at iii (this report was presented to and commissioned by Foreign Affairs and International Trade Canada).

90 *Ibid*.

91 McCartney, *supra* note 88 at 41.

Yet it is also through this lens that international students have been demonized as contributing to the housing crisis. Here, they are *unwanted consumers* in a compact housing market. Canadian law and policy have consistently evaluated international students by means of the financial benefit they offer to the established citizen. Are they a wanted consumer that stimulates the economy, or an unwanted pest clouding the housing market? Are they a Monster House or a potential Chinatown for gentrification? The policy and legal valuation of international students is always premised on economic output. And it is only in reference to this economic output where we have seen international students be readily welcomed in law and policy.

Yet, for whatever value international students bring, our law still sees them as foreigners outside of the Canadian community. Correspondingly, whatever benefits Canadian post-secondary study has for immigration, it is only realized upon graduating. The CEC and Express Entry system only reward international students who have a Canadian degree or study credential on their record, and only in the specific context of seeking permanent residency in Canada. It is only *at the point of graduating* that the Canadian immigration law system views international students as potential members of Canadian life and polity, coincidentally at the same time they would be more readily legible to the Canadian labour market. Yet, during the period of study itself, international students at best only hold the latent capacity of joining the Canadian polity at a future date. Legally speaking, they currently stand as temporary residents who hold a study permit but are still "foreign nationals" according to *IRPA*.[92]

This status of foreign nationals is important because it is used as a basis to allocate only minimal procedural rights in immigration law — especially concerning the right to enter or stay in Canada. Since Justice Sopinka's seminal decision in the 1992 case *Canada (Minister of Employment and Immigration) v. Chiarelli*, it is well-established in Canadian jurisprudence that non-citizens do not have a right to enter or remain in Canada.[93] Accordingly, subsequent case law has cemented that even if staying in Canada or completing a study program is important to an international student, entry to Canada is a privilege and *not a right* for foreign nationals.[94] This has often meant that administrators do not need to accord foreign nationals the same procedural fairness that would be accorded to Canadians. This has tangible impacts on the access to justice of foreign nationals, including not having a right to counsel for major decisions affecting their ability to stay in Canada.[95] So long as international students remain foreign nationals, they are placed in a situation of legal precarity.

What is particularly remarkable is the contractual description of foreign nationals' "privilege" to be in Canada laid out in Canadian jurisprudence. In *Chiarelli*, Justice Sopinka described foreign nationals in contractual terms by relation to the Canadian state. He described any sort of breach of the requisite conditions in immigration law or the commission of an offence as a "deliberat[e] violat[ion of] an essential condition under which [the foreign national is] permitted to remain in Canada."[96] Here, Justice Sopinka reimagines the foreign national as being a contracting party, whose entry into Canada is divorced from relations with

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92 *IRPR*, *supra* note 3, s 211.

93 [1992] 1 SCR 711 at 733–34 [*Chiarelli*].

94 *Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126 at paras 46–47 [*Cha*]; *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at para 57.

95 *Cha*, *ibid* at paras 46–47, 62.

96 *Chiarelli*, *supra* note 93 at 734.

people and livelihood. The right to remain or enter Canada is not just proposed as a privilege granted by the state, but one granted in exchange for the consideration of behaving in such a way that does not disrupt the Canadian polity. The damage of breaking this social contract stands irrespective of the actual gravity of a foreign national's conduct.[97] In other words, the foreign national becomes an abstract person who is only welcome here on strict terms and any deviation from which can justifiably result in removal.

