



British Columbia's
Office of the Human Rights
Commissioner

June 24, 2024

Meghan Will, Assistant Deputy Minister
Homelessness, Partnerships and Housing Supports
Ministry of Housing, Government of British Columbia

Via email to: Meghan.Will@gov.bc.ca

Dear Assistant Deputy Minister Will,

Re: Recommendations for the *Encampment Response Partner Resource*

Thank you for the opportunity to review the revised *Encampment Response Partner Resource* (*Encampment Resource*). I am disappointed to see that the feedback I provided in May 2022 is not reflected in this draft and want to take this opportunity to once again emphasize the importance of anchoring encampment response guidance in human rights.

As it is currently written, the draft *Encampment Resource* does not capture the human rights obligations that local governments and other duty bearers must fulfill when responding to a homeless encampment. It acknowledges that people living in encampments “have legal and human rights,” but does little to elaborate on this fundamental point. Importantly, this recognition of human rights falls short of recognizing that housing itself is a human right, or said another way, that people living in encampments have the right to housing. These are critical gaps that will not only undermine the ability of municipalities to effectively respond to encampments, but it also puts them at a disadvantage when applying for federal funding that is available only to those taking a human rights-based approach.¹

In this letter, I offer recommendations on how the document could be strengthened through an explicit human-rights approach that upholds the rights and dignity of all people who experience homelessness across the province.

¹ \$250 million to be cost matched by provinces and territories to address encampments. According to the federal plan, “The Fund will support human rights-based community action plans that commit to a housing-first approach to ending encampments, and include supportive and transitional housing, housing-focused services, and rent supplements specifically dedicated to individuals living in encampments or experiencing homelessness.”

Overall, and to the greatest extent possible, I strongly recommend aligning your resource with the eight principles contained in the [National Protocol for Homeless Encampments in Canada](#) released by former UN Special Rapporteur on the right to adequate housing, Leilani Farha, in 2020. The national protocol should be included in your resource list along with:

- [Homeless Encampments: Municipal Engagement Guidance](#) report by the National Working Group on Homeless Encampments,
- [Upholding dignity and human rights: the Federal Housing Advocate's review of homeless encampments](#) final report, and
- [Responding to homeless encampments: Local governments' human rights obligations](#) guidance published by my office.

I also strongly recommend that the encampment resource should convey accurate legal information. The framing of the advice at this point is permissive, without noting where the law requires certain actions, such as giving notice before eviction (currently noted as best practice). At best, this is a missed opportunity to transmit important information. At worst, this advice is legally wrong and could lead to local governments incurring liability by violating the legal rights of encampment residents. Below, I draw your attention to a number of areas where such risk is evident.

Forced Evictions Violate Human Rights Law

One of the most significant issues with the *Encampment Resource* is its framing of decampments. Currently, page 13 states, “*If an encampment must be closed (i.e. that a decampment must take place) either through removal of structures or closing a site completely to access.*” without establishing the legal standards that must be met before any decampment interventions can lawfully take place.

It must be clearly stated that the removal of encampments without adequate alternative housing is a form of forced eviction and is a violation of human rights. B.C. courts have held that there is a constitutionally protected right to shelter in public parks, at least during nighttime hours, when there are insufficient shelter spaces available or when those spaces are inappropriate for the residents of the encampment.² This applies whether there are not enough beds, or whether the beds available are not truly accessible to those sheltering in parks. The Court has also recognized in some circumstances that “there is a legitimate need for people to shelter and rest during the day and no indoor shelter in which to do so.”³

Similarly, under international human rights law, the removal of homes—regardless of the material with which they are constructed—is prohibited

² Bamberger v. Vancouver, 2022 BCSC 49 at paras.11-20; Victoria (City) v. Adams, 2009 BCCA 563 aff'g 2008 BCSC 1363

³ Abbotsford (City) v. Shantz, 2015 BCSC 1909 at para.276



without meaningful engagement with the residents to find adequate alternative housing.⁴ In addition, deteriorating health and safety conditions within an encampment should not be used to justify forced eviction when such concerns could have been addressed earlier, as detailed below.

Forced eviction⁵ is isolating and traumatizing for encampment residents and may exacerbate gender-based violence and the risks from a toxic drug supply.⁶ Furthermore, unless governments address the underlying causes, encampments will return.

In limited cases, eviction may be justified based on other overriding human rights concerns. Displacing people from hazardous areas, for example, may be necessary to protect their lives. In instances where residents must be evicted from encampments, all viable alternatives to eviction must first be considered in consultation with residents. Furthermore, the decampment process must conform to the following requirements of international human rights law.

