



Trespassing on the Right to Housing:

A human rights analysis of the
City of Toronto's response to
encampments during COVID-19

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Delaney McCartan, EJSC Student 2020-2021
Lauren Graham, EJSC Student 2020-2021
Dr. Estair Van Wagner, Associate Professor, Osgoode & EJSC Co-Director
Dr. Kaitlin Schwan, Visiting Scholar, Osgoode EJSC
Dr. Alexandra Flynn, Assistant Professor, University of British Columbia

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This report is dedicated to encampment residents and their allies, in Toronto and beyond.

Executive Summary

Toronto has a homelessness and human rights crisis

Over the last decade the homelessness and housing crisis has deepened in many cities across Canada, including Toronto. In 2019, the City of Toronto faced significant pressure to declare Toronto's homelessness and housing crisis a state of emergency.¹ Shortly afterward, the COVID-19 pandemic emerged.

COVID-19 exacerbated both the housing crisis and pressures on overburdened shelters across the city, contributing to an increase in encampments and their visibility during the pandemic. Many Toronto residents were unable to pay rent during this time and were evicted,² with data indicating there is insufficient affordable housing stock to meet the scale of housing insecurity or depth of poverty experienced across the city.³ Those experiencing homelessness or housing precarity faced deepening marginalization during the pandemic, including increased difficulty getting their basic needs met. Shelter spaces were limited and often subject to strict and/or deteriorating conditions, including COVID-19 outbreaks.⁴ The lack of social distancing in City of Toronto shelters and the inability to secure isolated COVID-19 sites has contributed, in part, to over 1300 people contracting COVID-19 during the first two waves of the pandemic. There were 38 subsequent hospitalizations and four deaths.⁵

In the wake of these conditions, homeless encampments have expanded during the pandemic. In part this has been because people felt unsafe in congregate shelters or because services had closed or reduced their hours. In the context of a global pandemic, encampments have thus become a key survival mechanism for Toronto residents who did not have access to adequate housing or safe shelter spaces.

Despite the important role that encampments play in the lives of some people who are unhoused, our research indicates that the City of Toronto's approach to encampments has continued to include policies, programs, and by-laws that criminalize and displace unhoused people. After a brief moratorium in 2020, the City of Toronto began to enforce parks by-laws that prohibit sheltering in parks. Trespass notices were issued, and the City began to evict residents and dismantle encampments. The City relocated some encampment residents indoors to newly acquired shelter

¹ See, e.g., Krystyn Wong-Tam & Gord Perks, "Declaring Toronto's Homelessness and Housing Crisis a State of Emergency" (January 20, 2019), online (pdf): <<https://www.toronto.ca/legdocs/mmis/2019/ph/bgrd/backgroundfile-123785.pdf>>.

² See, e.g., N. Ali, Y. Chan, F. Vahid Shahidi, and M. August, *Stop COVID Evictions! Rent Relief Now! A demand for social justice and public health*, (Keep Your Rent Toronto, 2021), online (pdf): <<https://static1.squarespace.com/static/5eb863c8122cea533e169834/t/5fc98b239c93c058c47ba9dc/1607043908077/S+topCOVIDevictions-Final.pdf>>.

³ See City of Toronto, "Social Housing Waiting List Reports," (2021), online: <<https://www.toronto.ca/city-government/data-research-maps/research-reports/housing-and-homelessness-research-and-reports/social-housing-waiting-list-reports/>>.

⁴ See, e.g., Muriel Draaisma, "Toronto reports COVID-19 outbreaks at 20 homeless shelters, over 300 cases, 1 recent death", *CBC News* (27 April 2021), online: <<https://www.cbc.ca/news/canada/toronto/toronto-shelters-in-outbreak-unhoused-people-one-death-covid-19-1.6003201>>.

⁵ See Appendix A for complete list of COVID-19 confirmed cases, hospitalizations, and deaths in the Toronto shelter system.

spaces and shelter-hotels, and in more rare cases residents were provided with housing. While some encampment residents agreed to relocate to homeless shelters, many did not, and some felt pressured or coerced to accept offers of these indoor spaces. Police or private security were frequently present when offers of indoor space were provided by City workers, and these offers were sometimes provided with little information and very short timelines. Many people have since returned to encampments from shelters and shelter-hotels because of COVID-19 outbreaks, safety and security concerns, and/or the need to be close to preferred supports and services. Others continued to feel safer outdoors until permanent housing could be offered and refused to leave the homes and networks of support they had established in encampments.

The City has refused calls to repeal or amend the by-law prohibiting sheltering in parks to address the reality that many people have no option but to live in encampments during the pandemic. Indeed, the City re-committed to enforcing these rules during the second and third waves of the pandemic. As a result, many encampment residents have been living under constant threat of eviction and criminalization, despite the scarcity of adequate, affordable housing options available to them. During the third wave of the pandemic, the City implemented one of the most aggressive series of encampment evictions to date. During the evictions of Lamport Stadium, Trinity Bellwoods, and Alexandra Park in June and July 2021, encampment residents and their housed allies experienced harassment and violence.⁶ Housing advocates and supporters of encampment residents were also targeted by police during the evictions and in the months following. Journalists, legal observers, and medics were told to leave and threatened with trespass charges and arrests if they did not comply.⁷ Multiple arrests were made, and as of December 2021 several people are still facing charges and fines related to the evictions.

Housing is not a privilege. It is a basic human right. Regardless of a person's housing status, the City of Toronto has an obligation to respect and uphold the right to housing for all people in Toronto, including those living in encampments. Police violence, penalization, and criminalization of unhoused people and housing advocates are contrary to a rights-based approach to housing. They are also human rights violations and these actions expose the City to legal action. Importantly, this approach also undermines the possibility for meaningful engagement and relationship-building with encampment residents – a core element of a human rights approach to encampments.

The City of Toronto has human rights obligations towards encampment residents

All orders of government in Canada are responsible for upholding the human right to housing. These human rights obligations are enshrined in both international and domestic law, as well as the [*National Housing Strategy Act*](#) (2019). The implementation of these obligations as they pertain to encampments has been summarized in [*A National Protocol for Homeless Encampments in Canada – A Human Rights Approach*](#) (2020), developed by Leilani Farha (former United Nations Special

⁶ See, e.g., Victoria Gibson & Jennifer Pagliaro, “Roughly two dozen evicted from Trinity Bellwoods encampments after tense standoff with Toronto police, private security”, *Toronto Star* (23 June 2021), online: <<https://www.thestar.com/news/gta/2021/06/22/city-officers-police-removing-homeless-encampments-at-trinity-bellwoods-park.html>>.

⁷ See, e.g., “26 arrested, violent clashes erupt as police evict homeless at Lamport Stadium encampment”, *City News* (21 July 2021), online: <<https://toronto.citynews.ca/2021/07/21/homeless-encampment-lamport-stadium-park/>>.

Rapporteur on the right to adequate housing and Global Director of [The Shift](#)) and Dr. Kaitlin Schwan (Director of Research, [The Shift](#)).

Importantly, the City has expressly adopted a rights-based approach to housing in the [Toronto Housing Charter](#) and the [2020–2030 HousingTO Action Plan](#), acknowledging its human rights obligations under international law.⁸ The City defined a rights-based approach to housing as one that promotes human dignity and wellbeing, inclusive of healthy and sustainable communities. The *Action Plan* also set forth several key commitments, including a commitment to prevent evictions and homelessness and to review existing policies, programs, and by-laws that penalize, criminalize, or displace people experiencing homelessness.⁹

Given these obligations, and the applicability of the [National Housing Strategy Act](#) to municipal governance in the area of housing, it is critical that the City of Toronto’s approach to encampments aligns with these human rights standards. The COVID-19 pandemic makes the need for a rights-based approach to encampments all the more urgent.

Human rights analysis of the City’s response to encampments – Legal powers and soft powers

Our research reviews the legal dimensions of Toronto’s approach to encampments during the first three waves of the COVID-19 pandemic. This report measures the City’s response to encampments against its human rights obligations to encampment residents as specified in international and domestic law, the [National Housing Strategy Act](#), and [A National Protocol for Homeless Encampments in Canada](#). Our analysis largely focuses on publicly available documents and media accounts of events between March 2020 and September 2021. We obtained additional documents from the City through *Freedom of Information* requests and accessed data collected by advocates working on the ground in encampments, including data systematically collected by the Encampment Support Network during their outreach and humanitarian aid work.

Our research indicates that cities have two main sets of powers to address housing need, homelessness, and encampments: formal ‘legal’ powers and ‘soft’ powers.

Legal powers include municipal by-laws, which are rules governing city residents’ actions. For example, a city can charge encampment residents with violations of parks by-laws or littering and street by-laws. Cities can choose to issue tickets and issue Notices of Trespass to evict encampment residents from public parks on the basis of these by-laws. They can also choose to have police enforce the Notices and remove people from the park. Importantly, cities do not have to enforce such bylaws; they have discretionary power in their enforcement and application.

Soft powers are persuasive strategies, sometimes used by political actors, to redirect people’s perspectives on a topic to advance the political actors’ interest and control the narrative about an issue in their jurisdiction.¹⁰ Language used by news outlets, in City Council

⁸ City of Toronto, “HousingTO 2020-2030 Action Plan” (December 2019), online (pdf): [City of Toronto <HousingTO 2020-2030 Action Plan \(toronto.ca\)> \[HousingTO\]](#).

⁹ *Ibid.*

¹⁰ Naren Chitty et al, *The Routledge Handbook of Soft Power* (Oxon: Routledge, 2017) at 1.

meetings, in written policies, or even on social media can change the perspective someone has on an issue. For example, some cities choose to characterize encampments as hazards to surrounding communities or prioritize the concerns of housed residents in neighbourhoods with encampments. Cities can use these powers to shape public opinion justify city actions.

Our human rights analysis of the City's use of legal and soft powers demonstrate that the City has much work to do to uphold the human rights of encampment residents. Our findings indicate the following:

- Even when available, the conditions in some shelters and shelter-hotels do not provide all occupants with a sense of safety, security, or privacy. As a result, some unhoused persons and shelter occupants reside in encampments and/or in public spaces.
- As the number of people residing in encampments grew during the COVID-19 pandemic, the City increasingly turned to parks by-laws, Notices of Trespass, and encampment evictions as the primary response to encampments.
- The City often cites health, safety, and fire concerns as reasons to issue Notices of Trespass. However, 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, or fire issues. Further, many of these concerns could be addressed by the provision of basic services and supports by the City.
- Trespass Notices are used to threaten encampment residents with eviction based on the City's property rights in public space. Even where the evictions are not immediately enforced, the constant threat of eviction can create significant stress for residents and undermine important relationships with City workers and support services. This approach can also exacerbate divisions between encampment residents and housed neighbours, undermining opportunities for solidarity in the face of an ongoing pandemic and housing crisis.
- Cities use *soft powers* as a tool to shape public opinion prior to and after taking actions in relation to encampments. In the case of Toronto, the City uses soft powers in its media releases to negatively characterize encampment residents and shift attention away from human rights obligations. Courts and the City have relied on harmful narratives to prioritize the rights and interests of housed residents neighbouring encampments and justify violations of encampment residents' human rights.
- Indigenous persons are disproportionately represented in homeless encampments. The City has specific and ongoing Treaty and constitutional obligations to Indigenous persons residing in encampments, as well as all local Indigenous nations. The current approach to encampments fails to honour these obligations and address the particular rights, needs, and relationships of Indigenous encampment residents.
- Toronto Police Services use of force during some encampment evictions has been grossly disproportionate to the alleged harm caused by encampments and encampment residents to City property. Police have engaged in violence against residents and their supporters,

resulting in harm, pain, and injuries to members of the public. Police have also restricted access to media, legal observers, and medics during evictions. These actions demonstrate that police involvement with encampments is inappropriate. Indeed, the City and the police board are currently being sued as a result of police violence at encampments.

Recommendations

Based on a review of international, federal, and provincial human rights obligations, as well as City Council-approved commitments, this report concludes that the City is not upholding its commitment to a human rights-based approach to housing. We urge the City to adopt written protocols, passed by City Council, to implement a rights-based approach to encampments. In order for the City to abide by its legal obligations, it is recommended:

1. The City must not engage in the forced eviction of encampment residents from parks, ravines, and outdoor spaces and must repeal or amend by-laws sanctioning forced evictions. Forced evictions are “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, 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.”¹¹ Forced evictions are never justified and are a gross violation of human rights. This includes instances where state harassment, intimidation, or threats cause encampment residents to relocate against their will. Evictions falling outside the legal definition of “forced” may only be justified in rare circumstances and nonetheless require that relocation only be carried out after exploring all viable alternatives with residents in accordance with law. Additionally, they must be consistent with the right to housing, and only occur after securing access to safe and adequate indoor shelter space appropriate to a resident’s needs. This recommendation requires the City to review and amend by-laws used as the basis for issuance of Notices of Trespass to encampment residents. We specifically note the need to amend by-laws 608-13 and 608-14 which prohibit camping and lodging or erecting tents or structures in parks to be in conformity with the right to housing. The City must discontinue the practice of issuing Notices of Trespass to encampment residents as part of any relocation process.
2. The City must recognize encampment residents as rights holders as recognized in international human rights law and domestic law, and adopt policies, practices, and programs that reflect this recognition. As such, the City must recognize that its prerogative to enforce by-laws, and specifically By-Laws 608-13 and 608-14, cannot supersede the rights of encampment residents to safety, security, and human dignity. Safety includes ensuring encampments meet basic needs of residents, as per recommendation 6 below. Security includes privacy and security of the person, including with regards to personal property and belongings. Human dignity includes respect for the intrinsic value of human life, individual autonomy, and equality.
3. The City must meaningfully consult with encampment residents before undertaking any action that could affect them. Meaningful consultation requires that residents have decision-

¹¹ UNCESCR, *General Comment No.7: The Right to Adequate Housing (Art. 11(1) of the Covenant)*, 16th Sess, 20 May 1997, UN Doc E/1998/22 [General Comment No.7].

making power and influence over final outcomes. It involves the following minimum components:

- Encampment residents are empowered to make decisions about actions that affect them, including through resident-led meetings and processes;
 - Processes for decision making by the City are transparent and clearly explained to residents prior to action being taken;
 - Residents are given enough time to consider information provided by government and to give their direction before actions are taken;
 - Officials should provide residents with reasons for decisions, including explaining how resident input and feedback was incorporated into decision-making;
 - There is a clear resident-approved process to challenge decisions, propose alternatives, and articulate demands and priorities;
 - Officials shall ensure resources are available to support full participation in decision-making, including Indigenous cultural supports, literacy supports, translation, mobility supports, PPE, food, and access to information; and
 - Residents are provided with independent legal advice, information concerning human rights, and the constitutional rights of Indigenous Peoples.
4. Alternative housing options must be sourced in consultation with encampment residents to adequately meet residents' needs. Housing options should preserve the human dignity of residents and critically consider their safety and well-being. This may require sourcing single-dwelling housing, accessible housing for disability-related needs, substance use, family-status, or pets, and housing options in proximity to key social supports and health services. Reasonable space for personal possessions should also be provided. Residents should have the option of declining housing offers, and have choice and agency in their housing. In accordance with human rights standards, the City of Toronto's techniques for prioritizing access to social housing should be based on level of need. The City should not provide preferential access to housing for individuals residing in encampments over persons experiencing other forms of homelessness in order to clear visible encampments, or for any other reason.
5. If housing that is adequate to meet residents' needs is unavailable, residents must be allowed to remain in encampments until appropriate housing becomes available. While they are in encampments, residents must be provided access to fundamental resources and supports that meet their safety and wellbeing needs, including heat sources, water, and sanitation. Tents may not be dismantled or destroyed even when made from other materials, such as tarps or blankets. City officials must respect residents' rights to privacy in tents and not interfere with shelters or residents' possessions without the express consent of residents.
6. The City must, at a minimum, ensure that basic adequacy standards are met in homeless encampments while adequate housing options are negotiated and secured.¹² Given that people residing in encampments are experts in their own lives and best positioned to assess

¹² Governments' compliance with international human rights law requires: (1) access to safe and clean drinking water, (2) access to hygiene and sanitation facilities, (3) resources and support to ensure fire safety, (4) waste management systems, (4) social supports and services, and guarantee of personal safety of residents, (5) facilities and resources that support food safety, (6) resources to support harm reduction, and (7) rodent and pest prevention.

what resources they need and how best to mobilize them, the City should engage these experts in ensuring their basic needs can be met.

7. The City must take action to restrict the presence of law enforcement at encampment sites whenever possible. Funds should be diverted from police budgets and invested in making housing and critical support services more accessible to low-income communities. Legal counsel and observers must be free to observe any interactions between residents and law enforcement where residents have requested, or consented to, their presence. The rights of members of the media must also be fully respected at all times.
8. If residents choose to relocate to shelters, they should be able to access shelter spaces easily, including current information on which shelters have available space, amenities available at the shelter, whether residents may be accompanied by animals or partners, and whether the shelter has guidelines or restrictions on the capacity of personal belongings. Residents should be offered storage for any additional belongings beyond those taken to the shelter, including tents and outdoor gear. Tents, shelter materials, and other survival gear should not be seized or destroyed by the City if residents relocate to shelter spaces. The City must make every effort to provide safe shelter spaces for women and gender-diverse residents. The City must ensure shelter providers do not rely on discriminatory or arbitrary policies to determine which residents can access shelter, including blanket prohibitions against substance abuse.
9. The City must take a Housing First approach rather than rely on the shelter system as a form of housing. Housing First means ensuring that people experiencing homelessness are given immediate, stable, long-term housing with supports, rather than access to emergency shelters. Streets to Homes should consistently apply a Housing First approach, consistent with human rights obligations.
10. The City must also be a committed advocate for a comprehensive, social, and affordable rental housing market in its own policy decisions and in its engagement with intergovernmental partners. The City must adopt policy choices that are consistent with its human rights obligations, including policies that prioritize access to adequate and affordable housing for those facing the greatest housing disadvantage. To this end, the City, alongside higher levels of government, should allocate the maximum available resources to urgently end homelessness. For example, there are opportunities to explore and expand the use of the City's existing regulatory and taxation powers to immediately create or build more publicly-owned and deeply affordable housing, including through the conversion of vacant buildings, private rental units (including short-term rentals), and other underused or unused units or buildings.
11. The City's responsibility to respect, protect, and uphold the distinct rights of Indigenous Peoples must guide all engagements with people experiencing homelessness and homeless encampments. To this end, the City should meaningfully engage all relevant Indigenous stakeholders and nations, as identified by Indigenous Peoples themselves, in the development of policy approaches to encampments that align with the right to housing, s 35 of the Constitution, relevant treaties, and the United Nations Declaration of the Rights of Indigenous Peoples. As part of this work, the City of Toronto should work with Indigenous persons with lived experience of homelessness, Indigenous lawyers, and Indigenous legal

scholars to ensure this strategy reflects the specific intersecting legal, Treaty, and human rights obligations of the City to Indigenous Peoples. This includes working with Indigenous People's own processes and laws.

12. The City of Toronto should develop robust accountability mechanisms to ensure that its approaches to encampments, and homelessness more broadly, align with the right to housing as articulated in the *National Housing Strategy Act*. People with lived expertise of homelessness should be directly involved in the development and implementation of such mechanisms, as well as the ongoing monitoring of City decision-making and policy development, in relation to human rights standards.

Introduction

“Home is where people live, raise a family and are part of a strong community. Stable affordable housing helps create a dependable environment for families and children that contributes to better health and educational results.”

— Honourable Ted McMeekin, Minister of Municipal Affairs and Housing¹³

“The City [of Toronto] is committed to creating an inclusive city where all residents have a safe, secure, affordable and well-maintained home, in their neighbourhood of choice without discrimination, from which to realize their full potential.”

— John Tory, Mayor of Toronto, 2020 National Housing Day¹⁴

The City of Toronto (City) has been in a housing and homelessness crisis for years, which has been exacerbated by the COVID-19 pandemic. According to the [2021 Street Needs Assessment](#), approximately 7,347 people experience homelessness each night in Toronto.¹⁵ This number is likely an undercount, and homelessness is expected to continue to rise due to ongoing job losses and evictions during the pandemic and beyond. Even with the creation of additional shelter spaces during the pandemic, continuing shelter capacity issues and concerns with shelter conditions means that some people are forced to live outdoors or in encampments in the midst of this public health crisis.

The recent increase in homeless encampments across Canada is underpinned by broader structural and systemic causes of homelessness, housing precarity, and lack of affordable housing. All orders of government bear responsibility for this housing crisis. In Toronto, the consequences are well understood: Toronto has become an increasingly unaffordable city.¹⁶ Previously affordable neighbourhoods have been gentrified and low-income residents have been displaced as rents and property values increase. The financialization of housing, including the accumulation of rental housing by “financialized landlords” such as real estate investment trusts (REITs) and private equity funds, has meant that housing is increasingly treated as a commodity for wealth and investment rather than as a home.¹⁷

¹³ Ontario, Ministry of Municipal Affairs and Housing, *Ontario’s Long-term Affordable Housing Strategy Update* (Ontario: Queen’s Printer for Ontario, 2016) at 1.

¹⁴ John Tory, “Today is National Housing Day in Canada. We are committed to proactively working with the federal and provincial governments, private and non-profit housing organizations and society as a whole to deliver positive housing outcomes for our residents.” (22 November 2018 at 7:48), online: *Twitter* <<https://twitter.com/TorontosMayor/status/1065587935003721728/photo/1>>.

¹⁵ City of Toronto, “Street Needs Assessment 2021” (2021), online (pdf): <<https://www.toronto.ca/legdocs/mmis/2021/ec/bgrd/backgroundfile-171729.pdf>> [*Street Needs Assessment 2021*].

¹⁶ See, David Macdonald, *Unaccommodating: Rental Housing Wage in Canada* (Centre for Policy Alternatives, 2019): <https://www.policyalternatives.ca/unaccommodating>.

¹⁷ This phenomenon is discussed in the context of Toronto by: Martine August & Alan Walks, “The financialization of Canadian multi-family rental housing: From trailer to tower” (2020) 42:7 *J of Urban Affairs* 975.

Financialization has collided with the historical withdrawal of federal housing dollars, and the downloading of responsibility for housing to provincial/territorial and municipal governments in the early 1990s. Reductions in social assistance, removal of tenancy protections, and the cancellation of affordable housing programs during these years contributed to increased numbers of people experiencing homelessness and a demographic shift in populations seeking shelter, expanding from largely single men to youth, women and families, newcomers, and persons with disabilities. Canada subsequently saw a significant increase in homelessness, which many municipal and provincial/territorial governments have responded to through emergency shelters and short-term, ad hoc crisis interventions.¹⁸ While the federal government has demonstrated considerable leadership and investment in affordable housing and homelessness in recent years, including through the [National Housing Strategy](#) and the [National Housing Strategy Act](#), many Canadian municipalities continue to face severe homelessness crises with insufficient housing stock and resources. This is exceedingly evident in the case of Toronto, with the rise of encampments during COVID-19 highlighting the scale and severity of the issue.

Housing is not a privilege. It is a basic human right. Regardless of a person's housing status, the City of Toronto has an obligation to respect and uphold the right to housing for all people in Toronto, including those living in encampments. The City has expressly adopted a rights-based approach to housing in the [Toronto Housing Charter](#) and the [2020–2030 HousingTO Action Plan](#), acknowledging its human rights obligations under international law. Given these obligations, and the applicability of the [National Housing Strategy Act](#) to municipal governance in the area of housing, it is critical that the City of Toronto's approach to encampments aligns with these human rights standards. The COVID-19 pandemic makes the need for a rights-based approach to encampments all the more urgent.

Report Purpose

This report reviews the legal dimensions of Toronto's approach to encampments during the first three waves of the COVID-19 pandemic. This report measures the City's response to encampments against its human rights obligations to encampment residents as specified in international and domestic law, the [National Housing Strategy Act](#), and [A National Protocol for Homeless Encampments in Canada](#) (*National Protocol*) developed by Leilani Farha (former United Nations Special Rapporteur on the right to adequate housing and Global Director of [The Shift](#)) and Dr. Kaitlin Schwan (Director of Research, [The Shift](#)).

First, we explore the City's human rights obligations and commitments under international human rights law and domestic law. We then consider Toronto's response to encampments in light of these obligations and commitments. We conclude with recommendations for concrete steps the City can take to adopt and implement a new human rights-based approach to encampments in Toronto. Our goal in setting out these recommendations is to support the City to not only fulfill their legal obligations, but to live up to the important commitments they have made to all residents, housed and unhoused, and to realize the right to housing in our city.

¹⁸ For an excellent overview of this context see, Tracy Heffernan, Fay Faraday, & Peter Rosenthal, "Fighting for the right to housing in Canada" (2015) 24:2 J L & Soc Pol'y 10; and, Stephen Gaetz et al., *The state of homelessness in Canada 2016* (Toronto: Canadian Observatory on Homelessness Press, 2016) at 12 [Gaetz et al].

Our analysis largely focuses on publicly available documents and media accounts of events between March 2020 and September 2021. We obtained additional documents from the City through *Freedom of Information* requests and accessed data collected by advocates working on the ground in encampments, including data systematically collected by the Encampment Support Network during their outreach and humanitarian aid work.

Our emphasis in this report is on existing human rights standards enshrined in domestic and international law. It is critical we hold governments to these obligations and document when they fail to uphold them, as we do below. However, we recognize these as minimum standards for the relationship between the City and *all* its residents, housed and unhoused. The City of Toronto, and all governments, should aspire to much more. To fully realize the right to housing in just and sustainable ways we must collectively reimagine and rebuild our communities as places where everyone has a safe and affordable place to call home.

Report Structure

Chapter 1 outlines the international, federal, provincial, and municipal laws that the City must follow in adopting a rights-based approach to housing. The *National Protocol* is the basis of the rights-based approach adopted in this report.¹⁹ The principles laid out in the *National Protocol* inform our discussion of the City's legal obligations regarding housing rights and encampments, and provide an evaluative framework to assess the City's actions considering these obligations.

Chapter 2 sets out the legal and political powers the City uses to respond to encampments, including the City's use of parks by-laws, fire codes, and Notices of Trespass to evict encampment residents. It also explores the role of Parks Ambassadors in heavily monitoring encampments and hidden locations occupied by people experiencing homelessness.

Chapter 3 explores the City's use of soft powers, which influence public opinion and can further stigmatize people experiencing homelessness. It discusses how these powers are engaged through City media releases and cited in court rulings and how they affect encampment residents and communities.

Chapter 4 establishes that temporary and emergency shelters should not be considered housing. It also demonstrates that the Toronto shelter system does not provide safe, secure, or private spaces, and that people experiencing homelessness may also avoid shelters due to infringements on dignity, autonomy, and self-determination. With many shelters operating over-capacity, it is expected that some shelter occupants will move to park encampments. Additionally, this chapter explores encampment evictions and the experiences that some residents have endured during evictions, including violence, harassment, and destruction of property and personal belongings.

Chapter 5 summarizes the legal obligations that the City must meet, and the powers at their disposal in relation to the principles set out in the *National Protocol*. We argue that the City must revisit its approach to encampments to fulfill its legal and moral obligations to encampment residents. We conclude with 12 recommendations the City should adopt to recognize encampment residents as

¹⁹ Leilani Farha & Kaitlin Schwan, "National Protocol for Homeless Encampments in Canada: A Human Rights Approach" (2020), online (pdf): *UN Special Rapporteur on the Right to Housing* <<https://www.make-theshift.org/wp-content/uploads/2020/04/A-National-Protocol-for-Homeless-Encampments-in-Canada.pdf>> [*National Protocol*].

rights holders. Each of our recommendations is within the capacity and jurisdiction of the City and can shift the narrative of housing justice from a universal one-size-fits-all approach to a rights-based approach that respects the needs and dignity of encampment residents.

Chapter 1: Housing is a human right

“Homeless encampments threaten many human rights... Encampments are thus 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. Ultimately, encampments are a reflection of Canadian governments’ failure to successfully implement the right to adequate housing.”

— Leilani Farha and Kaitlin Schwan in *A National Protocol for Homeless Encampments in Canada*²⁰

Housing is a human right, and all residents deserve to live in a home that supports their needs. Throughout the pandemic, many people experiencing homelessness endured injustices, violence, and death due to shelter conditions and encampment evictions. Shelter occupants were exposed to COVID-19 because the City did not comply with some aspects of social distancing standards and safety measures. Dozens of encampment residents faced harassment, violence, and arrests during recent encampment evictions. It is imperative for the City to uphold its commitment and implement a rights-based approach to housing and encampments.

Chapter 1 Summary

- The City is bound by international human rights standards.
- The City has binding obligations to uphold Indigenous rights and self-determination in international law, treaties, and section 35 of the *Constitution Act*.
- Section 7 of the *Charter* protects the right to life liberty and security of the person and has been found to prohibit encampment evictions when no adequate and safe shelter space is available.
- Section 15 of the *Charter* protects equality rights and prohibits discrimination, including discriminatory shelter conditions and enforcement of by-laws.
- The City’s parks by-laws are vulnerable to legal action by encampment residents.
- The City has committed to adopting a rights-based approach to housing through the HousingTO 2020-2030 Action Plan and the Toronto Housing Charter.
- The City has not upheld its commitment in the Toronto Housing Charter to reduce and prevent criminalization and penalization of unhoused persons.

