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# G2G JOURNAL

IDEAS THAT LEAD

A group of nine judges, including Beverly McLachlin, are posed on a wooden bench. They are all wearing traditional red and white judicial robes. Beverly McLachlin is seated in the center of the front row, wearing glasses and smiling. The other judges are arranged in two rows behind her, also smiling. The background is a dark wood-paneled wall.

**Hit the Bench: Beverly McLachlin's  
Reputation Takes a Dive in Retirement**

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Help Overcome Blockade Disruptions

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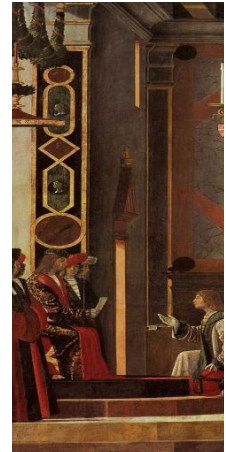
Grant A. Brown

When Chief Justice of the Supreme Court of Canada Beverley McLachlin stepped down in 2017, she was regarded as one of the most consequential jurists in Canadian history, largely due to her court's activist approach to the Charter of Rights and Freedoms. Her career arc was also widely considered a triumph of progressive feminism in the face of an entrenched legal patriarchy. That reputation is due for a re-assessment. Grant A. Brown sifts through the evidence of McLachlin's autobiography and various post-retirement missteps, and unearths what he feels is a surprising lack of principle, objectivity and sound reasoning.

## Stronger Alliances with First Nations Could Help Overcome Blockade Disruptions **PAGE 7**

Gwyn Morgan

The sight of Justin Trudeau's ministers genuflecting before petty aristocrats, anarchists, tire-burners and masked thugs sickened millions of Canadians – and made some of us think about hoarding critical supplies. Aside from the venality and sheer ineffectiveness of the Liberals' approach, Gwyn Morgan was struck by our enlightened rulers' bone-headed misunderstanding of diplomacy. Going cap-in-hand to the people who despise you is unlikely to end well. And when there are other options, it's unforgivable. Morgan suggests instead applying age-old principles of diplomacy – like supporting one's allies to maximize their influence. He should know, for he has done it himself.



## Want More Affordable Housing In Canada? Build More Houses **PAGE 9**

Peter Shawn Taylor

Solving Canada's housing crisis shouldn't require more than a single lesson in economics. When prices are high, a free market always responds and supplies more. Yet amidst Canada's severe problems of housing affordability, this foolproof mechanism is continually frustrated by governments that are either ignorant of how markets work, fixated on preserving the status quo or display naked contempt for the profit motive. Peter Shawn Taylor looks at the scorn heaped on land developers, landlords and the rest of the housing supply industry and wonders how they became the villains of this story.

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# Hit the Bench: Beverley McLachlin's Reputation Takes a Dive in Retirement

By Grant A. Brown

A re-evaluation of Beverley McLachlin, Canada's longest-serving Chief Justice of the Supreme Court of Canada, is in order. This is necessitated by evidence arising after her 2017 retirement suggesting she's not nearly as bright, impartial or principled as her record from the bench once established. Our brief consists of three items. First is her autobiography, [\*Truth Be Told: My Journey Through Life and the Law\*](#), released last year, which offers new insight into her personal biases and worldview. Second, her public support for Beijing in a dispute over the independence of the Hong Kong Court of Final Appeal and its connection to her public battles with former Prime Minister Stephen Harper. Finally, her baffling behind-the-scenes involvement in the pressure applied to former Justice Minister Jody Wilson-Raybould in the SNC-Lavalin political scandal.

Let's begin with some good news. McLachlin's autobiography is an easy and often delightful read – linear, literate, and non-technical. In broad strokes, it tells the inspiring story of someone possessed of exceptional intelligence, iron determination and ample decency, rising from humble beginnings to the height of

power and prestige in Canada. If fault can be found with her non-professional life, it's that she carries petty grudges through an enormously charmed life. No occasion in which she finished second is allowed to pass without the injustice being highlighted. (She was *not* the valedictorian of her high school graduation class!)

Further, it is undeniable that her tenure on the Supreme Court had an enormous impact on the shape of modern Canada. A member of the Supreme Court since 1989, she was Chief Justice for an unprecedented 17 years until her retirement. A list of her court's most consequential decisions includes such totemic innovations as same-sex marriage, decriminalization of prostitution, the right to assisted dying, pay equity for federal employees and the invention of vast, mysterious and, until very recently, apparently open-ended new duties to consult with and accommodate Indigenous people.

Rather than assess her skill as her own hagiographer or establish the weight of her working career, however, our aim here is to take McLachlin's measure as a judge-in-retirement. Given a vast number of new personal insights arising from her autobiography, we are now able to

BEVERLEY  
McLACHLIN



TRUTH BE TOLD

My Journey Through  
Life and the Law

consider certain questions of significance to any judge, past or present. What sort of mind does she possess? Does she suffer blind spots? Is she cautious in assigning malign motives to others? How consistent and sound is her reasoning?

What we discover, unfortunately, is someone who epitomises the garden-variety prejudices, oversights and conclusions common to her academic and legal peers. There is no deep questioning of received wisdom, no examination of





*Appointed to the Supreme Court in 1989, Beverley McLachlin spent a record 17 years as Chief Justice.*

new evidence, no penetrating or original analysis of issues and no curiosity about how anyone could see the world differently. Such faults are most apparent when McLachlin flies her feminist colours, which is often.