- Adequate alternative housing must be in place prior to eviction.⁷ A shelter bed is not adequate housing; if an individual refuses to accept this option (due, for example, to a lack of security, autonomy or privacy or separation from family or community), government should provide another form of acceptable housing.
- Residents' private property must not be removed without their knowledge and consent. If relocation is required, residents must have safe, secure, long-term places to store their belongings. After being confiscated, belongings should not be destroyed but rather proactively returned to their owners.
- Relocation must keep families and communities intact if residents express this desire.
- Residents must have access to justice (e.g., due process, access to legal aid.) at all times— not only when eviction is imminent.⁸
- If residents are at heightened risk of or have been subjected to gender-based violence, then supportive and safe housing must be provided. Reports of gender-based violence in camps must be addressed immediately, but survivors should not be forcibly displaced as a result. If survivors must relocate, government should provide tailored supports and safer housing options.

⁴ UN Special Rapporteur on adequate housing. Guidelines for Implementation of the right to adequate housing. 2020 (A/HRC/43/43), para 36

⁵ Force eviction includes relocating multiple smaller encampments to one site.

⁶ Papamihail, K., Yoon, M., Graham, B. et al. Convenience and comfort: reasons reported for using drugs alone among clients of harm reduction sites in British Columbia, Canada. Harm Reduct J 17, 90 (2020). <https://doi.org/10.1186/s12954-020-00436-6>

⁷ In addition to international human rights law, BC courts have found that "the suitability of available shelter spaces, in addition to the number of available spaces, is relevant to the constitutional right of sheltering in a public park." (Bamberger v. Vancouver, para 123)

⁸ UN Special Rapporteur on adequate housing. Guidelines for Implementation of the right to adequate housing. 2020 (A/HRC/43/43).



If relocation is truly consistent with the human rights of residents, it will almost always be achievable voluntarily and without the use of force. Police or private security forces should not be involved to force relocation.

In the *Encampment Resource*, the section on “transitioning encampments” is listed under “wise practices for homelessness and encampment response”. However, you must clearly recognize that decampment processes, including eviction, are subject to clear legal limits and obligations, not just wise practices. The law as I have laid out here is not optional, and the resource must communicate as much, for the sake of both local governments and encampment residents. I strongly recommend that you revise this section to remove it from the label of “wise practices” and outline the required steps for local governments to respect the rights of encampment residents.

Further, rights should not be conflated with “principles” to be “considered” as they are on page 4. Encouraging duty bearers (such as local governments) and rights holders (such as people living in encampments) to come to common understandings about circumstances and the path forward is important - and consistent with encampment resident’s right to meaningful participation, inclusion and empowerment - but this must be backstopped by a clear understanding of the rights and responsibilities at issue.

I further expand on the separation between wise practices and legal obligations below.

The Right to Safety and Security

The language on page 3 needs to be amended to accurately reflect the rights of people living in encampments. Instead of saying, “People in encampments deserve to be safe, healthy, and supported to become stably housed with the supports and community they need,” the *Encampment Resource* needs to be explicitly clear that these are rights (for example, the right to security of the person protected by s.7 of the Charter of Rights and Freedoms) with corresponding responsibilities.

On page 12, the *Encampment Resource* notes the “wise practice” of assessing the encampment for safety and the presence of “distinct marginalized groups”. However, there is no explicit recognition of the presence of gender-based violence in encampments or any practical advice to local governments about how to address it. As you know, gender-based violence has been a motivating factor in recent high-profile decampments in Vancouver, including along Hastings Street and in Oppenheimer Park, and therefore a real and current concern in managing encampments in our province.

Indeed, camp residents, like all of us, deserve safe living conditions, including being free from violence. But women and gender diverse people who are



facing violence shouldn't be forcibly evicted from their homes because of that violence. The *Encampment Resource* must specify that eviction does not make women safer, and neither does blaming them for the eviction of their neighbours or their entire community. Instead, culturally appropriate and targeted anti-violence services must be provided, and their perpetrators must be held accountable, as we would expect for any other person experiencing gender-based violence outside of an encampment context. Again, these responses are not optional but necessary to protect the human rights (and bodily integrity) of residents.

In addition, deteriorating health and safety conditions within an encampment should not be used to justify forced eviction when this deterioration could have been avoided through timely, proactive action by a local government. The solution to health and safety concerns in encampments is for governments to provide for residents' health and safety needs until adequate housing is available. For example, if propane tanks in tents are creating a fire hazard, government can create centralized and supported spaces for cooking. This "wise practice" should be added to the *Encampment Resource*, so that local governments can benefit from seeing the type of creative approaches to fire safety that are necessary to prevent violations of human rights.

The Right to Housing

Human rights are grounded in the dignity inherent in each of us.⁹ Too often, encampment residents encounter neither empathy nor empowerment; instead, they face criminalization and dehumanization. All levels of government must challenge the paradigm that leads to this treatment and centre encampment residents' dignity and human rights in all policy responses. And, at a time when there is understandably much public and political discussion about these challenging policy issues, it is essential that everyone understand that human rights are not up for debate, they are enshrined in legislation and international conventions.

