



Decriminalization of homelessness and poverty

The Federal Housing Advocate's input to
the Special Rapporteur on the right to
adequate housing and the Special
Rapporteur on extreme poverty

October 2023

Decriminalization of Homelessness and Poverty

The Mandate of the Federal Housing Advocate

The Federal Housing Advocate (FHA) is an independent, non-partisan watchdog, empowered to drive meaningful action to address inadequate housing and homelessness in Canada. While the Office of the Federal Housing Advocate receives administrative support from the Canadian Human Rights Commission (CHRC), it is not a formal unit of the CHRC. The mandate of the FHA, as defined by the National Housing Strategy Act (NHSA), a federal statute passed in 2019, is to act as an accountability, reporting, and monitoring mechanism for the protection, respect, and fulfillment of the right to adequate housing in Canada. Marie-Josée Houle currently holds the position and mandate of FHA, having been appointed in February of 2022 by the Governor in Council of Canada. In her capacity as the Advocate, Ms. Houle is empowered to make recommendations to improve Canada's housing laws, policies, and programs.

The Advocate monitors the progressive realization of the right to adequate housing in Canada as well as progress in meeting goals and timelines in the National Housing Strategy (s 13(b) NHSA). Further, The NHSA also mandates the Advocate to conduct research and studies on systemic housing issues; to consult with persons experiencing inadequate housing and homelessness and civil society organizations; and to receive submissions with respect to systemic housing issues. Finally, the NHSA declares that the Government of Canada “(a) recognize that the right to adequate housing is a fundamental human right affirmed in international law; (b) recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities; (c) support improved housing outcomes for the people of Canada; and (d) further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.”

The Federal Housing Advocate's Review of Homeless Encampments

The Federal Housing Advocate launched a systemic review on February 23, 2023 to examine the human rights issues facing encampment residents in Canada. This review, pursuant to subsection 13.1(1) of the National Housing Strategy Act (the NHSA), is informed by research on homeless encampments that was commissioned by the Office of the Federal Housing Advocate (OFHA) and released in December 2022ⁱ. This research confirmed that encampments are a human rights crisis and a violation of Indigenous Peoples' rights, which are unfolding in communities across Canada.ⁱⁱ

For the purpose's of the Advocate's review, the term "homeless encampments" refers to temporary outdoor accommodations for individuals and groups of unhoused and unsheltered individuals that have been established – often without permission – on public property or privately-owned land.ⁱⁱⁱ The growth in number and size of such encampments is the consequence of a severe lack of adequate housing that meets people's varying needs, particularly accessible and affordable housing. The Advocate also recognizes the need for Indigenous understandings of encampments to be respected given that encampments occur on Indigenous land and Indigenous people are overrepresented in encampments.

The challenges related to homelessness have been growing for many years and were exacerbated by the COVID-19 pandemic. The demands on shelters and social services are exceeding capacity, and homeless encampments have grown across the country. Punitive responses to encampments have also become widespread. This approach – including ticketing, arrest, forced eviction, and the destruction of tents and personal property – fails to address the underlying conditions that have led to the growth of encampments in the first place: chiefly, a lack of affordable, accessible housing. Further, it does not respect the human rights of encampment residents to live in dignity and have access to safe and secure housing.

Since the Review was launched on February 23, 2023, the Advocate has engaged in a number of events across the country to hear directly from encampment residents and local community advocates in Montreal, Saskatoon, Winnipeg, Vancouver, Toronto, and Calgary. Recognizing the significant over-representation of Indigenous individuals living in encampments, the Advocate also took part in a number of targeted engagements with Indigenous Peoples and their representative organizations.^{iv} The Advocate met with national and local Indigenous organizations and advocates during her visits to Montreal, Saskatoon, and Winnipeg as well as during her August 2022 visit to British Columbia.^v

In April 2023, the Advocate launched an online portal to invite individual and organizational submissions to inform this review. Recognizing that many people living in encampments would face challenges accessing this tool, she partnered with the Shift and local organizations in Victoria, Vancouver, Hamilton, Peel, Ottawa, Gatineau, Montreal, Moncton, and Halifax to support encampment residents in sharing their experiences and proposals for solutions. With the help of these local partners and others, 313 people with lived experience in encampments made submissions. In addition, 53 advocates, organizations and municipalities shared their perspectives and observations.

