



British Columbia's  
Office of the Human Rights  
Commissioner

# Un(media)ted

## Report of the Inquiry into the exclusion of media from the April 2023 Hastings decampment



Report | February 2026

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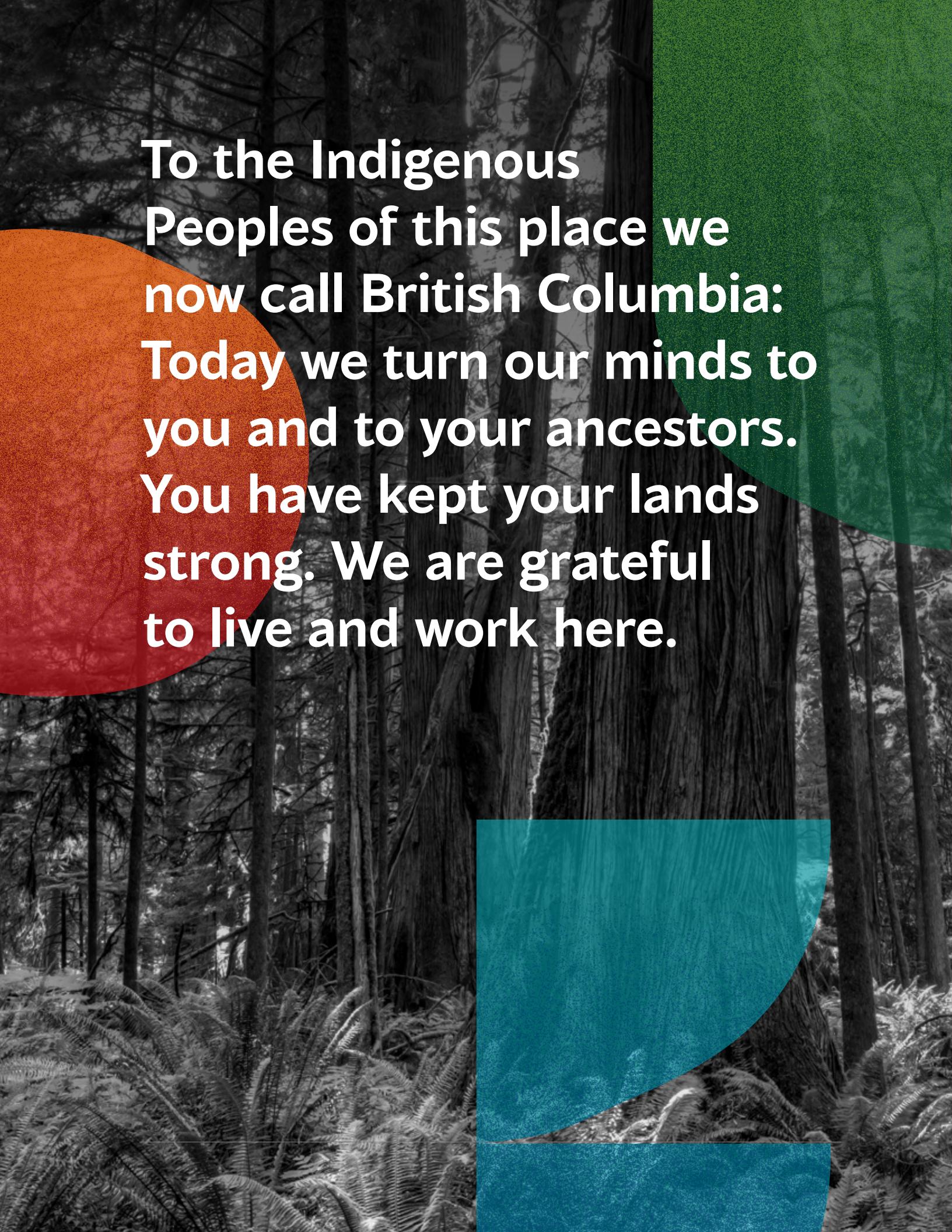
# **Un(media)ted**

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British Columbia's  
Office of the Human Rights  
Commissioner



**To the Indigenous  
Peoples of this place we  
now call British Columbia:  
Today we turn our minds to  
you and to your ancestors.  
You have kept your lands  
strong. We are grateful  
to live and work here.**



**February 2026**

The Honourable Raj Chouhan  
Speaker of the Legislative Assembly  
Parliament Buildings  
Victoria, BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Human Rights Commissioner's report, *Un(media)ted: Report of the Inquiry into the exclusion of media from the Hastings decampment in April 2023 to the Legislative Assembly*. It has been prepared in accordance with sections 47.15 and 47.20 of the *Human Rights Code*.

Sincerely,

A handwritten signature in black ink, appearing to read "Kasari Govender".

**Kasari Govender**  
Human Rights Commissioner

cc:      Kate Ryan-Lloyd  
          Clerk of the Legislative Assembly

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# Acknowledgements

While the focus of this Inquiry is on freedom of the press, the Human Rights Commissioner first and foremost acknowledges the harm experienced by residents of the Hastings encampment from their forced eviction of April 5 and 6, 2023, and from the exclusion of media during that time, and recognizes that these harms were disproportionately experienced by people who are Indigenous and people with disabilities.

The Human Rights Commissioner is grateful to the following people and organizations for their contributions to the Inquiry and who made this report possible:

- members of the media and City of Vancouver, Vancouver Police Department and Vancouver Police Board employees who participated in interviews and shared their experiences with the Commissioner
- community organizations and media organizations that participated in the Commissioner's three engagement sessions
- City of Vancouver, Vancouver Police Department and Vancouver Police Board employees who responded to the Commissioner's production orders
- external subject matter experts (listed on page 22)

Many BCOHRC staff were involved through the course of the Inquiry. The Commissioner thanks them for all their contributions to this work, and is especially grateful to Maria Sokolova, Staff Lawyer and Carly Hyman, General Counsel for their work and commitment to this Inquiry.

# Executive summary

This Inquiry was intended to shine a light on the importance of press freedom by examining the restrictions imposed by the City of Vancouver (the City, COV) and the Vancouver Police Department (VPD) during the Hastings decampment on April 5 and 6, 2023. The Human Rights Commissioner has broad powers under the *Human Rights Code* (the Code) to initiate an inquiry if she is of the view that inquiring into a matter would promote or protect human rights in the province. In this case, the matter the Commissioner decided to inquire into was the reported restrictions on media during the Downtown Eastside (DTES) decampment in order to promote and protect human rights in the province, because a free press is critical to a functioning democracy.

The Inquiry examined whether and why media and others were restricted from the Hastings Street encampment on April 5 and 6, 2023, and why public access to the traffic cameras was shut down on the morning of April 5, 2023. The Commissioner examined whether the restrictions complied with human rights law protections for freedom of the press and freedom of assembly in domestic and international law. The Inquiry also examined the process followed by the Vancouver Police Board's (VPB, the Board) and VPD's consideration of a complaint about the creation of an exclusion zone on April 5 and 6, 2023.

During this Inquiry, the Commissioner gathered extensive records from the City of Vancouver, the Vancouver Police Department and the Vancouver Police Board. The Commissioner's staff interviewed, under oath, staff from the City and the VPD who were involved in the decampment and media who were present in the Downtown Eastside during the decampment. The Commissioner held three engagement sessions with members of the media and community organizations who support people living in the Downtown Eastside.

As a preliminary point, the term exclusion zone was a point of contention in this Inquiry. In the Commissioner's view, the definitions suggested by the VPD and the City and the distinctions drawn between an "exclusion zone" and a "work zone" or a "safety zone" are overly formalistic and not based on principle or law. An exclusion zone is the closure or regulation of any form of access, including media access, to public space.<sup>1</sup> It might also be referred to as a no-go zone, buffer zone, temporary access control area, work zone, restriction or safety zone.<sup>2</sup> The significance of a restriction on access depends on its effect and the impact on press freedom, not on the words used to describe it or even the intent or purpose in establishing it.<sup>3</sup> The human right to press freedom

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<sup>1</sup> Robert Diab, *Commissioned Paper: The Policing of Large-Scale Protests in Canada: Why Canada Needs a Public Order Police Act*, (Public Order Emergency Commission, 2022), 41, <https://publicorderemergencycommission.ca/files/documents/Policy-Papers/The-Policing-of-Large-Scale-Protests-in-Canada-Diab.pdf>.

<sup>2</sup> "A History of Media Exclusion Zones – How injunctions became synonymous with police drive crackdowns on press freedom in Canada," Canada Press Freedom Project, June 15, 2023, <https://canadapressfreedom.ca/a-history-of-media-exclusion-zones/>.

<sup>3</sup> Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd., 1985 CanLII 18 (SCC), 551, <https://canlii.ca/t/1ftx2>; Andrews v. Law Society of British Columbia, 1989 CanLII 2 (SCC), 173-174, <https://canlii.ca/t/1ft8q>.

may be affected by partial as well as total restrictions.<sup>4</sup> Our reference to the term exclusion zone encompasses all the various names referred to above because of their similar effect on restricting media access to specific areas, potentially hindering the ability to gather and disseminate information to the public.

**The Commissioner found:**

**1 Transparency was compromised during the Hastings decampment.** Despite claims from the City and the VPD that media were only restricted during the first 45 minutes of the decampment, the Commissioner found that the VPD restricted media and others from accessing defined zones throughout April 5 and 6, 2023. The Commissioner found that the VPD allowed a pool camera it arranged into the exclusion zone and that all other media access had to be approved through a chain of command. Many media were denied entry into the exclusion zone for various lengths of time. Some media entered on their own, and were not asked to leave. Others were denied access and never entered the zone. The exclusion of media meant that their ability to report on the police action was impacted, and therefore transparency was compromised. The Commissioner found that, while not intentional, the traffic camera shutdown and subsequent lack of clarity contributed to the lack of transparency caused by the exclusion of the media and the public.

**2 The exclusion zone was not in accordance with human rights standards.** The Commissioner found that the exclusion zone was an extension of the City's practice of creating "safe work zones" and had the primary purpose of preventing safety issues, including issues associated with protests. The Commissioner found that while restricting media access was not the goal of the restrictions, the impact on the media was not adequately considered and the potential risks to staff or public safety did not justify the broad restrictions. The limited access that was provided was insufficient to meet the requirements of necessity and proportionality. The Commissioner found that the VPD did not have statutory or common law authority for the exclusion zone and that it was unlawful. The Commissioner found that the disproportionate effect on marginalized groups—especially Indigenous people and people with disabilities—that resulted from the April 5 and 6, 2023 forced eviction meant that the restrictions on media and attendant harms also disproportionately impacted the rights of the encampment residents. These disproportionate impacts perpetuated systemic discrimination contrary to the *Human Rights Code*.

<sup>4</sup> UN Human Rights Committee, *General Comment no. 34, Article 19, Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011, paras 22-24, 26-29, 33-36, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>; UN Human Rights Committee, *General comment no. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add. 13, May 26, 2004, para 6, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.13&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.13&Lang=en); Edison Lanza, *Protest and Human Rights, Standards on the rights involved in social protest and the obligations to guide the response of the State Special Rapporteur for Freedom of Expression* (Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, 2019), para 31, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf>.

Given that many members of the media were able to access the site at some point, the extent or scope of the impact on access to information is unclear. However, it is clear that harm was done: the Commissioner heard from members of the media that the media restrictions in this case—even where journalists eventually were able to enter the restricted zone—had the effect of impairing media from reporting on the full story of the forced eviction of the residents of the Hastings encampment.

The Commissioner accepts the City and VPD's perspective that they took steps to provide for media access in a dynamic and challenging circumstance and acknowledges that the City and VPD had safety risks to manage, including protecting the physical and mental safety of City staff. What was required of the City and VPD officials was to balance managing the safety risks without unnecessarily or unreasonably restricting freedom of the press and freedom of assembly in a manner that was proportional to the risks posed. In the Commissioner's view, the VPD and City clearly prioritized safety over media access and did not give due regard to the importance of the human rights issues at stake. This was clearly confirmed by one of the deputies of the VPD in a meeting with the Commissioner when he said that physical safety always takes precedence over human rights. In prioritizing safety over freedom of the press and freedom of assembly, the City and VPD failed to ensure that the restrictions on these freedoms were proportionate to perceived or anticipated risks.

**3 Oversight process followed by the Vancouver Police Board was insufficient.** The process followed to investigate a complaint about the media exclusion falls within the purview of the Human Rights Commissioner because the right to freedom of the press is rendered meaningless without access to effective remedies. The Commissioner found that the investigator assigned to investigate the complaint was not sufficiently independent because the investigator was also the Gold Commander with overall operational responsibility for the decampment. The Commissioner found that the complaint was not adequately investigated and considered by the VPD and VPB due to insufficiencies in the investigative process. In sum, the process for ensuring oversight over the issues flagged above was significantly compromised.

The Commissioner makes six recommendations to the Ministry of Public Safety and Solicitor General, the Ministry of Attorney General, the City of Vancouver, the Vancouver Police Department and the Vancouver Police Board. Recommendation 1 is also directed to all municipalities and all police departments in B.C.

# Recommendations

The Commissioner's following recommendations must be implemented in a manner that is consistent with domestic and international human rights laws, and promotes and protects the rights of people who are unhoused or otherwise impacted by exclusion zones.

Please note that the footnotes to the recommendations contain additional context, clarity and examples, and do not form the substance of the recommendations.

## Recommendation 1

The Vancouver Police Department and the City of Vancouver, as well as all other police departments and municipal governing bodies in British Columbia, immediately cease excluding or restricting media areas around police action<sup>1</sup> without explicit judicial authorization, unless required by immediate and unforeseeable circumstances limited to a credible and substantial threat to public safety (in accordance with the law) or for the integrity of a criminal investigation. If an exclusion zone (as defined in this report) is required in these circumstances, every reasonable effort to mitigate the impact on freedom of press must be taken.

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<sup>i</sup> Including (but not limited to) where police are involved in "keeping the peace."

## Recommendation 2

By June 2027, the Ministry of Public Safety and Solicitor General introduce legislation, legislative amendments or regulations to enshrine the directive established in Recommendation 1.

This must be done in collaboration with municipal police departments and RCMP e-division, and in consultation with Indigenous Peoples, media organizations, subject matter experts and advocacy organizations.

In compliance with the *Charter of Rights and Freedoms* (the Charter) and domestic and international human rights standards including *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), the legislation (and attendant regulations as necessary) should include:

- direction on how to determine whether someone is a journalist, taking into account that journalism is a function shared by a wide range of actors. People engaged in a good faith news-gathering activity of a journalistic nature on matters of public interest should be captured by this direction, in accordance with both international and domestic law. For the sake of clarity, the Commissioner recommends that the Ministry not engage in credentialling journalists for this purpose;
- time limits and size constraints for exclusion zones, to ensure as minimal intrusion on freedom of the press as possible;
- rules around managing admission, access control points and pool cameras, including ensuring that pool cameras are established by media rather than police and are only used when strictly necessary;<sup>ii</sup>
- requirements for when notice of media restrictions is to be given to the media and the content of such notice;
- training requirements for all involved front-line officers and commanders to ensure familiarity with the legislative changes;
- training requirements for all front-line officers and commanders on press freedom and freedom of assembly, as discussed in more detail below.

<sup>ii</sup> For example, pool cameras should be limited to only those circumstances where only one camera shot is possible (for example, a person speaking at a podium), where it is only physically possible for one camera to fit in the filming space or where expense of filming is extraordinary and therefore outweighs benefits of diverse views.

### **Recommendation 3**

The Ministry of Public Safety and Solicitor General provide funding for rights-based training for all front-line police officers and commanders, including:

- to the Canadian Association of Journalists or other experts to develop training on press freedom, which should include the role of the press in a functional democracy, legal protections of freedom of the press, when and in what way media access may be restricted and police obligations when interacting with or making operational decisions in regard to the media; and
- to a legal organization or expert to develop training on freedom of association, which should include the importance of the right to assemble in a functional democracy, legal protections of the right, when and in what way protests may be restricted, regulated or monitored and police obligations when interacting with or making operational decisions in regard to protests.

The Ministry should direct the Justice Institute and the RCMP to work with these organizations to deliver this ongoing training or should otherwise incorporate this recommendation into their ongoing development of standardized training curriculum, starting in February 2027.

### **Recommendation 4**

By February 2027, the Ministry of Attorney General provide annual funding (either independently or in collaboration with another legal funder) to an independent organization tasked with providing systemic advocacy and individual legal support to media and media organizations who encounter legal and policy issues concerning freedom of the press.

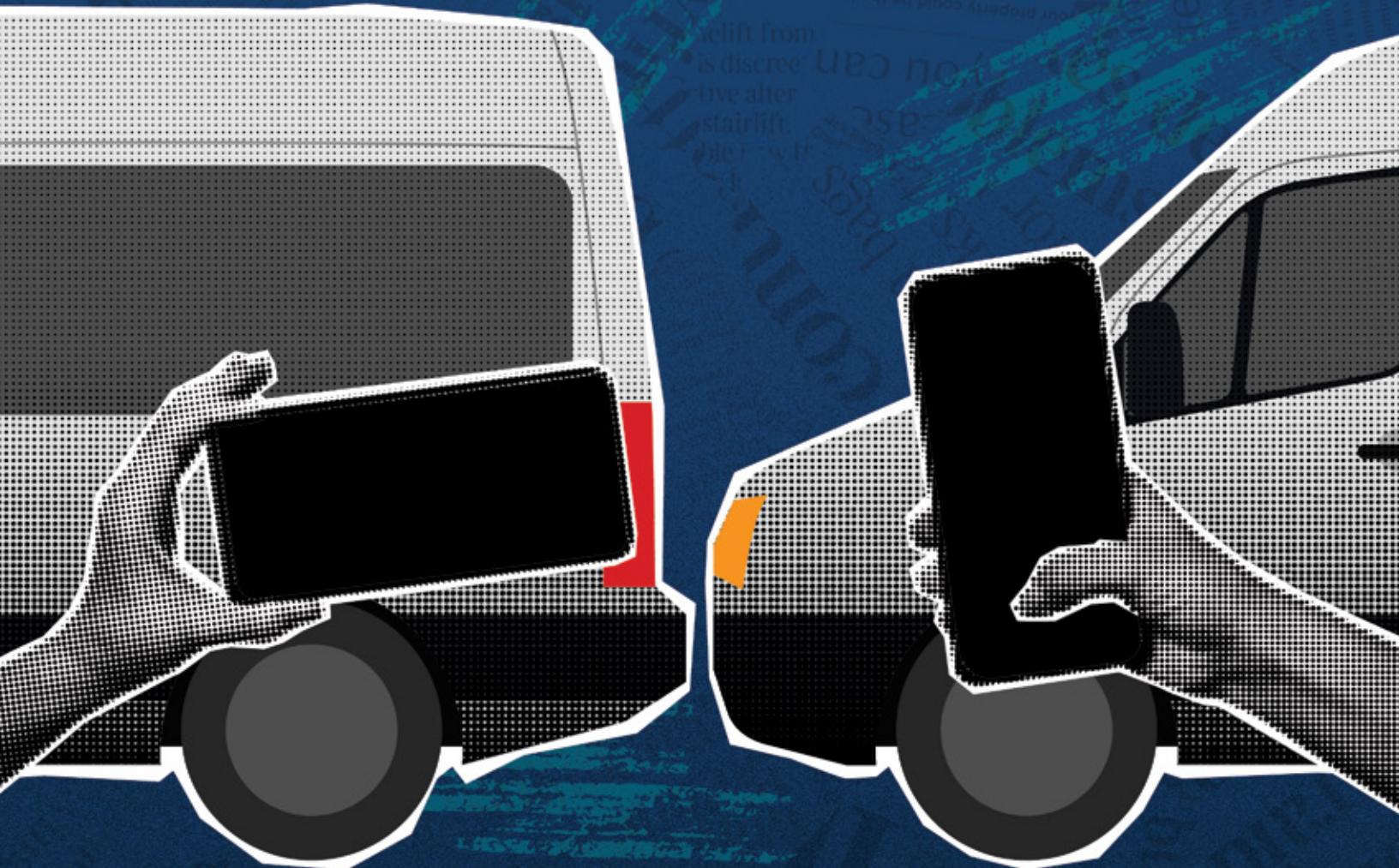
## **Recommendation 5**

By June 2026, the Vancouver Police Board amend its policy regarding handling of service and policy complaints to require that all complaints are handled in a procedurally fair manner and with rigour, including by ensuring that members involved in a matter under investigation are not tasked with investigating their own actions or those of their superiors and that all handling of complaints is addressed in a manner that is free from conflicts of interest, either real or perceived, and transparent.

## **Recommendation 6**

By June 2027, the Ministry of Public Safety and Solicitor General introduce amendments to the *Police Act* to:

- amend s. 171(1) to make explicit that where investigations of Service and Policy complaints are conducted, they can be done by an independent third party
- amend s. 171(2) to make compliance with the Office of the Police Complaint Commissioner's recommendations mandatory
- amend s. 173(1)(b) to change non-binding recommendations on investigation, study or procedural courses of action to binding directions



# Commissioner's opening

Freedom of the press is essential to ensuring we have shared truth in our society—that is, a shared understanding of facts and experiences that allows us to make informed political decisions and have constructive debates.

Shared truth is also a foundation for human rights: human rights protections rely on the shared truth that protecting and respecting human dignity is essential to a well-functioning society and to the well-being of the people within it.

This report—and the Inquiry from which it stems—centres on the importance of press freedom and the reliable sources of shared truth that go with it. It does so by reviewing restrictions placed on journalists during the April 2023 eviction of a homeless encampment that had been built up along Hastings Street in Vancouver. While it examines only two days on one street in one city, my Office delved into this topic because I wanted to ensure that any restrictions on freedom of the press anywhere in the province comply with law, including human rights protections, especially those involving police actions against marginalized people.

The role of journalists in informing the public about state actions (especially those impacting marginalized people) is vital to shine a light on human rights violations against vulnerable groups, raise public awareness and prevent people, organizations or governments from breaching others' human rights with impunity. Given the importance of media to a functioning democracy, any restriction on media freedom should be taken seriously and reviewed carefully—especially when the source of authority for the restriction is not clear and obvious. Complaint processes applicable to violations of press freedom must provide effective access to remedy, as a right without a remedy is meaningless.

Internationally, nationally and locally, journalists encounter challenges in doing their work, especially where they report on protests, often related to issues affecting the human rights of marginalized people.<sup>5</sup> Journalists working on human rights issues globally encounter resistance, obstruction or even retaliation from public or private actors. The obstacles faced by journalists fall on a spectrum of seriousness and severity, and have included censorship, criminalization and various legal restrictions such as arbitrary arrest and detention, and even violence.<sup>6</sup> The worst problems arise where journalists themselves have other intersecting identities, for example, female or racialized journalists.<sup>7</sup>

Many of these issues present themselves to some degree in Canada. Reporters Without Borders/Reporters Sans Frontiers (RSF), which publishes a World Press Freedom Index, ranks Canada's environment for journalism in 21st place out of 180 countries in 2025, down seven places from 14th in 2024. Since 2016, their annual assessment has concluded that the state of press freedom in Canada is "satisfactory," not "good."<sup>8</sup> Generally, RSF notes that as of 2023, there is no country in the Americas where the state of press freedom is "good."<sup>9</sup> In 2024, more than half of the countries in the Americas region saw their press freedom situation deteriorate.<sup>10</sup> For example, press freedom in Canada's neighbouring United States fell a precipitous 10 places from 45th in 2023 to 55th in 2024, and further to 57th in 2025.

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<sup>5</sup> Frank Smyth, *Safety of journalists covering protests: preserving freedom of the press during times of turmoil*, (UNESCO, 2020), 3, <https://unesdoc.unesco.org/ark:/48223/pf0000374206>; "Canada," Reporters Without Borders, 2025, <https://rsf.org/en/country/canada>; "Canada: RSF denounces 'catch-and-release' arrest of Montreal journalist Savanna Craig," Reporters Without Borders, last modified April 26, 2024, <https://rsf.org/en/canada-rsf-denounces-catch-and-release-arrest-montreal-journalist-savanna-craig>; Nighat Dad and Shmyla Khan, *Threats Against Journalists* (Digital Rights Foundation, 2020), [https://www.international.gc.ca/world-monde/assets/pdfs/issues\\_development-enjeux\\_developpement/human\\_rights-droits\\_homme/policy-orientation-journalists-journalistes-en.pdf](https://www.international.gc.ca/world-monde/assets/pdfs/issues_development-enjeux_developpement/human_rights-droits_homme/policy-orientation-journalists-journalistes-en.pdf); Lanza, *Protest and Human Rights*, para 51.

<sup>6</sup> Smyth, *Safety of journalists covering protests*, 3, 7-9.

<sup>7</sup> Brian Daly, Dexter Brown, Julie Sobowale and Nadia Stewart, *Amplifying Voices, Protecting Lives: Addressing Systemic Racism in Media*, (The Canadian Association of Black Journalists, November 16, 2020), [https://www.international.gc.ca/world-monde/assets/pdfs/issues\\_development-enjeux\\_developpement/human\\_rights-droits\\_homme/policy-orientation-racism-racisme-en.pdf](https://www.international.gc.ca/world-monde/assets/pdfs/issues_development-enjeux_developpement/human_rights-droits_homme/policy-orientation-racism-racisme-en.pdf); Dad and Khan, *Threats Against Journalists*; Kat Eschner, *Poisoned Well: The results of a roundtable on journalists and online hate* (Canadian Association of Journalists and the Canadian Journalism Foundation, 2022), 9, 25, [https://caj.ca/wp-content/uploads/poisoned\\_well-1.pdf](https://caj.ca/wp-content/uploads/poisoned_well-1.pdf); Smyth, *Safety of journalists covering protests*, 10.

<sup>8</sup> Reporters Without Borders, "Canada."

<sup>9</sup> "The Americas: Press Freedom Threatened by Political Instability," Reporters Without Borders, 2023, <https://rsf.org/en/classement/2023/americas>.

<sup>10</sup> "The Americas: Political pressure increasingly threatens journalistic independence and safety," Reporters Without Borders, 2024, <https://rsf.org/en/classement/2024/americas>.

Within Canada, most reported incidents affecting press freedom occur in British Columbia, Quebec and Ontario.<sup>11</sup> In recent years, journalists have faced criminal charges<sup>12</sup> and have had to go to court to ensure they can access places that may otherwise be restricted by injunctions.<sup>13</sup> While many of these incidents have corresponded with press reporting on Indigenous land defence protests, journalists reporting on forced eviction of tent encampments have seen a notable increase in restrictions across the country.

While this Inquiry was not an investigation of decampment practices and their human rights implications, it is important to provide the context for this media exclusion zone.

Tent encampments are a conspicuous sign of Canada and British Columbia's lack of progress in fulfilling their commitments to social and economic rights. As the Federal Housing Advocate recently found, "encampments exist only because of a larger, systemic failure to uphold the right of all people to adequate housing without discrimination."<sup>14</sup> What is more, instead of responding to encampments by implementing a human rights-based approach, governments often react by resorting to forced evictions of encampment residents. These evictions exacerbate the persistent human rights violations that permit encampments to exist. Indeed, the UN Human Rights Commission has recognized that "the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing."<sup>15</sup>

In order for the public to be informed about the right to housing—and to mobilize to advocate for human rights of encampment residents—human rights advocates and the press must be permitted to work without unreasonable interference to gather and disseminate information about incidents of forced eviction.

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<sup>11</sup> "Incidents," Canada Press Freedom Project, 2025, <https://canadapressfreedom.ca/category/incidents/>; Canada Press Freedom Project, 2024 Report, <https://canadapressfreedom.ca/the-canada-press-freedom-project-2024-report/>.

<sup>12</sup> Reporters Without Borders, "*The Americas: Political pressure increasingly threatens journalistic independence and safety.*"; See also Jonny Wakefield and Jackie Carmichael, "Charges withdrawn against journalist arrested at Edmonton homeless encampment protest," *Edmonton Journal*, March 1, 2024, <https://edmontonjournal.com/news/crime/charges-withdrawn-edmonton-journalist-arrested-homeless-encampment/>.

<sup>13</sup> Emma Gilchrist, "Why The Narwhal and Amber Bracken are Suing the RCMP," *The Narwhal*, February 13, 2023, <https://thenarwhal.ca/bracken-narwhal-rmp-lawsuit/>.

<sup>14</sup> The Office of the Federal Housing Advocate, *Upholding dignity and human rights: the Federal Housing Advocate's review of homeless encampments – Final report* (The Office of the Federal Housing Advocate, 2024), 10, [https://www.chrc-ccdp.gc.ca/sites/default/files/documents/final-report-federal-housing-advocate-s-review-of-encampments\\_0.pdf](https://www.chrc-ccdp.gc.ca/sites/default/files/documents/final-report-federal-housing-advocate-s-review-of-encampments_0.pdf).

<sup>15</sup> *Forced Evictions*, UN Commission on Human Rights, Resolution 1993/77, E/CN.4/RES/1993/77, 9 March 1993.

As noted by one encampment resident after his belongings were destroyed during an eviction in Prince George:

***I want the court and this city to know we are people and we exist. We just want to survive and be treated like human beings. What was done to us was very hurtful.<sup>16</sup>***

It was with these concerns in mind that I decided to undertake this Inquiry, which began on Dec. 12, 2023. There is significant public interest in having an accurate account of what occurred on April 5 and 6, 2023, and in better understanding the emergent practice of creating exclusion zones during the eviction of homeless encampments and otherwise.

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<sup>16</sup> As quoted in Joe Hermer, *Case Study: Prince George – A human rights analysis of encampments in Canada*, (Office of the Federal Housing Advocate, 2022), 14, [https://homelesshub.ca/wp-content/uploads/2024/04/Prince\\_George\\_encampment\\_case\\_study-EN\\_1.pdf](https://homelesshub.ca/wp-content/uploads/2024/04/Prince_George_encampment_case_study-EN_1.pdf).



ACCESS DELAYED  
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# Terms of reference

The Commissioner is responsible for promoting and protecting human rights in the province of British Columbia. The Commissioner's powers and mandate are outlined in section 47.12(1) of the *Human Rights Code* (the Code) and include:

- identifying, and promoting the elimination of, discriminatory practices, policies and programs (section 47.12(1)(a))
- publishing reports, making recommendations or using other means the commissioner considers appropriate to prevent or eliminate discriminatory practices, policies and programs (section 47.12(1)(c))
- examining the human rights implications of any policy, program or legislation, and making recommendations respecting any policy, program or legislation that the commissioner considers may be inconsistent with the Code (section 47.12(1)(f))
- promoting compliance with international human rights obligations (section 47.12(1)(i))

The Commissioner also has the power to inquire into any matter where such an inquiry would promote or protect human rights (section 47.15).

**In this Inquiry, the Commissioner sought to answer the following questions:**

- 1** Why were media and observers excluded from 9 a.m. to 9:45 a.m. at a stretch of East Hastings Street from Main Street to Carrall Street on April 5, 2023?
- 2** Why were the traffic cameras shut down at the corner of East Hastings Street and Main Street from 9 a.m. to 9:45 a.m. on April 5, 2023?
- 3** Did the creation of this exclusion zone comply with law and protections for freedom of the press?
  - a)** What is the scope of the legal authority to create exclusion zones?
  - b)** How frequently are exclusion zones created without an injunction?
  - c)** Are there special considerations when press freedom is at issue?
  - d)** Was that authority properly exercised during the DTES decampment on April 5, 2023?
- 4** Did the shutdown of the traffic cameras comply with human rights standards?

The Commissioner decided to focus only on media exclusion zones created without an injunction specifically providing for media exclusion because the legal authority for a court granting an injunction is distinct. The legal authority to exclude media from police actions without the benefit of an injunction specifically providing for such exclusion is much less clear and raises significantly different considerations.



# Methodology

## Commissioner's production orders

To answer the above questions, the Commissioner ordered the City of Vancouver and the Vancouver Police Department to provide records including records related to the planning, implementation and decision to exclude or restrict media and public access to a stretch of East Hastings Street on April 5, 2023, and records relating to the traffic camera shutdown on April 5, 2023. The order sought records concerning:

- a. the reasons for the restrictions or exclusions of media;
- b. any notice of the restriction given to media or the public;
- c. the geographic parameters of the zone;
- d. the media companies and individuals whose access was restricted from the zone, and whether and when access was granted on April 5, 2023;
- e. the media pool camera;
- f. the muster point for media;
- g. any planning or guidance on how officers were to respond to violations of the restrictions or exclusions; and
- h. details of police activity in the zone during any times media access was restricted.

Further, the Commissioner ordered the VPD and the City to provide the following information:

1. any internal policies, procedures or training documents on the use of exclusion or restriction zones
2. a description of how they define the term “exclusion zone”

The Commissioner also ordered the VPD to provide:

- a) records relating to any complaints the VPB has received about the VPD’s use of exclusion or restriction zones between Jan. 1, 2018 and Dec. 31, 2023
- b) data for every instance a public or media exclusion zone was used between Jan. 1, 2018 and Dec. 31, 2023, including:
  - i) whether the exclusion or restriction zone was created with or without a court injunction;
  - ii) if it was created with an injunction, the language from the court order that authorized the exclusion or restriction zone;
  - iii) if it was created without an injunction, the legal authority relied on to create the exclusion zone or restriction on public/media access;
  - iv) reasons for the exclusion or restriction zone;
  - v) the size and duration of the exclusion or restriction zone;
  - vi) whether the exclusion or restriction zone applied to the media and the public in the same way or whether there were special considerations for the media.

Finally, the Commissioner ordered the VPB to produce records about any complaints the VPB has received about the VPD’s use of exclusion zones in the past five years as well as information about the VPB’s investigation of the April 5, 2023, complaint into police use of media exclusion zones which was forwarded to the Board by the Office of the Police Complaint Commissioner.