Canada ratified the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* in 1976. Ratification of *ICESCR* was agreed to by the provinces and territories and commits all levels of government to the progressive realization of housing as a human right such that everyone has access to adequate housing as soon as this can be achieved within available resources. The federal government recently affirmed its commitment to further the progressive realization of the right to housing with the passing of the *National Housing Strategy Act*, and instituted mechanisms for public reporting and independent monitoring.

⁹ Article 1 of the Universal Declaration of Human Rights states: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."



Local governments in British Columbia have this same legally binding responsibility to take action to ensure the progressive realization of the right to adequate housing. The *Encampment Resource* is incomplete if it does not explain the right to housing and does not impress on local governments that they too are required to protect and promote this right. This could be included under the *Wise Practices for Homelessness and Encampment Response* section that discusses prevention and planning ahead on page 9.

The resource mentions important nuances around housing options on page 12, but instead of framing them as things to consider, they should be clearly stated as the following rights:

- The right to safe, secure, affordable housing that offers long-term security of tenure and is adequate to meet the resident's unique accessibility, cultural and/or other needs.¹⁰ Housing should be protected under relevant tenancy legislation and in a location acceptable to the resident.
- The right to remain with one's self-defined family and community in an alternative housing arrangement.¹¹
- The right to reject a shelter bed as an alternative arrangement (due to a lack of security, autonomy, privacy, etc.).¹² Individuals should be permitted to leave an alternative arrangement that is not working for them without losing their place on a housing waitlist. If I was to emphasize one point in all of this feedback, it would be this: the *Encampment Resource* must outline the law that applies to local governments and the province, which says that encampments cannot be shut down (and their residents evicted) unless the residents have been given appropriate and truly accessible shelter options, at a minimum. This means that the rules of the shelters need to be workable for the actual people being displaced, so that accessing them is a reasonable possibility¹³. This means that it is not a matter of simply matching the number of residents to the number of shelter beds. This means that people cannot be evicted from an encampment just to be told to go live in another park or public space. This has been established through common law and cannot be treated as optional by any level of government.

The Right to Food and the Right to Health

In addition to the more direct housing rights above, local governments have a responsibility to help people living in encampments to make their community as healthy and safe as possible while they reside there. It is positive that the

¹⁰ See [General Comment No. 4: The Right to Adequate Housing \(Art. 11 \(1\) of the Covenant\)](#) paragraph 8

¹¹ See [General Comment No. 4: The Right to Adequate Housing \(Art. 11 \(1\) of the Covenant\)](#) paragraph 9

¹² See [A National Protocol for Homeless Encampments in Canada](#) paragraph 14

¹³ *Bamberger v. Vancouver*, 2022 BCSC 49 at paras.11-20; *Victoria (City) v. Adams*, 2009 BCCA 563 aff'g 2008 BCSC 1363



Encampment Resource encourages local governments to provide water, sanitation, and tools of harm reduction and fire safety; however, a human rights approach demands more. Instead of accurately communicating that encampment residents have a right to these basic needs, the *Encampment Resource* says on page 22, “in general, it is *wise practice* to.. Ensure access to running water and soap on-site or at a nearby public facility where people can use toilets, wash their hands, stow, and sanitize food and belongings.”

Article 11 of the ICESCR draws an explicit link between the right to food and the right to housing, both of which are elements of the broader right to an adequate standard of living: “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.”¹⁴ Therefore, local governments should ensure encampment residents have access to food and to the means to keep and prepare their food safely, and this should be made clear in the *Encampment Resource*. For example, this could be achieved through a food distribution hub or kitchen within an encampment that has access to a generator to power appliances for heating and refrigeration.

I also recommend adding waste removal and electricity to the list of what local governments should arrange to provide people in encampments. As stated by the UN Committee on Economic, Social and Cultural Rights, “All beneficiaries of the right to adequate housing should have sustainable access to ... energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”¹⁵ The UN Special Rapporteur on the right to adequate housing has similarly noted that in the case of encampments, compliance with international human rights law requires waste management systems and refrigeration facilities for safe storage of foods and medicines.¹⁶ I recommend expanding this section on page 11 of the *Encampment Resource* accordingly.