²⁰ *National Protocol*, *supra* note 19 at 2.

1. A Toronto's housing and homelessness crisis during COVID-19: Shelter outbreaks and encampment evictions

Since the 1970s, the City has experienced a lack of affordable housing, gentrification, and the financialization of housing, each of which has contributed to pushing many people to the peripheries of communities and to experiencing homelessness²¹. By the early 2000s, the rising rates of homelessness in Toronto started to put pressure on the shelter system.²² This can be explained in part by expanded shelter operations, which had previously largely served single men. A shift in eligibility requirements saw shelters providing spaces for children, youth, women, families, as well newcomers, Indigenous persons, and people living with mental health and substance issues. Overall, “reductions in social assistance rates, cancellation of affordable housing programs... changes to landlord-tenant legislation” all contributed to increased numbers of people seeking emergency shelter.²³ More recently, the COVID-19 pandemic exacerbated the housing and homelessness crisis in Toronto, contributing to greater displacement because of social distancing measures, health and safety guidelines, and job loss.

COVID-19 shelter outbreaks in Toronto

During the first wave of the pandemic, the City made several efforts in mobilizing a COVID-19 response strategy for outreach workers, shelter occupants and staff members, and encampment residents.²⁴ The strategy complied with the World Health Organization's health, safety, and social distancing guidelines²⁵ by reducing the number of shelter beds available and reconfiguring shelter space to ensure that beds were two metres apart.²⁶ By following these social distancing guidelines, fewer beds were available at each shelter. For example, the Maxwell Meighen Centre initially had 364 beds pre-pandemic and 256 during the pandemic.²⁷ To accommodate the reduction of beds, from March 2020 until September 2020, the City intended to open 30 temporary shelter locations “with over 2,000 beds through the use of hotels, community centres and other locations” which will move over 3,500 people throughout the shelter system.²⁸ The City's efforts in complying with the social distancing guidelines and opening new shelters were often insufficient. During the first COVID-19 wave, several encampment residents from Moss Park sought an injunction against the City for not

²¹ Jonathan Greene, “Urban Restructuring, Homelessness, and Collective Action in Toronto, 1980-2003” (2014) 43:1 *Urban History Review* 1 at 23.

²² Gaetz *et al*, *supra* note 18; Commissioner, Community and Neighbourhood Services, City of Toronto Council and Committees meeting “Options for Addressing the Projected 2000 Budget Increase for Hostel Services” (20 October 1999), online: *City of Toronto* <<https://www.toronto.ca/legdocs/1999/agendas/committees/pof/pof991110/it026.htm>>.

²³ *Ibid*.

²⁴ City of Toronto, News Release, “Homeless Encampments- COVID-19” (2020), online: *City of Toronto* <<https://www.toronto.ca/311/knowledgebase/kb/docs/articles/social-development,-finance-and-administration/homeless-encampments-covid-19.html>> [*Toronto*].

²⁵ Toronto Drop-In Network, “COVID-19 Guidance and Resources for Drop-Ins” (12 March 2020), online: *TDIN* <<https://tdin.ca/announcement.php?id=2127#guidance>>.

²⁶ *Ibid*.

²⁷ News Staff, “COVID-19 Outbreak at Downtown Toronto Homeless Shelter is Growing”, *City News* (22 February 2021), online: <<https://toronto.citynews.ca/2021/02/22/covid-19-outbreak-at-toronto-homeless-shelter-is-growing/>>.

²⁸ City of Toronto, News Release “City of Toronto key summer accomplishments in the ongoing fight against COVID-19” (4 September 2020), online: *City of Toronto* <<https://www.toronto.ca/news/city-of-toronto-key-summer-accomplishments-in-the-ongoing-fight-against-covid-19/>>.

complying with proper social distancing guidelines.²⁹ The applicants won the injunction as the Court ruled in *Sanctuary et al. v Toronto* that the City had failed to comply with some social distancing measures and safety guidelines.³⁰ The City was ordered to use its best efforts to sustain physical distancing standards.

Sanctuary et al v Toronto (2020)

In *Sanctuary et al v Toronto*, 14 encampment residents from Moss Park were applicants who challenged the City's compliance with safety standards at shelters and 24-hour respite sites.³¹ These standards were implemented to curb the transmission of COVID-19.³² In shelters, the standards required that there be "at least 2 metres between beds or alternative sleeping arrangements" and restricted the use of the top bunk bed.³³ The applicants argued that the City did not comply with the standards listed above and failed to make best efforts to increase the number of beds available.³⁴ Based on the lack of compliance with these obligations, the court ruled that the City breached its obligations to comply with safety measures and social distancing guidelines.³⁵

During the second wave of the pandemic in November 2020, the [Better Living Centre](#) opened as a temporary shelter providing space of up to 100 beds.³⁶ The City drew heavy criticism from residents and community members for its lack of safety, security, and privacy as cots were separated by glass partitions, and residents had no way to secure their belongings.³⁷ Despite the City improving its compliance with health and safety guidelines to reduce the spread of the virus in shelters, between March and December 2020, over 1340 shelter occupants contracted COVID-19 with 38 being hospitalized, and four people passing away.³⁸ COVID-19 cases continued to rise during the third wave of the pandemic until the municipal vaccine response plan provided 7500 people experiencing homelessness with vaccines by May 31, 2021.³⁹

Nowhere to go, yet the encampment evictions continue

Early in the pandemic, the Centre for Disease Control (CDC) reported that considering the higher risks that those experiencing homelessness face in contracting COVID-19, cities should "allow

²⁹ *Sanctuary et al v. Toronto (City) et al.*, 2020 ONSC 6207 [*Sanctuary et al v Toronto*].

³⁰ *Ibid* at paras 215-216.

³¹ *Ibid* at para 1.

³² *Ibid* at para 104

³³ *Ibid* at para 22.

³⁴ *Ibid* at para 7.

³⁵ *Ibid* at paras 6, 215-216.

³⁶ Exhibition Place, "Beanfield Centre" (2021), online: <<https://www.explace.on.ca/venue/beanfield-centre/>>.

³⁷ Joanna Lavoie, "Advocates say Exhibition Place Respite Shelter 'Puts Humans in Glass Cages'", *Toronto News* (4 November 2020), online: <<https://www.toronto.com/news-story/10238751-advocates-say-exhibition-place-respite-shelter-puts-humans-in-glass-cages-/>> [Joanna Lavoie].

³⁸ See Appendix A for complete list of COVID-19 confirmed cases, hospitalizations, and deaths in the Toronto shelter system.

³⁹ Toronto City Manager, "COVID-19 Response Update: Protecting People Experiencing Homelessness and Ensuring the Safety of the Shelter System" (1 June 2021) at 9, online (pdf): *City of Toronto* <<https://www.toronto.ca/legdocs/mmis/2021/cc/bgrd/backgroundfile-167471.pdf>> [COVID-19 Response Update].

people who are living unsheltered or in encampments to remain where they are.”⁴⁰ With regards to encampments, the CDC recommended that the erected shelter structures be 12 feet by 12 feet apart and that municipalities work with community support services and organizations to improve sanitation resources.⁴¹ However, the City continued to evict some park encampments, regularly citing encampments as having fire safety hazards, sanitation issues, and limited access to water, which it frames as factors that increase “health and safety risks for individuals living in encampments.”⁴² The City used some of these reasons to evict encampments through Notices of Trespass, most often citing fire and safety concerns. These notices generally include a threat of eviction and removal of personal items and property, with residents potentially facing a \$10,000 fine for non-compliance.⁴³

In Summer 2020, during the first wave of the pandemic, fire hazards were a key concern due to a fire that erupted at a tent structure under the Gardiner Expressway encampment.⁴⁴ As a result, the City dismantled the encampment with bulldozers within feet of encampment residents who were attempting to collect their personal items.⁴⁵ On June 29, 2020 Toronto City Council debated how the Police Services Board should collaborate with community organizations, social services, and mental health agencies to “develop alternative models of community safety responses.”⁴⁶ These responses would create “non-police led response to calls involving individuals in crisis” with “extensive community consultation on a proposed response model” and “detail the likely reductions to the Toronto Police Services budget that would result from these changes.”⁴⁷ A motion was passed by Toronto City Council to reallocate the budget towards “community-led alternatives to policing and the criminal justice system; anti-racism education... affordable housing... food security” among other rights-based organizations and approaches to policing.⁴⁸

Even so, throughout Summer 2020, many encampment evictions occurred. In July 2020, the City evicted the Lamport Stadium encampment; unfortunately, some encampment residents were not given any opportunity to consult with City workers or Streets to Homes prior to the eviction. This lack of communication caused significant stress and anxiety among those residents. They were without the necessary information to make an informed decision about potential relocation offers

⁴⁰ Centers for Disease Control and Prevention, “Interim Guidance on People Experiencing Unsheltered Homelessness” (8 July 2021), online: *U.S. Department of Health & Human Services* <<https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unshelteredhomelessness.html#prevention>>.

⁴¹ *Ibid.*

⁴² Esn.to.4real, “Part 1: Eviction of Notices Dropped at Moss Park June 12th...” (13 June 2021), online: *Instagram* <<https://www.instagram.com/tv/CQELrroAkdS/>>.

⁴³ *Ibid.*

⁴⁴ City News, “Homeless Encampment Under Gardiner Expressway Dismantled”, *City News Toronto* (15 May 2020), online: <<https://toronto.citynews.ca/video/2020/05/15/homeless-encampment-under-gardiner-expressway-dismantled/>>.

⁴⁵ *Ibid.*

⁴⁶ Toronto City Council, CC22.2, “Changes to Policing in Toronto” (29 June 2020), online: *City of Toronto* <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC22.2>>. For more information regarding the cost of policing homelessness including mental health, gender-based violence, and additional resources as well as recommendations for re-allocating these funds to community-based responses, see: Toronto Neighbourhood Centres, “Rethinking Community Safety: A Step Forward for Toronto” (2020), online (pdf): *Neighbourhood Centres* <<https://neighbourhoodcentres.ca/sites/default/files/2021-01/Rethinking%20Community%20Safety%20-%20A%20Step%20Forward%20For%20Toronto%20-%20Full%20Report.pdf>>.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

and were given an extremely limited timeframe to make a decision that could significantly affect their health and wellbeing.⁴⁹

In Fall 2020, throughout the second wave of the pandemic, local carpenter Khaleel Seivwright, received more than \$129,000 in private donations to create tiny wooden shelters designed to protect encampment residents from cold weather.⁵⁰ Each tiny shelter was equipped with a CO2 monitor, insulation, proper ventilation, and a smoke detector.⁵¹ The plan was to provide 129 tiny shelters and isolated spaces for encampment residents who opted to remain in encampments. Being able to reside in a warm place during the winter months without having to relocate to a shelter provided encampment residents with some form of autonomy and self-determination, and a feeling of being safer from contracting COVID-19. In November 2020, the City issued warnings about the construction of the tiny shelters, citing health and fire safety concerns.⁵² It ordered Seivwright to discontinue construction and the City began to remove and demolish the tiny shelters.⁵³ The City encouraged many encampment residents to relocate to the newly constructed Better Living Centre, which opened in early November.⁵⁴ Due to the Better Living Centre not providing sufficient security, safety, or privacy for some individuals, some Better Living Centre occupants returned to park encampments.

In Spring 2021, during the third wave of the pandemic, the City created the Pathway Inside Program, which focused on providing additional shelter spaces for residents living in the four main park encampments at Moss Park, Alexandra Park, Trinity Bellwoods, and Lamport Stadium.⁵⁵ As part of this initiative, the City sourced additional spaces, including 250 rooms at 45 The Esplanade.⁵⁶ Pathway Inside Program team members reported that they regularly engaged with encampment residents, advocates, and partner agencies to understand the needs of residents.⁵⁷ In light of these discussions, the program was designed to include downtown locations, occupancy for couples as well as single-dwellers, and incorporated on-site harm reduction.⁵⁸ After the program was announced, Notices of Trespass were posted and circulated at four downtown encampments. These notices stated that encampment residents were required to vacate the parks on Tuesday, April 6, 2021.⁵⁹ The City later retracted the notices, stating they were merely “guidelines” to aid resident

⁴⁹ Encampment Support Network Parkdale Neighborhood Committee, “Evictions at the Lamport Stadium Encampment (Draft)”, on file with the authors [*Lamport Stadium Eviction Report*].

⁵⁰ Muriel Draaisma & Angelina King, “City Issues Warning Letter to Toronto Carpenter Building Shelters for Unhoused People”, *CBC News* (21 November 2020), online: <https://www.cbc.ca/news/canada/toronto/city-legal-action-toronto-carpenter-toronto-tiny-shelters-unhoused-people-1.5811589?fbclid=IwAR06bDpNl_pTB6VpejsExAAA9vNjhs-VEKTd1jxdz2-LAzczp_yvacwJrhc>.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Mira Miller, “People Outraged as Toronto Removes Tiny Shelter from City Park”, *BlogTO* (February 2021), online: <<https://www.blogto.com/city/2021/02/advocates-outraged-city-removes-tiny-shelter-injunction-carpenter/>>.

⁵⁴ *Joanna Lavoie, supra* note 37.

⁵⁵ City of Toronto, News Release, “City of Toronto Supporting People Living in Encampments with Safe, Supportive Indoor Space” (16 March 2021), online: *City of Toronto* <<https://www.toronto.ca/news/city-of-toronto-supporting-people-living-in-encampments-with-safe-supportive-indoor-space/#:~:text=Pathway%20Inside%2C%20a%20new%20City,everyone%20at%20these%20four%20sites>>.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Muriel Draaisma & Lorenda Reddekopp, “Toronto Pauses Plans to Clear Encampments After COVID-19 Outbreak Declared at Shelter Hotel”, *CBC News* (3 April 2021), online: <<https://www.cbc.ca/news/canada/toronto/city-pauses-plan-clear-encampments-covid-19-outbreak-shelter-hotel-pathway-inside-1.5974886>>.

decision-making. They did not enforce the Notices of Trespass at that time because four COVID-19 cases were documented at 45 The Esplanade where residents were being relocated and it was deemed a high-risk shelter.⁶⁰

Trespass Notices were reposted beginning in May and were enforced throughout the summer of 2021. Based on available information, at least five encampment evictions and clearings took place during a single week in May 2021.⁶¹ Of these five evictions, one encampment eviction occurred at Lamport Stadium where dozens of police officers – eight on horses – together with corporate security guards, four workers in hazmat suits, and two workers operating excavators, displaced tiny shelters and belongings and evicted residents.⁶² The City maintained that Lamport Stadium encampment residents had received housing offers and proceeded with evictions. However, according to advocates at the site, this was not the case. Rather, if a resident did not accept a hotel room, the City would destroy their home and belongings and evict them from the public property where the encampment was located.⁶³ While several encampments were fully cleared that week, only one side of the Lamport Stadium encampment was cleared after a large crowd arrived to show support for residents. Advocates were met with threats of arrest and the use of force by police. Multiple people were arrested.⁶⁴

In Summer 2021, Toronto Police Services and Star Security officials enforced three encampment evictions with a significantly larger presence: Trinity Bellwoods Park on June 22, Alexandra Park on July 20, and Lamport Stadium on July 21. The latter two evictions saw the most violent encampment evictions to date, with hundreds of officers and private security employees clashing with residents and advocates. According to advocates, Toronto Police Services arrested 34 people at the Lamport Stadium eviction, with 24 people taken to Division 11 where “they were denied access to a lawyer and not given any information about their charges” for three hours.⁶⁵ Some advocates and encampment residents were kicked, choked, and assaulted. Some members of the Toronto Police Services used batons, resulting in several injuries including a potentially broken wrist, a broken nose, and other hospital visits requiring x-rays to determine the severity of injuries.⁶⁶ At one point, a police officer threw a supporter to the ground, resulting in a concussion.⁶⁷ This has resulted in the recent statement of claim brought forward by five encampment supporters who were injured at the

⁶⁰ *Ibid.*

⁶¹ Victoria Gibson, “Tensions Flare as Fifth Toronto Homeless Encampment Cleared in a Week at Lamport Stadium”, *Toronto Star* (19 May 2021), online: <<https://www.thestar.com/news/gta/2021/05/19/tensions-flare-as-fifth-toronto-homeless-encampment-cleared-in-a-week-at-lamport-stadium.html>>.

⁶² *Ibid.*

⁶³ ESN.to.4real, “Statement on the Attempted Clearing of the Lamport Stadium Encampment” (23 May 2021), online: *Instagram* <https://www.instagram.com/p/CPN_hy8tWVQ/>.

⁶⁴ “Man charged as City dismantles homeless encampment at Lamport Stadium”, *City News* (19 May 2021).

⁶⁵ ESN_TO, “Update on Lamport Stadium arrests from ESN Parkdale:” (25 July 2021 at 9:10), online: *Twitter* <https://twitter.com/ESN_TO/status/1419283997067206659/photo/1>.

⁶⁶ For more complete list of injuries and statement made by Parkdale Community Legal Services: “Parkdale Community Legal Services, “PCLS Endorses Joint Statement on the Lamport Stadium Encampment Clearing” (4 August 2021), online: *PCLS* <<https://www.parkdalelegal.org/news/pcls-endorses-joint-statement-on-the-lamport-stadium-encampment-clearing/>>.

⁶⁷ Paola Loriggio, “Lawsuit alleges 5 assaulted by officers at clearing of Toronto homeless encampment”, *Global News* (25 October 2021), online: <<https://globalnews.ca/news/8322822/toronto-homeless-encampment-lawsuit/>>. For more comprehensive video coverage, see: “Global News, “Chaos erupts again as Toronto officials, officers clear homeless encampment at Lamport Stadium”, *Global News* (21 July 2021), online: <<https://globalnews.ca/video/8048142/chaos-erupts-again-as-toronto-officials-officers-clear-homeless-encampment-at-lamport-stadium>>.

Lampport Stadium eviction on July 21, 2021.⁶⁸ The lawsuit brought forward by these five supporters is against the City of Toronto, the Toronto Police Services Board, and four officers.⁶⁹

The City later revealed it had spent over close to million dollars to evict 60 residents from these encampments, \$840,127 of which was spent on police officers.⁷⁰ The total sum paid is equal to \$33,000 per person evicted, which is enough to pay for the average Toronto rent for roughly 16 months. Few encampment residents from Trinity Bellwoods, Alexandra Park, and Lampport Stadium, ended up being housed by the City. Most simply relocated elsewhere outdoors. In fact, during the first three waves of the pandemic examined in this report, roughly half of encampment residents referred to the shelter system have left shelters or shelter-hotels.⁷¹ Only about 8% of encampment residents referred to the shelter system now live in permanent housing.⁷²

The City's response to public outcry about the evictions was limited and Council has rejected several attempts at transparency and accountability about encampment evictions. On June 29, 2021, Toronto City Council rejected a motion to request the City Manager consult about community-led alternatives to policing and to request a 10% cut the police budget. An administrative inquiry seeking information on encampment removals did not proceed to executive for questions and deputations and a motion for an independent judicial inquiry failed.⁷³ The Toronto Ombudsman has opened an investigation into the encampment clearings.⁷⁴ However, police conduct falls outside of the jurisdiction of the Ombudsman's office. Thus, at the time of writing there has been no detailed accounting of whether and how the City's response to encampments during COVID-19 aligns with its human rights obligations.

1. B Toronto has a duty under international law to uphold human rights regarding housing

This section outlines the obligations that the City has in supporting a rights-based approach to housing. Each level of government – federal, provincial/territorial, and municipal – has different responsibilities in addressing housing, and this section explores the interrelations of each government and provides a contextual analysis of how municipal

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ City of Toronto, News Release, “City of Toronto final costs of enforcement of trespass notices in City parks” (17 September 2021): *City of Toronto* <<https://www.toronto.ca/news/city-of-toronto-final-costs-of-enforcement-of-trespass-notices-in-city-parks/>>.

⁷¹ Samantha Beattie, “Only 8% of encampment residents have made it into permanent housing since April 2020, Toronto data shows”, *CBC News* (12 September 2021), online: <<https://www.cbc.ca/news/canada/toronto/toronto-encampment-residents-housing-1.6167173>> [Beattie].

⁷² *Ibid.*

⁷³ Toronto City Council, IA36.1, ““Administrative Inquiry from Councillor Kristyn Wong-Tam, Ward 13, Toronto Centre on Clearing of Encampments” (17 September 2021), online: *City of Toronto* <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.IA36.1>>; Toronto City Council, MM36.25, “Judicial Inquiry into Encampment Clearings – by Councillor Josh Matlow, seconded by Councillor Mike Layton” (1 and 4 October 2021), online: *City of Toronto* <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.MM36.25>>.

⁷⁴ Ombudsman Toronto, “Toronto’s Ombudsman to Investigate City’s Clearing of Encampments”, (28 September, 2021), online: *City of Toronto* <<https://www.ombudsmantoronto.ca/Publications/News-Releases/News-Folder/Toronto-s-Ombudsman-to-Investigate-City-s-Clearin>>.

governments are partially dependent on provincial, federal, and international legislation and doctrines to fulfill their human rights obligations to residents.

In 2019, after declaring that Toronto was in a housing crisis, Toronto City Council “affirm[ed] its commitment to complying with its obligations under International Human Rights Law.”⁷⁵ The City of Toronto’s human rights obligations are expressly grounded in the international laws, treaties, and covenants that Canada has signed and ratified, signifying an obligation for all Canadian governments to follow. The Supreme Court of Canada has firmly established that the Canadian *Charter of Rights and Freedoms* “is presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.”⁷⁶

Where provisions of conventions have not been expressly incorporated into Canadian law, they nevertheless substantively inform the interpretation of domestic law and review of government decision making. The application of international conventions formed part of the landmark Supreme Court of Canada decision in *Baker v Canada*.⁷⁷ The Court noted “the important role of international human rights law as an aid in interpreting domestic law” as well as its role as “a critical influence on the interpretation of the scope of the rights included in the *Charter of Rights and Freedoms*.”⁷⁸ “The values and principles” set out in *Convention on the Rights of the Child* informed the values the Court determined to be “central” to assessing the reasonableness of government action, including recognition of “the importance of being attentive to the rights and best interests of children when decisions are made that relate to and affect their future.”⁷⁹

Under the *Covenant on Economic, Social and Cultural Rights* (UNCESCR), municipal governments “are obliged to comply, within their local competences, with their duties stemming from the international human rights obligations of the State.”⁸⁰ Article 11(1) declares that all state parties “recognize the right of everyone to an adequate standard of living”, including housing and the continuous amelioration of living conditions.⁸¹ Shelter under the UNCESCR is more than “having a roof over one’s head” – it refers to “the right to live somewhere in security, peace and dignity.”⁸² The UN Global Shelter Strategy expands on this definition by noting that adequate housing includes adequate privacy, space, security, lighting, and ventilation.⁸³ Additionally, adequate housing includes basic infrastructure and a location that is appropriate for the residents’ work, school, and recreational facilities.⁸⁴ While the right to adequate housing does not require that a member state provide housing

⁷⁵ City of Toronto, “HousingTO 2020-2030 Action Plan” (December 2019), online (pdf): *City of Toronto* <[HousingTO 2020-2030 Action Plan \(toronto.ca\)](#)> [*HousingTO*].

⁷⁶ *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313 at 394. Affirmed most recently in *Quebec (Attorney General) v 9147-0732 Québec inc.*, 2020 SCC 32 at 31.

⁷⁷ *Baker v Canada*, [1999] 2 SCR 817.

⁷⁸ *Ibid.*

⁷⁹ *Ibid* at 70.

⁸⁰ *International Covenant on Economic, Social and Cultural Rights*, GA Res 2200A (XXI), OHCHR (3 January 1976) 11 [ICESCR]; See Appendix B for full text.

⁸¹ *Ibid.*

⁸² UNCESCR, *General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant)*, 6th Sess, 13 December 1991, UN Doc E/1992/23, online:

<https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CESCR/GEC/4759&Lang=en>. See Appendix B for full text.

⁸³ Office of the United Nations High Commissioner for Human Rights, *The Right to Adequate Housing* (Geneva, Switzerland: United Nations, 2014) at 8.

⁸⁴ *Ibid* at 4.

to *all* citizens, it does require that adequate housing options are available to “prevent homelessness, prohibit forced evictions, address discrimination, [and] focus on the most vulnerable and marginalized groups.”⁸⁵

The right to adequate housing intersects with the concept of human dignity and non-discrimination when providing housing options to those in need.⁸⁶ Pursuant to the Global Shelter Strategy, all residents of a UN member state, including Canada, have the right “to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them.”⁸⁷ Thus, no person should be living in a shelter or encampment as a substitution for a home. However, where adequate housing options are not available, the violation of the right to housing must not be compounded by other human rights violations prohibited by international law.

International law and forced evictions

Article 17 of the *International Covenant on Civil and Political Rights* declares that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, [or] home.”⁸⁸ Thus, while the existence of encampments is a violation of the right to housing, unhoused persons living in encampments should not be forcibly evicted. “The practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, [and] the right to non-interference with privacy, family and home.”⁸⁹

At the outset of the COVID-19 pandemic, United Nations Special Rapporteur on the Right to Adequate Housing, Leilani Farha, stated that member states must ensure that “all residents of informal settlements/encampments have access to an adequate, affordable and proximate supply of water, toilets, showers, sanitation services, soap, sanitizer, disinfectants, and masks.”⁹⁰ She called on state parties to “declare an end to all forced evictions of informal settlements and encampments” and instead, create emergency plans to assist encampment residents including providing adequate resources, as listed above.⁹¹

International law and non-discrimination

The City also has obligations under international conventions on the elimination of discrimination. Article 5(e)(iii) of the *International Convention on the Elimination of All Forms of Racial Discrimination* obliges governments “to prohibit and eliminate racial discrimination in all of its forms” and to guarantee the right to housing “without distinction as to race, colour, or national or ethnic origin.”⁹²

⁸⁵ *Ibid* at 6.

⁸⁶ *Ibid* at 8-10.

⁸⁷ United Nations, “Fact Sheet No. 21, The Human Right to Adequate Housing” (n.d.) at 3, online (pdf): <<https://www.un.org/ruleoflaw/files/FactSheet21en.pdf>>.

⁸⁸ *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), OHCHR (23 March 1976) 17.

⁸⁹ *Ibid*.

⁹⁰ Leilani Farha, “COVID-19 Guidance Note: Protecting Residents of Informal Settlements” (23 April 2020) at 2, online (pdf): *United Nations Human Rights Special Procedures* https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_Guidance_informal_settlements.pdf>.

⁹¹ *Ibid* at 1-2.

⁹² *International Convention on the Elimination of All Forms of Racial Discrimination*, GA Res 2106 (XX), OHCHR (4 January 1969) 5.

Housing precarity is known to disproportionately affect immigrants and people of colour within Toronto:⁹³ 20% of racialized families will live in poverty at some point, compared to only 5% of non-racialized families.⁹⁴

In 2018 and 2021, the City published the *Street Needs Assessment* report, which uses a Point-In-Time Count measurement to assess a city or region's population of people experiencing homelessness by surveying unhoused respondents and shelter occupants on one night of the year. The report differentiates between people who reside outdoors, in shelters, 24-hour respite sites, or in Violence Against Women shelters. Results indicate key demographic and characteristics of people experiencing homelessness in Toronto.

The 2018 report highlights that two-thirds of survey respondents were members of racialized groups, predominantly identifying as Black.⁹⁵ Of the 31% of people identifying as members of racialized groups: 9% were Caribbean; 3% Hispanic, Latin American, South Asian; 2% East Asian or Arab; 1% South East Asian, Filipino, or West Asian; and under 1% identified as African American, Black Canadian, of African descent, or another racialized group that was not mentioned. Important to note, 94% of refugee survey respondents identified as members of racialized groups.⁹⁶

In 2021, nearly 60% of respondents were members of racialized groups.⁹⁷ A more detailed account identifies: 31% as Black, 13% as Black-African, 11% as Black-Afro-Caribbean or Afro-Latinx, 7% as Black-Canadian/America, 5% as South Asian or Indo-Caribbean, 4% as Latin American, 4% as Southeast Asian, and 2% respectively identified as West Asian, Arab, and East Asian with less than 1% as other Black-African-European.⁹⁸ Moreover, 13% of respondents were refugees, with 3% being refugee families. The decrease in refugees experiencing homelessness can be attributed to the COVID-19 pandemic due to travel restrictions.⁹⁹

The racialized impact of gentrification

The west end community of Parkdale was once the last option of housing affordability in Toronto, with almost 90% of the population renting their homes in 2016, including many seniors and immigrants.¹⁰⁰ When companies began to purchase properties in the area, low-income tenants began

⁹³ Canadian Observatory on Homelessness, "Discrimination" (2021), online: *HomelessHub* <<https://www.homelesshub.ca/about-homelessness/legal-justice-issues/discrimination>>.