The Commissioner’s initial order to the VPD and the City set a response deadline of Feb. 2, 2024. While both the VPD and the City did provide many responsive records by this date and the Commissioner appreciates their cooperation in doing so, it quickly became clear that the responses to the order were incomplete. The Commissioner then had to follow up several times to receive key documentary evidence, including operational plans, field notes from VPD commanders and emails containing important details about access that was to be granted to media during the operation.

## Key informant interviews and engagements

The Commissioner also issued orders to representatives of the City and the VPD to attend interviews and answer questions. The interviews, which took place in the spring of 2024 and 2025, were conducted under oath or affirmation and were recorded and transcribed. Commissioner counsel interviewed four City employees (then General Manager of Arts, Culture and Community Services, General Manager of Engineering, Associate Director of Traffic & Data Management and Director of Streets), three VPD employees (then Superintendent Don Chapman and Gold Commander for the decampment, then Inspector who was the Inner Bronze Commander, one of the two Bronze Commanders and the Media Relations Officer). Below, the Commissioner refers to representatives of the City and the VPD by their titles or roles on April 5 and 6, 2023, although then Superintendent Don Chapman is named in relation to the discussion of the public complaint to the Vancouver Police Board.

Counsel also interviewed 10 representatives of the media under oath or affirmation. In order to determine which media representatives to invite to interviews, the Commissioner reviewed the available media stories from April 5 and 6, 2023, as well as the records provided by the VPD and City in response to her order to identify media workers who appeared to be present in the DTES on April 5 and 6, 2023. The Commissioner invited 16 media representatives to interviews (representative of a broad range of outlets and types of media). Ten accepted the invitation and attended. Four did not respond and two were not permitted by their media outlets to participate in the Inquiry. The media outlets that did not wish to participate in the Inquiry requested that the Commissioner not issue an order compelling their journalists' attendance or production of other records, and the Commissioner accepted that request in the interests of protecting press freedom.

The Commissioner sought input from media representatives and community through two roundtables—one for each group—held in August 2024. The first roundtable was attended by nine individuals representing media organizations and individual journalists. The second roundtable was attended by five individuals representing five community organizations that work to support people living in the Downtown Eastside. The Commissioner sought input from media representatives through an additional roundtable in September 2025. This roundtable was attended by eight media representatives and organizations. The Commissioner did not make any findings of fact based on the roundtable discussions.

The Commissioner engaged three subject matter experts, Dr. Robert Diab, Marc Kruse and Ethan Cox, who reviewed and commented on interview questions and materials for the roundtables and reviewed the Commissioner's draft report.

Some of the evidence received during the Inquiry was conflicting. Where evidence presented in interviews conflicted with written documentation, other interviews or other records, the Commissioner assessed the evidence on the balance of probabilities to determine which version of events is more likely to have occurred; these instances are indicated in the report. Where possible, the Commissioner relied on the VPD's computer aided dispatch (CAD) transcripts, recordings of VPD radio broadcasts and on scribe notes from VPD commanding officers to resolve conflicts. The Commissioner found both sources of evidence to be reliable and specific. With respect to the media evidence, some media provided videos and photographs to corroborate their evidence. Especially where their oral evidence was corroborated by videos, photographs or by VPD scribe notes or radio broadcasts, the Commissioner found this evidence to be reliable. In other places in the report, the Commissioner has indicated why she found some evidence to be more credible or reliable than other evidence.

The Commissioner's findings are laid out in the content that follows. It is important to note that the Commissioner's findings are not findings of criminal or civil liability. While the Commissioner cannot make findings of civil or criminal liability in an inquiry, she must assess the credibility of witnesses and the nature of the evidence to make findings of fact. She can apply the law on this basis, including "identifying, and promoting the elimination of, discriminatory practices, policies and programs" pursuant to s.47.12(1)(a) of B.C.'s *Human Rights Code*. The purpose of this Inquiry (and the Commissioner's inquiries more generally) is to prevent future human rights issues from occurring rather than for the purpose of finding liability.



# Background

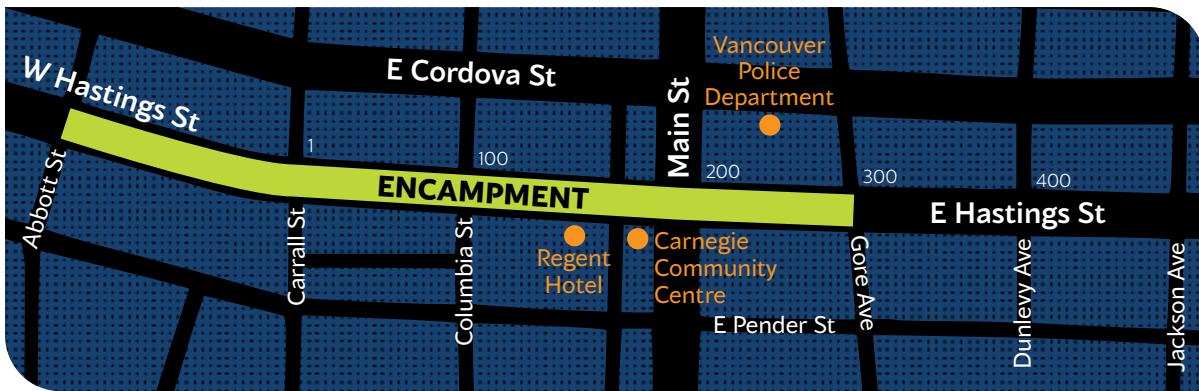
## The Hastings encampment and eviction

As of July 2022, an encampment had grown on Hastings Street, and there were tensions and concerns about safety and fire risks between City staff, police, encampment residents and advocacy organizations in the DTES.<sup>17</sup>

Before July 2022, the City of Vancouver would regularly “sweep” East Hastings Street, asking unhoused residents to remove their possessions or seizing property. While City staff were accompanied by the VPD, the VPD’s role was to provide security for the City and not to remove tents or belongings or otherwise clean or “sweep” the streets. The practice was controversial and advocacy organizations called on police to be removed from any involvement in street cleaning.<sup>18</sup> On July 1, 2022, the Vancouver Police Department stopped accompanying City staff during their daily bylaw enforcement in the DTES. The General Manager of Engineering Services at the City of Vancouver told us that City staff felt more vulnerable without the VPD’s presence. There was a brief pause in bylaw enforcement after the VPD stopped accompanying City staff while the City considered how to do this work without the VPD. According to the City and the VPD, the encampment then grew considerably during July to a peak of 180 structures.

<sup>17</sup> Justin McElroy, “A ‘Sad Day’ on Vancouver’s Downtown Eastside – But One We’ve Seen Before,” *CBC News*, April 6, 2023, <https://www.cbc.ca/news/canada/british-columbia/downtown-eastside-tent-removal-1.6803218>; Bridgette Watson, “Vancouver Police, City Staff Begin Removing Encampment on East Hastings Street,” *CBC News*, April 5, 2023, <https://www.cbc.ca/news/canada/british-columbia/vpd-encampment-removal-1.6802439>.

<sup>18</sup> Jen St. Denis, “Street Sweeps Steal from Homeless People, Say Downtown Eastside Advocates,” *The Tyee*, October 15, 2021, <https://thetyee.ca/News/2021/10/15/Street-Sweeps-Steal-From-Homeless-People-DTES-Advocates/>; BCOHRC interview with the City of Vancouver, Director of Streets.



On July 25, 2022, Fire Chief Karen Fry inspected the area in the Unit block West Hastings (the block where addresses run from 1–100) to 200 block East Hastings and surrounding vicinity and made an order pursuant to By-law No. 12472 (Fire By-law). The Fire Chief's order directed the City to address the fire safety risks presented by the structures in this area by, among other things, removing tents and other materials from locations that would obstruct access to buildings or otherwise impede the work of firefighters. The Order specified 5 p.m. on July 27, 2022, as the deadline for compliance. After the Fire Chief issued her order, the City developed the following initial plan to remove the structures along East Hastings:

- **July 27–Aug. 3, 2022:** the City would focus on providing information to residents about plans to remove structures
- **Aug. 3–8, 2022:** the City would remove high risk structures
- **Aug. 9, 2022, onwards:** the City would take a block-by-block approach to remove remaining structures<sup>19</sup>

On Aug. 9, 2022, the City planned to remove the remaining structures. According to the VPD:

*On August 9, at the request of the COV, the VPD dedicated members to stand by and keep the peace while the COV employees took over the information campaign. The in-person communication and information strategy employed by COV staff was met by a large disruption. This disruption by special interest groups quickly spilled into the street, blocking traffic and forcing the closure of the 100 Block of East Hastings Street. Heightened tensions led to the COV and VFRS [Vancouver Fire Rescue Services] ceasing their informational activities early.<sup>20</sup>*

<sup>19</sup> Records received from the City of Vancouver in response to the Commissioner's production order.

<sup>20</sup> Records received from the Vancouver Police Department in response to the Commissioner's production order.

The entire encampment area included the five blocks of East Hastings Street from Abbott Street to Gore Street. The Fire Chief's order covered the north and south sides of East and West Hastings and Main Street, O Block West Hastings to 200 block East Hastings. The City determined that "[t]o be inclusive of the surrounding vicinity, staff implementation will extend from Abbott to Gore, including Carrall, Columbia, Main and Gore streets as indicated above." It is noteworthy that the decampment zone was significantly larger than the scope of the Fire Chief's order, and covered areas that the Fire Chief had examined but did not include in the order. The decampment was the tenth eviction of an encampment located within a kilometre of the epicentre of the Downtown Eastside at Main and Hastings Streets in 10 years.<sup>21</sup>

On Aug. 9, 2022, an incident at the Carnegie Centre (located at the intersection of Main Street and Hastings Street) involving a person reported to be causing a disturbance at the Centre resulted in a police response, arrest of the accused person and altercations between members of the public and the VPD. As a result, the VPD formed a police line across the intersection of Main and Hastings at around 3 p.m. Traffic camera footage, the Daily Hive reporting and posts by users on Twitter (now X) confirmed that the VPD stood shoulder to shoulder and formed a line in order to impede traffic access at the intersection of Main and Hastings Streets in Vancouver.<sup>22</sup>

The incident led encampment residents and advocates to clash with the police. Both the VPD and the City explained that, from their perspectives, the advocates and protestors confused the police response to the disturbance as a response to the encampment and tensions escalated as a result.<sup>23</sup>

According to the VPD:

*An unrelated arrest at the Carnegie Centre sparked an already hostile crowd made up of encampment residents and protesters to swarm the arresting officers and prevent them from making a lawful arrest. Eight police officers were assaulted, seven were injured and eight people were arrested. These assaults included members being bit, punched, struck with improvised weapons and having liquid thrown on them.<sup>24</sup>*

<sup>21</sup> McElroy, "A 'Sad Day' on Vancouver's Downtown Eastside—But One We've Seen Before."

<sup>22</sup> Amir Ali, "Violence Erupts Between Police and Large Crowd in Downtown Eastside," *Daily Hive*, August 9, 2022, <https://dailyhive.com/vancouver/police-downtown-eastside>; tyson singh kensall (@tyssingh), "Main & Hastings right now," Twitter (now X), August 9, 2022, <https://x.com/tyssingh/status/155712545050940212>; Imtiaz Popat (@PopatImtiaz), "Police siege on Hastings and Main," Twitter (now X), August 9, 2022, <https://x.com/PopatImtiaz/status/1557129590044102656>.

<sup>23</sup> BCOHRC interview with the then General Manager, Arts, Culture and Community Services.

<sup>24</sup> Records received from the Vancouver Police Department in response to the Commissioner's production order.

However, community organizations had a very different view of the events. The Georgia Straight reported a statement by Our Streets which read:<sup>25</sup>

*VPD constables arrived at the 100 block of East Hastings Street in front of the Regent Hotel today at approximately 9:30 AM. At this point, VPD officers accompanied CEWs [City Engineering workers], and representatives of VFRS [Vancouver Fire and Rescue Services], who parked vehicles directly against the south curb, leaving residents with little room to organize their belongings. Contrary to the City's promises, BC Housing outreach workers did not arrive to offer residents assistance. A number of Our Streets representatives arrived around 10:00 a.m. and began meeting with supporters, doing legal observation, and speaking with the media to ensure that they were engaging respectfully. There was a demand from a supporter to block off Hastings from Main to Carrall to ensure the safety of block residents, supporters, and Our Streets team members.... BC Housing had no presence throughout the day, and we did not see organized outreach activities from other organizations with the exception of those involved in block stewardship....*

*Around this time [2 p.m.], a passerby entered the scene, behaving erratically, but not posing any threat to people in the area. Supporters and block residents conversed with this person to deescalate the situation. Around 2:30 p.m., CEWs left the scene and were replaced in presence with VPD officers to surveil the crowd. Supporters were then asked by residents to leave in order to give them some space, and promptly did so. A group of Our Streets members and supporters proceeded to walk down the sidewalk on East Hastings Street towards Carnegie, arriving there around 2:45 p.m. At this time, the passerby who had been behaving erratically caused a disturbance in front of Carnegie, again, without posing any serious threat to bystanders. Private security at Carnegie signaled to the large group of VPD officers,*

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<sup>25</sup> The Georgia Straight Staff, "Vancouver Police and Our Streets Provide Radically Different Interpretations of What Happened Outside Carnegie Centre," *The Georgia Straight*, August 11, 2022, <https://www.straight.com/news/vancouver-police-and-our-streets-provide-radically-different-interpretations-of-what-happened#>.

*who proceeded to escalate the situation by physically restraining and roughly detaining the man by “hog-tying him” by bounding his feet and hands, while a growing crowd filmed the incident and yelled to express their anger at what they were witnessing. The man was carried back to the paddy wagon.*

*At this point, a woman in the crowd of bystanders allegedly threw a light object in the direction of a VPD officer. Police quickly tackled and arrested her, and a confrontation between police and bystanders ensued. VPD constables were pushing and shoving bystanders, pulling people from the crowd and deployed pepper spray. Supporters who were walking by and not involved in the initial incident were violently grabbed by police and thrown to the ground, with one person having their head slammed on the pavement. Other members of the crowd then intervened, and five arrests were made, including three members of the Our Streets team. A massive police presence assembled at the intersection of Main and Hastings, blocking off the intersection with a line of officers. The arrested individuals were taken to the VPD station at 238 East Cordova Street, followed closely by a support team who will remain there until release.*

Aug. 9, 2022, represented a significant setback for the City.<sup>26</sup> Following the incident, the City scaled back the decampment efforts for the time being, although they report that staff remained in the encampment daily, engaging with individuals, providing services, addressing fire safety concerns and managing debris and materials.<sup>27</sup>

Sometime after Aug. 9, 2022, the City created a new plan for the decampment which included:

- **July to October 2022:** sought voluntary compliance with requests to remove structures and address the identified public safety concerns along the Hastings Street corridor
- **November 2022 to March 2023:** took an incremental approach to removing structures in which City Engineering crews identified high priority areas based on highest risk and impediments to services and fire egress

<sup>26</sup> BCOHRC interview with the then General Manager, Arts, Culture and Community Services; BCOHRC interview with the Gold Commander.

<sup>27</sup> This incident is potentially relevant as context for the April 2023 media exclusion. However, since it does not form the basis of this Inquiry, no interviews were conducted with advocates or others involved in this incident.

The City of Vancouver initially saw some success through the effort in its first phase. However, according to the then City Manager this progress was short lived and by “mid-October (2022), the number of structures had increased back to 180 structures and was continuing to grow.”<sup>28</sup>

In the second phase of the plan, according to the City, Engineering crews provided a seven-day written notice of by-law enforcement (also referred to by the City as “impound days”), and each subsequent day Engineering workers and Homelessness Services staff visited the site to provide a verbal reminder to the residents of the deadline, offer support packing up and encourage them to accept shelter or any Single Room Occupancy (SRO) units available through BC Housing. The City of Vancouver explained it was clear by late February 2023 that the incremental approach to enforcement was nearing the end of its effectiveness.

In early March 2023, City of Vancouver staff started to develop a plan to quickly bring the encampment to a close.<sup>29</sup> The City cited many reasons for this, including fire risks, increased aggression between encampment members and directed at City staff, reports of criminal activity including the presence of organized crime, increases in assaults in the encampment zone, a high risk of gender-based violence against women residing in the encampment, increases in guns and other weapons and the accumulation of structures. During the administrative fairness review of this report, the City emphasized the complexity of this decampment and their concerns for protecting staff safety during the operation.

The City developed a two-stage plan to bring the Hastings encampment to a close:

- **First Stage** (mid-March to April 4, 2023) aimed for the City to work with residents that were not deemed to be high risk of aggression towards staff and were more likely to comply with by-law enforcement. Staff would signal to people that they should accept shelter or consider moving as the encampment would be closing soon.
- **Second Stage** (April 5 and 6, 2023) was described by the City as a “public safety-led operation to address the high-risk sites where most of the occupants were associated with organized crime, illicit activities, or had exhibited aggression to City crews ...”<sup>30</sup>

The City of Vancouver developed a Hastings Destructuring Operational Plan for the April 5 and 6, 2023 decampment. In it, the City remained the overall lead organization for the decampment with Engineering staff identified as the primary lead in structure removal activities. The City and VPD agreed that the VPD would secure a work zone for the decampment.<sup>31</sup> While the City was the lead organization overall for the decampment and would be responsible for removing tents and other structures, the VPD assumed operational command for April 5 and 6, 2023. Accordingly, the VPD developed their own operational plan for the decampment which included a command structure (with Gold, Silver and Bronze Commanders).

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<sup>28</sup> City of Vancouver, Office of the City Manager, letter to Human Rights Commissioner, August 21, 2023, 7.

<sup>29</sup> City of Vancouver, Office of the City Manager, letter to Human Rights Commissioner, August 21, 2023, 13; BCOHRC interview with the then General Manager, Arts, Culture and Community Services.

<sup>30</sup> City of Vancouver, Office of the City Manager, letter to Human Rights Commissioner, August 21, 2023, 14.

<sup>31</sup> BCOHRC interview with the General Manager of Engineering; BCOHRC interview with the Inner Bronze Commander.

Ultimately, the decampment operation on April 5 and 6, 2023, was a “VPD led operation under [City of Vancouver] Engineering.” Then Superintendent Chapman explained:

***VPD led ... we were going to be the ones that were going to secure the area for the City, so the City could do their work. So, our members would be on the ground first for a bit of an analogy, “open the door” and the City can come in and conduct their work.***

With regard to security, the VPD’s role was to:

***[P]rovide security for the City workers to do their jobs (removal, By-law enforcement and/or impoundment). Security will be achieved through inner and outer containment perimeters and it is expected that portions of Hastings Street will be closed throughout the operational phase of this project. Individuals that require admittance into the “work zone” will be assessed on a case by case basis and maybe escorted to their destination by a VPD member.<sup>32</sup>***

The VPD Operations Plan contemplated the creation of this “work zone” or “safety zone,” described as follows:

***For safety the following will generally apply: The creation of a safety zone will be considered, as appropriate to the circumstances, to provide a safe working environment for members, COV employees, or any other resource deemed necessary. Consideration should be given to increasing and/or decreasing the size and scope of this zone to best accomplish mission objectives and ensure the safety of the public. The overarching goal of any safety zone will be to ensure safety while minimizing the impact on applicable Charter rights for people to freely move in the area.***

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<sup>32</sup> Records received from the Vancouver Police Department in response to the Commissioner’s production order.

No other reason beyond creating a safe work environment is included in the planning documents for the creation of the work zones or for restricting public or media access to them.

The City and the VPD decided that, during the decampment, entire blocks where City staff were working would be closed to the public with limited in/out privileges.

The City and VPD explained that they decided not to provide advance notice of the decampment to residents, community organizations or to the media because they were concerned about large crowds of people gathering. The City explained, “based on experience in previous encampments, there was a concern City workers could be swarmed as they carried out their work. This is very dangerous and the risk of such an occurrence needed to be minimized.... Accordingly, it was not possible to provide advance notice of specific dates to community groups, businesses and residents.”<sup>33</sup>

However, on April 2, 2023, a confidential operational plan for the decampment was leaked to the media. According to the VPD, this resulted in additional concerns with respect to crowd and traffic control in the area where the City would be working.<sup>34</sup>

On April 5, 2023, the City of Vancouver began removing structures and possessions that belonged to encampment residents, an operation which lasted two days.

Multiple reports by members of the media and others stated that an exclusion zone had been created during the decampment, which the VPD subsequently denied. Descriptions of media members’ experiences and of evidence provided by the police and City are provided under Finding 1 (p. 41) and a timeline of media experiences is available in the Appendix. Concerns about a lack of transparency during the decampment were exacerbated by an unexpected shut down of the traffic camera at the intersection of Main and Hastings Street from approximately 9 a.m. to 10:30 a.m. on April 5, 2023.

As a result of these media reports, concerns about press freedom arose within the Legislature during Question Period,<sup>35</sup> among the public and from oversight bodies. One member of the public wrote to the Office of the Police Complaint Commissioner (OPCC), alleging that police restricted media from the site during the decampment.<sup>36</sup> The Police Complaint Commissioner (PCC) forwarded the complaint to the Vancouver Police Board with a letter recommending that the Board obtain independent advice in addressing the complaint given that the Chair of the Police Board and the Chief Constable of the VPD were directly involved in the circumstances giving rise to the complaint. Instead of heeding the PCC’s recommendation, the Vancouver Police Board referred the complaint to the Chief Constables who requested then Superintendent Chapman and Gold Commander for the decampment to investigate the complaint. The Board’s Service or Policy Complaint Review Committee held a hearing into the complaint on Nov. 23, 2023. On behalf of the

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<sup>33</sup> City of Vancouver, Office of the City Manager, Letter to Human Rights Commissioner, August 21, 2023, 14.

<sup>34</sup> Vancouver Police Department, Letter received in response to Commissioner’s production order, February 2, 2024.

<sup>35</sup> Legislative Assembly of British Columbia, *Official Report of Debates (Hansard)*, 42-4, No. 314 (26 April 2023), at 10859 (A. Olsen), <https://www.leg.bc.ca/hansard-content/Debates/42nd4th/20230426pm-Hansard-n314.pdf>

<sup>36</sup> Member of public, Email to the Office of the Police Complaint Commissioner, April 5, 2023.

VPD, then Superintendent Don Chapman reported that the VPD had concluded that no exclusion zone had been created. The Committee dismissed the complaint without asking any questions or hearing any further evidence.

## Exclusion zone defined

There is no common law definition of an exclusion zone, nor is there legislation in B.C. that defines “exclusion zone.” Federally, to ensure security of intergovernmental conferences, the RCMP may “take appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances,”<sup>37</sup> but no similar power is granted beyond the scope of intergovernmental conferences or to municipal police forces.

Neither the City of Vancouver nor the Vancouver Police Department define what exclusion zones or safe work zones are, nor do they have policies or training on them (although the VPD clarified that their officers are trained extensively on issues relating to public safety). When asked to explain what their understanding is of a safe work zone and an exclusion zone, senior staff involved in the planning and decampment operation for the City and VPD provided varying explanations.

The Gold Commander said his understanding of an exclusion zone is that there is no entry whereas a safety zone is an area where there may be restrictions because of safety concerns:

*I'll give you an understanding from a layperson's point of view, exclusion means not allowed, no entry, no admittance.... But from the Gold Commander point of view, I would say an exclusion zone could also include that no entry, no admittance, but also no viewing.<sup>38</sup>*

In contrast he described a safety zone as “not an area of denial. It's an area where I'm using the resources that I have at hand to ensure the safety of all those risk factors ... are taken into account.”

<sup>37</sup> Foreign Missions and International Organizations Act, S.C 1991, c. 41, <https://canlii.ca/t/53406>.

<sup>38</sup> BCOHRC interview with the Gold Commander.

The Inner Bronze Commander described the difference between an exclusion zone and a safe work zone as:

*I guess an exclusion zone, like you're excluded from coming into the zone and a safety zone, it's like we don't want you in this zone because it's not safe for you to come in. So, I guess like—a crime scene ... "no, you're not allowed in the crime scene, because we have evidence that we have to process." So, we always set up an inner perimeter and an outer perimeter and you can set up your cameras on the outer perimeter, I've done it many many times ... you can get your visuals as long as the visuals aren't gonna compromise the investigation, so in this case, it's the same sort of idea, but just for different reasons.<sup>39</sup>*

The Media Relations Officer testified that he was not familiar with the term "exclusion zone," although said it is common practice for the Vancouver Police Department to create safe working zones. He said, "It's common for us to create a working zone, a working area for us to allow our officers to do their job, to preserve evidence in some cases and to balance the integrity of our work, the safety of our staff, the safety of others and the safety of the members of the public with the public's right to access." However, in a March 31, 2023 email planning for media access during the decampment, he wrote about "directing media to staging locations that are *outside* the perimeter of the exclusion zones." When asked about the use of the term exclusion zone in the planning email, the Media Relations Officer said that he meant in a colloquial sense, not a legal sense.

When asked about how the City of Vancouver defines exclusion zones or safe work zones, the General Manager of Engineering and the then General Manager, Arts, Culture and Community Services both said that they are not aware of the City having a definition of safe work zones or policies related to them. The General Manager of Engineering described a safe work zone as "an immediate area where the activity is happening." The then General Manager, Arts, Culture and Community Services described thinking of a safe work zone like a construction site where "the general public can't walk through while you're doing certain types of work."

When asked who would be permitted inside the safe work zone both the then General Manager, Arts, Culture and Community Services and the General Manager of Engineering said only people who are doing the work (for example, City staff and police) would be able to enter the work zone. When asked if other people would be restricted from entering the work zone the General Manager of Engineering said, "That's what I would hope." When asked specifically if media were allowed in safe work zones, the then General Manager, Arts, Culture and Community Services said no. The then General Manager, Arts, Culture and Community Services said that they always ensured that there were sightlines so media could film or photograph from outside the work zone.

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<sup>39</sup> BCOHRC interview with the Inner Bronze Commander.

However, when asked if the City had concerns about media accessing the safe work zone in April 2023, they both said no and confirmed that the difficult personal interactions City staff were having were not with the media, but rather with advocates or protestors.

In the Commissioner's view, the definitions suggested by the VPD and the City and the distinctions drawn between an "exclusion zone" and a "work zone" or a "safety zone" are overly formalistic and not based on principle or law. An exclusion zone is the closure or regulation of any form of access, including media access, to public space.<sup>40</sup> It might also be referred to as a no-go zone, buffer zone, temporary access control area, work zone, restriction or safety zone.<sup>41</sup> The significance of a restriction on access depends on its effect and the impact on press freedom, not on the words used to describe it or even the intent or purpose in establishing it.<sup>42</sup> The right to freedom of the press may be affected by partial as well as total restrictions.<sup>43</sup> Our reference to the term exclusion zone encompasses all the various names referred to above because of their similar effect on restricting the media access to specific areas and potentially the ability to gather and disseminate information to the public.

## The breadth and impact of exclusion zones generally

Exclusion zones have been used to control crowds, maintain public order at large events, restrict or control protests or demonstrations and to ensure the safety of people inside the zone.

Exclusion zones are usually used by police to enforce injunctions from a court, such as injunctions obtained by resource extraction companies. For example, to enforce injunctions obtained by resource extraction companies in B.C., the RCMP created exclusion zones on Burnaby Mountain (Transmountain injunction in November 2014), in Wet'suwet'en territory (Coastal Gas injunction January 2019) and in Fairy Creek (Teal Cedar injunction in May 2021).<sup>44</sup>

The Canada Press Freedom Project observed 57 denials of journalist access nationwide from 2021 until February 2025, 12 of which were in relation to journalists reporting on forced evictions of encampments and 16 of which were in relation to the use of exclusion zones in the enforcement of the Teal Cedar injunction at Fairy Creek.<sup>45</sup>

<sup>40</sup> Robert Diab, *Commissioned Paper: The Policing of Large-Scale Protests in Canada*, 41.

<sup>41</sup> Canada Press Freedom Project, "A History of Media Exclusion Zones."

<sup>42</sup> Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd., 551; Andrews v. Law Society of British Columbia, 173-174.

<sup>43</sup> UN Human Rights Committee, *General Comment no. 34, Article 19, Freedoms of Opinion and Expression*, CCPR/C/GC/34, 12 September 2011, paras 22-24, 26-29, 33-36, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>; UN Human Rights Committee, *General comment no. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add. 13, May 26, 2004, para 6, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.13&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.13&Lang=en); Lanza, *Protest and Human Rights*, para 31.

<sup>44</sup> Canada Press Freedom Project, "A History of Media Exclusion Zones."

<sup>45</sup> "Incidents – Denial of Access", Canada Press Freedom Project, <https://canadapressfreedom.ca/category/denial-of-access/>; "Incidents – Denials of Access at Fairy Creek," Canada Press Freedom Project, 2021, <https://canadapressfreedom.ca/category/denials-of-access-at-fairy-creek/>.

During the Commissioner's engagement session with community organizations, one participant described their organization's experience with the use of exclusion zones this way:

*We've seen [exclusion zones] being used both in [the Indigenous land defence] context and also in the context of more political activity on Indigenous lands. I don't think we've seen it as much yet for forms of protest or demonstrations that aren't Indigenous land defence, but there is this sort of dynamic of wherever the police are doing something ... or there might be some question about the activity that they're doing ... it's something that's already low visibility enough, then we're seeing these exclusion zones being used to essentially ... close the veil completely. And there's a reason why "secret police" is a scary thing. It has this strong connotation of authoritarianism. It is really deeply concerning, the way it's been used.<sup>46</sup>*

According to information received by the Commissioner in the Inquiry, between Jan. 1, 2018 and Dec. 31, 2023, the Vancouver Police Department used "exclusion zones" seven times: four of the exclusion zones were created to enforce an injunction/court order; two were created during COVID-19 protests under the *Access to Services (COVID-19) Act* and the other is the subject of this Inquiry. However, as noted above, the VPD do not have a commonly accepted definition of "exclusion zones" and therefore these statistics may be incomplete by the Commissioner's definition.

Injunctions and exclusion zones have a long and inequitable history of being used to stop Indigenous people from asserting land rights in Canada.<sup>47</sup> In 2017, the RCMP created the controversial Community-Industry Response Group (C-IRG) "to provide oversight in addressing energy industry (gas and oil pipeline) incidents and related public order, national security and crimes issues."<sup>48</sup> However, the use of injunctions and exclusion zones by the C-IRG have led to complaints about surveillance, harassment, criminalization and excessive use of force against Indigenous people. The C-IRG is currently facing complaints, lawsuits and a systemic review by the Civilian Review and Complaints Commission related to its actions.<sup>49</sup> In at least two cases, the Civilian Review Complaints Commission (CRCC) has found C-IRG's use of expansive exclusion

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<sup>46</sup> BCOHRC Community Engagement session, August 16, 2024.

<sup>47</sup> Canada Press Freedom Project, "A History of Media Exclusion Zones."

<sup>48</sup> In 2024, the C-IRG was renamed the Critical Response Unit (CRU-BC).

<sup>49</sup> "Update on The Status of C-IRG-Related Public Complaints and Reviews (as of September 30, 2024)," Civilian Review and Complaints Commission for the RCMP, Government of Canada, modified January 2025, <https://www.crcc-ccctp.gc.ca/en/update-status-c-irg-related-public-complaints-and-reviews>.

zones to be unreasonable.<sup>50</sup> The Yellowhead Institute issued a report examining 100 court cases of injunctions filed by and against First Nations in Canada and noted that half of the cases they reviewed involved First Nations who had erected blockades on their territories to protest resource development.<sup>51</sup> It is important to note that Indigenous Peoples in B.C. consider themselves to be upholding their Indigenous legal orders when using blockades as a tool of civil disobedience as “in some small measure, civil disobedience allows a subjugated group ... to reflect back to the domineering party the experience of being oppressed.”<sup>52</sup>

The use of media exclusion zones was highlighted for the first time in a legal context in the November 2020 report of the Civilian Review and Complaints Commission (CRCC) for the RCMP, which dealt with a complaint that the RCMP had excluded media when enforcing an injunction in response to anti-shale gas protests in Kent County, New Brunswick. Many of the protestors were members of the Elsipogtog First Nation. In its final report,<sup>53</sup> the CRCC recommended that RCMP “decisions to restrict access to public roadways or other public sites be made only with specific, objectively reasonable rationales for doing so, and if legally permissible, be done in a way that interferes with the rights of persons in as minimal a fashion as possible, for example, a buffer zone that is as limited in size as possible and an exclusion that is as short in duration as possible.”<sup>54</sup>

Nevertheless, journalists have been arrested and sometimes even criminally charged with contempt or obstructing police for violating an exclusion zone. For example, in Ontario, on September 2, 2020, journalist Karl Dockstader was arrested and charged with mischief and failure to comply with a court order while reporting on a land dispute between members of Six Nations, the band council and a development company. The charges banned him from returning to the site until they were withdrawn three months later.<sup>55</sup>

In Newfoundland and Labrador, journalist Justin Brake was arrested and charged with contempt for violating an injunction providing for an exclusion zone preventing protesters from accessing the site of a hydro-electric generating station project at Muskrat Falls on October 22, 2016. The injunction prohibited persons from being at the construction site and from blocking the road to the project. Mr. Brake admitted to trespassing in the area while working as a journalist but did not block the

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<sup>50</sup> Civilian Review and Complaints Commission for the RCMP, *Summary of Commission's Final Report on a Public Complaint Review of RCMP C-IRG Enforcement Actions at Fairy Creek, BC*, (Civilian Review and Complaints Commission for the RCMP, September 11, 2024), [https://www.crcc-ccetp.gc.ca/pdf/circ\\_gisci-en.pdf](https://www.crcc-ccetp.gc.ca/pdf/circ_gisci-en.pdf); Civilian Review and Complaints Commission for the RCMP, *Commission's Final Report* (Civilian Review and Complaints Commission for the RCMP, December 19, 2024).

