



CASE STUDY: TORONTO

A HUMAN RIGHTS ANALYSIS OF ENCAMPMENTS IN CANADA

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

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Background—Encampments in Toronto during a Public Health & Housing Crisis

The City of Toronto (the 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.¹ Despite the City's efforts, progress on the provision of adequate housing is often undermined by the housing crisis enveloping Ontario and Canada more broadly. Unaffordability, dwindling supply for low- and even middle-income households, and higher demand have made it increasingly hard to secure adequate housing for the most marginalized. This crisis and the economic fallout of the pandemic have put thousands of low-income households at risk of homelessness. Many residents were unable to pay rent during the pandemic and were evicted,² while data indicates there is insufficient affordable housing stock to meet the scale of housing insecurity or depth of poverty experienced across the city.³ While some people experiencing homelessness are being housed, many more are not. This is a worrying trend. The City's own statistics show an increase in the number of first-time shelter users in 2021, with most recent data indicating it grew from 3,601 in June 2021 to 6,708 in October 2021.⁴

In the midst of these intersecting crises, there was a significant increase in encampments across the City of Toronto in 2020. 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 rules and deteriorating conditions, including COVID-19 outbreaks.⁵ The lack of social distancing in City of Toronto shelters and the inability to secure isolated COVID-19 sites contributed to over 1,300 people contracting COVID-19 during the first two waves of the pandemic.⁶

This case study explores the increase of encampments in Toronto between summer 2020 and summer 2021, the City's responses to encampments, the role of civil society in addressing this

¹ 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*]. It should be noted that this is likely an undercount, given it does not account for situations of hidden homelessness.

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/StopCOVIDEvictions-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 <https://open.toronto.ca/dataset/toronto-shelter-system-flow/>.

⁵ 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>>.

⁶ Benjamin Elliot, "Covid in Toronto: Staying Safe a Daily Struggle for the Homeless," *The Signal* (28th April 2021), online: <<https://signalhfx.ca/staying-safe-a-daily-struggle-for-the-homeless/>>

crisis, and the human rights implications. This case study largely relies on publicly available documents and media accounts of events between March 2020 and September 2021, as well as information obtained through freedom of information requests and civil society organizations.⁷ We particularly focus on events at, and responses to, four encampment sites: Moss Park, Alexandra Park, Trinity Bellwoods Park, and Lamport Stadium (see Figure 1), which were perhaps the most established encampment sites during this period.

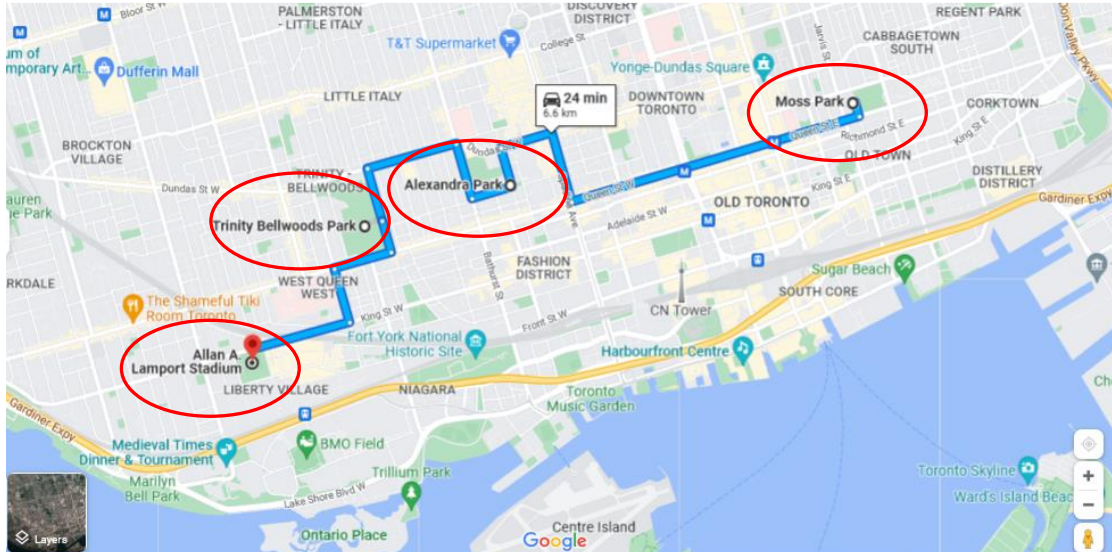


Figure 1: Locations of Moss Park, Alexandra Park, Trinity Bellwoods Park, and Lamport Stadium Encampments, 2021–2022.