This contractual theory of the foreign national requires imagining non-citizens as inherently outside of and unconnected to the established citizenry. Thus, in addition to being abstracted as a person, the foreign national is unimagined as having any connection or community within Canada, at least within the purview of the law. In the contract model, the only relationship of note is between the foreign national and the state entity as a whole. This should hark back to the unimagining of Black Montrealers under PALL. Despite the age of *Chiarelli*, Justice Sopinka's contractual theory has persisted through modern jurisprudence, and has been used as further justification for the fact that international students, as "foreign nationals," are accorded little substantive and procedural protections.[98] Further, breach of the social contract expected of foreign nationals can implicate the availability of other possible recourses to stay in Canada, such as humanitarian and compassionate grounds applications for permanent residency.[99]

C. THE VULNERABILITY OF INTERNATIONAL STUDENTS BEFORE ADMINISTRATIVE DECISION-MAKERS

Most immigration matters — including decisions regarding international students — are made by administrative decision-makers. This includes Immigration and Refugee Board (IRB) officials, but also Canada Border Services Agency (CBSA) officers and visa officers, who make many decisions that have profound impact on international students. It is these administrative officials who decide whether to grant study permits,[100] whether the foreign national has sufficient financial resources and is in compliance with study permit conditions to stay in Canada,[101] and whether the foreign national is or has become inadmissible (and thus subject to removal).[102] Procedural justice — that is, the right to an impartial decision-maker and to participate and voice opinion — is always variable.[103] The procedural rights accorded to international students are typically minimal.

Judicial review is available for most any administrative decision made under *IRPA* to the Federal Court, so long as the matter is granted leave by the court to be reviewed.[104] As confirmed in *Mason v. Canada (Citizenship and Immigration)*, administrative decisions made

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97 *Ibid*.
98 *Cha*, *supra* note 94 at paras 23–25; *Chhetri v Canada (Minister of Citizenship and Immigration)*, 2011 FC 872 at para 10.
99 *Williams v Canada (Citizenship and Immigration)*, 2020 FC 8 at para 65.
100 *IRPR*, *supra* note 3, ss 216, 219.
101 *Ibid*, ss 220–220.1.
102 *IRPA*, *supra* note 27, ss 34–42.
103 *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 at para 21 (SCC) [*Baker*].
104 *IRPA*, *supra* note 27, s 72.

under *IRPA* are typically subject to a reasonableness standard of review.[105] This is the presumptive standard of review set by *Canada (Minister of Citizenship and Immigration) v. Vavilov* for all administrative decisions.[106] In general, it is a more deferential standard where judges ask whether administrators made a decision that is simply within a "range" of acceptable outcomes.[107]

A deferential standard is one thing, but a larger concern arises where deference is being granted for reasons of legal fiction. This mainly comes into play when it comes to evaluating administrative expertise. When judges determine the range of acceptable outcomes of a decision, *Vavilov* asks courts to remain attentive to "specialized knowledge" and "expertise" that may be deployed by the administrative decision-maker when they made their choice.[108] Courts may consider the measured reasons given by an administrative decision-maker as a demonstration and a measure of this expertise, but there is an understanding that there is no requirement for every administrative decision to provide reasons, since the procedural fairness required of administrative decisions is "eminently variable."[109] Further still, *Vavilov* explains that where there is "less detail" in the presented reasoning, this can be explained by recalling administrative "expertise."[110] Ultimately, if we take the matter of looking at reasons out of the equation, *Vavilov* essentially proposes that administrative expertise can itself be explained by administrative expertise — an especially circular reasoning.

Yet, this takes on new dimensions in the immigration context. Many immigration lawyers and legal scholars have criticized any labelling of immigration and refugee decision-makers as "expert."[111] The IRB, as a tribunal, does not require members to have any past experience with refugees or legal training — and many have neither.[112] This raises the question: at what point have the courts determined that such bodies are "expert"? The jurisprudence on the matter has treated expertise as institutionally "inhere[d]."[113] In *Tran v. Canada (Public Safety and Emergency Preparedness)*, for example, the decision of a CBSA officer was treated deferentially, as "expert," despite his own admitted incompetence and unfamiliarity with the legal question before him.[114] Ultimately, this means that members of the IRB and other immigration decision-makers may be deemed experts over decisions concerning international students — with nothing more to qualify them than their mere membership in bodies such as the IRB or CBSA.

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105 *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 9; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 16 [*Vavilov*]. See also Jamie Chai Yun Liew, "The Good, The Bad, and the Ugly: A Preliminary Assessment of Whether the *Vavilov* Framework Adequately Addresses Concerns of Marginalized Communities in the Immigration Law Context" (2020) 98:2 Can Bar Rev 398 at 412 –13 (for an argument about why *IRPA* decisions should not be subject to the review standard of a statutory appeal).