<sup>51</sup> Marc Kruse and Carrie Robinson, *Injunctions by First Nations: Results of a National Study*, (Yellowhead Institute, 2019), 2, 3, <https://yellowheadinstitute.org/wp-content/uploads/2019/11/injunction-brief.pdf>; Shiri Pasternak and Hayden King, *Land Back, A Yellowhead Institute Red Paper*, (Yellowhead Institute, 2019), 10, <https://redpaper.yellowheadinstitute.org/wp-content/uploads/2019/10/red-paper-report-final.pdf>.

<sup>52</sup> John Borrows, *Canada's Indigenous Constitution* (University of Toronto Press, 2010), 51.

<sup>53</sup> Civilian Review and Complaints Commission for the RCMP, *Commission's Final Report into the RCMP's Response to Anti-shale Gas Protests in Kent County, New Brunswick*, (Civilian Review and Complaints Commission for the RCMP, November 2020), <https://www.crcc-ccetp.gc.ca/pdf/Kent-Report-en.pdf>.

<sup>54</sup> Civilian Review and Complaints Commission for the RCMP, *Commission's Final Report into the RCMP's Response to Anti-shale Gas Protests in Kent County, New Brunswick*, paras 175-176.

<sup>55</sup> NNL Staff, “Indigenous Journalist Arrested Covering Dispute at Six Nations” *NetNewsLedger*, September 5, 2020, <https://www.netnewsledger.com/2020/09/05/indigenous-journalist-arrested-covering-dispute-at-six-nations>; Canada Press Freedom Project, “A History of Media Exclusion Zones.”

road or engage in protest activities.<sup>56</sup> Yet, the charges were pursued until the Court of Appeal of Newfoundland and Labrador changed the injunction to make media exempt from its restrictions.<sup>57</sup>

At Fairy Creek in Pacheedaht First Nation territory on Vancouver Island, the RCMP enforced a court injunction aimed at preventing protesters from interfering with old-growth logging through a policy of restricting access to the injunction area by means of exclusion zones and checkpoints beyond the expanse of the injunction zone, which applied to media and the public. A consortium of media organizations successfully challenged the RCMP's actions in the BC Supreme Court in *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2021 BCSC 1554. Despite the Court's ruling, activists allege that the RCMP continued to use media exclusion zones and arrested photojournalist Colin Smith who attempted to document further protests at the Fairy Creek headquarters camp on October 13, 2021.<sup>58</sup>

In February 2020, documentary filmmaker and journalist, Melissa Cox was arrested while filming a railway blockade taking place during the enforcement of a Coastal GasLink injunction creating an exclusion zone in Wet'suwet'en territory. Despite having a press pass and being identified as a journalist to the RCMP, she was arrested and detained for seven hours. She alleged that the RCMP painfully twisted her arm and tampered with her camera, before releasing her on restrictive conditions.<sup>59</sup>

Similarly, the same month, Gitxsan journalist Jerome Turner was detained by the RCMP for eight hours while reporting in Wet'suwet'en territory, despite having an assignment letter.<sup>60</sup> Turner and his editor at Ricochet Media, Ethan Cox, made a complaint about Turner's detention to the CRCC. On Dec. 19, 2024, the CRCC issued its final decision on the complaint, finding that the RCMP's actions in detaining Turner were unreasonable and violated his Charter rights.<sup>61</sup> Significantly, the RCMP Commissioner accepted the CRCC's findings and all but one of the recommendations.<sup>62</sup> Following the CRCC's recommendation, the RCMP apologized to Turner and agreed to make changes to policy and practice.<sup>63</sup>

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<sup>56</sup> *Re Brake*, 2019 NLCA 17, paras 6, 9, 14, <https://canlii.ca/t/hzf01>.

<sup>57</sup> *Re Brake*, 2019 NLCA 17.

<sup>58</sup> The Local Journalism Initiative, "Old-Growth Protesters Allege RCMP's Fairy Creek Actions Defy Recent Court Order," *CTV News*, August 13, 2021, <https://www.ctvnews.ca/vancouver/vancouver-island/article/old-growth-protesters-allege-rcmps-fairy-creek-actions-defy-recent-court-order/>.

<sup>59</sup> "Canada Rapidly Losing Moral Authority After Arrest of Award-Winning Filmmaker," The Canadian Association of Journalists, March 4, 2020, <https://caj.ca/canada-rapidly-losing-moral-authority-after-arrest-of-award-winning-filmmaker/>.

<sup>60</sup> Jerome Turner, "Detained at Gidimt'en: Inside the Media Confinement Zone," *Ricochet Media*, February 12, 2020, <https://ricochet.media/justice/police-state/detained-at-gidimten-inside-the-media-confinement-zone/>; Karyn Pugliese, "RCMP Apologize for Threatening, Detaining Gitxsan Reporter During Wet'suwet'en Raid" *APTN News*, February 21, 2025, <https://www.aptnnews.ca/national-news/rcmp-apologize-for-threatening-detaining-gitxsan-reporter-during-wetsuweten-raid/>.

<sup>61</sup> Civilian Review and Complaints Commission for the RCMP, *Commission's Final Report* (Civilian Review and Complaints Commission for the RCMP, December 19, 2024).

<sup>62</sup> "Summaries Of Reviewed Public Complaints: RCMP Members Enforcing the Coastal Gaslink Injunction Against Indigenous Land Protests Unreasonably Prevented a Journalist from Entering a Large Exclusion Zone, Threatened Him With Arrest Without Grounds, and Detained Him Without Authority (24-207)," Civilian Review and Complaints Commission for the RCMP, Government of Canada, 2024, <https://www.crcrcc-cctcp.gc.ca/en/sample-review-findings>.

<sup>63</sup> Jerome Turner and Ethan Cox, "EXCLUSIVE: RCMP Formally Apologize for Violating Journalist's Rights, Commit to Changes in Wake of Explosive Oversight Report," *Ricochet Media*, February 21, 2025, <https://ricochet.media/labour/media-labour/exclusive-rcmp-formally-apologize-for-violating-journalists-rights-commit-to-changes-in-wake-of-explosive-oversight-report/>.

In November 2021, journalists Amber Bracken and Michael Toledano were arrested by the RCMP while reporting on the enforcement of the same Coastal GasLink injunction.<sup>64</sup> They were held for four days, which interfered with their ability to work and delayed the release of photos, images and their reporting on the events of the day. The charges against both were later dropped. Nevertheless, Bracken and her media outlet, *The Narwhal*, have since sued the RCMP for her arrest.<sup>65</sup> Importantly, all of these examples involve media exclusion zones in the context of injunctions, which are distinct from the facts that are the subject of this Inquiry, as no injunction was in place for the April 2023 decampment. In addition, no journalists were arrested during the decampment. However, these cases are informative for showing what can be at stake for journalists when they seek to report on situations from which they are excluded by police, and forms part of the current context of press freedom in Canada.

Recently in Canada, municipal police have reportedly been establishing “work zones” restricting public and/or media access during forced evictions of encampments, including in Toronto in the summer of 2021, in Vancouver during the forced evictions in the DTES on April 5 and 6, 2023 and reportedly in CRAB park in April 2024,<sup>66</sup> in Edmonton in January 2024 and in Kelowna in April 2025.

In June 2021, Toronto Police detained photojournalist Ian Willms while he was covering an eviction in Trinity Bellwoods Park in Toronto, Ontario. Willms climbed over a fence set up by police to block access to the area after asking several times to be let in. Although he was wearing a press pass, he was detained, taken to a police station and his equipment confiscated. He was told he would be charged with criminal offences, but it is not clear whether this occurred.<sup>67</sup>

Just a month later in July 2021, Canadian Press photojournalist Chris Young was arrested by corporate security while reporting on a removal of an encampment in Alexandra Park, Toronto, Ontario. Young entered the encampment area while the park was open, although fences were later erected. Despite showing his press credentials, he was asked to leave. He refused to leave when he was asked to do so. At that point he was placed in handcuffs and forcibly removed.<sup>68</sup>

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<sup>64</sup> Matt Simmons, “RCMP Arrest Journalists, Matriarchs and Land Defenders Following Gidimt’en Eviction of Coastal Gaslink,” *The Narwhal*, November 20, 2021, <https://thenarwhal.ca/journalists-arrested-rcmp-wetsuweten/>.

<sup>65</sup> Gilchrist, “Why The Narwhal and Amber Bracken are Suing the RCMP.”

<sup>66</sup> Dustin Gufrey, “Exclusion Zone Blocked Journalists Covering Vancouver Tent City Teardown,” *The Maple*, April 16, 2024, <https://www.readthemaple.com/exclusion-zone-blocked-journalists-covering-vancouver-tent-city-teardown/#::text=As%20park%20rangers%20oversaw%20the,to%20a%20media%20exclusion%20zone>.

<sup>67</sup> “Photojournalist detained while covering police clearing encampments in Toronto park Trinity Bellwoods,” Canada Press Freedom Project, June 22, 2021, <https://canadapressfreedom.ca/photojournalist-detained-while-covering-police-clearing-encampments-in-toronto-park-trinity-bellwoods/>.

<sup>68</sup> “Photojournalist Detained While Covering Encampment Clearing in Toronto’s Alexandra Park”, Canada Press Freedom Project, July 20, 2021, <https://canadapressfreedom.ca/photojournalist-detained-while-covering-encampment-clearing-in-toronto-s-alexandra-park/>.

In August 2021, Halifax Regional Police threatened to arrest CTV journalist Sarah Plowman, Global News journalist Alexa MacLean and Halifax Examiner journalist Zane Woodford who were reporting on the removal of an unhoused encampment from the lawn of a closed public library. Police also pushed Plowman while she was attempting to film the eviction, telling her moving back was for her safety. It is not clear whether journalists were ultimately permitted to report from that location.<sup>69</sup>

In Edmonton, Indigenous journalist Brandi Morin was arrested on Jan. 10, 2024 and charged with obstruction of police officers for entering an exclusion zone in order to report on the ongoing forced eviction.<sup>70</sup> Edmonton police reported that the exclusion zone or work zone was created to “protect journalists from the unpredictable hazards of an encampment cleanup, such as explosions, fire, biohazards and weapons concerns, and to protect the privacy of encampment residents.”<sup>71</sup>

In Morin’s words: “I was there to document it. Our people, a lot of times, experience a lot of excessive force and violence from police. These are vulnerable people, people that are unhoused.”<sup>72</sup>

The charges against Morin were later dropped by the Prosecution Service after concluding that there was no public interest in pursuing them. Despite the charges being dropped, Morin reported it taking an emotional and psychological toll. “It was the idea that just in doing your job, you could be arrested ... just coming face to face with that reality of being criminalized.... I questioned the work that I do, and whether I could continue doing it.”<sup>73</sup>

During the Inquiry, the Commissioner heard that the use of media restrictions is growing not only amongst police, but that the practice is also spreading to other actors like municipalities, security officers<sup>74</sup> and park rangers.<sup>75</sup> One journalist participant described the practice as “mutating” from the RCMP to municipal police and other authorities.

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<sup>69</sup> “Halifax Police Threaten to Arrest Journalists Covering Homeless Encampment Eviction”, Canada Press Freedom Project, August 18, 2021, <https://canadapressfreedom.ca/halifax-police-threaten-to-arrest-journalists-covering-homeless-encampment-eviction-2/>.

<sup>70</sup> Abby Francis, “Advocates Call for Police to Drop Charges Against Indigenous Reporter,” *The Tyee*, January 30, 2024, <https://thetyee.ca/News/2024/01/30/Advocates-Call-Police-Drop-Charges-Indigenous-Reporter/>.

<sup>71</sup> Abby Francis, “‘An Abomination’: Journalism, Human Rights Groups Call for Police to Drop Charges Against Indigenous Reporter” *IndigiNews*, January 29, 2024, <https://indigenews.com/news/an-abomination-journalism-human-rights-groups-call-for-police-to-drop-charges-against-indigenous-reporter>; Francis, “Advocates Call for Police to Drop Charges Against Indigenous Reporter.”

<sup>72</sup> Jackie Carmichael, “Indigenous Journalist Arrested by Edmonton Police at Homeless Encampment,” *Edmonton Journal*, January 11, 2024, <https://edmontonjournal.com/news/local-news/indigenous-journalist-arrested-by-edmonton-police-at-homeless-encampment>.

<sup>73</sup> Wakefield and Carmichael, “Charges Withdrawn Against Journalist Arrested at Edmonton Homeless Encampment Protest.”

<sup>74</sup> BCOHRC Media Engagement session, August 13, 2024.

<sup>75</sup> BCOHRC Community Engagement session, August 16, 2024.

In describing media increasingly being asked to report from behind physical barricades, one member of the media said, “[I]t seems like tactics changed over the years.” One experienced journalist who was at the protest at Fairy Creek on Vancouver Island in 2021 described these changes:

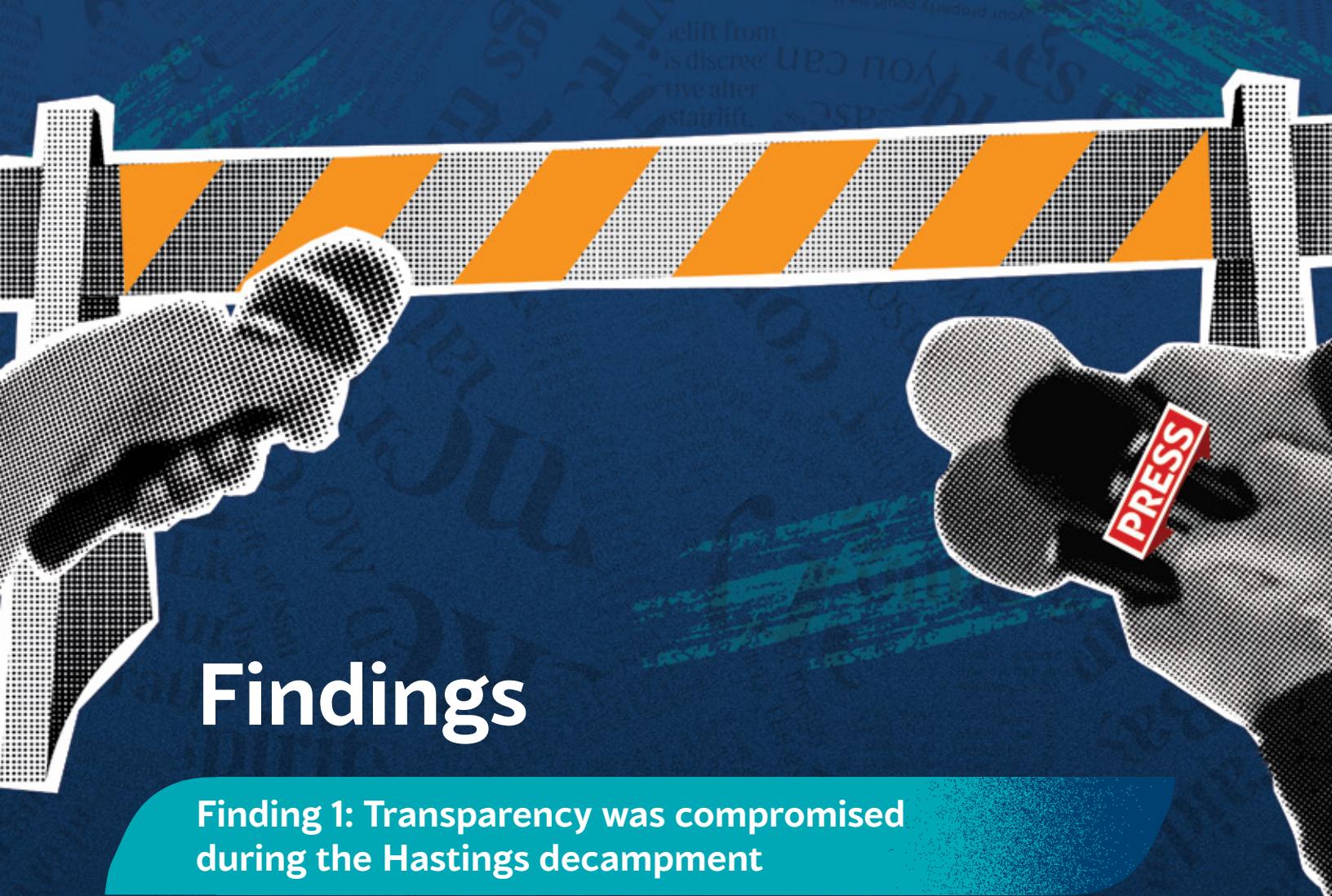
*Through my years working as a news reporter, I have covered many civil disobedience stories ranging from religious groups occupying nuclear missile sites in the United States to environmentalists blocking streets in downtown Vancouver. In every other case I have witnessed in democratic countries, law enforcement were able to do their job while allowing the media access to cover the story, at the times and places of our choosing and without escorts and exclusion zones.<sup>76</sup>*

One documentary journalist described the impact on him after being arrested during his coverage of the Oppenheimer decampment where there was no injunction:

*So, the immediate effect of being arrested—as a journalist and advocate—is you no longer have the ability to record or help. Which is probably ... the most important effect of it.... [T]he charges that I had the Crown did not even accept the charges, so I was not charged with anything, they were thrown, they were completely thrown out. But it does raise my own personal tensions when engaging in these spaces going forward.... [I]t constrains what you imagine possible and therefore it constrains the ways you can help and then also the ways you might be able to convey what's happening.<sup>77</sup>*

<sup>76</sup> *Teal Cedar Products Ltd. v Rainforest Flying Squad*, 2021 BCSC 1554 (CanLII), para 21, <https://canlii.ca/t/jhfcd>.

<sup>77</sup> BCOHRC interview with Documentary Journalist 6.



# Findings

## Finding 1: Transparency was compromised during the Hastings decampment

### Plans for dealing with media

#### City of Vancouver plan to create work zones

In November 2022, a decision was made to start instituting safe work zones for decampment activities. The City of Vancouver explained that this was because of difficult interactions City staff were having with people they described as members of the public, members of advocacy groups and protestors.<sup>78</sup> In a letter to the Commissioner the City explained the decision to start instituting safe work zones:

*[I]t was clear that the constant badgering and verbal abuse was increasingly affecting the mental health of City staff assigned to work in the encampment. Accordingly, to ensure our workers' safety, new procedures were implemented to provide for safe work zones. Specifically, when our integrated teams were working to enforce the By-law in a particular area of the encampment, construction signs were placed noting the sidewalk was closed. VPD members were also assigned to ensure that no one interfered in work being carried out in the work zone. Sightlines were maintained to ensure media and legal observers could watch the work.<sup>79</sup>*

<sup>78</sup> BCOHRC interview with the General Manager of Engineering; BCOHRC interview with the then General Manager, Arts, Culture and Community Services.

<sup>79</sup> City of Vancouver, Office of the City Manager, letter to Human Rights Commissioner, August 21, 2023, 10-11.

The then General Manager, Arts, Culture and Community Services decided to start implementing safe work zones during decamps. The General Manager of Engineering told us that he was supportive and surprised that it wasn't already in place.

To create safe work zones, City staff would erect barriers immediately around an area they were working in and no one would be permitted to enter, including media—despite the fact that the City did not have difficult interactions with members of the media.<sup>80</sup> The then General Manager, Arts, Culture and Community Services told us that City crews always ensured there were sight lines. She said:

*While we don't necessarily want people up close yelling at our staff right in their faces while they're doing work, we always recognize the role that advocates and observers play in democratic society and so we always made sure that there were sight lines. So, the work had [sic] always be observable and it wasn't from really far away, but it was far enough that our staff could do the work.<sup>81</sup>*

The then General Manager, Arts, Culture and Community Services explained that the City used safe work zones for their incremental bylaw enforcement. However, when preparing for the April 5 and 6, 2023 decamp, the City asked the VPD to lead the public safety response.<sup>82</sup>

One journalist shared:

*[I]n the lead up to April 5<sup>th</sup>, the City of Vancouver with the support of Vancouver Police, had started setting up exclusion zones around their decamps. So, they would do, set up City barricades around certain areas, so around people who are living on Hastings Street and that prevented us as, as advocates or me as a documentarian from recording and engaging in the process.... So, they would block these areas off. We would no longer have access to it. I was escorted out by police with their arm pulling me out of one of those zones previously ... there was a leaked document saying that there was going to be the decampment. We were quite sure that in some way there was going to be some exclusion, based on the number decamps that we had seen that there were already exclusion zones created.<sup>83</sup>*

<sup>80</sup> BCOHRC interview with the General Manager of Engineering.

<sup>81</sup> BCOHRC interview with the then General Manager, Arts, Culture and Community Services.

<sup>82</sup> BCOHRC interview with the then General Manager, Arts, Culture and Community Services.

<sup>83</sup> BCOHRC interview with Documentary Journalist 6.

**I certainly believe strongly in a safe work zone. In fact, people should be a good distance away from City workers conducting work on the street. So, I'm a strong believer of that and surprised that we didn't have it clearly defined as to what that looks like. I was kind of surprised that we didn't have ... a requirement for like, you know, that you can't enter this area because this activity is happening and City work is underway.<sup>84</sup>**

— General Manager of Engineering

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<sup>84</sup> BCOHRC interview with the General Manager of Engineering.

On April 3, 2023, two days before the April 5 decampment, the BC Civil Liberties Association and Pivot Legal Society wrote to the Federal Housing Advocate, copying the Premier and Ministers in the provincial government as well as the Mayor of Vancouver, expressing several human rights concerns regarding decampments in the DTES including the City of Vancouver and VPD's creation of "ever-expanding work zones." They said:

*We hear that legal observers and advocates are increasingly being threatened with arrest and criminal charges if they attempt to enter these zones to witness and provide support to residents undergoing evictions. The City's excuses about "work safety" are undermined by the fact that non-observers are permitted to come and go through these work zones relatively unimpeded.*

*These actions are an extreme threat to the fundamental human rights of people subjected to eviction. They impede the ability of observers to witness and record the actions of on-duty police officers. Legal observers cannot properly document state actions based on sight alone; hearing interactions is critical to assessing a state actor's alleged legal authority and the fairness of their engagement with people on the Hastings corridor, and proximity is crucial to providing evidence in future court cases regarding wrongful arrests and Charter violations. Furthermore, residents deserve to have advocates present when they are being forcefully removed from public space, and if they are being pressured to accept what are usually inadequate shelter offers, in the face of forced eviction to nowhere.<sup>85</sup>*

The City of Vancouver's Hastings Destructuring Operational Plan indicates that the VPD would lead securing the work zone for the April 5 and 6 decampment. A presentation describing the City's plan for April 5 and 6, 2023, indicates that "sections of the block to be fully closed to public—limited in/out privileges." None of the City's planning documents refer to the media specifically or specify whether media would be provided with access to the closed block.

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<sup>85</sup> BC Civil Liberties Association and Pivot Legal Society, Letter to the Federal Housing Advocate re: *Submission on the Review of Encampments in Canada* Evictions of Hastings Tent City, April 3, 2023, <https://bccla.org/wp-content/uploads/2023/08/2023-04-03-FINAL-Joint-Submission-from-PIVOT-and-BCCLA-to-Federal-Housing-Advocate-w-Attach.pdf>.

## VPD's media strategy

The VPD and the City determined, as noted earlier, that the VPD would be in charge of communications for the April 5 and 6, 2023 decampment, beginning once the VPD deployed on April 5, 2023. The Media Relations Officer explained their media strategy for April 5 and 6 as:

*[T]he philosophy was that we wanted to be as open and transparent as possible by making sure that the media ... by virtue of the media ... the public, had access to what we were doing, could see what we were doing and could report correctly on what we were doing, and like I said before, that desire, that philosophy was largely fed by some of the bad reporting, bad information that we had seen come out the previous August [this refers to the incident that occurred on Aug. 9, 2022, described above] as a result of some incorrect information that had been reported.<sup>86</sup>*

This was also described in the Operational Plan, which stated the media strategy was for the VPD to provide updates using traditional and social media throughout the day and to “allow limited media access to ensure transparency and maintain public trust.”<sup>87</sup>

The VPD's media strategy for April 5 and 6, 2023 involved:

- no advance media notification “in order to protect the integrity of the operation and the safety of those working in the operation”
- a joint virtual press conference with the City, VPD and the Fire Chief held in the morning of April 5, 2023
- providing timely updates using traditional and social media throughout the day
- allowing “limited media access to ensure transparency and build trust”
- having a media spokesperson on the ground<sup>88</sup>

The boundaries of the VPD zone did not correspond exactly to the entire decampment area identified by the City, or the area subject to the Fire Chief's order. The City's plan was to break the full encampment area into zones and work in one zone at a time while the VPD secured those areas. The Bronze Commander was responsible for deciding the size and duration of the restricted areas.

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<sup>86</sup> BCOHRC interview with the Media Relations Officer.

<sup>87</sup> Records received from the City of Vancouver in response to the Commissioner's production order.

<sup>88</sup> Records received from the City of Vancouver in response to the Commissioner's production order.

The VPD planned for major media outlets to be able to access footage from a Global News pool camera. VPD planned for the pool camera to be set up “on the fly” once the police had deployed. Their plan was to tell other media to muster at a designated location outside of the restricted zone (at Columbia and Hastings Street) from which point they could either take pictures or video at a distance. As things moved along, police planned to discuss with the command team whether it would be appropriate or necessary to allow closer access for media. If so, VPD planned to allow a couple of journalists at a time to come closer for a limited amount of time, then leave.<sup>89</sup>

The Media Relations Officer said that all media access, aside from the pool camera, needed to be approved through the chain of command, which was by the Inner Bronze Commander.

## Treatment of media on April 5 and 6, 2023

### Summary of VPD and City evidence and findings of fact

In response to questions about media access to the decampment area, including from the Human Rights Commissioner’s Office at the time of the decampment, both the City and the VPD maintained that media had unfettered access to the decampment area after 9:45 a.m. on April 5, 2023.<sup>90</sup> This was reiterated in a Feb. 2, 2024, letter to the Commissioner, in which the Vancouver Police Department explained that from 9 a.m. to 9:45 a.m. on April 5, 2023, they established a “semi-controlled perimeter” into the Hastings Street encampment zone. They explained that it was a limited and temporary restriction that was necessary for public safety and that “[m]edia was not prohibited from entering or otherwise excluded from the HSEZ [Hastings Street Encampment Zone] at any time.”

However, in a meeting with the Commissioner on April 5, 2023, the then General Manager, Arts, Culture and Community Services explained that the City started instituting safe work zones during their bylaw enforcement in the DTES in the fall because staff were experiencing difficult personal interactions. She said that when they created safe work zones, there was not necessarily unfettered media access, but rather there was always a line of sight for media and observers. She told the Commissioner they took the same approach on April 5, but that there was also a pool camera that media could hook into. In other words, on April 5, 2023, the Commissioner was told that the restrictions were put in place to create a safe working environment for City staff, that media and observers could observe from outside the work zone and there was a pool camera in the zone and media could access their footage.

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<sup>89</sup> Records received from the Vancouver Police Department in response to the Commissioner’s production order; Email between the Gold Commander and the Media Relations Officer, March 31, 2023.

<sup>90</sup> Records received from the Vancouver Police Department in response to the Commissioner’s production order, Gold Commander, Email to the Chief Communications Officer and the then General Manager, Arts, Culture and Community Services, City of Vancouver, April 19, 2023.

As the events of the day continued to unfold, the then General Manager, Arts, Culture and Community Services clarified in an email later that day:

***We have confirmed that media was only restricted in the morning when we first got going but were not prohibited after that. They had unfettered access after the first 45 minutes. Four media networks were invited in—they decided to send in one camera and one reporter to document and share content. Access was also provided to numerous print and online media, including Canadian Press. The pool camera was in the work zone right from the start.***

In response to a question from a media outlet about media restrictions, the Media Relations Officer said, “We initially directed media to Hastings and Columbia. Since 10 a.m., there have been no restrictions. We have asked media to respect privacy and not to impede the work of the city workers.”<sup>91</sup>

In an April 19, 2023, email the Gold Commander explained that from the VPD’s perspective the “media were never banned.” He explained:

***The two block stretch of East Hastings, from Main Street to Carrall Street, was shut down at 9 a.m. Media and members of the public were free to walk around in the area between Carrall and Columbia. We temporarily restricted access to the one block stretch between Main and Columbia Street as City workers and police were moving around multiple heavy trucks and police cars, and unloading bins from cube vans. Given that the sidewalks were impassable due to tents, structures and materials, anyone entering the area would have had to walk on the road, which would have been unsafe during these initial stages. Additionally, there was an unknown risk that people would attempt to access the area, interfere with the operation, and put people in danger (which we saw later in the day). The restricted access lasted about 45 minutes however it should be noted that multiple reporters and media agencies almost immediately gained access to the 100 East Hastings by entering through lanes. They were not stopped, nor were they asked to leave.***<sup>92</sup>

<sup>91</sup> Records received from the Vancouver Police Department in response to the Commissioner’s production order, Media Relations Officer, Email to a media outlet, April 5, 2023.

<sup>92</sup> Records received from the Vancouver Police Department in response to the Commissioner’s production order, Gold Commander, Email to the then Chief Communications Officer and the then General Manager, Arts, Culture and Community Services, April 19, 2023.

Moreover, in his Nov. 23, 2023, submission to the Vancouver Police Board on his investigation, then Superintendent Chapman reiterated that no exclusion zone was created. He further commented:

*I also want to make a note that there were no visual barriers that we erected to try to prevent anybody from seeing what was going on. It would've been very easy for the City or ourselves to get some very high chain link portable fencing, with some curtain stuff, and try to prevent people from seeing what was happening. That didn't transpire. It was never our intention to not let people see what was transpiring here.*

*Small restrictions around police operations, they are very reasonable. They allow us to work in an unobstructed manner. They are generally very short in duration, limited in scope and they're purposely done for public safety in mind.*

In a Feb. 2, 2024, letter to the Human Rights Commissioner, the Vancouver Police Department explained that from 9 a.m. to 9:45 am on April 5, 2023, they established a “semi-controlled perimeter” into the Hastings Street encampment zone. They explained that it was a limited and temporary restriction that was necessary for public safety and that “[m]edia was not prohibited from entering or otherwise excluded from the HSEZ (Hastings Street Encampment Zone) at any time.”

The Inner Bronze Commander described that on the morning of April 5, 2023, the VPD secured the work zone area. He said that no one, public or media, was to be allowed in the work zone except on a case-by-case basis. He confirmed that the public would be allowed into the work zone if they had a reason to be there, for an appointment for example. In response to a question about what direction was provided to officers at the police lines at the perimeter of the work zone, the Inner Bronze Commander said officers were told, “[W]e’re gonna create a perimeter, so until we make the decision to allow people in—it’s a perimeter.” The Inner Bronze Commander confirmed that he was responsible for deciding when it was safe to let media and the public in.

When asked if he had different considerations for media to access the work zone than for the public, he said, “No, not really.” The Inner Bronze Commander told us that at some point in the day he thinks he let media in because he saw them walking around. He said he didn’t remember the details and that he would have discussed it with the Media Relations Officer. When asked about when it became safe to let people in the work zone, he initially said about 30 to 45 minutes later, meaning 9:30 a.m. to 9:45 a.m. Later in the interview, he said it would have been closer to 11:45 a.m.

When asked whether the media restrictions were lifted or relaxed, the Media Relations Officer stated that the direction from the chain of command was that no media should be permitted in the work zone without permission and he was bound to follow that direction until told otherwise.

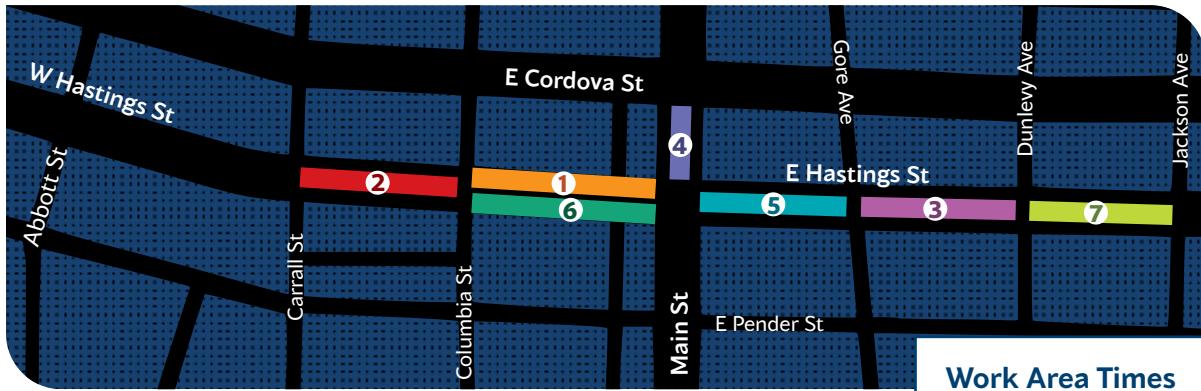
The Media Relations Officer said that he had a conversation with the Inner Bronze Commander on the morning of April 5 before he left for the press conference at City Hall, which started at 10:30 a.m., where he told the Inner Bronze Commander that he didn't think they needed to continue to limit or restrict media because the challenges they were anticipating during the initial deployment didn't materialize. The Media Relations Officer said he never received a firm decision on this point. When asked whether anyone told the officers at the police lines that they could let media in, he said he didn't know. When asked whether he expected the Bronze Commander would do that, he said no. When asked about how he would go about obtaining approval from the Inner Bronze Commander to allow media into the work zone, the Media Relations Officer said that the Inner Bronze Commander was standing a quarter of a block away from him and that he could walk up to him and have a personal conversation.<sup>93</sup>

The Media Relations Officer told us that he spoke to a few reporters on April 5, 2023, who told him that they did not have trouble accessing the work zone including a reporter from Glacier Media and a reporter from the Globe and Mail, both of whom were invited but declined to participate in the Inquiry (note, these are different reporters from the ones mentioned below).