City Responses to Tent Encampments Across Toronto—Legal & Soft Powers

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 between 2020 and 2021 included policies, programs, and bylaws that displaced unhoused people from encampments, in some cases criminalizing them for their poverty.⁸ This occurred through the use of two main sets of powers: formal “legal” powers and “soft” powers. These can be understood in the following way:

Legal powers include municipal bylaws, which are rules governing city residents’ actions. For example, a city can charge encampment residents with violations of parks bylaws or littering and street bylaws. Cities can choose to issue tickets and issue notices of trespass to evict

⁷ For a robust accounting of the methodology employed, see McCartan, D., Graham, L., Van Wager, E., Schwan, K., & Flynn, A. (2021). *Trespassing on the Right to Housing: A human rights analysis of the City of Toronto's response to encampments during COVID-19*. Toronto, ON: Environmental Justice & Sustainability Law Clinic, Osgoode Hall Law School. Online at: <https://ejclinic.info.yorku.ca/files/2021/12/trespassing-on-the-right-to-housing-city-of-toronto-report-20-december-2021.pdf?x86560>

⁸ Ibid.

encampment residents from public parks on the basis of these bylaws. 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.⁹ 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 to prioritize the concerns of housed residents in neighbourhoods with encampments. Cities can use these powers to shape public opinion and justify city actions.¹⁰

Common approaches to employing these powers included: (a) notices of trespass and encampment evictions on the basis of city bylaws; (b) encampment evictions on the basis of health, fire, and safety concerns; (c) efforts to remove community-created resources and failure to provide access to basic resources; (d) negative characterizations of encampments and encampment residents in City communications; and (e) use of police enforcement and private security for surveillance, displacement, and eviction. While undoubtedly the City has had some successes with transitioning people residing in encampments into housing, many people evicted from encampments were either offered spaces in homeless shelters or were simply displaced and expected to move on. While instances of successful transitions into housing should be celebrated and encouraged, and the complexity of the situation that the City was forced to deal with must be acknowledged, our review suggests that, in many instances, the City did not take into account the human rights of residents, and this ultimately impacted the success of its approach.

This section will focus on instances where the City’s use of legal and soft powers *failed* to uphold the right to housing, given that these instances provide critical insight into areas that need human rights oversight and accountability.

a) Notices of Trespass and Encampment Evictions on the Basis of City Bylaws

As the number of people residing in encampments grew during the COVID-19 pandemic, the City of Toronto increasingly turned to park bylaws, notices of trespass, and encampment evictions as the primary response to encampments. City park bylaws regulate the activities allowed in public parks.¹¹ These are the bylaws most often relied on by the City in their response to encampments. The City’s rationale for undertaking these measures, as argued in *Black v Toronto*, is that “people should not be able to opt out of using the shelter system when the City

⁹ Naren Chitty et al, *The Routledge Handbook of Soft Power* (Oxon: Routledge, 2017) at 1.

¹⁰ *Supra* note 7.

¹¹ City of Toronto. “Bylaw Enforcement.” (2021). Online: <<https://www.toronto.ca/city-government/public-notices-bylaws/bylaw-enforcement>>.

has made best efforts to address concerns related to COVID-19.”¹² Three bylaws were mainly used to justify the City’s removal of encampments: Chapter 608-13, Chapter 608-14 and Chapter 608-53.¹³ The first two bylaws make encampments illegal by prohibiting camping in parks (Chapter 608-13), and building a structure, such as a tent, in a park (Chapter 608-14).¹⁴ The latter (Chapter 608-53) allows park officers to act in cases of non-compliance with the bylaws.¹⁵ These bylaws make setting up and living in an encampment illegal. Furthermore, Parks Ambassadors are instructed during their training to contact the Toronto Police Services and cite the Trespass to Property Act if people erect structures in parks.