An Interim Report of the Review will be published in early October 2023^{vi}. The Advocate's final report to the Minister of Housing, Infrastructure and Communities (expected in early 2024) will present her findings as well as concrete recommendations to increase dignity, security, and protection for the human rights of people who are unhoused and living in encampments. Under the NHSA, the Minister must respond in writing to these recommendations.

What the Advocate has Heard about the Criminalization of Homelessness and Poverty

The following sections summarize some of the key issues brought to the Advocate's attention related to the criminalization of homelessness and poverty.

Encampment evictions and clearances

More than 150 references were made in individual online submissions regarding people living in encampments facing routine seizure and disposal of their property – including personal identification, tents, photo albums, money, and clothing – and being displaced without the provision of adequate alternative housing. Similar experiences were also recounted during the Advocate's in-person engagements. Some described seizure and displacement as daily occurrences.

The Advocate also heard how some municipalities misuse health and safety regulations as justification to clear encampments. For example, one participant shared how a fire department was sent to an encampment under the pretense of a "wellness check," but instead tore down tents and decamped people. The Advocate was also very concerned to hear about new "safe street bylaws" being enacted in some municipalities, empowering by-law officers and police to remove items they deem to be abandoned.^{vii}

Many participants with lived experience recounted facing violence, harassment, bullying, and constant threats of incarceration and fines from by-law officers and police, especially when being evicted and cleared out from temporary encampments.^{viii} The few participants who reported facing no issues with evictions and clearances were very disciplined in packing up their tents and their belongings before morning sweeps by law enforcement.

The Advocate also heard about incidents of excessive force used to clear encampment residents, such as during the 2021 eviction of an encampment at Lamport Stadium Park in Toronto.^{ix} "People could have died, it's just luck that nobody did," one roundtable participant reflected, noting that there were serious injuries among encampment residents, including someone who sustained a broken bone. Toronto's Ombudsman investigated the Lamport encampment clearing, among others, and found that the city "[c]hose to clear encampments quickly, instead of focusing on the needs of the people living in them."^x In doing so, the Ombudsman concluded, "the city caused undue confusion and harm."^{xi}

Reliance on policing and law-enforcement based approaches to encampments and homelessness adds to this trauma. Outreach workers and organizations mentioned how the police invoke a trauma response in many people who are or have been experiencing homelessness. The Toronto Alliance to End Homelessness sums up:

Security approaches do not work in addressing homelessness, or in stopping people from setting up encampments. It traumatizes already vulnerable and marginalized people and increases their vulnerability to becoming chronically homeless, forcing people into often even more precarious places.

For unhoused Indigenous people, the trauma of encampment clearings is often added to previous traumas, including the trauma of forced removal from traditional lands, or the forced removal of children from their communities into residential schools, the 60s Scoop and the child welfare system. Indigenous representative organizations and frontline workers expressed that police involvement in the housing crisis is a continuation of colonial state violence and is deeply inappropriate.

Violence and stigma increase isolation and risk of harm

The Advocate heard how government approaches to encampments stigmatize their residents, and how this relates to broader public sentiment regarding encampments. As one individual submission noted, “There is no empathy from the government, thus no empathy from the public.”^{xii}

The Advocate heard about the many ways people who are unhoused are criminalized for living in poverty. For example, Winnipeg police issue hundred plus dollar fines for trespassing or loitering outside shut down businesses. Participants also described how many cities have bylaws that do not permit encampments or allow anyone to erect a tent in city parks.^{xiii} In other municipalities, tents are only allowed between 7 p.m. and 7 a.m., making it difficult to establish any stability. Some described how municipalities will pursue legal action against groups, such as churches, that have worked to support encampments because they violate such bylaws. Often, such suits or other government-led actions against encampments are encouraged by public complaints and backlash against encampments, participants noted. In one extreme example, the Advocate learned of efforts by the Barrie city council to introduce a bylaw that would penalize individuals distributing essential supplies to unhoused people, such as providing tents or food supplies without a permit. Anyone found violating the bylaw could face fines up to \$100,000.^{xiv}

People experiencing homelessness also face stigma tied to drug use and mental health challenges, because of public assumptions that all people who live in encampments struggle with these issues. “Outsiders don’t know us. We get stereotypes of being criminals and drug users,” one participant said.^{xv} “Things would be different if people knew and understood the full situation,” another suggested.^{xvi}

The Canadian Drug Policy Coalition warned that criminalizing drug possession, in addition to being ineffective in reducing the use and availability of drugs, only serves to increase stigma and harm for drug users and their families: “The harms also go beyond the individual and affect families and communities who face stigma, social isolation, negative health outcomes, and financial burdens because of the criminalization of their loved one.”