McLachlin views herself as a heroic feminist trail-blazer, hacking through the undergrowth of patriarchy and overcoming numerous male-oriented obstacles by sheer strength of character and intelligence. And some of her harshest criticism is directed at women who preferred traditional gender roles over blazing trails, including her own mother. "Although women were allowed to vote now, the ones I saw around me didn't actually seem to be living lives equal to men," she writes. "They were staying home with the children, obediently catering to their husband's whims, watching each passing year whittle their dreams down to sad slivers of memory." Yet as *Truth be Told* reveals, McLachlin has lived a life remarkable for its lack of obstacles or obedience. Doors were opened for her as fast as she could leap through them.

### The "barriers" magically tumble down for a feminist on the fast-track

McLachlin's career arc begins in "the dying days of August" in 1965. With a

B.A. in philosophy, and a handful of acceptances to graduate schools at prestigious universities in Canada, the United States and Europe, she is dithering about what to do with her life. Her boyfriend (soon to be her first husband) is enrolled

articles at the second firm she interviewed at. (She left in a snit from her first interview because the interviewer made mention of the fact she was married.) After a few years working at this law firm, she decides to follow her husband to Fort St. John, B.C.,

**McLachlin views herself as a heroic feminist trail-blazer, hacking through the undergrowth of patriarchy. In truth she's lived a life remarkable for its lack of obstacles. Doors were opened for her as fast as she could leap through them.**

at the University of Alberta, and suggests she'd make a good lawyer. So she fires off a letter to the Dean of the Faculty of Law. Four days later she receives an acceptance to law school, starting the next week.

During the summer after her first year of law school, McLachlin wanders into the only law office in her home town of Pincher Creek, a picturesque backwater in southwest Alberta, just to say hello. She

where she is "enthusiastically" hired by the biggest law firm in town. Normally, a lawyer called to the Bar in Alberta would have to practise for three years or complete another year of articles in B.C. before making such a move. This requirement was waived for McLachlin. And when she moves to Vancouver, she again instantly lands a job at a major law firm.

After a few years in Vancouver, she decides to try her hand at teaching at UBC's



*Just one of the boys: Despite repeated claims she had to overcome entrenched sexism throughout her career, McLachlin rose swiftly through the judicial ranks.*

recalls being "greeted...as if [she were] already a fellow lawyer," is immediately hired and handed some files to work on. She also applies for a grant to do an M.A. in philosophy and receives a two-year scholarship.

Upon graduation in 1968, she takes her

law faculty; the job is hers for the asking. A couple of years later she shifts to teaching full-time and in 1974 is handed a tenure-track position. There was no international search for candidates or competition for the position; the old boys' network treated Bev as one of its favourites. Nor was her



*Retired and reappointed: McLachlin leaves the Supreme Court of Canada for the last time in late 2017 (top); in 2018 she was temporarily appointed to Hong Kong's Court of Final Appeal (bottom).*

appointment at the entry level of lecturer or assistant professor, but a prestigious associate professor. This is what the fast-track looks like.

Then late in 1980, McLachlin has a chance encounter at a legal shin-dig with the Chief Justice of the Supreme Court of B.C. He asks her if she'd be interested in becoming a judge one day. A short while later, she receives a phone call from Justice Minister Jean Chretien. The old boys' network is at it again and she's offered a position as County Court judge. Five months later, she's elevated to the Supreme Court of B.C. In 1985, she becomes the first female member of the B.C. Court of Appeal and three years after that is made Chief Justice of the B.C. Supreme Court. Finally, in 1989, she's elevated to the Supreme Court of Canada. As one of her colleagues observes at her

swearing-in ceremony, she moved through the judicial ranks faster than many cases.

So how does McLachlin perceive her seemingly magical career trajectory? On her elevation to the Supreme Court of Canada, she writes, "Pundits hailed the appointment of a third woman to the court of nine as a remarkable advance for women's rights. I was less convinced... when I scanned the courtroom, I saw more male faces than female... *What took us so long?* I thought." Presumably her selection as one of the most powerful judges in the country didn't happen fast enough for McLachlin. But ever since she was appointed Chief Justice, half of all appointments to the Supreme Court have been women. Surely equality doesn't get better than this.

McLachlin repeatedly claims to have faced numerous sexist barriers and discrimination throughout her career. But the examples she musters – a female colleague who protests she wasn't given her own office, and then is immediately provided with one – fail to convince. She complains about male students, professors and colleagues telling "dirty jokes," but later admits she appreciates her own brother's "wicked and ribald sense of humour." She characterizes rumours spread about women students and lawyers as "gossip that hurt" – yet men are just as likely to be hurt by rumours as women.

A female lawyer is told by a judge that her skirt was too short; but no male lawyer would dream of appearing before a judge in short pants, or with his shirt unbuttoned to reveal a gold pendant on his hairy chest. Collectively, her evidence of pervasive sexism seems remarkably weak. If anything, it suggests a civilized, restrained environment remarkable for its lack of serious problems, let alone harassment or impropriety.

And in substantive discussions about gender-based issues such as employment equity, intimate partner violence, criminal sentencing disparities and other legal matters, McLachlin regurgitates feminist ideology and seems almost blind to the world around her. For example, the most recent advance in family law worthy of

inclusion in her autobiography is 1973's *Murdoch v. Murdoch*, a controversial decision that triggered a spate of statutes and reforms meant to ensure women receive an equal share of matrimonial property following divorce. But by considering family law exclusively from the female perspective, McLachlin deliberately ignores [ample and more recent evidence](#) showing how dramatically unequal child custody and financial arrangements can be for fathers in divorce cases.

### Cool with the Chi-coms, contemptuous of Harper

Since her retirement from the Supreme Court, McLachlin has been involved in several other circumstances that suggest a disappointing lack of circumspection. In 2018 McLachlin was appointed as a "non-permanent common-law judge" on Hong Kong's Court of Final Appeal, a temporary post occasionally offered to retired judges from other countries. She quickly found herself mired in controversy, as many legal experts have complained that *ex post* "interpretations" of that court's rulings by China's National People's Congress (i.e., the Communist oligarchy) pose a serious threat to Hong Kong's judicial independence.