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<sup>93</sup> BCOHRC interview with the Media Relations Officer.

## VPD and City timeline of events



Pulled together, the VPD and City evidence paints a picture of the following timeline of events:

### April 5, 2023

- **6:00 a.m.:** The VPD and City began the day with briefings for their respective staff. The Vancouver Police Department briefing included the instruction that “media will not be permitted in the inner perimeter, but they can set up outside the perimeter.”<sup>94</sup>
- **9:00 a.m.:** When the operation started on April 5, 2023, the Vancouver Police Department closed three blocks of East Hastings between Gore Street and Carrall Street to vehicle traffic. VPD motorcycles and bicycles restricted vehicle traffic to these blocks.<sup>95</sup> The 100 block of East Hastings was closed to the public from 9:00 a.m. until just before noon when City staff completed work in the 100 block and moved into the unit block of East Hastings between Columbia and Carrall Streets.

### Work Area Times

#### April 5

- [1] 9:00am – 11:47am
- [2] 12:00pm – 2:45pm
- [3] 2:45pm – 4:30pm
- [4] 4:30pm – 6:07pm

#### April 6

- [5] 9:00am – 10:40am
- [6] 11:00am – 2:00pm
- [7] 2:00pm – 3:40pm

<sup>94</sup> Bronze Commander scribe notes, April 5, 2025.

<sup>95</sup> BCOHRC interview with Bronze Commander.

- **9:08 a.m.:** A City of Vancouver Information Bulletin titled Note to Editors Filming on East Hastings was released, stating:

***Media should coordinate access to the work zone perimeter via media@vpd.ca***

***We ask that media be sensitive to the needs of those sheltering outdoors as well as staff and community partners in the area as they attend the site. If gathering footage, media are asked to respect requests for distance and/or instructions by City staff or police while filming.***

***Media are advised that interviews with staff on the ground are not available as they will be engaged in the work.<sup>96</sup>***

The City reported that the Information Bulletin was distributed to their full media distribution list, with 1,122 successful sends, 463 unique opens and 3,402 total opens. It is unclear what times these opens occurred or whether any media actually coordinated access to the work zone perimeter via the provided VPD email, as most of the media interviewed by Commissioner staff were unaware of the bulletin.

- **9:32 a.m.:** Although the Media Relations Officer testified that he suggested to the Inner Bronze Commander that there was no reason to restrict media after this time, the balance of evidence before the Commissioner showed that no change in direction was communicated to the Media Relations Officer or to officers at the work zone perimeter. The Inner Bronze Commander scribe notes record a conversation between the Inner Bronze Commander and the Media Relations Officer at 9:32 a.m., following which the Inner Bronze Commander authorized Global News to enter the restricted area. Notably, the then General Manager, Arts, Culture and Community Services' statement that four media networks were invited in appears to be factually incorrect based on evidence from the Inner Bronze Commander's scribe notes corroborated with interviews with media workers. As detailed in Finding 2 below, the VPD invited Global News to operate the pool camera.<sup>97</sup> There were no discussions with other networks.<sup>98</sup>

There is no record of direction being provided to the Media Relations Officer or over the radio to officers at the police lines that they could let media in. The direction continued to be that the Inner Bronze Commander would determine access on a case-by-case basis. This is consistent with the media experiences outlined in this report.

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<sup>96</sup> Records received from the City of Vancouver in response to the Commissioner's production order.

<sup>97</sup> Silver Commander scribe notes, April 5, 2025.

<sup>98</sup> BCOHRC interview with Media Outlet A.

- **9:48 a.m.:** VPD post on Twitter (now X), “To ensure safety and privacy for people within the encampment, we have limited public access. Media and observers can stage at Columbia and East Hastings Street.”<sup>99</sup> When the Gold Commander was asked why the VPD would post on Twitter at 9:48 a.m. indicating that media could stage at Columbia and East Hastings if his testimony was that the media had unfettered access to the restricted area after 9:45 a.m., the Gold Commander said, “I don’t know. I can’t speak to that.”<sup>100</sup> He also explained that the Bronze Commander would have authority to control operations on the ground.
- **10:12–10:51 a.m.:** Despite the Inner Bronze Commander testifying that it was safe to let people in the work zone around 9:30 a.m. or 9:45 a.m., his own evidence was that he denied the following people access to the restricted area: an Indigenous elder at 10:12 a.m.; legal observers with Stop the Sweeps at 10:24 a.m. and BC Civil Liberties Association and Stop the Sweeps at 10:51 a.m. all for safety reasons.
- **11:46 a.m.:** With respect to media access to the unit block, the following direction was communicated to VPD officers: “Once we take Columbia and Hastings at that point it’s going to be a hard closure focusing on our original authorities. However, we’re not going to restrict access to legitimate media as soon as things calm down.”<sup>101</sup> This was followed by: “If allowing media in make sure they are aware of safety issues and to give us space to do our job.”<sup>102</sup> There is no record of further communication to officers indicating that things had, in fact, “calmed down” to the point that it was ok to let media in.
- **11:47 a.m.:** Before noon, the City had completed work in 100 block and were moving into the unit block of East Hastings. The Inner Bronze Commander’s evidence was that by 11:47 a.m. he was concerned about the group of people who had gathered at Columbia and Hastings. He said, “Like at this point in time—you know—like we’re talking about the protesters and I’m dealing with that—like the media was never forefront in my mind kinda ever in the day, I suppose, but it certainly wasn’t at this point in time, like at about noon.” He said that the VPD “took the intersection” at Main and Hastings “so nobody’s coming in.”<sup>103</sup> When asked if that included media he said yes.

<sup>99</sup> Vancouver Police (@VancouverPD), “To ensure safety and privacy for people within the encampment, we have limited public access. Media and observers can stage at Columbia and East Hastings Street.” Twitter (now X), April 5, 2023, <https://x.com/VancouverPD/status/1643656786715762688>.

<sup>100</sup> BCOHRC interview with the Gold Commander. At 9:48 a.m., VPD issued a second tweet which indicated that they had “limited public access” and that media and observers could stage at Columbia and East Hastings.

<sup>101</sup> Vancouver Police Department radio broadcasts, April 5, 2023.

<sup>102</sup> Vancouver Police Department radio broadcasts, April 5, 2023.

<sup>103</sup> BCOHRC interview with the Inner Bronze Commander.

The Media Relations Officer explained:

***When the workers moved and the operation moved west one block to the zero block of East Hastings St., between Carrall and Columbia St., by that time a large group of people, protestors, had come to the area and they had gathered in that block, and as the workers moved, they completed their work in the 100 block of East Hastings St. and moved to the zero block of East Hastings St., there was a very large group of protestors. The media was in the middle of it.***<sup>104</sup>

- **Just after noon:** City trucks had moved into the unit block, barricades were set up and the police formed a line behind the protestors to secure the unit block “to give the [C]ity a safe working space.”<sup>105</sup>
- **1:00–2:45 p.m.:** The VPD repeatedly ordered the crowd that had gathered at Columbia and East Hasting to move back (east) to make room for the City to work in the area they had gathered.<sup>106</sup>

The Media Relations Officer explained that things got tense as City workers were working in the unit block. He said, “the City of Vancouver workers began to move throughout the encampment in that block, this group of protestors encroached on them and became hostile, became violent, and started throwing things and put a lot of people’s safety at risk.”<sup>107</sup>

Posts on social media confirmed: “Things are getting a little more heated; someone just used a fire extinguisher. #DTES”<sup>108</sup>

- **2:30 p.m.:** By 2:30 p.m., the Vancouver Police Department had taken over three quarters of the unit block and were holding the police line. The VPD tweeted, “Our officers have formed a line between protestors and [C]ity crews to create a safe space for them to continue working within the encampment.”<sup>109</sup> The Inner Bronze Commander explained the VPD restricted access to this area including to media.<sup>110</sup>

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<sup>104</sup> BCOHRC interview with the Media Relations Officer.

<sup>105</sup> Vancouver Police Department radio broadcasts, April 5, 2023.

<sup>106</sup> Inner Bronze Commander scribe notes, April 5, 2023.

<sup>107</sup> BCOHRC interview with the Media Relations Officer.

<sup>108</sup> Brendan Kergin (@BKergin), “Things are getting a little more heated; someone just used a fire extinguisher #DTES,” Twitter (now X), April 5, 2023, 1:58 p.m., <https://x.com/BKergin/status/1643719744590323722>.

<sup>109</sup> [Vancouver Police \(@VancouverPD\)](https://x.com/VancouverPD/status/1643727666456174592), “Our officers have formed a line between protestors and city crews to create a safe space for them to continue working within the encampment,” Twitter (now X), April 5, 2023, <https://x.com/VancouverPD/status/1643727666456174592>.

<sup>110</sup> BCOHRC interview with the Inner Bronze Commander.

## April 5, 2025, continued

- **2:45 p.m.:** The access restriction continued until work was complete in the unit block around 2:45 p.m. and City staff prepared to move to the 300 block of East Hastings between Gore Street and Dunlevy Avenue.

The next direction to VPD regarding allowing public access to the unit block was at 2:45 p.m. From a VPD officer or VPD personnel via the VPD broadcast:

**[T]he line that we have we're going to hold it loosely, but we're not concerned with this block anymore, we're not going to push forward and if pedestrians are having to come through then we will let them.<sup>111</sup>**

- **4:30 p.m.:** By 4:30 p.m., City staff finished work in the 300 block of East Hastings. Next, the City and VPD moved to the 300 block of Main Street, where the VPD “create[d] a safe working space for the City.”<sup>112</sup>
- **4:58 p.m.:** The VPD had “got this workspace (300 block of Main) clear and the protestors have been pushed back to Cordova. Barricades are up.”
- Work completed in the 300 block of Main at 6:07 p.m. and VPD officers were told to stand down for the day. The 100 block of East Hastings remained closed to traffic until 6:30 p.m. on April 5, 2023.

## April 6, 2023

- According to Vancouver Police Department records, the plan for the morning of April 6, 2023, was to first close the 200 block of East Hastings Street between Main and Gore and then to move to the 300 block on Main Street.
- **8:07 a.m.:** With respect to media access on April 6, 2023, the following instructions were provided to Vancouver Police Department personnel at 8:07 a.m. that day: “Initially we are going to be taking the 200 block East Hastings—full shut down to pedestrian and vehicle traffic. Discretion for entry to be used for media and those requiring access same as yesterday.”<sup>113</sup>

<sup>111</sup> Vancouver Police Department radio broadcasts, April 5, 2023.

<sup>112</sup> Vancouver Police Department radio broadcasts, April 5, 2023.

<sup>113</sup> Vancouver Police Department radio broadcasts, April 6, 2023.

**April 6, 2025, continued**

- **9:01 a.m.:** The operation began just after 9:00 a.m. At 9:01 a.m., the VPD posted on Twitter: “Hastings Street will be closed between Gore and Main Streets as City of Vancouver crews continue to work within the Hastings Street encampments.”<sup>114</sup> The VPD shut down the 200 block to vehicles and pedestrians. Global News was restricted from entering around 10:20 a.m.<sup>115</sup>
- **10:40 a.m.:** The City finished work in the 200 Block and moved to the 300 Block Main Street. At 10:58 a.m., VPD was looking for the Media Relations Officer because CBC reporters were “being pushy.” The Commissioner finds that, on a balance of probabilities, it is likely that CBC reporters were attempting to enter the restricted area and were prevented from entering.
- **11:00 a.m.:** The VPD restricted access to the 100 block of East Hastings and the City began work in that block.
- **2:00 p.m.:** The VPD and City moved to the 400 block of East Hastings.
- **3:40 p.m.:** The operation ended just before 3:40 p.m.<sup>116</sup>

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<sup>114</sup> Vancouver Police (@VancouverPD), “Hastings Street will be closed between Gore and Main Streets as City of Vancouver crews continue to work within the Hastings Street encampments.,” Twitter (now X), April 5, 2023, <https://x.com/VancouverPD/status/1644007322518450176>.

<sup>115</sup> Vancouver Police Department radio broadcasts, April 6, 2023.

<sup>116</sup> Vancouver Police Department radio broadcasts, April 5, 2023; Inner Bronze Commander scribe notes, April 6, 2023.

## **Summary of media evidence and findings of fact**

What follows is a summary of evidence concerning media experiences on April 5 and 6, 2023, from the interviews with media workers conducted for this Inquiry. The details of individual media experiences are included in Appendix A.

Of the 10 journalists interviewed for this Inquiry, eight were restricted from entering the exclusion zone on April 5, 2023, in some way. Of the remaining two, one reporter entered through the alley but didn't attempt to access the restricted area because her colleagues were excluded earlier, and the other drove to the Downtown Eastside on April 6, 2023, but didn't get out of her vehicle because of the rain. The Commissioner received information that suggests that other reporters, including reporters from The Canadian Press, were also restricted when they first arrived. Reporters were told that the block they were seeking to enter was closed and/or that they could not enter.<sup>117</sup> They were given different reasons for being excluded, including that the only people who were allowed to enter were residents or people working in the restricted area, the block was closed for the safety and privacy of residents and the area was closed to create a safe working environment for staff. One was told that an exclusion zone had been instituted to prevent access to the area.<sup>118</sup> One member of the media reported to the Commissioner that they had unrestricted access to the zone, despite that being very different from the experiences of colleagues. That member of the media declined to participate in an interview.

Three journalists were told to wait for the Media Relations Officer to arrive to discuss entry. However, Photojournalist 4 stated that “they said that they have to get the media liaison person but it didn't feel like they actually wanted to help me or to actually get me access to that person because I was waiting for a long time around that side. It just felt like there was a possibility that I would be standing there all day.”

Several journalists reported that after being restricted at one side of the exclusion zone, they walked around to the other side and tried to enter again. One journalist who was restricted from entering at one side walked around and was permitted to enter on the other side.<sup>119</sup> Two journalists reported being restricted at both ends of the exclusion zone.<sup>120</sup>

Five of the 10 journalists interviewed reported entering the exclusion zone on their own, through alleys or otherwise, after being restricted.<sup>121</sup>

One journalist was escorted out of the exclusion zone twice.<sup>122</sup> Another was asked to move back behind police lines but insisted on staying and ultimately was not physically prohibited from doing so.<sup>123</sup>

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<sup>117</sup> BCOHRC interviews with Reporter 1, Photojournalist 2 (in the afternoon), Photojournalist 4, Reporter 5, Documentary Journalist 6, Reporter 7, Reporter 8 and Reporter 10.

<sup>118</sup> BCOHRC interview with Documentary Journalist 6.

<sup>119</sup> BCOHRC interview with Photojournalist 4.

<sup>120</sup> BCOHRC interviews with Reporter 8 and Reporter 10.

<sup>121</sup> BCOHRC interviews with Reporter 5, Documentary Journalist 6, Reporter 8, Reporter 9 (Reporter 9 wasn't restricted but entered on her own after her colleagues were restricted) and Reporter 10.

<sup>122</sup> BCOHRC interview with Documentary Journalist 6.

<sup>123</sup> BCOHRC interview with Reporter 8.

With respect to the duration of the restrictions:

- three journalists were told to wait and were delayed by about five to 15 minutes; two then entered on their own;<sup>124</sup> one was escorted into the exclusion zone by police<sup>125</sup>
- the journalist who was escorted out of the exclusion zone was restricted for a short time and then entered on his own at another location<sup>126</sup>
- three journalists were restricted for approximately 45 minutes, after which they were able to enter the zone<sup>127</sup>
- two journalists reported not gaining entry to the area they were trying to access<sup>128</sup>

Four of the eight reporters who were restricted said that they were restricted more than once on April 5, 2023.<sup>129</sup> Of those four,

- two said they were initially denied entry at more than one place;
- three said that after they gained entry, they exited and attempted re-entry and were restricted again.<sup>130</sup>

Most of the journalists who entered the exclusion zone, either with permission or on their own, were not asked to leave. The Commissioner heard of three instances where reporters inside the exclusion zone were asked to move back behind the police lines again.<sup>131</sup>

With respect to the time of day of the restrictions, in contrast to the explanations provided by the City of Vancouver and Vancouver Police Department, journalists reported that they encountered restrictions throughout both April 5 and April 6, 2023, including:

- nine reporting that they encountered restrictions between 8:50 a.m. and noon on April 5, 2023, with at least three reporting restrictions after 9:45 a.m. In addition, records reviewed by the Commissioner indicate at least three more journalists were restricted during this time, at least one after 9:45 a.m.
- three reporting that they encountered restrictions between noon and the end of the day (4:30 p.m.) on April 5, 2023, two reporting that they observed barricades on April 6, 2023, and one other reporting being on site at Main and Hastings and observing a police presence before heading to Oppenheimer Park, where she did not encounter police or restrictions; one entered through an alley and two others were able to move unrestricted. Nonetheless, VPD radio broadcasts reviewed by the Commissioner indicate that at least three more journalists were likely restricted during April 6, 2023.<sup>132</sup>

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<sup>124</sup> BCOHRC interviews with Reporter 1 and Reporter 5.

<sup>125</sup> BCOHRC interview with Photojournalist 2.

<sup>126</sup> BCOHRC interview with Documentary Journalist 6.

<sup>127</sup> BCOHRC interviews with Photojournalist 4 and Reporter 8.

<sup>128</sup> BCOHRC interviews with Reporter 7 and Documentary Journalist 6.

<sup>129</sup> BCOHRC interviews with Reporter 5, Documentary Journalist 6, Reporter 8 and Reporter 10.

<sup>130</sup> BCOHRC interviews with Reporter 5, Documentary Journalist 6 and Reporter 8.

<sup>131</sup> BCOHRC interviews with Documentary Journalist 6 and Reporter 8.

<sup>132</sup> Vancouver Police Department radio broadcasts, April 6, 2023. This evidence is further summarized in the Appendix.

Most of the reporters interviewed by Commissioner staff did not return to the Downtown Eastside on April 6—with the exception of Reporter 5, Documentary Journalist 6 and Reporter 3. Although the police had closed off entire city blocks again on April 6, none of these reporters experienced restrictions. However, VPD radio broadcasts from April 6 confirm that reporters from Global News and likely those from the CBC were restricted on April 6, 2023, and it is not clear whether these journalists got access to the area or when.<sup>133</sup>

One journalist from Media Outlet B reported, “I was indeed at the Hastings decampment but was never restricted in my movements. My understanding is that this is quite different from the experiences of some colleagues.”

Since the journalists each spoke to their personal experiences on April 5 and 6, there is no internally conflicting evidence to resolve. Where reporter evidence is at odds with police evidence, the Commissioner found the reporter evidence to be more plausible because restrictions on access were confirmed by all journalists, although the experiences of reporters varied. In many cases the Commissioner was able to corroborate the media stories either with their own photos, videos, media stories or social media posts or with records provided by the VPD including scribe notes and radio broadcasts.

### **Conclusions on events of April 5 and 6 and treatment of media**

Based on a review of all the evidence, the Commissioner finds that members of the media were excluded or restricted from the decampment zone on April 5 and 6, 2023.

The Commissioner reviewed the records provided by the VPD and City in response to her order, including commanding officer notes taken during the decampment, transcripts of the CAD and audio recordings of VPD officer radio transmissions. Based on the information in that evidence, despite the police and City evidence to the contrary, the Commissioner finds that the media did not have unfettered access at any time on April 5 or April 6, 2023. Contrary to the evidence presented by the City, the pool camera was not created by consensus among news outlets but rather was organized and established by the police.

While the Gold Commander testified that the media were never banned, two members of the media never gained access to the zone and the remainder of whom we are aware (with one exception) were restricted in some way. Reporters who were restricted from entering but who eventually were allowed in (or not asked to leave once they gained unsanctioned entry) saw delays between a few minutes and 45 minutes. The Commissioner finds that at least 12 journalists encountered restrictions between 8:50 a.m. and noon on April 5, 2023, including four who encountered restrictions after 9:45 a.m. and three journalists who were restricted after noon. It remains unclear how many journalists were restricted or excluded on April 6, although we know that at least Global News and CBC reporters were. Only one member of the media of whom the Commissioner is aware reported having unrestricted access to the zone.

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<sup>133</sup> Vancouver Police Department radio broadcasts, April 6, 2023.

The police and City evidence was contradictory on the timing of whether or when the access to reporters was restricted in some way. The Commissioner finds the evidence of members of the media to be more convincing on this point, which is that the media restrictions did not wholly end at any point during the decampment. It is clear from the police evidence that the restrictions were to stay in place unless the chain of command was told otherwise, and it is equally clear that no clear direction was ever given to the Media Relations Officer or front-line officers.

One thing clearly emerges from the evidence taken together (although it is also clear from even the City and VPD evidence alone): the police and City did not effectively organize or communicate their position in relation to media to each other or members of the press. The Commissioner does not conclude that the conflicting evidence shows a pattern of deceit, but rather that it demonstrates a level of disorganization and lack of internal clarity that compromised the access of the media to the decampment as it was occurring, and therefore to public transparency of the police and City actions. While the exclusion of media does not appear to be the primary purpose of the exclusion zone—or potentially a purpose at all—far too little attention was paid to the impact of police actions on the press and to the public’s right to have access to information about what was happening to marginalized people in their community.

## **Traffic camera was not shut down by the City to limit transparency**

On April 5, 2023, the traffic camera at the intersection of Main and Hastings Street in Vancouver was shut down from approximately 9 a.m. to 10:30 a.m. On previous occasions, images from traffic cameras showing a police line had been reported in the media. Similarly, images from before and after the shutdown showed the decampment activity on Hastings Street.

Since August 2023, the City described the traffic camera shutdown as follows:

*The public access to the feed from the City's traffic camera at Main [and] Hastings was accidentally turned off for about 30–40 minutes. This outage resulted inadvertently as Engineering staff were activating the department's Operations Centre at a nearby facility. The feed was restored immediately when the accidental outage was brought to our attention. The camera feed was restored prior to work with individuals beginning.<sup>134</sup>*

In response to the Commissioner’s order, the City provided records describing the outage as a “staff error” and not elaborating further. The Commissioner asked for and was provided with the names of staff that would be familiar with the incident. She issued orders for several staff to attend interviews and answer questions on this topic.

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<sup>134</sup> City of Vancouver, Office of the City Manager, letter to Human Rights Commissioner, August 21, 2023, 16.

During interviews with City staff, the Commissioner learned that the City's traffic cameras can take both videos and photos, the latter of which are posted to the City's website and updated every 10 to 20 minutes. Each photo is only temporarily available to the public on the City's website before being permanently deleted.

The City's then Senior Manager of the Traffic and Data Management Section explained that the video feed is only accessible to City employees in real time. The City does not retain records of the video footage. The then Senior Manager of the Traffic and Data Management Section said the video feed may be used by the City to monitor traffic conditions in real time during weather events or to observe the effect on traffic during other big social events. In this case, it appears that the City was using the traffic cameras to monitor their staff involved in the decampment.

The Deputy Director of the City's Departmental Operations Centre (DOC) for the decampment explained that when he arrived at the DOC, the live feed from the traffic camera at Main and East Hastings was already set up. He told us that because the traffic cameras rotate on an automated schedule, the camera is not always pointed at the view they want to see in the DOC. He told us:

*I had the idea to contact our traffic and data management folks and ask if we could turn the camera and take control of it so that we could see what was happening—you know observe the road closure, observe pedestrians, observe the vehicles, people on the street—like so we could see what was going on.<sup>135</sup>*

The Traffic and Data Management Section informed the Deputy Director of the DOC that he could take control of the camera to turn it, but that would require turning the public feed off. The Deputy Director of the DOC told staff in Traffic and Data Management that he wanted to go ahead and take control of the camera and the public images on the City's website was turned off.

The traffic camera shutdown was immediately noticed by the public and the media.

- **9:14 a.m.:** Bob Mackin from Breaker News posted on Twitter a photo from the traffic cameras,<sup>136</sup> but at 9:24 a.m. he tweeted that the traffic cameras had been shut down.
- **9:28 a.m.:** The City started to receive inquiries about the traffic camera feed being shut down.<sup>137</sup>
- **9:46 a.m.:** Justin McElroy tweeted, “curious how in the middle of the clearing of the tent encampment on hastings street the hastings traffic cameras aren’t working.”<sup>138</sup>

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<sup>135</sup> BCOHRC interview with the City of Vancouver, Director of Streets.

<sup>136</sup> Bob Mackin (@bobmackin), “Vancouver traffic camera at Main and Hastings, looking west, appears to show police on-scene with a temporary street closure as efforts continue to end the #DTES sidewalk tent city. #vanpoli #bcpoli,” Twitter (now X), April 5, 2023, 9:14 a.m., <https://t.co/Qtmjr7Z5BN>.

<sup>137</sup> Email to the City of Vancouver, “Why are the traffic cameras off?,” April 5, 2023, 9:28 a.m.

<sup>138</sup> Justin McElroy (@j\_mcelroy), “curious how in the middle of the clearing of the tent encampment on hastings street the hastings traffic cameras aren’t working,” Twitter (now X), April 5, 2023, 9:46 a.m., <https://t.co/CGAC03oei>.

- **10:04 a.m.:** The first record reviewed by the Commissioner indicating that the traffic camera feed was restored was an email sent at 10:04 a.m.
- **10:31 a.m.:** the City of Vancouver tweeted an apology for the traffic camera shutdown. They explained that the camera was shut down from approximately 9 a.m. to 9:45 a.m. “due to staff error.”<sup>139</sup>
- **10:32 a.m.:** Bob Mackin tweeted that the traffic cameras were restored.<sup>140</sup>

When the City received direct inquiries about why the camera was shut down, the DOC contacted staff in the Traffic and Data Management Section again. The DOC learned that if the DOC was comfortable with losing control of the camera from time to time while it pivoted to take the images for the City’s website, the Traffic and Data Management Section could automate the camera to go on its regular cycle of taking images and then turn control of the cameras back to the DOC when the camera wasn’t pivoting. The DOC agreed and the feed was restored.

While the traffic camera shutdown appears to have a relatively straightforward explanation, some questions remain. First, it is unclear why the miscommunication about the functions of the camera between City staff arose. Second, it is not clear why the City could not share the complete explanation with the public beyond describing the incident as “accidental” or “inadvertent” when, in fact, it was neither of those things. A decision was made, however misinformed, to turn off the public feed to the traffic camera to enable staff in the operations centre to move the camera to see a different view.

Moreover, it may be that in withholding the full explanation of the traffic camera shutdown from the public, the City was reluctant to reveal that the City can, and occasionally does, use the traffic cameras for purposes other than monitoring traffic conditions. The Commissioner is unaware of whether the City has completed an assessment of the privacy implications of doing so.

Further, the summary document provided by the City Manager told the Commissioner that the camera feed was restored prior to work with individuals beginning.<sup>141</sup> However, the Commissioner finds that the traffic camera public feed was restored closer to 10 a.m., which was after work with individuals on Hastings Street began.<sup>142</sup>

The City’s unclear explanations reveal a troubling tendency toward a lack of transparency by City officials.<sup>143</sup>

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<sup>139</sup> City of Vancouver (@CityofVancouver), “The feed for Main and Hastings was down from approximately 9 to 9:45 am due to a staff error. We acknowledge and apologize that this was very unfortunate given today’s work in the East Hastings encampment. The camera feed is now working as it should. [right arrow emoji] <http://ow.ly/hIMg50NBqG7>,” Twitter (now X), April 5, 2023, 10:31 a.m., <https://x.com/CityofVancouver/status/1643667762701819910>.

<sup>140</sup> Bob Mackin (@bobmackin), “Update: camera feed restored. Here’s the scene, on a 15-minute delay. #vanpoli #dtes,” Twitter (now X), April 5, 2023, 10:32 a.m., <https://x.com/bobmackin/status/1643667819689820160>.

<sup>141</sup> City of Vancouver, Office of the City Manager, letter to Human Rights Commissioner, August 21, 2023, 16.

<sup>142</sup> The Inner Bronze Commander’s scribe notes from April 5, 2023 indicate the City moved in at 9:03 a.m. At 9:37 a.m. he advised Command that work had already begun.

Reasons aside, the timing of the traffic camera shut down on April 5, 2023, is concerning. The first hour of the decampment operation was when residents were first notified that they had to leave and also the time when the 100 block of East Hastings was closed to media and the public and the traffic camera was shut down. The cumulative effect of these actions resulted in a lack of transparency for a critical part of the decampment operation. The Commissioner finds that, while not intentional, traffic camera shutdown and subsequent lack of clarity contributed to the lack of transparency caused by the exclusion of the media and the public.

## Finding 2: Exclusion zone was not in accordance with human rights standards

As described above, in order to comply with human rights standards on the protection of the right to freedom of the press, freedom of expression and freedom of assembly, state actions must be lawful, including compliance with protections for equality and non-discrimination. Moreover, they must be necessary and proportionate to their purposes.<sup>143</sup> The extent to which the media and protest restrictions created on April 5 and 6, 2023, met those standards is discussed in this section.

Because any interference with freedom of the press and freedom of peaceful assembly must be lawful,<sup>144</sup> international standards require compliance with domestic law including the law of police powers—that is, common law and statutes that grant police the powers necessary to perform their duties—and the *Charter of Rights and Freedoms*.

Regarding police powers, there are unresolved debates in the case law about how to reconcile the test for determining lawful police powers and the test for Charter compliance.<sup>145</sup> However, what is clear is that the considerations applicable under the common law police powers determination and the Charter overlap.<sup>146</sup> While there may be cases in which the application of the common law as opposed to the Charter could lead to different results, in this case, it is the Commissioner's view that both frameworks would lead to the same outcome.

The ultimate issue is balancing the ability of the police to do “what is reasonably necessary in order to perform their duties” and the ability of individuals to exercise their legally protected freedoms.<sup>147</sup> The discussion below therefore relies on the legal test for determining police powers, applied in a manner that respects Charter rights and values.

### The law governing police actions that interfere with liberty

While the VPD had no authority to create a media exclusion zone under a statute or City of Vancouver by-law, their actions may have been lawful under the common law. This involves an assessment of whether police actions were reasonably necessary to fulfilling their duties under the law.

<sup>143</sup> UN Human Rights Committee, *General Comment no. 34*, paras 22, 24-26, 33-34.

<sup>144</sup> UN Human Rights Committee, *General Comment no. 34*, para 22; UN Human Rights Committee, *General Comment No. 37 (2020), On the Right to Peaceful Assembly (article 21)*, CCPR/C/GC/37, September 17, 2020, para 39, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F37&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F37&Lang=en); <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>.

<sup>145</sup> *Fleming v. Ontario*, 2019 SCC 45 (CanLII), paras 46, 53-55, 110-113, <https://canlii.ca/t/j2pd2>; *Teal Cedar Products Ltd. v Rainforest Flying Squad*, para 31; *R. v. Nolet*, 2010 SCC 24 (CanLII), para 39, <https://canlii.ca/t/2b8jp>; *R. v. Clayton*, [ 2007 SCC 32 (CanLII) at para 61, <https://canlii.ca/t/lrxzv>.

<sup>146</sup> *Fleming v. Ontario*, paras 53-54.

<sup>147</sup> *Fleming v. Ontario*, para 55.

Police forces are created by legislation.<sup>148</sup> Most statutes creating police forces in Canada today do not provide an exhaustive list of police powers. Instead, they list police duties. Duties are the broad responsibilities of police whereas powers are conferred to allow police to execute their duties.<sup>149</sup> The duties of British Columbia's municipal police departments, including the VPD, are set out in two sections of the *Police Act*, RSBC 1996, c. 367:

**s. 26(2)** The duties and functions of a municipal police department are, under the direction of the municipal police board, to

- (a)** enforce, in the municipality, municipal bylaws, the criminal law and the laws of British Columbia,
- (b)** generally maintain law and order in the municipality, and;
- (c)** prevent crime.

**s.34(2)** The municipal police department, under the chief constable's direction, must perform the duties and functions respecting the preservation of peace, the prevention of crime and offences against the law and the administration of justice assigned to it or generally to peace officers by the chief constable, under the director's standards or under this Act or any other enactment.

Where police exercise a power not provided for by any statute, if it interferes with liberty, police require clear legal authority. Over time, the courts have created a set of rules for determining whether, in common law, such actions are legal. The test is called the ancillary powers doctrine, and is as follows:

**Preliminary steps:** What are the police powers and liberty interests that are being asserted? The liberty interests relevant here include both common law and constitutional definitions of liberty.

**Step 1:** Does the police action at issue fall within the general scope of a statutory (via the *Police Act*) or common law police duty? Common law duties include keeping the peace, preventing crime and protecting life and property.

**Step 2:** Was the police action reasonably necessary for the fulfilment of the duty? This question is similar to the requirement in the Charter to ensure that actions that are reasonably justifiable in a free and democratic society are not considered unconstitutional. Three factors are relevant to this question:

- a.** the importance of the performance of the duty to the public good;
- b.** the necessity of the interference with individual liberty for the performance of the duty; and
- c.** the extent of the interference with individual liberty.<sup>150</sup>

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<sup>148</sup> See in British Columbia, the *Police Act*, RSBC 1996, c. 367, <https://canlii.ca/t/56k91>; Federally, the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 creates the RCMP, <https://canlii.ca/t/56ck7>.

<sup>149</sup> *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208 (CanLII), paras 42-43, <https://canlii.ca/t/ggwxd>.

<sup>150</sup> *Fleming v. Ontario*, paras 46-55; *Dedman v. The Queen*, 1985 CanLII 41 (SCC), <https://canlii.ca/t/1ftwf>.