The Advocate heard how this pervasive environment of criminalization, stigma, and hate leads to increased isolation for those most in need of supports. One roundtable participant described the situation as a “very sadistic game of whack-a-mole,” as people who are unhoused are chased out of location after location, as shelters close, encampments are cleared, and they face increasing public backlash and lack of access to public spaces like malls or coffee shops. Current policy is not focused on housing people, they reflected, but rather on making them “invisible.”^{xvii} Similarly, a staff person of

an Indigenous representative organization said, “The only purpose of bylaw enforcement is to displace them from public space.”^{xviii}

People who opt to live hidden away to avoid being harassed are also deprived of access to community support and services critical for their physical and mental well-being. Frontline service workers emphasized that people are being forced by police to move, making it more difficult to maintain contact and more likely for people to fall through the cracks. This phenomenon uniquely impacts particular groups. Black, Indigenous, and racialized people who face elevated levels of police surveillance and violence, for example, are especially impacted.

PROMISING MUNICIPAL PRACTICES

During the Advocate’s engagement, she heard from municipalities that are working to develop more humane and human rights-centred responses to homelessness and encampments. The following are some of the promising municipal practices shared with the Advocate.

The Saskatoon fire department’s people first approach

Saskatoon, like other Canadian cities, faces significant homelessness driven by intersecting factors. Colonialism,^{xix} lack of access to affordable housing, lack of addictions and mental health supports, and inadequate income assistance are primary contributors.

The Saskatoon Fire Department (SFD) became directly involved with people who are precariously housed and living in encampments at the end of 2021. Chief Morgan Hackl and Deputy Chief Yvonne Raymer said that the fire department uses the same approach that they would when supporting and rehousing people who have survived a house fire.

The SFD created the Inadequate Housing Team to connect people living in encampments with housing and social services. This team is staffed by two fire inspectors who are rotated from regular inspection duties every few months. The team has two primary goals: 1) ensure public fire safety; and 2) reduce the number of encampments by connecting people directly to shelters and services. Their work varies widely from day to day, but most of their time is spent talking to unhoused people, giving out water on extremely hot days, offering to connect people to housing and financial assistance services, cleaning up used needles, and supervising the cleanup of inactive encampment sites.

The inspectors know the risk of fire and fatalities for residents and the dangers present for emergency medical services staff when fuel sources such as propane are used in encampments. At the same time, the team understands that fire risk cannot be managed without providing adequate shelter.

While the team has a mandate to enforce bylaws prohibiting public homeless encampments, the team approaches encampment residents first with offers to help them access social assistance and enforce bylaws only when these services are refused. Chief Hackl and Deputy Chief Raymer told the Advocate that the vast majority (around

80 percent) of encampment residents accept shelters or hotels and will make an appointment to connect with a housing worker. They do acknowledge that shelters are not adequate or safe for everyone. If a person refuses shelter or housing, SFD will work with social service organizations to create a plan with a timeline for that individual to access other housing options.