106 *Vavilov*, *ibid* at para 16.

107 *Ibid* at para 86.

108 *Ibid* at para 93.

109 *Ibid* at para 77.

110 *Ibid* at para 93.

111 Liew, *supra* note 104 at 408–09; Audrey Macklin, "Seven Out of Nine Legal Experts Agree: Expertise No Longer Matters (in the Same Way) After *Vavilov*!" (2021) 100 SCLR 249 at 255–56.

112 Liew, *ibid* at 408.

113 *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at para 33; Macklin, *supra* note 111 at 255.

114 Macklin, *ibid* at 255–56; *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50.

There is also a gap in the *Vavilov* framework as it concerns foreign nationals, including international students. *Vavilov* underscores that courts should focus on the reasons of the decision-maker when analyzing the reasonableness of the decision. Thus, reasons are both evidence of expertise but also the object of analysis to determine whether the court should intervene for unreasonableness. Yet for international students, courts have determined that the duty to *even provide reasons* is lower in the context of applications for temporary resident status (including study permits) in Canada.[115] In fact, in many cases, applicants are not ever issued reasons and must apply for an Access to Information Request — a time-consuming process — for the notes or other written materials where officers may have documented their reasons.[116]

The vulnerability of international students to administrative decision-making is compounded by the fact that immigration officers are granted considerable discretion under *IRPR* in matters pertaining to international students. For example, officers may impose, vary, or cancel any of the conditions placed on the residency of a temporary resident.[117] Under section 185(c), officers can freely impose restrictions or specifications on the nature of studies an international student is permitted to engage in — including the type of courses they take and even the timing of their study periods.[118] Officers also have the discretion to impose terms related to travel, work, and the period of authorized stay.[119] This could easily be reasoned as a matter of the contractual terms under which a foreign national may be permitted entry. Yet at the same time, it demonstrates a disturbing level of comfort with intruding on the educational pursuits an international student may partake in.

To make matters worse, the discretion of officers around the inadmissibility of foreign nationals is legally permitted to be *speculative* in nature. By this, I do not mean to suggest that it is permitted to be baseless, but that there is a not very exacting norm at play for discretion around conduct that has not yet occurred. Under section 33 of *IRPA*, officers only need reasonable grounds — an evidentiary threshold that is "less than the … balance of probabilities" yet more than "mere suspicion" — to find a foreign national is inadmissible to stay or enter Canada for matters such as security and criminality, including for future risk.[120] By nature, inadmissibility over a matter of *future* conduct necessitates speculation. The allowance for speculative reasonable grounds can permit decision-making that would seem arbitrary if applied to Canadian citizens. In the 2023 case *Li v. Canada (Citizenship and Immigration)*, the Federal Court upheld an officer's decision that an international student from China was inadmissible for espionage on a purely circumstantial and arguably hypothetical basis. The officer found a risk of espionage based on the fact that Yuekang Li went to a university in China with military ties and was studying public access information that *may* be of interest to China's military, and an article the officer read stating that China *sometimes* employs non-traditional collectors of intelligence who are not formally trained in

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115 See e.g. *Da Silva v Canada (Minister of Citizenship and Immigration),* 2007 FC 1138 at para 12 (while this case pertained to an applicant to the International Mobility Program, it treats foreign nationals across the board as not having the grounds for high enough procedural fairness to necessarily warrant reasons).

116 See e.g. *Baker*, *supra* note 103 at para 44.

117 *IRPR*, *supra* note 3, s 185.

118 *Ibid*, ss 185(c)(i), 185(c)(iv).

119 *Ibid*, ss 185(a)–(b), 185(d).

120 *IRPA*, *supra* note 27, s 33; *Re Almrei*, 2009 FC 1263 at paras 89, 91.

espionage.[121] While the Court noted the contention that this was speculative, and despite no evidence that Li was in contact with Chinese intelligence, the Court found that these facts gave sufficient grounds that Li *might* be contacted by Chinese intelligence to solicit information from his studies (even though the material of his studies would have been *public access* anyway).[122] This was enough to deny Li entry to Canada to pursue a doctorate.

