



Overview of Encampments Across Canada

A Right to Housing Approach—Executive Summary

Alexandra Flynn, University of British Columbia

Joe Hermer, University of Toronto

Caroline Leblanc, Université de Sherbrooke

Sue-Ann MacDonald, Université de Montréal

Kaitlin Schwan, Women's National Housing & Homelessness Network

Estair Van Wagner, York University

Contributors:

Sydney Chapados

Sam Freeman

Palmira Lutoto

Neil MacIsaac

Office of the Federal Housing Advocate, Canadian Human Rights Commission

344 Slater Street, 8th Floor, Ottawa, Ontario K1A 1E1

Toll Free: 1-888-214-1090 | **TTY:** 1-888-643-3304 | **Fax:** 613-996-9661 | www.housingchrc.ca

This report is part of a series of reports on encampments commissioned by the Office of the Federal Housing Advocate (OFHA). The other reports in the series can be found on the OFHA website and on the Homeless Hub at homelesshub.ca/OFHA.

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.

Le présent document existe également en version française sous le titre, Rapport de synthèse sur les campements au Canada: Une approche axée sur le droit au logement - Résumé. Elle est disponible sur le site du Bureau de la défenseure fédérale du logement et sur le Rond-point de l'itinérance.

How to cite this report:

Flynn, A., Hermer, J., Leblanc, C., MacDonald, S-A., Schwan, K., Van Wagner, E. 2022. *Overview of Encampments Across Canada—Executive Summary*. The Office of the Federal Housing Advocate.

© Her Majesty the Queen in Right of Canada,
represented by the Canadian Human Rights Commission, 2022.

Catalogue number: Pending

ISBN: Pending

Table of Contents

Overview of Encampments Across Canada	1
Introduction	4
Background on the Regulation of Encampments	4
The Role of Municipal Bylaws in Encampments	8
A National Protocol on Homeless Encampments in Canada	11
Principle 1: Recognize Residents of Homeless Encampments as Rights Holders	11
Principle 2: Meaningful Engagement and Effective Participation of Encampment Residents	12
Principle 3: Prohibition of Forced Evictions of Encampments	12
Principle 4: Explore All Viable Alternatives to Eviction	12
Principle 5: Ensure that any relocation is human rights compliant	13
Principle 6: Ensure encampments meet basic needs of residents, consistent with human rights	13
Principle 7: Ensure Human Rights-Based Goals and Outcomes and the Preservation of Dignity for Encampment Residents.....	13
Principle 8: Respect, Protect, and Fulfill the Distinct Rights of Indigenous Peoples in All Engagements with Encampments	14
Recommendations: Adopting a Rights-Based Approach to Encampments	14
1. De-Centre Policing and Law Enforcement	14
2. Municipal Governance & Interjurisdictional Responsibilities	15
3. Ensure the Meaningful Participation of Encampment Residents	15
4. Recognize the Distinct Rights of Indigenous Peoples	15
5. Address the Conditions within Encampments and Provide of Basic Services	16
Conclusion	17

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.

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.

Even while officials acknowledge the lack of available housing, enforcement measures such as ticketing, arrests, 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 inter-jurisdictional 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*.

This executive summary is part of a series of reports about encampments in Canada that includes the full *Overview of Encampments Across Canada* as well as five case studies focused on different regions, which are summarized in the second section of this document. Here, we provide a background on the regulation of encampments, present a human rights framework for housing and encampments, and provide specific recommendations to the federal government..

Background on the Regulation of Encampments

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 occupy public space as a form of expression (as in protest occupations), which are likely to engage different rights and obligations.¹ We also acknowledge that the rise of homelessness and encampments are grounded in the historical dispossession of Indigenous peoples' land.

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.² Up to the late 2000s, municipalities (by then the primary social housing providers) largely focused on crisis response such as shelters and drop-in programs, and policing unhoused populations through anti-panhandling laws.³ 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.⁴ In 2017, the federal government published its Strategy with legislation arriving the following year enshrining the right to housing in federal law.⁵ No provincial frameworks have yet expressly adopted the right to housing.

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, but also a response to concerns about shelters, and sites of safety, stability, and access to supports.⁶ Other factors include substance abuse, mental health issues, unemployment, and domestic turmoil.⁷ Some residents also speak positively about the sense of community the encampment offered through internal rules and obligations to help each other.⁸

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

¹ 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.