[Asked for her insider's opinion](#) on this issue late last year, after she had finished her stint and while bitter pro-democracy protests were ongoing throughout the former British colony, with hundreds of arrests and numerous injuries, McLachlin blithely declared Hong Kong's judges to be "immune" to political pressure from mainland China. Political interpretations of court decisions are done "sparingly," she said. Plus, she added, Beijing's oversight does not "affect the actual judging of the judges in Hong Kong," as these interpretations occur after they've done their job. Judicial independence is apparently alive and well in Hong Kong – even if its judges' decisions are later negated by a Communist dictatorship. It's an opinion that seems rather naïve; presumably the National People's



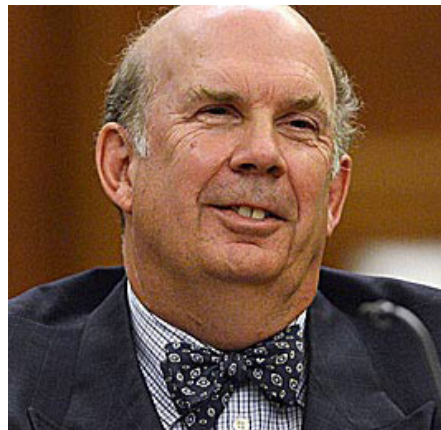
Congress considers McLachlin a useful idiot.

Her insouciant attitude toward General Secretary Xi Jinping's control over Hong Kong's high court contrasts sharply with her prickly and defensive attitude toward Harper's "interference" while she was Chief Justice of Canada's Supreme Court. Expressing umbrage at Harper over this issue takes up an entire chapter of McLachlin's autobiography.

The tale begins in early 2013 when an all-party Parliamentary Committee was struck to make recommendations to Cabinet on a replacement for the recently retired Justice Morris J. Fish. The workings of this committee are supposed to be strictly confidential, in part to promote candour from the witnesses, and to protect the reputations of candidates who are rejected. Committee members and witnesses [swear an oath](#) to say nothing about the process to anyone else.

That July, as McLachlin relates in her autobiography, "I received a call from the chief justice of the Quebec Superior Court [François Rolland], advising me that rumour had it the government was planning to replace Justice Fish with a judge from the Federal Court of Appeal." Alarm bells should have been ringing in McLachlin's head as she was listening to this information, which could only have come to Rolland through a breach of confidentiality in the appointment process. Indeed, discussing the matter with Rolland was itself a breach of protocol, since witnesses to the Parliamentary Committee are not supposed to discuss confidential matters among themselves outside of the Committee process. McLachlin should have discretely inquired where Rolland's information had come from, then terminated the call and conveyed to Justice Minister Peter MacKay that there had been a possible breach of confidentiality and who it could be traced back to.

Instead, Rolland's leak set off a different set of alarm bells. The *Supreme Court Act* stipulates that Quebec is entitled to three judges, and the requisite trio must be appointed "from among the judges of the Court of Appeal or of the Superior Court of



*In early 2013 François Rolland, Chief Justice of the Quebec Superior Court (top), provided McLachlin with leaked information about the government's plan to appoint Federal Court Judge Marc Nadon (bottom) to the Supreme Court.*

the Province of Quebec or from among the advocates of that Province." Since Justice Fish was a Quebec judge, replacing him with a judge from the Federal Court of Appeal was *prima facie* improper. Rolland recommended that McLachlin alert Justice Minister Peter MacKay to such a scenario.

Such a course of action was ill-advised. To begin with, it was unnecessary. The all-party Committee would have been well-versed in all eligibility requirements. They, or the Justice Minister, had almost certainly obtained a legal opinion on the matter, which would have advised that any concern over an appointment from the Federal Court of Appeal arises from an historical quirk. The *Supreme Court Act* had been written decades before the Federal Court system even existed and it was likely an oversight of Parliament not to have made an amendment to the Act to

permit Quebec judges in the Federal Court system to be appointed to the Supreme Court. Judges from every other province or territory were eligible to be elevated from the Federal Court system to the Supreme Court; it would be plainly discriminatory not to allow Quebec judges in the Federal Court system to advance in this way.

Second, acting on Rolland's recommendation was ill-advised because judges are trained to treat "rumour" with extreme caution. Yet, untroubled by any practical or ethical concerns, McLachlin immediately "alerted the Prime Minister's Office that [she] might wish to speak to Harper." (Translation: She phoned the PMO asking for Harper; when told he was not available, she left a message for him to call her back. Nobody calls the Prime Minister to "alert" him that they "might" wish to talk.) She then tracked down MacKay and spoke to him about the presumptive nominee. One can imagine how shocked MacKay would have been at learning secret government deliberations had been breached, and that two Chief Justices were now attempting to insert themselves into the Justice Minister's decision-making process. MacKay advised Harper not to take the Chief Justice's call. It was good advice.

McLachlin's autobiography offers a rousing *nothing-to-see-here* defence of her incautious intervention: "It wasn't a big deal – just the routine sort of information that a justice minister might want to have before giving the prime minister his recommendation..." But there was nothing routine about the breach in the committee's confidentiality, nor in her casual treatment of this highly confidential information, her preference for discussing sensitive and controversial matters over the phone without leaving a paper trail, or her instinct to go over the justice minister's head and try to talk to the prime minister directly.

At the end of September 2013, the appointment of Marc Nadon from the Federal Court of Appeal to the Supreme Court was announced. A challenge to the appointment by Toronto lawyer Rocco Galati was resolved by the McLachlin court in April 2014 with a 6-1 decision

that declared Nadon ineligible based on a narrow, textual interpretation of the *Supreme Court Act*. It is a puzzling decision coming from a McLachlin-led court, given how it otherwise always avoided a strict

commands like, “Harper, sit!” and “Harper, lie down!”