Respecting charter rights in Kitchener-Waterloo, Ontario

In January 2023, the Ontario Superior Court of Justice found that a municipal by-law prohibiting certain activities on municipal lands in Waterloo violated section 7 (right to life, liberty, and security of the person) of the Canadian Charter of Rights and Freedoms due to a lack of available and truly accessible shelter spaces that meet the needs of people experiencing homelessness.^{xx}

The Region of Waterloo decided not to appeal the decision, and to instead “focus on supporting those experiencing homelessness in the community.” The Regional Council approved a \$163 million investment in housing and homelessness to advance the region’s Interim Housing Strategy and increase shelter capacity.^{xxi} The region’s creation of an outdoor, tiny homes shelter on region-owned property to provide a greater range of accessible options for individuals experiencing homelessness is a key part of this strategy.^{xxii}

While the Region of Waterloo is the lead for housing and shelter locally, Kitchener recognizes that municipalities have a role to play as well. In Kitchener, increased homelessness has led to highly visible encampments in public places, including Victoria Park, a city-owned property. The municipality notes that while “those camping in Victoria Park are violating some bylaws, we have been taking a compassionate approach to addressing this encampment.”^{xxiii}

Kitchener is working to support residents in relocating to better shelter or housing. This work involves engaging residents and identifying alternative places to live, addressing their basic needs for housing, improving their current housing, and connecting residents with the necessary social and health support services.^{xxiv}

In the meantime, the municipality also tries to mitigate risks for encampment residents. To this end:

By-law and other City staff visit Roos Island daily to check on residents, help connect them with shelter options and other services, check for fire risks and provide safer heating options. Staff also facilitate daily garbage removal and cleanup of litter, sharp objects and abandoned or damaged tents. Staff and contracted security regularly patrol Victoria Park to address any safety or security issues raised by park users or Roos Island residents.^{xxv}

Solutions are urgently needed

Governments at all levels in Canada have a duty to uphold international human rights standards as well as Charter rights for everyone in Canada, and especially for people who are experiencing greater disadvantages and marginalization. The conversations the Advocate has had and the submissions she has received in recent months have reinforced her concerns about the human rights of people experiencing homelessness and living in encampments.

All governments must act to eliminate forced evictions of encampment residents, to stop the criminalization of people who are unhoused, to combat discrimination, stigma, and negative stereotyping of people who are unhoused, and to ensure access to legal remedies for rights violations related to housing.

The Advocate heard about a range of potential solutions to the broad range of human rights challenges facing people living in encampments.

Participants in the review have underscored how governments are not doing enough to uphold the basic rights of people experiencing homelessness to exist and to find shelter. Laws, policies and practices which criminalize homelessness and poverty are contributing to the stigma they face and can lead to further isolation and exposure to risk of harm.

Possible solutions proposed to the Advocate to address the criminalization of homelessness include:

- Uphold the prohibition on forced evictions by ensuring that there is no removal of encampments, including individual tents and habitations, except where strictly necessary to ensure the safety and security of the residents.
- Establish designated sites where people are allowed to camp.
- Review and revise existing bylaws and other regulations to ensure they recognize the need to protect, rather than punish, encampment residents.
- Prohibit law enforcement from removing the personal possessions of residents and require them to immediately return those that they are holding.
- Require law enforcement to receive human rights training to better understand the rights of encampment residents, including Indigenous residents.
- Create public education programs to encourage understanding of unhoused people's experiences and grow compassion, including by fostering a two-way dialogue and respect between people living on the street and others who share the space with them.
- Decriminalize drug possession for personal use, as well as the sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safe supply.
- Establish memorials to remember people experiencing homelessness who have died or gone missing.

ⁱ Links to the research papers can be found at <https://www.housingchrc.ca/en/homeless-encampments#research>

ⁱⁱ “Homeless encampments in Canada: A human rights crisis,” Office of the Federal Housing Advocate, December 8, 2022, <https://www.housingchrc.ca/en/homeless-encampments-in-canada-a-human-rights-crisis> (accessed August 1, 2023).

ⁱⁱⁱ Terminology related to encampments can be a source of diverging interpretations and conflicted meaning. One organization’s submission expressed a concern that, “[t]he term encampment is a false descriptor leaving the impression that a person’s domicile in a tent is temporary and chosen on the basis of a pleasure or sport and as a means to separate and devalue segments of the population” In her Interim Report, the Advocate has chosen to use the term “homeless encampment” as the language most commonly in use for now. She recognizes, however, that the term may not reflect everyone’s reality or experience and that it differs from terms commonly used internationally, such as informal settlements.

^{iv} The Advocate is also undertaking engagement with First Nations, Inuit, and Métis governments and representative organizations to inform the release of future, distinctions-based reports on the right to housing for First Nations, Inuit, and Métis peoples.