⁹⁴ Canadian Observatory on Homelessness, "Racialized Communities" (2021), online: *HomelessHub* <<https://www.homelesshub.ca/about-homelessness/population-specific/racialized-communities>>.

⁹⁵ City of Toronto, "Street Needs Assessment 2018" (2018) at 5, online (pdf): <<https://www.toronto.ca/city-government/data-research-maps/research-reports/housing-and-homelessness-research-and-reports/>> [*Street Needs Assessment*].

⁹⁶ *Ibid* at 20.

⁹⁷ *Street Needs Assessment 2021*, *supra* note 15 at 27.

⁹⁸ *Ibid* at 28.

⁹⁹ *Ibid* at 7.

¹⁰⁰ Murray Whyte, "'My Parkdale is gone': how gentrification reached the one place that seemed immune", *The Guardian* (14 January 2020), online: <<https://www.theguardian.com/cities/2020/jan/14/my-parkdale-is-gone-how-gentrification-reached-the-one-place-that-seemed-immune>>.

to be pushed out of the neighbourhood.¹⁰¹ “Residents claim that threats, intimidation, eviction notices, and strategic neglect have become common.”¹⁰² These trends increase the risk of vulnerable tenants experiencing homelessness. In 2016, 11% of people accessing homeless shelters in Toronto identified as refugees or asylum claimants.¹⁰³ This number rose to 25% in 2017, and by 2018, 40% of people accessing shelters identified as refugees or asylum claimants.¹⁰⁴

Article 14.2(h) of the *Convention on the Elimination of All Forms of Discrimination Against Women* establishes that Canada, as a state party, must “undertake all appropriate measures to eliminate discrimination against women ... in relation to housing, sanitation, electricity, and water supply.”¹⁰⁵ The Canadian Women’s Foundation reports that nearly 3500 women use the shelter system because of lack of safety at home, citing violence and abuse as reasons for leaving.¹⁰⁶ The 2018 *Street Needs Assessment* report indicated that of all the respondents surveyed, 42% were women. Of this 42%, 93% resided in Violence Against Women shelters, with 41% occupying the shelter system, 36% temporarily staying in 24-hour Respite Sites and 19% residing outdoors. The 2021 *Street Needs Assessment* report indicates that 34% of people experiencing homelessness, both outdoors or in the shelter system, were women.¹⁰⁷ While the shelter system supports women fleeing from violence and abuse, women who experience homelessness are at an increased risk of experiencing sexual assault, violence, and harassment.¹⁰⁸ Thus, it is important to focus on providing access to permanent housing or to improve the safety, security, and privacy of shelter conditions.

The *Convention on the Rights of the Child*, Article 27, establishes that every child has the right to a standard of living and that state parties need to take measures to support parents in providing this standard of living.¹⁰⁹ Article 16.1 states that “no child shall be subjected to arbitrary or unlawful interference with his or her privacy... [or] home.”¹¹⁰ Approximately 28% of the homeless population in Toronto are youth, meaning that 1500–2000 Toronto youth experience homelessness on any given night.¹¹¹ Of people residing outdoors, 63% acknowledged that they first experienced

¹⁰¹ Globe and Mail Event, “Rental housing and evictions”, *The Globe and Mail* (24 September 2020), online: <<https://www.theglobeandmail.com/events/article-rental-housing-and-evictions/>>.

¹⁰² *Ibid.*

¹⁰³ CBC News, “4 in 10 people using Toronto homeless shelters are refugees or asylum claimant, report finds”, *CBC News Toronto* (29 November 2018), online: <<https://www.cbc.ca/news/canada/toronto/street-needs-assessment-2018-1.4925418>>.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Convention on the Elimination of All Forms of Discrimination against Women*, GA Res 34/180, OHCHR (18 December 1979), 27(1).

¹⁰⁶ Fred Victor, “8 Challenges Homeless Women Face” (2021), online: *Fred Victor* <<https://www.fredvictor.org/2020/03/03/lets-help-homeless-women/>> [*Fred Victor*].

¹⁰⁷ *Street Needs Assessment 2021*, *supra* note 8 at 21.

¹⁰⁸ YWCA Canada, “When There’s No Place Like Home: A Snapshot of Women’s Homelessness in Canada” (2012), online: *HomelessHub* <<https://www.homelesshub.ca/resource/when-theres-no-place-home-snapshot-womens-homelessness-canada>>.

¹⁰⁹ *Convention on the Rights of the Child*, GA Res 44/25, OHCHR (2 September 1990) 49.

¹¹⁰ *Ibid.*

¹¹¹ Youth Without Shelter, “Who We Are: Youth Homelessness” (2021), online: *United Way Greater Toronto* <[https://yws.on.ca/who-we-are/youth-homelessness/#:~:text=28%25%20of%20homeless%20people%20in,1in%20100%20youth\)%20in%20Toronto](https://yws.on.ca/who-we-are/youth-homelessness/#:~:text=28%25%20of%20homeless%20people%20in,1in%20100%20youth)%20in%20Toronto)> [*Youth Without Shelter*].

homelessness as a child or youth.¹¹² 24% of youth who reside in shelters identify as LGBTQ2S+, and 22% of youth in shelters identify as immigrants, refugees, or asylum claimants.¹¹³

1. C The City of Toronto’s legal obligations to Indigenous Peoples

The disproportionate exclusion of Indigenous people from suitable and stable housing in Canada is largely due to the failure of Canadian society to prioritize supporting the diversity of culturally appropriate housing systems that correlate to Indigenous expectations about “home.”

— Jesse Thistle, *Definition of Indigenous Homelessness in Canada*¹¹⁴

The City must be guided by its legal and human rights obligations to Indigenous Peoples in all engagements with encampment residents. Indigenous Peoples have distinct rights and relationships with the lands that are recognized in international and domestic law, and the City has corresponding distinctive obligations. These obligations are grounded in historic treaty relationships, Canadian constitutional law, and international law. The City has specific legal duties to the current Treaty holders, the Mississaugas of the Credit First Nation, who have identified the right to adequate and safe housing as an area of policy they seek to influence.¹¹⁵ In the MNCFN 2017 Strategic Plan, the MNCFN prioritized access to more housing as an early infrastructure policy target.¹¹⁶

Homelessness and housing insecurity disproportionately affect Indigenous persons in Canada.¹¹⁷ In 2016, Indigenous persons represented 4.3% of the population in Canada, but represented 28–34% of the unhoused population.¹¹⁸ In Canada, Indigenous persons are 10 times more likely to access emergency shelter services than those who are non-Indigenous.¹¹⁹ In Toronto, Hamilton, and Ottawa, three of Ontario’s largest cities, 15–30% of urban Indigenous Peoples are unhoused.¹²⁰ Of the survey respondents from the 2018 *Street Needs Assessment* report, Indigenous persons accounted for 16% of respondents overall.¹²¹ Indigenous respondents accounted for 13% of respondents residing in shelters, and a striking 38% of those staying outside were Indigenous.¹²² In 2021, this number increased as Indigenous Peoples accounted for 15% of people experiencing homelessness,

¹¹² *Street Needs Assessment*, *supra* note 95, at 4.

¹¹³ *Youth Without Shelter*, *supra* note 111.

¹¹⁴ Jesse A. Thistle, *Indigenous Definition of Homelessness in Canada* (Toronto: Canadian Observatory on Homelessness Press, 2017). [Thistle]

¹¹⁵ Mississaugas of the New Credit First Nation, “Trailblazers: The Mississaugas of the New Credit First Nation Strategic Plan” (September 2017) at 39, online (pdf): MNCFN <<http://mncfn.ca/wp-content/uploads/2019/11/MCFN-Strategic-Plan-Final.pdf>>.

¹¹⁶ *Ibid* at 48.

¹¹⁷ Caryl Patrick, *Aboriginal Homelessness in Canada: A Literature Review* (Toronto: Canadian Homelessness Research Network Press, 2014) at 15.

¹¹⁸ *Gaetz et al*, *supra* note 18 at 50.

¹¹⁹ Annie Duchesne et al, *National Shelter Study 2005-2014* (Gatineau, QC: Employment and Social Development Canada, 2019).

¹²⁰ Canadian Observatory on Homelessness, “Indigenous Peoples” (2021), online: *HomelessHub*

<<https://www.homelesshub.ca/about-homelessness/population-specific/indigenouspeoples#:~:text=In%20fact%2C%20one%20study%20found,more%20likely%20to%20experience%20homelessness>>.

¹²¹ *Street Needs Assessment*, *supra* note 95, at 15.

¹²² *Ibid*.

9% were First Nations, 2% Métis, and under 0% were Inuit and 4% were of Indigenous Ancestry.¹²³ This profound violation of human rights is a result of historical and ongoing processes of colonization and racism against Indigenous Peoples, including broken Treaty promises, dispossession of land and displacement, residential schools, intergenerational disconnection from language and culture, and chronic underfunding of housing and social services.¹²⁴ The City's response to encampments must both acknowledge the roots of Indigenous homelessness and uphold Indigenous Peoples' right to self-determination.

Domestic Law: Section 35 of the Canadian Constitution

Section 35 of the *Constitution Act*, recognizes and affirms the rights of Indigenous Peoples. These rights are grounded in Indigenous Peoples' pre-existing sovereignty and legal orders.¹²⁵ In *R v Sparrow*, the court stated that when interpreting section 35(1) of the *Constitution Act*, a “generous, liberal interpretation... given that the provision is to affirm aboriginal rights” should be taken.¹²⁶ Section 35 of the *Constitution Act*:

“Provides the constitutional framework through which the fact that aboriginals lived on the land in distinctive societies, with their own practices, customs and traditions, is acknowledged and reconciled with the sovereignty of the Crown. The substantive rights which fall within the provision must be defined in light of this purpose.”¹²⁷

While Canadian courts have held that a government policy can regulate certain rights, it must be consistent with section 35(1) of the *Constitution Act*. Where a government decision or policy infringes on section 35 rights, the government must show that it is justified.¹²⁸ Governments also have a duty to consult and accommodate Indigenous Peoples, as the Supreme Court set out in *Haida Nation*. Forced evictions of Indigenous people do not comply with requirements for meaningful good faith consultation about and involvement in social programs, nor are they consistent with the recognition of Indigenous self-determination. Canadian courts have recognized the right to self-determination applies to urban Indigenous peoples and communities.¹²⁹ Urban Indigenous communities have the right to equal agency over social programs and decisions that affect them.

United Nations Declaration on the Rights of Indigenous Peoples

The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) is an international instrument recognizing a range of rights for Indigenous Peoples. It was formally endorsed by Canada in November 2010. UNDRIP sets minimum standards to support the survival, dignity, and wellbeing of Indigenous Peoples.¹³⁰ While UNDRIP is a non-binding declaration, the principles it enshrines are grounded in binding international law, such as the Conventions noted above. The

¹²³ *Street Needs Assessment 2021*, *supra* note 15 at 23.

¹²⁴ *Thistle*, *supra* note 114, at 8.

¹²⁵ See: *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73; *Delgamuukw v British Columbia*, [1997] 3 SCR 1010.

¹²⁶ *R v Sparrow*, [1990] 1 SCR 1075 at 1077 [*R v Sparrow*].

¹²⁷ *R v Van der Peet*, 1996 RCS 2 at page 508.

¹²⁸ *R v Sparrow*, *supra* note 126.

¹²⁹ *Canada (AG) v Misquadis* [2002] FCA 370; *Ardoch Algonquin First Nation v Canada (AG)*, [2004] 2 FCR 108, [2003] FCA 473, at 36.

¹³⁰ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGA, 61st Sess, UN Doc A/RES/61/295 (2007) [UNDRIP].

recently enacted federal Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, establishes a process to align Canadian law with UNDRIP and affirms the declaration as an interpretative tool for domestic law, including section 35 of the *Constitution Act, 1982*.¹³¹ While this process is ongoing, the Declaration “should be given the highest interpretative weight” by governments and courts to reflect the binding treaties, conventions and customary international law it enshrines.¹³² Indeed, the City’s human rights obligations noted above are indivisible from its obligations under the *United Nations Declaration on the Rights of Indigenous Peoples*.

A number of articles in UNDRIP are relevant to Toronto’s response to encampments. Article 1 guarantees Indigenous Peoples’ right to full enjoyment of all human rights and fundamental freedoms recognized in international law. Article 3 recognizes the right of self-determination and the freedom to determine political status and pursue economic, social, and cultural development. Article 10 establishes that Indigenous Peoples “shall not be forcibly removed from their lands or territories.”¹³³ Article 21 states that Indigenous Peoples have the right to the improvement of economic and social conditions, including housing and sanitation. Article 23 recognizes that self-determination requires Indigenous Peoples have the ability to develop and administer health, housing, and other economic and social programs affecting them through their own institutions and in accordance with their needs. The declaration does not differentiate between urban, rural, or remote Indigenous populations in recognizing the right to self-determination.

The City has adopted UNDRIP and recognized its obligations to Indigenous Peoples.¹³⁴ Indeed it was one of the first governments in Canada to do so. In 2015, the City endorsed the 94 Calls to Action outlined in the Truth and Reconciliation Commission of Canada and committed to fully implementing the eight Calls directly related to the role of municipal governments. The City specifically acknowledged Call to Action 3 recognizing the right to self-determination and Article 23 of UNDRIP, with respect to health, housing, and social programmes.”¹³⁵

1. D Cities have human rights obligations under federal, provincial, and municipal law

Municipal approaches to encampments must comply with the *Charter of Rights and Freedoms* (Charter), the *National Housing Strategy Act* and the *Ontario Human Rights Code*. The City is also bound by its own *HousingTO Action Plan* and the *City of Toronto Housing Charter*. While legal action is especially difficult and costly for those experiencing homelessness, these human rights obligations have been successfully argued in court actions against municipalities.

¹³¹ *Ibid.*

¹³² For a thorough review of the application of UNDRIP in Canada, and the impact of Bill C-15, see, Townshend, Hille, McNamara, “Bill C-15 (UNDRIP Act) Commentary” (2021), online: *Olthius, Kleeer, Townshend LLP* <<https://www.oktlaw.com/bill-c-15-undrip-act-commentary/#executive-summary>>.

¹³³ UNDRIP, *supra* note 130.

¹³⁴ *City* of Toronto, EX10.1, “Statement of Commitment to the Aboriginal Communities of Toronto: Annual Update 2015” (13 November 2015), online: <<https://www.toronto.ca/legdocs/mmis/2015/ex/bgrd/backgroundfile-85951.pdf>>.

¹³⁵ *City* of Toronto, EX 10.16, “Truth and Reconciliation Commission of Canada Recommendations” (9 December, 2015): <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX10.16>>.

The right to life, liberty, and security: Upholding section 7 of the Charter of Rights and Freedom

Under section 7 of the *Charter*, “everyone has the right 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.”¹³⁶ Several cases have highlighted this *Charter* right in court.

In British Columbia, courts have found that prohibitions against sleeping and erecting shelters on public property can violate section 7 where the city fails to provide adequate shelter space.¹³⁷ Subsequent cases have noted the limitations of existing shelter systems, and have found that shelter conditions and restrictions such as curfews, restrictive rules about alcohol and drugs, and violence can be interpreted as leading to “insufficient accessible shelter space.”¹³⁸ In *Victoria (City) v Adams*, the court comprehensively explored the benefits of encampments including improved health, access to services, safety of person and possessions, sense of community, as well as responsiveness to concerns raised by the police and fire departments. These findings were based on testimony from service providers, community organizations, and encampment residents, and they confirm arguments advanced by frontline groups and scholars.¹³⁹ The court found that granting an injunction to end the encampment would simply shift “harms” to other areas and concluded the balance of convenience was “overwhelmingly in favour of the defendants.”¹⁴⁰

Reports from encampment residents and advocates in Toronto support the reasoning in *Victoria (City) v Adams* with regard to the greater sense of belonging, security, safety, and privacy encampments can provide relative to the current shelter system. While in 2016 the City of Victoria did successfully get an injunction in relation to another encampment, the city had by then added a number of housing spaces.¹⁴¹ Further, as outlined in *Carter v Canada*, section 7 protects the right to life, including when state action imposes an increased risk of death. While the City of Toronto states encampment residents have access to “safe, high quality” indoor shelter, research had demonstrated that people experiencing homelessness in Ontario are significantly more likely to contract COVID-19, to be hospitalized, to require ICU care, and to die.¹⁴² Further, data obtained by the Canadian Press support claims by shelter users and advocates that shelters are violent and unsafe: violent incidents have increased by 200% in the last five years, and deaths have increased by 125%.¹⁴³ Overdose deaths in shelters were also at record highs during the period examined in the report with 610 suspected overdoses and 26 deaths between January and June 2021, a “staggering increase” from 10 deaths during the same period in 2020.¹⁴⁴

¹³⁶ *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*].

¹³⁷ *Victoria (City) v Adams*, 2009 BCCA 563 at paras 160-166 [*Victoria (City) v Adams*].

¹³⁸ *Abbotsford (City) v Shantz*, 2015 BCSC 1909 at paras 46-82, 100, 107-115 [*Abbotsford v Shantz*].

¹³⁹ *Ibid* at paras 125-179.

¹⁴⁰ *Ibid* at para 183.

¹⁴¹ *British Columbia v Adamson*, 2016 BCSC 1245.

¹⁴² Lucie Richard et al., “Testing, infection and compliance rates of COVID-19 among people with a recent history of homelessness in Ontario, Canada: A retrospective cohort study” (2021) 9:1 CMAJ OPEN at E6.

¹⁴³ Liam Casey, “Toronto’s shelters see triple the number of violent incidents rise in overdoses during COVID-19 pandemic, data shows”, *Globe and Mail* (6 June 2021), online: <<https://www.theglobeandmail.com/canada/toronto/article-torontos-shelters-see-triple-the-number-of-violent-incidents-rise-in/>>.

¹⁴⁴ Tyler Cheese, “Opioid overdoses spike in homeless shelters despite Toronto’s harm-reduction program”, *CBC News* (9 November 2021), online: <<https://www.cbc.ca/news/canada/toronto/toronto-hotel-shelter-overdoses-spike-1.6241762>>.

The City often cites the decision in *Black v Toronto* denying encampment residents an injunction against the enforcement of park by-laws.¹⁴⁵ However, this decision and its limited implications should be interpreted with caution for several reasons. First, as an application for an interim injunction it made no substantive findings on whether Toronto’s by-laws violate the *Charter*. Indeed, the court found that there was a serious issue to be tried. Therefore, the decision did not uphold Toronto’s by-laws; instead, the court found the balance of convenience favoured the city. However, the balance of convenience analysis was heavily informed by an earlier Ontario decision in *Batty v Toronto* in which the City of Toronto successfully defeated an injunction application by Occupy Toronto protesters, again pertaining to the application of parks by-laws. That case was not about an encampment established by unhoused people to provide shelter and meet basic needs. Thus, the decision engaged completely different rights under the *Charter*, namely section 2 freedom expression rather than section 7. Further, unlike *Batty*, *Black* was heard during a pandemic with specific and serious effects on the shelter system and homeless persons, as noted in *Sanctuary et al.*¹⁴⁶

Finally, the context at the time of the hearing in August 2020 was in stark contrast to the second and third waves of COVID-19 that occurred in subsequent months. Indeed, the Court stated “the City will have to consider how and when to enforce its by-law having regard to the continued availability of shelter spaces...” Unfortunately, the City failed to heed this warning and threatened residents with eviction throughout the pandemic and engaged in forced evictions in spring 2021. Encampment residents and their supporters closely tracked shelter outbreaks and shelter availability. Within a four-month period, more than 13,780 calls were made to the Central Intake Line to request a shelter space.¹⁴⁷ Those callers were told there was no space available. Shelters were operating at 98–99% capacity during this period.¹⁴⁸ Further, while the City often cites the addition of shelter spaces during the winter of 2020–2021, the requirements for social distancing led to more than 1000 fewer shelter spaces compared with the winters of 2018–2019 and 2019–2020. Further, while the City states it referred nearly 1858 people to indoor shelter spaces during the first three waves of the pandemic, its own data reveals nearly half of those who entered have since left the shelter system, often returning to encampments, and only eight percent are in permanent housing.¹⁴⁹

Equality before the law: Reinforcing section 15 of the Charter of Rights and Freedom

Section 15 sets out the *Charter* equality protections:

“[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

Section 15 prohibits governments from discriminating against anyone on these grounds, including racialized persons, Indigenous persons, and people living with physical and mental illness. As the court in *Black v Toronto* recognized, members of these protected groups are

¹⁴⁵ *Black et al v City of Toronto*, 2020 ONSC 6398 [*Black v Toronto*].

¹⁴⁶ *Sanctuary et al v Toronto*, *supra* note 29, at paras 214-216.

¹⁴⁷ Fact Check Toronto, “Claim: The City of Toronto continually provides safe, inside space to people living outside.” (18 May 2021), online: FCT <<https://factchecktoronto.ca/2021/05/18/shelter-unavailable/>> [FCT].

¹⁴⁸ *Fred Victor*, *supra* note 106.

¹⁴⁹ *Beattie*, *supra* note 71.

disproportionately represented in the homeless population of Toronto, particularly Indigenous people.¹⁵⁰ Thus, enforcement of parks by-laws and Trespass Notices, shelter conditions and rules, and the nature of housing options and manner of offers may all raise potential section 15 violations. For example, encampment residents have reported that shelters and shelter hotels being offered to encampment residents have restrictive rules and conditions, particularly those prohibiting guests and the consumption of alcohol and drug use. Substance-dependence is a recognized disability, and a failure to reasonably accommodate may give rise to a section 15 violation. As well, the enforcement of parks by-laws through Trespass Notices, policing, and eviction actions are likely to disproportionately stigmatize and criminalize members of these groups, compounding the ongoing and recognized over-policing of Black and Indigenous people. As discussed below, the City's Parks Ambassador program specifically targets and monitors alcohol and drug use by unhoused people in parks. The City must ensure its actions, and the actions of law enforcement in carrying out City policies, do not target protected groups and discriminate on prohibited grounds.

The National Housing Strategy Act

In June 2019, the [National Housing Strategy Act](#) (NHSA) received Royal Assent, and for the first time in Canada's history the right to housing was enshrined in domestic legislation. The historic Act was preceded by Canada's first-ever [National Housing Strategy](#) (NHS) in 2017, a 10-year, \$70 billion plan to meet the housing needs of 530,000 families, create 385,000 community housing units, and provide housing solutions for 50% of people experiencing chronic homelessness.¹⁵¹ The NHSA establishes housing as a human right in domestic legislation, recognizing "housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities."¹⁵² Section 4(a) of the NHSA states that "the right to adequate housing is a fundamental human right affirmed in international law."¹⁵³ This legislation requires an explicit commitment to improving housing outcomes for persons in greatest need, and Section 5(1)(d) acknowledges that "vulnerable groups and persons with lived experiences of housing need" must be included in decision-making processes.¹⁵⁴ In order to comply with the NHSA, all municipalities in Canada (including the City of Toronto), must develop policy and programmatic approaches to homelessness that are aligned with the right to housing.

Provincial legislation and the Ontario Human Rights Code

Municipalities have specific legal obligations in regard to housing and homelessness. Provinces establish legislation and policy frameworks regarding housing rights, as well as collaborating with service managers to ensure financial accountability of services and programs.¹⁵⁵ However, the municipal level is expected to "oversee affordable housing projects in their service area."¹⁵⁶ In doing

¹⁵⁰ *Black v Toronto*, *supra* note 145, at para 60.

¹⁵¹ Government of Canada, *Canada's National Housing Strategy*, (Ontario: A Place to Call Home, 2018) at 4-6.

¹⁵² *National Housing Strategy Act*, SC 2019, c 29.

¹⁵³ *Ibid* at s 4.

¹⁵⁴ *Ibid* at s 5.

¹⁵⁵ Ontario, Ministry of Municipal Affairs and Housing, *Municipal Tools for Affordable Housing* (Toronto: Provincial Planning Policy Branch, 2011) at 9 [*Municipal Tools*].

¹⁵⁶ Ontario, "Consent Authority of Service Managers" (15 November 2019), online: *Province of Ontario* <<https://www.ontario.ca/page/consent-authority-service-managers>>.

so, they can use federal, provincial, and municipal funds to develop and administer housing and homelessness programs and services.¹⁵⁷ The *Ontario Housing Services Act* states that service managers must “develop and implement local housing and homelessness plans that address provincial interests” and ensure that they “are consistent with Ontario’s Housing Policy statement.”¹⁵⁸

These legal obligations must comply with human rights law. Under section 2(1) of the *Ontario Human Rights Code*, “every person has a right to equal treatment with respect to the occupancy of accommodation without discrimination” based on key demographics and characteristics of which include, but are not limited to citizenship, sex, race, sexual orientation, and disability.¹⁵⁹ Section 4(1)(f)(i)(l) of the *Ontario Housing Services Act* notes:

“[I]t is a matter of provincial interests that there be a system of housing and homelessness services that...treats individuals and families with respect and dignity; allows for a range of housing options to meet a broad range of needs; [and] is delivered in a manner that promotes environmental sustainability and energy conservation.”¹⁶⁰

In addition, under section 1 of the *Ontario Human Rights Code*, “every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of... disability.”¹⁶¹ Section 5(1) of the *Ontario Human Rights Code* states that severe substance abuse, addiction, or dependency constitutes a disability.¹⁶² Thus, while it has not yet been litigated, some current shelter rules regarding substance use, including those in shelter-hotels, may be contrary to the *Ontario Human Rights Code*.

Municipal obligations & City Council commitments

Municipal governments play a critical role in advancing housing strategies and policies.¹⁶³ In some cases municipalities are responsible for distributing federal and provincial/territorial funds to the services and programs central to domestic international human rights obligations.¹⁶⁴ In many cases, municipal governments are the actors who transform “policies into practical application.”¹⁶⁵ In so doing, they must uphold the human rights obligations set out above.

Before the start of the pandemic, on November 26, 2019 Toronto City Council requested financial support from the provincial and federal government towards creating 18,000 new supportive

¹⁵⁷ *Municipal Tools*, *supra* note 155 at 9.

¹⁵⁸ *Ibid* at 4.

¹⁵⁹ OHRC, *In the Zone: Housing, Human Rights and Municipal Planning* (Toronto: Ontario Human Rights Commission, 2012), at 3.

¹⁶⁰ *Ontario Housing Services Act*, SO 2011, c 6, s 4.

¹⁶¹ *Ontario Human Rights Code*, RSO 1990, c H 19, s 1.

¹⁶² *Ibid* s 5(1).

¹⁶³ Alan Broadbent, Avana Capital & Elizabeth McIsaac, “Recommendations on strengthening the capacity of local governments to be effective in delivering on the obligations of the ICESCR” (2016) at 4, online (pdf): *Maytree* <https://maytree.com/wp-content/uploads/Maytree_Submission_Geneva-1.pdf> [*Maytree*].

¹⁶⁴ Social Rights Ontario, “Bringing human rights to the city: Municipal human rights charters in Canada” (n.d.), online: *Social Rights Ontario* <<http://www.socialrightsonario.ca/jurisprudence-2/>>. See also Fiona Crean, *Banned Indefinitely: Safety or Punishment? An Investigation into a Parks, Forestry and Recreation Decision to Ban an Individual* (Toronto: Office of the Ombudsman, 2010).

¹⁶⁵ *Maytree*, *supra* note 163, at 4.

housing units over a ten-year period.¹⁶⁶ In December 2019, the City updated its *HousingTO Action Plan*.¹⁶⁷ Despite a lack of measurable and quantifiable goals to address homelessness, the City acknowledges the need to transition from a crisis response focused on emergency shelter services to long-term solutions focused on permanent and adequate housing options.

The *Toronto Housing Charter* (THC), part of the *2020-2030 HousingTO Action Plan*, was introduced in 2009 and revised in 2019. The THC is consistent with the NHSA, setting out a rights-based approach to housing to ensure “safe, secure, affordable and well-maintained home[s].”¹⁶⁸ According to the THC, “all residents have a right to housing that is maintained in a state of good repair” and “all residents have a right to housing that respects and [considers] their expression of cultural identity and way of life.”¹⁶⁹ Section 4 commits the City to, “take action to prevent arbitrary eviction, homelessness and other threats to human security and dignity, ensuring that City policies and programs are designed to avoid residents from being made homeless.”¹⁷⁰

Section 7 of the THC states that the City will review “policies, programs and by-laws to evaluate those which penalize or criminalize homeless people or that displace them from where they are living without offering appropriate services and housing options.”¹⁷¹ Unfortunately the ongoing reality of most encampments in Toronto demonstrates that the City has not yet fulfilled this obligation. Multiple encampment evictions have taken place since the THC was adopted. During several of these evictions’ encampment residents have been forcibly removed and displaced from their shelter without adequate housing options being offered. For example, in June 2021, several residents who purportedly received housing offers during the Trinity Bellwoods eviction did not end up indoors.¹⁷² At Alexandra Park, City workers failed to ensure residents could access the shelter spaces offered and after workers left the park several residents were denied access and left on the streets.¹⁷³ The Trinity Bellwoods, Alexandra Park, and Lamport Stadium evictions were particularly notable because of the heavy police and private security presence and the use of fences, heavy machinery, and force. Several arrests were made and encampment residents and their supporters are still facing charges and restrictive conditions for release.¹⁷⁴ At the time of writing, two residents had just been removed from encampments and served with notices banning them from all City parks

¹⁶⁶ Toronto City Council, MM12.21, “Ending Homelessness – Building New Supportive Housing Now – by Councillor Joe Cressy, seconded by Councillor Kristyn Wong-Tam” (26 November 2019), online: *City of Toronto* <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.MM12.21>>.