After Nadon was ruled ineligible, the Prime Minister’s Office responded to media queries by revealing that McLachlin

independence.” Her triumphalism is noteworthy, but her hypocrisy is blinding. In McLachlin’s view, Harper’s justified allegation of inappropriate meddling in judicial appointments is a major threat to

## For someone so exquisitely protective of her own reputation as a jurist, it is surprising how easily McLachlin seems to have been drawn into machinations meant to undermine the independence of the Public Prosecution Service and the Justice Minister, in aid of SNC-Lavalin.

constructionist view of the law.

McLachlin often waxes eloquent in her autobiography about how the law is a “living tree” that must be adapted to new circumstances and to new social understandings, sometimes to mean the exact opposite of what the written words say. Her court was constantly reminding lower courts that the law in Canada must be interpreted “purposively.” Upholding the Nadon appointment would have been well in keeping with the law’s overall purpose, as well as Parliament’s intent. Surely a court sensitive to institutional and systemic discrimination against Canada’s founding minority population should not abide such an arbitrary limitation on Quebec jurists.

So why did the McLachlin court abandon its deeply ingrained judicial philosophy in favour of a strictly literal ruling? The most obvious answer is simple animus towards Harper. This speculation is reinforced by several other questionable rulings against Harper government initiatives on matters including minimum sentencing. Given that the *Criminal Code* is stuffed with all sorts of minimum and maximum sentencing provisions, why were Harper’s minimums uniquely deemed contrary to the *Charter*?

McLachlin’s deep disdain for Harper drips from the pages of her autobiography. She explains, for example, that she once considered naming a new dog Harper because it would be humorous to issue

had placed “inappropriate” phone calls to MacKay and Harper. At this point, McLachlin lashed out like a wounded wolverine. She issued a statement declaring her version of the facts, with her main points being she was concerned only about the impact a challenge to Nadon’s appointment would have on the court’s workload, and that she never discussed the eligibility challenge’s merits with MacKay.

In her autobiography she goes further, claiming she was only doing her “duty” in informing the justice minister. “There is simply no substance to the prime minister’s accusation of wrongdoing,” she writes, grandiloquently exonerating

judicial independence while Xi Jinping’s overruling of legitimate judicial decisions by the Hong Kong Court of Final Appeal is no big deal. How curious.

### Ensnared in SNC-Lavalin’s tentacles – or embracing them?

Finally, for someone so exquisitely protective of her own reputation as a jurist, it is surprising how easily McLachlin seems to have been drawn into machinations meant to undermine the independence of the Public Prosecution Service and the Justice Minister, in aid of SNC-Lavalin.

What little we know about McLachlin’s minor role in this drama comes from the [report of the federal Ethics Commissioner](#) known as *Trudeau II*.

Recall the [concerted backstage effort](#) to get Jody Wilson-Raybould to direct the Public Prosecution Service to negotiate a deferred prosecution agreement (DPA) with SNC-Lavalin instead of litigating a criminal case. McLachlin’s former Supreme Court colleague Frank Iacobucci, now legal counsel to SNC-Lavalin, hatched a plan to convince various members of the government – in the PMO’s

Office, the Finance Minister’s Office and the Clerk of the Privy Council – to pressure Wilson-Raybould into accepting some kind of intervention from McLachlin, who would then convince her that a DPA was the best



*For someone so obviously concerned about her reputation, how did McLachlin allow herself to be drawn into the SNC-Lavalin scandal?*

herself. McLachlin completes her program of self-vindication by citing “Legal groups, national and international, [which] weighed in to condemn the prime minister’s attack on me, and his affront to judicial



*A nearly perfect thing? McLachlin's post-retirement career reveals a surprising number of flaws, biases and personal blind spots.*

way to go, and entirely legally kosher.

McLachlin apparently informed Iacobucci that she no longer had standing to practice law in Canada, and therefore could not offer a legal opinion to Wilson-Raybould. But she nonetheless offered to mediate between the justice minister and SNC-Lavalin, if Wilson-Raybould could be pressured into engaging her in that capacity. Note that [ethical codes for mediators](#) typically demand complete neutrality. Since McLachlin had already been approached by SNC-Lavalin's lawyer to advance their interests in this matter, the requisite impartiality was lost.

While Iacobucci may not have apprised McLachlin of the full scope of his plan to manipulate Wilson-Raybould, it strains credulity to suppose she failed to understand that such an engagement would only be possible if her prior consultation with SNC-Lavalin was not disclosed. While this scheme was never put into action, McLachlin has made no public statement clarifying the role she proposed to play in this case. It is a significant omission. And, as with many other aspects of her post-retirement career, does her reputation no favours.

When asked about the flaws she sees in Canada's legal system, McLachlin recounts in *Truth be Told*, her answer is always: "access to justice." The law is a wonderful thing, she insists. A nearly

perfect thing. The only problem is that people can't always get before a judge to have their case properly heard and justice dispensed. Of course, such an attitude assumes judges themselves are perfect, or nearly so. As we are learning from her post-retirement record, however, McLachlin is not nearly as flawless, principled or heroic as she remembers herself to have been.

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# Stronger Alliances with First Nations Could Help Overcome Blockade Disruptions

By Gwyn Morgan

The year was 2015. We had gathered in the meeting house of the remote Tl'azt'en First Nation at Tache, 215 km northwest of Prince George. I was there as volunteer Chair of the B.C. Industry Training Authority (ITA), the organization responsible for funding and facilitating trades training in the province. Accompanying me were the ITA's CEO, Gary Herman, and other board members who shared a passion for our dual mission of helping young people gain rewarding careers in the certified trades, while also providing the skills that individuals and organizations would need to carry out virtually any public or private project throughout the province.

