



Overview of Encampments Across Canada

A RIGHT TO HOUSING APPROACH

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The opinions, findings, and conclusions or recommendations expressed in this document are those of the author and do not necessarily reflect the views of the Canadian Human Rights Commission or the Federal Housing Advocate.

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This report was authored by a group of settler researchers living and working on the territories of many Indigenous nations across what some call Turtle Island, in what is now known as Canada. We acknowledge that the laws and policies discussed in this report are grounded in the colonial legal and political structures forcibly overlaid on the pre-existing Indigenous systems of law and governance of these places. These structures have been, and continue to be, instruments of dispossession, violence, and disconnection from territory, place, culture, community, and family. The existence of housing precarity and homelessness is intertwined with this colonial reality. Further, the negative impact of the overlap of federal, provincial, and municipal jurisdictions, and the attempted erasure of Indigenous jurisdiction, is starkly evident in some of our findings. In our view, Indigenous systems of law and governance must be central to any meaningful attempt to address homelessness and realize the right to housing. As settler researchers, we discuss the specific obligations on Canadian governments with respect to this work.

We came together as researchers and allies concerned about homelessness as the pandemic was in full swing, initially through movements of academics and citizens focused on the dismantling of encampments across Canada. We bore witness to the injustices created by the intertwined housing and health crisis provoking punitive responses, particularly for encampment residents. In the midst of one of the worst economic and social crises in recent history, we believed it was critical to document and highlight the experiences of encampment residents during the COVID-19 pandemic. In so doing, we acknowledge the tens of thousands of unhoused people and their advocates who endured—and continue to experience—immense hardship, oppression, and displacement. We are grateful to those who shared their knowledge and validated and deepened our findings. We hope that this report will provide concrete levers for action in supporting and protecting the human rights of people and communities that are currently being denied in numerous encampment contexts.

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Introduction

Homeless encampments constitute one of the most serious right-to-housing issues in Canada today. During the COVID-19 pandemic, the number of shelter spaces decreased, indoor congregate settings became increasingly unsafe, and individuals lost their livelihoods. This has led to a rise in homeless encampments across the country. The lack of comprehensive data on this urgent crisis is distressing. Even so, we know that many individuals had little choice but to turn to living in tents or informal shelters to survive the confluence of historic crises in health, housing, climate change, colonial violence, and unemployment. As articulated by the UN Special Rapporteur on the Right to Adequate Housing, encampments represent, “instances of both human rights violations of those who are forced to rely on them for their homes, as well as human rights claims, advanced in response to violations of the right to housing.”¹

In 2019, the federal government enshrined the right to adequate housing in federal law in the *National Housing Strategy Act*. Section 4 of the Act states:

It is declared to be the housing policy of the Government of Canada to

- a) recognize that the right to adequate housing is a fundamental human right affirmed in international law;
- b) recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities;
- c) support improved housing outcomes for the people of Canada; and
- d) further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.

Other governments, including municipalities, have been reluctant to adopt similar rights-based approaches to homeless encampments. Given that many elements of housing policy fall under provincial jurisdiction and are often then delegated to municipal governments, this lack of corresponding legal and policy frameworks to implement the right to housing is significant. In practice, other levels of government have also failed to secure access to permanent, adequate housing for encampment residents. Even while officials acknowledge the lack of available housing, enforcement measures such as ticketing, arrest, forced eviction, and the destruction of tents and personal property are widespread responses to encampments in Canada. The complexity of the problem of homelessness, the polarization of views among stakeholders, the cross-departmental and interjurisdictional issues raised by encampments, and the absence of intergovernmental coordination on this issue has fortified a largely punitive response to encampments across the country. These responses violate the right to housing articulated under the *National Housing Strategy Act*. While our report brings attention to governmental regulation

¹ Leilani Farha & Kaitlin Schwan, “A National Protocol for Homeless Encampments in Canada” (30 April 2020), online (PDF): *The Shift* <make-the-shift.org/wp-content/uploads/2020/04/A-National-Protocol-for-Homeless-Encampments-in-Canada.pdf> [Farha & Schwan — The Shift].

of encampments generally, we also raise awareness of the federal government's role specifically.

The Growth of Encampments

Encampments are not a new phenomenon in Canada. In their efforts to meet their needs for shelter and safety while exercising autonomy and self-determination, persons facing homelessness have long established informal settlements, here referred to as “encampments,” in urban and rural sites across Canada. Though some grey and scientific literature exist on encampments, most is American;² little Canadian scholarship and empirical evidence has yet to surface.³ However, due to the increased proliferation of encampments during the COVID-19 pandemic and the exacerbation of Canada's affordable housing crisis, encampments have been in the media spotlight, making headlines across the country.⁴ Stories of dismantlement, displacement and evictions in the face of “stay-at-home” orders have highlighted gross human rights violations by all levels of government. Little progress has been made during the pandemic with respect to the unprecedented housing crisis. Rather, most Canadian cities continued to reply on outdated emergency warehousing approaches, notably short-term shelters and in some case shelter hotels.⁵

Since the beginning of the COVID-19 pandemic, encampments have become more numerous, more densely populated, and more visible across the country. In the winter of 2020-21, thousands of people were living outside, in tents and makeshift shelters, without access to adequate heat, water, sanitation, and safety equipment. In many municipalities, encampments have been subject to a range of enforcement measures including ticketing, eviction and trespass notices, and removal or destruction of belongings, by municipal officials, including bylaw officers, fire departments, and police. Residents also faced harassment and violence from state and non-state actors. Encampment residents and their advocates have spoken out against these measures and called for the provision of safe, appropriate, and secure housing. The proliferation of encampments, residents' lack of access to fundamental necessities, and enforcement

² See e.g., Chris Herring, “The New Logics of Homeless Seclusion: Homeless Encampments in America's West Coast Cities” (2014) 13:4 *City & Community* 285; Tony Sparks, “Neutralizing homelessness, 2015: Tent cities and ten-year plans” (2017) 38:3 *Urban Geography* 348; Jessie Speer, “The Rise of the tent ward: Homeless camps in the era of mass incarceration” (2018) 62:1 *Political Geographer* 160 [Speer—mass incarceration].

³ But see “CAEH 2020–2021: Annual Report” (2021), online (pdf): *Canadian Alliance to End Homelessness* <caeh.ca/wp-content/uploads/CAEH_2020-Annual-Report.pdf>.

⁴ See e.g., Natasha Riebe, “Edmonton to revamp encampment strategy amid criticism of current approach” (11 October 2022), online: *CBC* <[cbc.ca/news/canada/edmonton/edmonton-city-council-1.6613276](https://www.cbc.ca/news/canada/edmonton/edmonton-city-council-1.6613276)>; Renaud Philippe, “Tolérance zéro pour des campements d'itinérants à Montréal” (2020), online: *Le Devoir* <[ledevoir.com/societe/580289/montreal-tolerance-zero-pour-des-campements-d-itinerants](https://www.ledevoir.com/societe/580289/montreal-tolerance-zero-pour-des-campements-d-itinerants)>.

⁵ See Farha & Schwan — The Shift, *supra* note 1 at 5–6.

measures, harassment, and violence by state and non-state actors, are all serious and urgent human rights concerns.⁶

The response to homeless encampments has been overwhelmingly punitive. Residents have been denied vital services within encampments, including water and sanitation, and have faced violent forced evictions and destruction of property. Residents have been arrested and criminalized under bylaws outlawing behaviours such as camping, bathing, or defecating in public—activities which are unavoidable when sheltering in place. Far from causing a decline in homelessness, these responses have simply driven people experiencing homelessness into the shadows, away from areas of relative safety and beyond the reach of service providers. However, as encampment residents and advocates have been asserting throughout the pandemic, encampments can also be understood as rights claims—a way for citizens to build shelter and safety while exercising autonomy and self-determination.

Research Objectives

The objective of this project was to provide the Office of the Federal Housing Advocate (OFHA) with relevant knowledge to examine the human rights dimensions of encampments across Canada. The project's aim was to respond to the following questions by supporting team members to mobilize current knowledge from research on encampments and informal settlements:

- What are the different forms of encampments and informal settlements?
- What are the experiences, perspectives, and needs of encampment residents? In particular, what are their reasons for establishing encampments, what are their experiences while residing there, what have been their interactions with state and non-state actors?
- What are the conditions in encampments, particularly dimensions relating to the human rights to life, adequate housing, human dignity, and other human rights?
- What is the range of laws, policies and programs that directly and indirectly apply to encampments across Canada? What are the relevant federal considerations that should be brought to the attention of the Federal Housing Advocate?
- How are encampments, their residents, and local enforcement measures portrayed in news and social media? What is the range of public attitudes towards encampments, their residents, and local enforcement measures? What human rights dimensions should be brought to the attention of the Federal Housing Advocate?
- How have local, provincial, territorial, and federal governments responded to the increasing visibility and scale of encampments in the context of COVID-19? What measures have protected or contravened the rights of residents?

⁶ We want to acknowledge that the dominant language of “encampment” does not reflect the depth of community and belonging experienced by those living outdoors together, nor does it reflect that tents are homes for many people, and “encampments” are communities or villages. This is particularly evident with respect to Indigenous people, who have distinct rights and relationships in relation to land and housing. We ask that the reader understand encampments as homes and that our use of the term “encampment” reflects that understanding.

- What federal considerations relate to encampments and what federal interventions are recommended?
- How are the rights of Indigenous Peoples engaged in relation to encampments?

In this report and in the attached case studies, we have tried to address these research questions using a mixed methodological approach, drawing on a media scan, legal cases, academic articles, participant observation, and some quantitative data. We note with particular concern the challenges in writing this report without adequate and reliable data on housing precarity.

Organization of the Report

Mobilizing case studies, media scans, and literature and policy reviews, this report illuminates the inherent tensions of the human rights dimensions of encampments across Canada. The report is organized as follows:

- Chapter 1 provides a background on the regulation of encampments before and after the pandemic.
- Chapter 2 focuses on the specific role of municipal bylaws in encampments. Summaries of the five case studies are included in this chapter. This chapter shows how municipalities are the main governments that regulate encampments, largely through restrictive bylaws.
- Chapter 3 sets out a media scan of op-eds and news articles related to encampments from March 2020 to December 2021. This chapter explains the themes raised by popular media, including concerns about the visibility of encampments during the pandemic.
- Chapter 4 explains *A National Protocol on Homeless Encampments in Canada* in the context of this report, situating encampments within a right to housing framework with eight key principles.
- Chapter 5 provides five recommendations for the implementation of a rights-based approach to encampments, with specific recommendations aimed at the federal government.

We also note the case studies published alongside this report. The studies from British Columbia, Ontario and Quebec provide in-depth analysis of the policies, laws, and practices adopted and used by officials during the pandemic in response to encampments. These case studies spotlight the ways in which encampment residents' human rights are violated and the localized effects of municipal, provincial, and federal government laws, rules, and actions.

Chapter 1: Background on the Regulation of Encampments *

“That’s when I decided: I’m staying in Moss Park. I’m going to make it my home, and I’m going to make it hard for them. If you burn my home, that’s wrong—because it’s my home. I toiled to make it safe. Not for me, for us.”⁷

—Derrick Black, resident of Moss Park encampment in Toronto

Homeless encampments in Canada exist at the nexus of multiple overlapping crises, all of which were compounded by COVID-19. Despite increased visibility during COVID-19, encampments are not new to Canadian cities.⁸ Encampments are a symptom of the lack of adequate affordable housing and the shortcomings of housing and other policies at all levels of government across Canada. The lack of affordable housing, the opioid crisis, racial injustice, police misconduct, and ongoing colonization all converge at these sites. Government responses to encampments—both prior to and during the pandemic—pose significant jurisdictional complexities. Here we attempt to provide a brief overview of existing commentary on the legal frameworks engaged by encampments in order to contextualize our findings and recommendations.

We use the term “encampments” to refer to temporary outdoor campsites on public property or privately owned land. These informal settlements result from a lack of accessible affordable housing. This distinguishes them from efforts to assert a claim to the property as a whole (as in squatting or adverse possession) or to the occupation of public space as a form of expression (as in protest occupations), which are likely to engage different rights and obligations.⁹

We also acknowledge that the rise of homelessness and encampments are grounded in the historical dispossession of Indigenous peoples’ land. As Jesse Thistle states, “The observable manifestations of intergenerational trauma in Indigenous peoples, such as intemperance, addiction and street-engaged poverty, are incorrectly assumed to be causes of homelessness in popular and worldwide blame-the-victim discourses. Obscured behind these discourses are the historical processes and narrative prejudices practised by the Canadian state and settler society that have produced Indigenous homelessness.”¹⁰

* This chapter was drafted by Neil MacIsaac, JD student at Osgoode Hall Law School.

⁷ Derrick Black & Anupa Mistry, “A Year of Resistance in the Moss Park Encampment” (12 March 2021), online: *The Local* <thelocal.to/a-year-of-resistance-in-the-moss-park-encampment/>.

⁸ Governments, the law, scholarship, and frontline groups tend to focus attention and resources on urban homelessness. However, we acknowledge that rural homelessness and rural homeless encampments are a significant issue in Canada. For a useful primer on the difficulties of responding to rural homelessness, see Sue-Ann MacDonald & Dominique Gaulin, “The invisibility of rural homelessness in a Canadian context” (2020) 29:2 *J Social Distress & Homelessness* 169.

⁹ For example, courts have distinguished between homeless encampments where section 7 Charter rights to life, liberty and security of the person are engaged and protest encampments where section 2 rights related to freedom of expression are most relevant.

¹⁰ Jesse Thistle, “Definition of Indigenous Homelessness in Canada” (2017) at 7, online (pdf): *Homeless Hub* <homelesshub.ca/sites/default/files/attachments/COHIndigenousHomelessnessDefinition.pdf>.

1. Canadian Homelessness and Encampments Pre-Pandemic

The rise in rates of homelessness in Canada since the 1980s is generally attributed to three broad trends: nationwide disinvestment in affordable housing, shifts in employment away from permanent positions and towards precarious labour, and the broad defunding of social welfare programs.¹¹ Up to the late 2000s, municipalities (by then the primary social housing providers) largely focused on crisis responses, such as shelters and drop-in programs, and policing unhoused populations through anti-panhandling laws.¹² Federal and provincial plans to reduce homelessness began proliferating, often focusing on “chronic homelessness” and Housing First strategies, culminating in calls for a new National Housing Strategy.¹³ In 2017, the federal government published its Strategy with legislation arriving the following year enshrining the right to housing in federal law.¹⁴ No provincial frameworks have yet expressly adopted the right to housing.

The COVID-19 pandemic halted this potential momentum and affected the services available to unhoused people. There is very poor data on the number of precariously housed people, including those living in encampments. As of December 2020, at least 25,000 people experienced homelessness in a shelter or outdoors on any given night across 61 measured communities; this marked a 14% increase over the 2016 count.¹⁵ However, homeless counts have been criticized for not capturing adequately the actual number of people experiencing homelessness nor its different forms of expression (e.g., hidden homelessness).¹⁶ Within this context, encampments have become a regular facet of homelessness in Canada. During COVID-19, they became increasingly visible and, as a result, attracted increasing attention from the media and governments.

Given their high incidence in public parks, encampment regulation tends to involve municipal bylaws, particularly prohibitions or restrictions on erecting shelters in parks or camping in parks. In other instances, encampments on private property may engage other specific legislation regulating use and access. In either case, violations of underlying regulations are often enforced through trespass laws which facilitate police involvement.

However, as detailed in our case studies, encampment residents have long cited personal safety and privacy, health issues, a lack of shelter space, conditions within shelters or shelter rules,

¹¹ See Stephen Gaetz et al., *The State of Homelessness in Canada 2016* (Toronto: Canadian Observatory on Homelessness Press, 2016) at 12.

¹² See *ibid.* at 13. See e.g., *Safe Streets Act*, 1999, S.O. 1999, c. 8.

¹³ See Gaetz et al., *supra* note 11 at 13–14.

¹⁴ See Canada, Employment and Social Development Canada, *Canada’s National Housing Strategy — A place to call home* (Gatineau: Employment and Social Development Canada, 2018); *National Housing Strategy Act*, SC 2019, c 29, s 313.

¹⁵ See *ibid.*

¹⁶ See e.g., Sue-Ann MacDonald et al., “Démarche qualitative du Deuxième portrait de l’itinérance au Québec: Regards croisés et approfondissement des connaissances” (May 2022) at 7, online (pdf): CREMIS <https://api.cremis.ca/wp-content/uploads/2021/12/Rapport-final_2020-05-26_Version-finale_murale.pdf>.

proximity to partners, family, community and service providers, and relative independence as important factors. The reasons any unhoused individuals may be living in an encampment rather than residing in a city shelter or other temporary housing are highly variable and contextual. Encampments are both a last resort when people cannot access indoor shelter and a response to concerns about shelters, sites of safety and stability with access to supports.¹⁷ Other factors include substance abuse, mental health issues, unemployment, and domestic turmoil.¹⁸ Some residents also speak positively about the sense of community the encampment offered through internal rules and obligations to help each other.¹⁹

2. Canadian Homeless Encampments in the Pandemic Era

Most of Canada's 25 most populous municipalities have experienced at least one encampment since March 2020, when the World Health Organization officially declared the COVID-19 pandemic.²⁰ On top of the factors listed above, the pandemic quickly resulted in a reduction in capacity at many shelters to properly implement distancing and isolation measures. Encampments proliferated in the spring and summer of 2020.²¹ Initial concerns over encampments involved residents not being properly distanced and not having hygiene stations to wash hands, while infections inside shelters prompted cities like Toronto to declare moratoriums on clearing encampments.²² As the first wave subsided, these moratoriums were withdrawn.

Two months into the pandemic, former UN Special Rapporteur on the Right to Housing Leilani Farha and Dr. Kaitlin Schwan published *A National Protocol on Homeless Encampments in Canada* (the *Protocol*), advocating for cities to adopt a human rights-based approach and respect the dignity of encampment residents when working with them to secure adequate affordable housing.²³ The extent to which cities have undertaken outreach and provided meaningful support to encampment residents versus enforcing bylaws and property rights is varied and difficult to track. Indeed, encampment residents and advocacy groups have disputed the efficacy of many outreach efforts and the effectiveness of supports. Disputes have arisen over the conditions of emergency shelter spaces, the availability of shelters spaces or housing opportunities, and the rights of encampment residents to continue residing where they are.

¹⁷ See Herring, *supra* note 2 at 296–297, 306.

¹⁸ See Michael G. Young, Nicole Abbott, & Emily Goebel, “Telling their story of homelessness: voices of Victoria’s Tent City” (2017) 26:2 *J Social Distress & Homelessness* 79 at 83–84.

¹⁹ See *ibid.* at 85–86

²⁰ Research returned reports of homeless encampments in the following cities: Toronto, Montréal, Calgary, Ottawa, Edmonton, Mississauga, Winnipeg, Vancouver, Brampton, Hamilton, Surrey, Halifax, London, Kitchener, Windsor.