In all, international students have recourse to limited protections when it comes to administrative intrusions on their studies. By virtue of being legally constructed as foreign nationals and having no right to enter or remain in Canada, international students are rendered vulnerable before the administrative state, which has considerable discretion over their conditions of entry and stay in Canada. Given this general background, it is not surprising that access to justice for international students is extremely circumscribed when they are tenants. This is the subject of the next section.

IV. INTERNATIONAL STUDENTS AS TENANTS: VULNERABILITY AND INACCESSIBLE JUSTICE

It is well-documented across scholarship that there is a power differential between tenants and landlords. The premise of this power differential stems from the fact that tenants are dependent on landlords for the basic necessity of shelter.[123] Physically speaking, landlords have the power to control tenants' access to their home, which can impose a psychological stranglehold on tenants.[124] For example, numerous provincial statutes prescribe discretionary, though limited, power to landlords to intrude inside the residence — which means that a landlord holds a constant and latent potential right to enter.[125] Often, landlords also hold financial capital over tenants, which further contributes to the power differential.

All of this has impact in terms of access to justice for tenants, especially with regard to evictions. The impact of eviction, and the process of legally challenging it, is immensely stressful and carries huge consequences for the tenant, including the prospect of houselessness, which all together can exacerbate mental health challenges or themselves be a cause of trauma.[126] This is a fundamental challenge unique to the tenant and not shared with landlords, who do not face the same threat to their basic living conditions. Landlords are afforded a comparatively calmer terrain to enter landlord-tenant tribunals than tenants are. They often have more familiarity and experience with regard to the legal structure of tenancy

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121 *Li v Canada (Minister of Citizenship and Immigration)*, 2023 FC 1753 at paras 14–17, 51–58, 77.

122 *Ibid* at paras 57–77.

123 Kathryn A Sabbeth, "Housing Defense as the New *Gideon*" (2018) 41:1 Harv JL & Gender 55 at 99.

124 *Ibid*.

125 In Alberta: *Residential Tenancies Act*, SA 2004, c R-17.1, s 23(2) [Alberta *RTA*] (which grants landlords the right to enter without notice if they have reasonable grounds to believe there is an "emergency," or that the residence was abandoned). In Ontario: *Residential Tenancies Act*, 2006, SO 2006, c 17, s 26 [Ontario *RTA*] (which grants landlords the authority to enter without formal notice for a variety of reasons, including emergencies). In British Columbia: *Residential Tenancy Act*, SBC 2002, c 78, s 29 [British Columbia *RTA*] (which restricts a landlord's entry formally, but permits it in a variety of circumstances including emergencies or if they provide written notice for a reasonable purpose of entry).

126 Sara Buhler & Rachel Tang, "Navigating Power and Claiming Justice: Tenant Experiences at Saskatchewan's Housing Law Tribunal" (2019) 36:2 Windsor YB Access Just 210 at 223; Jack Tsai et al, "Longitudinal Study of the Housing and Mental Health Outcomes of Tenants Appearing in Eviction Court" (2021) 56:9 Soc Psychiatry & Psychiatric Epidemiology 1679.

than most tenants do.[127] Despite this, a lot of these inherently unequal and unfair realities behind the tenancy regime often get overlooked. The legal system in place for tenancy disputes purports to be a fair process of "'balancing' … the interests of landlords and tenants" with no account of any power imbalance.[128]

When we consider the position of international students — an excluded group who are both non-citizens and non-established citizens — their vulnerability as tenants is exacerbated. Power relations between tenants and landlords depend on the positional standing of the tenant. Because of their status as foreign nationals, non-citizens are more likely to "avoid contact with [the legal] system so as to avoid deportation," or other legal removal from the state.[129] Thus, legal precarity often defines the nature of both social and legal relationships foreign nationals make whilst in Canada. For example, it is widely documented that foreign workers are highly unlikely to seek legal action to enforce their rights or otherwise challenge employer abuse out of a fear that doing so will result in a loss of their status to stay in Canada.[130] While not in the exact same circumstances as temporary workers, many international students remain concerned that they may be made subject to removal if they step out of line — a concern shared by many with precarious status.[131] Compared to other tenants, international students must contend with their precarious status marking their "removability" or "deportability" while entering, negotiating, and maintaining tenancy agreements with landlords — or really any legal or social relationship.