One of the ITA's board members was Andy Calitz, a South African engineer who had led LNG projects around the world. Now, Andy was the CEO of LNG Canada, a joint venture by international energy companies to develop Canada's first large export facility for liquefied natural gas. It was Andy's leadership and determination that would make the \$40 billion venture situated at Kitimat – the largest industrial project in Canadian history – a reality.

The natural gas supply for this massive

project would be transported from landlocked northeast B.C. gas fields through the Coastal GasLink Pipeline. The pipeline's construction would create opportunities for the Tl'azt'en and other First Nations members along its route to learn a trade that could provide them with satisfying and well-paying, potentially lifelong careers, and help provide prosperity for their communities.

But we faced a dilemma. Many young people from those remote villages lacked the academic qualifications normally required even to enter trades training. Learning a certified trade such as electrician, welder or heavy equipment

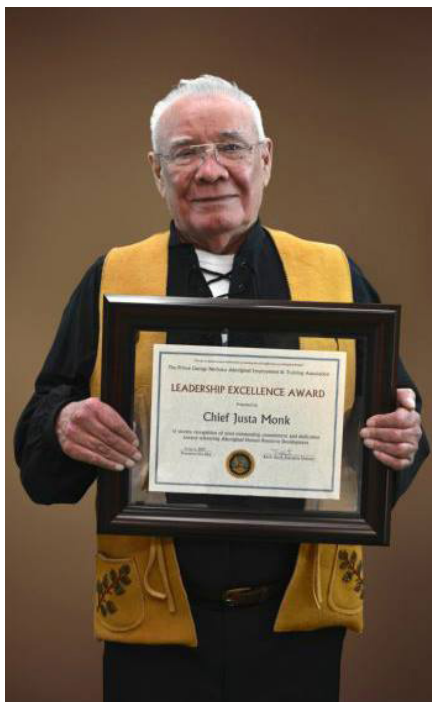
mechanic is a four-year process of schooling and work experience.

After wrestling with our dilemma, the ITA Board decided to create an entirely new certified trade called Construction Craft Worker. Through this program, trainees would receive the foundational knowledge needed to work safely as labourers, from where they could learn the skills needed to move into advanced trades. At the invitation of the Tl'azt'en Chief, Justa Monk, and Councillors, we came to discuss our Construction Craft Worker initiative.

Chief Justa Monk offered a traditional welcome and I respectfully responded, describing our mission. Then came a



Gwyn Morgan, Gary Herman and Andy Calitz believe passionately in trades training for young First Nations members.



*The late Tl'azt'en Chief Justa Monk welcomed IAT leaders in the hopes of securing employment for his members year.*

memorable feast of bear, beaver, deer, elk and moose, along with fish from the nearby lake. It turned out to be an emotional day for all. The Chief was near tears as he told us that, while they had heard many leaders' statements from afar aimed at First Nations, we were the first group of leaders to honour his people by travelling to their village. That meant more to the Chief (who has since passed away) and Council than we could have imagined. The many young band members in attendance expressed their hope that working on the pipeline might help them gain the trade qualifications needed to secure employment afterwards.

Given their remote location, our board knew the Coastal GasLink Pipeline would be their only chance in a generation to achieve that. The arduous process of gaining approval for the LNG project took much longer than expected but finally, five years after our meeting, the gas supply pipeline is under construction. And 20 First Nations along the route have signed agreements that not only offer employment opportunities, but also financial benefits that will help lift their communities out of poverty.

Who could have imagined that this long-held dream would turn into a national nightmare due to opposition by unelected "hereditary" Chiefs of just one of those 20 First Nations? And that this single, internal jurisdictional dispute could spawn illegal blockades disrupting railways, roads and international commerce across our entire nation, and even threaten shortages of things all of us need to live, like heating fuel and food? I'm sure most Canadians were as dismayed as I to see ministers of the Crown meekly asking for "permission" to enter an unlawfully occupied site to "dialogue" with a disparate agglomeration of protesters opposed to virtually everything that we value about our country.

There have been many times over the years when I've witnessed people who keep trying to change the behaviour of an impossibly intransigent opponent, rather than going around them to engage supporters. In this case, the way to do that is breathtakingly obvious. There are 20 First Nations who, just like the Tl'azt'en, are counting on the Coastal GasLink to help lift them out of poverty and provide opportunities for their young people to gain employable skills. If I were Prime Minister, my Cabinet ministers would immediately be on their way to each of those 20 First Nations to solicit their help in making sure the pipeline gets built.

My experience in that Tl'azt'en meeting house shows that ministers from our national government coming to meet First Nations on their own ground would be profoundly impactful in encouraging First Nations leaders who actually care about the future of their people to speak out against those who do not.

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# Want More Affordable Housing In Canada? Build More Houses

By Peter Shawn Taylor



Canada's housing market has an Alonzo Hawk problem.

Alonzo Hawk was a stock villain played by veteran actor Keenan Wynn in several Disney movies of the 1960s and 1970s, including *The Absent-Minded Professor* and *Son of Flubber*. In *Herbie Rides Again* he was the conniving proprietor of Alonzo A. Hawk Wrecking & Building Corporation, intent on tearing down an old firehouse where a certain Volkswagen Beetle lived with its elderly owner. "His skyscrapers cast a cold and grey shadow over the children's playgrounds all day long," sneered one character. He's "despicable, greedy, grumpy and wholly without principle or pity," said another.

Watching *Herbie Rides Again* at a drive-in back in 1974 marked the first time your correspondent had ever encountered the occupation of land developer. And it seemed obvious to this nine-year-old moviegoer that they were on par with Nazis, bank robbers and dog-nappers in terms of routine villainy. Whatever land developers were up to – tearing down quaint old buildings to put up soulless new ones, or ripping up bucolic farmland –

was evil simply by definition. It wasn't until much later I considered how unfair it was to caricature the supply side of the housing market in this way.