¹⁶⁷ *HousingTO*, *supra* note 8 at 13.

¹⁶⁸ Wendy Walberg, “Declarations and Affirmations respecting Homelessness and Housing” (28 January 2019), online (pdf): City of Toronto <<https://www.toronto.ca/legdocs/mmis/2019/cc/bgrd/backgroundfile-124111.pdf>>..

¹⁶⁹ *HousingTO*, *supra* note 8, at 4.

¹⁷⁰ *Ibid* at 24.

¹⁷¹ *Ibid*.

¹⁷² Victoria Gibson & Jennifer Pagliaro, “Roughly two dozen evicted from Trinity Bellwoods encampments after tense standoff with Toronto police, private security”, *Toronto Star* (23 June 2021), online: <<https://www.thestar.com/news/gta/2021/06/22/city-officers-police-removing-homeless-encampments-at-trinity-bellwoods-park.html>>.

¹⁷³ Encampment Support Network, *Report on Violent Evictions at Alexandra Park from ESN Scadding Neighbourhood Committee*, on file with the author, online: <[https://docs.google.com/document/d/1OqQhHmGikPHuaa\]QKhUFENqPRU_71CuRtnmx6MLK5gk/edit](https://docs.google.com/document/d/1OqQhHmGikPHuaa]QKhUFENqPRU_71CuRtnmx6MLK5gk/edit)>.

¹⁷⁴ The Canadian Press, “Toronto homeless, their supporters vow to fight charges in encampment clearings”, *Toronto Star* (16 September 2021), online: <<https://www.thestar.com/news/gta/2021/09/16/homeless-supporters-charged-in-toronto-encampment-clearings-vow-to-fight-charges.html>>.

and community centres for one year.¹⁷⁵ Lawyers working with encampment residents have raised concerns that the arrests and strict conditions have targeted encampment residents active in organizing residents against evictions.¹⁷⁶

Further, documents accessed through Freedom of Information (FOI) requests reveal that 2019 Park Ambassador training materials instructed Parks Ambassadors to contact the Toronto Police Services and cite the *Trespass to Property Act* if people erected structures in parks.¹⁷⁷ In combination with the consistent use of Notices to Trespass, threats of \$10,000 fines and even arrest if encampment residents do not comply with City officials, the Parks Ambassador instructions are in clear violation of the City's own commitments in section 7 of the THC.

In June 2021, the City published *The City of Toronto's Update on COVID-19 Homelessness Response Report*. The report sets out the various efforts made to secure both temporary and permanent housing for people experiencing homelessness. The Update reported on improvements made to the capacity of the shelter system. The Toronto shelter system has been operating at 98–99% capacity for several years. In response to COVID-19, and as amended from their initial report cited above which states 30 new locations and 2000 beds, in 2021 the City reportedly only opened 28 new shelter locations to accommodate the increase of people experiencing homelessness.¹⁷⁸ However, as discussed below in Section 1A, the City had to reduce existing shelter capacity to comply with social distancing requirements. Therefore, while the new spaces provided some people newly introduced to the shelter system because of COVID-19 evictions with access to indoor emergency spaces, meals, support resources, and programs, the City's Interim Shelter Recover Plan only considered 1000 additional spaces created.¹⁷⁹ This remained a serious shortfall for the overall need. The Response Report also sets out the measures the City has taken since March 2020 to protect shelter occupants from COVID-19. These measures include providing 100,000 pieces of personal protective equipment, launching informative flyers and poster campaigns about safety in shelters, and establishing proactive symptom and daily screening tests at shelter entry points.¹⁸⁰ While these are concrete steps towards ensuring safer space for shelter occupants, an Encampment Engagement Survey conducted in March 2021 found nearly 45% of respondents felt a greater sense of belonging living with friends and family in encampments,¹⁸¹ with 44% saying they had more privacy in encampments.¹⁸²

The Update also reported improvements to the City's eviction prevention programs and efforts to seek assistance from other levels of government to prevent residential evictions. The federal government provided \$2000 of financial aid through the Canadian Emergency Relief Benefit, which

¹⁷⁵ Chris Fox, "City bans two encampment residents from all Toronto parks and community centres for a year", *CTV News* (8 October 2021), online: <<https://toronto.ctvnews.ca/city-bans-two-encampment-residents-from-all-toronto-parks-and-community-centres-for-a-year-1.5617036>>.

¹⁷⁶ Katie Swyers, "Homeless encampment supporters banned from all city-run parks, community centres feel 'targeted'", *CBC News* (8 October 2021), online: <<https://www.cbc.ca/news/canada/toronto/toronto-homeless-encampment-supporters-banned-1.6204563>>.

¹⁷⁷ *FCT*, *supra* note 147.

¹⁷⁸ *COVID-19 Response Update*, *supra* note 39, at 1.

¹⁷⁹ City of Toronto Shelter, Support and Housing Administration, EC16.1, "Interim Shelter Recovery and Infrastructure Implementation Plan" (28 September 2020), online: *City of Toronto* <<https://www.toronto.ca/legdocs/mmis/2020/ec/bgrd/backgroundfile-157088.pdf>>.

¹⁸⁰ *COVID-19 Response Update*, *supra* note 39, at 8.

¹⁸¹ *Ibid* at 11

¹⁸² *Ibid*.

in part, supported residential tenants with rental payments. The provincial government implemented two moratoriums on evictions. Unfortunately, thousands of residents nonetheless lost their homes or were involved in Landlord Tenant Board hearings due to their inability to pay rent. Many are still facing precarious housing conditions or have become homeless.

Finally, the City committed that it would exhaust all options to provide shelter and housing for encampment residents before clearing them. However, while some encampment residents secured shelter spaces through Streets to Homes, we note that this municipal outreach program was originally intended to move unhoused persons into permanent housing, not emergency shelters. Further, our research indicates that City workers and Toronto Police Services evicted some encampment residents without providing any housing or even securing indoor shelter space.

On June 8, 2021, Toronto City Council amended the Response Report by including two new goals of ending chronic homelessness and achieving a goal of zero encampments.¹⁸³ Neither of these amendments had specific target-dates attached to them. While the City acknowledged during the Council meeting that Toronto takes a “housing first and human rights approach to housing those experiencing homelessness,” the Council actually voted against two motions intended to implement a rights-based approach to encampments.¹⁸⁴ Motion 1 on improving shelter operations, asked staff to report on the feasibility of the following actions:

- a. Forming an advisory committee comprised of current and past shelter clients to provide opinion and advice on shelter operation improvements for clients.
- b. Reviewing shelter and respite standards to improve operational practices and “enhance opportunities to provide a more welcoming environment.”
- c. Providing clients access to housing and healthcare workers within their first week of arrival to “develop a housing and health care plan.”
- d. Reviewing “bed-check” policies to improve privacy conditions and respect clients’ dignity.
- e. Providing clients with nutritious meals.
- f. Ensuring that clients have access to storage for their belongings.¹⁸⁵

Motion 2, Part 2 requested the City Manager to develop a strategy for a collaborative approach to “providing safe indoor shelter and housing opportunities for residents of encampments that ensures the safety and dignity of encampment residents” in consultation between staff, community organizations, and “most importantly, people with lived experience of homelessness.”¹⁸⁶ This part of Motion 2 lost by 17 votes.¹⁸⁷ Thus, while City Council repeatedly commits to upholding a rights-based approach to housing and encampments in principle, it fails to take the appropriate and necessary steps to adopt and implement this approach. Perhaps most critically, the City has repeatedly refused to meaningfully engage encampment residents in the design or implementation of policies, plans, and programs. The programs that are in place harm residents. Voting against motions that directly include and engage with people who have lived experiences of homelessness, further perpetuates the agenda of discriminating against people experiencing homelessness.

¹⁸³ Toronto City Council, CC34.1, “COVID-19 Response Update: Protecting People Experiencing Homelessness and Ensuring the Safety of the Shelter System” (8 June 2021), online: *City of Toronto* <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.CC34.1>>.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

Chapter 1 Summary

- The City is bound by international human rights standards.
- The City has binding obligations to uphold Indigenous rights and self-determination in international law, treaties, and section 35 of the *Constitution Act*.
- Section 7 of the *Charter* protects the right to life liberty and security of the person and has been found to prohibit encampment evictions when no adequate and safe shelter space is available.
- Section 15 of the *Charter* protects equality rights and prohibits discrimination, including discriminatory shelter conditions and enforcement of by-laws.
- The City's parks by-laws are vulnerable to legal action by encampment residents.
- The City has committed to adopting a rights-based approach to housing through the HousingTO 2020-2030 Action Plan and the Toronto Housing Charter.
- The City has not upheld its commitment in the Toronto Housing Charter to reduce and prevent criminalization and penalization of unhoused persons.

Chapter 2: Helping or hurting? The legal powers that the City uses to evict encampment residents

Cities have two main sets of powers to address housing need, homelessness, and encampments: formal ‘legal’ powers and ‘soft’ powers.

Legal powers include municipal by-laws, which are rules governing city residents’ actions. For example, a city can charge encampment residents with violations of parks by-laws or littering and street by-laws. Cities can choose to issue tickets and issue Notices of Trespass to evict encampment residents from public parks on the basis of these by-laws. They can also choose to have police enforce the Notices and remove people from the park. Importantly, cities do not have to enforce such bylaws; they have discretionary power in their enforcement and application.

Soft powers are persuasive strategies, sometimes used by political actors, to redirect people’s perspectives on a topic to advance the political actors’ interest and control the narrative about an issue in their jurisdiction.¹⁸⁸ Language used by news outlets, in City Council meetings, in written policies, or even on social media can change the perspective someone has on an issue. For example, some cities choose to characterize encampments as hazards to surrounding communities or prioritize the concerns of housed residents in neighbourhoods with encampments. Cities can use these powers to shape public opinion justify city actions.

The following two chapters discuss both forms of powers: Chapter 2 outlines the City’s legal powers, focusing on City by-laws and trespass orders, and Chapter 3 discusses its soft powers.

Chapter 2 Summary

- City parks by-laws were not introduced or implemented as housing policy and are unsuitable tools for responding to encampments, yet the City continuously uses them to displace and criminalize encampment residents.
- In 2015, the Faulkner Report concluded with 35 recommendations outlining fire safety concerns and a harm reduction approach that the City could introduce to reduce encampment fire hazards. The City has yet to adopt the Faulkner Report’s recommendations, yet the City continues to use fire safety concerns to justify evictions.
- Toronto Parks Ambassadors are being trained to specifically target and criminalize unhoused persons. Ambassadors sometimes work in collaboration with Toronto city workers to aid in dismantling, displacing, and removing encampment residents and their belongings. They also work with Toronto Police Services to penalize and criminalize encampment residents and housed individuals by identifying potential by-law violations and criminal offences.

¹⁸⁸ Naren Chitty et al, *The Routledge Handbook of Soft Power* (Oxon: Routledge, 2017) at 1.

The City is governed by the *City of Toronto Act*,¹⁸⁹ making it one of the only Canadian cities to have stand-alone legislation as opposed to being governed under the all-inclusive provincial *Municipal Act, 2001* that governs most municipalities in Ontario.¹⁹⁰ Section 6(1) of the *City of Toronto Act* states that: “The powers of the City under this or any other Act shall be interpreted broadly so as to confer broad authority on the City to enable the City to govern its affairs as it considers appropriate and to enhance the City’s ability to respond to municipal issues.”¹⁹¹ The Supreme Court of Canada upholds this flexibility noting that “municipal by-laws are to be read to fit within the parameters of the empowering provincial statute where the by-laws are susceptible to more than one interpretation.”¹⁹² Allowing municipalities some discretion in interpreting empowering provincial legislation reflects the judicial recognition of the principle of subsidiarity, that decisions should be made “at the lowest level of government when appropriate and possible.”¹⁹³ This is to ensure that decisions are being made by the level of government closest to the people that will be affected.¹⁹⁴

The Supreme Court of Canada addressed municipal jurisdiction in *Spraytech v Hudson (Town)*. In this case, the court found that municipalities, as “creatures of the province,” may only exercise powers “expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation.”¹⁹⁵ Nonetheless, municipalities are given discretion to create laws under “general welfare powers,” which allow municipalities to enact by-laws “genuinely aimed at furthering goals such as public health and safety.”¹⁹⁶ General welfare powers are granted to municipalities through open-ended provisions in empowering provincial legislation. Open-ended provisions provide municipalities with the flexibility to respond to local health and safety concerns without requiring amendment of the empowering provincial legislation.

2. A City of Toronto by-laws: The main grounds for eviction

City park by-laws regulate the activities allowed in public parks.¹⁹⁷ These are the by-laws most often relied on by the City in their response to encampments. For example, Toronto Municipal Code Chapter 608-13, prohibits camping in parks, stating, “no person shall dwell, camp or lodge in a park,” without a permit.¹⁹⁸ Chapter 608-14 prohibits someone from putting up a tent or building structure in a park. It states, “no person shall place, install, attach, or erect a temporary or permanent tent, structure or shelter at, in...a park,” without a permit.¹⁹⁹ These by-laws make setting up and living in an encampment illegal.

¹⁸⁹ *City of Toronto Act, 2006*, SO 2006, c 11, Schedule A [*City of Toronto Act*].

¹⁹⁰ *Municipal Act, 2001*, SO 2001, c 25.

¹⁹¹ *City of Toronto Act*, *supra* note 189. A similar provision is found in *Ibid* at s 8.

¹⁹² *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40 at para 26 [*Spraytech v Hudson (Town)*].

¹⁹³ Alexandra Flynn, “Operative Subsidiarity and Municipal Authority: The Case of Toronto’s Ward Boundary Review” (2019) 56:2 *Osgoode Hall LJ* 271 at 276.

¹⁹⁴ *Ibid*.

¹⁹⁵ *Spraytech v Hudson (Town)*, *supra* note 192, at para 18.

¹⁹⁶ *Ibid* at para 20.

¹⁹⁷ City of Toronto, “Bylaw Enforcement” (2021), online: *City of Toronto* <<https://www.toronto.ca/city-government/public-notice-bylaws/bylaw-enforcement>>.

¹⁹⁸ City of Toronto, by-law No 608, *Parks*, (30 October 2020), s 13 [*Parks By-law*].

¹⁹⁹ *Ibid* at s 14.

The City draws from the language used in these by-laws when it characterizes encampment residents and encampments. City communications do not refer to people living in encampments as “residents” or to shelters, such as tents, as “homes.” Instead, they emphasize the illegal, temporary, and informal nature of encampments. For example, in a Fact Sheet dated February 25, 2021, the City referred to Khaleel Seivwright’s modular homes as “wooden structures.”²⁰⁰ The same fact sheet referred to people experiencing homelessness as “individuals who were sleeping outside secure permanent housing.”²⁰¹ When referencing access to housing support, the City will only refer to shelter as an emergency, temporary provision, or as an ‘indoor space.’ Thus, affirming the notion that a shelter or ‘indoor space’ is not a viable housing option for someone to live permanently or for a long period of time. The parks by-laws are also the basis for the City’s characterization of encampment residents as “trespassers.” The City relies on this language to claim encampment residents are not being *evicted* because they have no legal right to be there and therefore procedural and other protections do not apply when encampments are cleared.

Chapter 608-53 permits by-law officers to act if they see someone not complying with by-laws. Usually, by-law officers will issue a ticket for violations of municipal by-laws. However, if the City decides to escalate action the police may be involved, and this may further escalate to an issuance of a “Trespass to Property Act Police Letter.” This allows the police to take action to clear an encampment. In enforcing by-laws, a police officer may “remove [an] encroachment, install appropriate fencing and recover all expenses associated with the removal” if people do not comply with orders to leave the park. In this case, “encroachment” may refer to shelters that people have established in encampments. Chapter 608-53(B)(2) authorizes a by-law officer to “[r]emove from the park to a pound or storage facility any animal or thing owned by or in control of the person who the officer believes is or was involved in the contravention.”²⁰² This provision allows a by-law officer to remove items belonging to people in encampments.²⁰³

While these by-laws do provide a legal basis for the City to involve police and to take certain actions in relation to public park lands, they do not *require* by-law officers or police to do so. Choices about enforcement are discretionary. The City could make different choices about how they engage with encampments and how they address any concerns about the health, safety, and well-being of residents, as well as concerns about access and use of the park by other users.

Municipal by-laws were not designed to address a housing crisis. Parks by-laws were not designed to serve as de facto housing policy. Trespass Notices do not address the structural issues that lead to encampments. These blunt legal tools not only fail to contribute to solving the municipal housing crisis – they also entrench the inequalities at the root of homelessness. Parks by-laws were not developed based on the experiences of unhoused people or in light of human rights obligations. In the absence of concrete steps to implement a rights-based approach to encampments and the realization of the right to housing, the City is relying on these ill-equipped tools to address what it has acknowledged as a housing crisis. The existing structure and content of the by-laws, and the choices made about how, when, and against whom to enforce them, are made by the City. It is both

²⁰⁰ City of Toronto, News Release, “Frequently Asked Questions- Wooden Structures in Encampments” (25 February 2021), online: *City of Toronto* < <https://www.toronto.ca/news/faq-wooden-structures-in-encampments/> > [FAQ].

²⁰¹ *Ibid.*

²⁰² *Parks By-law*, *supra* note 198, at s 53.

²⁰³ Nicholas Blomley, Alexandra Flynn & Marie-Eve Sylvester, “Governing the Belongings of the Precariously Housed: A Critical Legal Geography” (2020) 16 *Annu Rev Law Soc Sci* 165 at 167.

legally and politically possible to choose to respond to encampments differently. Indeed, as the new Dufferin Grove pilot project demonstrates, nothing in the existing regulatory structure requires the City to take the current approach.

In addition to making different choices about enforcement, the City also has the power to rethink how public space is regulated through the Municipal Code to be consistent with the commitments made in the Housing Charter and human rights obligations. While the existing parks by-laws emphasize the City's role as a property owner, with the right and power to exclude just like any other owner, the City's primary role is as a government. As a government it is bound by its human rights obligations to all its residents, both housed and unhoused. Therefore, by-laws and actions grounded in the City's powers as a property owner must always account for these primary human rights obligations, including the right to housing.

Parks by-laws have a long history of being applied to encampments in Canadian cities. For example, a series of court cases from cities in British Columbia dealt with *Charter* challenges to municipal overnight camping prohibitions in public parks. In two early cases, courts granted cities injunctions against encampments they claimed violated parks by-laws and were trespassing on public space.²⁰⁴ However, more recently courts have found that in the absence of adequate shelter space and alternative housing, such prohibitions violate the *Charter*. This was affirmed by the British Columbia Court of Appeal in *Victoria (City) v Adams*, which upheld the trial judge's finding on the section 7 claim.²⁰⁵

...prohibiting the homeless from taking simple measures to protect themselves through the creation or utilization of rudimentary forms of overhead protection, in circumstances where there is no practicable shelter alternative, is a significant interference with their dignity and independence.

Some cities have responded to these findings by interpreting them as narrowly as possible and permitting only transient “overnight” shelter in public space. For example, in Vancouver, Park Rangers generally abstained from enforcing the rules prohibiting people from establishing shelters overnight, allowing them to set up shelter at around 7:00 p.m., and allowing them to remain until roughly 10:00 a.m. the following morning.²⁰⁶ In July 2020, the General Manager of the Vancouver Board of Parks and Recreation sent a report to the Park Board Chair and Commissioners suggesting updates to parks by-laws regarding temporary shelter in parks. One of the key recommendations in the report was removing the previous prohibition on individuals establishing overnight shelters, to make the by-laws more constitutionally compliant.²⁰⁷ Instead, the General Manager suggested a by-

²⁰⁴ *Vancouver Parks Board v Mickelson*, 2003 BCSC 1271 [Mickelson]; *Vancouver Board of Parks and Recreation v Sterritt*, 2003 BCSC 1421 [Sterritt].

²⁰⁵ *Victoria (City) v Adams* *supra* note 137, at para 109.

²⁰⁶ Meghan McDermott & Anna Cooper, “Re: Submission on “Parks Control By-law Updates: Temporary Shelter in Parks” (13 July 2020), online: *Union of British Columbia Indian Chiefs* <https://www.ubcic.bc.ca/re_submission_on_parks_control_by_law_updates_temporary_shelter_in_parks>.

²⁰⁷ General Manager Vancouver Board of Parks and Recreation, “Parks Control By-law Updates- Temporary Shelter in Parks” (7 July 2020) at 3, online (pdf): *Vancouver Board of Parks and Recreation* <<https://parkboardmeetings.vancouver.ca/2020/20200713/REPORT-ParksControlBylaws-TemporaryShelter-20200713.pdf>>.

law that would allow temporary shelters to be erected at dusk and removed the following morning.²⁰⁸

Advocates quickly identified errors in this displacement approach, arguing that the proposed changes would encourage daily displacement and put unhoused residents at risk and make them harder for service providers to reach. Specifically, the amended by-laws mean that temporary structures can be established for a shorter time each night: in Vancouver, dusk can occur as late as 10:00 p.m. during the summer months, and the amended by-laws also require encampment residents to leave by 7:00 a.m. the following morning.²⁰⁹ Advocates argued the resulting constant displacement could have severe consequences on psychological wellbeing and personal safety. Indeed, the court in *Abbotsford v Shantz*, found that "the result of repeated displacement often leads to the migration of homeless individuals towards more remote, isolated locations as a means to avoid detection. Displacement makes supporting people more challenging and results in adverse health and safety risks."²¹⁰

Abbotsford v. Shantz

In this case, the City of Abbotsford evicted Happy Tree Camp encampment residents from the site on June 4, 2013 by tossing chicken manure throughout the campsite.²¹¹ As a result, Barry Shantz relocated with other encampment residents to Jubilee Park to reside in the Park's parking lot wooden structure.²¹² During their stay, the City employed several displacement tactics in an attempt to displace encampment residents. These tactics included selectively policing areas frequented by people experiencing homelessness, using bear spray, destroying belongings and tent structures, spreading fish fertilizer near encampments, and failing to develop the needed housing to support people who experience homelessness.²¹³ The City sought an injunction against the encampment at Jubilee Park. The British Columbia/Yukon Association of Drug War Survivors challenged the constitutional validity of the by-laws prohibiting camping on the basis of sections 2, 7, and 15 of the *Charter*.²¹⁴ The court declined to order the injunction sought by the City and declared that the by-laws prohibiting erecting tents overnight violated section 7 *Charter* rights and was not saved by section 1 of the *Charter*.²¹⁵

Despite efforts from encampment residents and advocates to pressure the City to stop encampment evictions and revise their regulatory approach, Toronto parks by-laws have been in place throughout the COVID-19 pandemic. These continue to be enforced. A short moratorium on evictions occurred from March–July 2020, but city workers began issuing eviction notices again in August 2020 and have continued to do so intermittently since then. Major enforcement efforts have taken

²⁰⁸ *Ibid* at 7.

²⁰⁹ *Ibid*.

²¹⁰ *Abbotsford (City) v Shantz*, *supra* note 138, at para 213.

²¹¹ *Ibid* at para 26.

²¹² *Ibid* at para 27.

²¹³ *Ibid* at para 91.

²¹⁴ *Ibid* at para 4.

²¹⁵ *Ibid* at para 258.

place in summer 2020 and spring 2021. In an undated 311 information bulletin regarding homeless encampments in the context of the pandemic, the City indicated the policy remained the same: “[e]ncampments are not permitted in City parks and it is not permitted to erect tents and other structures on City property.”²¹⁶

Regardless of parks by-laws, cities have a legal obligation to offer alternative shelter to encampment residents prior to initiating an eviction.²¹⁷ Section 7 of the *Charter* is engaged if a city by-law interferes with a person’s ability to “shelter oneself in circumstances where there is no practicable alternative shelter.”²¹⁸ Cities may also voluntarily bind themselves to obligations with regard to encampment residents. For example, Brad Ross, Toronto’s Chief Communications Officer, has indicated that encampment residents are only evicted if they are offered alternative indoor shelter.²¹⁹ This is consistent with the City’s *COVID-19 Response for People Experiencing Homelessness*, which includes references to making safe indoor spaces accessible “through temporary respite programs, hotel spaces and housing options with supports” as part of its response plan.²²⁰ Unfortunately, in some ways, this obligation weaponizes the City’s shelter systems as a tool to evict encampment residents without ensuring that the alternative spaces offered are adequate to meet residents’ needs or the City’s human rights obligations. Indeed, as discussed below, temporary shelters are not adequate housing and do not meet the needs of many unhoused persons. The City must ensure housing offers are adequate and human-rights compliant in the circumstances of each resident. As will be discussed in Chapter 4, the constitutionality of encampment evictions where shelter spaces are formally “available” but in practice are inadequate, inappropriate, and inaccessible has not been resolved by the courts. The City’s reliance on a consistently over-capacity shelter system, characterized by violence, strict rules, and conditions, and with limited ability to respond to the individual needs of unhoused persons, leaves it vulnerable to a legal challenge.

2. B Survival necessities: Keeping warm or staying ‘safe’

City Responses to Tiny Shelters

On February 12, 2021, the City of Toronto filed an application for injunction against Khaleel Seivwright. In a frequently asked questions fact sheet, the City of Toronto cited safety concerns related to fires, overdoses, and a lack of access to water and sanitation.²²¹ City officials noted that one person died in a wooden structure.²²² As such, the City of Toronto deemed these structures to be dangerous to both encampment residents, first responders, and the broader community.²²³ In the application for injunction, the City of Toronto cited TMCC chapters:

²¹⁶ *Toronto*, *supra* note 24.

²¹⁷ *Charter*, *supra* note 136.

²¹⁸ *Abbotsford (City) v Shantz*, *supra* note 138, at para 188.

²¹⁹ CBC News, “Academics, lawyers, musicians launch public letters urging city to halt encampment evictions”, *CBC News* (4 December 2020), online: <<https://www.cbc.ca/news/canada/toronto/public-letters-encampment-evictions-toronto-1.5829824>>.

²²⁰ City of Toronto, News Release, “City of Toronto COVID-19 Response for People Experiencing Homelessness” (14 October 2020), online: *City of Toronto* <<https://www.toronto.ca/news/city-of-toronto-covid-19-response-for-people-experiencing-homelessness/>>.

²²¹ *FAQ*, *supra* note 200.

²²² *Ibid.*

²²³ *Ibid.*

1. 608-7 forbids, unless with authorized permission, any person to “encroach[es] upon or take[s] possession of a park by any means whatsoever, including the construction, installation or maintenance of a... structure.”²²⁴
2. 608-14 prohibits encroachment on public parks and establishing shelters unless authorized by permit.²²⁵
3. 548-3 establishes that no person can throw, place or deposit waste on land including lakes, ponds, and rivers.²²⁶
4. 548-4 prohibits depositing “waste” on any land in Toronto. It is currently unclear whether the City of Toronto considers the shelters themselves to be “waste”, or whether its primary concern is the generated waste incidental to living in one of these shelters (for example, food wrappers, needles, or other personal waste). This could carry implications for how shelters established in encampments are treated by the City in the future.²²⁷
5. 743-9 outlines that no person shall obstruct, encumber, foul, or damage waterways, drainages, pedestrian or vehicle traffic, or streets.²²⁸

Winters in Toronto can be extremely cold. During the winter of 2020–2021, the average temperature was -8°C.²²⁹ The coldest day was -19°C on February 14, 2021, without taking windchill into account.²³⁰ The City provides warming centres, which are indoor spaces for people experiencing homelessness to rest, have a snack, use the washroom facilities, and seek referrals to emergency shelters.²³¹ However, these centres only operate when Environment and Climate Change Canada records temperatures below -15°C.²³² The CDC notes that people can experience hypothermia in temperatures as high as 4.4°C if they are chilled from rain or sweat.²³³ Therefore, encampment residents often turn to fire or other heating mechanisms as a necessity for survival.

The City has referred to several concerns about fire safety in encampments, including the flammability of structures used as shelter; the use of gasoline generators and propane tanks; the presence of multiple ignition sources like open fires and cigarettes;²³⁴ and the difficulties associated

²²⁴ *Parks By-law*, *supra* note 198 at s 7.

²²⁵ *Ibid* at s 14.

²²⁶ City of Toronto, by-law No 548, *Littering and Dumping* (25 August 2020), s 3.

²²⁷ *Ibid* at s 4.