The Right to Privacy, Property, Security and Autonomy

The privacy, property, security and autonomy rights of people living in encampments are similarly underdeveloped in the draft *Encampment Resource*. People experiencing homelessness regularly face the threat, or reality, of having their belongings taken and destroyed by police and bylaw officers.¹⁷ The loss of one's possessions can be dangerous in the case of confiscated medications, and traumatizing in the case of irreplaceable items, as this individual's experience shows: “My kids pictures... All of them are gone, I have no pictures of kids when they were babies now [...] and how are

¹⁴ See [International Covenant on Economic, Social and Cultural Rights](#), Article 11

¹⁵ See [General Comment No. 4: The Right to Adequate Housing \(Art. 11 \(1\) of the Covenant\)](#), paragraph 8(b)

¹⁶ See [A National Protocol for Homeless Encampments in Canada](#), Principle 6

¹⁷ For example, see [#StopTheSweeps: Ending Cyclical Displacement & Criminalized Poverty in Vancouver](#), released on May 2, 2022.



they gonna replace them? There's no money in the world that could replace what they took from me.”¹⁸

This reality must be highlighted in the *Encampment Resource*, and local governments should be reminded of their responsibility to respect the belongings and privacy of people experiencing homelessness and/or living in encampments. A tent (or shelter) is a home and should be treated as such until adequate housing is available. If relocation is required, residents must have safe, secure, long-term places to keep their belongings. When confiscated, belongings should not be destroyed; it is incumbent on local governments to proactively return these belongings to their owners.

I also urge you to do more to address discrimination against people living in encampments. At a minimum, the *Encampment Resource* should strongly discourage local governments from taking any actions that might constitute harassment, control, or punishment of people living in encampments. These commonplace tactics reinforce the idea that public spaces are primarily for those with some degree of privilege. It is a state-sponsored signal that a particular group is unwanted and even dangerous. I am advocating for the addition of social condition (which includes housing status) to B.C.'s *Human Rights Code*, which would provide legal protection against this form of stigma and discrimination. Until then, local governments should be educated through resources such as this about the harmful nature of these attitudes and behaviours.

In sum, I recommend that you include in the *Encampment Resource* the following rights of encampment residents:

- The right to peaceful enjoyment of possessions and to have possessions returned if they are confiscated.
- The right to be free from threat of harassment, control or arbitrary punishment by authorities.
- The right to be free from discrimination based on social condition.

Decolonizing Encampment Response

I appreciate that the draft *Encampment Resource* includes a section on *Indigenous Context and Cultural Safety and Wise Practices for Communities and Indigenous Partners*, including a recognition of the harms of colonialism and a legacy of mistrust toward colonial governments. The document rightly encourages local governments to connect Indigenous people living in encampments with culturally appropriate services. Indigenous peoples' overrepresentation in experiencing homelessness is a direct result of colonization and colonial displacement.

¹⁸ Ibid, page 29



In addition, as per the *UN Declaration on the Rights of Indigenous Peoples*, local governments must¹⁹ recognize Indigenous peoples' distinct relationships and rights to their lands and territories. This means that governments must secure free, prior and informed consent before relocating Indigenous peoples from their lands or territories, including encampments on those lands (Art. 10). Local governments must engage with representatives chosen by Indigenous peoples themselves (Art. 19).

Again, these are not just “wise practices.” They are required actions and the *Encampment Resource* does all readers a disservice by not being more clear on this distinction. The resource would also be strengthened by including advice and direction on how this commitment to decolonization should inform the development of housing solutions and the importance of working collaboratively with local Indigenous nations, communities and organizations in the creation of self-determined and culturally appropriate housing options.

Procedural Fairness

A human rights-based approach centres the rights, needs and perspectives of the most marginalized through meaningful participation, inclusion and empowerment. As affirmed in [Bamberger v. Vancouver](#) regarding the rights of those sheltered in Vancouver's CRAB Park, local governments have a duty of procedural fairness, and “[residents] have a right to notice and a right to be heard, as their rights, privileges, or interests are uniquely affected” (para 69).

Therefore, I recommend that you include in the *Encampment Resource* the following additional rights of encampment residents:

- The right to sufficient notice and sufficient time to consider and respond to local government actions that affect encampment residents.
- The right to access independent legal advice and information concerning one's rights when notice of eviction has been served.
- The right of residents to be heard, for example by creating their own process to respond to local government and to propose alternatives for local governments to consider in good faith.

¹⁹ See pages 29-31 of the [National Protocol](#) for more on the specific requirements under international human rights law.



I appreciate the work you and your team are doing to meet the challenge of responding to homeless encampments. Your emphasis on collaboration between the provincial government, municipalities, First Nations and Indigenous organizations, health authorities, non-profits and others is welcome. I look forward to working together to protect the human rights of people living in encampments.

To support my commitment to public accountability and responsibility to serve the people of British Columbia, this letter, or portions of it, may be made public.

Sincerely,



Kasari Govender, Commissioner
BC's Office of the Human Rights Commissioner

cc: Sarah Petrescu, Director, Encampment Response
Sarah.Petrescu@gov.bc.ca