Unfortunately, governments that ought to know better still cling to an Alonzo Hawk view of land developers and their trade. And it's making life very difficult for Canadian families.

Amid the current and more pressing COVID-19 crisis, Canada is also widely considered to be experiencing a housing crisis. Earlier this year Ottawa City Council declared an "affordable housing and homelessness emergency" due to rapidly rising housing prices. Vancouver has done likewise. [According to RBC Economics,](#)

housing affordability in Vancouver and Toronto "remains at crisis levels." The share of average household income required to buy a home in Vancouver is an untenable 84.7 percent. In Toronto, it's a still-crippling 66 percent. Rents in these markets, meanwhile, are also escalating.

Popular culprits include rapacious landlords, foreign buyers, money launderers, the "commodification" of real estate, easy credit and assorted "demand-side" factors. And much of the government policy response is contradictory. After having imposed a mortgage stress test to quell housing demand among eager new buyers, for example, the Trudeau Liberals last year introduced their [First-](#)

[Time Home Buyer Incentive](#)

that sees Ottawa directly encouraging newcomers to get into the market. Equally popular with municipalities and provinces are policies that attempt to defend homeowners and tenants from land developers and landlords, including rent control, zoning restrictions, tenancy protection and new taxes such as [B.C.'s speculation and vacancy tax](#).

Largely missing from this crisis-mongering is recognition



Unscrupulous and evil: the land developer as portrayed in Disney's "Herbie Rides Again".



**“Every component of housing supply – materials, labour, financing, architectural expertise – is responsive to demand,” observes researcher Frank Clayton. “If prices go up, the market supplies more. Except for one thing: serviced land.” Unlike all the other factors of housing production, the supply of land is directly controlled by municipal and provincial bureaucracies.**

of the equally crucial supply side of the housing equation. Outside of eliminating immigration and population growth, there's only one way to solve a housing affordability crisis: by building more houses. A lot more houses. If we really want to end Canada's alleged housing emergency, we need to come to terms with our Alonzo Hawk problem and start treating developers, landlords and other housing suppliers as the solution rather than the problem.

Every housing market is influenced by a host of local factors, yet no market can avoid the iron law of supply and demand. Frank Clayton is a senior research fellow at the Centre for Urban Research and Land Development at Ryerson University in Toronto, and a long-time observer of the housing market in the Greater Toronto and Hamilton Area (GTHA) of southern Ontario. [Clayton's research](#) points to underlying demand of more than 50,000 new housing units per year across the GTHA, due to strong long-term in-migration. Unfortunately, new supply over the past five years has averaged only 42,000 units. This unmet gap inevitably pushes up prices and, according to Clayton's work, they're rising faster than incomes. Hence affordability falls.

What's behind this imbalance? A disturbance of basic economics. “Every component of housing supply – materials, labour, financing, architectural expertise – is responsive to demand,” Clayton observes in an interview. “If prices go up, the market supplies more. Except for one thing: serviced land.” Unlike all the other factors of housing production, the supply of land is directly controlled by municipal and provincial bureaucracies. And whether

the land in question is greenfield plots on the outskirts of cities or redevelopment lots within city boundaries, the supply chronically lags far behind the amount that could be sold and developed were it available. Put simply, says Clayton, “There's not enough land, and it takes too long to get it through the system.”

The GTHA is blessed with plenty of available land on its periphery suitable for new housing. But, says Clayton, “these days no one wants to expand to greenfield developments because it conflicts with all sorts of environmental concerns,” especially regarding suburban sprawl. This limitation has spilled over into the urban rental market. As single-family homes become increasingly dear, aspiring homeowners are forced to stay put. This in turn prevents lower-income families (nearly all of whom are renters) from trading up to bigger rental units. And so rents rise in tandem with house prices.

Making matters worse, the vast majority

of developed land within Toronto's city limits is zoned exclusively for single-family homes, making it all-but impossible to tear down existing houses and put up three or four-storey walk-ups to take the pressure off rents. Efforts to insert higher-density developments into these areas are habitually met with outrage from existing homeowners intent on preserving their neighbourhood as-is. Thus, despite rising prices, the market is incapable of meeting the new demand because the supply of land isn't responsive to price.

Remove artificial blockages, Clayton notes, and housing crises tend to solve themselves over time. “Just loosen the land supply, and the private sector will do its job,” he promises. For proof, consider [a recent report](#) from Canada Mortgage and Housing Corp. (CMHC) examining the “elasticity of supply” of the Canadian housing market. In this context, elasticity of supply is the extent to which an increase in housing prices prompts an increase in the supply of new houses for sale. Edmonton and Montreal stood out in this cross-Canada comparison of major cities for their high elasticity. These two cities produced twice as many new homes for a given price rise as did Toronto and Vancouver.

Such market responsiveness has an appreciable impact on affordability. Edmonton, for example, has an RBC housing affordability index of slightly under 40 percent – less than half Vancouver's



*Give the people land! Economist Frank Clayton says government is standing in the way of the market.*

ruinous 85 percent. Sprawling Calgary, which recently attempted to [curb its suburban growth](#) in favour of more downtown density, is midway between low-elasticity Vancouver and Toronto and high-elasticity Edmonton and Montreal. As the CMHC observes, policy-induced supply constraints create expectations among homebuyers that prices will continue to rise in the future, feeding further declines in affordability. There is only one solution. “Cities that keep expanding their boundaries are able to keep prices down,” observes Clayton, because developers can keep building new houses.