²²⁸ City of Toronto, by-law No 743, *Streets and Sidewalks, Use of* (20 January 2020), s 9.

²²⁹ Doug Gillham, “Winter 2020-21: A Season of Extremes across Canada” (24 February 2021), online: *The Weather Network* <<https://www.theweathernetwork.com/ca/news/article/canada-2021-winter-forecast-snow-and-cold-temperature-predictions>>.

²³⁰ Current Results, “Toronto: Lowest Temperature for Each Year” (2021), online: *Current Results* <<https://www.currentresults.com/Yearly-Weather/Canada/ON/Toronto/extreme-annual-toronto-low-temperature.php>>.

²³¹ City of Toronto, News Release, “City of Toronto to Open Two Warming Centres Tonight to Help Those Experiencing Homelessness” (12 March, 2021), online: *City of Toronto* <<https://www.toronto.ca/news/city-of-toronto-to-open-two-warming-centres-tonight-to-help-those-experiencing-homelessness/>>.

²³² *Ibid*.

²³³ Centers for Disease Control and Prevention, “What is Hypothermia?” (2021), online: *U.S. Department of Health & Human Services* <<https://www.cdc.gov/disasters/winter/staysafe/hypothermia.html>>.

²³⁴ Victoria Gibson, “Six years after a tragic death, a rash of Toronto encampment fires revives calls to hand out safer heat sources,” *Toronto Star* (31 December 2020), online: <<https://www.thestar.com/news/gta/2020/12/31/six-years-after-a-tragic-death-a-rash-of-toronto-encampment-fires-revives-calls-to-hand-out-safer-heat-sources.html>>.

with detecting smoke, fire, and carbon monoxide in outdoor environments.²³⁵ It often cites these as risks to residents and therefore reasons to clear encampments.

The City has also referenced a significant increase in fires in encampments throughout the pandemic. It stated that Toronto Fire Services responded to more than 250 fires in encampments during 2020, and that this represents a 250% increase compared to 2019.²³⁶ In a news release dated February 25, 2021, it stated that there had been 27 fires in encampments to date in 2021.²³⁷ One fire occurred on February 17, 2021, when a fire at an encampment in Corktown left one resident dead.²³⁸ Fire safety in encampments is an important issue for encampment residents, as it is for housed residents. It can and should be addressed by the City. However, data obtained through FOI requests revealed that these figures are based on the broad category of “fire response events,” which can include any emergency response to notifications of a suspected uncontrolled fire. These data regarding “fires” may include false alarms, controlled fires such as a campfire, smoke from a BBQ or steam from cooking, fireworks, and any other fire-related events. Therefore, the number of actual “fire incidents,” defined as emergency responses to suspected uncontrolled fires requiring suppression, was about half, at 132 incidents. Further, claims about increased fire incidents do not account for the significant increase in the use of parks generally, including for activities like outdoor cooking or campfires, or the increased numbers of unhoused persons living in encampments. It is not clear how many of the 132 fire incidents took place within encampments themselves, or simply in parks with encampments.

In 2015, Grant Faulkner died in a temporary shelter that caught fire. This led to a coroner’s inquest and the Faulkner Report, which set out several recommendations to limit risks to unhoused persons using temporary shelters. The Report urged the City to adopt a harm reduction approach informed by the lived experience of unhoused persons and community service providers.

The Faulkner Report

In 2015, Grant Faulkner, who was living in a wooden shack behind a Scarborough cement plant, died when the structure he had been living in caught fire.²³⁹ Temperatures at the time of his death had dropped to -12°C, and he had been using a propane heater to stay warm.²⁴⁰ Following his death, the coroner’s office launched an inquest, which yielded the Faulkner Report. This consisted of 35 recommendations designed to limit similar dangers faced by other individuals experiencing homelessness. These recommendations emphasized implementing a harm reduction approach grounded in preserving the autonomy of individuals experiencing homelessness. Many of the recommendations focused on providing services designed to limit harm, such as making survival equipment like sleeping bags and safe heat sources more available to individuals experiencing

²³⁵ *FAQ*, *supra* note 200.

²³⁶ *Ibid.*

²³⁷ *Ibid.*

²³⁸ CBC News, “Corktown-area encampment fire leaves 1 dead”, *CBC News* (17 February 2021), online: <<https://www.cbc.ca/news/canada/toronto/corktown-encampment-fire-1.5916594>>.

²³⁹ Kenyon Wallace, “For first time in more than a decade, coroner holds inquest into Toronto homeless death”, *Toronto Star* (11 June 2018), online: <<https://www.thestar.com/news/investigations/2018/06/11/father-of-three-girls-who-became-homeless-after-losing-his-job-at-an-automotive-parts-manufacturer-projected-a-cheery-persona-to-outreach-workers-and-friends-all-the-while-living-on-as-little-as-220->>.

²⁴⁰ Nick Boisvert, “Jury recommends sweeping changes after inquest into homeless man's death in shack fire”, *CBC News* (20 June 2018), online: <<https://www.cbc.ca/news/canada/toronto/grant-faulkner-verdict-1.4714402>>.

homelessness.²⁴¹ Notably, one of the recommendations urged the office of the Fire Marshal to “consult with community service providers, municipalities, and people with lived experience of homelessness, to develop fire safety tips targeted toward homeless people that identify risks and best safety practices, and share such tips on a regular basis with community service providers.”²⁴² The City has not adopted this recommendation.

In Ontario, shelters established by encampment residents do not fall within the jurisdiction of the Fire Code. The Fire Code establishes criteria for a “dwelling unit,” which refers to a “suite operated as a housekeeping unit, used or intended to be used by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities, and includes a residential unit.”²⁴³ It has provisions associated with fire hazards. For example, under both sections 2.4.3.1 and 2.14.1.3 of the Fire Code, smoking is prohibited in areas where it could potentially create a fire hazard.²⁴⁴ Under the related *Fire Protection and Prevention Act, 1997*,²⁴⁵ the Fire Marshal or a fire chief may enter premises if a fire has occurred or they have reason to believe that “a substance or device that is likely to cause a fire may be situated on the land or premises.”²⁴⁶ Upon entering the premises, the Fire Marshal or a fire chief may restrict access to the land²⁴⁷ and, in extreme cases, remove fire hazards and potential ignition sources.²⁴⁸ Although the City has the jurisdiction through these statutes to regulate resident possessions insofar as they could represent potential fire hazards, it has acknowledged that neither the Ontario Building Code nor Ontario Fire Code grants jurisdiction over some of the shelters that residents have established.²⁴⁹ Thus, the City is aware that that it is operating under legal frameworks that are neither designed with the reality of encampments in mind nor applicable to the context of encampments.

This has not stopped the City from implying that it has the legal authority to remove these shelters, citing a harm reduction approach to managing public lands and resident safety.²⁵⁰ However, the harm reduction approach the City has set out does not implement the recommendations of the Faulkner Report: it is not based on the lived experience of residents and fails to holistically consider the security of residents or their autonomy to make decisions about their own health and wellbeing. Instead, the City’s approach often focuses on removing shelters from public lands to mitigate fire hazards and diverting residents into indoor spaces, which may be inaccessible, inappropriate, and unsafe for particular encampment residents.²⁵¹

²⁴¹ David Eden, “Verdict of Coroner’s Jury (Grant Faulkner)” (11 June 2018), online: *Ontario Ministry of the Solicitor General* <<https://www.mcscs.jus.gov.on.ca/english/Deathinvestigations/Inquests/Verdictsandrecommendations/OCCInquestFaulkner2018.html>>.

²⁴² *Ibid.*

²⁴³ O Reg 213/07.

²⁴⁴ *Ibid* at ss 2.4.3.1 & 2.14.1.3.

²⁴⁵ *Fire Protection and Prevention Act, 1997*, SO 1997, c 4 [*Fire Protection and Prevention Act*].

²⁴⁶ *Ibid* at s 14.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid* at s15.

²⁴⁹ *FAQ*, *supra* note 200.

²⁵⁰ *Ibid.*

²⁵¹ City of Toronto, News Release, “City of Toronto serves notice on illegal structures in parks” (19 February 2021), online: *City of Toronto* <<https://www.toronto.ca/news/city-of-toronto-serves-notice-on-illegal-structures-in-parks/>> [*City Notice*].

Fire can be a very real threat to individuals experiencing homelessness. Nonetheless, as noted in the Faulkner Report, individuals experiencing homelessness in the cold climate of Canada need a way to generate heat to survive. Unfortunately, fire risks are often incidental to this need and must thus be managed in partnership with, and in ways informed by, unhoused persons. The actions taken by the City in the name of health and safety, such as removing temporary shelters deemed ‘fire hazards,’ do not adequately protect the health or safety of residents. Instead, these actions often expose residents to other risks, and reduce their ability to secure their belongings and protect their dignity and privacy. The City must adopt a true harm reduction approach that prioritizes the dignity and physical wellbeing of encampment residents by following the 35 recommendations in the Faulkner Report. Many encampment residents and their allies have already developed models for this, such as a peer education initiative organized by the Encampment Support Network and held at the Ross Tilley Burn Centre at Sunnybrook Hospital in 2021. Fire-related initiatives should build on this experience and emphasize strategies to mitigate the risks necessarily incidental to generating heat, as well as distributing survival equipment and education about safer means of generating and retaining heat.

2. C Parks Ambassadors: Another threat for resident displacement and eviction

City Parks Ambassadors are officials who “ensure that permitted areas are cleared and ready for events, and work to resolve conflicts in those areas if they arise.”²⁵² The Parks Ambassadors Program states that an ambassador is “an authorized messenger or representative... of goodwill.”²⁵³ However, training materials for the program reveal the underlying focus of the Parks Ambassadors is the management of unhoused people using public space. The official mandate of the program is to ensure that “parks remain welcoming for passive and recreational use,” and Parks Ambassadors are to monitor the behaviour of unhoused people and enforce municipal by-laws against them.²⁵⁴ They are not police officers or security guards, but they have taken on similar functions and sometimes work with police; they also sometimes wear uniforms resembling police uniforms. This program is grounded in the City’s narrative that encampments deter families and communities from accessing parks for recreational purposes. Parks Ambassadors reinforce this narrative and play a crucial role in monitoring, reporting, and criminalizing unhoused people in parks and encampments.

For example, data obtained through FOI requests revealed that Parks Ambassadors made several 311 calls notifying City workers of encampments by reporting tents being set up or requesting assistance to remove structures located in a park. Another Parks Ambassador phoned to report “crowds of the homeless (10+ tents with 20+ people), obviously unable to physical distance from one another” at the Parkdale Amphitheatre. By advising 311 agents of encampments in parks, Parks Ambassadors are facilitating the eviction, displacement, and relocation of residents. Calls to 311 were also used in *Black v Toronto* to bolster the City’s arguments about public concerns about encampments and how clearing them is in the public interest. Any claims about the complaints and

²⁵² City of Toronto, “Parks Ambassadors”, online: *City of Toronto* <<https://www.toronto.ca/311/knowledgebase/kb/docs/articles/parks,-forestry-and-recreation/parks/parks-ambassadors.html>>.

²⁵³ City of Toronto, Freedom of Information request 2020-01772.

²⁵⁴ *Ibid.*

concerns reported by the public should be closely scrutinized to account for calls placed by City employees themselves.

Parks Ambassador training specifically focuses on ways to penalize and criminalize encampment residents. One training module obtained by FOI request highlights the *Liquor Licence Act* with specific reference to sections:

*31(4) (a) No person shall be in an intoxicated condition, in a place to which the general public is invited or permitted access; or (b) in any part of a residence that is used in common by persons occupying more than one dwelling in the residence.*²⁵⁵

*33(a) No person shall, drink alcohol in a form that is not a liquor.*²⁵⁶

Practices of targeting encampment residents for consumption of alcohol in parks are controversial and highly contradictory. Canadian jurisdictions, including Toronto, have been experimenting with public drinking by permitting park-goers to consume alcohol and gather safely outdoors while still explicitly penalizing encampment residents for similar behaviours. The training materials provided to Parks Ambassadors make no mention of responding to public intoxication or open containers of alcohol among park-goers. Instead, they specifically target, in the words of the City, “homelessness and people living in poverty.”²⁵⁷ Parks Ambassadors characterize people experiencing homelessness as those who “live outside (on the street or in ravines and parks); stay in emergency shelters; spend most of their income on rent or live in overcrowded, substandard conditions and are therefore at serious risk of becoming homeless.”²⁵⁸ While Parks Ambassadors do not have the power to ticket or fine encampment residents for alcohol consumption, they can monitor and report this behaviour to City officials. City officials can then serve tickets or Notices of Trespass to evict encampment residents and justify the evictions based on allegations of criminality and substance abuse.

Parks Ambassadors are also typically present for encampment clearings²⁵⁹ and often facilitate the dispossession and disposal of personal property including survival gear such as tents, sleeping bags, and even clothing. The Encampment Support Network has documented instances of Parks Ambassadors tagging tents to track how long they have been ‘abandoned,’ presumably facilitating removal.²⁶⁰ Parks Ambassadors have also been observed removing items from encampments in response to complaints from surrounding communities,²⁶¹ or placing personal possessions in a dump pile without consent from residents.²⁶² Personal property may not always be removed from a site, but destroying tents and possessions seems to be a relatively common practice. For instance, several

²⁵⁵ *Liquor Licence Act, RSO 1990, c L 19* at s 31.

²⁵⁶ *Ibid* at s 34.

²⁵⁷ City of Toronto, Freedom of Information request 2020-01772 at 11.

²⁵⁸ *Ibid*.

²⁵⁹ Right to Housing, “Encampment Rights Review: Report on Encampments in Toronto During COVID-19” (2020), online (pdf): *Right to Housing* <<https://right2housingto.ca/wp-content/uploads/2020/09/R2HTO-Encampments-Rights-Review-final.pdf>> [*Encampment Rights Review*].

²⁶⁰ Encampment Support Network, “Log of Interactions w/ Parks, S2H, Cops & City workers, (incident recorded at Moss Park, January 10, 2021)”, on file with the author.

²⁶¹ City of Toronto, “Log of Interactions w/ Parks, S2H, Cops & City workers, (incident recorded at Trinity Bellwoods Park, August 10, 2020)”, on file with the author.

²⁶² City of Toronto, “Log of Interactions w/ Parks, S2H, Cops & City workers, (incident recorded at Trinity Bellwoods Park, October 25, 2020)”, on file with the author.

residents have reported returning to campsites to find their tents slashed open, rendering them effectively useless,²⁶³ one also reported being held down by police officers as they ransacked his campsite and destroyed his tent.²⁶⁴ In destroying personal possessions, the police and City officials are acting without clear legal authority.

The *National Protocol* states that, “human rights law does not permit governments to destroy peoples’ homes, even if those homes are made of improvised materials and established without legal authority.”²⁶⁵ There have also been several reports of incidents where City officials did not confirm that residents had been offered adequate housing before confiscating their belongings and taking down their shelters.²⁶⁶ This could potentially represent a contravention of City by-laws, which require City officials to issue a notice before taking action against people who have broken a by-law.²⁶⁷ Additionally, City representatives have admitted that encampment residents have had their possessions destroyed after being told they would be kept safe if they accepted an offer of shelter space.²⁶⁸ The official policy is to catalogue and store personal possessions seized from encampments, but there is no actual documentation of ownership, and there is enforcement mechanisms in place if belongings are destroyed or misplaced.

The City frames Parks Ambassadors as conducting “wellness checks and shar[ing] information about washroom access, showering facilities, vaccine clinic information and more.”²⁶⁹ This narrative promotes the idea of community support and meaningful engagement with encampment residents.²⁷⁰ In reality, the training modules obtained indicate the program serves a very different role and confirm the long-standing concerns expressed by encampment residents and advocates on the ground.²⁷¹ These modules promote an enforcement approach with the intent to monitor, penalize, and criminalize the various behaviours used by unhoused people to survive.

The City frames Parks Ambassadors as conducting “wellness checks and shar[ing] information about washroom access, showering facilities, vaccine clinic information and more.”²⁷² This narrative promotes the idea of community support and meaningful engagement with encampment residents.²⁷³ In reality, the training modules obtained through Freedom of Information requests indicate the program serves a very different role, confirming the concerns expressed by residents and advocates on the ground.²⁷⁴ These modules promote an enforcement approach with the intent to monitor, penalize, and criminalize the various behaviours used by unhoused people to survive.

²⁶³ 1alykhan, “Dismantling Stubborn Structures” (3 December 2020), online (video): *YouTube* <<https://www.youtube.com/watch?feature=youtu.be&v=bE54h6TTYf0>> [*ESN video*]. Matthew Braga, “A Park for All, or a Park for Some?” (23 July 2019), online: *The Local* <<https://thelocal.to/a-park-for-all-or-a-park-for-some/>>.

²⁶⁴ *Ibid.*

²⁶⁵ *National Protocol*, *supra* note 19, at 3.

²⁶⁶ *ESN video*, *supra* note 263.

²⁶⁷ *Parks By-law*, *supra* note 198, at s 53.

²⁶⁸ Fact Check Toronto, “Tag: Parks Ambassadors” (22 April 2021), online: *FCT* <<https://factchecktoronto.ca/tag/parks-ambassadors/>>.

²⁶⁹ *COVID-19 Response Update*, *supra* note 39 at 11.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid* at 11.

²⁷² Toronto City Manager, “COVID-19 Response Update: Protecting People Experiencing Homelessness and Ensuring the Safety of the Shelter System” (1 June 2021), online (pdf): *City of Toronto* <<https://www.toronto.ca/legdocs/mmis/2021/cc/bgrd/backgroundfile-167471.pdf>> at 11.

²⁷³ *Ibid.*

²⁷⁴ City of Toronto, Freedom of Information request 2020-01772.

Chapter 2 Summary

- City parks by-laws were not introduced or implemented as housing policy and are unsuitable tools for responding to encampments, yet the City continuously uses them to displace and criminalize encampment residents.
- In 2015, the Faulkner Report concluded with 35 recommendations outlining fire safety concerns and a harm reduction approach that the City could introduce to reduce encampment fire hazards. The City has yet to adopt the Faulkner Report's recommendations, yet the City continues to use fire safety concerns to justify evictions.
- Toronto Parks Ambassadors are being trained to specifically target and criminalize unhoused persons. Ambassadors sometimes work in collaboration with Toronto city workers to aid in dismantling, displacing, and removing encampment residents and their belongings. They also work with Toronto Police Services to penalize and criminalize encampment residents and housed individuals by identifying potential by-law violations and criminal offences.

Chapter 3: The City of Toronto uses soft powers to further stigmatize encampment residents

Soft powers differ from formal legal tools like by-laws. They are based on assumed credibility, which cities often automatically attract in their roles as public institutions. This allows cities to create a public narrative about encampments to justify their actions, while delegitimizing criticisms from advocates and encampment residents.

Chapter 3 Summary

- Cities use soft powers as a tool to shape public opinion prior to and after taking actions in relation to encampments.
- The City uses soft powers in its media releases to negatively characterize encampment residents and shift attention away from human rights obligations.
- Courts and the City have relied on harmful narratives to prioritize the rights and interests of housed residents neighbouring encampments and justify violations of encampment residents' human rights.

In the context of homelessness, cities can leverage soft powers when they are pressed to defend their actions or when they want to control the narrative before taking action. City narratives about the public interest and public health and safety are often very powerful tools in shaping public opinion. These narratives are also often asserted in court when City actions are challenged.

For example, in *Batty v City of Toronto*, the Ontario Superior Court of Justice undertook a 'balancing analysis' in which it measured competing uses of municipal parks. Justice Brown of the Ontario Superior Court of Justice accepted the City's position that the purpose of park by-laws was to "enable[e] all to share a common resource and ensuring that the uses of the parks will have a minimal adverse impact on the quiet enjoyment of surrounding residential lands."²⁷⁵ Justice Brown found that an Occupy Toronto camp's presence in the park created a "chilly and somewhat intimidating reception"²⁷⁶ for others who wanted to access the park and that "tents and other shelters hog the park land."²⁷⁷ Justice Brown also declared that "the permissible use of parks must take into account the effect on those living by and around the parks."²⁷⁸ On this basis, Justice Brown ruled the City was justified enforcing by-laws and Trespass Notices against the Occupy Toronto camp residents.

²⁷⁵ *Batty v City of Toronto*, 2011 ONSC 6862 at para 95 [*Batty v City of Toronto*].

²⁷⁶ *Ibid* at para 91.

²⁷⁷ *Ibid*.

²⁷⁸ *Ibid* at para 92.

Batty v City of Toronto

This case involved protestors from the Occupy Toronto movement residing in the St. James Park encampment from October 15, 2011. A Notice of Trespass was served on November 15, 2011.²⁷⁹ Subject to the *Trespass to Property Act*, the notice prohibited the protestors from “installing, erecting or maintaining a tent, shelter or other structure” in the park and banned any use of the park, including entry or gatherings, between 12:01 a.m. and 5:30 a.m.²⁸⁰ The issue in question became whether or not this Notice of Trespass was in violation of section 2 of the *Charter*. The court acknowledged that it was acceptable for protestors to use the park to voice concerns related to the Occupy Toronto movement; however, the court noted that the protestors did not receive permission from civic representatives, occupiers of the park, or neighbouring residents to turn the park into a tent city of potentially indefinite duration.²⁸¹ The court concluded that the Notice of Trespass was constitutionally valid.²⁸²

The reasoning in the *Batty v City of Toronto* has important limitations and has been critiqued by commentators. Thus, it should be of limited application to encampment residents who have established shelter in public parks as a means of survival, not for political protest. The case concerned trespass powers, which relate only to the owner (the City) and those deemed trespassers (the Occupy Toronto protest camp residents). However, the judge also directly considered evidence about the views and interests of residents situated near the park. Thus, the interests of these neighbours were therefore considered twice: once as members of the general public with interests in accessing the park for recreation, and again as private property owners who experienced particular nuisances due to their proximity to the park.²⁸³ As Dr. Sarah E. Hamill has argued, this amplified the “views and rights” of surrounding residents, thereby leading to the private interests of neighbourhood residents being given undue weight over common property rights in public space.²⁸⁴ The focus on the rights of private property owners was especially inappropriate because the legal issue in the case was the constitutional validity of the City’s actions in trespass. Trespass is a legal action relating to the owner’s rights vis-a-vis the trespasser, which distinct from a nuisance claim through which neighbours, as property owners of adjacent private property, could seek damages for harms they experienced.²⁸⁵

Further, the court’s approach emphasized the City’s wide discretion in its ownership role in maintaining and determining acceptable uses of public land. However, in *Batty v City of Toronto*, section 2 *Charter* rights were engaged, which protect the right to “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.”²⁸⁶ In cases pertaining to encampments created by unhoused people, section 7 *Charter* rights to life, liberty and security of the person are engaged.²⁸⁷ Given these very different interests at stake, the City and

²⁷⁹ *Ibid* at para 3.

²⁸⁰ *Ibid* at para 4.

²⁸¹ *Ibid* at 9.

²⁸² *Ibid* at 128.

²⁸³ Sarah E. Hamill, “Private Rights to Public Property: The Evolution of Common Property in Canada” (2012) 58:2 McGill LJ 365 at 382 [*Hamill*].

²⁸⁴ *Ibid*.

²⁸⁵ *Ibid*.

²⁸⁶ *Charter*, *supra* note 136, at s 2.

²⁸⁷ *Hamill*, *supra* note 283, at 384.

future courts should be very cautious about emphasizing the City's role as an owner above its primary human rights obligations in determining the appropriate use of and public interest in public land. Indeed, this narrow view of the City's role was compounded by the court's consideration of the rights of private property owners in surrounding communities in *Batty v City of Toronto*.

A more recent example of the significance of soft power in the context of homeless encampments is how the City framed the issue in *Black v Toronto*.

Black v Toronto

As COVID-19 was beginning in 2020, 14 applicants who were Moss Park encampment residents, alongside two housing advocate organizations, put forward an interlocutory injunction to prevent the City from enforcing by-laws prohibiting camping and the erection of tents during the pandemic.²⁸⁸ The applicants argued that considering the pandemic and the lack of available shelter spaces, displacing and evicting encampment residents violates sections 7, 12, and 15 *Charter* rights.²⁸⁹ Notably, the applicants did not challenge the validity of park by-laws; instead they argued their *Charter* rights were violated by their enforcement during the pandemic and in the context of the shelter conditions.²⁹⁰ The court decided the applicants had failed to meet the third branch of the test for injunctive relief as set out in *RJR MacDonald*:

1. Is there a serious issue to be tried?
2. Will the applicant suffer irreparable harm if the injunction is not granted?
3. Which party will suffer the greater harm if the injunction is granted or refused: a balance of inconvenience test?

The court noted that the public interest purpose of by-law 608 is to make parks available to everyone.²⁹¹ This purpose outweighs the applicants' interests in what was characterized as a "sweeping" order preventing enforcement of by-law 608 in all City parks.²⁹² The court's decision does not determine the constitutionality of the by-laws. Rather, the judge specifically noted that the City of Toronto should reconsider the enforcement of the by-laws if conditions changed. Notably, the judge noted the decision did not mean that the City *should* enforce the by-laws, rather that the applicants had not met the test for an injunction.

In *Black v Toronto*, Justice Schabas of the Ontario Superior Court of Justice referenced 311 calls made to the City by surrounding communities, citing significant safety concerns within the park encampments. These calls included "hundreds of complaints and reports by park users, neighbours, and City staff regarding violence, drug trafficking, noise at all hours, garbage, threats, and harassment at parks with encampments."²⁹³ Between June 6 and July 21, 2020, the 311 hotline received 212 calls about fire complaints and associated fire risks in park encampments.²⁹⁴ During the

²⁸⁸ *Black v Toronto*, *supra* note 145, at para 1.

²⁸⁹ *Ibid* at para 2.

²⁹⁰ *Ibid*.

²⁹¹ *Ibid* at para 143.

²⁹² *Ibid*.

²⁹³ *Ibid* para 105.

²⁹⁴ *Ibid* at para 108.

same time frame, it received 392 complaints about a lack of physical distancing by park encampment residents, 400 complaints about substance use, 600 complaints about garbage in parks near encampments, and 470 complaints about human waste.²⁹⁵ The City cited another 330 calls from residents citing violence, 400 calls about threatening behaviour, 223 noise complaints, and 113 complaints about theft.²⁹⁶ As a result, Justice Schabas concluded that “[m]any people are afraid to enter certain parks, and families are unable to bring children to playgrounds due to the presence of needles.”²⁹⁷

Justice Schabas relied on this evidence in his conclusion, in which he ruled that the “relief sought would unjustifiably tie the City’s hands in dealing with encampments that raise serious health and safety concerns for an indefinite duration and would unduly prevent the use of parks by others.”²⁹⁸ What is not known is whether some of these calls were not simply “complaints” about encampment residents but were rather raising concerns about the role of the City. For example, by providing basic services like waste collection and sanitation facilities in line with its human rights obligations outlined in the *National Protocol*, the City might have mitigated more than 1000 of the calls cited in the decision. It is also unclear whether the same callers might be making multiple calls or raising multiple concerns, meaning that the numbers cited might overrepresent the number of discrete callers and concerns. Indeed, as noted above, some of these calls may have been Parks Ambassadors or City workers themselves.

We also have concerns about the application of *Batty v City of Toronto* by the court in *Black v Toronto*. *Batty v City of Toronto* involved an Occupy Toronto movement encampment and while the applicants did provide shelter to unhoused persons as part of the movement, the primary purpose of the encampment was the occupation of the park as a political statement of dissatisfaction with current political structures and socio-economic inequality. The basis for the injunction against the City was that the enforcement of the by-laws would violate section 2 expressive rights. In contrast, the 14 applicants in *Black v Toronto* were experiencing homelessness during a global pandemic and were camping in a public park because of inadequate and unsafe alternatives. *The Black v Toronto* application was based on section 7 and section 15 *Charter* rights, including the right to security of the person, similar to the cases in British Columbia discussed above and below. A section 2 analysis of the relative harms should have little bearing on a case in which “one of the most basic and fundamental human rights guaranteed by our Constitution” is at stake. Indeed, all other *Charter* rights depend on the protection of one’s life, liberty, and security of the person: “Most, if not all, of the rights and freedoms set out in the *Charter* presuppose a person who has moved beyond the basic struggle for existence.”²⁹⁹

The *Black v Toronto* decision suggests that cities are empowered to take a ‘business as usual’ approach in enforcing by-laws that were in place before the COVID-19 pandemic. It also suggests that cities can meet their obligation to offer alternative housing by providing space in a congregate setting such as a shelter, even if it is unsafe or inappropriate for the needs of encampment residents. This narrow reading of the British Columbia cases is inappropriate, particularly in the context of COVID-19.

²⁹⁵ *Ibid* at para 109.

²⁹⁶ *Ibid*.

²⁹⁷ *Ibid*.

²⁹⁸ *Ibid* at para 150.

²⁹⁹ Martha Jackman, “The Protection of Welfare Rights Under the Charter” (1988) 20 Ottawa L Rev 257 at 326. Cited in *Victoria (city) v Adams*, *supra* note 137, at para 75.