² See Stephen Gaetz et al, *The State of Homelessness in Canada 2016* (Toronto: Canadian Observatory on Homelessness Press, 2016) at 12.

³ See *ibid* at 13. See e.g. *Safe Streets Act*, 1999, S.O. 1999, c. 8.

⁴ See Gaetz et al, *supra* note 11 at 13-14.

⁵ 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.

⁶ See Herring, *supra* note 2 at 296-297, 306.

⁷ 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.

⁸ See *ibid* at 85-86.

communities; this marked a 14% increase over the 2016 count.⁹ 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).¹⁰ 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.

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.¹¹ On top of the factors listed above, the pandemic quickly reduced capacity at many shelters to properly implement distancing and isolation measures. Encampments proliferated in the spring and summer of 2020.¹² 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.¹³ 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 to respect the dignity of encampment residents when working with them to secure adequate affordable housing.¹⁴

Government policy responses tend to fall within the following four strategies: abandonment, emergency relief, heightened law enforcement, and housing-led responses.¹⁵ 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

⁹ See *Ibid.*

¹⁰ 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>.

¹¹ 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.

¹² 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>.

¹³ 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?cache=yes%3FclipId%3D89830%3FclipId%3D89563>.

¹⁴ See Farha & Schwan – The Shift, *supra* note 1.

¹⁵ See *ibid* at 359-361.

offences to fines for violating statutes and bylaws.¹⁶ Municipal and public transportation bylaw offences already disproportionately target people experiencing homelessness, and COVID-19 fines and distancing requirements had the same effects.¹⁷

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.”¹⁸

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*.¹⁹ 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.²⁰ Still, a recent court decision allowed a hearing to go ahead on human rights grounds, after the United Nations Human Rights Committee found that Canada violated its international commitments.²¹

Notably, the federal government’s housing commitments in the *National Housing Strategy Act* were based on the previously identified need to “implement housing rights progressively (i.e., over time and to the maximum of its available resources),” while acknowledging that future cases could clarify the “minimum core obligations” owed by governments.²² To date, neither the courts nor governments have explained what a “right to housing” means for those in encampments and the specific obligations of governments.

The right to housing included in the Government of Canada’s *National Housing Strategy Act* has also not been considered alongside municipal bylaws. To better understand how governments respond to encampments, the next section sets out the specific role of municipal bylaws, which

¹⁶ 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.

¹⁷ See *ibid* at 291. Skolnik only references anecdotal cases of fines being issued to people experiencing homelessness and notes that many courts have 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.

¹⁸ *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.

¹⁹ SC 2019, c 29 s 313, Preamble [*National Housing Strategy Act*].

²⁰ 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).

²¹ 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.

²² 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.

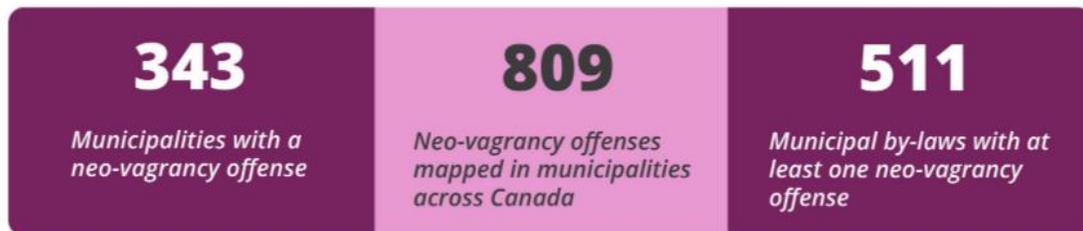
have been the main legal tool used to regulate encampments and their residents.

The Role of Municipal Bylaws in Encampments

1. *Municipal bylaws and the Regulation of Public Space*

Municipal bylaws have become a powerful instrument to be 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, use, and conduct of both objects and people. 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.

A national study carried out in 2021 mapped the extent to which these anti-homeless or “neo-vagrancy” bylaws now represent a concerning threat against the human rights of unhoused people.²³ 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.²⁴ 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.



When one includes provincial Safe Streets legislation in Ontario and British Columbia, 77% of Canadians live in a jurisdiction with an anti-homeless offence. During the pandemic, these laws played a major role in how cities responded to the increase in homeless encampments.