Further evidence of the effect of government regulations on housing affordability lies in [New Zealand research](#) showing 56 percent of the cost of a new house in urban, highly regulated Auckland (population 1.6 million) is due to land use restrictions and other rules that add costs, limit supply or otherwise frustrate the market. In the country’s less regulated housing markets, such as Palmerston North (population 86,000), such rules account for only 15 percent of total housing cost.

“When we talk about a housing affordability crunch we need to quantify the degree to which government land use regulations affect housing prices,” Clayton says. He adds that, “Ontario and B.C. are the two worst provinces for a planning system that does not respond to prices and fails to provide the necessary



*There's plenty of land, such as in B.C.'s Lower Mainland's, but governments are resisting urban expansion at all costs. No surprise that housing prices climb.*

housing crisis is most acute, the housing market admittedly faces more serious geographical constraints than Toronto. Here, redevelopment of existing developed land offers the most obvious way to deliver more supply. (Although the [Agricultural Land Reserve](#) across the Lower Mainland could offer plenty of land for housing if there was the political will to build on it.) Yet again, government policies purposely frustrate the supply of more housing, particularly in the rental apartment category.

With 18 years in the commercial real estate business and over \$3 billion worth of apartment buildings and other rental properties sold over his career, Mark Goodman has an unimpeachable

numbers, and more and more developers are simply walking away from Vancouver because the [financial] numbers don't work.”

Major complaints Goodman hears from clients concern rent control, rental-only zoning rules, hefty taxes as well as permitting and consultation processes that routinely take up to four years, only to have entire projects dashed by a council vote at the final stage. “We know supply-side measures work,” he says. “But no one is doing enough to encourage [them].” Instead, many municipal politicians focus their efforts on ensuring the supply of housing in Vancouver never changes.

Most of Vancouver's major apartment buildings are at least 50 years old,

**“Seattle doesn’t have rent control, they don’t have rent-only zoning, they aren’t dictating suite size or taxing their industry to death,” Goodman notes. Two years ago, Seattle’s providers built over 17,000 rental units; Vancouver added fewer than 2,000. Last year, average rental costs actually dropped in Seattle due to excess supply.**

supply of serviced land.” At some point, the land supply issue will need to be resolved, because the fact remains that the large majority of Canadians – including immigrant families – don’t wish to dwell in apartments forever.

In Vancouver, where Canada’s

perspective on the issue. “We see Economics 101 all the time, every day,” says Goodman, a principal in Goodman Commercial Inc. and publisher of the popular *Goodman Report* on Vancouver’s commercial real estate industry. “I’m sitting down with developers running the

predating the condo boom that began in the 1980s. During the boom’s early years, many apartment buildings were torn down to make way for new condos. In response to complaints from displaced tenants, Vancouver City Council established a policy requiring a one-to-one replacement





Getting it done: Artist's rendering of the Senakw project, on Squamish First Nation land in Vancouver, to break ground next year.

of demolished rental units in certain parts of the city. This policy – still in effect – has become a *de facto* moratorium on redeveloping land in some of Vancouver's most desirable residential areas, by taking away landowners' discretion to put properties to their most effective and rewarding use. "It is politically expedient to protect existing tenants by preventing the demolition of existing buildings, but this is making the problem worse," says Goodman. So Vancouver's rental stock simply sits and rots while developers look elsewhere for better opportunities.

The city claims to be addressing its rental apartment supply problem by allowing modest density increases in certain areas. Yet a suite of remaining policies still discourage new supply. For evidence of how a developer-friendly environment can solve such problems, Goodman points to [Seattle, Washington](#), just a three-hour drive away. "Seattle doesn't have rent control, they don't have rent-only zoning, they aren't dictating suite size or taxing their industry to death," he notes. Two years ago, Seattle's providers built over 17,000 rental units; Vancouver added fewer than 2,000. Last year, average rental costs actually dropped in Seattle due to excess supply; landlords have even been known to tempt new tenants with sweeteners such as two months' free rent.

Vancouver could add a lot more housing – but doing so would require slashing government regulation. Consider the [Senakw project](#) in the Kitsilano

neighbourhood on Squamish First Nation land. Freed from labyrinthine city controls due to its Indigenous status, Senakw will inject 6,000 new housing units, 70 percent of which are planned as rentals, across 11 buildings, providing a massive dose of density when and where it's most needed. As for political approvals, a simple majority vote of Squamish First Nation's 827 members last December did the trick. Construction is to start next year. "The fact this project was approved in months, rather than years, shows what's possible when the city gets out of the way and we can

**A whole new vocabulary has been invented to heap scorn on landlords and land developers, including "renoviction" and "demoviction," to delegitimize the process of renovating or demolishing apartment buildings to put up something newer and bigger. "These are slang terms that assume a greedy landlord is trying to toss helpless tenants out of their homes," says Macallum dispiritedly.**

simply concentrate on building a lot of new supply," marvels Cynthia Jagger, a partner in Goodman Commercial.

Kitchener, in southwestern Ontario, similarly complains of an affordability crisis, with housing prices up by 88 percent and rents up by 35 percent over