²¹ See Kelly Egan, “Egan: Not yet in from the cold—the year of shifting homeless encampments” (29 December 2020), online: *Ottawa Citizen* <ottawacitizen.com/news/local-news/egan-not-yet-in-from-the-cold-the-year-of-shifting-homeless-encampments>.

²² See Chris Fox, “City opens Covid-19 recovery site for homeless amid news of 30 cases in shelter system” (14 April 2020), online: *CP24* <cp24.com/news/city-opens-covid-19-recovery-site-for-homeless-amid-news-of-30-cases-in-shelter-system-1.4895234>.

²³ See Farha & Schwan — The Shift, *supra* note 1.

Despite acknowledgements by governments that COVID-19 disproportionately affects already-marginalized communities, legal responses have failed to account for this and have in fact contributed to poorer encampment conditions.²⁴ Government policy responses tend to fall within the following four strategies: abandonment, emergency relief, heightened law enforcement, and housing-led responses.²⁵ Rarely do these policies produce permanent housing outcomes for people experiencing homelessness and living in encampments, as even the housing-led responses tend to focus on temporary measures like hotels or shelters.

All levels of government across Canada have enacted punitive laws, ranging from criminal offences to fines for violating statutes and bylaws.²⁶ Municipal and public transportation bylaw offences already disproportionately target people experiencing homelessness, and COVID-19 fines and distancing requirements had the same effect.²⁷ Unhoused people are subject to increased police surveillance and punishment by virtue of lacking private property rights and depending on public spaces, pressuring many into shelters to escape persecution and harassment.²⁸

Deaths from fire, exposure, and overdoses have tragically occurred in multiple encampments across the country. Encampment residents and unhoused persons have also been the target of violence and threats. On March 2, 2021, nearly a year after the beginning of the pandemic, the Chief Commissioner of the Canadian Human Rights Commission, Marie-Claude Landry, issued a statement that “urge [d] governments at all levels to mount a coordinated and swift response to ensure the right to safe, dignified housing for everyone facing homelessness across Canada.”²⁹ The statement endorsed the Protocol and noted that such deaths could be prevented by upholding the rights of people experiencing homelessness and providing adequate housing. In August 2022, the British Columbia Human Rights Commissioner, Kasari Govender, released a statement in response to multiple attacks on homeless people in the province, renewing her call to add “social condition” as a protected class in the provincial Human Rights Code. This would include social or economic disadvantage, including homelessness.³⁰

²⁴ See Leilani Farha & Kaitlin Schwan, “The Front Line Defence: Housing and Human Rights in the Time of COVID-19” in Flood et al., eds, *Vulnerable: The Law, Policy, and Ethics of COVID-19* (Ottawa: University of Ottawa, 2020) at 358.

²⁵ See *ibid.* at 359–361.

²⁶ See Terry Skolnik, “The Punitive Impact of Physical Distancing Laws on Homeless People” in Flood et al., eds, *Vulnerable: The Law, Policy, and Ethics of COVID-19* (Ottawa: University of Ottawa, 2020) at 288–289, 293–295.

²⁷ See *ibid.* at 291. Skolnik only references anecdotal cases of fines being issued to people experiencing homelessness and notes that many courts closed or reduced capacity during the pandemic, so the extent of the impact is as yet unclear and may take years to be fully revealed.

²⁸ See *ibid.* at 295–296.

²⁹ “Statement—Canada must uphold the rights of persons experiencing homelessness” (2 March 2021), online: CHRC <[chrc-ccdp.gc.ca/en/resources/statement-canada-must-uphold-the-rights-persons-experiencing-homelessness](https://www.chrc-ccdp.gc.ca/en/resources/statement-canada-must-uphold-the-rights-persons-experiencing-homelessness)>.

³⁰ See “Commissioner’s statement on recent assaults on homeless people” (3 August 2022), online: BC Office of the Human Rights Commissioner <[bchumanrights.ca/news/https-bchumanrights-ca-wp-content/uploads-homeless-violence-statement-pdf/](https://www.bchumanrights.ca/news/https-bchumanrights-ca-wp-content/uploads-homeless-violence-statement-pdf/)>.

In an effort to arrive at more long-term and equitable solutions to encampments, scholars have argued that public health measures should adopt a human rights approach to housing and homeless encampments.³¹ This human rights approach would be centred on advocating for adequate housing and other resources rooted in the self-determination of encampment residents.³² It would also require a prohibition on evictions until adequate housing is available.³³

3. Homelessness and Human Rights

Human rights can be used to both shield against punitive government action and to force positive government action. In the context of encampments, the rights most often invoked as a shield against eviction are section 7 Charter rights to “life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”³⁴ As detailed in the Appendix, which sets out the encampment cases that have been decided by the courts, section 7 rights have been relied on to prevent governments from obtaining injunctions to clear encampments in certain limited circumstances. Equality rights protected under section 15 have also been raised by encampment residents in recent cases, though courts have not expressly adopted an equality-based analysis to prevent encampment evictions.

Canada has adopted the right to adequate housing, as outlined in article 11 of the United Nations *International Covenant on Economic, Social and Cultural Rights* and now enshrined in the *National Housing Strategy Act*.³⁵ However, the content of a right to adequate housing is not yet defined in Canadian law. Efforts to establish a positive right to adequate housing with obligations on governments have been unsuccessful.³⁶ However, a recent court decision allowed a hearing to go ahead on human rights grounds after the United Nations Human Rights Committee found that Canada had violated its international commitments.³⁷

The federal government has also introduced the *National Housing Strategy Act* which “recognize[s] the right to adequate housing as a fundamental human right affirmed in international law.”³⁸ The Act establishes structures for accountability and established the Housing Advocate’s office. Notably, the federal government’s housing commitments were based on the previously identified need to “implement housing rights progressively (i.e., over time and to the maximum of its available resources)”, though acknowledges that future cases could clarify

³¹ See Nicholas Olson & Bernadette Pauly, “Homeless encampments: connecting public health and human rights” (2021) 112 Can J Public Health 988 at 988.

³² See *ibid.* at 993.

³³ See *ibid.* at 988.

³⁴ *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

³⁵ SC 2019, c 29 s 313, Preamble [*National Housing Strategy Act*].

³⁶ See *Tanudjaja v Canada (AG)*, 2014 ONCA 852 at paras 30–32 [*Tanudjaja ONCA*]. Leave to appeal to the SCC denied: *Tanudjaja v Canada (AG)*, [2015] SCCA No. 39 (SCC).

³⁷ See *Toussaint v Canada (Attorney General)*, 2022 ONSC 4747. See also *Views adopted by the Committee under article 5 (4) of the Optional Protocol concerning communication No. 2348/2014*, HRC Dec 2348/2014, UNHRC, 2018, 123rd Sess, UN Doc CCPR/C/123/D/2348/2014.

³⁸ *National Housing Strategy Act*, *supra* note 35, s 313, s 4(a).

the “minimum core obligations” owed by governments.³⁹ To date, neither the courts nor governments have explained what a “right to housing” means for those in encampments. The right to housing included in the Government of Canada’s *National Housing Strategy Act* has also not been considered alongside municipal bylaws and the specific obligations of governments.

To better understand how governments respond to encampments, the next chapter sets out the specific role of municipal bylaws. While municipalities regulate encampments through the use of bylaws that regulate parks and other public spaces, other governments play roles as well, including the federal government. The chapter also includes summaries of case studies attached to this report that document the ways in which officials responded to encampments in five jurisdictions across Canada during the pandemic.

³⁹ Canada, Library of Parliament, Parliamentary Information and Research Service, “A Primer on Housing Rights in Canada” by Ryan van den Berg, Publication No 2019-16-E (Ottawa: Library of Parliament, 21 June 2019) at 11–12.

Chapter 2: The Role of Municipal Bylaws in Encampments

“It was safer in the park. It wasn’t crowded. More breeze, more everything! It was a nice set-up. I had my bike in there, an air bed. It was quiet and it wasn’t too cold because it was springtime. There was three tents first, and then more people came. Soon Moss Park was the biggest encampment in the city.”⁴⁰

—Derrick Black, describing the growth of the Moss Park Encampment

This section provides an analysis of how municipal bylaws are used in relation to encampments. While many different laws at different levels of government impact how encampment residents are treated, municipal bylaws are unique in the degree to which they regulate public space and those in it.

Attached to this report are five in-depth case studies, summarized in this chapter, that reveal a wide range of actors involved in encampment policing that has eroded human rights: police officers, special constables, bylaw officers, park ambassadors, park wardens, parks and recreation staff, private security, private construction crews, provincial offences officers, and fire department personnel.

1. Municipal bylaws and the Regulation of Public Space

The policing of encampments challenges a straightforward view of “law enforcement” or “policing” that is simply carried out by “police officers.” Instead, what one observes is a network of actors who are empowered with varying degrees of legal or administrative authority. Indeed, encampment policing and regulation are often characterized by legal informality and agents with attenuated policing powers. At first glance, this network of actors presents a particular challenge to human rights researchers. However, because encampments often (but not always) are situated on public space, one specific area of law does emerge as a central focus of human rights violations: municipal bylaws.

Municipal bylaws have become a powerful instrument used against encampment residents and street-involved people. Indeed, while considered a “low-level” law as compared to provincial or criminal statutes, they nonetheless seem custom-made to be used against those who shelter in public space. There are two reasons for this. By their very nature, bylaws are designed to regulate the mundane minutiae of public space, which includes prescribing the presence and conduct of people and the use of objects. This micro character of bylaws often extends specific prescriptions having to do with place and time. Secondly, while bylaw officers usually have limited legal powers, the bylaws themselves can be enforced by almost every type of policing actor, from fully sworn police officers, to private security and civilians enforcing private property rights on behalf of municipalities under provincial trespass laws.

⁴⁰ Black & Mistry, *supra* note 7.

The powerful character of bylaws in Canada became more apparent during the pandemic—and quite specifically when it came to unhoused people taking shelter in public spaces. Recent research has shown how widespread municipal bylaws are that target the survival activities of unhoused people, including simply being present in public space or attempting to shelter overnight.



A national study carried out in 2021 mapped the extent to which these anti-homeless or “neo-vagrancy” bylaws now represent a concerning threat to the human rights of unhoused people.⁴¹ Drawing on the history of English vagrancy law offences, seven different anti-homeless offences were identified and mapped in current municipal bylaws: panhandling, loitering, obstructing, salvaging, resting or sleeping, sheltering, and disorder.⁴² Like archaic vagrancy law, these bylaws can be used to punish people who are visibly poor and have no choice but to spend their time in public spaces.

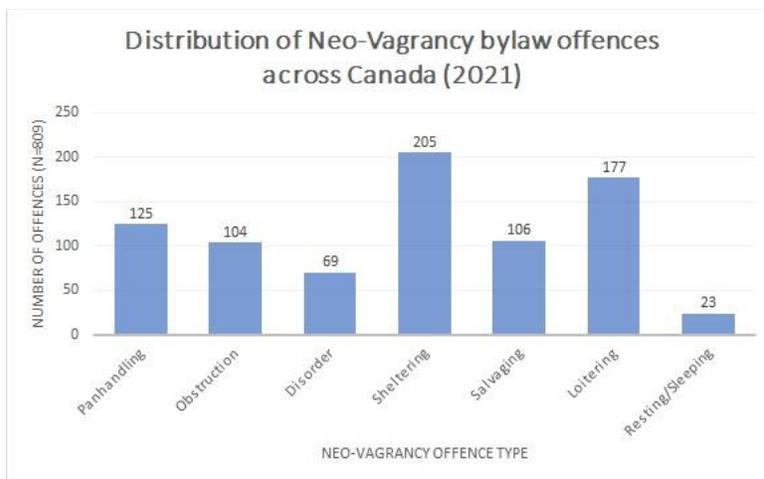


Figure 1: Breakdown of neo-vagrancy offences on a provincial basis⁴³

⁴¹ See policinghomelessness.ca

⁴² Vagrancy offences were designed to target anyone whose simple presence was perceived as a threat to the prevailing social and economic order. See Joe Hermer, “The Mapping of Vagrancy Type Offences in Municipal By-Laws,” Homeless Hub (22 July 2020), online: <<https://www.homelesshub.ca/blog/mapping-vagrancy-type-offences-municipal-laws>>.

⁴³ See <http://policinghomelessness.ca/mapOne.html>.

The results are disturbing. When one includes provincial Safe Streets legislation in Ontario and British Columbia, 77% of Canadians live in a jurisdiction with an anti-homeless offence. While one might think that these are old offences that have been “on the books” for some time, the exact opposite is true. More than half (52%) of the offences have been enacted or revised in the last 10 years, and 75% of them within the last 20 years.⁴⁴ This suggests that over the last two decades, there has been an organized and systematic effort using municipal bylaws to target unsheltered and street-involved people in public spaces across Canada. And while this type of policing is often associated with large urban areas, the fact is many small cities and towns have anti-homeless bylaw offences that have been recently enacted.

2. Municipal bylaws and Encampments in the Pandemic Era

For the first months of the pandemic, many cities suspended their policies of clearing encampments, including Toronto, Edmonton, and Victoria.⁴⁵ These suspensions were largely temporary and most cities resumed or continued clearings in the summer and fall; Calgary and other cities claimed to be limiting clearings to encampments considered health and safety risks.⁴⁶ This selective enforcement approach—with certain encampments being tolerated for months while outreach efforts proceeded—often depends on complaints being at a minimum. The Cut encampment in Windsor (which lasted from March to November 2020) is a prime example: despite being situated on private land, the owner raised no issues with the municipality for months, and its seclusion limited interactions with the surrounding community.⁴⁷

Though most cities claim that outreach is conducted at encampments, these claims are often countered by residents and encampment groups. Victoria and Oshawa are rare cases where encampments have been organized by governments. The Topaz Park encampment was coordinated by several Victoria and British Columbia agencies to provide distanced tents, meals, hygiene stations, harm reduction services, security, and outreach; the camp was in operation from late March or early April to late May, when all residents were rehoused.⁴⁸ Durham Region

⁴⁴ This includes offences of new bylaws that have been enacted, the revision of current bylaw sections, or the inclusion of bylaw offences into consolidated versions.

⁴⁵ See *Clinique juridique itinérante c Procureur général du Québec*, [2021] QCCS 182 at paras 11-15 [*Clinique*].

⁴⁶ See Bill Kaufmann, “City eases crackdown on homeless camps amid COVID-19 despite increasing complaints” (15 November 2020), online: *Calgary Herald* <calgaryherald.com/news/local-news/city-eases-crackdown-on-homeless-camps-amid-covid-19-despite-increasing-complaints>.

⁴⁷ See e.g., Trevor Wilhelm, “Tent city: homeless encampments have sprung up around Windsor” (28 August 2020), online: *Windsor Star* <windsorstar.com/news/local-news/tent-city-homeless-encampments-have-sprung-up-around-windsor>; Trevor Wilhelm, “Tent City 2: ‘I wish I wasn’t homeless.’ Taking homelessness fight to the streets” (3 September 2020), online: *Windsor Star* <windsorstar.com/news/local-news/i-wish-i-wasnt-homeless-taking-homelessness-fight-to-the-streets>; Dalson Chen, “Windsor’s Tent City evicted; Advocacy groups help homeless find new accommodations” (4 November 2020), online: *Windsor Star* <windsorstar.com/news/local-news/windsors-tent-city-evicted-advocacy-groups-help-homeless-find-new-accommodations>.

⁴⁸ See Louise Dickson & Lindsay Kines, “In Victoria, a tale of two very different homeless camps” (15 April 2020), online: *Times Colonist* <vicnews.com/news/b-c-enacts-provincial-order-to-move-homeless-at-victoria-encampments-into-hotels/>; Lindsay Kines, “Deadline for moving homeless out of Victoria camps

organized an encampment at Camp Samac (6 km north of the city centre) on May 1, allowing 109 people experiencing homelessness who tested negative for COVID-19 to reside on-site in tents with mental and physical health support, outreach, hygiene, and meals; the program concluded on September 14, 2020.⁴⁹

Exceptional circumstances aside, government responses have overwhelmingly been evictions on the basis of local bylaws, provincial trespassing acts, other legislation, or private property rights, depending on the circumstances. Threats of legal action by cities against encampments or their supporters, or by private actors against cities, may also prompt clearings even if they do not go to trial.⁵⁰ Several cities including Toronto, Calgary, Edmonton, Hamilton, Victoria, and Halifax have webpages describing their encampment response.⁵¹ Vancouver, Hamilton, and Halifax claim to have adopted rights-based approaches, using the page to describe their overall approach and principles, although it is unclear whether these rights-based approaches are actually used.⁵²

Outside of the broad categories of clearing, not clearing, and supporting encampments, certain cities have used the pandemic to prepare reports on encampments. Winnipeg's Standing Policy Committee on Protection, Community Services, and Parks produced a report on the city's encampments in October 2020, which drew inspiration from the Protocol but still intends to enforce clearings over safety concerns.⁵³ The report frankly identifies shortcomings of the city's own shelter system, particularly the lack of Indigenous, women's, or 2SLGBTQ+ shelters; however, it also critiqued the provincial and federal governments' "limited" direct services and

extended to May 20" (8 May 2020), online: *Times Colonist* <[timescolonist.com/news/local/deadline-for-moving-homeless-out-of-victoria-camps-extended-to-may-20-1.24132161](https://www.timescolonist.com/news/local/deadline-for-moving-homeless-out-of-victoria-camps-extended-to-may-20-1.24132161)>.

⁴⁹ See Brittany Rosen, "Camp Samac housing homeless people in Durham during coronavirus pandemic" (14 May 2020), online: *Global News* <globalnews.ca/news/6940366/camp-samac-durham-homeless-coronavirus-covid-19/>.

⁵⁰ See Austin Grabish, "Residents of homeless encampment gear up for city takedown" (9 June 2020), online: *CBC* <[cbc.ca/news/canada/manitoba/homeless-camp-take-down-mmf-winnipeg-1.5516957](https://www.cbc.ca/news/canada/manitoba/homeless-camp-take-down-mmf-winnipeg-1.5516957)>; Muriel Draaisma, "Toronto carpenter who builds tiny shelters for unhoused people calls on city to drop legal fight" (22 February 2021), online: *CBC* <[cbc.ca/news/canada/toronto/toronto-carpenter-khaleel-seivwright-response-city-application-injunction-1.5923854](https://www.cbc.ca/news/canada/toronto/toronto-carpenter-khaleel-seivwright-response-city-application-injunction-1.5923854)>.