Under the ancillary powers test, police creation of an exclusion zone, even a media exclusion zone, may be justified in certain situations even in the absence of an injunction. This is confirmed by the Supreme Court of Canada case of *R v. Knowlton*, [1974] S.C.R. 443, in which the Supreme Court upheld the actions of police in cordoning off an area in front of a hotel where a visiting dignitary was staying and restricting public access to it—preventing a photographer at a certain distance. An important factor in *Knowlton* was that police were responsive to the circumstances known to them. In that case, the visiting dignitary had been assaulted a few days prior to the visit. The Supreme Court found that the police were duty bound to take these preventative steps: “In this respect they had a specific and binding obligation to take proper and reasonable steps. The conduct of the police clearly fell within the general scope of the duties imposed upon them. There is in the record no evidence showing that the police officers resorted, on the occasion, to any unjustifiable use of the powers associated with the duty imposed upon them.”<sup>151</sup> But in this case, the exclusion zone was small—a portion of the street in front of a hotel, and the accused in this case was not prevented from taking pictures.

Given the Commissioner’s finding that police created a multi-block zone around the decampment on Hastings, which restricted members of the media, alongside members of the public, from entering to observe City and police activities, was this reasonably necessary to fulfill a police duty? Below, we apply the ancillary powers test to determine the legality of the exclusion zone from the Hastings decampment.

## Delineating asserted police powers and liberty interests at stake

### Police power asserted

The police power at issue is the power to create an exclusion zone, without an injunction, in order to keep the peace and protect public safety. The VPD’s position is that their authority to create the exclusion zone comes from a common law duty (to keep the peace, prevent crime and protect life and property, as described above) and their statutory duty (per the *Police Act*) to maintain law and order and prevent crime.<sup>152</sup>

### Rights asserted: Freedom of the press

There are human rights-based protections for freedom of the press in both the *Charter of Rights and Freedoms* and in international human rights law, namely Article 19 the *Universal Declaration of Human Rights* (UDHR), and Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR). Section 2(b) of the Charter protects the fundamental freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication, while Article 19 of the UDHR and Articles 19(2) and (3) of the ICCPR protect the freedom to “seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

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<sup>151</sup> *R v Knowlton*, 1973 CanLII 148 (SCC), <https://canlii.ca/t/1xtz2>.

<sup>152</sup> S. 26(2) *Police Act*; BCOHRC interview with the Gold Commander.

There is a close relationship between the text of s. 2(b) of the Charter and rights under international law. The Supreme Court of Canada has recognized that “the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.”<sup>153</sup> This is known as the presumption of conformity.

The UN Human Rights Committee, the expert UN treaty body that is tasked with interpreting the ICCPR, has set out its interpretation of the right to freedom of expression, including the freedom of the media, in General Comment 34 on Article 19: Freedoms of opinion and expression.<sup>154</sup> In it, the UN Human Rights Committee observes that “[f]reedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.”<sup>155</sup>

The UN Human Rights Committee further explains that:

*A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output. [citations omitted]*<sup>156</sup>

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<sup>153</sup> Dickson CJ in dissent in *Reference Re Public Service Employee Relations Act (Alta.)*, 1987 CanLII 88 (SCC), 349, <https://canlii.ca/t/lftnn>, as cited with authority in *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, para 31, <https://canlii.ca/t/jbf0p>.

<sup>154</sup> UN Human Rights Committee, *General Comment no. 34*.

<sup>155</sup> UN Human Rights Committee, *General Comment no. 34*, para 3.

<sup>156</sup> UN Human Rights Committee, *General Comment no. 34*, para 13.

Similarly, in the Inter-American Human Rights system, the Special Rapporteur for Freedom of Expression has explained the importance of the right to the integrity of democracy:

***[I]t should be borne in mind that the right to freedom of expression is not just another right, but one of the primary and most important foundations of any democratic structure: the undermining of freedom of expression directly affects the central nerve of the democratic system.***<sup>157</sup>

Moreover, when restrictions on freedom of expression or media freedom are discriminatory in their intent or impact, they violate the non-discrimination provisions of the ICCPR and are therefore unlawful (see below for further details on the right to non-discrimination).<sup>158</sup>

Article 19(3) provides that the only permissible restrictions on freedom of expression and media freedom are ones that are provided by law and necessary for the respect of the rights or reputations of others or for the protection of national security or of public order, or of “public health or morals.”

As General Comment 34 explains:

***[R]estrictions must be provided for by law<sup>159</sup> that is sufficiently precise and accessible to the public.<sup>160</sup> Laws that permit unfettered discretion to restrict freedom of expression and media freedom do not meet the requirements of the ICCPR.<sup>161</sup>***

General Comment 34 further explains that restrictions must<sup>162</sup> “conform to the principle of proportionality; ... be appropriate to achieve their protective function; ... be the least intrusive instrument amongst those which might achieve their protective function; [and] proportionate to the interest to be protected.” General Comment 34 also notes that it is normally incompatible with the ICCPR to restrict freedom of movement of journalists within the state (including locations where there are allegations of human rights abuses).<sup>163</sup>

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<sup>157</sup> Lanza, *Protest and Human Rights*, para 93.

<sup>158</sup> UN Human Rights Committee, *General Comment no. 34*, para 26.

<sup>159</sup> UN Human Rights Committee, *General Comment no. 34*, para 23.

<sup>160</sup> UN Human Rights Committee, *General Comment no. 34*, para 24.

<sup>161</sup> UN Human Rights Committee, *General Comment no. 34*, para 24.

<sup>162</sup> UN Human Rights Committee, *General Comment no. 34*, para 34.

<sup>163</sup> UN Human Rights Committee, *General Comment no. 34*, para 45.

Similar protections for freedom of expression and press freedom exist in Article 19 of the *Universal Declaration of Human Rights*.<sup>164</sup>

The Supreme Court of Canada has recognized that freedom of the press is “vital in a society based on the rule of law”<sup>165</sup> and is “essential to the proper functioning of a democratic society.”<sup>166</sup> It is based on the principles that “seeking and attaining the truth is an inherently good activity”<sup>167</sup> and that “participation in social and political decision-making is to be fostered and encouraged.”<sup>168</sup> The Supreme Court of Canada has also noted that “news gathering is an activity that forms an integral part of freedom of the press.”<sup>169</sup> The Court has also noted:

*There is another aspect to freedom of expression which was recognized by this Court in *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712. There at p. 767 it was observed that freedom of expression “protects listeners as well as speakers.” That is to say as listeners and readers, members of the public have a right to information pertaining to public institutions and particularly the courts. Here the press plays a fundamentally important role. It is exceedingly difficult for many, if not most, people to attend a court trial.... It is only through the press that most individuals can really learn of what is transpiring in the courts. They as “listeners” or readers have a right to receive this information. Only then can they make an assessment of the institution. Discussion of court cases and constructive criticism of court proceedings is dependent upon the receipt by the public of information as to what transpired in court. Practically speaking, this information can only be obtained from the newspapers or other media.*<sup>170</sup>

<sup>164</sup> United Nations (General Assembly), *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810, (1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights> <https://www.ohchr.org/en/resources/educators/human-rights-education-training/universal-declaration-human-rights-1948>.

<sup>165</sup> *R. v. National Post*, 2010 SCC 16 (CanLII), [2010] 1 SCR 477 at para 26.

<sup>166</sup> *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2 (CanLII), [2011] 1 SCR 19 at para 98.

<sup>167</sup> *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 SCR 927 at page 976; *Ford v. Quebec*, 1988 CanLII 19 (SCC), [1988] 2 SCR 712 at pages 765-766.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2 (CanLII), [2011] 1 SCR 19 at para 46.

<sup>170</sup> *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 SCR 1326.

As detailed above, the Commissioner has found that the VPD restricted media access to the Hastings decampment through the creation of the exclusion zone. “While reporters were subject to a variety of lengths of restriction and some reporters gained access through other means, the result is that media was impeded in their ability to report on a highly sensitive police action impacting some of the most marginalized members of our society. Based on the Charter, human rights law and interpretations cited above, I find that this is a violation of freedom of the press.”

### **Rights asserted: Freedom of assembly**

While this Inquiry was primarily focused on the impact of the media restrictions on freedom of the press, the evidence shows potential violations of the right to peaceful protest, which is part of the freedom of assembly. The terms of reference speak to the exclusion of media and observers, and to whether the police authority to create exclusion zones was lawfully exercised in these circumstances. As noted below in further detail, the Commissioner finds that there was insufficient evidence that protestors and advocates would pose a public safety risk to justify their exclusion. In this section, we address to what extent the exclusion of protestors is a lawful goal in itself.

In international law, Article 21 of the ICCPR protections include the right of peaceful assembly, with limitations similar to those described in the Charter. Similarly, these rights are protected in the *Convention on the Rights of the Child* (Article 15) and the *International Convention on the Elimination of All Forms of Racial Discrimination* (Article 5).

The Human Rights Committee explains the right to peaceful assembly and its scope.<sup>171</sup> General Comment 37 states:

7. In many cases, peaceful assemblies do not pursue controversial goals and cause little or no disruption. The aim might indeed be, for example, to commemorate a national day or celebrate the outcome of a sporting event. However, peaceful assemblies can sometimes be used to pursue contentious ideas or goals. Their scale or nature can cause disruption, for example, of vehicular or pedestrian movement or economic activity. These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy. To the extent that an event may create such disruptions or risks, these must be managed within the framework of the Covenant.
8. The recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination. This requires States to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants. The second sentence of article 21 provides grounds for potential restrictions, but any such restrictions must be narrowly drawn. There are, in effect, limits on the restrictions that may be imposed.

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<sup>171</sup> UN Human Rights Committee, *General Comment no. 37*, paras 7-8.

The Guidelines of Freedom of Peaceful Assembly, published by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE) and the Vienna Commission, can be useful in assessing the scope of protections:<sup>172</sup>

**1.1** Freedom of peaceful assembly is a fundamental human right that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. Assemblies may serve many purposes, including the expression of diverse, unpopular or minority opinions. The right can be an important strand in the maintenance and development of culture, such as in the preservation of minority identities. The protection of the freedom to peacefully assemble is crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices or policies can exist peacefully together....

The Inter-American Special Rapporteur further explains the connection between the right to peaceful protest and democracy:

**17.** ... the inter-American system has acknowledged the relationship between political rights, freedom of expression, freedom of assembly, and freedom of association, and that these rights, taken together, make the democratic process possible.

Domestically, protests are protected by rights enumerated in the Charter, particularly the freedom of assembly in s. 2(c). As with all Charter rights, the protections of s. 2(c) are subject to reasonable limits, prescribed by law and justified in a free and democratic society.

The text of section 2(c) of the Charter is almost identical to the text of Article 20(1) of the UDHR and Article 21 of the ICCPR. As with s. 2(b), the protection of s. 2(c) is therefore presumed to conform to that under the UDHR and the ICCPR.

Assemblies, which are generally public gatherings of people for an expressive purpose, have a critical role to play in democracies.<sup>173</sup> As stated by the Supreme Court of Newfoundland and Labrador in *Koehler v Newfoundland and Labrador*, the right to peaceful assembly furthers the other fundamental freedoms, protecting “the right of citizens to gather to express views concerning matters related to the functioning of a free society.”<sup>174</sup>

Importantly, public gatherings enable disadvantaged groups and communities to join and leverage their voice. Echoing the interpretation in *Ontario (Attorney General) v. Dieleman*, the Supreme Court of Newfoundland and Labrador in *Koehler v. Newfoundland and Labrador* stated:

Freedom of assembly is subject to the same analysis as freedom of expression. Freedom of assembly is “speech in action.”

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<sup>172</sup> *Garbeau c. Montreal (Ville de)*, 2015 QCCS 5246 (CanLII), cited these guidelines in defining the scope of s. 2(c), <https://canlii.ca/t/gm2zg>.

<sup>173</sup> *Hillier v Ontario*, 2025 ONCA 259 (CanLII), para 5, <https://canlii.ca/t/kbfs1>.

<sup>174</sup> *Koehler v Newfoundland and Labrador*, 2021 NLC 95 (CanLII), paras 45-49, <https://canlii.ca/t/jgp6w>.

The *Koehler* case also cites *Canadian Charter of Rights and Freedoms*, Walter S. Tarnopolsky and Gérald A. Beaudoin's 1982 book about the then newly enacted Charter, which notes:

If we do indeed have a right to speak, and to be heard, the right to assemble may be the only way of ensuring the advocacy of the right to speak. Mr. Justice Berger notes that:

Assemblies, parades and gatherings are often the only means that those without access to the media may have to bring their grievance to the attention of the public.

Groups without the money to advertise often find it necessary to demonstrate. If their right to demonstrate is denied, the group must languish in a communicative vacuum.

Demonstrations guarantee media exposure and in Western society, access to the media is essential to the communication of a point of view, and to the fulfillment of group interests.

With regard to use of public space, s. 2(c) of the Charter guarantees access to, and use of public spaces including parks, squares, sidewalks, roadways, bridges and buildings around which public life unfolds, subject to reasonable regulations governing the use of spaces and having regard to public health and safety.<sup>175</sup> It does not protect a particular venue for assembly.<sup>176</sup>

Some cases have found that legal measures affecting freedom of assembly through the reasonable regulation of public space and associated public health and safety matters do not infringe s. 2(c). For example, courts in Canada have found that:

- Freedom of assembly did not include the right to use City parks without complying with reasonable regulations governing park use and without any regard to public health and safety.<sup>177</sup>
- "Gatherings that employ physical force, in the form of enduring or intractable occupations of public space that block local residents' ability to carry out the functions of their daily lives, in order to compel agreement [with the protestors' objective] are not constitutionally protected."<sup>178</sup>
- Freedom of peaceful assembly must be exercised while respecting the *Criminal Code* and can't be exercised by disturbing the peace, committing assault, intimidation, uttering death threats, by means of an unlawful assembly or participation in a riot.<sup>179</sup>

The freedom protected in s. 2(c) of the Charter has an internal limit: it only protects peaceful assembly. What constitutes a peaceful assembly has not been defined due to limited judicial consideration; however, an assembly is generally not considered violent simply because the conduct of the individuals involved has the potential to annoy, offend or hinder the activities of third parties.<sup>180</sup>

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<sup>175</sup> *Hussain v. Toronto (City)*, 2016 ONSC 3504 (CanLII), at paras 38 and 44, <https://canlii.ca/t/grvjjz>; *Abbotsford (City) v Shantz*, 2015 BCSC 1909 (CanLII), at para 158, <https://canlii.ca/t/glpss4>; *Koehler v. Newfoundland and Labrador*, para 47.

<sup>176</sup> *Attorney General of Ontario v. 2192 Dufferin Street*, 2019 ONSC 615 (CanLII), para 54, <https://canlii.ca/t/hx6b2>; *Koehler v. Newfoundland and Labrador*, para 47.

<sup>177</sup> *Hussain v. Toronto (City)*, para 44.

<sup>178</sup> *Canadian Frontline Nurses v. Canada (Attorney General)*, 2024 FC 42 (CanLII), para 313, <https://canlii.ca/t/k2d9l>.

<sup>179</sup> *Garbeau c. Montréal (Ville de)*, 2015 QCCS 5246 (CanLII), <https://canlii.ca/t/gm2zg>.

<sup>180</sup> *Ibid.*

International law further enforces this point: the Human Rights Committee confirms that assemblies are not violent merely because they cause disruptions. General Comment 37 states that, in the context of ICCPR Article 21, violence typically includes the use of “physical force against others that is likely to result in injury or death, or serious damage to property.” The General Comment clarifies that:

- mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to “violence” (at para 15)
- for an assembly to be non-peaceful, violence must originate from the participants and not the authorities or members of the public (at para 19)
- isolated acts of violence by some members of an assembly, cannot necessarily be attributed to the group (at para 17)
- there may not be a clear dividing line between assemblies that are peaceful and those that are not, but there is a presumption in favour of considering assemblies to be peaceful (at para 17)

General Comment 37 addresses some situations in which police may act proactively to respond to a gathering taking the form of a protest. This occurs when the authorities have credible evidence that:

- before or during the assembly, specific participants are inciting others to violence
- the actions of specific participants are likely to cause violence
- the participants have violent intentions and plan to act on them
- violence on the participants’ part is imminent

Isolated incidents do not taint the entire assembly, actions that manifestly widespread within the assembly cause it to lose the protection of Article 21.<sup>181</sup>

The power of police to take preventive actions in anticipation of assemblies is contemplated in Canada’s case law. In *Brown v. Durham Regional Police Force*, the Ontario Court of Appeal differentiated between “the common law power to arrest or detain to prevent an imminent breach of the peace” and “a power to detain whenever the detention would assist in keeping the public peace,” finding the latter is not authorized at common law. Specifically, the court found that when the police take proactive measures to keep the peace, police must not interfere with individual liberty unless there is a real risk of imminent harm. The Court said:

***Any interference with individual liberty must be justified as necessary: R. v. Dedman, supra. When taking proactive measures to maintain the public peace, the requisite necessity arises only when there is a real risk of imminent harm. Before that point is reached, proactive policing must be limited to steps which do not interfere with individual freedoms.***

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<sup>181</sup> UN Human Rights Committee, *General Comment no. 37*, para 19.

*The balance struck between common law police powers and individual liberties puts a premium on individual freedom and makes crime prevention and peacekeeping more difficult for the police. In some situations, the requirement that there must be a real risk of imminent harm before the police can interfere with individual rights will leave the police powerless to prevent crime. The efficacy of laws controlling the relationship between the police and the individual is not, however, measured only from the perspective of crime control and public safety. We want to be safe, but we need to be free.*<sup>182</sup>

In *Fleming v. Ontario*, the Supreme Court of Canada cautioned against police powers that interfere with the liberty of people who are acting lawfully and not suspected of committing a crime. The Court said, “It would be difficult to overemphasize the extraordinary nature of this power. Such a power would constitute a major restriction on the lawful actions of individuals in this country.” The Supreme Court also cautioned against preventative or proactive policing that interferes with individual liberty. The Court noted that while the common law duties of preserving the peace, preventing crime and protecting life and property can include the ability to act proactively, courts must be “very cautious” about authorizing invasive police actions that intrude upon individual liberties “merely because an unlawful or disruptive act could occur in the future. Vague or overly permissive standards in such situations would sanction profound intrusions on liberty with little societal benefit.”<sup>183</sup>

In other words, even when protest interferes with police ability to keep the peace, the police may only take preventative actions (such as preventing a protest) when there is a real risk of imminent harm. This is a high standard to meet. The Human Rights Committee articulates a similar vision of this limitation at international law in General Comment 37, such as when the authorities have credible evidence that violence on the part of the protestors is imminent.

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<sup>182</sup> *Brown v Durham (Regional Municipality) Police Force*, 1998 CanLII 7198 (Ont. CA), <https://canlii.ca/t/6gkq>.

<sup>183</sup> *Fleming v Ontario*, para 83.

The Inter-American Special Rapporteur identifies evictions as a specific situation where protests arise. He notes (emphasis added):

*Some social protests take place in a context of prior rights violations and may include actions of resistance to State action, in which case demonstrators are particularly exposed to police repression. In this regard, the Inter-American Commission has underscored that the authorities must provide appropriate responses to the complex conditions under which many of the demonstrations and demands take place in the region....*

*Since [eviction] generally involves an intensified use of force, the order in which such operations are to be carried out and the manner in which they are to be carried out must meet specific criteria for guaranteeing rights, particularly when the right to social protest is involved. States should assess these circumstances in such a way that their response to protest situations can be geared, in each case, toward protecting persons in vulnerable situations, including specific measures and guidelines for supervising the use of force by security forces. In no case should State intervention lead to the violation of other rights, such as the right to life and physical integrity, the rights of participation in public affairs, freedom of expression, freedom of assembly and association, or the right to housing, among others.<sup>184</sup>*

## Determining the legality of the Hastings exclusion zone

Where an exclusion zone is required by a court order, the VPD and other municipal police are required by s. 26(2)(a) of the *Police Act* to enforce it pursuant to their responsibility to “enforce the laws of British Columbia.” Where no injunction or other court order serves as the foundation for the creation of the exclusion zone, police must have another source of lawful authority on which to base their actions in creating an exclusion zone. Where there is no statutory authority and police actions interfere with liberty, the common law ancillary powers test must be met for police creation of exclusion zones to be lawful.

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<sup>184</sup> Lanza, *Protest and Human Rights*, paras 141-151.

As described earlier, following the preliminary stage just above, the ancillary powers test asks two main questions to determine the legality of police actions that interfere with liberty:

1. Does the police action at issue fall within the general scope of a statutory or common law police duty?
2. Does the action involve a justifiable exercise of police powers associated with that duty?  
Consider:
  - a. the importance of the performance of the duty to the public good
  - b. the necessity of the interference with individual liberty for the performance of the duty
  - c. the extent of the interference with individual liberty

In this section, we review the Hastings decampment exclusion zone using these questions as a framework.

### **Step 1: Does the police action at issue fall within the general scope of a statutory or common law police duty?**

When asked what authority police relied on when they restricted access and created “safe work zones,” the Gold Commander said,

*My legal authority, that would be my common-law authority, [to] protect public, preserve the peace, which also I believe I have an authority under the Police Act ... that gives me the ability to keep the peace, prevent crime, uphold public safety, notions to that effect.*

*Once again, in risk, as a Commander, what I have to consider is, if an area's not safe and somebody gets injured, and I know about that, I know about the risk, but I chose not to do anything about that risk, I ignored that risk,... I am then culpable for that risk. So, it's one thing to say, “Well I wasn't aware of that possibility happening,” but if I'm aware of a possibility of happening, of somebody being injured and I choose not to take any steps to ensure the safety of those persons ...*

In short, the Vancouver Police Department’s position is that the restricted areas were necessary to keep the peace and protect public safety.

The duties of preserving the peace, preventing crime and protecting life and property are recognized as principal duties of the police at common law.<sup>185</sup> Police actions aimed at preventing breaches of the peace have been found by the courts to be related to these duties.<sup>186</sup> The VPD’s position is that the restrictions were put in place to protect the public and keep the peace. Given

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<sup>185</sup> *Fleming v Ontario*, para 70.

<sup>186</sup> *Fleming v Ontario*, para 71.

that the VPD has both a statutory and common law duty to keep the peace, the Commissioner finds that the first step of the test is met. The key question becomes whether the interference with liberty was reasonably necessary for fulfilling the police duty.

## **Step 2: Was the police action reasonably necessary for the fulfilment of that duty?**

While the police may be able to link their actions to their duty to maintain law and order where there is no injunction, a mere reference to “law and order” or “safety” cannot justify exclusion of media.<sup>187</sup> As discussed in detail above, media have a right to gather and disseminate information and the public has a right to receive information that is not censored or restrained.<sup>188</sup>

At this stage of the analysis, the key consideration is that, as stated by the Supreme Court of Canada, “The interference with liberty must be necessary for the carrying out of the particular police duty and it must be reasonable, having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference.”<sup>189</sup> In other words, the violation of rights must be necessary, reasonable and proportionate to the public purpose motivating the police action. The starting question is what public purpose was being served through this exclusion zone. Similarly, s. 1 of the Charter effects a balance between the rights of individuals and the interests of society by permitting limits on Charter rights and freedoms. Pursuant to s. 1, rights and freedoms are “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

In the subsections that follow, we lay out the purposes of the exclusion zone as described by the VPD and City and provide an analysis of the extent to which they are important to the public good and interference with liberty was necessary to meet them. The purposes described include addressing concerns expressed about privacy of encampment residents, concerns about the City’s and VPD’s reputation and safety concerns about both vehicular traffic and potential protest. Notably, when he was asked if one of the risks he considered was to public access or media freedom, the Gold Commander said no.

As is described below, the Commissioner concludes that the exclusion of media was not reasonable, and that liberty interests outweigh the privacy, reputational and safety goals described.

### **Justifications**

#### **Privacy of encampment residents**

Privacy of encampment residents was offered as a reason for media exclusion. In an email to Mayor and Council on April 5, 2023, the City Manager explained that “additional media outlets were given access to the encampment area after 10 a.m. this morning. This was to balance the need to protect peoples’ privacy and ensure everyone’s safety, with the media’s desire to access the working area.”<sup>190</sup>

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<sup>187</sup> *Teal Cedar Products Ltd. v Rainforest Flying Squad*, para 29.

<sup>188</sup> UN Human Rights Committee, *General Comment no. 34*, paras 11-14, 20.

<sup>189</sup> *Dedman v. The Queen*, 35.

<sup>190</sup> City of Vancouver, *FOI Proactive Release, Email from City Manager to Mayor and Council, CONFIDENTIAL - End of day update: work along East Hastings (April 5, 2023)*, (City of Vancouver, April 5, 2023), 3, <https://vancouver.ca/files/cov/2023-359-release.pdf>.

Several journalists also told the Commissioner that one of the reasons they were given for restrictions on their access was the privacy of encampment residents. For example, several journalists were told they couldn't enter the work zone or were asked to refrain from filming as certain tents were removed to protect residents' privacy. Moreover, an editor of a media company emailed the VPD on April 5, 2023, asking about reports that an officer told a journalist that the VPD were restricting media access for "reasons of privacy and safety of residents."<sup>191</sup>

The Commissioner acknowledges that failure to protect the privacy of encampment residents would exacerbate the profound human rights violations that decampments often perpetrate. Thus, protecting the privacy and dignity of residents who are forced to pack up their personal belongings often with little to no notice or place to go is essential to mitigating some of the harm and trauma that decampments have on residents.<sup>192</sup>

However, restrictions on press freedom are only justified when they are proportionate.<sup>193</sup> In the Commissioner's view, restricting media from entire city blocks to protect the privacy of encampment residents is overly broad and does not properly balance the rights of media to report and for the public to access information with the rights of encampment residents to privacy. It is unclear whether the City or VPD considered any alternatives to broad restrictions to protect the privacy of encampment residents. For example, rather than restricting media access to entire city blocks, it is unclear why the City did not continue its practice of instituting small work zones around individual tents and structures.

Moreover, regulation of the press, especially by police, is disproportionate when the industry has already developed practices that minimize privacy impacts. While media organizations are not legally required to obtain consent from individuals to take their photographs or record videos of them, journalists interviewed for this Inquiry volunteered that it is their practice to do so, where possible.<sup>194</sup> Respecting privacy is a fundamental ethical consideration for journalists.<sup>195</sup>

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<sup>191</sup> Records received from the Vancouver Police Department in response to the Commissioner's production order, Media company Editor, Email to VPD, April 5, 2023.

<sup>192</sup> Papamihali, 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, (2020): 90, <https://doi.org/10.1186/s12954-020-00436-6>.

<sup>193</sup> *Fleming v. Ontario*, paras 54-44; The *Constitution Act*, 1982, Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 (Charter) s. 1, <https://canlii.ca/t/ldsx>; UN Human Rights Committee, *General Comment no. 34*, para 22, 34-35.

<sup>194</sup> BCOHRC interview with Reporter 8.

<sup>195</sup> The Canadian Association of Journalists, *Ethics Guidelines* (CAJ, 2023), 2, <https://caj.ca/wp-content/uploads/Ethics-Guidelines-v2023.pdf>; The Canadian Association of Journalists, *Principles of Ethical Journalism*, <https://caj.ca/wp-content/uploads/principles.pdf>; Radio Television Digital News Association Canada, *Code of Journalistic Ethics* (RTDNA Canada, 2021), Principle 5.5, [https://rtdnacanada.com/wp-content/uploads/2021/02/2016RTDNA\\_Code\\_Poster\\_EN.pdf](https://rtdnacanada.com/wp-content/uploads/2021/02/2016RTDNA_Code_Poster_EN.pdf).

In addition, the City and VPD had themselves chosen to engage in high profile interference with the privacy of encampment residents by implementing the decampment, which forcibly removed people from their homes. The irony of refusing to allow coverage of these infringements on the basis of privacy concerns was not lost on reporters. This issue was best summarized by one BCOHRC media interviewee:

*So, my problem with saying that they are pushing, that they want media to go to back to Cordova Street because of the privacy of the person being decamped is that they are the ones violating her privacy by taking away her tent piece by piece and demanding that she get out of the tent and go somewhere else. So, I'm not violating her privacy, they're the ones who are violating her privacy.<sup>196</sup>*

Therefore, while protecting the privacy of residents is a laudable goal and could inform police conduct, the establishment of the exclusion zone was not reasonably necessary or proportionate to achieving this goal.

#### **Reputational protection**

The VPD also noted potential reputation risks. The Gold Commander noted:

*So, you know, as and what we saw, you know, things were either pushed out on the media, you know, how is that actually gonna affect the, you know, the public's view of the Vancouver Police Department? This is a City led initiative, so what is the reputational risk to the City of Vancouver? This is also being led ultimately by the Ministry of the Attorney General and the Ministry of Housing. They claimed ownership over this entire operation from an uber provincial strategic outlook. So, there is risk to the Provincial Government and both of those ministries. So, I have to look at all of those and then make a determination on, okay, what is an operational plan and what's the best way to proceed or not, and then the other ultimate risk was parts of our... briefing with ... the Attorney General and the Ministry of Housing were leaked and disclosed ...<sup>197</sup>*

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<sup>196</sup> BCOHRC interview with Reporter 8.

<sup>197</sup> BCOHRC interview with the Gold Commander.

It is not clear that reputational risks for a municipality or a police department are valid goals to ground police actions in Canadian law. In international human rights law, General Comment 34 permits some restrictions on freedom of expression in order to protect the reputations of others,<sup>198</sup> but both General Comment 34 and General Comment 37 clarify that restrictions on expression and expressive assemblies “should not be used to prohibit insults to the honour and reputation of officials or State organs.”<sup>199</sup> What is clear is that restricting transparency of police actions involving highly marginalized people by excluding media cannot be justified by perceived reputational risks for the VPD or the City.

### **Safety concerns**

The VPD and the City described safety as the primary reason for the creation of the safe work zones and the restrictions on media and the public. This was emphasized by the Gold Commander in his interview with the Commissioner’s staff. The Gold Commander explained that in developing the operational plan, he assessed a number of risks including safety risks to the following groups:

- people living in the encampment
- community
- businesses
- people who need to work or access the area
- fire, emergency health services and City staff
- property

Specifically, the safety concerns described by the Gold Commander, the VPD and the City include:

- protecting journalists from risks posed by moving vehicles
- protecting staff from negative interactions with advocates
- protecting the public, encampment residents and staff from a potentially disruptive protest

The City and the VPD stress their legal obligations to ensure the safety of the media, staff and the public more broadly. They note that they owe a duty of care to the public, including by City workers operating machinery on public streets, and that the City has an obligation as an employer to ensure that its employees are safe in their work environment pursuant to the *Workers Compensation Act* and Occupational Health and Safety Regulation. The Commissioner recognizes these responsibilities but notes that they have to be balanced with other legal obligations, such as human rights protections.

It is not clear whether other options, short of exclusion (including the muster point and the pool camera) were considered to mitigate potential safety concerns. It is important to note that the Commissioner finds below that the muster point was used inconsistently and that neither the muster point nor the pool camera were sufficient to address the rights violations.

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<sup>198</sup> UN Human Rights Committee, *General Comment no. 34*, para 21.

<sup>199</sup> UN Human Rights Committee, *General Comment no. 34*, para 38; UN Human Rights Committee, *General Comment no. 37*, para 49.

### **Safety concerns posed by moving vehicles**

The planning documents the Commissioner reviewed for this Inquiry provide staff safety as the reason for creating safe work zones. However, later the City and VPD provided another reason for excluding media during the initial deployment; that is, that media were restricted for the first 45 minutes for the safety of members of the media and the public related to moving vehicles.

Then Superintendent Chapman authored a letter in response to the Commissioner's production order in which he outlined his view of what the VPD did on April 5, 2023, and reasons why the street was closed, identifying public safety concerns due to the presence of large trucks.<sup>200</sup>

*We temporarily restricted access to the one-block stretch between Main and Columbia Street as City workers and police were moving around multiple heavy trucks and police cars, and unloading bins from cube vans. Given that the sidewalks were impassable due to tents, structures and materials, anyone entering the area would have had to walk on the road, which would have been unsafe during these initial stages.<sup>201</sup>*

The Media Relations Officer also testified that the reason for the restriction was safety concerns because of the large vehicles moving around in the block. He said:

*There were a lot of trucks; there were police cars; there were ... large cargo vans, you know, with the rollup back ... back door, like moving vans.... Things being offloaded off those vans, like crates and stuff like that.... There were a number of large trucks, I'm not gonna say dump trucks, but trucks that had like hydraulic bins on the back that were ... that I've seen typically used by sanitation workers, so ... it was pretty chaotic there for ... the first ... I don't know ... first several minutes ... longer than that ... 30 or 40 minutes. There was a lot of stuff happening in that block.<sup>202</sup>*

<sup>200</sup> Letter received from the Vancouver Police Department in response to Commissioner's production order, February 2, 2024.

<sup>201</sup> Letter received from the Vancouver Police Department in response to Commissioner's production order, February 2, 2024.

<sup>202</sup> BCOHRC interview with the Media Relations Officer.

Then Superintendent Chapman added:

***[H]aving indiscriminate people walking around while all of that is getting in place creates a danger hazard and creates another risk that I can mitigate. So, by creating a safety zone, I'm creating something that's, at the time, it's short in duration, it's proportional and it has a nexus for me to public safety.***<sup>203</sup>

The Inner Bronze Commander also said, “[I]nitially, it’s a lot of moving vehicles, big vehicles, a lot of people that are on the sidewalks in various levels of health and mobility, and then as well we don’t know how they’re gonna react, and so ... how is this gonna go?” Evidence reviewed by the Commissioner shows that approximately 20 City vehicles moved into the 100 block of East Hastings between 9:05 a.m. to 9:15 a.m., in an organized manner. By 9:15 a.m., the City trucks were “all in.”<sup>204</sup> While vehicles may have moved as work progressed there is no evidence of vehicles moving en masse after 9:15 a.m. until the City completed work in the 100 block and moved to the unit block. However, the VPD and City’s evidence was that the 100 block was closed for 45 minutes. Notably, there is no mention in the City or VPD evidence of safety concerns involving the trucks moving from the 100 block to the unit block midday.