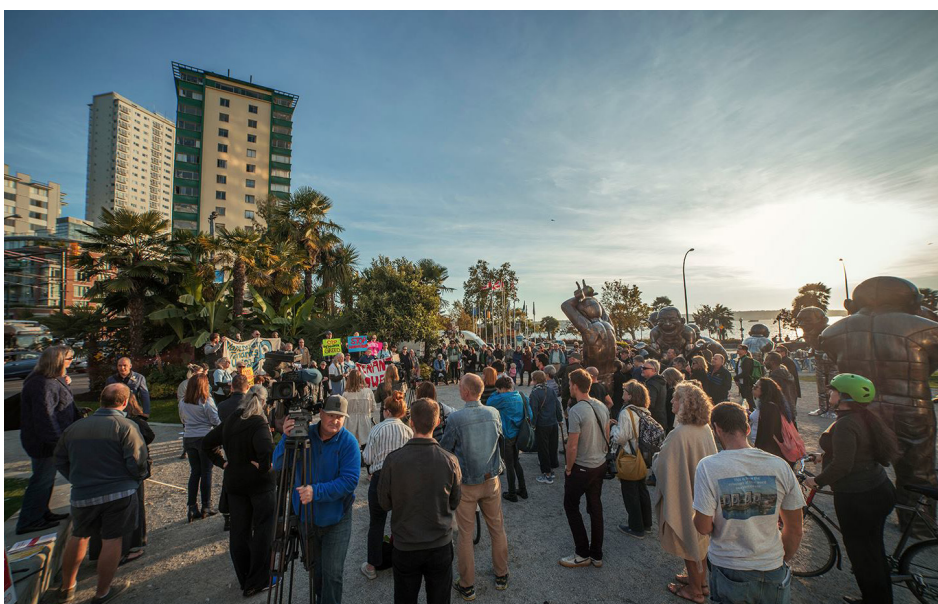
the past decade. "The solution is always more supply," offers Andrew Macallum, president of the Waterloo Region Apartment Management Association, which represents 300 property owners.

Yet Macallum notes that most of what passes for local housing policy seems designed to forestall more rental housing, including regional apartment property tax rates that are double what homeowners pay, as well as rental unit licensing requirements and often conflicting municipal and provincial government regulations. "Over the years we have seen so many policies try to control the market that it has simply choked the ability of property owners to look after their own needs," he says. Without a sufficient profit motive, Macallum adds, investors will inevitably look to put their money elsewhere.

Scratch a housing crisis and you will inevitably find government policies meant to protect existing homeowners and tenants at the expense of future supply. Zoning rules that forbid innovative or higher-density developments are the biggest obstacles to owner-occupied homes. Rent control is the most widely cited and pernicious issue when it comes

to rentals. While average monthly rent for a one-bedroom apartment in Waterloo Region is \$1,045, Macallum reels off numerous local apartments where tenants are currently paying just \$600 to \$700 per month after being protected for many years by provincial rental control. "Why is





*Housing Justice Warrior: Property owner and landlord Jon Stovell was vilified for attempting to upgrade his rental property, the Berkeley Tower.*

that fair?" he asks. The owners of these properties are being robbed of the market rate for rent by government policy, which inevitably reduces their willingness to invest in additional rental housing.

A 2019 study in the American Economic Review repeats what is common knowledge among economists: "Rent control leads to a long-run decrease in the supply of rental housing." While the Ford government in Ontario [eliminated rent control](#) for buildings constructed after November 2018, in Vancouver talk has recently shifted from rent controls,

which limit rent increases during a given tenant's tenure, [to vacancy control](#), which imposes government-mandated limits on rent increases for the life of the apartment itself. If implemented, vacancy control would mean a conclusive end to any new construction in that city's rental market.

Beyond the financial obstacles imposed on landlords and developers, the housing crisis is also bringing public opprobrium down on the market's supply side. Someone has to take the blame for high prices. Owners who attempt to respond to market signals by upgrading

decrepit rental buildings are a frequent target. Vancouver developer Jon Stovell of Reliance Properties was given the full Alonzo Hawk treatment in 2018 when he announced plans to redevelop a 60-year-old apartment building in Vancouver's English Bay neighbourhood.

Despite lawfully exerting ownership rights over his own property, exceeding legal requirements for compensating existing tenants, and offering them right of first refusal on units when the building re-opens, Stovell was viciously attacked across social media. "Disgusting," "SHAME", and calls to "screw Stovell" were among the more polite responses. The project continues, despite the public outcry. "New investors are very hesitant to buy buildings in Vancouver that need a lot of work," says Goodman, "because they know they'll be vilified and victimized for 'throwing people out on the streets' when they are simply doing what needs to be done by upgrading the city's housing stock."

A whole new vocabulary has been invented that heaps scorn on landlords and land developers, including "renoviction" and "demoviction," to delegitimize the process of renovating or demolishing apartment buildings to put up something newer and bigger. "These are slang terms that assume a greedy landlord is trying to toss helpless tenants out of their homes," says Macallum dispiritedly. "But condemning landlords isn't helping. We are part of the solution."

Even the innovative Senakw project in Vancouver has been attacked by guardians of the status quo. "We're talking about something that a lot of people detest, which is developers profiting," Squamish councillor Khelselim, who goes by one name, told [The Tyee](#). "But in this situation, it's a community and a government making money to support themselves."

The perception that market mechanisms are inappropriate or incapable of addressing the housing crisis is further exacerbated by the tendency of politicians in many cities to lump the disparate issues of homelessness and rising home prices into a single massive problem called the

“housing affordability” crisis. While this bolsters claims that the housing market is failing on multiple fronts and requires even more government intervention, it is entirely unfair. Homelessness almost always involves addiction, mental illness and victimization, none of which can be blamed on housing suppliers. Finding a place for the homeless to live is separate from resolving blockages in the supply of new market housing.

As with the larger housing affordability problem, the social scorn heaped on developers and the supply side of the housing market is rooted in a basic ignorance of economics – as well as the envy and jealousy that are a large factor in urban politics. “There are plenty of people who will tell you developers are terrible people because they’re trying to make money,” observes Clayton. “There is a school of thought in urban planning circles and on city councils that considers housing a human right. But they simply don’t understand how a market works. People who invest in rental housing are providing a service, and that service is a place to live.”

Take away developers’ ability to make a profit, and they’ll take away the service. Anyone looking for an affordable place to live – and anyone in a position to influence urban housing policy – should keep that in mind.

If housing supply is a problem, making the suppliers of new housing out to be the villains of this movie is unlikely to provide a happy ending.

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