⁵¹ See "Encampment Outreach & Response" (last accessed 28 October 2022), online: *City of Toronto* <toronto.ca/community-people/housing-shelter/homeless-help/encampment-outreach-response/>; "Encampments: Calgary's approach to illegal encampments" (last accessed 28 October 2022), online: *City of Calgary* <calgary.ca/csps/abs/illegal-encampments.html>; "Responding to Homelessness in our Communities" (last accessed 28 October 2022), online: *City of Edmonton* <edmonton.ca/city_government/initiatives_innovation/homeless-on-public-lands.aspx>; "City of Hamilton Encampment Response" (last accessed 28 October 2022), online: *City of Hamilton* <hamilton.ca/social-services/housing/city-hamilton-encampment-response>; "Sheltering in Parks" (last accessed 28 October 2022), online: *City of Victoria* <victoria.ca/EN/main/city/bylaw-enforcement/sheltering-in-parks.html>; "Public Safety" (last accessed 28 October 2022), online: *City of Halifax* <halifax.ca/about-halifax/regional-community-planning/public-safety#encampments>.

⁵² See e.g. "Agreement signed to end encampments in Vancouver" (6 April 2021), online: *City of Vancouver* <news.gov.bc.ca/releases/2021AG0043-000637>.

⁵³ *City of Winnipeg, An Overview of the Current State of Residents Living in Encampments* (20 September 2020), online: *City of Winnipeg* <<https://clkapps.winnipeg.ca/dmis/ViewDoc.asp?DocId=20319&SectionId=&InitUrl>> at 7–8.

funding support.⁵⁴ Statements made by other cities support the sense that they feel overwhelmed by the severity of the homelessness crisis and believe more could be done by the federal and provincial governments. Montréal Mayor Valerie Plante published an open letter highlighting the years-long negotiations between Quebec and Ottawa on funding under the National Housing Strategy.⁵⁵ This suggests that some cities would provide more outreach and support to encampments if greater, directed funding allowed. The British Columbia government did reach an agreement to work with the City of Victoria to find indoor shelter for encampment residents in 2021 once Victoria resumed regular bylaw enforcement; however, a lack of housing options persists to date.⁵⁶

3. How Bylaws are Used in Encampments: Summaries of the Case Studies

a) *Prince George, British Columbia (Joe Hermer)*

This case study begins by exploring the City of Prince George’s long history of displacing Indigenous peoples, such as the forcible removal of the Lheidli T’enneh in 1913 through the burning down of their village. The City has also acutely felt the housing and drug overdose crises, given its comparably high rates of homelessness and overdose deaths compared to those of other British Columbia cities.

During the COVID-19 pandemic, two encampments—one called “The Splits” and the other “Moccasin Flats”—drew the attention of the City. An application to evict residents from these encampments resulted in two court decisions from the Supreme Court of British Columbia: *Prince George v Stewart* and *Prince George v Johnny*. In the former, Chief Justice Hinkson ordered the closure of The Splits on the expectation that residents would move to Moccasin Flats, which had in fact already begun. Moccasin Flats, meanwhile, was not closed, as Justice Hinkson found that the City had failed to provide sufficiently low-barrier and accessible housing options to encampment residents.

A few weeks following the *Stewart* decision, Moccasin Flats was effectively destroyed by heavy equipment operated by City of Prince George workers. The City then made another application to close Moccasin Flats, in the case known as *Johnny*, which was again denied. In denying their application, Justice Coval determined that the City had violated Justice Hinkson’s order in *Stewart*, which protected the existence of Moccasin Flats given the City’s continuing lack of suitable housing and daytime facilities.

In March 2022, the City of Prince George withdrew their appeal of *Stewart*, acknowledged the court’s decision in *Johnny*, and apologized for their actions at Moccasin Flats. Reasons for this turnabout are unclear, although the author speculates it may have been connected to the

⁵⁴ *Ibid.* at 9–12, 14–15.

⁵⁵ See Simon Nakonechny & Benjamin Shingler, “Montreal’s homeless camp emerges as symbol of housing crisis while governments bicker over funds” (5 September 2020), online: *CBC* <[cbc.ca/news/canada/montreal/tent-city-montreal-housing-crisis-1.5713069](https://www.cbc.ca/news/canada/montreal/tent-city-montreal-housing-crisis-1.5713069)>.

⁵⁶ See “Province, City of Victoria sign agreement to end encampments” (22 March 2021), online: *Government of BC* <news.gov.bc.ca/releases/2021AG0022-000521>; Mary Griffin, “Homeless in Victoria say they need help to find permanent homes” (10 August 2022), online: *Chek News* <[cheknews.ca/homeless-in-victoria-say-they-need-help-to-find-permanent-homes-1073904/](https://www.cheknews.ca/homeless-in-victoria-say-they-need-help-to-find-permanent-homes-1073904/)>.

severe public criticism the city faced about their treatment of unhoused people, including the release of research reports from the British Columbia Assembly of First Nations.

b) Vancouver, British Columbia (Alexandra Flynn)

Create a Real Available Beach (CRAB) Park has hosted encampments since at least 2003 and is noted in this case study to have a curious existence. It is unceded Indigenous territory, yet it is still owned—as well as lands adjacent to it—under Canadian law by the federal government. Furthermore, CRAB Park and its encampments engage two distinct yet related pieces of legislation. Given the federal government’s claim it is federal land, this implies the application of the *National Housing Strategy Act*, in which the right to housing is acknowledged. And considering the disproportionate rate of Indigenous people among Vancouver’s unhoused population, the *United Nations Declaration of the Rights of Indigenous Peoples* is also implicated. Indeed, UNDRIP has been domestically implemented at the federal and provincial levels in British Columbia.

Municipal bylaws, however, have failed to adequately resolve the homelessness crisis, and encampment residents primarily rely on volunteers and community initiatives for support. The City of Vancouver’s most recent response to encampments located at or near CRAB Park has resulted in two Supreme Court of British Columbia cases: *Vancouver Port Authority v Brett*, and *Bamberger v Vancouver*. Both occurred during the COVID-19 pandemic.

In *Brett*, an application was brought by the Vancouver Fraser Port Authority, a federal government agency, to remove an encampment from Port Authority land. The court determined that the land was not like a public park, but rather more akin to private property, and so the encampment residents were trespassers. Despite the seminal case of *Victoria (City) v Adams*, the court also rejected the application of section 7 from the *Charter* in *Brett*.

Eighteen months later, encampment residents brought a judicial review of two orders made by the general manager of the Vancouver Parks Board. In *Bamberger*, the court quashed two orders which were effectively attempts to evict residents from an encampment at CRAB Park, located on federal lands. Finding the orders unreasonable, the court pointed to the Parks Board general manager’s failure to properly consider whether available shelter adequately met the needs of those sheltering at CRAB Park in making their decision. Unlike in *Brett*, the court considered the Charter rights of those residing in the encampment, noting that since they were impacted by the General Manager’s decision, and more data and oversight were needed, beyond verbal assurances from a third party that accessible and suitable housing was available for encampment residents. However, the author notes that although *Bamberger* recognizes the importance of consultation within the right to housing, it failed to outline the process, nor did it meaningfully engage with the *National Housing Strategy Act*.

c) Hamilton, Ontario (Estair Van Wagner)

Just as elsewhere across Canada, the COVID-19 pandemic exacerbated the homelessness crisis in the City of Hamilton. At the beginning of the pandemic, the City of Hamilton lessened the spread of the virus among those experiencing homelessness, but more recent waves have severely impacted the unhoused. This case study reviews the City’s response to the increase in

encampments, specifically from March 2020 to May 2022, which the author argues worsened health and safety conditions for encampment residents during the pandemic.

Methods by which the City approached encampments included bylaw enforcement, a task force, evictions, the temporary use of a protocol that implemented a rights-based approach when engaging with encampment residents, and a six-step enforcement plan triggered by a complaint to Hamilton's Municipal Law Enforcement. Bylaw enforcement stigmatized and criminalized encampment residents, while also treating their personal property as waste. It also prevented the erection of shelters and interfered with the residents' ability to meet their basic needs. Evictions and displacement were common throughout the pandemic, despite variations in the process (ex., the Bylaw Enforcement Protocol, six-step plan). Following the repeal of the Bylaw Enforcement Protocol in August 2021, an eviction of encampment residents also resulted in the arrest of advocates who were protesting on site.

On the other hand, three civil society organizations have supported encampment residents throughout the pandemic: Keeping Six, Hamilton Social Medicine Response Team, and the Hamilton Encampment Support Network. These organizations formed a coalition in 2020 and worked to mitigate both COVID-19 and the homelessness crisis.

Additionally, two legal cases relating to encampment evictions in the City of Hamilton were brought during the period of March 2020 to May 2022. The first, *Bailey et al. v City of Hamilton* resulted in an order against the City that prevented them from forcibly removing encampment residents from public spaces who were unable to accept housing options provided. The second, *Poff v City of Hamilton*, was a challenge against the enforcement of city bylaws. But in application of the three-step injunction test (serious issue, harm, balancing), the case failed at the second.

d) Toronto, Ontario (Kaitlin Schwan, Palmira Lutoto, Sam Freeman, Estair Van Wagner, Alexandra Flynn, Delaney McCartan, & Lauren Graham)

Encampments established in Toronto between the summers of 2020 and 2021 drew a two-pronged response from the City. One prong is described by the author of this case study as the exercise of "legal powers" and the other as the use of "soft powers." While legal powers consist of municipal bylaws, soft powers are persuasive strategies often employed by politicians, such as characterizing encampments as criminogenic.

During the pandemic, the City of Toronto increasingly enforced parks bylaws against residents of encampments, serving them with notices of trespass, which often cited health, safety, and fire concerns. Bylaw enforcement also undermined grassroots organizations' attempts to provide necessities to encampment residents, such as water, waste removal, food, and hygiene systems. For instance, a local carpenter was issued warnings to stop constructing small shelters for residents that helped keep them out of the cold. The City subsequently demolished these shelters, citing concerns over health and fire safety.

Encampment residents were also frequently described by the City of Toronto as "trespassers," and encampment evictions often involved the police or private security. Evictions at Alexandra

Park and Lamport Stadium Park were particularly notable for their law enforcement presence and the numerous assaults committed by police against residents and their allies. Despite the City's response to encampments, there was also an increase in organizing, activism, and the provision of aid.

e) *Quebec Case Studies (Caroline Leblanc, Sue-Ann MacDonald, Isabelle Raffestin, Émilie Roberge and Laury Bacro)*

Several examples of encampment evictions are set out in these Quebec case studies, including seven in Montreal, and one each in Gatineau and Sherbrooke, between March 2020 and January 2022. The authors detail the specific bylaws used to evict residents, the manner in which residents resisted, and the effects of the evictions on residents. Using a combination of media analysis, and engagement with advocates and those with lived experience, the case study documents the actions taken by officials under the authority of municipal bylaws in particular.

The report concludes that encampments provide protection, stability, and support for vulnerable residents. Municipal responses are focused on the interests of officials rather than the needs of encampment residents, with one example being that once encampments increase to a particular size, authorities quickly dismantle them. The result is immediate precarity and stress for residents who must struggle to find new locations to reside, with full awareness that they are not welcome.

The case study offers several recommendations, including: that different forms of social and affordable housing be made available for encampment residents; while housing is not available, that encampment residents receive supports; that particular attention be placed on the unique needs on unhoused populations who identify as LGBTQ+ and youth; that the dignity and autonomy of encampment residents and unhoused populations be understood and respected; and that municipal officials cease approaching the issue of encampments through a lens of criminalization and policing.

The next chapter sets out a media scan of op-eds and news articles related to encampments from March 2020 to December 2021. This chapter explains the themes raised by popular media, including concerns about the visibility of encampments during the pandemic.

Chapter 3: Media Scan *

“I applied to TCHC housing 40 years ago. But they never, ever called me until I said I’m not leaving the park. Until I was too hard to ignore.”⁵⁷

—Derrick Black, on his difficulties in securing affordable housing

Given the limited academic resources on encampments during the pandemic and the importance of media reporting in this area, this chapter sets out a scan of the media on encampments in Canada from March 2020 to December 2021. The objective of the media scan is to capture helpful data, insights into the issues raised by reporters, and information on the views of unhoused people, community members, and officials. This media scan of English media also provides insight into how public opinion can be influenced by reporting, what issues are deemed newsworthy, and how information about encampments is disseminated to the public outside of encampments.

Methodology

For manageability, duplicate articles and articles pertaining to other countries were removed. The articles were further condensed to only include those that directly mentioned “Encampments,” “Camps,” “Tents,” and “Tenters” in the title, for relevance purposes. After this was complete, researchers analyzed 213 articles.⁵⁸ Of these articles, 116 were from March 2020-December 2020, and 96 articles were from 2021. Themes were repeated throughout many of the articles and are relevant to broader understandings and representations of encampments in Canada. Almost every article pertained to a major city, with the majority of the articles coming from Ontario.

Provincial Breakdown:

Province	# of Articles	% of Total
Ontario	134	62.9
British Columbia	40	18.8
Alberta	15	7
Manitoba	10	4.7
Quebec	9	4.2
Nova Scotia	2	0.9
Saskatchewan	2	0.9
New Brunswick	1	0.4

Due to the heavy focus on Ontario and British Columbia in the initial media scan, researchers conducted an additional search to explore media representations of encampments in the territories. The media scan was guided by the following descriptive research questions:

* This chapter was drafted by Sydney Chapados, Sociology PhD Student, Carleton University.

⁵⁷ Black & Mistry, *supra* note 7.

⁵⁸ A database of the articles referenced in this chapter has been published alongside the report.

- 1) How are encampments, their residents, and local enforcement measures portrayed in news and social media?
- 2) What is the range of public attitudes towards encampments, their residents, and local enforcement measures?
- 3) What human rights dimensions should be brought to the attention of the Federal Housing Advocate?

Articles were coded descriptively based on these three questions to explore how the media represents and frames the presence of encampments in Canada.

Findings

Media on encampments presented a wide range of perspectives including from those living in encampments, advocates and protesters, outreach workers, community members who did not reside in encampments, previous encampment residents, police officers and other emergency response workers, as well as politicians. In some cases, these viewpoints were presented in the form of an op-ed or editorial, a “debate” held by the news outlet, or a standard report where actors provided quotes. The breadth of actors involved in sharing knowledge provided a significant and well-rounded analysis of media representation and perspectives on encampments in Canada. Findings are organized into three broad themes, with subsequent subthemes displayed here in brackets: life in the encampments (rationale and reasons, day-to-day experiences, needs of campers), issues facing encampments (cohabitation, sanitation, safety and security), and responses to encampments (bylaw, police, and security; community and neighbours; and political).

1. Life in the Encampments

Rationale and Reasons

Many of the media representations of encampments seek to prescribe what should be done to or with those residing in encampments. In rare cases, this looks like advocating for permanent housing, whereas in most others, it takes the form of moving people into shelters, rooming houses, hotels, jails, or other institutions. However, these prescriptions often overlook what drives people to take up residence in an encampment in the first place. Arguably, there are two main reasons identified in the media that contributed to people living in encampments throughout the pandemic. The first of these is people who have chosen to live outside for many years because they enjoy being outside, living with others away from scrutiny and authority, and feel safer doing so⁵⁹. The second is those who have moved outside since the onset of COVID-19 due to various factors impacting their well-being. Discussing these factors, residents expressed concerns about violence and chaos, the spread of COVID-19, a lack of available shelter space,

⁵⁹ Johnston & Vincent, 2021; Casey, 2021; Rodrigues & Westoll, 2021; Tamminga, 2021

cleanliness, and increased substance use in the shelter and hotel system.⁶⁰ Put simply, media coverage that considered rationale for residing in encampments demonstrated that COVID-19 had created, exacerbated, and sustained a myriad of issues related to accessing shelter comfortably and safely, causing people to seek shelter elsewhere where they feel more in control of their own health and safety.

Day-to-Day Life

Although some encampment residents interviewed in media sources express that staying in an encampment is the best choice for them, this choice is often one made in a limited context created by the housing shortage.⁶¹ Encampments may be the safest option that residents can access; however, there are also factors identified by the media within encampments that create challenges on a day-to-day basis. Residents express that accessing hygiene facilities, such as showers, washrooms, and sinks, has become exponentially more difficult since the onset of COVID-19 and the subsequent lockdowns.⁶² In some cases, cities and organizations have responded to these concerns by providing showers in trailers or porta-potties, but many encampment residents are left without.⁶³

Encampment residents have also identified that they find it difficult to really put down roots in any place because they are aware that they could be moved at any moment or have some of their personal items stolen.⁶⁴ Life in encampments for these residents is therefore presented as being precarious, but not any more precarious than accessing shelter or other short-term, temporary services. In any case, there is some representation of residents who do settle into encampments with many belongings, including musical instruments and art supplies.⁶⁵ These residents state that they feel safe in encampments and do not hesitate to call their space “home.” One resident interviewed by CBC News mentioned that his space in a Toronto encampment is the first home he has had in years, and he would be “crushed” if he were to lose this place where he is able to engage in leisure activities like making art and to have access to all of his belongings.⁶⁶ Others have also identified that encampment residents try their best to take care of one another, as well as the physical space, leading to a deepened sense of community within the encampments.⁶⁷

In many cases identified by the media, there is fairly consistent contact with city officials, outreach workers, religious organizations, and police and emergency services who enter camps

⁶⁰ Mackie, 2021; Johnston & Vincent, 2021; Casey, 2021; Gibson, 2021; DiManno, 2021; Casey, 2021b; Rodrigues & Westoll, 2021; Salhia, 2021; Moro, 2021; Thompson, 2021; Yuen, 2020; Canadian Press, 2020; Bernhardt, 2020; DiManno, 2020

⁶¹ Johnston & Vincent, 2021; Dunlevy, 2021; DiManno, 2021; Levy, 2021e; Rodrigues & Westoll, 2021; McNally & Dosani, 2021; Lorinc, 2020; Hernandez, 2020; Scace, 2020; Braun 2020; Moro, 2020; Nakonechny & Shingler, 2020

⁶² Mackie, 2021; Eadland, 2020; Eagland, 2020c; Casey, 2020; Krause, 2020; Hamilton Spectator, 2020;

⁶³ Mackie, 2021; McIntyre & Chan, 2021

⁶⁴ Mackie, 2021; Dickson & Bell, 2021; Casey, 2021b; Snowdon, 2020

⁶⁵ Casey, 2021b; CBC News, 2020

⁶⁶ Casey, 2021b

⁶⁷ Mackie, 2021a; Smith, 2021; Eagland, 2020c; Craggs, 2020

to administer different services to residents.⁶⁸ In Vancouver, nurses would visit the encampments to administer COVID-19 testing and facilitate isolation for those who tested positive or were experiencing symptoms.⁶⁹ This was not without problems, as isolating in a tent is quite difficult for residents when there are no washrooms or hygiene services nearby.