After a brief moratorium in 2020, the City of Toronto began to enforce parks bylaws 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 spaces and shelter hotels, and in 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.¹⁶ 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. Subsequently, many people returned to encampments from shelters and shelter hotels because of COVID-19 outbreaks, safety and security concerns, and 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 bylaw 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 were living under near-constant threat of eviction and criminalization during this time, despite the scarcity of adequate, affordable housing options available to them.

It is critical to note that, despite the presence of the bylaws providing a legal basis for the removal and criminalization of those living in encampments in public parks, there was never any requirement to enforce these laws. The City, at all times, had discretion as to how it addressed encampments and how it sought to promote the health and well-being of those living in them.¹⁷

b) Encampment Evictions on the Basis of Health, Safety, and Fire Concerns

The City often cites health, safety, and fire concerns as reasons to issue Notices of Trespass. The City has referred to several concerns about fire safety in encampments, including the

¹² Black et al v City of Toronto, 2020 ONSC 6398 [Black v Toronto].

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

¹⁴ *Ibid*.

¹⁵ *Ibid*.

¹⁶ McCartan et al., 2021.

¹⁷ McCartan et al., 2021, p. 38.

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;¹⁸ and the difficulties associated with detecting smoke, fire, and carbon monoxide in outdoor environments.¹⁹ 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.²⁰ Further, many of these concerns could be addressed by the provision of basic services and supports by the City.

c) Efforts to Remove Community-Created Resources & Failure to Provide Access to Basic Resources

Although the City provided access to waste management systems for some encampments, it was reported that overall, the conditions in the encampments did not meet human rights law standards.²¹ For instance, most encampment residents did not have access to basic resources, including water, bathrooms, food, and hygiene products, and they had to rely on community support systems and grassroots organizations for those needs.²² Reports indicated that basic services remained limited, unpredictable, or absent in many encampments, and that services may be inconsistently established or removed.²³ This is inconsistent with a rights-based approach, given that basic services such as clean water, sanitation facilities, electricity, and heat are foundational to survival.²⁴ The failure of governments to provide these basic services

¹⁸ 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>>.

¹⁹ City of Toronto. News Release, "Frequently Asked Questions – Wooden Structures in Encampments." (25 February 2021), online: <<https://www.toronto.ca/news/faq-wooden-structures-in-encampments/>> [FAQ].

²⁰ Boucher, L. M., Dodd, Z., Young, S., Shahid, A., Bayoumi, A., Firestone, M., & Kendall, C. E. (2022). "They have their security, we have our community": Mutual support among people experiencing homelessness in encampments in Toronto during the COVID-19 pandemic. *SSM- Qualitative Research in Health*, 2, 100163.

²¹ McCartan et al., 2021. See also Boucher et al., 2022.

²² McCartan et al., 2021. See also Boucher et al., 2022.

²³ McCartan et al., 2021. See also Boucher et al., 2022.

²⁴ A/HRC/43/4. As outlined in [A National Protocol for Homeless Encampments in Canada – A Human Rights Approach](#), 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."

violates a range of human rights²⁵ and threatens the dignity, safety, health, and well-being of people living in encampments.²⁶

In the absence of the provision of basic services, those living in encampments and their allies often self-organized to meet their needs and fill gaps in services. For example, some encampments had centralized harm reduction supplies, water, medical supplies, and other key resources which were shared among those residing in the encampment.²⁷ Encampment clearings conducted by the City were reported to undermine these efforts and result in the loss or destruction of these resources and self-established mutual aid systems that met basic needs. More broadly, City bylaws enabled the removal of the personal property of people residing in encampments. In enforcing bylaws, 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.²⁸ In this case, “encroachment” may refer to shelters that people have established in encampments. Chapter 608-53(B)(2) authorizes a bylaw officer to “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.”²⁹

This is perhaps most evident in the case of the tiny shelters built by Khaleel Seivwright. In fall 2020, Khaleel Seivwright, a local carpenter, was building shelters to keep encampment residents safe from the cold. However, the City issued warnings and ordered Seivwright to discontinue the construction of the shelters. The City indicated that there were concerns over health and fire safety hazards before proceeding to remove and demolish the shelters. The City suggested encampment residents should instead go to the Better Living



Figure 2: Encampment, downtown Toronto. (Samuel Engelking for NOW Magazine)

²⁵ A/HRC/43/4.