While the facts in *Victoria (City) v Adams*, including the lack of shelter space, have shaped the subsequent case law, the Court of Appeal expressly noted that the constitutionality of blanket prohibitions on camping where sufficient shelter spaces were available had yet to be determined. At trial the judge noted, “[t]he court would then have to examine the reasons why homeless people chose not to use those shelters. If the shelters were truly unsafe, it might be that it would still be an infringement of section 7 to require the homeless to attend at shelters or sleep outside without their own shelter.” For encampment residents and advocates, the decision in *Black v Toronto* indicates the need to scrutinize municipal claims about the number and adequacy of shelter spaces. Unfortunately, access to and transparency of data around shelter spaces is problematic.³⁰⁰ However, based on data provided by the City after the hearing in *Black v Toronto*, on average 38 people per night were unable to access a shelter space during the winter of 2020–2021. This number is likely low because the number of calls also includes couples who are seeking space inside. It also does not include people who have given up seeking inside space for a variety of reasons. Finally, it does not reflect the many callers who were initially offered beds and then declined because the space was inappropriate, unsafe, or inaccessible for them.

In addition to narratives advanced in litigation, the City has also used soft powers when issuing media releases related to encampments. Such communications are clearly intended for a specific audience: housed residents. They often characterize encampments negatively based on complaints from people living near encampments, as well as citing potential safety risks like fire hazards.³⁰¹ This kind of characterization presents an uneven and oversimplified view of the real situation in encampments. More importantly, these narratives do not address the City’s own failures to meet human rights obligations toward encampment residents, which often contribute and even create, many of the issues raised by housed residents.³⁰² Nor does it capture the lived realities of encampment residents for whom encampments may be the safest available option.³⁰³ By framing actions as a response to public safety concerns, cities are able to carry out discriminatory policies, like violently clearing encampments, without attracting as much public outcry.³⁰⁴

Soft power tactics can pose significant challenges for encampment residents who are often already subject to stigmatization and intersectional discrimination. City statements criticizing encampments as being unsafe only adds to these negative stereotypes, which can harm encampment residents. This is particularly problematic where the City fails to provide basic services in accordance with their human rights obligations and thus directly contributes to the alleged harms and hazards. Additionally, discourse that focuses on the concerns of neighbouring communities shifts attention away from the rights and agency of encampment residents. In clear violation of their human dignity, unhoused residents are presumed to be incapable of speaking on their own behalf and their motivations, reasoning, and actions deemed to be incompatible with the “shared” common sense invoked by the City – and the courts – on behalf of housed residents. This approach prioritizes the comfort of surrounding communities over the dignity, safety, and wellbeing of encampment residents, which effectively serves to grant preferential access to public space to those who can afford private property rights. This ‘us and them’ narrative is not only harmfully reproduced in

³⁰⁰ *Black v Toronto*, *supra* note 145, at para 150.

³⁰¹ *Toronto*, *supra* note 24.

³⁰² *National Protocol*, *supra* note 19.

³⁰³ *Encampment Rights Review*, *supra* note 259, at 3.

³⁰⁴ Jennifer Stone & Brendan Jowett, “Defending Homeless Encampments” (15 May 2020), online: *Neighbourhood Legal Services* <<http://www.nlstoronto.org/blog/defending-homeless-encampments>> [*Neighbourhood Legal Services*].

judicial decision making, it actively undermines community-based efforts to build relationships of understanding, mutual aid, and support between housed and unhoused residents.

Chapter 3 Summary

- Cities use soft powers as a tool to shape public opinion prior to and after taking actions in relation to encampments.
- The City uses soft powers in its media releases to negatively characterize encampment residents and shift attention away from human rights obligations.
- Courts and the City have relied on harmful narratives to prioritize the rights and interests of housed residents neighbouring encampments and justify violations of encampment residents' human rights.

Chapter 4: Temporary and emergency shelters are not housing

Chapter 4 Summary

- The City emphasizes its role as property owners in its response to encampments by relying on Notices of Trespass and police enforcement. It often cites parks by-laws, littering and waste disposal by-laws, and fire code regulations to legally ground the evictions. The notices are accompanied by threats of \$10,000 fines and arrest for non-compliance.
- Shelters established by encampment residents do not technically fall within the jurisdiction of the provincial Fire Code, despite being used as reasons to evict encampment residents and remove shelters.
- The City uses soft powers to discriminate and negatively portray people experiencing homelessness, further contributing to their stigmatization.
- Parks Ambassadors are often used as authoritative figures to heavily monitor, penalize, displace, and disrupt encampment residents.
- The City does not explore all alternatives to eviction, meaningfully consult with residents, or provide adequate notice prior to encampment evictions.
- The City continues to use police and private security to facilitate evictions, creating a coercive atmosphere and the risk of harm and violence to residents and their possessions.
- Shelter and housing options are offered without adequate information and time to make a free and informed decision. The lack of harm reduction and social support services offered in shelters can lead to a lack of safety, security, and privacy in shelters. Geographic displacement and strict rules about visitors can lead to harmful isolation of residents and exacerbate the lack of appropriate supports in shelters and shelter hotels.
- Shelter and shelter hotels being offered do not provide security of tenure or long-term housing. They may also fail to adequately secure personal possessions, leaving residents at risk if they return to encampments.

4. A Shelter and Housing Offers

Temporary and emergency shelter are not adequate housing and do not fulfill the City's human rights obligations towards people who are unhoused. The increase in shelter spaces created during the pandemic is a positive interim support for those experiencing homelessness; however, it is not a substitute for making adequate and affordable housing programs available to unhoused and precariously housed residents. While shelter hotels have offered an important alternative to congregate settings, some residents have reported serious concerns about conditions in the hotels,

including invasions of privacy and a heightened risk of overdose. Further, these indoor spaces are temporary and do not provide security of tenure for residents.³⁰⁵

The City owns the *Toronto Community Housing Corporation*, which is the largest social housing provider in Canada and the second largest social housing provider in North America.³⁰⁶ As of 2021, there are more than 79,000 names on the waiting list for housing units.³⁰⁷ The wait for bachelor units is at least seven years long, and years longer for larger family units.³⁰⁸ The demand for supportive housing also greatly outstrips availability, with more than 60% of applicants waiting over two years.³⁰⁹ Former encampment resident Jennifer Jewell, who is now residing in a shelter hotel, reports being on the waiting list for wheelchair accessible housing for 15 years.³¹⁰ In the absence of adequate social housing, the City heavily relies on the private sector and the temporary shelter system to meet housing needs.

The City funds the *Streets to Homes* program, a Housing First program established in 2005 to help transition people experiencing homelessness into permanent housing. The program has been found to have significant success in moving unhoused persons into indoor housing.³¹¹ However, it has also been critiqued as part of broader efforts to facilitate gentrification and remove homelessness from downtown public spaces and public view, while leaving the economic and social relations that cause homelessness unaddressed.³¹² Notably, the program works alongside the provincial *Safe Streets Act*, which criminalizes panhandling, as well as the parks by-laws noted above. As homelessness researcher A.J. Withers points out, the emphasis on erasing homelessness from downtown has meant unhoused persons in the downtown core are removed from social and support networks to be placed in housing in the suburbs, while unhoused persons in the suburbs are unable to access

³⁰⁵ Victoria Gibson, “Toronto has 2,500 people living in hotel shelters. What happens when those leases expire?”, *Toronto Star* (12 October 2021), online: <<https://www.thestar.com/news/gta/2021/10/12/toronto-has-2500-people-living-in-hotel-shelters-what-happens-when-those-leases-expire.html>>.

³⁰⁶ Toronto Community Housing Corporation, “Who we are”, online: *Toronto Community Housing* <<https://www.torontohousing.ca/who-we-are>>.

³⁰⁷ Housing Stability Services, “Social Housing Waiting List Reports” (2021), online: *City of Toronto* <<https://www.toronto.ca/city-government/data-research-maps/research-reports/housing-and-homelessness-research-and-reports/social-housing-waiting-list-reports/>>.

³⁰⁸ Victoria Gibson, “More than 81,000 are waiting for subsidized housing in Toronto. The City hopes a new wait list system will help fill its units faster”, *Toronto Star* (19 January 2021), online: <<https://www.thestar.com/news/gta/2021/01/19/more-than-81000-households-are-waiting-for-subsidized-housing-in-toronto-the-city-hopes-a-new-waitlist-system-will-help-fill-its-units-faster.html>>.

³⁰⁹ *Ibid.*

³¹⁰ The Canadian Press, “Homeless, supporters charged in Toronto encampment clearings vow to fight charges”, *Global News* (16 September 2021), online: <<https://globalnews.ca/news/8195220/toronto-homeless-encampment-clearings-supporters/>>.

³¹¹ L. Raine, and T. Marcellin, “What Housing First means for people: Results of Streets to Homes” 2007 post-occupancy research, *Canadian Observatory on Homelessness* (2007), online: <<https://www.homelesshub.ca/resource/what-housing-first-means-people-results-2007-post-occupancy-research>>; N. Falvo, Toronto’s Streets to Homes Program (2010). In D. J. Hulchanski, P. Campsie, S. B. Y. Chau, S. W. Hwang, & E. Paradis (Eds.), “Finding home: Policy options for addressing homelessness in Canada” *Canadian Observatory on Homelessness Press* (2010).; P. Goering, S. Veldhuizen, A. Watson, C. Adair, B Kopp, E. Latimer, G. Nelson, E. MacNaughton, D. Streiner, & T. Aubrey, “National At Home/Chez Soi Final Report” (2014), online: <https://homelesshub.ca/sites/default/files/attachments/mhcc_at_home_report_national_crosssite_eng_2.pdf>.

³¹² C. Willse, “Neo-liberal biopolitics and the invention of chronic homelessness” *Economy and Society*, (2010) 39:2, at 155–184; A.J. Withers, “Mapping Ruling Relations Through Homelessness Organizing” *Doctor of Philosophy, School of Social Work York University*, [unpublished dissertation] (2020) at 179.

housing options as downtown residents are prioritized.³¹³ Critics have noted the harms associated with the resulting isolation, as well as the ongoing struggle with poverty when limited social assistance funds are then largely allocated to housing.³¹⁴ As outlined below, particular concerns about the program have been highlighted during COVID-19.

Streets to Homes has provided some outreach to encampment residents during COVID-19. The City states the program has engaged with encampment residents “more than 19,000 times” and secured permanent housing for 305 people.³¹⁵ However, Streets to Homes has also faced criticism from advocacy groups for failing to establish a consistent presence in encampments before evictions take place.³¹⁶ Streets to Homes workers often have sporadic encounters with unhoused residents, making it difficult to establish relationships.³¹⁷ Indeed, some advocates have noted that this seemingly impressive number breaks down to be less than 5 visits per day throughout the City.³¹⁸ This minimal outreach limits the ability of City staff to match residents with housing options adequate to meet their individual needs. Indeed, advocates report that people who have taken up City offers of indoor space are returning to encampments because they end up in places that are unsafe or not suitable for their needs.³¹⁹

The inconsistent presence of Streets to Homes workers at encampment sites prior to eviction events has also caused confusion and psychological distress among some residents. Residents may be offered housing with little to no warning, which forces them to make significant life decisions based on very limited information and under tight deadlines.³²⁰ Advocates have also noted that Streets to Homes workers sometimes use coercive tactics in attempting to convince residents to leave encampments.³²¹ Multiple instances of Streets to Homes workers attending encampments with police³²² or private security officers³²³ have been documented. This is inconsistent with the *National Protocol*, which expressly prohibits the use of “police enforcement to coerce, intimidate, or harass [residents].”³²⁴

³¹³ *Ibid*, Withers, at 179.

³¹⁴ *Ibid*, Withers, F. Klodawsky, “Home spaces and rights to the city: Thinking social justice for chronically homeless women.” *Urban Geography* (August 16, 2009) 30:6, at 591–610; B Hennigan, “House broken: Homelessness, housing first, and neoliberal poverty governance.” *Urban Geography* (2017) 38:9, at 1418–1440.

³¹⁵ *COVID-19 Response Update*, *supra* note 39, at 11-12.

³¹⁶ Joanna Lavoie, “Volunteers help, advocate for people living in downtown Toronto encampments” (22 September 2020), online: *Toronto.com* <https://www.toronto.com/news-story/10206446-volunteers-help-advocate-for-people-living-in-downtown-toronto-encampments/> [*Toronto.com*].

³¹⁷ *Ibid*.

³¹⁸ TheAJWithers, “5b. This number seems impressively large. But over April 1, 2020-June 15, 2020, with 10 staff a day, this = 4.5 visits/staff person a day for the whole city. This is why so many people in encampments complained they had gone for weeks/months and never spoken to a housing worker.” (3 July 2021 at 14:20), online: *Twitter* <<https://twitter.com/TheAJWithers/status/1411389436517044227>>.

³¹⁹ Tedros Adhanom Ghebreyesus, “Virtual press conference on COVID-19” (Virtual press conference at the World Health Organization, 11 March 2020); TheAJWithers, “12. MISLEADING: IN the early months of the pandemic, some were understandably afraid to come inside. Many chose, instead, to live outside where COVID-19 was felt to be less of a threat to their health.” (3 July 2021 at 14:20), online: *Twitter* <<https://twitter.com/TheAJWithers/status/1411389459757780994>>.

³²⁰ *Lamport Stadium Eviction Report*, *supra* note 49.

³²¹ *Toronto.com*, *supra* note 316.

³²² *Neighbourhood Legal Services*, *supra* note 304.

³²³ Doug Johnson Hatlem, “Two three-page documents being dumped on Trinity Bellwoods residents by Streets to Homes lead Mitchell followed by a gaggle of nine Toronto corporate security officers.” (19 March 2021 at 9:19), online: *Twitter* <<https://twitter.com/djohnso/status/1372900565559173123>> [*Hatlem tweet*].

³²⁴ *National Protocol*, *supra* note 19, at 16.

The shelter system is used to enforce City of Toronto by-laws and evict encampment residents

Cities may also use the availability of shelter and housing options to justify evicting encampment residents. This is reflected in responses to the increases in encampments in Toronto during COVID-19. When the pandemic began, the City rushed to make temporary shelters available in an attempt to quickly relocate encampment residents. The results include the Better Living Centre, a congregate setting of plexiglass pods. Residents reported having virtually no privacy and being monitored constantly.³²⁵ Advocates criticized the Better Living Centre for its disregard for privacy, as well as the dehumanizing treatment upon arrival.³²⁶ On November 3, 2020, the ESN documented encampment residents being threatened with eviction if they did not agree to relocate to the Better Living Centre.³²⁷ However, as of April 10, 2021, 43 COVID-19 cases had been reported at the Better Living Centre.³²⁸

During the pandemic many people experiencing homelessness have been uncomfortable with the prospect of moving to a shelter setting, given the increased potential of contracting COVID-19.³²⁹ Research has confirmed that people experiencing homelessness are particularly vulnerable to respiratory illnesses due to risk factors such as a high prevalence of chronic health conditions, increasing the risk of morbidity from COVID-19 for this population.³³⁰ The living conditions in shelters also make it difficult or impossible to maintain appropriate hygiene.³³¹ Furthermore, individuals experiencing homelessness may distrust healthcare workers due to past negative experiences and systemic problems with services, which often take the form of “emergency services...characterized by overcrowding [and] congregate living.”³³² However, concerns about the adequacy of spaces offered in shelters have been largely ignored. For example, the judge in *Black v Toronto* found that residents’ concerns about contracting COVID-19 in a shelter were justified, but this did not merit “broad relief” in the form of suspending the City’s ability to enforce its by-laws.³³³ One of the key findings that contributed to this decision was the availability of shelter spaces in Toronto. The judge found that Toronto had “provid[ed] sufficient and safe shelter facilities during the pandemic such that any violation of life, liberty and security of the person, or equality rights, is limited.”³³⁴

³²⁵ Joanna Lavoie, *supra* note 37.

³²⁶ *Ibid*.

³²⁷ Encampment Support Network Toronto, “If ppl don't accept going into the Better Living Centre congregate setting shelter, they're threatened with eviction from parks.” (3 November 2020 at 8:44), online: *Twitter* <https://twitter.com/esn_to/status/1323621997440602112>.

³²⁸ City of Toronto, “COVID-19: Status of Cases in Toronto” (1 June 2021), online: *City of Toronto* <<https://www.toronto.ca/home/covid-19/covid-19-latest-city-of-toronto-news/covid-19-status-of-cases-in-toronto/>>.

³²⁹ *Encampment Rights Review*, *supra* note 259.

³³⁰ Melissa Perri, Naheed Dosani & Stephen W Hwang, “COVID-19 and people experiencing homelessness: challenges and mitigation strategies” (2020) 192:26 *Canadian Medical Assoc J* 716.

³³¹ Jack Tsai & Michal Wilson, “COVID-19: A Potential Public Health Problem for Homeless Populations” (2020) 5:4 *The Lancet* 186.

³³² Kristy Buccieri & Rebecca Schiff, “Pandemic Preparedness and Homelessness: Lessons from H1N1 in Canada” (2016) at 5, 13, online (pdf): *HomelessHub* <<https://www.homelesshub.ca/sites/default/files/attachments/LessonsfromH1N1-FullBook.pdf>>.

³³³ *Black v Toronto*, *supra* note 145.

³³⁴ *Ibid* at para 66.

The availability of indoor shelter has been central to court decisions about encampment evictions, such as in *Victoria (City) v Adams*.³³⁵ In practice, municipalities have interpreted *Victoria (City) v Adams* to mean that if city workers have offered any form of temporary shelter to individuals (either in shelters or alternative housing), they have met their obligation to make alternative space available and can proceed to evict encampment residents. This narrow interpretation means cities are not ensuring the shelter they have offered adequately meets the needs of encampment residents before proceeding with evictions, emphasizing “quick fix” shelter options for encampment residents without addressing the long-term needs of people experiencing homelessness.³³⁶ Some of the proposed options for alternative shelter also have the potential to exacerbate harm. Encampment residents may have little to no control as to where they are relocated, leaving them isolated from support networks and services that are critical to their wellbeing.³³⁷ Further, shelters and shelter hotels do not provide security of tenure. This leaves residents vulnerable to being unhoused again if they are found to violate rules or if the City ends a particular program. Belonging restrictions in shelters often mean they are then facing homelessness without the survival gear they relied on while living in encampments. This narrow reading of the City’s human rights obligations leaves it open to legal challenge and is a clear failure to live up to its own commitments.

Temporary and emergency shelters lack support, security, and safety

Many housing advocates and encampment residents argue the Toronto shelter system does not offer adequate support, security, and safety for many residents. First, many encampment residents and advocates have pointed to a general lack of harm reduction services, which is particularly problematic when people are relocated away from proximity to care providers and social supports.³³⁸ For example, moving encampment residents into hotels that have been repurposed as temporary housing can exacerbate the risks associated with opioid addiction. In these situations, people are under enormous psychological stress from abrupt changes to their living situation and are living in isolated rooms with limited access to support staff. This can easily lead to fatal drug overdoses without the infrastructure and peer support necessary to provide meaningful harm reduction services.³³⁹

As noted above, the City also shows a dramatic rise in violence in shelters in recent years. Between March 2016 and February 2021, more than 10,000 incidents of violence were reported in the shelter system.³⁴⁰ Incidents of violence include harassment, assault, “physical violence, threats of death or harm, and throwing objects.”³⁴¹ In 2016, shelters reported under 3% of incidents related to violence, whereas in 2021 reports of violence rose to 5%.³⁴² This translates to 120 incidents of violence per month in 2016, increasing to 270 incidents per month in 2020, and now almost 370 incidents per

³³⁵ *Victoria (City) v Adams*, *supra* note 137.

³³⁶ Ali Amad, “Life in Moss Park” (18 January 2021), online: *Toronto Life* <<https://torontolife.com/city/people-would-rather-be-outdoors-than-risk-getting-covid-in-a-shelter-a-photo-essay-from-the-moss-park-encampment/>>.

³³⁷ *Encampment Rights Review*, *supra* note 259, at 1.

³³⁸ *Ibid.*

³³⁹ Carlyn Zwarenstein, “The Cost of a Stay at a Shelter Hotel” (23 November 2020), online: *The Local* <<https://thelocal.to/the-cost-of-a-stay-at-a-shelter-hotel/>>.

³⁴⁰ Fact Check Toronto, “Claim: People experiencing homelessness in Toronto have access to safe, high quality emergency shelter.” (7 June 2021), online: *FCT* <<https://factchecktoronto.ca/>>.

³⁴¹ *Ibid.*

³⁴² *Ibid.*

month in 2021.³⁴³ Some shelter occupants have shared their lived experiences of violence within the shelter system. One shelter occupant, Michael Eschbach, reported taking a shower in the shelter when he was attacked by a man who attempted to sexually assault him.³⁴⁴ Former encampment resident Brian Cleary reported an account when another shelter occupant spilled juice over Cleary's belongings; as he began to clean up the mess, Cleary was choked and jumped by the other shelter occupant.³⁴⁵ As a result, the shelter removed Cleary and the attacker.³⁴⁶ Gru, a former encampment resident, shelter occupant and now shelter-hotel resident, said that while he has yet to experience physical violence, he often witnesses it, leaving him feeling unsafe and choosing to reside in encampments.³⁴⁷

Many advocates and encampment residents have also widely disputed the City's claims that shelter space is available. For example, Doug Johnson Hatlem, a worker with Sanctuary in Toronto, took a video that received significant media attention. On November 1, 2020, Hatlem phoned the City's central intake operator asking for a room for the night; the central intake operator told Hatlem no shelter spaces were available. On the same day, Hatlem called the central intake desk in his role as a Sanctuary worker, and was told the shelter system had a 30% vacancy rate.³⁴⁸ Hatlem claims that he called the central intake desk several times and received similar results each time, noting significant discrepancies between the City's claims and the resources that are actually available to individuals experiencing homelessness.³⁴⁹ Some advocates have made similar criticisms about the Pathway Inside Program, claiming the program is really a measure designed to move individuals experiencing homelessness out of the public eye, which is why the City geared the initiative toward relocating individuals in the most four visible encampments.³⁵⁰ Notably, advocates have reported attempting to refer individuals who were not from these four encampments to the hotels that were made available on several occasions, only to be turned away despite vacancies.³⁵¹

The lack of appropriate supports, increasing violence, and escalating health risks compound the lack of existing shelter space in Toronto. Thus, the justifications for encampment evictions put forward by the City, and noted by the court in the preliminary decision in *Black v Toronto*, may be vulnerable to challenge when subject to further scrutiny in future legal proceedings. Should *Black v Toronto* or another legal challenge proceed to a full hearing, the City's actions in evicting encampments on the basis of existing shelter conditions could be found to violate the *Charter*.

³⁴³ Liam Casey, "'Explosion of fury and violence and blood:' Toronto's shelters see increase in violence", *The Canadian Press* (6 June 2021), online: <<https://globalnews.ca/news/7925736/toronto-shelters-rise-violence-covid-pandemic/>>.

³⁴⁴ *Ibid.*

³⁴⁵ *Ibid.*

³⁴⁶ *Ibid.*

³⁴⁷ *Ibid.*

³⁴⁸ Sara Jabakhanji, "City has far fewer homeless shelter beds than it claims it has, street pastor says", *CBC News* (19 November 2020), online: <<https://www.cbc.ca/news/canada/toronto/toronto-shelter-space-1.5808905>>.

³⁴⁹ *Ibid.*

³⁵⁰ *Ibid.*

³⁵¹ Lorraine Lam, "Since Novotel opened end Feb, I have been trying to refer people:" (21 March 2021 at 9:04), online: *Twitter* <<https://twitter.com/lorrainelamchop/status/1373802832323870722>>.

4. B Decampment notices and time discrepancies

As discussed above, according to international law, forced evictions are a violation of human, civil, and political rights: when evictions do occur, steps must be taken to ensure that encampment residents are treated as rights holders, have been properly engaged with, and have been provided options for adequate and affordable housing.

One of the key procedural issues associated with by-law enforcement is the notice a city must provide prior to initiating an encampment eviction. Under the Toronto Municipal Code, police must tell someone when they have violated a by-law. This extends to encampment residents violating park by-laws. Following police notice, people who have violated the by-law are usually given time to comply with the by-law, and “compliance” usually requires dismantling shelters and leaving the encampment site. Although time periods may vary, in Toronto individuals are usually given at least 72 hours to comply with police orders: the Municipal Code states that compliance is expected “no sooner than 72 hours after the notice is given.” Once this period is over, the Parks and Recreation Department will usually issue a “Trespass to Property Act Police Letter.” This letter is issued under the provincial *Trespass to Property Act*, which, in part, sets out police powers to respond to people ‘trespassing’. Under sections 2(1)(a)(ii) and 9 of the *Trespass to Property Act*, police may act against anyone they believe on “reasonable and probable grounds” to be engaging in prohibited activities on the premises.³⁵² Under a Trespass to Property Act Police Letter, police are empowered to “remove people in contravention” of the *Trespass to Property Act* on behalf of the City.³⁵³

Although the 72-hour notice period is a requirement under City by-laws, some residents have encountered shorter timeframes. For example, on July 15, 2020, residents at the Moss Park encampment received a notice from the City threatening to forcibly remove their belongings if residents had not voluntarily removed them by 1 p.m. on July 16, 2020.³⁵⁴ Many advocates were quick to point out that the notice violated the City’s own requirements to provide at least 72 hours’ notice to residents before acting. The ESN has also documented instances where the City has carried out encampment evictions without properly notifying residents. Lorraine Lam, an outreach worker at Sanctuary, noted that “there may have been some exceptions, but for the most part, residents are given a couple hours to pack up their belongings and leave the park.”³⁵⁵ The City has faced no accountability for their decision to provide such limited notice, despite criticism from advocacy groups.³⁵⁶

On March 19, 2021, following the announcement of the Pathway Inside Program, the City erected signs in Moss Park, Alexandra Park, Trinity Bellwoods Park, and Lamport Stadium to notify residents that encampments would be cleared on April 6, 2021.³⁵⁷ These notices read, “[i]n early

³⁵² *Trespass to Property Act*, RSO 1990, c T.21.

³⁵³ City of Toronto, Department of Parks, Forestry and Recreation, “Trespass to Property Act Police Letter (Copy)”, online: *Public Commons* <<http://publiccommons.ca/public/uploads/Form-PoliceLetterForTrespassToProperty.pdf>>.

³⁵⁴ Sara Jabakhanji, “People in Moss Park encampment remain defiant, refuse a city notice to clear out”, *CBC News* (16 July 2020), online: <<https://www.cbc.ca/news/canada/toronto/tents-moss-park-toronto-homeless-1.5651892>> [*Moss Park*].

³⁵⁵ Encampment Support Network, Toronto, (1 November 2020), online: *ESN Donor Newsletter* <<https://drive.google.com/file/d/1NdyHSijsh140ZogrUGSKAfljiVciynOX/view>>.

³⁵⁶ *Ibid.*

³⁵⁷ Mira Miller, “New Map Tracks Mass Evictions Happening Across Toronto”, *BlogTO* (March 2020), online: <<https://www.blogto.com/city/2021/02/new-map-tracks-mass-evictions-toronto/>>.

April, people will not be allowed to stay overnight and these encampment sites will undergo a parkland restoration process.”³⁵⁸ While the City gave notice well in advance in compliance with the applicable by-laws, it went on to provide inconsistent information, causing significant psychological distress and uncertainty among residents.³⁵⁹ For example, on April 1, 2021, the City indicated that “[n]o enforcement action to vacate parks will occur on April 6” and that the posted notices “identified a date of April 6 to guide peoples’ decision making regarding offers of shelter, housing and other supports being offered.”³⁶⁰ According to the City, the planned decampments were put on hold because four residents at the Novotel Toronto Centre, where the shelter hotel program is located, tested positive for COVID-19.³⁶¹ As discussed below, the City did proceed with heavily-policed forced encampment evictions in Spring and Summer 2021.

Usually, notices requiring compliance with a City by-law will be given directly to the person who is in violation of a by-law, either in person or through the mail to their last known address.³⁶² Officers may not be obligated to inform people directly: if a person’s address is unknown or the City is unable to give notice to the person directly, the City may leave a sign in a public area, noting the violation and the City’s intention to enforce the by-law.³⁶³ Some encampment residents have reported police and by-law officers issuing notices to them directly³⁶⁴ or leaving notes on tents or trees.³⁶⁵ It is unclear whether the City uses a uniform approach when notifying encampment residents of the City’s intention to initiate an encampment eviction. Therefore, it is unclear whether the City does properly notify residents before an eviction occurs.