None of the journalists that the Commissioner interviewed said they perceived any threat to themselves from the large trucks. These perspectives are not *determinative* of whether there were indeed safety risks as reporters’ personal risk tolerance does not absolve the City of its legal and ethical obligations for workplace safety. However, the views of reporters do inform the proportionality analysis in weighing potential safety risks with the imperative to respect press freedom, given the low risk perceived by reporters. As Reporter 1 said when asked if he perceived a risk to his safety from the moving vehicles at 9 a.m. in the restricted area, “It never occurred to me.”<sup>205</sup>

Documentary Journalist 6 watched the trucks enter the work zone. When asked about whether he had safety concerns he said, “No. At any point I wouldn’t have. There’s, you know, trucks slowly driving down the street. I would not perceive that as a danger ... it did not look like there was any danger to anybody—outside of all of the people who were scared to be decamped.”

None of the media interviewed for this Inquiry believed that the media restrictions based on safety concerns resulting from the presence of large trucks were necessary or reasonable. They also did not agree that the decampment was comparable to other circumstances they had reported in where restrictions could be justified, such as natural disasters like wildfires<sup>206</sup> and crime scenes where the preservation of evidence was necessary.<sup>207</sup> Rather, the media interviewed thought any possible safety risks posed by moving vehicles could be mitigated with common sense and by relying on their training.

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<sup>203</sup> BCOHRC interview with Gold Commander.

<sup>204</sup> Vancouver Police Department radio broadcasts, April 5, 2023.

<sup>205</sup> BCOHRC interview with Reporter 1.

<sup>206</sup> BCOHRC interview with Reporter 1.

<sup>207</sup> BCOHRC interview with Reporter 1.

When asked if she perceived any risks to her own safety Reporter 9 said, “I’ve reported on hostile environments around the world and I did not feel my safety was at risk at one moment on the Downtown Eastside.... I’ve been in pretty sketchy places globally.... I’ve walked into places far more dangerous than this and not been told not to.”<sup>208</sup>

It is also notable that there is no evidence of any steps taken to ensure the safety of encampment residents already in the work zone. As one community member asked the Commissioner: “So, I’m just curious ... whose safety we are talking about?”<sup>209</sup>

In addition, despite Hastings Street ordinarily being a busy thoroughfare and tents having been in place on the sidewalk for some time, the area had not been shut off to pedestrians until that point.

The Commissioner acknowledges the City and VPD’s stated concerns about safety risks posed by moving vehicles and their concerns about liability risks if people were to be moving around freely in the area. The Commissioner also acknowledges that the VPD and City are trained to assess safety risks. However, the Commissioner finds the restriction on media was not proportionate given the nature and depth of the interests at stake and that the restriction was unreasonable in the exercising of excessive caution regarding the safety of reporters without demonstrating a concern for the safety for those already in the exclusion zone, namely the encampment residents. It is not clear whether other options, short of exclusion and the pool camera (discussed in detail below), were considered to mitigate potential safety concerns from the moving vehicles.

In addition, even if some restriction had been reasonable, the duration of the restriction, which went well beyond the time when the trucks moved into the zone, was unreasonable. The Commissioner has found that the vehicles were in place after 15 minutes, meaning that they did not pose a safety risk after 9:15 a.m. while the evidence of the City and VPD is that they restricted media access until 9:45 a.m. and the evidence of members of the media was that they were restricted throughout the day. It is also notable that the beginning of the operation was a particularly important period of time where media presence would have increased transparency because, given that no notice was provided, this is the period of time when encampment residents were learning that they were being decamped. While the VPD and City’s evidence is that the pool camera was in the block during this time, the Commissioner has found, as discussed in detail below, that the pool camera was not set up until shortly after 9:30 a.m.

#### **Safety concerns relating to potential protest**

There is strong evidence that the primary reason for the exclusion zone was to protect City staff from negative interactions and to quell safety issues arising from a potential protest.

In her interview with Commissioner staff, the then General Manager, Arts, Culture and Community Services testified that the City was also concerned about their staff being swarmed and mobbed. She said, “[I]n a very high intense situation like this we’re very concerned that if someone loses their temper or any number of things our workers get swarmed—that’s happened in previous encampments—that’s very dangerous and extraordinary danger when something like that happens so we were very concerned about that type of mobbing as well.... [W]e were very concerned about

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<sup>208</sup> BCOHRC interview with Reporter 9.

<sup>209</sup> BCOHRC Community Engagement session, August 16, 2024.

the very abusive kind of protest actions that our staff had been experiencing.” She told us that the plan was to limit public access “for the time that we were working in those areas.”<sup>210</sup>

The then General Manager, Arts, Culture and Community Services explained that City staff experienced “constant badgering and verbal abuse” from advocates and noted that such behaviour “was increasingly affecting the mental health of City staff assigned to work in the encampment. Accordingly, to ensure our workers’ safety, new procedures were implemented to provide for safe work zones.... Sightlines were maintained to ensure media and legal observers could watch the work.”

The Media Relations Officer added:

***“Anytime media is accessing an area where there is disorder or violence, there’s absolutely a safety concern for them. However, that does not factor into our decision, for the most part, does not factor into our decision to — does not factor into my decision about how to provide access to media.... In this case, I could say generally ... it wouldn’t be unheard of for me to caution ... a member of the media about their safety, but that wouldn’t necessarily factor into ... it wouldn’t necessarily result in me stopping somebody from entering.”***<sup>211</sup>

Given the City’s concerns that staff were experiencing verbal abuse and harassment during bylaw enforcement, the City expected similar negative interactions during the decampment. As indicated above, to ensure staff safety, the City began instituted work zones in the immediate area where they were working.

In addition, the Commissioner notes that the City and VPD chose not to provide advanced notice of the decampment because they were concerned about significant public interest attracting large crowds that they would have to manage. As confirmed by then Superintendent Chapman, they wanted to avoid a situation like the Carnegie Centre incident on Aug. 9, 2022, discussed above, that resulted in clashes between police and protestors, including injuries and arrests. The Commissioner is not aware of any credible evidence suggesting that a significant protest would take place. On April 2, 2023, the Gold Commander sent an internal email explaining that the VPD continued to “monitor contacts and social media for information that may suggest a large/organized protest. To date, no such information exists.”<sup>212</sup> However, later the same day, information about the City’s operational plan was leaked, which may have resulted in increased concerns about a possible protest, although the date of the operation was not included in the leaked documents.

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<sup>210</sup> BCOHRC interview with the then General Manager, Arts, Culture and Community Services.

<sup>211</sup> BCOHRC interview with the Media Relations Officer.

<sup>212</sup> Records received from the Vancouver Police Department in response to the Commissioner’s production order; Internal VPD email from the Gold Commander, “Hasting Street Decampment – Update April 2, 2023”, April 2, 2023.

As the Inner Bronze Commander stated:

*You know, is it gonna be peaceful or not peaceful, and are protestors gonna show up, how quickly are they gonna show up, and all these questions sort of go into your mind, and so the overriding principle in my mind is I don't want anybody getting hurt here ... from a human perspective and optics perspective, every perspective.*

The Media Relations Officer also testified to being concerned about protests and disorder. He said, “[W]e didn’t exactly know how this was going to play out, whether or not it was going to be orderly, whether or not we were gonna be met with protestors, whether or not it was going be a significant amount of disorder.”<sup>213</sup>

The Gold Commander’s testimony also emphasized that the VPD were concerned about protests. When talking about creating the operational plan for April 5, the Gold Commander said:

*Should we have a protest element, which we figure we’re gonna have a protest element. Let’s basically, you know, try to quell that, and keep that protest element to a minimum, and what’s really we don’t want to get into is a prolonged violent protest struggle or anything, anything to that, to that effect.*

The Gold Commander also stated:

*[T]here is a protest element that will show up that’s not associated to those encampments, they’re showing up to protest whatever the City or the Park has chosen to do. Those groups, or those individuals ... will then essentially put a call out: “Let’s have more people come down.”*

The Gold Commander further explained that:

*They pose a safety risk unfortunately, a lot of the protestors we deal with. Protests can turn violent where, you know, our members are assaulted or City staff are assaulted [and] whatnot and then we have to then, in turn, use tactics in order to rebuke that assaultive behaviour.*

<sup>213</sup> BCOHRC interview with the Media Relations Officer.

***So, that is for sure a safety concern at any protest. We see it. There was 1018 protests in Vancouver last year, and some of them are very benign, nothing happens and others are very tense and can lead to hostilities. So, that I have to consider, and that definitely plays on my mind.***

When asked if the altercation between police and protestors on Aug. 9, 2022, (as detailed above, this incident involved a disruption at Carnegie Centre that resulted in significant conflict between police and community members and advocates) was that type of situation the VPD was trying to avoid the Gold Commander said, “Absolutely.”

Protesters did have a presence on April 5 and April 6, 2023. According to the Gold Commander, “[S]ome people just showed up to protest, you know, ‘cause that’s just what they do.”<sup>214</sup> The protest did not, however, threaten public safety. Per the Gold Commander:

***To my surprise ... on April 5th and 6th the protest element wasn't as — they were boisterous, they were challenging, they would go up to push, lay hands, but other than that, that's where they stopped, and that surprised me a little bit. To the good ... on the good side.***<sup>215</sup>

With regard to the exclusion zone, then Superintendent Chapman said that he believed media had unfettered access to the restricted area after 9:45 a.m. and the public had unfettered access after 9:45 a.m. unless they were part of the “protest element.”

In a May 2, 2023, email to Commissioner staff, the then General Manager, Arts, Culture and Community Services corroborated this: “Additionally, there was an unknown risk that people would attempt to access the area, interfere with the operation, and put people in danger (which we saw later in the day). The restricted access lasted about 45 minutes.”<sup>216</sup> As already discussed, the evidence shows that this was not true and media were still excluded or restricted after this time.

Police are not legally entitled to prevent a protest without credible evidence of imminent violence. Even if the VPD could reasonably anticipate some disorder and negative interactions, the reaction to it must be proportionate. The VPD may have been entitled to step in to prevent isolated incidents or respond reasonably when a crowd formed at around noon, but the evidence reveals that after several hours of the police making announcements asking the crowd to move back and the crowd slowly moving back, the crowd eventually dissipated and left.

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<sup>214</sup> BCOHRC interview with the Gold Commander.

<sup>215</sup> BCOHRC interview with the Gold Commander.

<sup>216</sup> Email to BCOHRC from the then General Manager, Arts, Culture and Community Services, May 2, 2023.

### **Conclusion on safety concerns**

In sum, while the multiple reasons offered for the exclusion zone were all real concerns for the City and VPD, the Commissioner finds excluding media does not appear to have been the primary reason for the exclusion zone. Instead, the exclusion zones created on April 5, 2023, were an extension of the City's practice of creating "safe work zones" and had the primary purpose of preventing safety issues, including staff safety concerns associated with protests or advocates.

Although *Knowlton* affirms that the police can sometimes lawfully create exclusion zones even if they are not enforcing an injunction, the exclusion zone at issue in that case was small. Neither *Knowlton* nor any Canadian authority affirm that the police can rely solely on their common law authority to create expansive exclusion zones that cover entire city blocks. Even if this could be permissible, whether the police can lawfully restrict public access to entire city blocks for the goal of preventing potentially violent protestors or human rights advocates is a matter of balance and, as noted above, may only be justified if the police have strong and credible evidence of imminent violence.<sup>217</sup> In addition, media access raises separate considerations.

The VPD repeatedly affirmed that they view transparency as important. Yet, the Gold Commander's above-stated rationale was essentially that transparency might result in some risks to public safety and therefore had to be restricted. The Commissioner appreciates that the VPD had to conduct this contextual assessment pre-emptively without the benefit of hindsight, training or written guidance in how to conduct such an assessment. The Gold Commander stated that he approached the analysis by considering a matrix of unwritten factors he had developed through years of experience, which doesn't include assessing risks to press freedom.<sup>218</sup> It is worthwhile noting that, as documented above, the explanations for the exclusion zone varied widely from April 5, 2023, until the date of publication. While the Commissioner does find that restricting media was not the primary motivation (or perhaps, even a motivation at all) for the exclusion zone, the inconsistency in explanations and articulations of risk from the City and VPD did not inspire confidence that these authorities engaged in the necessary balancing of rights versus risks.

To their credit, the VPD did recognize that it was important to ensure some media access to the site for the purpose of transparency and took steps to guarantee such access.<sup>219</sup> However, their efforts to do so were ultimately not sufficient to ensure that restrictions on media were proportionate.

### **Limited media access insufficient to meet requirements of necessity and proportionality**

#### **Notice and muster point were insufficient**

Prior to the City of Vancouver Information Bulletin and VPD tweets, none of the media interviewed by Commissioner staff nor the public got notice of the decampment itself or of the intended access restrictions to the area. Media who we interviewed reported a disorganized state of affairs. Although several said they were aware of a rumour or leaked information which suggested that the decampment was going to happen, none were certain about when it would happen. Only

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<sup>217</sup> UN Human Rights Committee, *General Comment no. 37*, paras 19.

<sup>218</sup> BCOHRC interview with the Gold Commander.

<sup>219</sup> BCOHRC interview with the Gold Commander; BCOHRC interview with the Media Relations Officer.

Reporter 9 noted they saw the City of Vancouver Information Bulletin, although they were already on site in the DTES when they became aware of it. None were aware of any VPD tweets that were issued on April 5, 2023. That said, the Vancouver Sun did report that the City announcement came at 9:08 a.m., which appears to be the time the Information Bulletin was sent, as described above.

As described earlier in the summary of VPD and City evidence, the VPD issued a post on Twitter at 9:48 a.m. on April 5 stating, “To ensure safety and privacy for people within the encampment, we have limited public access. Media and observers can stage at Columbia and East Hastings Street.”<sup>220</sup> This tweet was the first notice from the VPD about the muster point. None of the journalists interviewed for this Inquiry had seen this tweet or received any other advance notice of the muster point from the VPD.

The Gold Commander testified that the City and VPD decided not to provide advance notice of the decampment to residents, community and media out of concern about protests.<sup>221</sup>

*It's going to bring down a very robust protest element, which is going to create a public safety hazard for myself and for the members on the street who actually have to deal with and it will bring down ultimately ... just a lot more people wanting to see what's going on. An analogy would be like, you know, if you telegraph a fight at a high school and everybody knows about it at 8 o'clock in the morning, chances are the whole school will show up, but if it just happens, maybe two or three people saw it and that's it.*

The then General Manager, Arts, Culture and Community Services also testified that they didn't provide notice of the decampment operation to anyone because the City was very worried about “the volume of people that might come down to the area and flood the area while we were trying to get the work done and again we're working with a very sensitive, highly vulnerable population and what they don't need are like hundreds of people yelling and screaming around them while we do this work.... But it wasn't so much about the media in that case. It was we were trying to avoid hundreds of people coming in.”

Provided they are otherwise acting legally and complying with the human rights standards outlined above, the VPD and City could reasonably decide not to give the media notice of the decampment until the day it occurred, where there is reason to believe this is necessary for public safety such as to protect the integrity of a criminal investigation or to protect against serious bodily harm for those involved.<sup>222</sup> However, as described earlier, this was not the case with the April 5 and 6

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<sup>220</sup> Vancouver Police (@VancouverPD), “To ensure safety and privacy for people within the encampment, we have limited public access. Media and observers can stage at Columbia and East Hastings Street,” Twitter (now X), April 5, 2023, 9:48 a.m., <https://x.com/VancouverPD/status/1643656786715762688>.

<sup>221</sup> BCOHRC interview with the Gold Commander.

<sup>222</sup> *R v Knowlton; Figueiras*, paras 59-60.

decampment. The Media Relations Officer explained that the goal of the muster point was to facilitate media access not to prohibit access. At the same time, he said that “the muster point didn’t really materialize the way that [he] had hoped it would.” He said he did not know if media saw the 9:48 a.m. post on Twitter, and he noted that “media was already in the site. Because media was accessing it via … the lanes.”

When asked whether the muster point moved when the police line at East Hastings and Columbia moved, the Media Relations Officer replied, “[N]o.” He explained that by the time the VPD operation moved, media was everywhere, so he didn’t feel that the VPD needed to be “preventing or, or limiting access ‘cause the … for me personally, the kind of the … some of the challenges that we anticipated could happen didn’t materialize.” He did not elaborate at that point on what challenges were anticipated.

As described above, the Media Relations Officer noted that within the first hour of the deployment he approached the Inner Bronze Commander and suggested that since the media were everywhere, the VPD could probably just “let them do their thing.” It is unclear whether this statement was meant to imply that it was not necessary to maintain the muster point or whether the Media Relations Officer was suggesting that the VPD should not ask those media that had gotten access to leave the area or restrict them in other ways. It seems he did not get a firm response. The Inner Bronze Commander’s notes also confirm he talked to the Media Relations Officer at about 9:32 a.m.; however, the scribe notes indicate that the conversation resulted in the Bronze Commander permitting one camera and one reporter from Global News into the perimeter. There is no record of the Inner Bronze Commander and the Media Relations Officer discussing whether to eliminate the muster point and provide media with unfettered access to the work zone. While there is conflicting evidence on this point, it isn’t material enough for the Commissioner to resolve this inconsistency. What matters is that there was no further direction provided to front-line officers about media access.

At the same time, the Media Relations Officer confirmed several times that the direction communicated to all officers in the early morning before the decampment began remained that all media access to the site, apart from the pool camera, was to be approved through the chain of command. He was not aware of any other officers in the police line being advised that that direction with respect to media access had changed at any time. As reviewed above, a number of members of the media reported being denied entry by the police line and it was not clear to them how to seek entry. Some received inconsistent directions or responses. Therefore, the Commissioner finds that even if the Media Relations Officer implied in his conversation with the Inner Bronze Commander that the muster point should be eliminated, he did not specifically ask the Inner Bronze Commander to make a firm decision on this point and none was made.

In sum, the Commissioner finds the notice and muster point imposed on April 5 and 6, 2023, were not reasonably imposed and were insufficient to mitigate the impact on freedom of press—in other words, they were insufficient to meet the legal requirements of necessity and proportionality. First, the Information Bulletin that went out from the City of Vancouver did not make clear the location that media should enter or who in the VPD should be contacted. In fact, the information for media

was buried at the bottom of the page and referred to the work zone perimeter with no context or explanation. While the VPD also posted about the closure of the street and the muster point on Twitter at 9:48 a.m.,<sup>223</sup> that was after the time the VPD subsequently claimed the restrictions ended. That is also after the time that the Media Relations Officer said he spoke to the Inner Bronze Commander about not maintaining the muster point because the anticipated challenges did not materialize.

Second, despite the City's distribution of the Information Bulletin, none of the media interviewed for this Inquiry recalled seeing it. While most media said that they are on the City's email lists, none recalled receiving email notification from the City.

Third, in arriving at the site, media were given inconsistent and incomplete information about whether and where there was a muster point and whether and how they could access the site. The muster point was implemented in a disorganized manner, which meant some media were unjustifiably turned away and some were made to wait for a lengthy period of time to coordinate access with the Media Relations Officer during key moments at the beginning of the decampment, which impeded their ability to report on it.

While the VPD also posted about the closure of the street and the muster point on Twitter, that post was at 9:48 a.m., after the time the VPD subsequently claimed the restrictions ended. That's also after the time that the Media Relations Officer spoke to Bronze Commander about not maintaining the muster point because the anticipated challenges did not materialize. As is recorded in the Inner Bronze Commander's notes, the direction from the VPD chain of command for all of April 5 and April 6, 2023, was that no person could enter the work zone without permission from the Bronze Commander. It does not appear that all officers were aware that the Media Relations Officer was managing media access through the muster point. Therefore, not all of them directed members of the media who asked them for access to the staging point to the Media Relations Officer.

It is not clear when the muster point was in fact dropped. There is no indication that the information provided to officers in the police line to convey to media who approached them was updated when this was done, or in fact at any point during April 5 or April 6.

#### **Pool camera was insufficient**

As described above, Global News ran a pool camera from inside the exclusion zone to record the events of the decampment on April 5, 2023. There are a number of issues of concern emerging from the evidence on the establishment of the pool camera, all of which speak to whether the pool camera created enough transparency as to alleviate the impact that the exclusion zone otherwise has on freedom of the press. In the Commissioner's view, the pool camera does not adequately address the risks created by the media exclusion zone.

First, the evidence is contradictory on when Global News was selected to set up the pool camera and notified about the decampment.

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<sup>223</sup> Vancouver Police (@VancouverPD), "To ensure safety and privacy."

The Media Relations Officer explained that in late summer 2022, he had a discussion with the Managing Editor at Global News where, at the end of the conversation, he broached the topic of Global News setting up a pool camera if the City was going to bring the Hastings encampment to an end. The Media Relations Officer said that he was told that the pool camera could be set up very quickly after calling Global News.

This is contradicted, however, by Global News' testimony. In their written statement to the Commissioner, Global News said that the conversation in 2022 was "a request to pool coverage of the delegation from the Vancouver Chinatown travelling to San Francisco, which included members of VPD travelling with community members." Global News denied discussing potential pool coverage for a decampment during that conversation. Global News also said that they were approached by the Media Relations Officer "mid-morning" on April 5, 2023, to set up a pool camera.

Nevertheless, records from the VPD match the Media Relations Officer's testimony. On March 31, 2023, the Gold Commander wrote an email to the Media Relations Officer to finalize a decision on the pool camera, saying:

***Hi [Media Relations Officer],***

***Did you ever arrive at a decision about who may be the "pool" camera person invited into the decampment zone during the decampment? From a transparency aspect it would be great to have that covered off.***

***Let me know your thoughts so that we can include that one way or the other in the Ops plan.***

The Media Relations Officer replied:

***This will be super easy to set up on the fly if that's what we want to do. Once we've deployed, I can reach out to Global and ask them to set it up. They can do it in an hour by contacting the other networks.***

***A pool cam will only satisfy the four TV stations. We're also likely to have print reporters, photographers, and others from smaller media outlets who want access....***

The Media Relations Officer testified that he and the Gold Commander planned to reach out to Global News to set up a pool camera as soon as the VPD "had a visible presence" in the encampment area. He said he chose Global News to set up the pool camera because "they have

the most resources...." He explained that "throughout the COVID pandemic when resources were limited and the networks weren't all sending individual camera operators and reporters to events, they'd always rely on Global News to shoot and pool the information, distribute the information to the other TV stations."<sup>224</sup>

The Gold Commander testified that the only exception to media access for those first 45 minutes was for the Global News pool camera. The City of Vancouver and Vancouver Police Department said that the Global News pool camera was in the restricted area when they deployed.

The Media Relations Officer indicated that he made a phone call to Global News at approximately 9:07 a.m. He said that Global News already had a reporter and camera in the area and he asked the Global assignment editor to contact the other networks (CBC, CTV and CityTV) to arrange to pool the footage. He let Global News contact the other media outlets to arrange access to their footage. It is unclear how many media outlets accessed the pooled footage. Evidence before the Commissioner indicates that at least one of the major media outlets did not support this model.

Although Global News declined to participate further in the Inquiry, they did provide the following written statement to the Commissioner:

*On April 5, 2023, Global News reporter ... and camera operator... were already on site in the Downtown Eastside between 5am-6am, BEFORE the decampment of Hastings St. As with many news stories, Global BC has been the leader in learning what may be happening and having our news teams in place to cover potential stories. As with any story in the DTES, our crews are well-prepared and take into account all safety considerations. As the decampment was underway, by mid-morning we were approached to provide pool material for other media outlets, which is a common practice that has been established over the last several years. To ensure this story was shared widely with the public, in good faith we decided to facilitate sharing our material.<sup>225</sup>*

We received contradictory evidence about when Global News became aware of the decampment and when the pool camera was permitted into the restricted area. The notes of the Silver Commander indicate that the Global News camera was "pre-arranged." The Media Relations Officer said that he permitted Global News to access the restricted area "almost immediately" after making the phone call at 9:07 a.m. Global News told us they were approached to set up a pool camera "mid-morning" but declined to clarify the precise time. VPD radio broadcasts confirm that Global News was set up outside the restricted area at Carrall and Hastings at 9:21 a.m.; at 9:22 a.m., they walked to Columbia and Hastings looking for the Media Relations Officer and, at 9:30 a.m.,

<sup>224</sup> BCOHRC interview with the Media Relations Officer.

<sup>225</sup> Global News, Email to BCOHRC, May 30, 2024.

they requested access into the block. At 9:30 a.m., a police officer radioed, “I’ve got Global TV that wants to walk into the block. Say they have permission from media [the Media Relations Officer] to be there.”<sup>226</sup> Scribe notes from the Silver and Inner Bronze Commanders indicate a reporter and camera from Global News were allowed into the restricted area at 9:32 a.m. This is confirmed by a VPD radio broadcast from 9:34 a.m.: “For all units Global is in the exclusion zone with the permission of [the Media Relations Officer].”

Global News reporters issued the following first tweet with photos from inside the restricted area at 10:01 a.m.

***Vancouver #DTES being cleared right now. Those on the streets are stuffing as much as they can into bins—I’ve seen tents and belongings thrown into garbage trucks—advocates calling it cruel and inhumane. No clashing so far.***<sup>227</sup>

The Commissioner finds, on the balance of evidence, that Global News accessed the restricted area at 9:32 a.m., and that while the divergent evidence on this question is puzzling, the question of when they were notified is not a significant factor in determining whether the pool camera sufficiently addressed the need for media access. Based on the evidence, the Commissioner finds that it is likely that Global News contacted the other major news outlets in the morning of April 5 and explained that they would be sharing their video. The only evidence before the Commissioner is that the video footage was shared “later in the day.” It is unclear what time video footage was shared. The Commissioner finds that the video footage started sometime between 9:32 a.m. and 10:01 a.m., and therefore did not capture the beginning of the decampment.

Second, there is contradictory evidence on why a pool camera was established at all, and whether such a tool was appropriate in the circumstances.

The Media Relations Officer said the VPD decided on a pool camera because it was not practical for every reporter to report on the decampment. When asked why the VPD thought it wouldn’t be practical, he provided an example of the prime minister going on an overseas trip and it not being practical for every reporter to go on the plane with the prime minister. He explained what typically happens in those situations is that the news agencies decide among themselves who will attend and pool their footage.<sup>228</sup> With respect, it is difficult to see how these situations are analogous. In the Media Relations Officer’s example, space is clearly limited on a plane whereas the decampment area covered city blocks. In addition, a trip overseas is much more resource intensive than a trip within the city. Further, the decampment was breaking local news, for which the major news outlets would likely have made resources available.<sup>229</sup>

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<sup>226</sup> Vancouver Police Department radio broadcasts, April 5, 2023.

<sup>227</sup> Emily Lazatin (@EmilyLazatin), “Vancouver #DTES being cleared right now. Those on the streets are stuffing as much as they can into bins—I’ve seen tents and belongings thrown into garbage trucks—advocates calling it cruel and inhumane. No clashing so far. [@GlobalBC](https://x.com/EmilyLazatin/status/1643660171963695104),” Twitter (now X), April 5, 2023, 10:01 a.m., <https://x.com/EmilyLazatin/status/1643660171963695104>.

<sup>228</sup> BCOHRC interview with Media Relations Officer.

<sup>229</sup> BCOHRC interview with Media Outlet A; BCOHRC interview with Photojournalist 2.

The journalists' perspective on the pool camera was dramatically different from that of the VPD. Journalists were critical of what they perceived to be VPD's decision to control media by planning for a pool camera, although some received and used Global News' footage because they felt they had no choice. A number of journalists noted that they were "shocked" by the proposed pool camera arrangement because the circumstances were not suitable for its use and the manner in which the decision was made was not consistent with industry practice. The Commissioner heard that, generally, the practice of using pool cameras is controversial in the industry because it originates in military practices of embedding journalists with military in active war zones, leading to concerns about control of the narrative and information.<sup>230</sup> Usually, the choice to use a pool camera is a practical one made by media outlets in consultation with each other. It's never dictated, outside of very specific high security situations, such as reporting from the prime minister's plane.

The Commissioner heard from other networks that they were not consulted in the establishment of the pool camera. Media Outlet A described being surprised both that their team was prevented from accessing the restricted area and that the VPD had established a pool camera. As a major news outlet, they explained that pool cameras are unheard of in circumstances like this and that they are never established unilaterally between a police agency and a single news outlet. They said that pool cameras are more common in very controlled environments (for example, during COVID-19 briefings) and in situations where space is limited (for example, on a helicopter flying over a wildfire). They explained that the decision to pool footage is always made co-operatively between newsrooms, that newsrooms decide to pool their resources and that, when pool cameras are established, it's the newsrooms, not the police, who decide who will take the footage and how it is going to happen. They explained that pooled footage is available to the media outlets at the same time, so the media outlet shooting the footage doesn't get to use it earlier than the others. They said that the process for establishing pool cameras is co-operative and very clear between newsrooms, and that it can be decided and mobilized very quickly.

Media Outlet A told us that they have never encountered a situation before where they were told who operates the pool camera. They said that they sent emails to the VPD asking about how and why the pool camera was established but they never received a response.

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<sup>230</sup> Lisa Paul, "Embedding for Safety," *Ryerson Review of Journalism*, April 20, 2007, <https://rrj.ca/embedding-for-safety/>.

Another told us,

*[There are gray areas] when the police start deciding that they have a pool access that they're offering—they can pick a lot and then you also get into a lot of challenges around who has source relationships with police, who can speak to Comms people on the fly, who has the right phone numbers and obviously organizations ... will have a little bit more access potentially than other news organizations which can be really inequitable.<sup>231</sup>*

Third, media witnesses raised concerns about how the pool camera arrangement compromised their independence.

As one journalist put it:

*I believe it was Global as a pool camera, maybe they knew. Which is a problem in and of itself because if [the VPD] were, you know, contacting one print-based and one video-based news organization to the exclusion of others, there's a problem for the dissemination of, of news and that has democratic problems.*

*It is a common practice to have a print and a video reporter go into situations. I think back to the Kamloops fires about 15 years ago. You know, they would take a print reporter from say CP and a CBC reporter up in the helicopter to go to the fire sites and then come back and bring the information.*

*And they would do that on the proviso that the information was shared with everyone who wanted it. Given that we were given no notice in this situation, you know, what was the proviso that the information would be shared with everybody? We just didn't know.<sup>232</sup>*

<sup>231</sup> BCOHRC Media Engagement session, August 13, 2024.

<sup>232</sup> BCOHRC interview with Reporter 1.

Reporter 9 explained the challenges of relying on pooled footage in this way:

*So, if I'm the reporter and it's my job to report on what I see and what I hear ... even the smells and the sounds—it's my job to report on that. By not having access to that place, I have somebody else's singular view of the event. So, for example, you have one camera, that's your only lens. What that person shows you and captures, or if they talk to someone, that's their lens of it. And to me it would impact my ability to fulsomely know what was going on—to have the independence. So, it takes away your independence as a journalist to be able to gather your own material because I don't know what if that angle that he's shot there, when you turn around this way, it's a different scene. Or maybe there's a confrontation or, what was that pool person shooting?*

*In a pool situation there are agreements and typically they are in a very controlled environment. For example, a press pool. You know you're going to get comments from the prime minister and cutaways. There's not a lot of space. You're not going to miss much, right? Because it's a controlled environment already, or a fly over of a fire. You know, it's agreed upon, a camera goes up. You know, they have two windows to shoot from, and that's what they do. So, there's not space there where I would have had much more opportunity to be independent, but something like this, that's not a controlled environment, it's breaking news. It's also controversial, right? The Downtown Eastside always is. You're also talking about vulnerable people. There's different approaches to how people approach people. I just feel like it strips away your independence and your ability to fulsomely report on something and then to me, that makes me worry a bit about credibility for what we're showing.... Not that I don't trust my Global colleagues, but there was no conversation about it. There was no like, "What are you gonna get? What are you gonna focus on?"*

*It's just like I said, I've been reporting for more than 25 something years and never experienced that....*

*I think it strips away your independence, your ability to do your job, and in that can chip into your credibility as well.*

During the Commissioner's media roundtable, we heard several concerns about the practice of police-established pool cameras. For example, one participant described the practice of inviting one or two journalists into a restricted area as a "curated environment."<sup>233</sup>

Finally, media witnesses raised concerns about the exclusion of smaller and more alternative outlets.

The Media Relations Officer noted that the pool camera would be shared only with the four major TV stations, and would not satisfy print or radio reporters, photographers and others from smaller media outlets who would want access.<sup>234</sup> Outlets that do not rely on broadcasting may have different information collection methodologies. Moreover, smaller outlets are precisely the outlets that may have alternative perspectives on events. Smaller outlets are those where journalists themselves may be members of minority groups and have insight into different lived experiences.<sup>235</sup> A VPD plan that does not include them therefore tends to unreasonably marginalize these voices and restrict public debate. As already discussed above, the Media Relations Officer raised the issue of access for other media outlets. It is not reasonable that the Media Relations Officer's important concern about smaller media outlets remained unaddressed.

In sum, in the Commissioner's view, the establishment of a pool camera was not reasonably imposed and was insufficient to meet the legal requirements of necessity and proportionality. Media should have been provided with direct access to the encampment areas. The Commissioner finds that the pool camera did not provide sufficient access to media who were excluded from the area of the decampment. It was not coordinated with other outlets in the usual fashion, which indicates that it was not designed to meet the needs of transparency and press freedom. It was an unusual arrangement that appeared to prioritize police control rather than media independence. The nature of a pool camera is that it is centralized footage, which is not well suited to capturing a complex situation involving hundreds of people within two city blocks. It was also only established after 9:30 a.m., leaving much of the initial operation without media coverage. Major outlets weren't provided with access to Global News' footage until later in the day and smaller outlets and independent media weren't provided with access to it at all. Indeed, it directly undermined media independence both in how it was established and in the fact that it became the primary source of video footage for broadcast journalists and didn't meet the needs of smaller, diverse or non-broadcast outlets at all, thereby undermining freedom of press.