Many international students may find housing accommodation that falls outside the legal protections of provincial tenancy regulations anyway. For example, rooming houses[132] in some cases are not covered by the protections of Ontario's *Residential Tenancies Act*, but are fairly affordable and accessible accommodation for some international students.[133] In British Columbia, student housing made available by universities or other educational institutions is similarly not covered under the British Columbia *Residential Tenancy Act*.[134] International students may also rent rooms where they are not formally listed on a lease (for example, an informal sublease), which can leave them without the formal contractual protections of tenancy.

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127 Sabbeth, *supra* note 123 at 99.

128 Buhler & Tang, *supra* note 126 at 229. See also Ezra Rosser, "Exploiting the Poor: Housing, Markets, and Vulnerability" (2017) 126 Yale LJ Forum 458 at 467.

129 Deena Greenberg, Carl Gershenson & Matthew Desmond, "Discrimination in Evictions: Empirical Evidence and Legal Challenges" (2016) 51:1 Harv CR-CLL Rev 115 at 137, citing Anita Raj & Jay Silverman, "Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence" (2002) 8:3 Violence Against Women 367 at 385.

130 Devyn Cousineau & Kaity Cooper, "At Risk: The Unique Challenges Faced by Migrant Workers in Canada" (Paper 5.1 delivered at the Human Rights Conference, 2014) (Vancouver: Continuing Legal Education Society of British Columbia, 2014) at 12. See also Jacob Bucher, Michelle Manasse & Beth Tarasawa, "Undocumented Victims: An Examination of Crimes Against Undocumented Male Migrant Workers" (2010) 7:2 Southwest J Crim Justice 159.

131 See also Shirley P Leyro & Daniel L Stageman, "Crimmigration, Deportability and the Social Exclusion of Noncitizen Immigrants" (2018) 15:2 Migration Letters 45 at 52–53; Raj & Silverman, *supra* note 129 at 386.

132 Where a tenant rents a room and shares a washroom or kitchen with other tenants and sometimes with a landlord.

133 The Ontario *RTA* does not apply to rentals where the tenant shares a bathroom or kitchen with the owner or their closest relatives, if they also live on the premises: Ontario *RTA*, *supra* note 124, s 5(i).

134 British Columbia *RTA*, *supra* note 125, s 4(b).

Yet even when we leave aside the specific the type of housing accommodations taken by international students, we must consider the role of deportability. Of course, formally, this status of being deportable does not enter a leasehold agreement contract or the rules of privity of estate. But the lingering threat of deportation facilitates abuse of power by landlords, who can exploit the vulnerable status of international student tenants. In a 2016 case before the Ontario Landlord and Tenant Board (ONLTB), a landlord responded to two international student tenants who were raising complaints about a mice infestation and no lock on the front door with a threat that he had reported tenants in the past who "ran away from their lease … to the respective immigration office, credit collection agency and educational institutions."[135] This threat was purposefully leveraged to strike at the vulnerability of legal status.[136] Similarly, the Saskatchewan Office of Residential Tenancies (SKORT) oversaw a 2023 dispute where a landlord had threatened to call the police on his international student tenants for having more pets in the unit than indicated on their application, and making numerous statements that he would advance legal action against them.[137] This caused deep anxiety for the tenants, who now feared "they could be deported."[138]

It is unclear whether these tenants at any point were actually in a position where they could have been found inadmissible under *IRPA*, and thus subject to removal. In order to be found inadmissible, a foreign national would have to be convicted of a specific kind of offence, such as a serious indictable offence (that is, a crime considered to be more serious and punishable by a harsher sentence), two distinct convictions for summary or regulatory offences (that is, less serious offences, punishable by lighter sentences, such as "disturbing the peace"), or any offence in which a sentence of six months of incarceration is imposed.[139] It is doubtful that a police encounter over a mere tenancy pet dispute would lead to any such conviction. There is also no ground for inadmissibility under the *IRPA* merely for exiting a lease agreement as the landlord threatened in the ONLTB case. Yet, this does not change the resulting anxiety and vulnerability produced by the issuance of such threats. Moreover, it is certainly *possible* for landlord-tenant disputes to result in a foreign national becoming inadmissible. For example, a landlord could make a report to the IRB that a tenant is failing to comply with the conditions of their study permit, or, if disputes with landlords are confrontational enough to where they *do* result in arrest and conviction, this can present a ground for inadmissibility.