On March 19, 2021, Doug Hatlem documented trespass notices issued according to the *Trespass to Property Act* being posted around the encampment site and distributed to individual residents in Trinity Bellwoods Park.³⁶⁶ The timing of these notices suggests they were issued in conjunction with the Pathway Inside Program, which had been announced three days earlier. According to Hatlem, the notices were issued by a Streets to Homes worker who was accompanied by nine Toronto corporate security officers in uniform.³⁶⁷ The City has stated that corporate security officers are meant to “support[t] and enhanc[e] the safe delivery of City services.”³⁶⁸ However, it is unclear why so many corporate security officers were required to fulfill this prerogative. In practice, police and private security presence serves to intimidate residents. Advocates voiced concerns that evictions carried out under the *Trespass to Property Act* would lead to residents being forcibly removed by

³⁵⁸ *Ibid.*

³⁵⁹ Encampment Support Network Toronto, “Will city councillors and SSHA go down to the encampments and tell the residents that you aren’t going to enforce the Notices of Trespass?” (2 April 2021 at 14:04), online: *Twitter* <https://twitter.com/ESN_TO/status/1378045684293701634>.

³⁶⁰ City of Toronto, News Release, “Pathway Inside program continues to house and support people experiencing homelessness” (1 April 2021), online: *City of Toronto* <<https://www.toronto.ca/news/pathway-inside-program-continues-to-house-and-support-people-experiencing-homelessness/>>.

³⁶¹ Lorenda Reddekopp, “The city’s plan to evict homeless people camping in parks is on hold” (2 April 2021 at 20:02), online: *Twitter* <<https://twitter.com/CBCLOrenda/status/1378135845681659907>>.

³⁶² *Parks By-law*, *supra* note 198, at s 53.

³⁶³ *Ibid.*

³⁶⁴ *Moss Park*, *supra* note 354.

³⁶⁵ *ESN video*, *supra* note 263.

³⁶⁶ Doug Johnson Hatlem, “Document 2.” (19 March 2021 at 9:22), online: *Twitter* <<https://twitter.com/djohnso/status/1372901343174754305>>.

³⁶⁷ *Hatlem tweet*, *supra* note 323.

³⁶⁸ City of Toronto, “Corporate Security” (2021), online: *City of Toronto* <<https://www.toronto.ca/city-government/accountability-operations-customer-service/city-administration/staff-directory-divisions-and-customer-service/corporate-security/>>.

police.³⁶⁹ Indeed, as discussed below, the City proceeded with forced evictions using police and private security, heavy equipment, and the fencing off of encampments sites, beginning in May and June 2021.³⁷⁰

4. C Cities are engaging in violence, harassment, and forcibly removing encampment residents

Police presence at encampments, especially during evictions, has the potential to cause residents severe psychological distress and further exacerbate pre-existing trauma. The City should ensure engagement with encampments, particularly the provision of housing offers, is done by housing and support workers with adequate human rights training and without police or by-law officers present. Police and by-law interactions with encampments should be as minimal as possible and only resorted to where there is no safe alternative available.

Police involvement in encampment evictions can be harmful and counterproductive, including the potential to re-enact historical trauma. Historically marginalized and systemically disadvantaged groups – including Black persons, Indigenous Peoples, and other racialized communities, as well as people with histories of mental illness, people with disabilities, and criminalized people – may face significant barriers in accessing housing and are more likely to face homelessness and to be living in encampments.³⁷¹ Many unhoused people have faced targeted violence from law enforcement, and for some this has led to deeply rooted distrust and trauma. Many Indigenous Peoples have internalized intergenerational trauma because of state violence and institutional racism, including residential schools and violence against Indigenous women, girls, and Two-Spirited persons. Indeed, for some residents, living in encampments may be part of an effort to avoid state surveillance and institutional environments due to prior experiences and trauma.

The criminalization of homelessness has been entrenched in legislation such as the *Safe Streets Act*,³⁷² which imposes penalties on activities often incidental to homelessness, like squeegeeing or panhandling. As a result, police may be predisposed to accept stereotypes that associate homelessness with criminality and validate the concerns raised by housed residents and businesses surrounding encampments. This can lead to increased risk of police violence toward encampment residents, as well as further criminalization of homelessness. The *National Protocol* expressly calls on governments to “recognize that engaging police or other state authorities as a response to violence in encampments may put people at increased risk of harm, including due to risks of being criminalized or incarcerated.”³⁷³

Residents and advocates have reported multiple instances of police violence at encampment evictions in Toronto. During the 2020 Lamport Stadium eviction, the ESN noted the presence of police officers at different points as residents were departing the encampment site and during the

³⁶⁹ Muriel Draaisma, “City tells encampment residents they have until April 6 to remove makeshift homes from parks”, *CBC News* (28 March 2021), online: <<https://www.cbc.ca/news/canada/toronto/city-of-toronto-serves-notice-trepass-encampment-residents-unhoused-people-1.5967258>>.

³⁷⁰ For pictures and videos of encampment evictions and clearings, see: Tanya Mok, “City brought bulldozers and police to evict residents from a Toronto encampment”, *Blog TO* (May 2021), online: <<https://www.blogto.com/city/2021/05/police-brought-bulldozers-evict-residents-toronto-encampment/>>.

³⁷¹ *National Protocol*, *supra* note 19, at 5.

³⁷² *Safe Streets Act*, 1999, SO 1999, c 8.

³⁷³ *National Protocol*, *supra* note 19, at 26.

tent clearing process.³⁷⁴ The heavy police presence at encampment evictions between May to July 2021 was also well-documented in the media. Derrick Black, one of the applicants in *Black v Toronto*, discussed an incident in August 2020 when police officers entered his tent without a warrant, claiming to be looking for a gun, and assaulted him.³⁷⁵ Right to Housing Toronto also referenced “reports from encampment residents of harassment and assault by the police” prompted by complaints from surrounding communities.³⁷⁶ The troubling trend of police brutality toward encampment residents was most publicly demonstrated when police and private security officers violently evicted residents from Lamport Stadium and Trinity Bellwoods encampments in spring 2021. Over 200 police and private security attended Trinity Bellwoods to evict a small group of approximately 24 encampment residents. Police officers attempted to break apart supporters who linked arms forming a circular barricade around residents’ shelters, to provide them additional time in collecting their belongings before being evicted. Police used pepper spray, were mounted on horses, and fenced residents and supporters in a confined area, prohibiting the re-entry upon exiting the fenced perimeter.³⁷⁷ At Lamport Stadium, media and advocates captured video footage of a resident being violently arrested and taken into custody during the attempted eviction. As previously mentioned, police force resulted in bruises, concussions, and broken bones. In both instances, police used fencing to block access to the encampment and to isolate residents from members of the public who arrived to support them and stop the eviction.

Advocates in other cities such as Vancouver and Victoria have documented how such actions have serious impacts on residents, including the fear of leaving their tents and belongings in case they were blocked off and inaccessible when they returned. In some cases, residents stayed in their tents, which limited their ability to find necessary supplies including food and water.³⁷⁸ Advocates in Victoria also noted the decampment process put residents at risk by making the encampment less navigable. Justin Sawyer, a harm reduction counsellor at AVI Health and Community Services, pointed out that the way the City of Victoria erected the fences prevented residents from using crosswalks, making crossing the street more dangerous and also posing a potential fire hazard because entering and exiting the encampment had become more difficult.³⁷⁹ Fences remained around encampment sites in Toronto for several weeks despite the City’s claim that evictions were necessary to allow public access and use of the parks. These aggressive strategies can also limit contact between residents and service providers. In Victoria advocates noted that encampments became more chaotic after the city began using these tactics and many residents relocated, severing relationships with service providers. The potential harms resulting from this loss of contact are well documented by advocates, including nurses being unable to locate encampment residents to give them prescribed medication.³⁸⁰

³⁷⁴ *Ibid.*

³⁷⁵ Derrick Black, “A Year of Resistance in the Moss Park Encampment”, *The Local* (12 March 2021), online: <<https://thelocal.to/a-year-of-resistance-in-the-moss-park-encampment/>>.

³⁷⁶ *Encampment Rights Review*, *supra* note 259.

³⁷⁷ Chris Herhalt, “Trinity-Bellwoods encampment evictions ‘reasonable, firm, but compassionate.’ Tory”, *CTV News Toronto* (23 June 2021), online: <<https://toronto.ctvnews.ca/trinity-bellwoods-encampment-evictions-reasonable-firm-but-compassionate-tory-1.5481959>>

³⁷⁸ *Ibid.*

³⁷⁹ Pivot Legal, “Statement by Justin Sawyer, Harm Reduction Counsellor, AVI Health and Community Services; Re: Encampment Health and Safety (COVID-19) BC Ministerial Order M128” (3 May 2020), online (pdf): *Pivot Legal Society* <https://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/3467/attachments/original/1589510957/statement_6_-_Justin_Sawyer.pdf>.

³⁸⁰ Anna Cooper & Caitlin Shane, “Decampment of Topaz Park and Pandora Avenue Corridor” (14 May 2020), online: *Pivot Legal* <https://www.pivotlegal.org/decampment_of_topaz_park_and_pandora_avenue_corridor#_ftn9>.

Even where residents appear to have been given more choice as to whether to remain in an encampment or accept space in a shelter-hotel the presence of city workers, especially police and private security, can exacerbate the pressure residents may feel to accept space offered at shelter-hotels.³⁸¹ Historically marginalized and systemically disadvantaged groups are more likely to experience both homelessness and police brutality.³⁸² Together, these contribute to an environment where residents feel at risk of police violence if they remain in an encampment after space in a shelter-hotel is offered.

4. D Losing your sense of belonging: Cities continuously remove and destroy encampment residents' personal belongings

Throughout the pandemic, the removal of personal belongings and crowd-sourced resources by City workers has been documented in cities across Canada. In November of 2020, an encampment community in Beacon Hill Park in Victoria, British Columbia had access to two showers, a cistern, and community care tents that a grassroots community group had constructed. Advocates built the showers after the City of Victoria had turned off the park's handwashing stations, thereby forcing people in the park to find a new water source.³⁸³ The showers helped preserve human dignity, as well as maintained the health and wellbeing of residents by enabling proper sanitation. They were in place for three days before they were dismantled by about 30 police and city by-law officers. In dismantling the showers and removing the cistern and community care tents, city officials cited "fire risks...health and safety risks and...damage[e] [to] the environment."³⁸⁴

As discussed above, the City of Toronto filed an application for injunction against Khaleel Seivwright, citing concerns that the tiny shelters he was building were undermining City efforts to move residents into indoor housing and "may have the effect of encouraging individuals to continue to occupy public property in conditions which are both dangerous and unhealthy."³⁸⁵ In a news release dated February 19, 2021, the City announced its intention to take legal action to "stop those who are building unsafe wooden structures and illegally depositing them on City property, including in parks and on City rights-of-way."³⁸⁶ The same news release included a reference to a deadly encampment fire "involv[ing] a wooden structure" on February 17, 2021, as well as two other "fires involving wooden structures: one in December at Moss Park and one in January at Holy Trinity Church."³⁸⁷ The City removed some of the shelters Seivwright constructed from public parks.³⁸⁸

These actions have the potential to harm residents. In direct contradiction to the stated rationale of protecting resident well-being, these resources are often removed without additional action by cities

³⁸¹ *Ibid.*

³⁸² *National Protocol*, *supra* note 19, at 26.

³⁸³ Adam van der Zwan, "City of Victoria dismantles showers for homeless campers at Beacon Hill Park", *CBC News* (21 November 2020), online: <<https://www.cbc.ca/news/canada/british-columbia/beacon-hill-park-showers-1.5811064>>.

³⁸⁴ *Ibid.*

³⁸⁵ Muriel Draaisma & Angelina King, "City issues warning letter to Toronto carpenter building shelters for unhoused people", *CBC News* (21 November 2020), online: <<https://www.cbc.ca/news/canada/toronto/city-legal-action-toronto-carpenter-toronto-tiny-shelters-unhoused-people-1.5811589>>.

³⁸⁶ *City Notice*, *supra* note 251.

³⁸⁷ *Ibid.*

³⁸⁸ Mira Miller, "People outraged as Toronto removes tiny shelter from city park", *BlogTO* (February 2021), online: <<https://www.blogto.com/city/2021/02/advocates-outraged-city-removes-tiny-shelter-injunction-carpenter/>>.

Chapter 4 Summary

- The City emphasizes its role as property owners in its response to encampments by relying on Notices of Trespass and police enforcement. It often cites parks by-laws, littering and waste disposal by-laws, and fire code regulations to legally ground the evictions. The notices are accompanied by threats of \$10,000 fines and arrest for non-compliance.
- Shelters established by encampment residents do not technically fall within the jurisdiction of the provincial Fire Code, despite being used as reasons to evict encampment residents and remove shelters.
- The City uses soft powers to discriminate and negatively portray people experiencing homelessness, further contributing to their stigmatization.
- Parks Ambassadors are often used as authoritative figures to heavily monitor, penalize, displace, and disrupt encampment residents.
- The City does not explore all alternatives to eviction, meaningfully consult with residents, or provide adequate notice prior to encampment evictions.
- The City continues to use police and private security to facilitate evictions, creating a coercive atmosphere and the risk of harm and violence to residents and their possessions.
- Shelter and housing options are offered without adequate information and time to make a free and informed decision. The lack of harm reduction and social support services offered in shelters can lead to a lack of safety, security, and privacy in shelters. Geographic displacement and strict rules about visitors can lead to harmful isolation of residents and exacerbate the lack of appropriate supports in shelters and shelter hotels.
- Shelter and shelter hotels being offered do not provide security of tenure or long-term housing. They may also fail to adequately secure personal possessions, leaving residents at risk if they return to encampments.

to provide suitable alternatives. Residents are left vulnerable to exposure to inclement weather, poor sanitation, and without privacy and security for their belongings. Without a complementary City response to provide meaningful alternatives and basic services, informed by consultation with residents, the process of removing community-sourced resources exacerbates harm, rather than mitigating it.

The City has also failed to protect the personal belongings of encampment residents, and at times has actively removed, damaged, and destroyed them. Reports indicate that some city officials have confiscated or destroyed personal possessions while carrying out encampment evictions.³⁸⁹ This can cause significant stress and anxiety to residents, who may fear leaving their shelter to collect necessary supplies including food and water. The City's practice of destroying residents' shelters when they are absent also has the potential to disrupt key sources of income, as some residents need to be outside their shelter for hours while they generate an income.

³⁸⁹ Stepan Wood, "6 reasons why displacing the homeless must stop, regardless of COVID-19", (20 July 2020), online: *The Conversation* <<https://theconversation.com/6-reasons-why-displacing-the-homeless-must-stop-regardless-of-covid-19-142341/>> [Stepan Wood].

Chapter 5: The City of Toronto is falling short in upholding their rights-based approach to housing

As a municipal government, the City is obligated to comply with human rights law. The City has the necessary legal powers and political tools to create policies, enact legislation, and use soft powers to adopt and implement a rights-based approach to housing. Indeed, the City has committed to doing so. Yet when the City's actions are measured against the principles outlined in the [A National Protocol for Homeless Encampments in Canada: A Human Rights Approach](#), it becomes clear that the City is failing to fulfill its international human rights obligations with respect to encampments. As discussed below, our legal research and analysis suggests the City of Toronto is emphasizing its role as the owner of public space at the expense of its obligation to protect of the human rights of *all* residents.

The Standard and the Reality: The City's response to encampments has not been in compliance with the National Protocol and is not consistent with a rights-based approach

In 2020, Leilani Farha, United Nations Special Rapporteur on the Right to Adequate Housing (2014-2020), along with Dr. Kaitlin Schwan, developed the *National Protocol on Homeless Encampments in Canada – A Human Rights Approach*.³⁹⁰ The Protocol is based in international human rights law and the recognition that encampment residents are rights holders and experts in their own lives. The Protocol is intended to assist governments in realizing the right to adequate housing for this group. The Protocol includes eight Principles for a rights-based approach to encampments. These Principles should be the foundation of the City's approach to encampments.

“Principle 1: Recognize residents of homeless encampments as rights holders

All government action with respect to homeless encampments must be guided by a commitment to upholding the human rights and human dignity of their residents. This means a shift away from criminalizing, penalizing, or obstructing homeless encampments, to an approach rooted in rights-based participation and accountability.

Principle 2: Ensure meaningful engagement and effective participation of encampment residents

Residents are entitled to meaningful participation in the design and implementation of policies, programs, and practices that affect them. Ensuring meaningful participation is central to respecting residents' autonomy, dignity, agency, and self-determination. Engagement should begin early, be ongoing, and proceed under the principle that residents are experts in their own lives. The views expressed by residents of homeless encampments must be afforded adequate and due consideration in all decision-making processes. The right to participate requires that all residents be provided with information, resources, and opportunities to directly influence decisions that affect them.

³⁹⁰ *National Protocol*, *supra* note 19, at 2.

Principle 3: Prohibit the forced evictions of encampments

International human rights law does not permit governments to destroy peoples' homes, even if those homes are made of improvised materials and established without legal authority. Governments may not remove residents from encampments without meaningfully engaging with them and identifying alternative places to live that are acceptable to them. Any such removal from their homes or from the land which they occupy, without the provision of appropriate forms of legal protection, is defined as a 'forced eviction' and is considered a gross violation of human rights. The removal of residents' private property without their knowledge and consent is also strictly prohibited. Common reasons used to justify evictions of encampments, such as 'public interest,' 'city beautification', development or re-development, or at the behest of private actors (e.g., real estate firms), do not justify forced evictions.

Principle 4: Explore all viable alternatives to eviction

Governments must explore all viable alternatives to eviction, ensuring the meaningful and effective participation of residents in discussions regarding the future of the encampment. Meaningful consultation should seek to maximize participation and should be supported by access to free and independent legal advice. Where personal needs differ amongst residents of encampments such that a singular best alternative is not unanimous, governments will have to develop several solutions each of which is consistent with the principles outlined in this Protocol.

Principle 5: Ensure that any relocation is human rights compliant

Considerations regarding relocation must be grounded in the principle that "the right to remain in one's home and community is central to the right to housing."² Meaningful, robust, and ongoing engagement with residents is required for any decisions regarding relocation. Governments must adhere to the right to housing and other human rights standards when relocation is necessary or preferred by residents. In such cases, adequate alternative housing, with all necessary amenities, must be provided to all residents prior to any eviction. Relocation must not result in the continuation or exacerbation of homelessness, or require the fracturing of families or partnerships.

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

Canadian governments must ensure, at a minimum, that basic adequacy standards are ensured in homeless encampments while adequate housing options are negotiated and secured. Governments' compliance with international human rights law requires: (1) access to safe and clean drinking water, (2) access to hygiene and sanitation facilities, (3) resources and support to ensure fire safety, (4) waste management systems, (4) social supports and services, and guarantee of personal safety of residents, (5) facilities and resources that support food safety, (6) resources to support harm reduction, and (7) rodent and pest prevention.

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

Governments have an obligation to bring about positive human rights outcomes in all of

their activities and decisions concerning homeless encampments. This means that Canadian governments must move, on a priority basis, towards the full enjoyment of the right to housing for encampment residents. Any decision that does not lead to the furthering of inhabitants' human rights, that does not ensure their dignity, or that represents a backwards step in terms of their enjoyment of human rights, is contrary to human rights law.

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

Governments' engagement with Indigenous Peoples in homeless encampments must be guided by the obligation to respect, protect, and fulfil their distinct rights. This begins with recognition of the distinct relationship that Indigenous Peoples have to their lands and territories, and their right to construct shelter in ways that are culturally, historically, and spiritually significant. Governments must meaningfully consult with Indigenous encampment residents concerning any decisions that affects them, recognizing their right to self-determination and self-governance. International human rights law strictly forbids the forced eviction, displacement, and relocation of Indigenous Peoples in the absence of free, prior, and informed consent.

Given the disproportionate violence faced by Indigenous women, girls, and gender diverse peoples, governments have an urgent obligation to protect these groups against all forms of violence and discrimination within homeless encampments, in a manner that is consistent with Indigenous self-determination and self-governance.³⁹¹

The City has not met the human rights standards outlined in the National Protocol

Based on the evidence presented throughout this report, we conclude that the City's approach has not been consistent with its human rights obligations as set out above and in the *National Protocol*. While the City claims to have engaged with encampment residents up to 20,000 times throughout the pandemic, our findings indicate that the nature of these engagements has not been sufficient to fulfill its human obligations.³⁹² Indeed, some of these engagements are in direct violation of the human rights.

According to Principle 1 of the *National Protocol*, a rights-based approach to encampments requires recognizing residents as rights holders and actively upholding their human rights and human dignity. This requires an active shift from responses that criminalize and penalize encampment residents. Principle 3 of the *National Protocol* prohibits the forced evictions of encampments. Principle 4 of the *National Protocol* states that a government should explore all viable alternatives to evictions. During the period examined in this report, the City's approach to encampments emphasized evictions and charging residents with by-law infractions through Notices of Trespass. These responses penalize and often criminalize encampment residents and their supporters rather than recognize them as rights holders. Former encampment resident Brian Cleary described the events at Lamport Stadium

³⁹¹ *National Protocol*, *supra* note 19, at 3-4.

³⁹² Toronto, News Release, "City of Toronto continues to help and support people experiencing homelessness" (23 July 2021), online: *City of Toronto* <<https://www.toronto.ca/news/city-of-toronto-continues-to-help-and-support-people-experiencing-homelessness-3/>>.

in May as follows: “They’re criminalizing everyone living here, this is scary and traumatizing and just absolutely unnecessary.”³⁹³

The City justified this approach by emphasizing its ownership of parks and the need to balance the interests of the public rather than acknowledging the rights, agency, and vulnerabilities of those living in encampments. The City has used the courts defensively and proactively to counter residents’ assertion of their human rights and efforts to uphold their dignity. This is most apparent in its defence of trespass notices in *Black v Toronto* where the City argued that a small group of people should not be able to opt out of using the shelter system when the City has made best efforts to address concerns related to COVID-19.³⁹⁴ The City’s decision to take legal action against Khaleel Seivwright who began constructing tiny shelters to house encampment residents during the winter months in November 2020 was also indicative of this approach. Rather than working with Seivwright and residents to ensure that tiny shelters were safe and fulfill the recommendations of the Faulkner Report, the City issued injunctions to force him to stop based on littering and other by-law infractions.³⁹⁵ The City maintained this approach even when inclement conditions and COVID-19 outbreaks posed serious risks to residents’ health and safety.

Although the City has the formal legal tools to evict residents from encampments through its use of municipal current parks by-laws, this approach is inconsistent with recognizing residents as rights holders and is vulnerable to a legal challenge under the *Charter*. Eviction threats and actions highlight the City’s willingness not only to forcibly remove and evict encampment residents if they do not comply with City orders, but to penalize and criminalize their lack of compliance.

Principle 2 of the *National Protocol* states that the design and implementation of policies, programs, and practices requires meaningful engagement and effective participation of encampment residents. Meaningful engagement enables residents to express concerns, articulate demands and priorities, and voice opinions about any plans for existing encampments and relocation processes. Effective participation empowers encampment residents to make decisions about actions that affect them and to participate through resident-led processes that respect their autonomy. Such engagement should also be undertaken during the (re)design of relevant programs and practices to create safer and more secure indoor spaces. Implementing meaningful engagement and effective participation requires active support from the City, such as Indigenous cultural supports, translation, mobility and technology support, food, and access to relevant information. The evictions described above and the development of the Better Living Centre and Pathways Inside Program demonstrate the City’s lack of such meaningful engagement to date.

In order to shift away from policies and practices that criminalize or penalize encampment residents, meaningful engagement and participation must occur early and be ongoing. The City must avoid the use of coercive tactics like threats of eviction and removal of residents’ personal belongings, as well as limit the use of law enforcement and private security when engaging with encampments.³⁹⁶ During any relocation process the City should provide residents with adequate time to consider

³⁹³ Muriel Draaisma, “Encampment residents say permanent housing, not brute force, is solution to homelessness”, *CBC News* (30 June 2021), online: <<https://www.cbc.ca/news/canada/toronto/residents-moss-park-permanent-housing-brute-force-city-toronto-homelessness-1.6087106>> [*Encampment Residents*].

³⁹⁴ *Black v Toronto*, *supra* note 145.

³⁹⁵ Encampment Support Network, “Donor Newsletter” (14 February 2021), online (pdf): *Encampment Support Network* <<https://drive.google.com/file/d/1OXkXpAj0H4qM736dpAoCerY0SYmyOpfD/view>>.

³⁹⁶ *Stepan Wood*, *supra* note 389.

relocation offers, ensure they have access to relevant resources and information, and provide opportunities for meaningful input into City proposals that affect encampments. We support the City's efforts to pilot a more comprehensive engagement in Dufferin Grove Park in late summer 2021. However, we note that this has not been applied to all encampments, and residents elsewhere continue to be threatened with eviction and criminalization. The City should be transparent about the policy basis and rationale for the pilot, the steps taken to implement the pilot, and the site selection. Further, the City should ensure that all encampment residents, regardless of which park they reside in, have equal access to meaningful opportunities for engagement and participation in all decision affecting them.

Principle 5 of the *National Protocol* seeks to “ensure that any relocation is human rights compliant,” emphasizing that should adequate housing be unavailable or inaccessible, encampment residents have the right to remain within their encampment.³⁹⁷ In general, the City has focused on providing emergency shelter spaces or single-units at shelter-hotels to people residing in encampments, rather than permanent housing. These spaces are, by definition, not permanent housing and may be located away from vital community and health supports. Former encampment resident Brian Clearly described hating his time at a City shelter hotel: “I had to walk a kilometre to get groceries, there’s just nothing around, let alone any support services.”³⁹⁸ It is well documented that shelters are also sites of violence and damage to (and theft of) personal belongings. During the pandemic shelters also saw coronavirus outbreaks.

We welcome efforts by the City to address these challenging issues in light of intergovernmental funding challenges. However, the framing of shelters and shelter-hotels as *housing* undermines the lived experiences of many unhoused people, some of whom have experienced trauma, crime, illness, and insecurity as a result of shelters. As one encampment resident Sasha stated, “I come back here with a tent because I feel more safer than I do there.”³⁹⁹ We urge the City to understand the importance of adequate permanent housing, not shelters or shelter-hotels, as necessary for encampment residents before they are asked to leave public spaces. Rather than expand the emergency shelter system, the City needs to urgently expand affordable housing units with rent-gear-to-income and supportive housing options to ensure permanent housing is accessible to those experiencing homelessness. In Sasha’s words, “[Y]ou need to figure out what kind of housing is going to be the best situation for them. It's just like, 'Hey, let's shove them here, they're okay, bye.' No, it's not. We're not okay. You can't just say 'bye' to us.”⁴⁰⁰

We note that at the final stages of writing this report the City began to implement a new approach as part of a “pilot project” with the Dufferin Grove Park encampment, which expanded immediate access to housing for encampment residents. We applaud this change of course. Indeed, it appears to be a welcome return to the original mandate of the City’s Streets to Homes outreach program: moving unhoused people into permanent homes, not emergency shelters. However, this approach had not been extended to all encampments at the time of writing. Further, it remains unclear whether permanent housing options are universally being offered to residents. Most importantly, there is no indication that the underlying policies and by-laws will be repealed or amended to comply with the City’s human rights obligations. These legal and policy instruments facilitated the violence

³⁹⁷ *National Protocol*, *supra* note 19, at 21.

³⁹⁸ *Encampment Residents*, *supra* note 393.

³⁹⁹ *Ibid.*

⁴⁰⁰ *Ibid.*

against, and criminalization and penalization of, encampment residents and advocates discussed in this report. Indeed, at the time of writing, many people are still facing charges in connection with encampment evictions and the police have attempted to impose inappropriate and likely unconstitutional conditions to limit access to public space and future engagement in housing advocacy.

Principle 6 of the Protocol outlines that governments must ensure encampments meet the basic needs of residents, in alignment with human rights standards. While the City is able to facilitate access to the resources listed under Principle 6, none of the encampment residents had access to all basic resources, and in some cases were unable to access water or bathrooms. Portable toilets were limited or unavailable at most sites. While the City may provide access to waste management systems for some encampments, many encampment residents often relied on community support systems and grassroots organizations to provide access to water, food, hygiene products, and other basic necessities critical to survival, such as sleeping bags. As former encampment resident Jennifer Jewel noted at the July 26 press conference, accessible showers were unavailable throughout the pandemic, leaving Jewel to travel 30 minutes to shower.⁴⁰¹

Principle 8 of the *National Protocol* declares that all orders of government must respect, protect, and fulfill the distinct rights of Indigenous Peoples in all engagements with encampments. The City has adopted *UNDRIP* and committed to implement the relevant Calls to Action of the Truth and Reconciliation Commission and is therefore bound to recognize Indigenous Peoples' right to self-determination, including in the area of housing. This means that the City must work with current Treaty holders and all relevant Indigenous nations and organizations, in addition to undertaking meaningful consultation and rights-based engagement with Indigenous encampment residents.

When measured against the Principles of the *National Protocol*, it is clear the City is falling short in upholding its legal obligations and commitment to a rights-based approach to housing in relation to homeless encampments.

⁴⁰¹ Wyld Wych, "The showers too. When I was living in the park, out of all of the City of Toronto pools that were wheelchair-accessible and had accessible facilities, only one was open for homeless people. It was a \$30 round trip with Uber for me each time." (26 June 2021 at 14:26), online: *Twitter* <https://twitter.com/Wyld_Wych/status/1408854268204007430> .