It appears that the Gold Commander's and the Media Relations Officer's intentions with permitting the pool camera were to promote transparency. It is also noteworthy that the Gold Commander turned his mind to this question in advance and saw it as important enough to make inquiries and ensure a plan was in place. That planning is commendable.

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<sup>233</sup> BCOHRC Media Engagement session, August 13, 2024.

<sup>234</sup> Emails between the Media Relations Officer and then Superintendent Chapman.

<sup>235</sup> Canadian Association of Journalists, *Canadian Newsroom Diversity Survey, Final Report* (CAJ, 2024), 13, [https://caj.ca/wp-content/uploads/Diversity\\_Survey\\_Report\\_2024\\_EN.pdf](https://caj.ca/wp-content/uploads/Diversity_Survey_Report_2024_EN.pdf); See also Fernando Arce, "Canada's newsrooms don't reflect the country's diversity: Study," *New Canadian Media*, January 6, 2023, <https://www.newcanadianmedia.ca/canadas-newsrooms-dont-reflect-the-countrys-diversity-study-journalists/>.

However, the conceptualization and execution of the plan was problematic from the perspective of respecting freedom of the press. This problem becomes apparent in planning discussions between the Gold Commander and the Media Relations Officer. In an email about media planning in advance of the decampment, the Media Relations Officer explained (emphasis added):

*My thoughts are that we use Twitter to communicate and start out by directing media to staging locations that are outside of the perimeter of the exclusion zones. They can shoot at a distance from there and speak to people as they leave. As things move along we can discuss with the Command Team whether it's appropriate or even necessary to allow closer access. If we do, I suggest we allow a couple at a time to come a bit closer for a limited amount of time, then get out.*

The above reveals a problematic assumption from police that it is within their jurisdiction to make decisions about whether it is necessary to allow access to the site, if media are asking for access. However, as already noted, there was no lawful authority for police to exclude media or make arrangements for how they should report. There is no indication that the presence of media posed any risks to themselves or any person in the operation. There was simply no need for that level of control by the VPD. Restricting broadcast media access to one camera had the effect of shaping the narrative and impeding broadcast reporting on the whole of the decampment. Moreover, several journalists mentioned the importance of being able to film the sounds of the decampment and use their other senses, such as smell, in making choices about what footage to capture and when presenting a story.<sup>236</sup> The potential impact on freedom of press is demonstrated by the surprise indicated by several reporters about the use of a pool camera in this circumstance, which was seen as highly unusual.

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<sup>236</sup> BCOHRC interviews with Documentary Journalist 6 and Reporter 9; See also Brent Jolly, Ethan Cox and Andrea Houston, "By Detaining Journalists Doing Their Job, Police in Canada Threaten the Public Interest" *The Globe and Mail*, February 14, 2024, <https://www.theglobeandmail.com/opinion/article-by-detaining-journalists-doing-their-job-police-in-canada-threaten-the/>.

### **Sight lines were insufficient**

The VPD and City consistently maintained that sight lines for media who were restricted from entering the work zone were not compromised. For example, in his submission to the Vancouver Police Board on his investigation, then Superintendent Don Chapman explained:

***It would've been very easy for the City or ourselves to get some very high chain link portable fencing, with some curtain stuff, and try to prevent people from seeing what was happening. That didn't transpire. It was never our intention to not let people see what was transpiring here.***<sup>237</sup>

Some journalists, however, commented that the very existence of the perimeter impeded their ability to report. For example, Reporter 10, a photojournalist with CBC, was asked whether he would have been able to photograph the decampment from behind the police lines he explained, “No. It was just too far away and there was too many trucks and other equipment in the way.”<sup>238</sup>

Similarly, Reporter 1 from Glacier Media said, “You know, with cube vans in the way blocking garbage trucks, you wouldn’t be able to see, clearly see, people as their belongings were being ripped from them. So, in that, in that sense sight lines were restricted.” Reporter 1 added, “It’s the people who are the story.” He explained that to report effectively on the decampment, he needed access to the restricted area to speak to people affected by it.<sup>239</sup>

When asked about sight lines, Photojournalist 2 said, “There’s police and other people kind of in the way, like you’re basically photographing the back of some people. It’s not a news photo.”<sup>240</sup>

Photojournalist 4 said, “I think the difference being inside, even though it’s a one-block radius ... it’s harder to see farther into the middle of the street what’s happening just standing on the side of the street ... so it was hard, at least from Columbia Street, because it’s down at the bottom of a hill and there’s you know a lot of people kind of in the middle of the block—so just in terms of media ... seeing what is happening—we don’t know what else is happening in the middle versus what’s happening just on the outsides of the block.”<sup>241</sup>

In response to a question about whether he could report from behind the police barricades, Reporter 5 said, “No, because what you want to do is speak with someone who is in the process of packing up all of their belongings into a bin—find out where they’re going, how long have they been there. Because the City was saying we have shelter spaces for everyone and they’re giving out information—find out if that person has been given information. Do they know where they’re going?”<sup>242</sup>

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<sup>237</sup> Then Superintendent Don Chapman submissions at VPB Hearing into complaint, November 23, 2023.

<sup>238</sup> BCOHRC interview with Reporter 10.

<sup>239</sup> BCOHRC interview with Reporter 1.

<sup>240</sup> BCOHRC interview with Photojournalist 2.

<sup>241</sup> BCOHRC interview with Photojournalist 4.

<sup>242</sup> BCOHRC interview with Reporter 5.

The Commissioner finds that sight lines from behind police lines over entire city blocks involving the decampment of hundreds of people could not—as the police have asserted—be uncompromised. The need for even minor restrictions of media, let alone significant impediments, has never been shown. Therefore, these restricted sight lines into the exclusion zones were not sufficient to alleviate the human rights concerns arising from the exclusion.

### **Police action not a justifiable exercise of a police power associated with a police duty**

The Commissioner finds that the potential risk to public or staff safety does not justify broad media restrictions that spanned entire city blocks and lasted throughout the day on April 5, 2023, and the VPD’s efforts to mitigate the effect of restrictions were ultimately insufficient. Transparency and accountability are themselves critical social interests and require tolerance of some risk. When determining whether to limit transparency, the starting point with which the analysis should be approached is that media should be unhindered, and the public have a right to receive information from the media and express their views on it.<sup>243</sup> Moreover, the public has a right to peacefully protest what they perceive to be human rights violations. Any restrictions on those rights must be necessary and proportionate.

Given the critical importance of the right to a free press and the public’s right to receive information about and express their views on events impacting the human rights of marginalized populations, in the Commissioner’s view, the assessment undertaken by the VPD in this situation had to balance the following factors:

- the critical importance of the free and independent press to democratic institutions, the starting point of the reasoning being that media should not be hindered in carrying out their duties
- the effect of the proposed restrictions on the rights of the press to bear witness to the ongoing events
- the nature of the event and the rights to be reported on
- the likelihood, nature and extent of risks to public safety arising
- whether there are alternative means to securing public safety that do not require media restrictions

In this case, the events themselves concerned critical human rights questions surrounding the City of Vancouver’s compliance with the human right to housing and measures taken against vulnerable people. The Commissioner finds that there is no evidence that the media themselves posed any risk to the operation or to public safety. It appears that this was self-evident to police as well given that there no discussion of risks posed by media in the planning process. When media accessed the work zone, they were generally not asked to leave which suggests that the VPD did not have concerns with them remaining in the work zone. If the VPD didn’t have concerns with media being in the work zone, it is hard to justify the restrictions in the first place.

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<sup>243</sup> UN Human Rights Committee, *General Comment no. 34*, para 13.

Given that the VPD didn't seem to have concerns about media being in the work zone, the Commissioner finds that they failed to direct police officers at the barricades that they could permit media to enter, resulting in media continuing to be restricted throughout the day on April 5, 2023. The Commissioner finds that it was not necessary or reasonable to restrict media to protect public and staff safety. In fact, the opposite is true—media presence is protective of human rights, which is in the public interest. There is also no evidence that allowing media to enter the restricted area would necessarily mean that members of the public, including potential protestors, would have to be allowed in the zone as well. Media presence is important for oversight of municipal and police conduct. Their exclusion increases the risk of rights violations, which undermines public safety.

As stated before in this report, any media restrictions must be minimal and mindful of the fact that a free and unhindered press is essential to democracy. Restrictions should not impair the media's reporting ability or shape the narrative of the reporting. Once it is decided that media should enter from a certain point, they should receive reasonable notice of that direction and clear instructions including the exact location and contact information for the person to contact with questions. There should not be an undue delay in admitting media to a site because that undermines their ability to observe ongoing events. As described by one engagement participant, "[A]ccess delayed is access denied."<sup>244</sup>

With respect to restricting the public and advocates to ensure the safety of staff, the Commissioner acknowledges that the City had an obligation to take steps to keep staff safe in the face of the verbal abuse and harassment the City alleges they were experiencing. The Commissioner notes that, prior to April 5, the City was already managing this risk with the creation of work zones around the immediate vicinity of their bylaw enforcement. The Commissioner also notes that there was significant police presence during the decampment and the police are empowered to enforce the law when they suspect people of committing crimes.

During the administrative fairness review, the Deputy City Manager noted that in addition to staff safety, the restrictions were for operational efficiency. The Commissioner acknowledges that the City's goal was to bring the entire Hastings decampment to a close in two days and that closing city blocks to achieve that purpose was convenient from an operational perspective. The City and VPD, however, needed to recognize the liberty interests at stake and ensure that restrictions on the right to protest were necessary, reasonable and proportionate.

Given the right to peaceful assembly, the police can only proactively limit or restrict a protest when they have credible evidence of a risk of violence. Violence in this context is understood as physical force against others that is likely to result in injury or death, or serious damage to property. Mere pushing and shoving or disruption of vehicle or pedestrian movement or daily activities do not amount to "violence."<sup>245</sup> As noted above, isolated acts of violence by some members of an assembly cannot necessarily be attributed to the group.<sup>246</sup>

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<sup>244</sup> Subject matter expert memo, August 2025.

<sup>245</sup> UN Human Rights Committee, *General Comment no. 37* para 15.

<sup>246</sup> UN Human Rights Committee, *General Comment no. 37* para 19.

**“In determining the boundaries of police powers, caution is required to ensure the proper balance between preventing excessive intrusions on an individual’s liberty and privacy, and enabling the police to do what is reasonably necessary to perform their duties in protecting the public.”<sup>247</sup>**

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<sup>247</sup> *R. v. Clayton*, para 26.

While the Commissioner is concerned about the impacts on the right to protest and assemble from the creation of the exclusion zone, the Commissioner does not make a specific finding on whether the limits were justified because to do so she would need to assess whether there was a credible risk of violence, which is an evidentiary issue that was outside the scope of the Inquiry. She was informed about the City's perspective on the risks posed by protesters and advocates through her Inquiry into the exclusion of media, and was not able to interview community members or advocates on their perspectives, given the limited scope of this Inquiry.

The City and police have pointed to isolated incidents of violence and, even if that is true (which is outside the scope of the Inquiry for the Commissioner to determine), that does not justify the sweeping exclusion of media from the whole zone. As noted above, there is no evidence that media themselves posed a risk of harm to public or staff safety (beyond the City's evidence that the City and its workers should be protected from the potential liability and psychological harm associated with hitting a journalist with a city vehicle). Therefore, it is not necessary for the Commissioner to determine the extent of the risk posed by advocates or protestors to City staff in order to find that the creation of the media exclusion zone was not necessary or proportionate to the risks identified and therefore contrary to human rights protections of a free press.

In addition, the Commissioner finds that the creation of the media exclusion zone was not reasonably necessary for the fulfilment of any police duty and therefore not a justifiable exercise of a police power. The creation of the exclusion zone was not therefore authorized by the common law, and the VPD did not have lawful authority to implement the temporal and geographical media restrictions that it did. The importance of reporting by the free press on the events in this case as well as the freedom of assembly outweighed any public safety concerns. Since the creation of the media exclusion zone was unlawful, human rights standards were not fulfilled.

The above analysis does not mean to suggest the VPD can never take any short-term, limited and reasonable measures to secure an area, or decline to give advance notice for a police operation where there is reason to believe this is necessary for public safety. There could be circumstances where it is reasonable to ask media to enter from a certain street or talk to a certain person to gain entry.

For example, extra judicial restrictions may occasionally be justified where necessary to protect the integrity of a criminal investigation or to protect against unanticipated serious bodily harm for those involved,<sup>248</sup> and in such circumstances, as much media access as possible should be well coordinated to reduce unnecessary or overly broad restrictions on their access. However, that's not what happened in this case. Here, the Commissioner accepts that the City and VPD's perspective is that they took steps to provide for media access in a dynamic and challenging circumstance and acknowledges that the City and VPD had safety risks to manage. What was required of the City and VPD officials was to balance managing the safety risks without unnecessarily or unreasonably restricting freedom of the press and freedom of assembly in a way that is proportionate to the risks posed. In the Commissioner's view, the VPD and City clearly prioritized safety over media access. This was clearly confirmed by one of the deputies of the VPD in a meeting with the Commissioner during the administrative fairness process when he said that physical safety always

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<sup>248</sup> *R v Knowlton; Figueiras*, paras 59-60.

takes precedence over human rights. In prioritizing safety over freedom of the press and freedom of assembly, the City and VPD failed to ensure that the restrictions on these freedoms were proportionate to perceived or anticipated risks.

## Exclusion zone violated protections for substantive equality

Human rights standards prohibit restrictions on media freedom—or indeed, any police actions—that are discriminatory in their intent or impact.<sup>249</sup> A law, policy or practice is discriminatory within the meaning of domestic and international human rights law where it creates disadvantage for a person with a protected characteristic, and unjustified discrimination is illegal.

International law protections are contained in many treaties and declarations, for example:

- The ICCPR prohibits any distinctions, exclusions, restrictions or preferences which are based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.<sup>250</sup>
- The Economic, Social and Cultural Rights Committee has noted that the protections under that Convention extend to non-discrimination on the basis of social condition, including living in poverty or being unhoused.
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>251</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>252</sup> respectively prohibit the unequal treatment of racialized persons and women.
- The UN *Declaration on the Rights of Indigenous Peoples* (which is affirmed to apply to the laws of British Columbia in s. 2(a) of the *Declaration on the Rights of Indigenous Peoples Act*<sup>253</sup>) prohibits any kind of discrimination against Indigenous people.

Similarly, the right to substantive equality, on the basis of a number of enumerated and analogous grounds, is also protected by s. 15 of the Charter. One distinct difference of Charter protections from international law protections is that the Charter does not explicitly prohibit discrimination on the basis of social condition, poverty or homelessness. Although arguably such grounds could be considered analogous to the enumerated grounds, the courts have declined thus far to name it as such.

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<sup>249</sup> UN Human Rights Committee, *General Comment no. 34*, para 26.

<sup>250</sup> UN Human Rights Committee, *General Comment 18: Non-discrimination*, November 19, 1989, para 7, <https://www.refworld.org/legal/general/hrc/1989/en/6268>.

<sup>251</sup> United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195, 21 December 1965, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>.

<sup>252</sup> United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 1249 UNTS 13, 18 December 1979, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

<sup>253</sup> *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c. 44, <https://canlii.ca/t/544c3>; *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430, <https://canlii.ca/t/kgvvb>.

Turning finally to statutory protections under B.C.'s *Human Rights Code*, s. 8(1)(b) notes that a person must not discriminate against a person or class of persons because of their Indigenous identity, race, colour, ancestry, physical or mental disability, sex, gender identity or expression or age regarding services customarily available to the public, such as police services, unless there is a *bona fide* and reasonable justification.

Determining whether there has been a breach of the *Human Rights Code* involves a two-step analysis.<sup>254</sup> At the first step, the individual or group must establish a *prima facie* case of discrimination by showing:

1. they have a characteristic which is protected under the Code;
2. they have experienced an adverse effect; and
3. that the protected characteristic was a factor in the adverse treatment.

It is not necessary to prove causation; instead, there must simply be a "connection," or the protected characteristic must be a factor in the negative treatment.<sup>255</sup>

The next step in the legal analysis is to determine whether the actions of the public body are justified as a *bona fide* requirement.<sup>256</sup> The test is whether they:

1. adopted the standard for a purpose or goal rationally connected to the function being performed;
2. adopted the standard in good faith, in the belief that it is necessary for the fulfilment of the purpose or goal; and
3. the standard is reasonably necessary to accomplish its purpose or goal, because the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship, whether that hardship takes the form of impossibility, serious risk or excessive cost.

Discrimination refers to both direct discrimination and adverse impact discrimination. Direct discrimination occurs when there is differential treatment on the basis of one of the protected grounds.<sup>257</sup> Adverse impact discrimination occurs when a seemingly neutral law or policy has a disproportionate impact on members of groups based on their protected characteristics.<sup>258</sup>

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<sup>254</sup> *British Columbia (Public Service Employee Relations Commission) v. B.C.G.E.U.*, 1999 CanLII 652 (SCC), paras 54-55, <https://canlii.ca/t/1fqk1>.

<sup>255</sup> *Moore v. British Columbia (Education)*, 2012 SCC 61 (CanLII), para 33, <https://canlii.ca/t/ftp16>; UN Human Rights Committee, *General Comment 18: Non-discrimination*, para 7, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCCR%2FGEC%2F6622&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCCR%2FGEC%2F6622&Lang=en); UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para 2, of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/20, 2 July 2009, para 10, <https://documents.un.org/doc/undoc/gen/g09/434/05/pdf/g0943405.pdf>.

<sup>256</sup> *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, 1999 CanLII 646 (SCC), <https://canlii.ca/t/1fqk1>.

<sup>257</sup> *Ont. Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC), <https://canlii.ca/t/1ftxz>; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), para 27, <https://canlii.ca/t/1fqk1>.

<sup>258</sup> *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 (CanLII), para 32. <https://canlii.ca/t/gk9vn>.

Importantly, intent is not required to establish that a practice is discriminatory. Adverse impact discrimination violates the norm of substantive equality, which looks at the impact of a law or policy to see whether the outcome is equal for different groups of people. Substantive equality considers social and historical context and recognizes that sometimes in order for an outcome to be fair, laws or policies may need to treat people differently.<sup>259</sup>

While B.C.'s Code does not speak directly to the rights of people who are unhoused, it does protect against discrimination on the basis of Indigenous identity, race, disability, age and gender. The Commissioner has, on a number of occasions, recommended the addition of "social condition" to the Code, although this recommendation has not yet been implemented. The protections against discrimination at international law are much broader, as noted above.

In regard to homelessness in particular, the UN Human Rights Commission has long recognized that "the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing."<sup>260</sup> Forced evictions are often violent, intensify inequality, social conflict, segregation and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and Indigenous Peoples.<sup>261</sup>

The UN Commission's statement is true in British Columbia. Studies have confirmed that the residents of the Downtown Eastside disproportionately belong to the populations identified by the UN Human Rights Commission—particularly Indigenous people and people with disabilities—and that was also the case with the residents of the Hastings encampment.<sup>262</sup> According to the 2023 Homeless Count for Vancouver, 33 per cent of the unhoused population identified as Indigenous, compared to two per cent of the Census population.<sup>263</sup> Forty-seven per cent reported medical conditions, with 40 per cent reporting physical disability, 53 per cent reporting mental health concerns, 71 per cent reporting an addiction and 27 per cent reporting a learning disability.<sup>264</sup> Indeed, the BC Court of Appeal has agreed that "certain groups protected under the *Human Rights Code* are over-represented among the street homeless population," such as Indigenous people and people with disabilities, referring specifically to the Downtown Eastside of Vancouver.<sup>265</sup>

In the Commissioner's view, the disproportionate effect on marginalized groups—especially Indigenous people and people with disabilities—that resulted from the April 5 and 6, 2023 forced eviction perpetuated systemic discrimination against these vulnerable groups. These groups, which are characterized by disproportionate numbers of Indigenous people and people

<sup>259</sup> *Fraser v. Canada (Attorney General)*, 2020 SCC 28 (CanLII), <https://canlii.ca/t/jb370>; *Ont. Human Rights Comm. v. Simpsons-Sears*, 551; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, para 41, <https://canlii.ca/t/1fqk1>; *CN v. Canada (Canadian Human Rights Commission)*, 1987 CanLII 109 (SCC), 1138, <https://canlii.ca/t/1lpq8>.

<sup>260</sup> *Forced Evictions*, UN Commission on Human Rights, Resolution 1993/77, E/CN.4/RES/1993/77, 9 March 1993, 227-229, <https://digitallibrary.un.org/record/170876?ln=en>.

<sup>261</sup> "Forced Evictions: Special Rapporteur on the Right to Adequate Housing," United Nations, 2014, <https://www.ohchr.org/en/special-procedures/sr-housing/forced-evictions>.

<sup>262</sup> *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132 (CanLII) at paras 17-18, <https://canlii.ca/t/hrfft>; Homelessness Services Association of BC, 2023 *Point-in-Time Homeless Count, Final Data Report* (Homelessness Services Association of BC, October 2023), 6, [https://hsa-bc.ca/Library/2023\\_HC/2023\\_Homeless\\_Count\\_for\\_Greater\\_Vancouver.pdf](https://hsa-bc.ca/Library/2023_HC/2023_Homeless_Count_for_Greater_Vancouver.pdf).

<sup>263</sup> Homelessness Services Association of BC, 2023 *Point-in-Time Homeless Count, Final Data Report*, 6.

<sup>264</sup> Homelessness Services Association of BC, 2023 *Point-in-Time Homeless Count, Final Data Report*, 7.

<sup>265</sup> *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, para 99.

with disabilities, experienced the adverse impact of losing their homes suddenly and without notice or sufficient alternative housing.

While the Court of Appeal in *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association* said it could not find sufficient nexus without the Tribunal having had the benefit of a full record on the point, the Court noted, “On this appeal, it has been suggested that the connection between homelessness and Aboriginal heritage is a result of historical discrimination, displacement, and alienation. While no explicit attempt has been made to show a similar connection between disabilities and homelessness, it is not difficult to understand that such an explanation might be advanced. These various explanations have a strong plausibility, and might, it seems to me—at least if fully articulated—establish the link necessary to connect the adverse treatment in this case with prohibited grounds of discrimination.”<sup>266</sup> In the Commissioner’s view, this leaves open to her the possibility of finding that decampments systemically discriminate against those who are disproportionately impacted. While this Inquiry is not the place to conduct an extensive substantive equality analysis on decampments, the Commissioner is not bound by the same rules of evidence as the Court of Appeal and, in her view, she is entitled to take notice of the connection between colonialism, historical discrimination, ongoing social and economic disadvantage and homelessness, which results in this disproportionate impact. Indeed, even the courts can take judicial notice of such impacts, as recognized by the Supreme Court of Canada in *R. v Sharma*, such as taking notice of the history of colonialism and how it translates into higher levels of incarceration of Indigenous people.<sup>267</sup>

One source told the Commissioner: “We lost a lot of people that day. We never found many of them and many people died as the result of being driven away to shelter isolated from community.” Reports of impacts felt by Indigenous people during other forced decampments have found that individuals have felt like they “have nothing left to lose.”<sup>268</sup> In a research study on the belongings of precariously homed people, one Indigenous woman described peoples’ fear of having their belongings removed or seized by authorities as “life in the hum”—the consistent omnipresent experience of property dispossession and devaluation.<sup>269</sup>

Of course, this Inquiry is focused on how the treatment of media during the decampment impacted human rights, rather than the human rights concerns directly engaged by the decampment itself. However, this evidence of the disproportionate impact of the decampment on people who are living in poverty, disabled and/or Indigenous is the landscape against which the restrictions on the media played out.

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<sup>266</sup> *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, para 101.

<sup>267</sup> *R. v Sharma*, 2022 SCC 39 at para 55.

<sup>268</sup> Jessica Braimoh, Erin Dej, and Carrie Sanders, “Somebody’s Street’: Eviction of Homeless Encampments as a Reflection of Interlocking Colonial and Class Relations,” *Journal of Law and Social Policy* 36 (2023): 12-22, 15, 23-24, <https://homelesshub.ca/resource/somebodys-street-eviction-homeless-encampments-reflection-interlocking-colonial-and-class-relations/>.

<sup>269</sup> Marina Chavez et al., “Life in the ‘Hum’: Belongings and Everyday Dispossession,” *International Journal on Homelessness* 5, no. 1 (2025): 115-131, 118, <https://ojs.lib.uwo.ca/index.php/ijoh/article/view/16988/16056>.

While this report aims to shine a light on the essential facts, a lot remains unknown. If one thing is clear, it is that there was not a consistent approach to regulating or restricting media during the decampment, so the impact is not as decisive as having kept out media entirely. Given that many members of the media were able to access the site at some point, the extent of the impact on access to information is unclear. However, the Commissioner heard from members of the media that the media restrictions in this case—even where journalists eventually were able to enter the restricted zone—had the effect of impairing media from reporting on the full story of the forced eviction of the residents of the Hastings encampment. Of course, because of these limits, we do not know what stories were not told or what journalists may not have been able to capture. Any restrictions may have impacted encampment residents' ability to publicly express their objections to the decampment and receive support from advocates and the public. One reporter noted his concern that these restrictions can have a chilling effect, both on media outlets determining whether to send staff to the site on that day or future reporting on such events, where outlets may save themselves the hassle of being excluded and not show up at all.<sup>270</sup>

Restrictions on media access may also have impacted the public's ability to access critically important information about whether the City complied with its human rights obligations to minimize the impact on encampment residents and to provide them with alternative accommodations. Public pressure can be a key driver in ensuring human rights are respected; without full and adequate media coverage, the potential for public sentiment to create pressure for change is significantly diminished.

Despite Canada's international commitments to the *International Covenant on Social, Economic, and Cultural Rights*, and developments on the rights of encampment residents in constitutional case law, economic and social rights, including the right to housing, remain largely unprotected by Canadian law and are commonly violated without any remedy. For the City of Vancouver and VPD to restrict information from the public discourse on this issue, limits the possibility of legitimate public discussion on realizing these rights. What is clear from the data is that any attendant harms flowing from restrictions on media disproportionately impact the rights of the encampment residents, who are disproportionately Indigenous and disabled and whose rights to equality are protected at every level of human rights law.

Therefore, the Commissioner finds that the media exclusion zone used in this case perpetuated systemic discrimination against people who are unhoused, Indigenous people and people with disabilities. Specifically, the Commissioner finds that the disproportionate impacts amounted to a discriminatory practice under the Code, pursuant to her powers under s. 47.12(1)(a) of the Code.

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<sup>270</sup> BCOHRC Media Engagement session, August 13, 2024.

## Finding 3: Oversight process by Vancouver Police Board was insufficient

As the reaction to the events of April 5 and 6, 2023 unfolded, it became clear that members of the public and the media had concerns about the potential creation of a media exclusion zone, and a complaint was filed. The process followed to investigate a complaint about the media exclusion falls within the purview of the Human Rights Commissioner, because the right to freedom of the press is rendered meaningless without access to effective remedies. It is a fundamental legal principle in our system of common law that there can be no right without a remedy.<sup>271</sup> This means that a person whose legal rights have been violated or withheld must have access to a process to enforce them.

This principle is key to ensuring protection for human rights, both domestically and internationally. Domestically, s. 24(1) of the Charter provides that anyone whose Charter rights or freedoms have been infringed or denied may apply to a court for a remedy that is appropriate and just in the circumstances.

Internationally, Article 8 of the *Universal Declaration of Human Rights* provides that everyone has the right to an effective remedy for human rights violations including violations of the right to freedom of the press and freedom of assembly. The right to an effective remedy is also reflected in a number of international human rights instruments.<sup>272</sup> “Effectiveness” implies independence of the remedial body from those responsible for the violation as well as the ability to invoke the guaranteed right, procedural fairness, the capability of the remedial body of affording redress, and effectiveness in fact.<sup>273</sup>

In this case, the rights at issue were freedom of the press, freedom of expression and freedom of assembly, protected under both domestic law and international human rights law as explained above. The Vancouver Police Board was asked to address a complaint which expressly raised freedom of the press and its decision would necessarily affect the realization of these human rights. Therefore, the effectiveness of the Vancouver Police Board’s process is squarely at issue in this Inquiry and has practical implications for how human rights are protected in British Columbia.

In short, the purpose of reviewing this process was to ensure it was conducted in a way that provided meaningful access to justice on the human rights issues raised in this report; in the Commissioner’s perspective, it was not. This was a result of both the lack of procedural fairness adopted within the Board’s process as well as systemic problems in the legislative process for reviewing service or policy complaints.

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<sup>271</sup> William Blackstone, *Commentaries on the Laws of England*, 23.

<sup>272</sup> See Article 2 of the *International Covenant on Civil and Political Rights*, Article 6 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, Article 14 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and Article 39 of the *Convention on the Rights of the Child*.

<sup>273</sup> Dinah Shelton, “Human Rights – Remedies,” in Max Planck Encyclopedias of International Law.

## The processing of the complaint

On hearing reports that the media was being prevented from accessing the site of the decampment, a member of the public wrote to the Office of the Police Complaint Commissioner (OPCC) expressing a number of concerns including that “preventing journalists from entering the site today was an infringement upon journalistic freedom and freedom of press, a constitutionally protected right in Canada.”

On April 14, 2023, the Police Complaint Commissioner forwarded the complaint to the Vancouver Police Board which is responsible for responding to complaints about the VPD’s general direction and management as well as the adequacy and appropriateness of the VPD’s policies or internal procedures.<sup>274</sup> The Police Complaint Commissioner explained:

*“After review of the concerns raised in the complaint and the public statements of the VPD, it appears that an “exclusion zone” was created by the VPD for the purpose of excluding the public and the media from a specific section of the city for a defined period of time. It is unclear what lawful authority was relied upon in the creation and enforcement of this “exclusion zone.” The matter of the legality of “exclusion zones” has been the subject of consideration by the Courts most notably in the context of civil disobedience.”<sup>275</sup>*

As noted earlier, the Police Complaint Commissioner recommended that the Board obtain independent advice in addressing the issue raised, given that both the Chair of the Police Board and the Chief Constable of the VPD were directly involved in the circumstances that gave rise to the impugned events.<sup>276</sup>

Unfortunately, it appears that the PCC’s communication to the Police Board was misaddressed and did not arrive to the Board until November 14, 2023, when it was immediately referred to the Board’s Service or Policy Review Complaint Review Sub-Committee. Under the Board’s practice, the Sub-Committee reviews complaints and recommends a course of action to the Service or Policy Complaint Review Committee.<sup>277</sup> Under s. 171(1) of the *Police Act*, on receiving a complaint the Board must do one or more of the following:

- (a) request a chief constable of that municipal police department to investigate and report on the complaint;
- (b) initiate a study concerning the complaint;
- (c) initiate an investigation into the complaint;

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<sup>274</sup> *Police Act*, s. 168.

<sup>275</sup> Office of the Police Complaint Commissioner, Letter to Vancouver Police Board, April 14, 2023.

<sup>276</sup> Office of the Police Complaint Commissioner, Letter to Vancouver Police Board, April 14, 2023.

<sup>277</sup> Letter received from the Vancouver Police Board in response to the Commissioner’s production order, April 10, 2024.

- (d) dismiss the complaint on any of the grounds set out in subsection (2.1);
- (e) take any other course of action the board considers necessary to respond adequately to the complaint.

The Service or Policy Complaint Review Sub-Committee reviewed the complaint on Nov. 14, 2023, and recommended that the Service or Policy Complaint Review Committee ask the Chief Constable of the VPD to investigate whether any exclusion zone was established and, if so, to investigate the involvement of any VPD member in regard to the exclusion zone and to report back to the sub-committee, who may consider further action to recommend to the committee. Notably, as mentioned earlier in this report and described below in more detail, this failed to heed the PCC's recommendation for a reviewer independent of the VPD.

The Chief Constable referred the complaint to then Superintendent Don Chapman who reported back to the Committee seven business days later on November 23, 2023, immediately before the Committee made a decision on the merits of the complaint.<sup>278</sup>

The Vancouver Police Board's misunderstanding of their role in upholding procedural fairness in their processes was evident in comments from the Committee Chair, who said:

*The subcommittee reviewed the complaint. It considered that the initial question of whether or not journalists or the public were prevented from entering the areas as a relatively straightforward question, and can be determined by an internal investigation.*

*If the answer to that question is yes, then it may be appropriate to initiate an external and independent investigation into who from the City-led decampment operation was responsible for creating what the OPCC referred to as the EZ [exclusion zone], what role if any the VPD had in preventing journalists and others from entering the area, whether there was public safety or other reasons to justify these decisions.*

*One of the factors that the subcommittee took into account was that the seven month delay between the actual complaint and the time it was received by the VPD required the VPD to go back and assess and investigate what actually happened at that particular time.*

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<sup>278</sup> Vancouver Police Board, *Service or Policy Complaint Review Committee Meeting Agenda*, November 23, 2023 (VPD, 2023), [2023-11-23 COMBINED S or Px14575.pdfAgenda.pdf](https://www.vancouverpolice.ca/2023-11-23-COMBINED-S-or-Px14575.pdfAgenda.pdf).

***So, based on the foregoing, the subcommittee recommended the Chief Constable [i.e. Adam Palmer] investigate if an EZ was established, report back to the subcommittee, which may consider any other further actions to recommend to the Board.***

As noted above, however, the delay referred to was due to the PCC's letter being misaddressed, rather than any fault of the complainants.