^v For more information on the Advocate’s findings from her visit to British Columbia, see Federal Housing Advocate’s Observational Report British Columbia (August 23 to September 2, 2022),

<https://www.housingchrc.ca/en/publications/federal-housing-advocates-observational-report>

^{vi} The Interim Report will be available at: <https://www.housingchrc.ca/en/homeless-encampments>

^{vii} Kate Partridge, “Prince George police, bylaw officers given power to decide what can be removed from streets,” CBC (12 July 2022), <https://www.cbc.ca/news/canada/british-columbia/prince-george-encampment-bylaws-1.6517643> (accessed August 31, 2023).

^{viii} There were 112 references across online submissions.

^{ix} Matthew Bingley, “Toronto officials, police under fire for tactics used to clear homeless encampments,” Global News (22 July 2021), <https://globalnews.ca/news/8052972/lamport-stadium-park-encampment-toronto-police/> (accessed August 31, 2023);

^x “Toronto’s Ombudsman says City Chose Speed over People in Clearing Encampments,” Ombudsman Toronto (24 March 2023), <https://www.ombudsmantoronto.ca/Publications/News-Releases/News-Folder/Toronto-s-Ombudsman-says-City-Chose-Speed-over-Peo> (accessed August 31, 2023).

^{xi} *Ombudsman Toronto Investigation Report: Investigation into the City’s clearing of Encampments in 2021*, Ombudsman Toronto (24 March 2023), p 2, <https://www.ombudsmantoronto.ca/Publications/News-Releases/News-Folder/Investigation-into-the-City-s-Clearing-of-Encampme.aspx?ext=.pdf> (accessed August 31, 2023).

^{xii} Submission 2150 – Gatineau – June 28, 2023.

^{xiii} “Encampment Safety & Clearing Protocols,” City of Toronto, <https://www.toronto.ca/community-people/housing-shelter/homeless-help/encampment-outreach-response/encampment-safety-clearing-protocols/> (accessed August 31, 2023).

^{xiv} Andrew Lupton, “Barrie bylaw that outlaws homeless help perplexes those shaping London’s response,” CBC (22 June 2023), <https://www.cbc.ca/news/canada/london/barrie-bylaw-outlaws-homeless-help-perplexes-london-response-1.6883806> (accessed August 29, 2023). The Advocate’s open letter to Barrie Mayor Alex Nuttal is available here: <https://www.housingchrc.ca/en/open-letter-barrie-city-council>.

^{xv} Encampments Roundtable – Vancouver – May 10, 2023.

^{xvi} Encampments Roundtable – Calgary – August 8, 2023.

^{xvii} Encampments Roundtable – Toronto – June 1, 2023.

^{xviii} Encampments Roundtable – Toronto – June 1, 2023.

^{xix} In Saskatoon, 82.6% of unhoused people identify as Indigenous. An Evaluation of the Inadequate Housing Team at Saskatoon Fire Department. Pg 9. Point-In-Time Count 2022

^{xx} Aidan Macnab, “Kitchener Waterloo homeless encampment eviction stymied by section 7 argument,” Law Times (8 Feb. 2023), <https://www.lawtimesnews.com/practice-areas/human-rights/kitchener-waterloo-homeless-encampment-eviction-stymied-by-section-7-argument/373551> (accessed August 31, 2023).

^{xxi} “Region will not appeal court decision,” Region of Waterloo (23 Feb. 2023), <https://www.regionofwaterloo.ca/Modules/News/index.aspx?feedId=ab159244-c732-45c7-b4c9-67b38b43eed5&newsId=4d1ca211-b472-48a5-9659-35737de95c1f> (accessed August 31, 2023).

^{xxii} Aastha Shetty, “Residents invited to tour the region’s new outdoor shelter,” CBC (22 Apr. 2023), <https://www.cbc.ca/news/canada/kitchener-waterloo/tours-encampment-outdoor-shelter-waterloo-region-homeless-1.6818328> (accessed August 31, 2023).

^{xxiii} “Encampments,” Kitchener, <https://www.kitchener.ca/en/living-in-kitchener/encampments.aspx> (accessed August 31, 2023).

^{xxiv} *Ibid.*

^{xxv} *Ibid.*