Ultimately, in both the ONLTB and SKORT cases, the landlords asserted their power over their non-citizen tenants based on their status as foreign nationals. The tribunals in both cases found that these threats constituted a breach of the landlords' legal duties, respectively for harassment and breach of quiet enjoyment.[140] However, the imposition of these legal duties on landlords does not sufficiently mitigate the power imbalance of these situations. Even without the physical manifestation of threats, both international students and landlords have a tacit understanding that the status of international students is precarious and accords them fewer legal rights and safeguards than it does to citizens. This is the case even if neither party

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135 (19 January 2016), TST-62283-15 at para 28, online: ONLTB [perma.cc/5PQ8-P57Z] [ONLTB TST-62283-15].

136 *Ibid* at para 30.

137 *Ji & Ors v Neshan* (13 April 2023), 2023 SKORT 1066 at paras 8–9, online: SKORT [perma.cc/H3DF-ADCT] [*Neshan*].

138 *Ibid* at para 9.

139 *IRPA*, *supra* note 27, ss 36(1)(a), 36(2)(a).

140 ONLTB TST-62283-15, *supra* note 135 at para 33; *Neshan*, *supra* note 137 at paras 44–45.

is fully aware of the exact legal scope of international student status or legal protections available to them.

Taking this power imbalance into account, access to justice for international students becomes more important to protect their fundamental interests. Yet international students often get the short end of the stick. Throughout the years and across provinces, non-citizens have had differential access to social assistance and especially legal aid — including a number of cases of outright inaccessibility to such services.[141] This denial of public social and legal supports may seem almost natural. As explained by Audrey Macklin, the rise of the welfare state and the associated social benefits necessitated legal exclusions in order to confine the scope of the class to benefit from these programs.[142] Indeed, the construction of membership as a social good, in this case of the established citizen, is seen as most valuable where there is a social perception that membership is defined and constructed by those already "in" the community.[143] So, much like in the case of Black Montrealers, social welfare or public legal aid programs can justifiably fall short of extending support to international students facing injustice.

In addition, the construction of temporary authorizations impose a sort of "liminal" legality, creating a situation where international students simultaneously have a right to be in Canada, yet are socially and legally constructed as already having "one foot out the door."[144] Indeed, as stipulated in the terms of both temporary resident visas and study permits, international students are expected and required to leave after their period of authorized stay.[145] It must be recalled that race is a social construct that interacts with, is shaped by, and shapes law. In other words, race is malleable and mutually constitutive with law to inform justifications for exclusion — both socially and legally.[146] Thus, to understand the specific ways in which the construction of race and the model of the established citizen exist for international students, we have to consider the role of status liminality — of being in a state of precarious and temporarily defined authorization.

Liminality thus reinforces the unimagining of international students as belonging or part of community in Canada by already constructing them as unwanted at a future point. This can carry harm, since beyond law, the liminality of international students (and other temporary residents) as a group can justify their social exclusion *ab initio*. Limited supports and social infrastructure are justified if the recipient is only here for a short and confined period.

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141 See e.g. Tom Clark, "Legal Aid, International Human Rights & Non-Citizens" (1998) 16 Windsor YB Access Just 218 at 222.

142 Audrey Macklin, "Public Entrance/ Private Member" in Brenda Cossman & Judy Fudge, eds, *Privatization, Law, and the Challenge to Feminism* (Toronto: University of Toronto Press, 2002) 218 at 243.

143 Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983) at 31–32.