Needs of Residents

Most campers and advocates interviewed in media reports identified that the number one thing that encampment members needed was permanent housing and long-term solutions, rather than short-term stays in shelters and hotels.⁷⁰ Short-term stays in shelters and hotels would often only remove people from encampments for a brief period of time, and they would then return after being discharged. Others identified needs such as hygiene, food, relief from the elements, pieces of identification that are vital for accessing supports, substance use and mental health supports, and dignity and respect.⁷¹

2. Issues Facing Encampments

The issues facing encampments that are highlighted by media are deep, with some pertaining to life inside the encampments, and others pertaining to external threats to encampments. These are separated into two themes: security and safety, and sanitation.

Sanitation

As mentioned above, encampment residents found it quite difficult to maintain their hygiene during the pandemic due to the closure of public facilities and a lack of access to showers, washrooms, and sinks. This created barriers for encampment residents to follow public health guidelines such as handwashing. Similarly, campers found it difficult to socially distance within encampments, and there were also concerns about accessing potable water for drinking and cooking.⁷²

Campers and community members outside of the encampments identified concerns about garbage build-up and garbage removal within the encampments.⁷³ If garbage removal was not arranged externally, it was often not done, leading to a large build-up of garbage within the encampments that could lead to health and morale issues. The issue of garbage removal seemed to draw significant attention from external community members who were displeased at how parks were being treated and how garbage was left to build up.⁷⁴ Many community members identified that they no longer enjoyed being in parks due to the lack of cleanliness they witnessed.

⁶⁸ Casey, 2021; Wilhelm, 2020; Mackie, 2021; DiManno, 2021; Quan, 2021; Cragg, 2020; Last-Kolb, 2020

⁶⁹ Culbert, 2021

⁷⁰ Berger, 2021; Dunlevy, 2021; Tsang, 2021; Rodrigues & Westoll, 2021; Sterritt, 2020

⁷¹ Mackie, 2021; Johnston & Vincent, 2021; Smith, 2021; Sterritt, 2020

⁷² Culbert, 2021

⁷³ Mackie, 2021; Levy, 2021; Michelin, 2021; Levy, 2021e; Tamimga, 2021; Wakefield, 2020

⁷⁴ Mackie, 2021

Safety and Security

In regard to safety and security, a number of concerns have been identified in the media by campers, their family members, external community members, emergency services, and politicians. Throughout the past two years, there have been a number of media articles identifying issues with fires and gas explosions within encampments, in some cases causing death.⁷⁵ This coverage highlights that soft-sided and temporary shelters can be set on fire very easily, causing fires to spread quickly throughout encampments and damaging people's belongings and living spaces. People rely on propane and fire for warmth and cooking meals. This concern is often cited by politicians and emergency services as a main reason why encampments should be shut down.⁷⁶ Residents have also expressed that their personal items have been stolen in encampments⁷⁷ and there is also concern about overdoses that have occurred within encampments.⁷⁸

Outsiders such as police officers and external community members repeatedly state that encampments harbour criminal behaviour, substance use, weapons, and violence,⁷⁹ but this is not corroborated in the media by encampment residents. While there have been reported instances of violence at the encampments, details are scarce and, in some cases, involve people who live outside of encampments.⁸⁰ As a result, in some situations encampments are patrolled regularly by private security companies, bylaw officers, or police, and in other situations encampments may be fenced to delineate which space is encampment space, which has the effect of separating campers from the general public.⁸¹

3. Responses to Encampments

Police, Bylaw, and Private Security

Despite restrictions and delays on dismantling encampments early in the pandemic due to safety concerns,⁸² police, bylaw officers, and private security firms were called upon often throughout the pandemic to enforce rules within encampments, as well as to facilitate the dismantling and destruction of encampments when they were ruled to be illegal by municipal councils or city park boards.⁸³ Police highlight in the media that they have been treated poorly when entering encampments, including being threatened, chased, and protested.⁸⁴ However,

⁷⁵ Snell, 2021; Connor, 2021; Salem, 2021; Dickson & Bell, 2021; McIntyre & Chan (2021); Levy, 2021d; Michael, 2021; Bron, 2021b; Lorinc, 2020; Wakefield, 2020; Connor, 2020; Passifaume, 2020; Connor, 2020

⁷⁶ Snell, 2021; Connor, 2021; Salem, 2021; McIntyre & Chan (2021)

⁷⁷ Mackie, 2021;

⁷⁸ Dickson & Kines, 2020; Gibson, 2020

⁷⁹ Levy, 2021; Zivo, 2021; Pazzano, 2020; Little, 2020; Ferguson, 2020; Stueck, 2020

⁸⁰ Little, 2020; Ferguson, 2020; Craggs, 2020

⁸¹ Mackie, 2021

⁸² Kines, 2020; CBC News, 2020; McIntyre, 2020

⁸³ Berger, 2021; Gibson, 2021a; Gibson, 2021b; Gibson, 2021c; Moro, 2021; Chan, 2021; Van Dongen, 2020b; Draaisma, 2020; Stueck, 2020; Lorinc, 2020; Michelin, 2020; Wakefield, 2020; Canadian Press, 2020; Kives, 2020; Ferguson, 2020b; Boothby & Cook, 2020; Deachman, 2020

⁸⁴ Gibson, 2021c; Luymes, 2021

advocates and encampment residents have responded that they have concerns about police entering encampments without declaring themselves, having warrants, or providing a reason, as police are associated with evictions and residents are afraid they will lose the sense of security they have if they are moved elsewhere.

When police have been called to dismantle encampments due to trespass orders, it has been done using methods that are quite violent and harmful to residents and advocates.⁸⁵ One encampment resident mentioned that the eviction at Trinity Bellwoods Park in June 2021 was the most aggressive situation she had ever experienced or witnessed at the hands of the police.⁸⁶ In this case, there were police drones, helicopters, officers wearing military uniforms, and officers using crowd control weapons to intimidate residents and protesters.⁸⁷ Residents and protesters were physically barricaded and trapped by hundreds of metres of fences that were put up around them, a crowd containment tactic known as kettling.⁸⁸ While the Trinity Bellwoods clearing was a brutal display of force, it is unfortunately not unique, as many other encampment evictions involved an intimidating police and security presence, as well as arrests, barricades, and standoffs.⁸⁹ Still, some continue to defend police and argue that the use of force is necessary to deal with encampments.⁹⁰

While police often claim to be evicting encampment members for health and safety purposes, these evictions directly put encampment residents in harm's way. Police, often working with bylaw officers, generally offer some form of alternative sheltering option (if it exists) when evicting encampments.⁹¹ However, these alternative arrangements such as hotels and shelters do not offer residents much safety or security and ignore the very reason why many have chosen to reside in encampments throughout the pandemic. Residents are therefore left to make impossible choices that could put them at risk of COVID-19, violence, arrest, and health challenges from sleeping unsheltered.⁹²

General Public

The public is often presented in the media as being quite divided on the issue of encampments, with some members of the public advocating for housing solutions and help, while others are outright hostile towards encampments and residents. Supporters and advocates recognize that the existence of encampments is often due to some policy or housing failure, and thus express sympathy for those in encampments and look for ways to help, such as cleaning up garbage, providing hygiene options, donating sleeping bags or blankets, protesting evictions, and

⁸⁵ Gibson, 2021c; Levy, 2021c; Quan, 2021; Rodrigues & Westoll, 2021; Bholla, 2021; Robertson, 2021; Micallef, 2021; Gibson & Pagliaro, 2021; Canadian Press, 2021; Passifume, 2021; Sachdeva, 2021; Laurie, 2021; Ila, 2021; Casey, 2020

⁸⁶ Rodrigues & Westoll, 2021

⁸⁷ Rodrigues & Westoll, 2021; Robertson, 2021; Micallef, 2021

⁸⁸ Rodrigues & Westoll, 2021;

⁸⁹ Wilson, 2021; De Luigi, 2021; Ryan, 2021; Bholla 2021b; Canadian Press, 2020

⁹⁰ DiManno, 2021b; Toronto Star, 2021

⁹¹ McIntyre & Chan, 2021, Moro, 2021d; Van Dongen, 2020;

⁹² Gibson, 2021b; Rodrigues & Westoll, 2021; Bernard, 2021; Crawford, 2020

coordinating with support workers.⁹³ Advocates have also suggested policy-level solutions, such as the creation of designated tent cities, the creation of tiny homes and small shelters (such as Kitchener-Waterloo's "A Better Tent City")⁹⁴ and purchasing hotels for transitional housing.⁹⁵

However, those who are against encampments and their residents often draw on very stigmatizing images of those who are experiencing homelessness. When discussing what they are witnessing in encampments and surrounding neighbourhoods, these voices suggest that encampment residents are incapable of caring for themselves or their surroundings, are rife with mental health and substance use issues, and are overall dangerous and violent.⁹⁶ Some have expressed outrage that parks are being overrun by "criminals" and "thugs" who are taking away the park from people who "deserve" to be in it, namely children and seniors.⁹⁷ Others have expressed that the presence of encampments has also been harmful to business, in a climate where business has already been impacted by lockdown measures.⁹⁸ One community member who was interviewed mentioned that he had outright protested some campers putting up tents by screaming at them until they moved.⁹⁹ People experiencing homelessness in encampments are thus placed at further risk for violence and harm by community members attempting to enforce who is allowed to occupy public space, and in some cases, there is mutual hostility between encampment residents and outsiders.¹⁰⁰ While there is a tendency in the media to blame encampment residents for the issues surrounding encampments, it is important to consider the context in which encampments arise.

Politicians

Similar to community residents, politicians, municipal governments, and councils are also presented as being divided on the issue of encampments. The most common political response to encampments in the media is the opening of other spaces for people to move into.¹⁰¹ As mentioned above, some encampment residents are quite hesitant to move because of the health and safety risks in alternative spaces such as shelters, hotels, or rooming houses, as well as a lack of privacy and concern about not being able to bring all of their belongings.¹⁰² Still,

⁹³ Urquhart, 2021; Maddison, 2021; Dunlevy, 2021; Gibson, 2021e; McNally & Dosani, 2021; Lee, 2021; Canadian Press, 2021b; Peddle, 2021; Wells, 2020; Casey, 2020; Last-Kolb, 2020; Sterritt, 2020; Moro, 2020; Canadian Press, 2020; McIntyre, 2020; Cook, 2020; Balogh, 2020; Monteiro, 2020; Wilhelm, 2020b
⁹⁴ Villella, 2021

⁹⁵ Urquhart, 2021; Maddison, 2021; Tsang, 2021; Thompson, 2021; Moro 2021d; Seto, 2021

⁹⁶ Levy, 2021a; Levy 2021e; Levy 2021f; Bron, 2021; Warmington, 2020; Warmington, 2020b; Braun, 2020; Mason, 2020

⁹⁷ Wells, 2021; Gibson, 2021d; Levy, 2021f; Zivo, 2021b; Warmington, 2020c

⁹⁸ Snell, 2020

⁹⁹ Mackie, 2021

¹⁰⁰ Wong, 2020; Crawford, 2020

¹⁰¹ Johnston & Vincent, 2021; Kines, 2021; Casey, 2021; Berger, 2021, McIntyre & Chan, 2021; Wells, 2021; Dunlevy, 2021; Gray & Moore, 2021; Moro, 2021b; Salloum, 2021; Eagland, 2020a; Eadland, 2020b; Eagland, 2020c; Crawford, 2020; Kines, 2020; Free Press, 2020

¹⁰² Berger, 2021; Gibson, 2021; McIntyre & Chan, 2021; Casey, 2021b; Rodrigues & Westoll, 2021; Moro, 2021c; Bernhardt, 2020; Scace, 2020

others express hope and excitement at the prospect of moving into housing, even if it is temporary.¹⁰³

Politicians generally take the stance that encampments are not conducive to health and safety and should be removed—but there is division on where encampment members should be moved to and what types of solutions are viable. In one controversial case, the City of Winnipeg undertook a pilot project where they would play a high-pitched, continuous noise to deter people from setting up camp.¹⁰⁴ The City discontinued this practice after it was heavily criticized for being “cruel and pointless.”¹⁰⁵ Politicians have also expressed concern that simply removing encampment residents and placing them in other locales is an insufficient response due to the multi-faceted issues that they experience.¹⁰⁶ Politicians expressed in the media that many residents needed mental health and substance use support in addition to housing support.

Summary of Media Scan Alongside Encampment Enforcement

The increased visibility and attention to encampments throughout the COVID-19 pandemic have provoked significant public debate about homelessness and housing solutions. The general public, alongside politicians and community organizations, are quite divided about the issues of encampments, often disagreeing about what the solutions should entail. Although divided on the issue of encampments, the general public, politicians, and community organizations express that encampments do need to be addressed in some way. However, some encampment residents disagree and call these spaces home—expressing that they feel more comfortable and in control in encampments than they have felt for a long time.

While there is much discussion in the media surrounding what to do about encampments, such as taking a criminalization approach or displacing people to hotels and short-term shelters, there is not as much understanding about why people move into encampments in the first place. Indeed, the root of the issue—housing shortages and a lack of affordable housing and support—is rarely addressed politically. Solutions are often short-term, leaving residents to fend for themselves and blaming them when issues arise.

Health and safety are the most common and important reasons evoked to end encampments. However, removing encampment residents does not ensure their safety. Violently evicting, dismantling, and displacing encampment residents in the name of wellness is a massive contradiction, as residents are often placed into increasingly insecure and unsafe situations. These encampment evictions raise important questions about the violation of people’s human rights, notions of citizenship, tenure and private versus public property, and the occupation of public space. Moreover, several levels of government are involved in these different situations, raising questions about who is ultimately responsible for people’s and communities’ well-being, social inclusion, and the protection of their human rights. Provocatively, this raises questions

¹⁰³ Eagland, 2020; Casey, 2020; Wells, 2020

¹⁰⁴ Froese, 2020

¹⁰⁵ Froese, 2020

¹⁰⁶ Kines, 2021; Casey, 2021; Berger, 2021; Snell, 2021b; Smith, 2021; Grochowski, 2021; Crawford, 2020; Wilhelm, 2020

about cohabitation and the occupation of public space. Removing encampment residents with violent, coercive means, trampling their dignity, and ignoring their self-determination and human rights so that other citizens can use space freely sends a clear message about whose rights are more important and worth protecting.

Chapter 4: A National Protocol on Homeless Encampments in Canada *

“I wanted to be a leader because I have a strong voice. I wanted to speak for people who cannot speak. The second I leave, look what’s happening: they cleared my stuff, and they’re clearing all the little houses. I’m not there to get in the way anymore.”¹⁰⁷

—Derrick Black, on the struggles of advocating for encampments

In recent years, homeless encampments have become a prominent symptom of Canada’s housing crisis. In a housing arena marked by unaffordability, insecurity, and financialization, a lack of adequate accommodation options has driven people into informality—forcing them to live in self-made structures in public and private outdoor spaces. This reality has been further exacerbated by the COVID-19 pandemic, which caused many temporary and emergency accommodation providers to close or severely limit their capacities, leaving people with little choice but to find alternatives.

In light of the governmental inaction which has led to the rise of homeless encampments in Canada, encampments must be regarded as having a dual nature—they are, of course, a violation of the right to housing and a representation of a failure of governments in Canada meet their obligations to realize the right for all. Yet they also represent an important claim of the right—a clear statement that housing is vital to human well-being and that being forced to live without shelter is a severe threat to dignity and security.

All levels of government must ensure that their obligations relating to the right to housing and other human rights are upheld. To properly understand and address encampments, all governments in Canada must recognize those living in them as holders of human rights who are entitled by law to have their human right to housing realized in full through the progressive provision of secure, affordable, and habitable housing which provides them with dignity. All jurisdictions within Canada must respond to existing encampments in a way that complies with international human right laws, including ensuring proper consultation with encampment residents when developing initiatives to assist them.

Despite their human rights character, in a great number of cities across Canada, the response to homeless encampments has been punitive. Encampments residents have been met with a lack of vital services (including water and sanitation), violent forced evictions, and destruction of property. Residents have been arrested and criminalized under bylaws outlawing behaviours such as camping, bathing, or defecating in public—activities which are unavoidable when living in homelessness. Far from causing a decline in homelessness, these responses have simply driven people experiencing homelessness into the shadows, away from areas of relative safety,

* Sam Freeman and Palmira Lutoto drafted this chapter.

¹⁰⁷ Black & Mistry, *supra* note 7.

and beyond the reach of vital service providers. This approach is not compliant with human rights and is not sustainable.

This chapter sets out key national and international discourses related to homeless encampments and human rights. The chapter is organized based on the eight principles outlined in *A National Protocol on Homeless Encampments in Canada* (the Protocol). The Protocol was created to provide governments with a framework on how use a right-based approach when dealing with encampments.¹⁰⁸ The literature review integrates relevant international human rights laws, Canadian laws, such as the *Canadian Charter of Rights and Freedoms* and the *National Housing Strategy Act*, and research papers and reports on homeless encampments in Canada and the United States. The literature review also provides recommendations on measures governments can adopt to respond to encampments and indicates the possible impacts if obligations are not upheld.

Principle 1: Recognize residents of homeless encampments as rights holders

The principle of recognizing residents of homeless encampments as rights holders is inherently linked to an understanding of the dual nature of homeless encampments.¹⁰⁹ In particular, it means that those who are forced to rely on encampments as their home are not only experiencing human rights violations as a result of failed state actions and policies, but are also claiming their right to housing.¹¹⁰ When the state fails to implement and meet its obligation to realize the human right to adequate housing for all, those who are financially disadvantaged and those whose identities intersect with multiple forms of oppression (e.g., historically excluded on the basis of race, gender, sexual orientation, disability, age, Indigenous identity, and ethnicity), tend to be more at risk of being excluded from the formal housing systems. The lack of affordable housing and adequate housing solutions can lead individuals to adapt survival strategies, such as creating an informal housing system that involves sleeping outdoors.¹¹¹ In essence, homeless encampment residents are rights holders who are advancing their basic claims to home and community, and thereby claiming their legitimate place within cities.¹¹²

Rather than addressing the issue of shortages in affordable housing and rectifying the policies that lead to the creation of homeless encampments, state actions tend to be centred on the criminalization of homeless encampments.¹¹³ The criminalization of homelessness occurs when governments pass and choose to enforce laws making it a criminal offence to camp, sleep, rest,

¹⁰⁸ See Farha & Schwan — The Shift, *supra* note 1 at para 7.

¹⁰⁹ See Leilani Farha, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, UNGAOR, 73rd Sess, UN Doc A/73/310/Rev.1 (2018) at para 11.

¹¹⁰ See *ibid.*

¹¹¹ See Tony Sparks, “Citizens without property: Informality and political agency in a Seattle, Washington homeless encampment” (2016) 49:1 *Environment & Planning A: Economy and Space* 86 at 87.

¹¹² See Farha & Schwan — The Shift, *supra* note 1 at para 39.