²³ See policinghomelessness.ca

²⁴ 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>>.

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.²⁵ These suspensions were largely temporary, and most cities resumed or continued clearings in the summer and fall.

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. 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.²⁶

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 claimed to enforce clearings over safety concerns.²⁷ Montréal Mayor Valerie Plante published an open letter highlighting the years-long negotiations between Quebec and Ottawa on funding under the National Housing Strategy.²⁸ This suggests that some cities would provide more outreach and support to encampments if greater, directed funding allowed.

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

The five case studies described below are included as part of this series of reports and cover much more than we can hope to summarize here.

a) Prince George, British Columbia (Joe Hermer)

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 *Stewart*, Justice Hinkson allowed the closing of The Splits encampment, but not Moccasin Flats, because he found that the City had

²⁵ See *Clinique juridique itinérante c Procureur général du Québec*, [2021] QCCS 182 at paras 11-15 [Clinique].

²⁶ 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-mmfwinnipeg-1.5516957](https://www.cbc.ca/news/canada/manitoba/homeless-camp-take-down-mmfwinnipeg-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)>.

²⁷ City of Winnipeg, *On 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.

²⁸ 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)>.

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, which was again denied in the latter case, *Johnny*. 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.

b) Vancouver, British Columbia (Alexandra Flynn)

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. 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 the orders, which were effectively attempts to evict residents from an encampment at CRAB Park, located on federal lands. Unlike in *Brett*, the court considered the *Charter* rights of those residing in the encampment, noting that since these rights 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.

c) Hamilton, Ontario (Estair Van Wagner)

Methods by which the City approached encampments during the pandemic 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. Evictions and displacement were common throughout the pandemic, despite variations in the process (ex., the Bylaw Enforcement Protocol, six-step plan).

Two legal cases relating to encampment evictions in the City of Hamilton were brought during the period from 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 from public spaces encampment residents 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 the case was unable to pass the three-step injunction test.

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

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 led to the undermining of grassroots organizations' attempts to provide necessities to encampment residents, such as water, waste removal, food, and hygiene systems.

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 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 between March 2020 and January 2022 are set out in these Quebec case studies, including seven in Montréal, and one each in Gatineau and Sherbrooke. The authors detail the specific bylaws used to evict residents, the manner in which residents resisted, and the effects of the evictions on residents.

Municipal responses are focused on the interests of officials rather than the needs of encampment residents, in particular the observation 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.

As these case studies make clear, an approach based on the enforcement of bylaws has not resolved the underlying issues that give rise to encampments or provided stable housing to encampment residents. Even where courts limit local governments from enforcing bylaws, encampment residents remain deeply vulnerable to evictions, insecurity, and stress. In the next section, we present eight core principles of a rights-based approach to encampments, as laid out in *A National Protocol on Homeless Encampments in Canada*.

A National Protocol on Homeless Encampments in Canada

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—a representation of the failure of governments in Canada to meet their obligations to realize this 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, security, and well-being.

This section sets out key national and international discourses related to homeless encampments and human rights. It is organized based on the eight principles outlined in *A National Protocol on Homeless Encampments in Canada (Protocol)* by Leilani Farha and Kaitlin Schwan.

Principle 1: Recognize Residents of Homeless Encampments as Rights Holders

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*.²⁹ States

²⁹ See Farha & Schwan – The Shift, *supra* note 1 at para 39.

should assist encampment residents in finding adequate, affordable housing, adopt policies to end homelessness, and improve residents' living conditions.³⁰

Principle 2: Meaningful Engagement and Effective Participation of Encampment Residents

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.³¹ 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 the programs and policies affecting them.³² The right to participate should be implemented at the earliest stage in any interactions between the state and encampment residents and in any policies made regarding encampments.³³

Principle 3: Prohibition of Forced Evictions of Encampments

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.³⁴ 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.³⁵ As stated in the United Nations 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 and requirements are provided or relocation measures have been put in place.³⁶

Principle 4: Explore All Viable Alternatives to Eviction

Evictions without adequate support or viable alternatives can have many negative consequences, such as poorer quality of life and traumatic psychological and emotional impacts that further disrupting the lives of people who are already in a situation of disadvantage.³⁷ In

³⁰ See *ibid* at para 41.