144 Cecilia Menjívar, "Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States" (2006) 111:4 Am J Sociology 999 at 1007. See generally Leisy J Abrego & Sarah M Lakhani, "Incomplete Inclusion: Legal Violence and Immigrants in Liminal Legal Statuses" (2015) 37:4 L & Pol'y 265.

145 Unless, of course, they are otherwise authorized to stay: *IRPR*, *supra* note 3, ss 179(b), 216(1)(b).

146 Laura E Gomez, "Understanding Law and Race as Mutually Constitutive" (2012) 8:1 J Scholarly Perspectives 47. See also Achiume, *supra* note 17 at 480.

Temporality is a defining legal condition of how the Canadian public views international students. This is reflected in the way that international students are framed as exacerbating problems and demand in *the rental market* and not the housing market. "Temporary foreign workers and students don't come to buy homes. They rent. So we've had a massive demand impact on the rental part of the housing system," says Stephen Pomeroy from the Canadian Housing Evidence Collaborative.[147] In quite a literal sense, liminal status is used in political discourse to distinguish international students as part of the non-established citizen class, who in this context endanger the domestic rental market. Accordingly, their rights and interests vis-à-vis housing are mute. They are intruders on Canadian housing even if legally authorized to be here.

Liminality extends beyond political discourse to construct the international student as a perpetual "other." Presumed temporariness contributes to discrimination in the rental market, in addition to presumed unfamiliarity in Canada.[148] Indeed, it reinforces the idea of "not being from here" by asserting that international students are to return *elsewhere*. This can in turn be used to negate the actual legal standing of international students (and others with liminal status) in favour of viewing them as a less-than-trustworthy outsider.[149] Indeed, in a qualitative study by Yolande Pottie-Sherman et al., an Iranian international student in St. John's was told "you're new here, so how can I trust that you're paying the rent every month?," which amongst other things, carries an implication that they could easily leave.[150]

Yet, liminal status does not just impose conditions on international students in a vacuum; it also interacts with and reinforces power differentials with those they interact with, especially landlords.

Consider the risk of eviction resulting from discrimination. It is widely documented that racial bias exists in the rental housing market — particularly with regard to landlord decisions in tenancy applications.[151] This in and of itself constitutes evidence that prejudice can play an impact in the discretion made by landlords around tenancy. When we consider the fact that liminal status socially marks international students as "temporary" and without equivalent legal protections, it would be sensible to conclude that this status has some kind of impact on landlord discretion. True, the effect of this on landlord decisions to evict may in reality be subtle. However, a structural concern, particularly around inaccess to justice, arises where it is difficult to legally prove that discrimination is the motivating factor in an eviction decision.

Evidence of discrimination in discretionary matters such as eviction can be near impossible to legally prove. While statutory regimes and tribunal bodies over tenancy differ across the provinces, they commonly ascribe a discretionary right to landlords to choose whether to evict tenants or end tenancies for a breadth of different matters, such as breach of tenancy conditions, non-payment or late payment of rents, or if they determine the tenant no

147 Peter Zimonjic, "Linking Immigration to the Housing Shortage May be Missing the Problem, Experts Say," *CBC News* (21 January 2024), online: [perma.cc/9TWN-RQC8].

148 Yolande Pottie-Sherman et al, "Navigating the Housing Crisis: A Comparison of International Students and Other Newcomers in a Mid-Sized Canadian City" (2024) 68:1 Can Geographies 44 at 52–53.

149 *Ibid* at 52; Abrego & Lakhani, *supra* note 144 at 269.

150 Pottie-Sherman et al, *ibid* at 52.

151 See e.g. Hogan & Berry, *supra* note 59; Hackworth, *supra* note 59; Danso & Grant, *supra* note 59.

longer qualifies to remain.[152] It can be difficult to isolate race as a distinguishing factor for eviction unless a similarly situated but racially "white-citizen" tenant was not evicted.[153] Landlords are also unlikely to make a confirmatory statement directly admitting to racial bias.[154] What is more, the procedural rights owed to someone accused of racism or discrimination are increased in administrative law, owing to the concern for individual reputation.[155] All of this further exacerbates the power imbalance between landlords and tenants before a tribunal.