¹¹³ See generally Marybeth Shinn & Jill Khadduri, *In the Midst of Plenty: How to Prevent and End Homelessness in the United States* (Hoboken, New Jersey; Wiley-Blackwell, 2020).

or engage in other activities necessary for life in public areas. State actions to criminalize, penalize, and obstruct homeless encampments through the demolition of property and the eviction and arrest of residents are a violation of the human rights and dignity of those residing in them.¹¹⁴

The criminalization of homeless encampments creates two main issues. On the one hand, those experiencing homelessness are marginalized in the denial of their human right to housing.¹¹⁵ On the other hand, when these already marginalized groups attempt to remedy their situation and reclaim their right, they are subject to eviction and displacement, or they are criminalized and punished through fines or imprisonment.¹¹⁶ The latter naturally makes it even harder to exit homelessness.¹¹⁷ The criminalization of homelessness is not a proper response to state failures. These punitive actions do not meaningfully decrease homelessness or lead to any real beneficial outcomes.¹¹⁸ Rather, the criminalization of homelessness has several serious consequences on unhoused people, including¹¹⁹:

1. breaching several human rights laws;
2. inhibiting their ability to exit homelessness and transition into permanent housing;
3. denying access to an income, given the risk of being excluded from employment opportunities;
4. subjecting them to discrimination by landlords;
5. reducing their quality of life;
6. affecting mental and physical health;
7. creating social marginalization and isolation;
8. increasing their likelihood of developing illnesses due to severe weather conditions and limited access to healthcare and spaces to recover;
9. producing negative impacts on dignity and potentially causing harm;
10. interfering with Charter rights, including the right to life, liberty, security, housing, health, and a reasonable expectation of privacy;
11. depriving them of autonomy and responsibility through the state's interventions in self-managed homeless encampment; and
12. making it challenging to claim the right to housing.

¹¹⁴ See Julie Hunter, Paul Linden-Retek, Sirine Shebaya, Samuel Halpert, "Welcome Home: The Rise of Tent Cities in the United States" (2014) at 58, online (pdf): *Canadian observatory on homelessness* <homelesslaw.org/wp-content/uploads/2018/10/WelcomeHome_TentCities.pdf>.

¹¹⁵ See *Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America*, UNHRCOR, 38th Sess, UN Doc A/HRC/38/33 (2018) at para 45 [*Special Rapporteur—USA*].

¹¹⁶ See *ibid.*

¹¹⁷ See *ibid.*

¹¹⁸ See Eric S Tars, "Criminalization of Homelessness" (2021), online (pdf): *National Low Income Housing* <nlihc.org/sites/default/files/AG-2021/06-08_Criminalization-of-Homelessness.pdf>.

¹¹⁹ See Tony Robinson, "No Right to Rest: Police Enforcement Patterns and Quality of Life Consequences of the Criminalization of Homelessness" (2019) 51:1 *Urban Affairs Rev* 41 at 60; Leilani Farha, "Communication by the Special Rapporteur on the Right to Housing to Hungary" (2018), online (pdf): *OHCHR* <spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=2391>; *Special Rapporteur—USA*, *supra* note 115 at para 45; *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

Although state orders tend to be politically and financially motivated, the criminalization of homeless encampments is often justified by the need for public order, health, and safety. As a result, factors such as city beautification, tourism and business promotion, increased property values, and the appeasement of housed residents are very often taken into consideration when passing bylaws criminalizing homeless encampments.¹²⁰ Evidently, this type of response shifts the blame from the state's failure to implement strategies and policies that follow human rights guidelines, as well as from structural poverty, inequality, and systemic discrimination towards individual failures that need to be controlled and punished by the state.¹²¹

Rather than criminalizing encampment residents, states need to recognize those experiencing homelessness as human beings claiming their rights within failed systems, and fulfill their obligations to respect human dignity, as set out in the *National Housing Strategy Act*.¹²² States should assist them in finding adequate affordable housing, adopt policies to end homelessness, and improve residents' living conditions.¹²³ These goals can be achieved by adopting Principle 2—a community-led approach centred on meaningful engagement and the effective participation of encampment residents.

Most importantly, states need to end actions that criminalize homeless encampments and shift towards recognizing these as homes. The recognition of homeless encampments as home aims to drive states to exercise the same legal respect and consideration for informal home structures as they do for formal home structures.¹²⁴ Consequently, law enforcement would not be authorized to intrude in the lives of homeless encampment residents by opening, damaging, or destroying residents' property and entering, opening, or removing residents' homes without their expressed permission or a warrant.¹²⁵

Principle 2: Meaningful engagement and effective participation of encampment residents

The principle of meaningful engagement and effective participation of encampment residents is premised on state recognition of encampment residents as right holders.¹²⁶ As stated in Principle 1, the treatment of encampment residents as criminals reinforces the unproven notion that homeless self-governance is dangerous and that a competent caretaker must intervene to protect the community.¹²⁷ Homeless encampment residents are perceived as dependent subjects who are incapable of knowing, articulating, or acting in their own best interests, which

¹²⁰ See Chris Herring, Dilara Yarbrough, & Lisa Marie Alatorre, "Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness" (2020) 67:1 Social Problems 1; Robinson, *supra* note 119 at 59.

¹²¹ See Speer—mass incarceration, *supra* note 2 at 168.

¹²² See Farha & Schwan — The Shift, *supra* note 1 at para 39.

¹²³ See *ibid.* at para 41.

¹²⁴ See Sarah Ferencz, Alexandra Flynn, Nicholas Blomley & Marie-Eve Sylvestre, "Are Tents a 'Home'? Extending Section 8 Privacy Rights for the Precariously Housed" (2022) 68 McGill LJ 1 at 10 (forthcoming).

¹²⁵ See "Encampments Rights Review Report on encampments in Toronto during COVID-19" (2020) at 13, online (pdf): *Right to Housing in Toronto* <right2housingto.ca/wp-content/uploads/2020/09/R2HTO-Encampments-Rights-Review-final.pdf> [Report on encampments in Toronto].

¹²⁶ See Farha & Schwan — The Shift, *supra* note 1 at para 41.

¹²⁷ See Speer—mass incarceration, *supra* note 2 at 166.

justifies discipline and management from the authorities.¹²⁸ On the contrary, it is precisely because encampment residents are best placed to identify their needs that their participation is needed in the design and implementation of programs and policies affecting them.¹²⁹

When states cast homeless people as passive subjects, they fail to recognize them as low-income and disadvantaged people who are trying to attain political or legal recognition as active and rights-bearing citizens.¹³⁰ In the case of Seattle, encampment residents reported the difference between being in shelters compared to self-managed encampments: in the shelters, “They treat you like you’re a little kid and after a while you become a little kid—Here, [in the Tent City] you’re responsible for something. If you don’t like it, you can work to change it, if you don’t do what you say you’re gonna do, everyone suffers.”¹³¹ This statement reveals how autonomy and responsibility afforded by self-managed homeless encampments provide dignity in the lives of homeless encampment residents.¹³² Autonomy and responsibility provide residents with the opportunity to build confidence and leadership skills.¹³³ The communities in Seattle around the new encampments positively responded to these encampments, and it was documented that the crime levels had not significantly increased in the areas surrounding the self-managed encampments.¹³⁴

The right to participate should be implemented at the earliest stage in any interactions between the state and encampment residents or in any policymaking regarding encampments.¹³⁵ States need to respond to encampments by first authorizing their existence and by establishing a legal framework that allows them to be self-governed, while providing assistance and oversight.¹³⁶ For instance, Seattle’s Human Services Department selected several non-profit organizations to provide services, such as referrals to diversion programs and shelters, legal services, rapid rehousing programs, and employment training and educational referrals.¹³⁷

¹²⁸ See Ananya Roy, “Paradigms of Propertied Citizenship: Transnational Techniques of Analysis” (2003) 38:4 *Urban Affairs Rev* 463; Andrea Brighenti, “Visibility: A category for the social sciences” (2007) 55:3 *Current Sociology* 323.

¹²⁹ See Farha & Schwan — *The Shift*, *supra* note 1 at para 42.

¹³⁰ See Andrea Brighenti, “Visibility: A category for the social sciences” (2007) 55:3 *Current Sociology* 323; Sparks, *supra* note 131 at 88.

¹³¹ Sparks, *supra* note 131 at 92.

¹³² See *ibid.*

¹³³ See *ibid.*

¹³⁴ See City of Seattle, Human Services Department, “Seattle Permitted Encampment Evaluation. Seattle” (2017), online (pdf): *City of Seattle* <www.seattle.gov/documents/departments/humanservices/aboutus/final%202017%20permitted%20encampment%20evaluation.pdf> [*Seattle Encampment Evaluation*].

¹³⁵ See United Nations Human Rights Council, “The guiding principles on extreme poverty and human rights, foundational principles” (2012) at para 38, online (pdf): *OHCHR* <ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf>; Farha, *supra* note 119 at para 73.

¹³⁶ See *Seattle Encampment Evaluation*, *supra* note 134.

¹³⁷ See *ibid.*

To achieve meaningful engagement, States should ensure that the right to participation is protected in law through constitutional or legislative provisions.¹³⁸ Participation processes must comply with all international human rights law and principles, and meaningful engagement must be grounded in the recognition of the inherent dignity of encampment residents and their human rights.¹³⁹ States should also ensure that all homeless policies or relocation strategies provide encampment residents with full participation in the management of encampments, relocation planning and implementation, upgrading programs, and ensuring the achievement of sustainable results.¹⁴⁰ Participation and engagement in the decisions affecting encampment residents should be active, free, and meaningful, and in the case of Indigenous residents of encampments, the processes should be undertaken in accordance with the principles of free, prior, and informed consent and in a manner that is culturally safe and trauma informed.¹⁴¹ Encampment residents should not be exposed to the threat of eviction procedures or police enforcement to coerce, intimidate, or harass them.

The following suggestions provide guidance to states to ensure meaningful engagement of encampment residents:

- 1) To eliminate the power imbalance with governments and residents, the necessary supports and resources should be provided. Residents who act as community spokespeople should be provided with remuneration for their work and proper training.¹⁴² Access to independent legal advice and representation, independent advocates, collaboration with front-line organizations, and disbursements for expenses should also be provided to assist residents with the right to participate.¹⁴³
- 2) Relevant information should be provided about the right to housing, including information about procedures through which they can hold governments and other actors accountable, the upgrading process, and the relevant laws and information about their rights.¹⁴⁴
- 3) Relevant information concerning decisions that affect residents should be provided to ensure sufficient time to consult and opportunities to directly influence decisions that affect them.
- 4) A formal, binding community engagement agreement, establishing when and how the community will be engaged at each stage of the process, should be negotiated between homeless encampment residents, government actors, and other stakeholders.¹⁴⁵
- 5) Equitable opportunities for the meaningful participation of all encampment residents should be provided to allow the community to make collective decisions and the effective sharing of information.¹⁴⁶

¹³⁸ See Farha, *supra* note 119 at para 73.

¹³⁹ See Farha & Schwan — The Shift, *supra* note 1 at para 44.

¹⁴⁰ See Farha, *supra* note 119 at paras 19, 31, 72.

¹⁴¹ See Farha & Schwan — The Shift, *supra* note 1 at para 41.

¹⁴² See Farha, *supra* note 119 at para 79.

¹⁴³ See Report on encampments in Toronto, *supra* note 125 at 15.

¹⁴⁴ See Farha, *supra* note 119 at paras 19, 79.

¹⁴⁵ See *ibid.* at para 74.

¹⁴⁶ See *ibid.* at para 76.

- 6) Residents' concerns should be documented, including those with police, and law enforcement must not be present at conversations and interactions with encampment residents, considering past interactions that have targeted specific members of the communities.¹⁴⁷
- 7) It is important to understand their concerns and offer them safe and permanent housing options before asking them to move.¹⁴⁸
- 8) It is important to collect and document understandings of informal tenure status through enumerations and tenure registration, with a view to ensuring long-term security.¹⁴⁹

States' failure to adopt a meaningful engagement approach could result in encampment residents further disengaging and refusing to seek resources.¹⁵⁰

Principle 3: Prohibition of forced evictions of encampments

Eviction is defined as “the expulsion of people and their possessions from a space to which they cannot return without the permission of the owner.”¹⁵¹ Forced eviction is defined as “the permanent or temporary removal of individuals, families and/or communities from the homes and/or land which they occupy against their will, without the provision of, and access to, appropriate forms of legal or other protection ... in conformity with the provisions of the International Covenants on Human Rights.”¹⁵² Forced eviction can be executed by law enforcement through destruction of property and harassment or intimidation of encampment residents.¹⁵³ Unlike evictions, forced evictions are considered a gross violation of human rights, including the right to housing, and they are prohibited under international human rights law and standards.¹⁵⁴ They also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, and the right to the peaceful enjoyment of possession.¹⁵⁵

Evictions of encampment residents could be motivated by public interest, city beautification, development or redevelopment, or requests by private actors.¹⁵⁶ In the circumstances where eviction is required, it should be carried out after exploring all viable alternatives with residents, in accordance with the law and consistent with the right to housing. As stated in the *United Nations*

¹⁴⁷ See Report on encampments in Toronto, *supra* note 125 at 14.

¹⁴⁸ See *ibid.*

¹⁴⁹ See Farha, *supra* note 119 at para 37.

¹⁵⁰ See Oren Yiftachel, “Critical theory and ‘gray space’: Mobilization of the colonized” (2009) 13 *City* 246 at 249; Sparks, *supra* note 111 at 91.

¹⁵¹ Nicholas Blomley, “Precarious Territory: Property Law, Housing, and the Socio-Spatial Order” (2019) 52:1 *Antipode* 36 at 46.

¹⁵² Committee on Economic, Social and Cultural Rights, *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*, UNESCOR, 16th Sess, Supp No. 2, UN Doc E/1998/22 (1997) at para 4 [*General Comment No. 7*].

¹⁵³ See Farha & Schwan — The Shift, *supra* note 1 at para 47.

¹⁵⁴ See UN Commission on Human Rights, *Commission on Human Rights Resolution: 2004/28: Prohibition of forced evictions*, UNHCROR, 60th Sess, UN Doc E/CN.4/RES/2004/28 (2004) at para 1.

¹⁵⁵ See *General Comment No. 7*, *supra* note 152 at para 4.

¹⁵⁶ See Farha & Schwan — The Shift, *supra* note 1 at para 48.

Conference on Human Settlements in 1976, forced evictions should only take place when conservation and rehabilitation are not possible, and if appropriate forms of protection are provided or relocation measures have been put in place.¹⁵⁷ Therefore, laws and policies that sanction forced evictions or penalize and punish people experiencing homelessness and residing in encampments, such as anti-camping laws, move-along laws, laws prohibiting tents being erected overnight, laws prohibiting personal belongings on the street, etc., should be repealed, and states must refrain from adopting them. States must ensure that measures are in place to prevent and punish forced evictions that are carried out without appropriate legal protection by private agents or third parties.¹⁵⁸

Forced evictions are prohibited in all but in the most extreme circumstances, such as if the well-being of encampment residents was in immediate risk if a forced eviction was not to take place. In the case where forced evictions must occur, it should be done only if it is permissible under relevant laws, the circumstances in which the interferences may be permitted are specified in legislation, and suitable alternatives are provided, in compliance with the international human rights law and in accordance with the principles of reasonableness and proportionality.¹⁵⁹ In these rare cases, states should implement the following recommendations when conducting forced evictions:¹⁶⁰

1. Adequate and reasonable notice for all affected persons to move their items prior to the scheduled date of eviction;
2. Upon residents' consent, clear and consistent guidelines about the removal, storage, and disposal of property;
3. Legal protection, remedies, procedures, and, where possible, legal aid to persons who are in need of it to seek redress from the courts;
4. Guaranteed due process and administrative fairness;
5. Right to compensation for any damaged property;
6. Alternative accommodation;
7. An opportunity for genuine consultation with those affected;
8. Information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in a reasonable time to all those affected;
9. Especially where groups of people are involved (such as in an encampment setting), the presence of government officials or their representatives during an eviction;
10. Proper identification of all persons carrying out the eviction;
11. Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; and
12. Any appropriate resources that may be needed.

When evictions are conducted without safeguards, not only do they create disruptions and trauma for encampment residents, but encampments are re-established in a new location or at

¹⁵⁷ See *General Comment No. 7, supra* note 152 at para 2.

¹⁵⁸ See *ibid.* at para 9.

¹⁵⁹ See *ibid.* at para 14.

¹⁶⁰ See *ibid.* at paras 1, 2, 9, 15. See also Report on encampments in Toronto, *supra* note 125 at 15.

the initial site.¹⁶¹ States must cease justifying the eviction of encampment residents using legal procedures. In addition, courts should refuse to authorize such evictions unless necessary and only when all international human rights requirements are met and when residents have been meaningfully engaged in the process.¹⁶²

Principle 4: Explore all viable alternatives to eviction

State responses to homeless encampments tend to involve the eviction of the residents and the destruction of their property without providing proper support or services to help them.¹⁶³

Principle 4 highlights the importance for states to explore all viable alternatives to eviction and to consult with encampment residents when addressing the issue of homeless encampments.¹⁶⁴ Evictions without adequate support or viable alternatives can have many negative consequences, such as poorer quality of life, traumatic psychological and emotional impacts, thereby further disrupting the lives of people who are already in a disadvantage situation.¹⁶⁵ In addition, such actions create an adversarial relationship between people experiencing homelessness and law enforcement and governments.¹⁶⁶

People experiencing homelessness have limited options in finding alternative housing.¹⁶⁷ The most common options are shelters and encampments. In deciding between both options, several factors come into play such as the availability of shelter beds, undesirable shelter conditions, shelter policies, sense of safety and community in the shelter, the space to have autonomy and privacy, and the freedom to come and go.¹⁶⁸ States must engage with homeless encampment residents in discussions regarding viable alternatives to eviction and ensure their meaningful and effective participation in discussions regarding the future of the encampments.¹⁶⁹

To ensure proper consultations and engagement, States should make available free and independent legal advice, financial support, and other types of support to all residents to ensure that they understand their options, processes, and rights.¹⁷⁰ Encampment residents should also be able to retain outside consultants to assist them in developing alternative options to eviction.¹⁷¹ States should also take into considerations the various needs among encampment

¹⁶¹ Rebecca Cohen, Will Yetvin, & Jill Khadduri, “Understanding Encampments of People Experiencing Homelessness and Community Responses” (2019) at 2, online (pdf): *US Department of Housing and Urban Development* <[huduser.gov/portal/sites/default/files/pdf/Understanding-Encampments.pdf](https://www.huduser.gov/portal/sites/default/files/pdf/Understanding-Encampments.pdf)>.

¹⁶² See Farha, *supra* note 119 at para 29.

¹⁶³ See Cohen et al., *supra* note 161 at 9.

¹⁶⁴ See Farha & Schwan — The Shift, *supra* note 1 at para 50.

¹⁶⁵ See Samir Junejo, Suzanne Skinner, & Sara Rankin, “No Rest for the Weary: Why Cities Should Embrace Homeless Encampments” (2016) at 18, online (pdf): *Seattle University School of Law* <digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1006&context=hrap>; Farha, *supra* note 119 at para 27.