³¹ See Speer – mass incarceration, *supra* note 2 at 166.

³² See Farha & Schwan – The Shift, *supra* note 1 at para 42.

³³ 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.

³⁴ 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.

³⁵ See *General Comment No 7*, *supra* note 152 at para 4.

³⁶ See *General Comment No 7*, *supra* note 152 at para 2.

³⁷ 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.

addition, such actions create an adversarial relationship between people experiencing homelessness and law enforcement and governments.³⁸

Ultimately, the most appropriate alternative to eviction should be securing 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.³⁹

Principle 5: Ensure that any relocation is human rights compliant

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. 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.⁴⁰ States should adopt a human rights-based approach and ensure that encampments are safe and residents have access to resources and services.⁴¹ Moreover, encampments should be recognized as communities, and states should ensure meaningful engagement with encampment residents collectively and individually.

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.⁴² States should engage with encampment residents when planning and implementing measures to improve access to basic services and when deciding on the resources that are needed and how best to mobilize them.⁴³

Basic services include safe and clean drinking water, hygiene and sanitation facilities, fire safety, waste management, social supports, personal safety, food safety, harm reduction, and pest prevention. Access to them is not discretionary as 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.⁴⁴

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.⁴⁵ The right to privacy, dignity, integrity, and autonomy are fundamental to all human beings, but encampment residents are

³⁸ See Cohen et al, *supra* note 161 at 13.

³⁹ See Farha, *supra* note 119 at para 21.

⁴⁰ See Farha & Schwan – The Shift, *supra* note 1 at para 57.

⁴¹ See Report on encampments in Toronto, *supra* note 125 at 16.

⁴² See Farha & Schwan – The Shift, *supra* note 1 at para 61.

⁴³ See *ibid.*

⁴⁴ See *General Comment No 15*, *supra* note 189 at para 26.

⁴⁵ See Farha & Schwan – The Shift, *supra* note 1 at para 64.

often deprived of them.⁴⁶ States should adopt policies or laws that ensure that individuals enjoy their right to dignity and privacy.⁴⁷

Principle 8: Respect, Protect, and Fulfill the Distinct Rights of Indigenous Peoples in All Engagements with Encampments

When developing policies and plans for encampments, states must recognize their obligation to uphold both human rights in their decisions and engagements with Indigenous encampment residents.⁴⁸ As outlined in the *United Nations Declaration on the Rights of Indigenous Peoples Act*,⁴⁹ 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.⁵⁰

Recommendations: Adopting a Rights-Based Approach to Encampments

As this report has demonstrated, dismantling encampments, and evicting and displacing their residents does not lead to safer conditions for unhoused people, as they are often placed into increasingly insecure and unsafe situations. Instead, we recommend a rights-based transformation of government responses to encampments for all governments through the immediate adoption of the following five recommendations by the Government of Canada.

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.

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

⁴⁶ See Ferencz et al, *supra* note 124 at 34.

⁴⁷ 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.

⁴⁸ See *ibid* at para 68.

⁴⁹ SC 2021, c 14.

⁵⁰ *Ibid*, Preamble.

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, 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.

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 often acted upon without any form of consultation. They are rarely encouraged to participate in informed decision-making or to direct decisions concerning their well-being, tenure, and property. Processes for decision-making about encampments are rarely transparent or clearly explained to encampment residents before actions are taken.

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. However, 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 persons with lived experience of homelessness, Indigenous advocates, Indigenous-led organizations, Indigenous lawyers, and Indigenous legal scholars to ensure encampment responses reflect 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 Provide 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. 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. Unfortunately, cities across Canada have not only failed to directly provide basic services, they have gone to extensive efforts to prevent the provision of humanitarian aid to encampments by community groups and other allies, including through ticketing and 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.

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 rights holders who have had their rights to housing violated through forced evictions from encampments and from the lack of vital services. These evictions have not addressed the underlying culprit: a lack of secure shelter, including social and affordable housing. Instead, punitive bylaws and trespass orders have exacerbated existing vulnerabilities and criminalized people's very existence.

In operationalizing the rights-based framework in the *National Housing Strategy Act* and through the five recommendations detailed above, 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 their human rights obligations and ensure basic and fundamental rights are protected.