These disadvantages of making a legal case for discriminatory eviction exist independent of the vulnerability of international student status. Yet we must recall that because homeownership is associated with good, responsible citizenship — or a marker of being within the established citizenry — landlords benefit from a presumption of being responsible and trustworthy.[156] This can be further augmented and compounded when an established citizen landlord is juxtaposed to an international student before a tribunal. Eviction itself is based on the *underlying superior right* to ownership and property of the landlord,[157] which can be highlighted when placed against the liminal and temporary rights of international students. The contrast to the temporality of someone imagined "one foot out the door" can only underscore the underlying claim of the landlord as *enduring* and that their presence is marked by greater *permanence*.

On a final note, it is not just the precarity and liminality of immigration status that compounds the vulnerability of international students in tenancy law. The reverse is also true. Eviction carries financial costs; it requires the tenant to upend their living situation and in fast-paced turnaround secure new accommodations. The financial impact of this can put most people into financial precarity, but for international students it can render them inadmissible to remain in Canada for not having the financial means to support themselves without social assistance.[158] What is more, because of the competitive nature of housing markets in Canada, international students may not have the flexibility to search for affordable housing or meet with landlords when in-person courses are in session and study permit requirements mandate that they have to maintain active engagement in their studies in order to remain in Canada.[159]

V. CONCLUSION

By unearthing the established citizen, we can fully situate the international student in Canadian law and society. Existing as both a valued potential Canadian, yet also in the here-and-now as merely temporary and status-insecure, the international student encounters unique constructions of racial "othering," non-belonging and non-citizenship. To the extent that international students are outside the established citizen class, the Canadian legal system

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152 Buhler & Barkaskas, *supra* note 20 at 35. See e.g. British Columbia *RTA*, *supra* note 125, s 49.1; Ontario *RTA*, *supra* note 125, s 37.

153 Greenberg, Gershenson & Desmond, *supra* note 129 at 120.

154 Jenifer Ross, "The Burden of Proving Discrimination" (2000) 4 Intl J Discrimination & L 95 at 95–96.

155 See e.g. *Ontario (Human Rights Commission) v Ontario (Board of Inquiry into Northwestern General Hospital)*, 1994 CanLII 10981 at paras 28–32 (ON Div Ct (GD)); *Canada (Attorney General) v Canada (Commission of Inquiry on the Blood System)*, 1997 CanLII 323 at para 55 (SCC).

156 Stephanie M Stern, "Reassessing the Citizen Virtues of Homeownership" (2011) 111:4 Colum L Rev 890 at 890; Buhler & Barkaskas, *supra* note 18 at 36.

157 Buhler & Barkaskas, *ibid* at 35–37.

158 *IRPA*, *supra* note 27, s 39.

159 *IRPR*, *supra* note 3, s 220.1(b); Pottie-Sherman et al, *supra* note 148 at 51.

has justified limiting legal protections to these temporary and foreign national students. This includes denying them procedural rights in protections in our immigration law system, justified by imagining them as perpetual outsiders who have a state-contractual "privilege" to be in Canada. When it comes to housing, the liminal status of international students further entrenches them as "outsiders" without equivalent rights and protections. This can put them at greater risk of landlord exploitation but also justify relative inaccess to legal aid or other supports.

When discourse turns to describe the housing crisis as an issue exacerbated by international students, the legal disadvantages international students face become abstract. In fact, international students themselves become abstracted. They are not discussed in terms of being community members or residents in the Canadian housing market but rather as a foreign threat to the interests of the true Canadian. They are unimagined as part of any sense of community in Canada but also villainized as a threat to established Canadians and their housing interests. Our current political landscape forgets that international students are not mere numbers but real people, who make real connections while in Canada, and have real fears, desires, and hopes.

In the history of Canadian housing policy initiatives and debates, the international student is just another neglected member of the non-established citizen class. They are not the intended beneficiary of housing law or policy, mirroring the historical patterns of housing injustice for Chinese Canadians, Black Montrealers, and still other marginalized and racialized communities throughout Canada. Indeed, the very nature of how the immigration and housing systems structurally intersect creates a clear message: *even if international students can enter, they are not part of us*.