¹⁶⁶ See Cohen et al., *supra* note 161 at 13.

¹⁶⁷ See *ibid.* at 21.

¹⁶⁸ See *ibid.*

¹⁶⁹ See *ibid.*

¹⁷⁰ See Farha & Schwan — The Shift, *supra* note 1 at para 41.

¹⁷¹ See *ibid.*

residents and develop alternative solutions accordingly. For instance, representatives of Indigenous communities should be engaged in the planning process to ensure the availability of culturally appropriate services.¹⁷²

Ultimately, the most appropriate alternative to eviction is permanent housing that is affordable, habitable, culturally adequate, accessible to services and where encampment residents would be able to live without discrimination, in security, peace, and dignity.¹⁷³ The permanent housing should also be located in areas that are proximate to those from which the eviction took place in order to minimize social, economic, and cultural disruption. In the absence of adequate alternatives or permanent housing for encampment residents, States should ensure that encampments are protected and made safe for all residents through the provision of resources that meet basic needs and human rights standards.¹⁷⁴

Principle 5: Ensure that any relocation is human rights compliant

States tend to respond to homeless encampments by relocating encampment residents using law enforcement, physical barriers, or other means, with little to no consultation or engagement with the residents.¹⁷⁵ This type of relocation does not address the lack of the basic right to housing; instead, it contributes to increased marginalization when conducted in a manner that is not compliant with human rights and not agreed to by encampment residents.¹⁷⁶ For instance, one of the City of Toronto responses to the increase of encampments during Covid-19 was the relocation of encampment residents to hotels and shelters following the issuance of notices of trespassing. However, some of the encampments residents who relocated to one of the shelters returned to encampment sites, given the lack of safety and privacy (see the Toronto Case Study in this series).¹⁷⁷ The City of Toronto case study demonstrates that even when shelter spaces are available, they do not necessarily provide a level of safety or privacy that is acceptable to residents. The inability of shelters to adequately provide these important necessities can lead those staying in shelters to relocate to encampments, especially during the Covid-19 pandemic, given the need to social distance.¹⁷⁸

Where encampment residents agree to relocate, states must establish meaningful and ongoing engagement with residents early in the process of the development of any relocation plans. The relocation plans should:¹⁷⁹

1. Comply with international human rights law;
2. Provide residents with relevant information regarding the relocation plans;
3. Provide residents access to independent legal advice regarding the plans;

¹⁷² See Farha & Schwan — The Shift, *supra* note 1 at para 52.

¹⁷³ See Farha, *supra* note 119 at para 21.

¹⁷⁴ See Report on encampments in Toronto, *supra* note 125 at 16.

¹⁷⁵ See Farha & Schwan — The Shift, *supra* note 1 at para 55.

¹⁷⁶ See *ibid.*

¹⁷⁷ See Report on encampments in Toronto, *supra* note 125 at 18.

¹⁷⁸ See *ibid.* at 16–19

¹⁷⁹ Farha, *supra* note 119 at paras 4, 17, 22, 25, 38, 41, 59, 60, 63, 74; Report on encampments in Toronto, *supra* note 125 at 16; Farha, *supra* note 119 at para 34.

4. Provide access to justice to ensure procedural fairness and compliance with all human rights;
5. Respect the rights of residents, including the right to remain in one's home and community;
6. Provide compensation for any relocation costs incurred;
7. Be implemented without the interference of law enforcement or the use of force;
8. Prohibit the removal of residents' private property without their knowledge and consent;
9. Adhere to the right to housing and other human rights standards; and
10. Not result in the continuation or exacerbation of homelessness or require the fracturing of families or partnerships.

If states cannot ensure that the relocation will be human rights compliant, then residents should be permitted to remain in encampment sites until adequate alternatives are provided.¹⁸⁰ States should adopt a human rights-based approach and ensure that encampments are safe, and residents have access to resources and services.¹⁸¹ Moreover, encampments should be recognized as communities, and states should ensure meaningful engagement with encampment residents collectively and individually.¹⁸²

Given that encampments are neither a solution to homelessness nor a form of adequate housing, states have an obligation to ensure that homeless residents have access to permanent affordable housing, mental health services, the services covered under Canadian universal health care, and employment opportunities.¹⁸³ Furthermore, states should refrain from approving urban development proposals that do not provide existing residents with housing that fully meets their needs in terms of affordability, design, and adequacy.¹⁸⁴

Principle 6: Ensure encampments meet basic needs of residents consistent with human rights

States must ensure that encampments meet the basic needs of residents consistent with human rights while arranging for permanent affordable housing.¹⁸⁵ States should engage with encampment residents when planning and implementing measures to improve access to basic services, deciding on the resources that are needed, and how best to mobilize them.¹⁸⁶ States should also respect any existing practices, systems, and agreements among the residents and should consult them if there is need for improvements.¹⁸⁷

Article 11.1 of the *International Covenant on Economic, Social and Cultural Rights*, which is recognized in the *National Housing Strategy Act*, states that "The State Parties to the present

¹⁸⁰ See Farha & Schwan — The Shift, *supra* note 1 at para 57.

¹⁸¹ See Report on encampments in Toronto, *supra* note 125 at 16.

¹⁸² See *ibid.*

¹⁸³ See Cohen et al., *supra* note 161 at 16.

¹⁸⁴ See Farha, *supra* note 119 at para 41.

¹⁸⁵ See Farha & Schwan — The Shift, *supra* note 1 at para 61.

¹⁸⁶ See *ibid.*

¹⁸⁷ See *ibid.*

Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”¹⁸⁸ Furthermore, under the human rights to water and sanitation, “Governments must ensure that all people have access to safe water and sanitation in proximity to their living spaces, regardless of whether living spaces are formal or informal.”¹⁸⁹ Lastly, under the right to adequate housing, “Housing must provide its residents with safety, security, and dignity, and must contain those services that are necessary for protecting human life, including water, sanitation, heating, and cooking facilities.”¹⁹⁰ It is thus important to ensure that encampment residents have access to the following basic resources and services¹⁹¹:

- Safe and clean drinking water
- Hygiene and sanitation facilities,
- Fire safety
- Waste management systems
- Social supports and services
- Personal safety
- Facilities and resources that support food safety
- Resources to support harm reduction
- Rodent and pest prevention

Access to these basic services and resources are not discretionary. They are essential to human life and failure by the state to provide them would be considered a violation of human rights, and a threat to dignity, safety, security, health, and well-being.¹⁹² For example, the lack of access to drinking water, washrooms, showers, and other resources for residents of the Moss Park encampment in Toronto resulted in serious health concerns (see also the Toronto Case Study in this series).¹⁹³ The residents chose to remain in the encampment site even though it was not safe because they were worried that shelters were less safe during the pandemic.¹⁹⁴

The denial of access to water, sanitation and health services, and other necessities by the state as a strategy to relocate the encampment residents constitutes a clear violation of human rights, including the rights to life, housing, health, and water and sanitation.¹⁹⁵ States should instead have meaningful engagement and participation with encampment residents to develop plans to have access to safe water, washrooms, showers, and other essential amenities to meet the basic needs of residents, consistent with human rights.¹⁹⁶

¹⁸⁸ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) at para 11.1.

¹⁸⁹ See Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, UNESCOR, 29th Sess, UN Doc E/C.12/2002/11 (2003) at paras 12(c)(i), 16(c) [*General Comment No. 15*].

¹⁹⁰ See *ibid.* at para 8(b).

¹⁹¹ See Farha & Schwan — The Shift, *supra* note 1 at para 61.

¹⁹² See *General Comment No. 15, supra* note 189 at para 26.

¹⁹³ See Report on encampments in Toronto, *supra* note 125 at 12.

¹⁹⁴ See *ibid.*

¹⁹⁵ See *General Comment No. 7, supra* note 152 at para 2; Farha, *supra* note 119 at para 46.

¹⁹⁶ See Report on encampments in Toronto, *supra* note 125 at 17.

Principle 7: Ensure human rights-based goals and outcomes, and the preservation of dignity for encampment residents

When states fail to realize human rights-based goals and outcomes, such as the right to housing, they fail to preserve the dignity of encampment residents.¹⁹⁷ The right to privacy, dignity, integrity of the person, and autonomy are fundamental to all human beings, but these are often denied to encampment residents.¹⁹⁸ The right to privacy, for example, is a right that is denied to encampment residents given that tents are not accepted as homes.¹⁹⁹ Those who reside in settings such as group homes, institutions, transitional housing, shelters, and public spaces, finding it more challenging to enjoy the right to privacy compared to those living in houses and apartment buildings, because their residential space is subject to state management and control.²⁰⁰ It is important to note that a home has no stationary location, while a location can come to function like a home. This is central to the experience of encampment residents.²⁰¹ Encampment residents often view the encampment sites as a home that provides them a sense of protection, comfort, privacy, and community.²⁰² In an encampment site in Fresno, California, a sign at the encampment location says: “All property here is valuable. Do not destroy.” One of the residents reported: “I ended up here and I’m trying to make the best of it and take what they throw away to build a home ... and they come out here ... and they’re stepping on my friend’s home.”²⁰³

When states and courts refuse to consider tents as homes, they deny a reasonable expectation of privacy to encampment residents.²⁰⁴ When law enforcement destroys, seizes, or disposes of encampment residents’ property, these residents are precluded from their right to privacy and of the legal protection of their property.²⁰⁵ Encampment residents are not property-less, yet they have fewer rights protecting their property compared to those who reside in a formal structure.²⁰⁶ For instance, law enforcement entering a property to conduct a search and seizure without additional authority, such as a warrant, would be deemed illegal and would result in criminal liability for breaking and entering.²⁰⁷ However, without the recognition of encampments as homes, the privacy, control, and security protections of people in them are revoked.²⁰⁸

¹⁹⁷ See Farha & Schwan — The Shift, *supra* note 1 at para 64.

¹⁹⁸ See Ferencz et al., *supra* note 124 at 34.

¹⁹⁹ See *ibid.* at 33.

²⁰⁰ See Jessie Speer, “‘It’s not like your home’: Homeless Encampments, Housing Projects, and the Struggle over Domestic Space” (2016) 49:2 *Antipode* 517 at 520.

²⁰¹ See *ibid.* at 519.

²⁰² See *ibid.* at 522.

²⁰³ *Ibid.*

²⁰⁴ See Ferencz et al., *supra* note 124 at 8.

²⁰⁵ See *ibid.* at 1.

²⁰⁶ See Jane B Baron, “Homelessness as a Property Problem” (2004) 36:2 *Urban Lawyer* 273.

²⁰⁷ See Ferencz et al., *supra* note 124 at 12.

²⁰⁸ See *ibid.* at 23.

States should adopt policies or laws to ensure that individuals enjoy their right to dignity and privacy.²⁰⁹ Some of the recommendations for policies and laws are:²¹⁰

1. Identify opportunities for shelter;
2. Improve access to community services;
3. Promote safe environments for people who are homeless;
4. Promote and deliver human services prior to any enforcement activities;
5. Ensure shelter, support and housing outreach staff accompany enforcement officers;
6. Provide assistance, call 211, or refer homeless people to services;
7. Provide training for staff and volunteers focused on developing sensitivity to issues relating to homelessness and people living in poverty;
8. Address safety threats, racism, transphobia, and other issues in shelters that cause people to seek shelter in encampments;
9. Ensure the safety and survival of encampment residents;
10. Create a transparent and accountable plan to move residents into housing;
11. Recognize encampment residents as rights holders, and measure to ensure their ongoing, meaningful participation in decisions regarding encampments; and
12. Ensure encampment residents' basic needs are met, including access to amenities and hygiene facilities, and that these are not removed until they can be offered permanent, appropriate, and accessible housing options.

Principle 8: Respect, protect, and fulfill the distinct rights of Indigenous Peoples in all engagements with encampments

Indigenous peoples in Canada are overrepresented in homeless populations across the country. According to the Employment and Social Development Canada report, *Everyone Counts 2018: Highlights*, Indigenous peoples represent about 5% of the Canadian population, yet about 30% of homeless youth identify as Indigenous.²¹¹ Furthermore, of those who identified as Indigenous, 37% were living in unsheltered locations.²¹² The presence of Indigenous people in this environment reflects a violation of their right to housing, self-determination, and the free pursuit of their economic, social, and cultural development.²¹³ Indigenous peoples' right to housing is "interconnected with their right to lands, territories and resources, their cultural integrity and their ability to determine and develop their own priorities and strategies for development."²¹⁴ Therefore, the presence of Indigenous people in encampments can be seen as a means of survival and an attempt to claim the right to housing and to assert their rights to land and territories.²¹⁵

²⁰⁹ See Human Rights Committee, *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UNHRCOR, 124th Sess, UN Doc CCPR/C/GC/36 (2019) at para 26.

²¹⁰ See Report on encampments in Toronto, *supra* note 125 at 7, 10.

²¹¹ See Kaitlin Schwan, "Too Little, Too Late: Reimagining Our Response to Youth Homelessness in Canada" (16 November 2016), online: *Homeless Hub* <homelesshub.ca/blog/too-little-too-late-reimagining-our-response-youth-homelessness-canada>.

²¹² See *ibid.*

²¹³ See Farha & Schwan — The Shift, *supra* note 1 at para 66.

²¹⁴ *Ibid* at para 68.

²¹⁵ See *ibid.* at para 39.

When developing policies and plans for encampments, states must recognize their obligation to uphold human rights in their decisions and engagements with Indigenous encampment residents.²¹⁶ As outlined in the *United Nations Declaration on the Rights of Indigenous Peoples Act*,²¹⁷ which the Government of Canada has endorsed, governments must respect and promote the inherent rights of Indigenous peoples and must commit to consult and cooperate with them.²¹⁸ At minimum, governments must comply with human rights law pertaining to Indigenous peoples by:²¹⁹

1. Recognizing the distinct relationship that Indigenous peoples have with their lands and territories;
2. Guaranteeing self-determination, free, prior, and informed consent, and meaningful consultation for Indigenous peoples;
3. Prohibiting the forced eviction, displacement, and relocation of Indigenous peoples; and
4. Protecting against all forms of violence and discrimination for Indigenous women, girls, and gender diverse people.

This chapter has explained *A National Protocol on Homeless Encampments in Canada*, situating encampments within a right to housing framework with eight key principles. Using the Protocol as a framework, this chapter has highlighted key themes and concerns arising from the literature. Given the limited availability of Canadian literature, the review also integrated several research papers and reports from the United States. US literature does, however, remain useful given the similar issues present in both contexts, in particular the notable increase in encampments in recent years, the over-representation of Indigenous people in homeless populations, and a federal governmental system where municipalities are strongly involved in housing and homelessness policy. All sources reviewed therefore help to provide a greater understanding as to what implementing a human rights-based approach to encampments should look like in Canada.

The material used for this literature review was limited, however, by the lack of an extensive number of testimonies from encampment residents on their experience of living in encampments and on their consultation and engagement with governments. Future research could focus on those topics and incorporate the voices of those with lived experience, to further contribute to the literature on encampments in Canada.

The next chapter provides five recommendations for the federal government to implement a rights-based approach to encampments.

²¹⁶ See *ibid.* at para 68.

²¹⁷ SC 2021, c 14.

²¹⁸ *Ibid.*, Preamble.

²¹⁹ See Farha & Schwan — The Shift, *supra* note 1 at para 69.

Chapter 5: Adopting a Rights-Based Approach to Encampments

“I want to tell everyone: We’re all in this together. I used to sit in the tent in the dark and think about why things are so hard, but I didn’t leave. If everyone is determined and said, ‘We’re not moving!’, watch what happens! They will find affordable housing, because our lives matter.”²²⁰

—Derrick Black

As this report has demonstrated, evicting, dismantling and displacing encampment residents does not lead to safer conditions for unhoused people, as they are often placed into increasingly insecure and unsafe situations. Encampment evictions raise important questions about the violation of people’s human rights, notions of citizenship, tenure and private or public property, and the occupation of public space. The general public, alongside politicians and community organizations, are quite divided about the issue of encampments, often disagreeing about what the solutions should entail, but they agree that action must be taken to address this urgent issue. A different approach is needed.

The increased visibility of encampments throughout the COVID-19 pandemic has provoked significant public debate about homelessness and housing solutions. The general public, alongside politicians and community organizations, are quite divided about the issues of encampments, often disagreeing about what the solutions should entail. Although divided on the issue of encampments, the general public, politicians and community organizations express that encampments do need to be addressed in some way. However, some encampment residents disagree and call these spaces home, expressing that they feel more comfortable and in control in encampments than they have felt for a long time.

While there is much discussion in the media surrounding what to do about encampments, such as taking a criminalization approach or displacing people to hotels and short-term shelters, there is not as much understanding about why people move into encampments in the first place. Indeed, the root of the issue—housing shortages and a lack of affordable housing and support—is rarely addressed politically. Solutions are often short-term, leaving residents to fend for themselves and then blaming them when issues arise.

As this report has shown, health and safety are evoked as the most common and important reasons to end encampments. However, removing encampment residents does not ensure their safety. Violently evicting and displacing encampment residents in the name of wellness is a massive contradiction, as residents are often placed into increasingly insecure and unsafe situations. These encampment evictions raise important questions about the violation of peoples’ human rights, notions of citizenship, tenure and private or public property, and the occupation of public space. Moreover, several levels of government are involved in these different situations raising questions about who is ultimately responsible for people’s and communities’ well-being, social inclusion, and the protection of their human rights. This raises

²²⁰ Black & Mistry, *supra* note 7.

questions about cohabitation and the occupation of public space. Removing encampment residents with violent, coercive means, trampling their dignity, and ignoring their self-determination and human rights so that other citizens can use space freely sends a clear message about whose rights are more important and worth protecting.

This report has highlighted the impact of Canada's severe housing shortage on the increase in encampments. The case studies show that across the country, municipalities use trespass orders, policing, and restrictive bylaws to remove encampment residents. In turn, when they can, encampments and their advocates turn to legal processes to try to stop local governments from these practices. This ineffective circuit results in further displacement for encampment residents and their belongings and does not address the problem.

Instead, we recommend a rights-based transformation of government responses at all levels to encampments through the immediate adoption by the Government of Canada of the following five recommendations.

1. De-Centre Policing and Law Enforcement

A rights-based approach to encampments requires all governments, including municipalities and the federal government, to end their practices of using trespass orders, bylaws, and policing to evict unhoused people from encampments.

Encampments and other survival space of unsheltered people are policed and regulated through a complex intersection of actors, jurisdictions, and authorities. This is further complicated by the blurring of public and private property relations, since many encampments are established in public spaces like parks. While governments may formally "own" public spaces, they are not private property in the sense that an individual home would be.