²⁶ UN Water. Human Rights to Water and Sanitation. Available from: <https://www.unwater.org/waterfacts/>

human-rights/

²⁷ Boucher et al., 2022.

²⁸ City of Toronto, by-law No 608, *Parks*, (30 October 2020), s 13 [*Parks By-law*].

²⁹ Nicholas Blomley, Alexandra Flynn & Marie-Eve Sylvester, “Governing the Belongings of the Precariously Housing: A Critical Legal Geography” (2020) *16 Annu Review Law Soc Sci* 165 at 157.

Centre for shelter. However, some of those who made it to the shelter returned to the encampment sites, given the lack of security and privacy in the Better Living Centre.

d) Negative Characterization of Encampments and Encampment Residents in Some City Communications

In some cases, the City uses soft powers in litigation, media releases, and other public communications to negatively characterize encampment residents and shift attention away from human rights obligations. This is detailed extensively in [Trespassing on the Right to Housing: A human rights analysis of the City of Toronto's response to encampments during COVID-19](#), which found that courts and the City have relied on harmful narratives to prioritize the rights and interests of housed residents neighbouring encampments and to justify violations of encampment residents' human rights.³⁰ For example, park bylaws have been mobilized by the City to characterize 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. Therefore, procedural and other protections do not apply when encampments are cleared.

e) Use of Police Enforcement and Private Security for Surveillance, Displacement, and Eviction

Police and private security were used extensively in the City of Toronto's response to encampments during the period under study. This was perhaps most evident during the third wave of the pandemic, when the City implemented an aggressive series of encampment evictions at Lamport Stadium, Trinity Bellwoods Park, and Alexandra Park in June and July 2021.

Leading up the evictions, in spring 2021, the City created the Pathways Inside Program to provide additional shelter spaces. Following the announcement of the program, Notices of Trespass requiring encampment residents to vacate the parks by April 6, 2021, were issued at Moss Park, Alexandra Park, Trinity Bellwoods Park, and Lamport Stadium. The Notices of Trespass were not enforced, given the COVID-19 cases that were reported at the Esplanade, one of the shelters where residents were to be relocated. However, the



Figure 3: Demonstrators attempting to topple a fence are pepper-sprayed by Toronto police officers enforcing an eviction order in an encampment at Lamport Stadium. (Evan Mitsui/CBC)

³⁰ McCartan et al., 2021.

Notices of Trespass were reposted and enforced throughout the summer of 2021. Three encampment sites (Trinity Bellwoods Park, Alexandra Park and Lamport Stadium) were subject to evictions involving several police officers and private security officials. The evictions that took place in Alexandra Park and Lamport Stadium have been deemed the “most violent encampment evictions to date.”³¹ Residents and advocates were kicked, choked, assaulted, arrested, and detained without access to a lawyer or information on the charges for several hours.³² Several serious injuries, including a broken wrist, a broken nose, and a concussion, were reported following the use of force on residents and advocates by police officers and security officials.³³ Journalists, legal observers, and medics were told to leave and threatened with trespass charges and arrests if they did not comply.³⁴

Remarkably, the City later revealed it had spent close to \$1 million to evict residents from these encampments.³⁵ With only 60 residents present at the time of the eviction, one study has noted that the costs were “equal to \$33,000 per person evicted, which is enough to pay for the average Toronto rent for roughly 16 months.”³⁶ Despite this, very few of those evicted from Trinity Bellwoods, Alexandra Park, and Lamport Stadium ended up in permanent housing, with the majority simply being displaced to other outdoor areas.³⁷

This focus on law enforcement responses to encampments deviates from the motion the City passed on June 29, 2020, to reallocate the budget to develop a “non-police alternative response

³¹ 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>>.

³² See, Jeff Gray, “Toronto encampment protesters decry ‘political’ charges,” *The Globe and Mail*, (13 October 2021), online at: <<https://www.theglobeandmail.com/canada/article-toronto-encampment-protesters-decry-political-charges/>>; see also: Parkdale Community Legal Services, “PCLS Endorses Joint Statement on the Lamport Stadium Encampment Clearing” (4 August 2021), online: <<https://www.parkdalelegal.org/news/pcls-endorses-joint-statement-on-the-lamport-stadium-encampment-clearing/>>.