RECOMMENDATIONS

Based on a review of international, federal, and provincial human rights obligations, as well as City Council-approved commitments, this report concludes that the City is not upholding its commitment to a human rights-based approach to housing. We urge the City to adopt written protocols, passed by City Council, to implement a rights-based approach to encampments. In order for the City to abide by its legal obligations, it is recommended:

1. The City must not engage in the forced eviction of encampment residents from parks, ravines, and outdoor spaces and must repeal or amend by-laws sanctioning forced evictions. Forced evictions are “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, 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.”⁴⁰² Forced evictions are never justified and are a gross violation of human rights. This includes instances where state harassment, intimidation, or threats cause encampment residents to relocate against their will. Evictions falling outside the legal definition of “forced” may only be justified in rare circumstances and nonetheless require that relocation only be carried out after exploring all viable alternatives with residents in accordance with law. Additionally, they must be consistent with the right to housing, and only occur after securing access to safe and adequate indoor shelter space appropriate to a resident’s needs. This recommendation requires the City to review and amend by-laws used as the basis for issuance of Notices of Trespass to encampment residents. We specifically note the need to amend by-laws 608-13 and 608-14 which prohibit camping and lodging or erecting tents or structures in parks to be in conformity with the right to housing. The City must discontinue the practice of issuing Notices of Trespass to encampment residents as part of any relocation process.
2. The City must recognize encampment residents as rights holders as recognized in international human rights law and domestic law, and adopt policies, practices, and programs that reflect this recognition. As such, the City must recognize that its prerogative to enforce by-laws, and specifically By-Laws 608-13 and 608-14, cannot supersede the rights of encampment residents to safety, security, and human dignity. Safety includes ensuring encampments meet basic needs of residents, as per recommendation 6 below. Security includes privacy and security of the person, including with regards to personal property and belongings. Human dignity includes respect for the intrinsic value of human life, individual autonomy, and equality.
3. The City must meaningfully consult with encampment residents before undertaking any action that could affect them. Meaningful consultation requires that residents have decision-making power and influence over final outcomes. It involves the following minimum components:
 - Encampment residents are empowered to make decisions about actions that affect them, including through resident-led meetings and processes;

⁴⁰² UNCESCR, *General Comment No.7: The Right to Adequate Housing (Art. 11(1) of the Covenant)*, 16th Sess, 20 May 1997, UN Doc E/1998/22 [General Comment No.7].

- Processes for decision making by the City are transparent and clearly explained to residents prior to action being taken;
 - Residents are given enough time to consider information provided by government and to give their direction before actions are taken;
 - Officials should provide residents with reasons for decisions, including explaining how resident input and feedback was incorporated into decision-making;
 - There is a clear resident-approved process to challenge decisions, propose alternatives, and articulate demands and priorities;
 - Officials shall ensure resources are available to support full participation in decision-making, including Indigenous cultural supports, literacy supports, translation, mobility supports, PPE, food, and access to information; and
 - Residents are provided with independent legal advice, information concerning human rights, and the constitutional rights of Indigenous Peoples.
4. Alternative housing options must be sourced in consultation with encampment residents to adequately meet residents' needs. Housing options should preserve the human dignity of residents and critically consider their safety and well-being. This may require sourcing single-dwelling housing, accessible housing for disability-related needs, substance use, family-status, or pets, and housing options in proximity to key social supports and health services. Reasonable space for personal possessions should also be provided. Residents should have the option of declining housing offers, and have choice and agency in their housing. In accordance with human rights standards, the City of Toronto's techniques for prioritizing access to social housing should be based on level of need. The City should not provide preferential access to housing for individuals residing in encampments over persons experiencing other forms of homelessness in order to clear visible encampments, or for any other reason.
 5. If housing that is adequate to meet residents' needs is unavailable, residents must be allowed to remain in encampments until appropriate housing becomes available. While they are in encampments, residents must be provided access to fundamental resources and supports that meet their safety and wellbeing needs, including heat sources, water, and sanitation. Tents may not be dismantled or destroyed even when made from other materials, such as tarps or blankets. City officials must respect residents' rights to privacy in tents and not interfere with shelters or residents' possessions without the express consent of residents.
 6. The City must, at a minimum, ensure that basic adequacy standards are met in homeless encampments while adequate housing options are negotiated and secured.⁴⁰³ Given that people residing in encampments are experts in their own lives and best positioned to assess what resources they need and how best to mobilize them, the City should engage these experts in ensuring their basic needs can be met.

⁴⁰³ Governments' compliance with international human rights law requires: (1) access to safe and clean drinking water, (2) access to hygiene and sanitation facilities, (3) resources and support to ensure fire safety, (4) waste management systems, (4) social supports and services, and guarantee of personal safety of residents, (5) facilities and resources that support food safety, (6) resources to support harm reduction, and (7) rodent and pest prevention.

7. The City must take action to restrict the presence of law enforcement at encampment sites whenever possible. Funds should be diverted from police budgets and invested in making housing and critical support services more accessible to low-income communities. Legal counsel and observers must be free to observe any interactions between residents and law enforcement where residents have requested, or consented to, their presence. The rights of members of the media must also be fully respected at all times.
8. If residents choose to relocate to shelters, they should be able to access shelter spaces easily, including current information on which shelters have available space, amenities available at the shelter, whether residents may be accompanied by animals or partners, and whether the shelter has guidelines or restrictions on the capacity of personal belongings. Residents should be offered storage for any additional belongings beyond those taken to the shelter, including tents and outdoor gear. Tents, shelter materials, and other survival gear should not be seized or destroyed by the City if residents relocate to shelter spaces. The City must make every effort to provide safe shelter spaces for women and gender-diverse residents. The City must ensure shelter providers do not rely on discriminatory or arbitrary policies to determine which residents can access shelter, including blanket prohibitions against substance abuse.
9. The City must take a Housing First approach rather than rely on the shelter system as a form of housing. Housing First means ensuring that people experiencing homelessness are given immediate, stable, long-term housing with supports, rather than access to emergency shelters. Streets to Homes should consistently apply a Housing First approach, consistent with human rights obligations.
10. The City must also be a committed advocate for a comprehensive, social, and affordable rental housing market in its own policy decisions and in its engagement with intergovernmental partners. The City must adopt policy choices that are consistent with its human rights obligations, including policies that prioritize access to adequate and affordable housing for those facing the greatest housing disadvantage. To this end, the City, alongside higher levels of government, should allocate the maximum available resources to urgently end homelessness. For example, there are opportunities to explore and expand the use of the City's existing regulatory and taxation powers to immediately create or build more publicly-owned and deeply affordable housing, including through the conversion of vacant buildings, private rental units (including short-term rentals), and other underused or unused units or buildings.
11. The City's responsibility to respect, protect, and uphold the distinct rights of Indigenous Peoples must guide all engagements with people experiencing homelessness and homeless encampments. To this end, the City should meaningfully engage all relevant Indigenous stakeholders and nations, as identified by Indigenous Peoples themselves, in the development of policy approaches to encampments that align with the right to housing, s 35 of the Constitution, relevant treaties, and the United Nations Declaration of the Rights of Indigenous Peoples. As part of this work, the City of Toronto should work with Indigenous persons with lived experience of homelessness, Indigenous lawyers, and Indigenous legal scholars to ensure this strategy reflects the specific intersecting legal, Treaty, and human rights obligations of the City to Indigenous Peoples. This includes working with Indigenous People's own processes and laws.

12. The City of Toronto should develop robust accountability mechanisms to ensure that its approaches to encampments, and homelessness more broadly, align with the right to housing as articulated in the *National Housing Strategy Act*. People with lived expertise of homelessness should be directly involved in the development and implementation of such mechanisms, as well as the ongoing monitoring of City decision-making and policy development, in relation to human rights standards.

Appendices

Appendix A

Table 1. Toronto shelter outbreaks during the first wave of COVID-19⁴⁰⁴

Shelter location	Active cases	Deaths	Hospitalizations	Date case reported	Toronto updated date
Seaton house	14	0	5	6 April 2020	29 April 2020
Homes First Shelter-Willowdale Welcome Centre	152	0	2	9 April 2020	29 April 2020
Homes First Society	1	0	0	11 April 2020	29 April 2020
Nellie's	11	0	0	16 April 2020	29 April 2020
Sojourn House	24	0	0	16 April 2020	29 April 2020
Dixon Hall- School House	3	0	1	18 April 2020	29 April 2020
Dixon Hall- 188 Carlton	1	0	0	23 April 2020	29 April 2020
Good Shepherd	2	0	1	23 April 2020	29 April 2020
Scott Mission	2	0	0	24 April 2020	29 April 2020
Homes First Shelter-Willowdale Welcome Centre	163	0	1	9 April 2020	6 May 2020
Nellie's Women's Shelter	11	0	0	16 April 2020	6 May 2020
Dixon Hall- School House	3	0		23 April 2020	6 May 2020
Dixon Hall- 188 Carlton	5	0		18 April 2020	6 May 2020
Scott Mission	2	0	0	24 April 2020	6 May 2020
Seaton House	19	0	7	6 April 2020	6 May 2020
Sojourn House	43	0	1	16 April 2020	6 May 2020

⁴⁰⁴ All information in this table is data extracted from the integrated Public Health Information System (iPHIS) which is the reporting and surveillance of Diseases of Public Health Significance (DOPHS) in Ontario. The data includes only those outbreaks that are currently active. The number of cases and deaths are cumulative for each outbreak. For more information, see: iPHIS, "iPHIS resources" (2021), online: *Public Health Ontario* <<https://www.publichealthontario.ca/en/diseases-and-conditions/infectious-diseases/ccm/iphis>>.

Costi	10	0	1	30 April 2020	13 May 2020
Homes First Shelter-Willowdale Welcome Centre	178	0	0	9 April 2020	13 May 2020
Nellie's Women Shelter	11	0	0	16 April 2020	13 May 2020
Salvation Army Evangeline Residence	21	0	0	30 April 2020	13 May 2020
Scott Mission	2	0	0	24 April 2020	13 May 2020
Seaton House	28	1	7	6 April 2020	13 May 2020
Sistering Women's place	1	0	0	5 May 2020	13 May 2020
Sojourn House	46	0	0	16 April 2020	13 May 2020
St. Felix Centre	2	0	1	24 April 2020	13 May 2020
Costi	19	0	1	30 April 2020	15 May 2020
Homes First Shelter-Willowdale Welcome Centre	180	0	0	9 April 2020	15 May 2020
Salvation Army Evangeline Residence	21	0	0	30 April 2020	15 May 2020
Seaton House	32	1	6	6 April 2020	15 May 2020
Sistering Women's Place	1	0	0	5 May 2020	15 May 2020
Sojourn House	46	0	0	16 April 2020	15 May 2020
St. Felix Centre	2	0	1	24 April 2020	15 May 2020
Costi	74	0	0	30 April 2020	1 June 2020
Ernestine's Women's Shelter	1	0	0	20 May 2020	1 June 2020
Homes First Society	6	0	0	22 May 2020	1 June 2020
Maxwell Meighen Centre	16	0	1	14 May 2020	1 June 2020
Robertson House	1	0	1	23 May 2020	1 June 2020
Seaton House	49	1	0	4 June 2020	1 June 2020
St Felix Centre	1	0	0	22 May 2020	1 June 2020
St. Simon's Shelter	20	1	0	16 May 2020	1 June 2020
Street Haven	1	0		24 May 2020	1 June 2020
Streets to Homes	1	0	0	25 May 2020	1 June 2020
Birkdale/Costi Hotel Program	24	0	0	23 May 2020	26 June 2020
Mary's Home Emergency Shelter	6	0	0	1 June 2020	26 June 2020
Maxwell Meighen Centre	48	0	0	14 May 2020	26 June 2020
Robertson House	10	0	0	12 June 2020	26 June 2020
Warden Woods Community	4	0	0	21 May 2020	26 June 2020

Seaton House	1	0	0	5 July 2020	13 July 2020
St. Felix	2	0	0	10 July 2020	20 July 2020
Eva's Satellite Site	2	0	0	23 August 2020	26 August 2020
Eva's Satellite Site	2	0	0	23 August 2020	9 September 2020
Costi-R	4	0	0	26 August 2020	9 September 2020
Costi-R	10	0	1	26 August 2020	21 September 2020
Kennedy House Youth Shelter	2	0	0	14 September 2020	21 September 2020
Total	1341	4	38	N/A	N/A

Table 2. Toronto shelter outbreaks during the second wave of COVID-19⁴⁰⁵

Shelter location	Active cases	Deaths	Hospitalizations	Date case reported	Toronto updated date
Kennedy House Youth Shelter	5	0	0	14 September 2020	7 October 2020
Strachan House	1	0	0	25 September 2020	7 October 2020
Strachan House	1	0	0	25 September 2020	9 October 2020
Good Shepherd	5	0	0	29 October 2020	13 November 2020
Seaton House- 3 rd Floor Annex	4	0	0	6 November 2020	13 November 2020
Dixon Hall	2	0	0	12 November 2020	23 November 2020
Seaton House- 3 rd Floor Annex	4	0	0	6 November 2020	23 November 2020
Covenant House Toronto	2	0	0	1 December 2020	7 December 2020

⁴⁰⁵ All information in this table is data extracted from the integrated Public Health Information System (iPHIS) which is the reporting and surveillance of Diseases of Public Health Significance (DOPHS) in Ontario. The data includes only those outbreaks that are currently active. The number of cases and deaths are cumulative for each outbreak. For more information, see: iPHIS, "iPHIS resources" (2021), online: *Public Health Ontario* <<https://www.publichealthontario.ca/en/diseases-and-conditions/infectious-diseases/ccm/iphis>>.

Dixon Hall	2	0	0	24 November 2020	7 December 2020
Salvation army Florence Booth New Hope	4	0	0	25 November 2020	7 December 2020
Christie Ossington Neighbourhood Centre	1	0	0	28 November 2020	11 December 2020
Salvation Army Florence Booth New Hope	4	0	0	25 November 2020	11 December 2020
Total	35	0	0	N/A	N/A

Appendix B

Table 3. International covenants on equality and anti-discrimination⁴⁰⁶

Convention	Article	Text
International Covenant on Economic, Social and Cultural Rights	Article 11.1	“The States Parties to the present 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”
International Covenant on Civil and Political Rights	Article 17	No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home.

⁴⁰⁶ ICESCR, *supra* note 80

Appendix C

Table 4. International law addressing minority communities (Black communities, People of Colour, Indigenous Peoples, LGBTQ2S, women, children, immigrants, disabilities, etc.)⁴⁰⁷

Convention	Article	Text
Convention on the Elimination of All Forms of Racial Discrimination	Article 5(e)(iii)	Obliges States “to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... (e) ... (iii) the right to housing”.
Convention on the Elimination of All Forms of Discrimination Against women	Article 14.2(h)	“States Parties shall undertake all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	Article 43.1	“Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to ... (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents.”
Convention on the Rights of the Child	Article 16.1	“No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.”
Convention on the Rights of the Child	Article 27	States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”
Convention on the Rights of Persons with Disabilities	Article 9.1(a)	“To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment... These measures, which shall include the identification and elimination of

⁴⁰⁷United Nations Human Rights Office of the High Commissioner, “International standards on the right to housing” (2021), online: OHCHR <<https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#treaties>>.

		obstacles and barriers to accessibility, shall apply to, inter alia: housing
Convention on the Rights of Persons with Disabilities	Article 28.1	“States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.” Article 28.2(d) includes “access by persons with disabilities to public housing programmes.”
United Nations Declaration on the Rights of Indigenous Peoples	Article 1	“Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights ⁴ and international human rights law.”
United Nations Declaration on the Rights of Indigenous Peoples	Article 3	“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”
United Nations Declaration on the Rights of Indigenous Peoples	Article 10	“Indigenous Peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”
United Nations Declaration on the Rights of Indigenous Peoples	Article 21.1	“Indigenous Peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.”
United Nations Declaration on the Rights of Indigenous Peoples	Article 23	“Indigenous Peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous Peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”

Appendix D

Table 5. City of Toronto Municipal By-laws

Type of By-law	Statute	Pinpoint citation	Text	Case cited
Fire Code	<i>Fire Protection and Prevention Act, 1997</i>	14	<p>Entry where fire has occurred or is likely to occur</p> <p>(1) The Fire Marshal or a fire chief may, without a warrant, enter on land or premises if,</p> <ul style="list-style-type: none"> (a) a fire has occurred on the land or premises; or (b) he or she has reason to believe that a substance or device that is likely to cause a fire may be situated on the land or premises. 	N/A
	<i>Fire Protection and Prevention Act, 1997</i>	14	<p>Powers upon entry</p> <p>(2) Upon entering on land or premises under subsection (1), the Fire Marshal or a fire chief may,</p> <ul style="list-style-type: none"> (a) close, and prevent entry to, the land or premises for the length of time necessary to complete the examination of the land or premises; (b) in the case of an entry under clause (1) (a), remove from the land or premises, retain and examine any article or material, and take such samples or photographs, make videotapes and other images electronic or otherwise that in his or her opinion may be of assistance in determining the cause of the fire under investigation; (c) make such excavations on the land or premises as he or she considers necessary; (d) require that any machinery, equipment or device be operated, used or set in motion under specified conditions; and (e) make any reasonable inquiry of any person, orally or in writing. 	N/A
	<i>Fire Protection and</i>	15	<p>Immediate threat to life</p> <p>(1) If the Fire Marshal, an assistant to the Fire Marshal or a fire chief has</p>	

	<i>Prevention Act, 1997</i>		<p>reasonable grounds to believe that a risk of fire poses an immediate threat to life, he or she may, without a warrant, enter on any land or premises and, for the purpose of removing or reducing the threat, may,</p> <ul style="list-style-type: none"> (a) remove persons on the land or premises; (b) post a fire watch; (c) remove combustible or explosive material or anything that may constitute a fire menace; (c.1) dispose of any material or thing that was removed under clause (c), in accordance with any directives issued by the Fire Marshal; (d) eliminate ignition sources; (e) install temporary safeguards, including fire extinguishers and smoke alarms; (f) make minor repairs to existing fire safety systems; (g) do any other thing that the Fire Marshal, an assistant to the Fire Marshal or a fire chief has reasonable grounds to believe is urgently required to remove or reduce the threat to life. 	
Fire Code	<i>Fire Protection and Prevention Act, 1997</i>	34	<p>Warrant authorizing entry</p> <p>(1) If a justice of the peace is satisfied on evidence under oath that there are reasonable grounds to believe that entry on certain land or premises is necessary for the purpose of doing a thing that the Fire Safety Commission has authorized to be done under section 33, the justice of the peace may issue a warrant authorizing the person named in the warrant to enter and do the thing on the land or premises including, where necessary, entering an adjacent property in order to access the property named in the warrant.</p>	N/A
Fire Code	<i>Fire Protection and Prevention Act, 1997</i>	34	<p>Warrant authorizing entry</p> <p>(4) A person authorized under subsection (1) to enter land or premises for the purpose of doing a thing may call on police officers as necessary and may use force as</p>	N/A

			necessary to make the entry and do the thing.	
Fire Code	O. Reg. 213/07: Fire Code	2.4.1.3.	<p>Waste receptacles</p> <p>(1) Materials subject to spontaneous ignition, such as greasy or oily rags, shall be deposited in a receptacle conforming to Sentence (3) or be removed from the premises.</p> <p>(2) Ashes shall be stored in receptacles that conform to Sentence (3) and combustible materials shall not be stored with ashes in the same receptacle.</p> <p>(3) A receptacle required in Sentences (1) and (2) shall</p> <ul style="list-style-type: none"> (a) be constructed of non-combustible materials, (b) have a close-fitting, self-closing metal cover, (c) if the flooring material upon which it is placed is combustible, have a flanged bottom or legs not less than 50 mm high, and (d) not be placed closer than 1 m to combustible materials, except as permitted in Clause (c). 	N/A
Fire Code	O. Reg. 213/07: Fire Code	2.4.3.1.	<p>Smoking prohibited</p> <p>(1) If conditions are such that smoking would create a fire or explosion hazard, smoking shall not take place except in approved smoking areas.</p>	N/A
Fire Code	O. Reg. 213/07: Fire Code	2.4.4.3.	<p>Devices having open flames</p> <p>Devices having open flames shall be securely supported in non-combustible holders and located or protected so as to prevent accidental contact of the flame with combustible materials.</p>	N/A
Fire Code	O. Reg. 213/07: Fire Code	2.4.4.4.	<p>Open-air burning.</p> <p>(1) Open-air burning shall not take place unless</p> <ul style="list-style-type: none"> (a) it has been approved, or (b) the open-air burning consists of a small, confined fire that is <ul style="list-style-type: none"> (i) used to cook food on a grill, barbecue or spit, (ii) commensurate with the type and quantity of food being cooked, and 	N/A

			(iii) supervised at all times.	
Fire Code	O. Reg. 213/07: Fire Code	2.14.1.3	Ignition Sources. Smoking shall not take place [in an outdoor public amusement area] and open flames, temporary wiring, heat-producing equipment and similar ignition sources shall not be used if they would create a fire hazard, except in approved areas.	N/A
Parks By-law	<i>City of Toronto Municipal Code</i>	608-7	Encroachment. Unless authorized by permit, no person shall encroach upon or take possession of a park by any means whatsoever, including the construction, installation or maintenance of a fence or structure, the dumping or storage of materials or plantings, or planting, cultivating, grooming, or landscaping.	Application for injunction against Khaleel Seivwright
Parks By-law	<i>City of Toronto Municipal Code</i>	608- 9	Access. Unless authorized by a parks access agreement, no person shall access or occupy a park for non-recreational uses, or to access an adjacent property. Unless authorized by permit, no person shall use, enter or gather in a park between the hours of 12:01 a.m. and 5:30 a.m.	Application for injunction against Khaleel Seivwright and <i>Black et al. v. City of Toronto</i>
Parks By-law	<i>City of Toronto Municipal Code</i>	608-13	Camping and lodging. Unless authorized by permit, no person shall dwell, camp or lodge in a park.	<i>Black et al. v. City of Toronto</i>
Parks By-law	<i>City of Toronto Municipal Code</i>	608-14	Tents and structures. Unless authorized by permit, no person shall place, install, attach or erect a temporary or permanent tent, structure or shelter at, in or to a park.	Application for injunction against Khaleel Seivwright and <i>Black et al. v. City of Toronto</i>
Parks By-law	<i>City of Toronto Municipal Code</i>	608-53	Enforcement. Any officer is authorized to inform a person of the provisions of this chapter and request compliance with it. Any officer is authorized to order a person believed by the officer to be contravening or who has contravened any provision of this chapter to:	N/A

			<p>Stop the activity constituting or contributing to the contravention; Remove from the park to a pound or storage facility any animal or thing owned by or in control of the person who the officer believes is or was involved in the contravention; or Leave the park.</p> <p>With the exception of §§ 608-27A, B, C, D, E.1, F and 608-30.1 which will be enforced by an enforcement officer, any provincial offences officer may enforce the provisions of this chapter.</p> <p>Where a person contravenes any of the provisions of this chapter, or fails to comply with any order referred to in Subsection B, the permission and licence of the person to remain in that park is revoked.</p> <p>If a person encroaches upon a park and fails to comply with a notice given under Subsection F, the General Manager, or persons acting upon his instructions, may remove the encroachment, install appropriate fencing and recover all expenses associated with the removal, including, but not limited to, soil testing, disposal fees, park restoration and fence installation.</p> <p>Notice to comply. The notice to comply shall require compliance with this chapter within a specified time period but no sooner than 72 hours after the notice is given. Notice to remove the encroachment may be served personally on the person to whom it is directed or sent by registered mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.</p> <p>If there is evidence that the person in possession of the land is not the registered property owner, the notice shall be served</p>	
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			<p>on both the registered property owner and the person in possession of the land.</p> <p>If the address of the owner or occupant is unknown or the City is unable to effect service on the owner or occupant under Subsection F(2), a placard stating the terms of the notice and placed in a conspicuous place upon the property shall be deemed to be sufficient notice.</p> <p>Costs incurred by the City in doing the work required to be done by notice may be recovered by action or adding the costs to the tax roll and collecting them in the same manner as taxes.</p>	
Littering and Dumping By-law	City of Toronto Municipal Code	548-3	<p>Littering and depositing waste prohibited.</p> <p>A. No person shall throw, place, deposit or permit or cause to be thrown, placed or deposited any waste on any highway within the City.</p> <p>B. In the case of land that is not a highway, no person shall throw, place or deposit or permit or cause to be thrown, placed or deposited any waste on any land not including buildings, within the City, including ponds, lakes, rivers and watercourses, without the consent of the owner or occupant of the property.</p>	Application for injunction against Khaleel Seivwright
Littering and Dumping By-law	City of Toronto Municipal Code	548-4	<p>Waste dumping prohibited.</p> <p>A. No person shall place, dump or deposit or permit to be placed, dumped or deposited any quantity of waste on any land, not including buildings, within the City, including ponds, lakes and streams, except as required or permitted under Chapter 841, Waste Collection, Commercial Properties, and Chapter 844, Waste Collection, Residential Properties.</p>	Application for injunction against Khaleel Seivwright

			<p>B. No person shall place, dump or deposit their privately generated waste into:</p> <ul style="list-style-type: none"> (1) Public litter and recycling bins/receptacles; or (2) Regulation containers belonging to another person or entity, without that person or entity's consent. 	
Streets and Sidewalks By-law	City of Toronto Municipal Code	743-9	<p>Fouling and obstruction streets. Unless specifically authorized by this Chapter:</p> <ul style="list-style-type: none"> A. No person shall obstruct, encumber, damage, foul, or cause or permit the obstructing, encumbering, damaging or fouling of any street, or interfere with the clearing of snow, or install or place any unauthorized encroachment, object, article or thing, on, over, along, across, under, or in a street except as permitted under this chapter or any other City by-law. B. No person shall place any obstruction in, obstruct or cause to be obstructed, any ditch, culvert, drain or watercourse on any street. C. No person shall store, place or dispose of material, including fallen leaves, in such a way that it may enter onto a street by any means, including wind or water. D. No person shall cut, saw, break, split, place or pile firewood, lumber, blocks, rocks, stones, debris or other material, article or thing, or do any other act upon a street that may obstruct or impede vehicle or pedestrian traffic, or interfere with the maintenance of a street. E. No person shall damage the surface of a street, or cause an obstruction, nuisance, or dangerous condition. F. No person shall convey through the streets any solid or liquid waste except in a properly covered and 	Application for injunction against Khaleel Seivwright

			<p>secured vehicle or metal container that prevents the contents from falling on the street, and that protects the contents from vermin and controls, as far as possible, the escape of offensive odours.</p> <p>G. No person shall cause or permit a vehicle to leak or discharge engine or transmission fluids, or fluids of any type, so as to foul or damage a street.</p> <p>H. No person shall place or leave on or across any street, a pole, wire, cord or cable that may interfere with the safe passage of vehicles or pedestrians, or that is capable of transmitting electrical energy into a street from public or private property.</p> <p>I. With the exception of the police or the military, or during events authorized by the General Manager, no person shall ride a pack animal, or vehicle drawn by a pack animal, on any street.</p> <p>J. No person shall pull down, destroy, deface, place posters on, or in any way interfere with any post, surveyor's mark, benchmark, traffic control sign, street name sign, signboard, traffic control signal, traffic cone, or any other traffic control device that is placed in a street.</p> <p>K. No person shall climb on or over a railing, bridge or fence located along or across any street, or climb on any tree located in a street, or on any post, pole or structure installed on any street.</p> <p>L. No person shall, without the approval of the General Manager, ignite or discharge fireworks on, over or across a street.</p> <p>M. No person shall, without the approval of the General Manager, deface or damage any wall, fence,</p>	
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			<p>railing, sign, monument, post, pole or other property in any street by cutting, breaking or placing graffiti on it.</p> <p>N. No person shall, without prior authorization from the General Manager, move, or cause or permit to be moved, or assist in moving, any building, boat, machine or other article or thing in, along or across any street if such building, boat machine or other article or thing, while being moved, exceeds any of the height, width or weight restrictions specified under the Highway Traffic Act.</p> <p>O. No person shall mix concrete, mortar or other substance of a similar nature upon any street.</p> <p>P. No person shall, without prior authorization from the General Manager, chain, lock or otherwise attach any article or thing to a waste receptacle, streetlight, parking meter, utility pole, transit shelter, fence, tree or any other municipal property or authorized encroachment that is located in a street, and any article or thing that remains attached for more than 24 consecutive hours may be removed by the General Manager and disposed of pursuant to Article VIII.</p> <p>Q. No person shall, without the approval of the General Manager, camp, dwell or lodge on a street, subject to application of the City's Interdepartmental Protocol for Homeless People Camping in Public Spaces.</p> <p>R. Subsection 743-9P shall not prohibit the chaining, locking or attaching of a bicycle that, in the General Manager's opinion, is in good operating condition and is not chained, locked or attached so as to</p>	
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