Municipal bylaws are the most prominent and perhaps most visible of the policing tools used to respond to encampments. They are a powerful weapon against the survival spaces of unsheltered people for a number of reasons: they are often enforced informally by low-level agents with little accountability, and they are by their nature designed to target the mundane presence of people and things in public space. Municipalities often invoke provincial trespass legislation to enforce bylaws against encampment residents. The power to invoke trespass laws and issue trespass notices is rooted in a government's ownership of public spaces such as parks. However, public spaces cannot be understood as akin to private property no matter who owns them. Further, cities have discretion about whether and how to enforce such bylaws. Therefore, it is important to understand that governments could choose to prioritize upholding the rights of encampment residents to safety, security, and human dignity by responding to encampments without relying on policing and punitive or exclusionary measures.

We also note that the Government of Canada could provide an example of the right to housing for encampments located on federal land, such as CRAB Park in Vancouver. In so doing, it could operationalize both the *National Housing Strategy Act* and the Protocol.

2. Municipal Governance & Interjurisdictional Responsibilities

In adopting a rights-based approach to encampments, federal and provincial governments have an obligation to provide funding and services that offset the disproportionate impact faced by municipalities in addressing the housing crisis and the existence of encampments. This includes short-term options, such as investments in modular housing and suitable shelter spaces, and longer-term investments in social and affordable housing.

While municipalities largely have primary jurisdiction over encampments, they often lack the resources and competencies to adequately address the underlying structural causes driving homelessness and encampments (e.g., unaffordability, dwindling housing supply for low- and even middle-income households, and higher demand). For cities to adequately address and eliminate homelessness through prevention measures and by transitioning those living in encampments into permanent, adequate housing, consistent with their human rights obligations, they will undoubtedly need greater cooperation with and support from other levels of government. In relation to the federal government, this includes the urgent adaptation and expansion of the Reaching Home and Rapid Housing Initiative to provide better long-term shelters and permanent housing options.

Municipalities and other stakeholders across the country have increasingly employed not only legal powers but “soft powers” to negatively characterize encampment residents and mischaracterize the realities experienced by people living in encampments. In doing so, they shift attention away from their human rights obligations and individualize the systemic failure to realize the right to housing.

Municipalities often cite health, safety, and fire concerns as reasons to dismantle encampments. These concerns are rarely informed by the lived experience of encampment residents, and the threat of eviction is inconsistent with a harm reduction approach to health, safety, substance use, or even fire safety. Encampment evictions, in fact, often undermine safety, with encampment residents displaced to increasingly insecure and unsafe situations where their needs and presence is made invisible.

In many cases encampment residents are asked (or forced) to go to shelters, many of which are unsuitable or inaccessible for some people experiencing homelessness (e.g., people who use drugs, couples, people with animals, people with mental health challenges). Shelters can expose individuals to various dangers, including infection, theft, and physical and sexual violence—which they may have been buffered from within encampments. Such forced relocation also undermines choice and self-determination. Shelters are also not housing and are by nature temporary. Indeed, most shelters do not offer daytime services, even in cold weather.

We urge the federal government to immediately require all recipients of federal funds directed at housing and homelessness, including municipalities, to adopt a rights-based framework in the enactment and enforcement of bylaws, policies, and other frameworks.

3. Ensure the Meaningful Participation of Encampment Residents

A rights-based approach requires meaningful and inclusive participation of people living in homelessness in the design and implementation of policies, programs, and practices that affect them.

Encampment residents are frequently perceived in the media and treated by the general public and decision-makers as non-citizens and as nuisances to public safety and public space. These perceptions have led to the widespread failure to meaningfully engage encampment residents in the development and implementation of the policies and practices affecting them.

Encampment residents are often acted upon without any form of consultation. They are rarely encouraged or supported to participate in informed decision-making or to direct decisions concerning their well-being, tenure, and belongings. Processes for decision-making about encampments are rarely transparent or clearly explained to encampment residents before actions are taken. Governments rarely provide legal information concerning human rights and the distinct rights of Indigenous peoples, creating barriers to informed consultation and meaningful engagement with encampment residents. Further, there are few (if any) processes to challenge decisions, propose alternatives, and voice priorities and needs where decisions are inappropriate, unresponsive, or harmful.

Meaningful participation must be mobilized to better understand encampment residents' perspectives, to promote their self-determination, and to respect their human rights, including the right to housing. People with lived experience and their advocates should be included at the table when governments consider housing, shelter, and other supports in place of encampments. The federal government must immediately prioritize the knowledge of those with lived experience with funding for unhoused people to assist with policy and program development.

4. Recognize the Distinct Rights of Indigenous Peoples

A rights-based approach requires governments to acknowledge Indigenous rights under the United Nations Declaration on the Rights of Indigenous Peoples, the Canadian Constitution, treaties, and case law. Governments should meaningfully engage all relevant Indigenous stakeholders and nations, as identified by Indigenous peoples themselves, in the development of policy approaches to encampments.

The issue of encampments in Canada is inextricably linked to historic and ongoing colonial practices that harm Indigenous peoples and contribute to housing inequities, including systemic discrimination and racism, broken treaty promises, dispossession of land and displacement, residential schools, intergenerational trauma resulting from disconnection from language and culture, and chronic underfunding of housing and social services for Indigenous communities. The ongoing impacts of colonization have resulted in higher rates of homelessness among Indigenous peoples across Canada, with research indicating that people living in encampments or “sleeping rough” are disproportionately Indigenous.

Governments have distinct obligations to Indigenous peoples grounded in historic or modern treaty relationships, Canadian constitutional law, and international law, all of which are relevant to encampments. These include responsibilities to respect, protect, and uphold the distinct rights of Indigenous Peoples at all levels of government. UNDRIP requires governments to obtain the free, prior, and informed consent of Indigenous peoples in all decisions that affect their socio-economic development.²²¹ Further, the duty to consult and accommodate Indigenous Peoples is enshrined in domestic law as set out by the Supreme Court in *Haida Nation*.²²² Canadian courts have recognized that the right to self-determination applies to urban Indigenous peoples and communities with respect to social programs and decisions that affect them.²²³ Therefore, while there is limited case law on the meaning of the duty to consult in this context, forced evictions of Indigenous people do not comply with the requirements for meaningful, good-faith consultation about and involvement in the development and delivery of social programs, nor are they consistent with the recognition of Indigenous self-determination in accordance with UNDRIP. In the context of specific encampments, relevant government actors will have legal duties to consult and engage with the current treaty holders as governments, as well as to regional Indigenous organizations, with policies and priorities related to housing and homelessness policy, and increasingly as housing developers and providers of both housing and homelessness programs.²²⁴

The current approach to encampments taken by many governments, including municipalities, fails to honour these obligations and address the particular rights, needs, and relationships of Indigenous encampment residents and local Indigenous nations. We urge the Government of Canada, and all other governments, including municipalities, to work with Indigenous people with lived experience of homelessness, Indigenous advocates, Indigenous-led organizations, Indigenous lawyers, and Indigenous legal scholars to ensure encampment responses reflects the specific intersecting legal, treaty, and human rights obligations applicable in a particular territory. This includes a recognition of Indigenous peoples' own processes and laws.

5. Address the Conditions within Encampments and Provision of Basic Services

A rights-based approach requires access to basic services, such as clean water, sanitation facilities, electricity, and heat.

Encampment residents frequently lack access to adequate water, sanitation, heating and cooling, and safety measures, which severely threatens their mental and physical well-being. While some cities provide basic services, such as toilet facilities and waste management systems, available research and information suggest that access to basic services remains

²²¹ See *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 295, UNGAOR, 61st Sess, Supp No. 49, UN Doc A/RES/61/295 (2007), arts 10, 11(2), 19, 28(1), 29(2), 32(2).

²²² *Haida Nation v British Columbia (Minister of Forests)*, 2004 3 SCR 511.

²²³ *Canada (AG) v Misquadis*, 2002 FCA 370; *Ardoch Algonquin First Nation v Canada (AG)*, 2003 FCA 473 at para 36.

²²⁴ See e.g., *Mississaugas of the New Credit First Nation*, "Trailblazers: The Mississaugas of the New Credit First Nation Strategic Plan" (September 2017) at 39, 48.

limited, unpredictable, or absent in many encampments and that services may be inconsistently established and removed.

In the absence of basic services, many encampments have self-organized to meet their basic needs and fill gaps in services (e.g., by establishing centralized tents for harm reduction supplies, water, or food). Encampment evictions frequently undermine these efforts and result in the loss or destruction of these resources and self-established mutual aid systems that meet basic needs. Unfortunately, cities across Canada have not only failed to directly provide basic services, they have made extensive efforts to prevent the provision of humanitarian aid to encampments by community groups and other allies, including through ticketing and the destruction of property.

We recommend that the federal government prioritize the provision of services to address basic needs, such as access to water and warmth, through the provision of funding and through examples on federal lands. Municipal governments' resistance to providing water, food, sanitation, and other critical resources to encampments during the COVID-19 pandemic stands in stark contrast to public health orders and evidence-based scientific advice from leading health experts, in addition to contravening human rights standards.

This report provides a greater understanding of what implementing a human rights-based approach to encampments should look like in Canada. We urge the Government of Canada—and all governments—to immediately operationalize the right to housing for encampment residents.

Conclusion

A different approach is needed to better respond to this humanitarian crisis and violation of people's human rights in Canada. A human rights-based approach to encampments is long overdue.

We applaud the Government of Canada for enacting the *National Housing Strategy Act*, including the recognition that the right to adequate housing is a fundamental human right in Section 4 of the Act. As demonstrated by this report and the case studies, encampment residents are both rights holders and have had their rights to housing violated through the forced evictions of residents from encampments and the lack of vital services. These evictions have not addressed the underlying problem: a lack of secure shelter, including social and affordable housing. Instead, punitive bylaws and trespass orders have exacerbated existing vulnerability and criminalized people's very existence.

Our research has found that governments are failing in their human rights obligations to encampment residents. To remedy the situation, the Government of Canada should:

1. **De-Centre Policing and Law Enforcement:** A rights-based approach to encampments requires that all governments, including the Government of Canada in relation to federal lands, end their practice of using trespass orders, bylaws, and policing to evict unhoused people from encampments. Bylaw offences should never be used to target the survival and subsistence activities of unhoused people, including the right to simply be present in public space.
2. **Intergovernmental Obligations:** In adopting a rights-based approach to encampments, the federal government has an obligation to provide funding and services that offset the disproportionate impact faced by municipalities in addressing the housing crisis and existence of encampments. This includes short-term options, such as investments in modular housing and suitable shelter spaces, and longer-term investments in social and affordable housing.
3. **Meaningful Participation:** A rights-based approach requires the meaningful and inclusive participation of people living in homelessness in the design and implementation of policies, programs, and practices that affect them. The federal government must immediately prioritize the knowledge of those with lived experience with funding for unhoused people to assist with policy and program development.
4. **Recognition of the Distinct Rights of Indigenous Peoples:** A rights-based approach requires governments to acknowledge Indigenous rights under the *United Nations Declaration on the Rights of Indigenous Peoples*, the *Canadian Constitution*, treaties and case law. The Government of Canada—and all governments—should meaningfully engage all relevant Indigenous stakeholders and nations, as identified by Indigenous peoples themselves, in the development of policy approaches to encampments. We remind the federal government of its responsibilities to respect, protect, and uphold the distinct

rights of Indigenous peoples, who are disproportionately represented in encampment populations.

5. **Access to basic services:** A rights-based approach requires access to basic services, such as clean water, sanitation facilities, electricity, and heat. The federal government must also prioritize the provision of services to address basic needs, such as access to water and warmth through the provision of funding and through examples on federal lands.

Through these five recommendations, we argue that the federal government must provide leadership in this crisis—both in relation to federal lands and in relation to funding. This is an opportunity for the federal government to proactively acknowledge its human rights obligations and ensure basic and fundamental rights are protected.

All governments are implicated by these recommendations and share responsibility for people's and communities' well-being, social inclusion, and the protection of their human rights. All encampment residents are rights holders.

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Appendix A: Judicial Responses to Encampments

In this section, we review the encampment cases from both before the pandemic and during the pandemic. The pre-pandemic era can be divided into three eras: early cases, the turning point in *Victoria (City) v Adams*, and the subsequent cases that built on and distinguished themselves from *Adams*. We will also review the government policies that have defined the pandemic era, drawing out general trends as well as outliers which convey unique insights.

It is important to note that many encampment cases that come before the courts are determined at a preliminary stage, such as on an injunction application. In a successful injunction decision, enforcement of bylaws can proceed even though the merits of Charter-based arguments have not been heard or determined at trial. The results of these hearings effectively determine the outcome on the ground because an encampment is evicted or is allowed to stay until sufficient housing has been offered. These decisions mean the municipality has successfully argued that they would suffer irreparable harm, or that the balance of convenience favours the enforcement of the bylaw. Thus, we suggested treating claims by municipal governments that bylaws are valid based on the granting of an injunction with caution.

A. Court Cases on Encampments Pre-Pandemic

Early Cases: Mickelson and Sterritt

Canadian case law dealing with encampments began in 2003 with two British Columbian cases decided within less than two weeks of each other.²²⁵ The plaintiff in both was the Vancouver Board of Parks and Recreation, which was seeking court orders to evict multiple encampment residents from Thornton Park in *Vancouver Parks Board v Mickelson* and Portside Park in *Vancouver Board of Parks and Recreation v Sterritt*.²²⁶ While these cases have been largely overlooked afterward, they nonetheless set the stage for judicial treatment of encampments. Cases going forward would continue to focus on injunctions, municipal bylaws, and the infringement of Charter rights.

In *Mickelson* the Board sought a declaration that the defendants had violated section 11 of the city's *Parks Control Bylaw* and committed trespass, as well as a permanent injunction against the encampment residents from "constructing, placing or maintaining structures in the park" and an

²²⁵ There are earlier Canadian cases dealing with protest occupations which reference homelessness, and a 1939 case involving federal relief camps established during the Great Depression which were intended to in part address homelessness. There is also *Vancouver (City) v Maurice*, 2002 BCSC 1421, though this was described at the time as a squat or protest rather than an encampment, and the reasoning is thinner and less influential than the cases of the following year. Therefore, we see the examined cases as the start of the current line of jurisprudence.

²²⁶ *Vancouver Parks Board v Mickelson*, 2003 BCSC 1271 [*Mickelson*]; *Vancouver Board of Parks and Recreation v Sterritt*, 2003 BCSC 1421 [*Sterritt*]. It is unclear why it is listed as the Parks Board in one style of cause and the Board of Parks and Recreation in the other; the headnote for both cases lists it as the Vancouver Board of Parks and Recreation.

interlocutory mandatory injunction requiring them to remove their structures.²²⁷ The judge found for the Board and applied the leading injunction test from *RJR-MacDonald*. Notably, it was held that the Board would “suffer irreparable harm as [they] cannot be properly compensated in damages for the violation of the bylaw.”²²⁸ The argument claiming infringement of Charter rights was largely dismissed, seemingly in part because the defendants did not file a statement of defence.²²⁹ That said, the decision to apply the *RJR-MacDonald* injunction test rather than the less onerous *Maple Ridge (District) v Thornhill Aggregates Ltd*²³⁰ because Charter rights were raised would prove influential on future decisions. Under the *Thornhill* test, the municipality would only have to establish a clear violation of the bylaw and, outside of exceptional circumstances, an injunction would be granted. The *RJR-MacDonald* test requires a three-part analysis that considers whether there is a serious issue to be tried, whether the party seeking the injunction would suffer irreparable harm if it was not granted, and which party the balance of convenience favours, in light of the public interest at stake.

In *Sterritt*, the Board sought an interlocutory mandatory injunction requiring the defendants to remove their structures and belongings from Portside Park.²³¹ Meiklem cites *Mickelson* and noted the nearly identical circumstances, adopted the reasoning, and issued a nearly identical injunction and prohibition (despite the Board seemingly not having made an identical application).²³² Notably *Sterritt* expressly discusses the safety, orderliness, and cleanliness of the encampment as well as a significant portion of the defendants being Indigenous, factors that would emerge as significant in later cases.²³³

The Turning Point: Victoria (City) v Adams

The landmark decision in *Victoria (City) v Adams* has shaped the cases that have followed, including those decided during the pandemic. In October 2005, an encampment of roughly 70 residents in Cridge Park became the target of a City of Victoria injunction application. The City sought an interlocutory injunction against the residents loitering and “taking up temporary abode overnight” in the park.²³⁴ Though the injunction was granted and the encampment disbanded, the residents opposed the injunction in court and a trial was required.²³⁵ The British Columbia Supreme Court found in favour of the defendants. Justice Ross’ decision found sections of the municipal *Parks Regulation Bylaw* and the *Streets and Traffic Bylaw* had breached the defendants’ section 7 rights to life, liberty and security of the person and were not saved under section 1 of the Charter. It declared the infringing sections of the bylaws “of no force and effect insofar and only insofar as they apply to prevent homeless people from erecting temporary shelter.”²³⁶ Though *Adams* was not hugely dissimilar from *Mickelson* or *Sterritt* in

²²⁷ *Mickelson*, *supra* note 226 at para 1.

²²⁸ *Ibid* at paras 7, 25.

²²⁹ *Ibid* at paras 27, 32.

²³⁰ [1998] BCI No 1485 at para 9, 162 DLR (4th) 203 (BCCA).

²³¹ See *Sterritt*, *supra* note 226 at para 1.

²³² See *ibid.* at paras 6, 11–12.

²³³ See *ibid.* at paras 2–3, 6–7.

²³⁴ *Victoria (City) v Adams*, 2008 BCSC 1363 at paras 7–10 [*Adams I*].

²³⁵ See *ibid.* at paras 11–14.

²³⁶ *Ibid* at para 239.

facts, the defendants' section 7 Charter arguments were fully argued and were thus considered far more comprehensively than in either of the earlier cases. This included acutely framing the issue around the shortfall of shelter beds relative to the number of people experiencing homelessness, such that, for many, camping outside was demonstrably their only option.²³⁷ Finally, there was the willingness and ability to persist in challenging the city in court for over four years and in funding and participating in a full hearing of the merits.

The City appealed to the provincial court of appeal, which upheld the trial decision but modified the declaration to narrow its application.²³⁸ The Court of Appeal's 2009 decision declared the bylaws "inoperative insofar and only insofar as they apply to prevent homeless people from erecting temporary overnight shelter in parks when the number of homeless people exceeds the number of available shelter beds in the City of Victoria."²³⁹ This revision of the declaration has significantly limited the circumstances to which it could be applied, as the Court of Appeal decision binds all other BC courts in future cases. As we discuss below, the link between shelter availability and the right to erect temporary shelter is one of the most enduring features of the case law both within and outside BC.