³³ 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: <<https://www.parkdalelegal.org/news/pcls-endorses-joint-statement-on-the-lamport-stadium-encampment-clearing/>>.

³⁴ 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/>>.

³⁵ City of Toronto, News Release, “City of Toronto final costs of enforcement of trespass notices in City parks” (17 September 2021), online: <<https://www.toronto.ca/news/city-of-toronto-final-costs-of-enforcement-of-trespass-notices-in-city-parks/>>.

³⁶ McCartan et al., 2021, p. 20.

³⁷ McCartan et al., 2021, p. 20.

that would involve collaboration with community organizations, social services, and mental health agencies.”³⁸

Civil Society Responses to Tent Encampments

Civil society responses to encampments across Toronto were deeply polarized, with some Toronto residents expressing deep anger and frustration that encampments infringed on their access to and enjoyment of city parks.³⁹ However, the City of Toronto was also the site of tremendously robust organizing, activism, and mutual aid in response to encampments during the pandemic. In addition to significant increases in outreach support by shelter providers, service providers, and other allied organizations (e.g., by YWCA, Native Men’s Residence, Sanctuary Sistering), there was a proliferation of efforts across the city to provide humanitarian aid to people residing in encampments. This ranged from individual housed neighbours dropping off food, water, or other resources to encampment residents, to highly organized, multi-site mutual aid efforts.⁴⁰ During the time of our research, the [Encampment Support Network](#) (ESN) was perhaps one of the most successful and highly organized mutual aid groups supporting people residing in encampments across Toronto, including: ESN Parkdale, ESN Trinity Bellwoods, ESN Scadding Court, ESN Moss Park, ESN LNP, and ESN Cherry Beach. As documented by ESN and others, however, bylaw officers, city staff, and police officers regularly removed or destroyed resources provided to encampments by housed allies.⁴¹

Key Human Rights Issues Raised by Toronto Encampments

The escalating housing crisis, overburdened shelters, and the pandemic created the conditions for the worsening of homelessness and the emergence of encampments across Toronto. While many of these conditions fall outside of the power or jurisdiction of the City, it remains the case that the City of Toronto has an obligation to uphold the right to housing. The City of Toronto’s response to encampments raises many human rights issues, including issues of access to justice related to human rights violations experienced by encampment residents. The following is of note:

- **Failure to Adhere to Municipal and Federal Human Rights Commitments** — Like many other municipalities, the City of Toronto’s response to encampments did not reflect its own

³⁸ *City of Toronto* <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC22.2>>. Toronto City Council, CC 22.2, “Changes to Policing in Toronto” (29 June 2020), online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC22.2>>.

³⁹ See, for example, Muriel Draaisma, “City in talks to move homeless people out of tents in 2 parks as nearby residents say they feel unsafe,” *CBC* (28 June 2020), online: <https://www.cbc.ca/news/canada/toronto/city-mayor-george-hislop-park-sanctuary-homeless-encampment-residents-1.5630356>

⁴⁰ Boucher et al., 2022.

⁴¹ Boucher et al., 2022. See also public statements of the Encampment Support Network, available at: <https://www.encampmentsupportnetwork.com/public-statements/>

commitments to uphold the right to housing, as articulated in the [Toronto Housing Charter](#) and the [2020–2030 HousingTO Action Plan](#). In its 2019 *Toronto Housing Charter*, the City recognized that “housing is a fundamental human right ... and essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities.”⁴² Likewise, many City actions are grossly inconsistent with the *National Housing Strategy Act*, despite the applicability of this federal legislation to all orders of government. Our research suggests that the seriousness of these human rights violations is often not well understood by government officials and government actors and is not well integrated into decision-making and policy-making regarding encampments.