Distinguishing from Adams: Occupy, Shantz, Adamson, and Beyond

Following *Adams*, multiple encampment cases arose involving the Occupy movement. Two of them cited *Adams*, including the Ontario decision *Batty v City of Toronto*, but these were ultimately distinguished given the Occupy encampments engaged different Charter rights than the encampment in *Adams*.²⁴⁰ The outcome for a homeless encampment in *Vancouver Board of Parks and Recreation v Williams* hewed closer to *Mickelson* and *Sterritt*, in part because the judge in *Williams* seemed to accept that Vancouver had sufficient capacity to shelter the encampment residents, unlike in *Adams*.²⁴¹ Two lengthy cases would follow, each resulting in multiple decisions: *Abbotsford (City) v Shantz* and *British Columbia v Adamson*. These decisions confirmed that the *RJR-MacDonald* injunction test applies where Charter issues are raised.

The first *Shantz* decision in 2013 granted an injunction evicting the encampment residents and prohibiting them from lighting fires and trespassing. Notably the judge did discuss the issues with the local shelters and expressed concern over the tactics used in clearing encampments.²⁴² The second decision in 2015 resulted from the city seeking a permanent injunction against the defendants as well as damages against Mr. Shantz, an activist associated with the BC/Yukon Drug War Survivors group supporting the camp. This case substantiated the allegations that chicken manure and pepper spray had been used by City employees during evictions²⁴³ and provided an expansive analysis of how the city bylaws against camping affected Charter rights under sections 2, 7, and 15.²⁴⁴ The court held that only section 7 was violated and that it was not

²³⁷ See *ibid.* at paras 37–66.

²³⁸ See *Victoria (City) v Adams*, 2009 BCCA 563 at paras 160–166 [*Adams II*].

²³⁹ *Ibid.* at para 166. Underline added to emphasize the Court's adjustments.

²⁴⁰ See *Batty v City of Toronto*, 2011 ONSC 6862 at note 17. See also *Victoria (City) v O'Flynn-Magee*, 2011 BCSC 1647 at paras 41–42.

²⁴¹ See *Vancouver Board of Parks and Recreation v Williams*, 2014 BCSC 1926 at paras 55–57.

²⁴² See *Abbotsford (City) v Shantz*, 2013 BCSC 2612 at paras 20–53.

²⁴³ See *ibid.* at paras 100, 107–115.

²⁴⁴ See *ibid.* at paras 146–236.

saved under section 1, as the bylaws were not minimally impairing.²⁴⁵ In so doing, the court clarified that the Charter did not create positive obligations with respect to housing and rejected homelessness as a protect ground under the Charter’s section 15 equality rights protection, relying on the *Tanudjaja* decision of the Ontario Court of Appeal.²⁴⁶

Adamson uniquely involved the provincial government, given that the encampment at issue was located on the green space of a provincial courthouse in Victoria. The encampment was formed in November 2015, with the province seeking an injunction in March 2016 after attempts to disperse residents through the *Trespass Act* and the *Fire Services Act* failed to fully clear the encampment. The province argued against the *RJR-MacDonald* test in favour of the *Thornhill* test, but the court rejected this deviation from *Williams, Shantz* and *Mickelson*.²⁴⁷ The injunction was denied, with Hinkson (who also decided *Shantz* [2015]) challenging the near-presumption that the government would suffer irreparable harm from allowing encampments to persist, as well as comprehensively exploring the benefits of encampments, including improved health, access to services, safety of persons and possessions, and sense of community, and finding the balance of convenience favouring the residents.²⁴⁸ The decision also noted that—as in *Adams*—the number of people experiencing homelessness continued to exceed shelter spaces, meaning that clearing the encampment at the courthouse would simply result in the same issues “migrat[ing] to other areas in the City of Victoria.”²⁴⁹ A second decision by Hinkson in July 2016 granted an injunction against the same encampment, finding that the province had sufficiently increased the number of alternative housing spaces available and that conditions in the encampment had worsened in the intervening months, increasing the costs incurred by the province and the city and decreasing the benefits gained by the encampment residents.²⁵⁰

The remaining British Columbia encampment cases between 2017 and 2020 largely maintained the principles set by prior cases, being determined primarily on factual circumstances already explored rather than novel facts or reasoning. Of note are two cases which dealt with the impacts of encampment residents being rehoused. A dozen former encampment residents from *Adamson* successfully challenged a restrictive visitor policy imposed at the Johnson Street Community Housing Project before the Residential Tenancy Branch. The operators, contracted by BC Housing, applied for judicial review of the Branch’s decision, which was upheld as reasonable and procedurally fair.²⁵¹ In the aftermath of *Nanaimo (City) v Courtoreille* (2018), municipal zoning issues arose around properties purchased to house the encampment residents. The court held that Crown immunity protected the governments and their agents in bypassing the zoning requirements.²⁵² Finally, we saw another protest encampment case considered in Saskatchewan in 2018 where *Shantz* was cited as an example of how “societal interests” and “the plight of the homeless” could be reconciled, though homelessness and

²⁴⁵ See *ibid.* at paras 237–247.

²⁴⁶ See *ibid.* at paras 148, 177, 231–234.

²⁴⁷ See *British Columbia v Adamson*, 2016 BCSC 584 at paras 23–35.

²⁴⁸ See *ibid.* at paras 54–59 and 125–179.

²⁴⁹ *ibid.* at paras 64–73 and 184–185.

²⁵⁰ See *British Columbia v Adamson*, 2016 BCSC 1245.

²⁵¹ See *PHS Community Services Society v Swait*, 2018 BCSC 824.

²⁵² See *Buechler v Island Crisis Care Society*, 2019 BCSC 1899.

section 7 rights were not issues in the decision. That decision ordered the encampment be cleared.²⁵³

B. Court Cases on Encampments in the Pandemic Era

Several cases have been brought before courts in Ontario and British Columbia since the start of the pandemic in March 2020: the Ontario cases *Sanctuary et al. v Toronto (City) et al.*, *Black et al. v City of Toronto*, and *Poff v Hamilton (City)*, and the British Columbia cases *Bamberger v Vancouver (Board of Parks and Recreation)*, *Prince George (City) v Stewart*, and *Vancouver Fraser Port Authority v Brett*. Quebec has also seen a major decision on homelessness in the pandemic with *Clinique Juridique Itinérante c. Procureur Général du Québec* in 2021. These cases have made novel advancements even where they have not succeeded in protecting encampments.²⁵⁴

Sanctuary involved two decisions in which a coalition of advocacy groups initially pursued an injunction prohibiting the City from operating shelters which did not adhere to rules surrounding distancing of beds; in May 2020, the motion was adjourned as the two sides composed an Interim Settlement Agreement which required regular reports to the coalition.²⁵⁵ The Agreement acknowledged encampments, noting that new spaces opened to accommodate encampments residents must also meet distancing standards. In June, the City claimed to have reached compliance with the agreement, but the coalition alleged they had breached the terms and sought an order declaring as much.²⁵⁶ Prior to the court's decision on the Agreement, it ruled on a refusals motion: City witnesses had refused to provide answers to certain questions concerning records of how physical distancing had been implemented, the shelter system's overall capacity, internal processes and policies, and more.²⁵⁷ The motion was granted in part, with some of the refusals being found to be proper.²⁵⁸

The court ultimately found the City had breached the Interim Settlement Agreement and was obligated to continue reporting to the coalition on its progress in implementing physical distancing across their shelters.²⁵⁹ The City acknowledged certain sites were not fully compliant but argued the demands of the pandemic should be taken into account when assessing if they had exerted their best efforts. The court held that “the pandemic context ... cuts both ways” and raised the need for accountability, especially in regards to the already-vulnerable homeless

²⁵³ See *Dubois v Saskatchewan*, 2018 SKQB 241.

²⁵⁴ It is worth noting that, though it did not culminate in a major decision on the issue, in Hamilton the combined efforts of Keeping Six, HAMSMaRT, the Hamilton Community Legal Clinic, and Wade Poziomka successfully won a temporary injunction against an encampment clearing in July/August 2020: “Community updates” (2020), online: *Hamilton Justice* <hamiltonjustice.ca/en/encampment-advocacy/>. The City reached an agreement with these groups to end the injunction in October: Dan Taekema & Samantha Craggs, “Court battle over Hamilton tent encampments expected to drag on for days” (19 October 2021), online: *CBC* <cbc.ca/news/canada/hamilton/encampments-1.6215671>.

²⁵⁵ See *Sanctuary et al. v Toronto (City)*, 2020 ONSC 6207 at paras 6–7.

²⁵⁶ See *ibid.* at paras 8–10

²⁵⁷ See *ibid.* at paras 88–136.

²⁵⁸ See *ibid.* at paras 145–147.

²⁵⁹ See *ibid.* at paras 214–216.

population.²⁶⁰ Despite concerns arising from internal communications, the court did not find that the City had acted in bad faith.²⁶¹ Although limited, the *Sanctuary* decision was a victory in terms of accountability, and it revealed the shortcomings of the City's shelters in responding to the pandemic, which is important given the continued efforts to move encampment residents into shelters and housing.

In *Black*, 14 Toronto encampment residents applied for an injunction preventing the City from enforcing bylaws (after the moratorium on clearing encampments was lifted) that prohibit camping and structures in parks. The residents argued enforcement would violate their section 7, 12 and 15 Charter rights.²⁶² The injunction was denied on application of the *RJR-MacDonald* test, with the application failing on the third portion, the balance of convenience, which examines the relative harm to the parties.²⁶³ Unlike *Adams*, *Shantz*, or *Adamson* the decision in *Black* did not hinge only on availability of shelter spaces, but the court did hear the evidence before it established there was sufficient space.²⁶⁴ This difference stems in part from the novelty of the application. Here the injunction was sought by (rather than against) encampment residents to prohibit enforcement *during the pandemic*. It was not a broader challenge to the validity of the bylaws themselves. Overall, the court's acceptance of there being sufficient shelter space and outreach without further examination, despite advocates' claims to the contrary, is perhaps the most unfortunate aspect of the decision, implying that the threshold for establishing sufficient shelter capacity is low. Notably the court also imported reasons from the *Batty* case in the context of section 2 freedom of expression rights, though it did consider the BC decisions in *Adamson* and *Abbotsford*. As noted in *Stewart*, discussed below, encampments established for shelter by homeless individuals "must be distinguished" from encampments motivated by expressive activity and advocacy for economic and political change.²⁶⁵ Analysis of the limits of section 2(b) expressive rights should not be used to withhold protection where "one of the most basic and fundamental human rights guaranteed by our Constitution" is at stake.²⁶⁶

Despite the application being rejected, the reasoning in *Black* is notable in its treatment of equality-based arguments. The BCSC in *Adams* accepted the encampment residents had raised a serious issue to be tried regarding section 15 of the Charter and the *Ontario Human Rights Code*, specifically noting the disproportionate number of Indigenous and gender-diverse people within the encampment population.²⁶⁷ The test for a serious issue to be tried is a low bar and does not indicate the likelihood of success, particularly given the potential of a Charter violation to be saved by section 1 reasonable limits, but it does present an opening to explore section 15 further than earlier cases had. Further, the court specifically refused to apply the section 15 analysis from *Tanudjaja v Canada* rejecting "homelessness" as analogous ground under

²⁶⁰ *Ibid.* at paras 68–75.

²⁶¹ See *ibid.* at paras 142–159.

²⁶² See *Black et al. v City of Toronto*, 2020 ONSC 6398 at paras 1–2.

²⁶³ See *ibid.* at paras 76–150.

²⁶⁴ See *ibid.* at paras 86–99.

²⁶⁵ *Prince George (City) v Stewart*, 2021 BCSC 2089 at para 83 [*Stewart*].

²⁶⁶ *Adams II*, *supra* note 238 at para 75.

²⁶⁷ See *Adams I*, *supra* note 234 at paras 60–61.

section 15 in the context of encampments.²⁶⁸ Future claims could be based directly in other grounds such as Indigeneity, gender, race, or disability, in addition to revisiting the question of whether homelessness is an analogous ground.²⁶⁹

The 2020 *Brett* decision from Vancouver illustrates the continuity of encampments over years despite clearings and the continued involvement of activists.²⁷⁰ Uniquely, because the encampment was on Port Authority lands, the case was based on common law trespass or alternatively the *Port Authorities Operations Regulations* under the *Canada Marine Act*, rather than a breach of the provincial *Trespass Act* or municipal bylaw.²⁷¹ Nevertheless, *RJR-MacDonald* was applied. Irreparable harm was established by the fact that encampment residents had “no apparent means of indemnifying the plaintiff” for any costs resulting from their continued presence and found the balance of convenience favoured the Port Authority, with much of the defendants’ evidence being dismissed as conjecture.²⁷²

One year after *Brett* was decided, encampment residents challenged an eviction order brought against residents in the CRAB Park encampment, adjacent to the lands considered by the court in *Brett*. In *Bamberger*, the residents did not raise a section 7 claim, focusing instead on procedural issues about the lack of consultation with residents before the orders and questions about the reasonableness of the Parks Board’s decision. However, the court was live to the section 7 issues, which informed the conclusion that residents had a right to notice and an opportunity to be heard before being ordered to leave. The court also decided that the Parks Board was unreasonable, because it did not have accurate information regarding the availability of alternative housing for those living in CRAB Park. On these bases, the court set aside the order prohibiting overnight shelter at a Vancouver park and remitted the decision for reconsideration.²⁷³ Though the order being challenged was implemented during the third wave of the pandemic, the pandemic itself was not an independent consideration for the court. Rather, the petition succeeded because the general manager did not have a reasonable factual basis for concluding that there were sufficient and appropriate indoor options for those seeking shelter at the park in question.²⁷⁴

In Quebec, *Clinique Juridique Itinérante* challenged the provincial curfew imposed on January 6, 2021 (décret gouvernemental 2-2021) on the grounds that it infringed on the section 7 Charter

²⁶⁸ *Ibid* at para 62.

²⁶⁹ See *Tanudjaja ONCA*, *supra* note 36 at para 37.

²⁷⁰ Specifically, the plaintiff Christine Brett was also involved in the encampment case *Saanich (District) v Brett*, 2018 BCSC 1648 and an order made concerning an encampment in *Duncan (City) v Brett* [2017] BCSC WL10398269. The decision in *Brett* (2020) notes that *Williams* granted an injunction against an encampment in Oppenheimer Park, which eventually reformed and persisted until a Ministerial Order was made on April 24, 2020, evacuating the encampment. Oppenheimer Park is a kilometre southwest of 101 West Waterfront Road, where the encampment at issue in *Brett* was formed on May 8, 2020. See *Vancouver Fraser Port Authority v Brett*, 2020 BCSC 876 at paras 10–15, 28–31 [*Brett*].

²⁷¹ See *Brett*, *supra* note 270 at paras 36–41.

²⁷² *Ibid.* at paras 102–115, 68–75.

²⁷³ See *Bamberger v Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49 at paras 63–64.

²⁷⁴ See *ibid.* at para 150.

rights (as well as provincial charter rights) of people experiencing homelessness.²⁷⁵ Having been decided after the peak of the second wave, the decision took into account the outbreaks at shelters as a valid reason for people to not utilize them, on top of the issues raised about shelters denying admittance based on various factors.²⁷⁶ The court found for the applicants, concluding that all elements of the *RJR-MacDonald* test had been satisfied, with the balance of convenience section noting police enforcement could be unpredictable and the exemption would apply to a small percentage of the overall population.²⁷⁷ Though not directly related to encampments, the curfew came within a month of Montréal's Notre-Dame Street encampment being cleared by police.²⁷⁸

The lack of sufficient and appropriate indoor options was also an important factor in *Prince George (City) v Stewart*. This case involved a municipality seeking two statutory injunctions (and a police enforcement order) against the occupants of an encampment. Though the application was allowed in part and one encampment site was permitted to be cleared, the municipality was unable to establish the other encampment site contravened the zoning bylaw due to a lack of viable alternatives.²⁷⁹ The court held the existing shelter beds were not "low barrier" enough to provide for accessibility.²⁸⁰ For example, the shelters imposed eligibility criteria which often excluded those with substance abuse issues or mental health issues from accessing these spaces. Other barriers mentioned by the court included a lack of identification and lack of bank accounts or records.²⁸¹ Notably, Chief Justice Hinkson briefly considered the role of the pandemic in contributing to the lack of normally accessible shelter spaces.²⁸² The decision is also important because the judge considered both the climate and the context of colonization. Taking notice of the ongoing impacts of colonization such as residential schools, the judge noted the disproportionate number of Indigenous individuals in the encampment. Several times in the decision the judge also noted the cold climate and the lack of both suitable housing and daytime facilities. This may imply that Charter protections regarding sheltering at nighttime may also be extended to daytime situations where the cold weather is a significant threat. In a second injunction application in *Prince George (City) v Johnny* regarding the same encampment, the City argued it had satisfied the preconditions set out in *Stewart*. The application was dismissed for similar reasons, the court finding there was still a lack of "low-barrier" shelter space accessible for some encampment residents, as well as issues with the limited daytime facilities.

²⁷⁵ See *Clinique*, *supra* note 45 at para 9.

²⁷⁶ See *ibid.* at para 10.

²⁷⁷ See Isaac Olson, "Forced out of Montreal encampment, disbanded homeless community spreads out into city" (9 December 2020), online: *CBC* <[cbc.ca/news/canada/montreal/homeless-montreal-shelters-encampment-1.5834917](https://www.cbc.ca/news/canada/montreal/homeless-montreal-shelters-encampment-1.5834917)>.

²⁷⁸ See Sidhartha Banerjee, "Montreal authorities clear out Notre-Dame Street homeless camp over safety concerns" (7 December 2020), online: *Global News* <globalnews.ca/news/7505640/notre-dame-street-homeless-camp-evictions-begin/>.

²⁷⁹ See *Stewart*, *supra* note 265 at para 84.

²⁸⁰ *Ibid.* at para 81.

²⁸¹ See *ibid.* at paras 67–68, 73.

²⁸² See *ibid.* at para 73.

Poff v Hamilton (City) is another example of an injunction application brought by encampment residents. This case followed on an earlier successful application in August 2020, which had led to a negotiated settlement and a Bylaw Enforcement Protocol agreed to by advocates and City Council. When the City voted to repeal the Protocol one year later, encampment residents brought a Charter challenge and another application requesting the City be restrained from enforcing anti-camping bylaws until the Charter case could be fully heard and decided on the merits. The court refused to grant the injunction, finding the five residents bringing the application were no longer in encampments and could not establish irreparable harm. Notably the court refused to consider the broader homeless population in this analysis. Following *Black*, the court also imported analysis from the protest encampment context in *Batty* without acknowledging the very different Charter rights at stake under section 7. Here the court rejects the arguments that shelters had high barriers to entry and emphasized the “choice” to remain in encampments.

This signals that courts in Ontario are taking a markedly different approach than those in BC, emphasizing the property rights of municipalities without consideration of the social context of encampments, substance use, the ongoing impacts of colonialism, and systemic discrimination against Black and Indigenous people in housing and policing. These cases also demonstrate that the unique facts of each court action are important, rather than broader questions of housing availability for vulnerable people.