- **Access to Justice** — There is a notable absence of accountability mechanisms through which residents of encampments could seek redress for human rights violations perpetrated against them, within and beyond the City of Toronto.⁴³ This is contrary to the right to housing, which requires governments to implement infrastructure that provides avenues for community members to claim their right to housing and access remedies for unjust or unlawful treatment.⁴⁴
- **Meaningful Participation** — Central to the realization of the right to housing is the meaningful participation of people living in homelessness in the design and implementation of policies, programs, and practices that affect them. Ensuring meaningful participation is “critical to respect for individuals’ autonomy, dignity, agency, and self-determination.”⁴⁵ Government collaboration and partnership with lived experts ensure that the experiences of those living in encampments is taken into account and that they are treated as experts in their own lives and as partners in decision-making.⁴⁶ Our case study of Toronto revealed few pathways through which people residing in encampments in Toronto were meaningfully involved in the development of policy solutions to the homelessness crisis.
- **The Distinct Rights of Indigenous Peoples** — The issue of encampments in Canada is inextricably linked to historic and ongoing colonial practices that harm Indigenous Peoples and contribute to housing inequities, including systemic discrimination and racism, broken treaty promises, dispossession of land and displacement, residential schools, intergenerational disconnection from language and culture, and chronic underfunding of

⁴² City of Toronto. (2017). *Toronto Housing Charter*. Toronto, ON: City of Toronto.
<https://www.toronto.ca/wp-content/uploads/2017/11/8eca-2016-TOHousingCharter.pdf>

⁴³ McCartan et al., 2021.

⁴⁴ A/HRC/43/43. See also Dragicevic, N., & Porter, B. (2020). *Human rights cities: The power and potential of local government to advance economic and social rights*. Toronto, ON: Maytree.
<https://maytree.com/publications/human-rights-cities/>.

⁴⁵ Farha & Schwan, 2020, p. 2.

⁴⁶ A/HRC/43/4. See also Farha & Schwan, 2020.

housing and social services for Indigenous communities.⁴⁷ In alignment with international human rights standards, the City of Toronto’s engagement with Indigenous people residing in 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.”⁴⁸ Under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), governments must also ensure the participation of Indigenous Peoples in all decision-making processes that affect them.⁴⁹ The duty to consult and accommodate Indigenous Peoples is enshrined in domestic law as well, as set out by the Supreme Court in *Haida Nation*.⁵⁰ Further, the City of Toronto also has specific and ongoing treaty and constitutional obligations to distinct Indigenous nations.

The City’s obligations to respect and protect the distinct rights of Indigenous nations, advance truth and reconciliation, and uphold treaty obligations to diverse Indigenous nations intersects with broader human rights obligations to secure the right to housing for people who are unhoused and residing in encampments on Indigenous territories (including unceded territories). The complexity of these intersections deserves careful attention and analysis. Importantly, higher levels of government—particularly the federal government—have specific obligations towards Indigenous Peoples that have direct bearing on municipal governments’ ability to meaningfully respect, protect, and fulfil the distinct human rights of Indigenous people. There is an urgent need for human rights and legal analysis—led and controlled by Indigenous Peoples themselves—to determine how municipalities’ efforts to address encampments can most meaningfully protect, respect, and advance the inherent rights of Indigenous Peoples, as well as the right to housing.

- **Provision of Basic Services**—Access to basic services, such as clean water, sanitation facilities, electricity, and heat, is foundational to survival and a cornerstone of a human rights-based approach to homelessness and encampments.⁵¹ The failure of governments to provide these basic services violates a range of human rights⁵² and threatens the dignity, safety, health, and well-being of people living in encampments.⁵³ While our review noted

⁴⁷ Thistle, 2017, p. 8.

⁴⁸ Farha & Schwan, 2021.

⁴⁹ United Nations Declaration on the Rights of Indigenous Peoples. Online: <<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>>

⁵⁰ *Haida Nation v British Columbia (Minister of Forests)*, 2004 3 SCR 511.

⁵¹ A/HRC/43/4.

⁵² A/HRC/43/4.

⁵³ UN Water. Human Rights to Water and Sanitation. Available from: <https://www.unwater.org/waterfacts/human-rights/>

some successes in this regard, during the time of this review, the City of Toronto largely failed to provide sufficient basic services during the pandemic to people residing in encampments. The severe consequences of this failure, and the egregious nature of this failure in such a wealthy city, deserve significant human rights scrutiny.