Then Superintendent Don Chapman stated that he had been asked by the Chief Constable to complete the investigation and would report on the investigation on behalf of the VPD. There is no explanation on the record of why someone directly responsible for the operation was tasked with investigating the complaint.

After hearing from then Superintendent Don Chapman, the Committee asked him no questions. It did not hear from any media witnesses or the complainant. It did not review any documents or legal authorities. Instead, the the Committee Chair recommended that the "complaint be concluded on the basis of a letter going to the OPCC and the complainant setting out the correct facts about what happened during the decampment, and that the complaint be concluded on the basis of that report."

On December 6, 2023, a letter was sent from the Executive Director of the Vancouver Police Board to the complainant informing them that the complaint was dismissed.

Upon review of the Board's concluding letter, the PCC wrote back to the Board noting that the Human Rights Commissioner was conducting an inquiry to review the restrictions on media during the Downtown Eastside decampment. The PCC made two recommendations to the Board:

1. that, in light of the initiation of the related inquiry undertaken by the Human Rights Commissioner, the Board hold the conclusion of this complaint in abeyance pending the conclusion of the inquiry
2. that, at the conclusion of the Human Rights Commissioner's inquiry, the Board consider any findings and recommendations from the inquiry in the context of further action that the Board may wish to take in relation to this complaint

The Board confirmed that the complaint would be held in abeyance pending the conclusion of this Inquiry. The PCC retained jurisdiction over the complaint and indicated that it would continue to monitor the complaint for further developments from the Board.<sup>279</sup>

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<sup>279</sup> Office of the Police Complaint Commissioner, 2023/2024 Annual Report (OPCC, 2024), 43, [https://opcc.bc.ca/wp-content/uploads/2025/01/OPCC\\_2023-24\\_Annual-Report.pdf](https://opcc.bc.ca/wp-content/uploads/2025/01/OPCC_2023-24_Annual-Report.pdf).

## Investigator was not sufficiently independent

International human rights standards require fairness in any proceeding that affects human rights.<sup>280</sup> Fairness may require independence of the decision-maker from the interests of the parties<sup>281</sup> or a decision on a matter affecting rights to be reached following due process being afforded to the case.<sup>282</sup>

The requirements of due process or procedural fairness are also protected in the common law, including the key principle that no one can be a judge in their own case.<sup>283</sup> The duty of fairness requires that decision makers actually be able to act independently/free from bias and must also appear to be acting independently. The process undertaken for this complaint reveals several glaring flaws in the Vancouver Police Board's process for considering complaints. Since Vancouver Police Board procedure has a direct impact on the rights and interests of both complainants and police, a degree of procedural fairness is required.<sup>284</sup>

It is important to note that the role of the Vancouver Police Board is to provide independent civilian oversight, governance and strategic leadership to the Vancouver Police Department. It is the body responsible under s. 171 of the *Police Act*, for reviewing service and policy complaints. The Vancouver Police Board established the Service and Policy Complaint Review Committee to fulfill its statutory responsibilities with respect to responding to service or policy complaints which are complaints about the general direction, management and operation of the VPD, or about the adequacy or appropriateness of the VPD performance in the areas outlined in s. 168 of the *Police Act*.

In its referral of the review to the VPB, as mentioned earlier, the PCC recommended that the VPB should seek independent advice in addressing the complaint distinct from the VPD "as the public record demonstrates that both Chair of the Police Board and the Chief Constable were directly involved in the circumstances which give rise to this complaint."<sup>285</sup> The Commissioner notes that the Board Chair was involved because he was, at that time, the Mayor of Vancouver<sup>286</sup> and the Chief Constable was involved as he participated in the VPD operation, for example, by giving a press conference about VPD activities on April 5 and 6, 2023 and being directly implicated in the chain of command.<sup>287</sup>

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<sup>280</sup> ICCPR Article 14(1), second sentence, UN Human Rights Committee, *General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32, August 23, 2007, paras 15-16, <https://www.refworld.org/legal/general/hrc/2007/en/52583>; American Declaration on the Rights and Duties of Man, 1948, Article XVIII, <https://www.oas.org/en/iachr/mandate/Basics/american-declaration-rights-duties-of-man.pdf>.

<sup>281</sup> *IWA v. Consolidated-Bathurst Packaging Ltd.*, 1990 CanLII 132 (SCC) at 322, 324, <https://canlii.ca/t/1fsz2>.

<sup>282</sup> *Ibid; Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), para 20, <https://canlii.ca/t/1fq1k>.

<sup>283</sup> *IWA v. Consolidated Bathurst Packaging Ltd.*, 322.

<sup>284</sup> *Cardinal v. Director of Kent Institution*, 1985 CanLII 23 (SCC), para 14, <https://canlii.ca/t/1ftwk>; *Baker v. Canada (Minister of Citizenship and Immigration)*, para 20.

<sup>285</sup> Records provided to BCOHRC from the Vancouver Police Board.

<sup>286</sup> In April 2023, the *Police Act*, s. 25(1) provided that the Mayor of Vancouver was automatically appointed as the Chair of the Vancouver Police Board. This section was amended in April 2024 and now provides that the Board Chair is elected by the Board every two years.

<sup>287</sup> City of Vancouver, "City of Vancouver East Hastings Update," Press Conference, Vancouver, B.C., April 5, 2023, 53 min., 40 sec., [https://youtube.com/live/qOiTU\\_fWPrQ](https://youtube.com/live/qOiTU_fWPrQ).

Despite the PCC's recommendation, the Board Sub-Committee recommended that the investigation be assigned to the Chief Constable,<sup>288</sup> who signed it over to then Superintendent Don Chapman, even though he was the Gold Commander for the operation. There is no clear or compelling rationale for this process beyond trying to move quickly.

The Sub-Committee's other rationale for not getting independent advice was that "whether or not journalists or the public were prevented from entering the areas [is] a relatively straightforward question, and can be determined by an internal investigation." However, as this report shows, the issues raised by the events of April 5 and 6, 2023 were not simple and could not be fully evaluated based on sources internal to the police only; perspectives of members of the press were essential to this fact-finding exercise.

The Board made no effort to ensure that the investigation was free of bias; the investigation wasn't conducted by an impartial third party and the Board didn't receive independent advice related to it. Instead, it permitted the VPD to investigate itself and essentially dictate the outcome of the complaint. This approach created the reasonable perception that the VPB did not approach the complaint impartially.

It is similarly perplexing that the Chief Constable asked then Superintendent Chapman, and not another senior member of the VPD, to conduct the investigation into whether the VPD created an exclusion zone on April 5 and 6, 2023. Then Superintendent Chapman was the Gold Commander, with overall operational responsibility for the decampment including the media and communications plan. Then Superintendent Chapman was tasked with investigating aspects of his own operation and as such was not sufficiently independent nor would his involvement communicate to the public that the investigation would be conducted in an unbiased way.

## Complaint was not adequately investigated

The Commissioner requested a copy of any VPD policies on investigating service and policy complaints. The VPD confirmed that it does not have such a policy. Then Superintendent Chapman explained that the Chief usually assigns a subject matter expert in the field to respond to a complaint. He explained that the subject matter expert can use the services of the professional standards section and/or planning, research and audit section or other subject matter experts. As indicated above, the investigation of the complaint was referred from the Chief Constable to then Superintendent Chapman, presumably because the Chief Constable determined that he was the subject matter expert in this case due to his involvement in the operation.

Then Superintendent Don Chapman later told the Commissioner that he essentially did not do any investigation into the complaint about the creation of an exclusion zone. He explained that he didn't involve any other sections or VPD personnel in his investigation; he did not interview or request any information from media; and he did not conduct external research. Then Superintendent Chapman declined to comment on whether he sought legal advice, despite the Police Complaint Commissioner questioning whether the police have authority to

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<sup>288</sup> Section 5.6.4.5 of the VPD Board Governance Manual outlines the powers of the Sub-Committee in the complaint review process. Section 5.6.4.5(f) permits the Sub-Committee to recommend to the Board any course of action that the Sub-Committee deems adequate in responding to the complaint.

establish exclusion zones and flagging that the legality of exclusion zones has been the subject of consideration by the courts. Then Superintendent Chapman explained to Commissioner staff that he didn't seek out any information because his "stance all along was that the ... exclusion zone never took place."<sup>289</sup>

In contrast to the steps taken in this Inquiry to determine whether media were restricted or excluded on April 5 and 6, 2023, then Superintendent Chapman testified that the only steps he took to investigate the complaint were to review the operational plan and that he may have had a conversation with the Media Relations Officer. The Media Relations Officer testified that he couldn't recall if then Superintendent Chapman involved him in any discussions about the complaint. Then Superintendent Chapman explained:

*[T]he steps that I took were looking at our operational plan, noting that ... knowing [from] my personal knowledge that an exclusion zone ... did not occur ... and explaining back to the Board that a safety zone had, in fact, been established.*<sup>290</sup>

He testified that "with respect to the decampment, I was pretty satisfied that I had all the information and I ultimately made the decision."<sup>291</sup> In response to a question about the steps he took to investigate the complaint he reiterated "I'm taking the opinion right from the beginning that that never happened. So we're talking about something fictitious."<sup>292</sup>

## **Police Board process failed to respect principles of procedural fairness**

Then Superintendent Chapman reported to the Board that the complaint to the PCC did not use the term exclusion zone, but rather that the existence of an exclusion zone was the PCC's assumption. He also said that the VPD "did not prevent any journalists or media from entering the Hastings Street encampment zone on April 5 and 6." He stated that instead, in the early hours, media were asking to attend a specific staging point and a police liaison officer was provided to facilitate media access. He then further noted that "there were no visual barriers preventing media from seeing what was going on, and small restrictions around police operations are reasonable."<sup>293</sup>

As the Commissioner has found above, journalists were indeed prevented from entering the encampment zone in a number of different ways and for varying durations. This information was never before the Board or Committee, other than in the allegations of the complaint.

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<sup>289</sup> BCOHRC interview with the Gold Commander.

<sup>290</sup> BCOHRC interview with the Gold Commander.

<sup>291</sup> BCOHRC interview with the Gold Commander.

<sup>292</sup> BCOHRC interview with the Gold Commander.

<sup>293</sup> Then Superintendent Don Chapman statement to Vancouver Police Board, Nov 23, 2023.

Unsurprisingly, accepting only then Superintendent Don Chapman's perspective and declining to ask him any follow-up questions left the Committee with an incomplete picture of events. The Committee did not appear to at all consider any of the complex factual and legal issues that the situation involved that are described in this report, and therefore the Board did not have the benefit of any of this information or analysis.

In determining that the VPD was "acting with in its lawful authority"<sup>294</sup> it does not appear that the VPB turned its mind to any legal precedents on the issue of media exclusion zones, nor did it hear from any witnesses, including media who were present in the Downtown Eastside on April 5 and 6, 2023, or review any documents. It did not look into the nature of any restrictions.

In short, the Board took no steps to investigate the complaint beyond assigning the task to someone who was clearly biased due to their direct and significant involvement in the operation in question, which had the foreseeable effect of compromising the integrity of the factual and legal basis on which the Board dismissed the complaint. The Commissioner finds that the Board abdicated its legal responsibility to properly investigate this complaint following the principles of procedural fairness.

When a police board's processes lack rigour or safeguards against bias, accountability is compromised and public trust in its ability to oversee the police is eroded.

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<sup>294</sup> Records received from the Vancouver Police Department in response to the Commissioner's production order; Concluding letter from Vancouver Police Board to Complainant, December 6, 2023.

# Conclusion

The rights to peaceful protest and freedom of press are essential to a functioning democracy and police must take clear and careful steps to protect both, especially in the absence of any compelling evidence of risk to public safety. These steps were not taken in this case. The police took active steps to restrict the ability of journalists, protesters and advocates to access the site where unhoused people were being forcibly evicted. Although the full scope of the harm cannot be ascertained, as explained above, harm resulted and it was experienced disproportionately by certain communities. The Commissioner remains concerned about the lack of transparency around a situation affecting the human rights of some of our most profoundly vulnerable citizens. Though it appears not to have been the intent, the VPD imposed restrictions on media with little regard to the impact on freedom of the press. In other words, the City and VPD failed to strike the appropriate balance between potential safety or other risks with the right to freedom of the press.

The disproportionate impact on unhoused people—themselves disproportionately Indigenous and people with disabilities—is undeniable. Again, regardless of the scope of impact, police-imposed restrictions on journalists, advocates and protesters is contrary to human rights protections for the most marginalized among us, including the right to substantive equality.

Perhaps most jarringly, the process that was followed in responding to the complaint was deeply flawed, leaving questions about the effectiveness of VPB oversight and the process for resolving service and policy complaints for rights violations of these kinds. For an investigation to be conducted by the very people who are subject to the investigation is at best an absurdity and at worst a perversion of justice. In this case, justice was neither done nor could be seen to be done by the public. The human right to freedom of the press is rendered meaningless without meaningful access to an effective remedy.

# Appendix 1

## Media experiences from 9 a.m. to noon on April 5, 2023

### Glacier Media

Reporter 1 with Glacier Media arrived in the DTES around 8:30 a.m. He moved around freely in the area that would soon be restricted. At approximately 8:40 a.m. to 8:45 a.m., Reporter 1 photographed a man sitting on East Hastings Street: “He had clearly seen what was coming and decided to sit down and stage a protest.”<sup>295</sup>

At approximately 9:15 a.m., Reporter 1 left the work zone and then attempted to re-enter. When he attempted to re-enter, police told him that he wasn’t allowed in. He was not provided with a reason. However, he showed his media credentials, insisted on entering and was not prevented from doing so.

*So I wanted to get a more panoramic shot of what was happening with the tents on either side of the street, the sanitation vehicles, and the police and the barricades.... [A]nd as I went back I returned on the northbound side of the barricades and as I attempted to go through officers moved towards me to block me. And I just looked at them and said, “I’m going through,” ... and they said, “You’re not allowed to.” And I said, “I’m an accredited journalist. I am here to cover this event,” and I said, “Here’s my accreditation. This is why I’m wearing these tags.... I said, “This is my court accreditation for the Courts of British Columbia,” and they stood aside.*

Reporter 1 also told us that he approached the Inner Bronze Commander, while he was in the restricted area. Around 9:40 a.m., Reporter 1 said, “[I] wandered over and introduced myself and his response was, ‘What are you doing in here?’”<sup>296</sup> Reporter 1 responded saying that he had every right to be there. The Inner Bronze Commander did not ask him to leave. The interaction with the Inner Bronze Commander is confirmed by the Inner Bronze Commander’s notes which record that the Inner Bronze Commander spoke to Reporter 1 at about 10:02 a.m. and that Reporter 1 “insisted he was there before the operations started today and will not be leaving.”

Although VPD officers told Reporter 1 that he was not allowed to enter to the restricted area and questioned him when he was in the restricted area, the Commissioner finds that he was not prevented from entering or staying in the restricted area after he insisted on entering. It is not clear, however, whether he would have been prevented from entering the restricted area if he had not insisted on being there.

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<sup>295</sup> BCOHRC interview with Reporter 1.

<sup>296</sup> BCOHRC interview with the Media Relations Officer.

## **Photojournalists with Reuters and the Vancouver Sun**

Photojournalist 2 was on assignment with Reuters and told us that she arrived in the Downtown Eastside on April 5, 2023 between 8:30 a.m. and 8:40 a.m. She provided a precise timeline of her movements that day by reviewing the timestamps on the many photographs she took. When she arrived at Main and East Hastings, barricades were in place preventing access to the 100 block of East Hastings between Columbia and Main. She said that she and Photojournalist 3 from the Vancouver Sun approached the police line together, that they were carrying numerous large cameras and that they were clearly media. Photojournalist 2 said that she identified herself as a photojournalist on assignment with Reuters. She recalls having to wait for someone else to come speak with them. VPD radio broadcasts from 9:02 a.m. indicate “we’re just talking to media here with [the Media Relations Officer] and sorting it out.” After waiting for about five minutes at the police line, they were escorted into the restricted area by police officers. She told us that it was very clear that they were media and she questions why they had to wait. She estimates that she was in the restricted area for approximately 20 minutes until about 9:10 a.m. when she left to file her photographs. She returned to the restricted area around 10:00 a.m. which is discussed below.

The Commissioner finds that after being restricted from entering for a short period of time, the photojournalists were permitted to access the restricted area and were able to move freely within the restricted area, although with a police escort. Photojournalist 2 did not recall being told why a police escort was necessary.

## **Globe and Mail**

In contrast to the experience of the reporter from Glacier Media, Photojournalist 4 with the Globe and Mail arrived at the police perimeter at Columbia and East Hastings around 9:15 a.m. Photojournalist 4 identified themselves to an officer as a photojournalist with the Globe and Mail. They were not permitted to enter the restricted area. They spoke to the VPD’s Media Relations Officer who told them that media were not allowed inside the barricade for reasons of privacy and safety and asked them to wait. They requested a police escort into the restricted area and were denied. They did not insist on entering because they were afraid of being arrested and concerned for their safety if they pushed too hard. They also witnessed other journalists and photojournalists being denied access:

*[S]o I would have approached an officer and let them know that I was there as a photojournalist with the Globe and Mail. I was told that I wasn’t allowed into the blocked area and that I’d have to talk to a media liaison ... they said that they have to get the media liaison person but it didn’t feel like they actually wanted to help me or to actually get me access to that person because I was waiting for a long time ... it just felt like there was a possibility that I would be standing there all day.... [T]hat’s when I had my debate — how much do I push back against the VPD to try to access the site? You know if I push back, if I try to use my rights as media or a journalist will they just arrest me ... but I felt for my own safety it was probably easier to not escalate.*

Photojournalist 4's account was verified by the Media Relations Officer who confirmed that he spoke to somebody from the Globe and Mail around 9:15 a.m. who he'd never met and whose ID he couldn't confirm. The Media Relations Officer said, "[M]y direction at that point was that media, aside from the pool camera, ... would gain access to that site through the chain of command ... I saw [Photojournalist 4] there at Columbia and Hastings St., we spoke and I just asked [Photojournalist 4] to hang tight, told [Photojournalist 4] I'd, I'd work on getting her access as soon as possible. My intention was to clear that access through the chain of command, but then I never saw [Photojournalist 4] again." Based on the evidence above, the Commissioner finds that Photojournalist 4 was restricted by the VPD from entering the restricted area around 9:15 a.m. at East Hastings and Columbia.

Photojournalist 4 explained that they were not confident that they would be let in to the restricted area and that time was of the essence because as a photojournalist with the Globe and Mail they were trying to meet reporting deadlines which were in eastern standard time. They also explained that they didn't want to wait too long because things were unfolding and they didn't want to miss the story.

Photojournalist 4 said they walked around Cordova Street and walked through an alley between Cordova and Hastings. They were able to take some photos from there but were reluctant to enter the work zone. They said, "I noticed that there [were] some police officers in that area with [their] bikes but they were not facing into the alleyway — they were just on the street so I was able to stand through there, take a few more pictures and I did think that it was very possible that I could have walked through that area, but I wasn't sure if I walked through the area ... if they would arrest me. I didn't know what the interaction would be since it seemed — to me that they were closed off to having me in the site."<sup>297</sup>

From there, Photojournalist 4 walked to Main and East Hastings. After speaking to a different officer there and after waiting for a few minutes, they were permitted to enter the restricted area around 10 a.m. The Commissioner is satisfied that after initially being restricted, Photojournalist 4 was permitted to enter the restricted area from the police perimeter at Main and East Hastings at approximately 10 a.m.

## **CBC**

Reporter 10, a photojournalist with CBC, was assigned to go down to the Downtown Eastside and arrived there around 9:00 a.m. on April 5, 2023. He went to the police line at Columbia and East Hastings, identified himself as a photojournalist and was denied entry into the restricted area. After being told he wasn't allowed to enter into the site and denied entry at the police line at Columbia and East Hastings, he walked down Pender Street to the police line at Main and East Hastings where he was also denied entry. Reporter 10 then entered the restricted area through an alley. The first photo he took inside the restricted area was time stamped 10:36 a.m. Reporter 10 told the Commissioner that he was approached by a police officer inside the restricted area who asked how he got into the restricted area but did not ask him to leave. He said, "I wasn't obstructed when I was inside here. I do remember a conversation with a VPD officer asking me something along the

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<sup>297</sup> BCOHRC interview with Photojournalist 4.

lines of ‘how did you get in here’ but it wasn’t a formal direction to leave.” He said, “[T]he only clear direction I think they were giving was that we weren’t allowed in that area.”<sup>298</sup> He later added, “I do remember looking back at this barricade and there was quite a few journalists still at Main and Hastings that didn’t come in or didn’t go through the barricade or through the alley way.”<sup>299</sup> Reporter 10 said that the only media he saw in the restricted area were with Global News.

## **Vancouver Sun**

Reporter 5 with the Vancouver Sun arrived in the Downtown Eastside around 9 a.m. at the barricade at Main and East Hastings. Shortly after arriving, he observed the City of Vancouver cube vans and trucks moving into the restricted area. He said that the vans and trucks parked within a few minutes of entering the 100 block. He did not try to enter the restricted area at Main and East Hastings because “it was pretty clearly blocked off.” Instead, he decided to walk around to Columbia Street.

Around 9:30 a.m., he walked around to the barricade at Columbia and East Hastings where he identified himself as a reporter with the Vancouver Sun and requested access. He was told by a police officer that there was no media or public access and that the only people allowed into the area were residents or people who needed to get to appointments. He was told that access was restricted for safety reasons and that he would have to wait to speak to the Media Relations Officer. The officer he spoke to didn’t know how long he would have to wait.

After waiting for 10 to 15 minutes, he noticed another person accessing the restricted area from an alley and decided not to wait any longer. Reporter 5 explained that he cannot do his job from behind a police line because he needs to interview people impacted by the decampment. He also said that taking photographs from behind the police line would be challenging. He said that it would have been possible to get an overview shot but not a clear or close shot given the obstacles between the police line and where City staff were working.

Reporter 5 walked around to an alley and into the restricted area around 9:45 to 9:50 a.m. He told us that he was nervous about entering the restricted area from the alley. He said: “I walked in, well first I was a little bit nervous because I’m like if the police are going to see me and be like, ‘Okay you gotta go, you gotta get out of here.’”<sup>300</sup>

Once he was in the restricted area, no one asked him to leave. In fact, he said that the police didn’t speak to him or approach him once he was inside the restricted area. He shared, “[I]n my experience over the two days they would enforce [the restrictions] at the barricades but that was about it.” When he was in the restricted area, he was able to interview some residents and then left around 11:00 a.m. to file his story. He returned to the Downtown Eastside in the afternoon and experienced another restriction which is discussed below.

<sup>298</sup> BCOHRC interview with Reporter 10.

<sup>299</sup> BCOHRC interview with Reporter 10.

<sup>300</sup> BCOHRC interview with Reporter 5.

## **Independent journalist**

Documentary Journalist 6 arrived in the Downtown Eastside at Columbia and Hastings streets around 9:10 a.m. and described that the 100 block of East Hastings was “blocked off” and “shut down.” He indicated that he did some filming from outside the zone and then walked inside the restricted area. He was approached by a police officer who asked him to leave the restricted area. The following interaction was recorded at 9:10 a.m.

**Police officer:** *Okay sir, I'm going to have to ask you to step out here please.*

**Documentary Journalist 6:** *is this the exclusion zone?*

**Police officer:** *Yup.*

**Documentary Journalist 6:** *The block is?*

**Police officer:** *Yeah, the block is.*

**Documentary Journalist 6:** *Pardon me.*

**Police officer:** *I'll chat with you over here outside the exclusion zone.*

**Documentary Journalist 6:** *I'm media.*

**Police officer:** *Yeah, I know who you are. I've seen you lots of times.*

**Documentary Journalist 6:** *So, I'm here as media.*

**Police officer:** *Yeah, media is not coming in here.*

**Documentary Journalist 6:** *So media will be excluded today.*

**Police officer:** *Media is welcome to set up outside today. We need to provide a safe work environment.*

**Documentary Journalist 6:** *So this is a media exclusion zone?*

**Police officer:** *This is a workers' zone right now and we're blocking it off to the public except for employees of the City and people who need it.*

Documentary Journalist 6 was escorted out of the zone by the VPD officer. The Commissioner finds that Documentary Journalist 6 was restricted/excluded by the VPD around 9:15 a.m. on April 5, 2023.

After being escorted out of the restricted area, he walked down the north side of East Hastings and entered the restricted area again and started filming. He observed a staff person with the City of Vancouver's Sanitation Services, Engineering Department speaking to a police officer and pointing in his direction. Documentary Journalist 6 was then approached by another police officer who indicated that he could stay in the restricted area as long as he didn't interfere with the operation. Shortly after being approached by this officer, he started to film a conversation between a community organization and City of Vancouver personnel. After the City personnel implied

that filming the interaction was interfering with the City's operation, Documentary Journalist 6 told Commissioner staff that he stopped filming that interaction and was reluctant to film others because he was worried about being asked to leave or being arrested.

## Media Outlet A

Another major media outlet that Commissioner staff interviewed told us that after receiving a tip that the decampment was imminent, they sent Reporter 7 and a camera person to the Downtown Eastside on the morning of April 5, 2023. They estimated that the team was onsite around 9:30 a.m. When the team arrived, they were prevented from entering the restricted area for "safety reasons." They were told that the VPD arranged for Global News to be a pool camera and that they could obtain footage from Global News. This account was confirmed by the Media Relations Officer who told us, "And then there was a ... a reporter and a camera operator for [Media Outlet A] who was out there, and I explained to them, 'Heh, we've got a pool camera in there,' which was fulfilling their, you know, fulfilling the feed that they needed, so ..." <sup>301</sup>

Reporter 9 is an experienced reporter from Media Outlet A. On April 5, 2023, she got into the office around 8:15 a.m. and heard that Global News was chosen to pool footage and that some of her colleagues were not permitted to access the work zone. Reporter 9 recalled feeling surprised and angry about the restrictions. She said:

*It made me angry because I've been covering the Downtown Eastside off and on my entire career ... I've never been not allowed to go into this community ... I've done a lot of stories from there. So it was very unusual for me.... I said, well, nobody's gonna stop me from going to the Downtown Eastside, which is a part of my community, which I've been reporting on for over two decades.*

She walked down to the Downtown Eastside and arrived around 9:15 a.m. She entered through an alley to avoid being restricted from entering the work zone like her colleagues at Media Outlet A. She interviewed a man who was loading everything he owned into a cab. She said she was not asked to leave once she was there, but she also stayed in the alleys away from where the police were. Reporter 9 remained in the Downtown Eastside until 12–12:30 p.m. when she returned to the office to file her story. She said that she ended up using a combination of her own footage and footage that was eventually shared by Global News.

## The Canadian Press

City of Vancouver and Vancouver Police Department's evidence was that the Media Relations Officer facilitated "immediate access" to the 100 block of East Hastings for the Canadian Press (photographer and videographer).<sup>302</sup> Canadian Press declined the Commissioner's request to participate in the Inquiry.

<sup>301</sup> BCOHRC interview with the Media Relations Officer.

<sup>302</sup> Then General Manager of Arts, Culture and Community Services, Email titled RE: Review Requested: CCRN Response, Records received from the Vancouver Police Department in response to the Commissioner's production order, April 20, 2023.

The Media Relations Officer told Commissioner staff that he was approached by reporters with The Canadian Press and that he spoke to them for several minutes at Columbia and Hastings before he facilitated their access to the area. He estimated that he facilitated their access into the restricted area between 9–9:40 a.m. He explained that The Canadian Press access provided coverage for newspapers including the Vancouver Sun, The Province, Vancouver is Awesome, Peace Arch News, Langley Times and others.<sup>303</sup> However, the Commissioner also learned that The Canadian Press was initially/temporarily prevented from accessing the restricted area when they arrived to report on the decampment.<sup>304</sup>

The Commissioner finds that it is likely that The Canadian Press was restricted from accessing the work zone for a period of time before the Media Relations Officer facilitated their access. Because The Canadian Press declined to participate, the Commissioner is unable to conclude how long they were restricted for, where they were restricted and what reason they were provided. The Commissioner is also unable to determine what time The Canadian Press were provided with access because the Commissioner received conflicting evidence on this point. The City and VPD indicated that The Canadian Press had immediate access to the work zone and the Media Relations Officer estimated that he facilitated their access between 9–9:45 a.m. The Commissioner is not able to verify the time because there is no record in the Inner Bronze Commander's scribe notes, the VPD's radio broadcasts or any other records provided to the Commissioner of a decision to allow The Canadian Press to access the work zone or of when they were provided with access.

## **The Tyee and Photojournalist 2**

Around 10:10 a.m., Reporter 8 with The Tyee was with Photojournalist 2 at the police line at Columbia and East Hastings. Reporter 8 said it was very clear when she arrived that she would have to request access from a police officer. When they approached the police line and identified themselves as media, they were told that they could not enter and would have to wait for the Media Relations Officer. When they asked how long they would have to wait, the officers said that they didn't know and suggested that they email the Media Relations Officer. This account is confirmed by VPD radio broadcasts:

**VPD officer at 10:12 a.m.:** *[H]ave a couple of photographers here from media. I guess they were in contact with [the Media Relations Officer] and we'll probably need him to attend Columbia and Hastings.*

**Media Relations Officer response 10:12 a.m.:** *I'm just running up to City Hall right now, if they wait I will be back shortly to chat with them or ... you can give them my email address and I'll chat with them by email.*

**VPD officer at 10:13 a.m.:** *They want a walk through escort.... They need an escort to re-enter.*

**Media Relations Officer at 10:13 a.m.:** *I'll be there when I can.*

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<sup>303</sup> BCOHRC interview with the Media Relations Officer.

<sup>304</sup> Records received from the Vancouver Police Department in response to the Commissioner's production order; Evidence received from the public.

The Media Relations Officer left to attend the press conference at City Hall that was scheduled to start at 10:30 a.m. The press conference ended about 50 minutes later. It's unclear when the Media Relations Officer returned to the Downtown Eastside and who was responsible for media relations and facilitating media access to the work zone while he was gone.

Reporter 8 decided to walk around to the police line at Main and East Hastings. Photojournalist 2 decided to stay at the police line at Columbia and East Hastings. Photojournalist 2 said that she waited at the police line at Columbia and East Hastings for seven to 10 minutes. She said around 10:07 a.m., she made her way back in. She recalled, "the second time I went in it was a longer wait, but this time I didn't need an escort and I just kind of moved around freely." At 10:28 a.m., she photographed two reporters standing behind the police line at Main and Columbia.

Reporter 8 stayed there and spoke to police officers at the perimeter at Main and East Hastings at approximately 10:30 a.m. She identified herself as media: "I said I'm media, you really need to let me in, and they said no, we can't do that." After being restricted from entering at Main and East Hastings, Reporter 8 walked down Pender and was able to enter the restricted area through an alley. Reporter 8 said that on gaining entry through the alley she tweeted at 10:57 a.m. that media were barred from the street but that she got in through an alley.<sup>305</sup>

The fact that Reporter 8 was prevented from entering the restricted area at Main and Hastings was confirmed by the then General Manager, Arts, Culture and Community Services and the Media Relations Officer, although there is a discrepancy between the two accounts as to timing. The then General Manager, Arts, Culture and Community Services indicated:

*[Reporter 8] seems to have missed [the VPD's] tweet regarding the media muster point and attempted to gain access from Main and Hastings and was denied access as this was not the designated muster location. [Reporter 8] should have been advised of the alternate location, however given how busy those first moments were, we do understand how that might have been missed. She subsequently entered the work zone through the lane and, as noted above, was not asked to leave. She incorrectly posted on Twitter that media had been barred. This tweet appears to be the source of the misunderstanding that media was barred from the Hastings Street Encampment Zone.<sup>306</sup>*

The Media Relations Officer indicated:

*I saw a tweet from one person [Reporter 8] at The Tyee who had posted video from within that 100 block of East Hastings St. and the nature of her tweet suggested that she had been denied access, but then she was in there, right? I just let that be. There was no attempt to force media to leave; however, there was some conversations with a couple of people who when I asked them, "Heh, can you just stand back a little bit" they did.<sup>307</sup>*

<sup>305</sup> BCOHRC interview with Reporter 8.

<sup>306</sup> Then General Manager, Arts, Culture and Community Services, Email to BCOHRC, May 2, 2023.

<sup>307</sup> BCOHRC interview with the Media Relations Officer.

## Media experiences from 12 p.m. to the end of day

### Vancouver Sun

Reporter 5 returned to the Downtown Eastside early in the afternoon after filing his story. He said that when he returned, the police were restricting access to the 000 block of East Hastings between Columbia and Carrall streets. He encountered a police line at Columbia and East Hastings where he spoke to a junior officer. He identified himself as media and asked if he could enter the zone. He was denied entry and again told that only residents and people who were working in the area were allowed in. After being restricted he went around to Carrall Street and was able to enter the restricted area by squeezing in past the barrier without being noticed. Once he was in the restricted area he was not asked to leave.

### Independent Journalist

Documentary Journalist 6 also told Commissioner staff that at approximately 1–2 p.m. he observed another restricted area and a small police line around a single tent near Carrall and East Hastings streets. He tried to get through the police line to document the interactions but told Commissioner staff that he was prevented from entering that space a couple of times. When he asked about the reason for the restriction, he was told that he couldn't enter because of safety reasons because it was a work zone.

### The Tyee

Reporter 8 with The Tyee returned to the Downtown Eastside later in the day on April 5, 2023, around 4:30 p.m. She said that she noticed another restricted area on Main Street between Hastings and Cordova where police had blocked off both ends of the street. She said that she arrived at the police line at Main and Cordova where she could observe City staff focused on one tent. She explained:

*I went to Hastings and Gore, I interviewed some people, did some photographs and then I noticed that they were doing, the decampment continued all day ... and I noticed that they were focused on Main Street, like between Hastings and Cordova ... and so they had done the thing again where they had blocked off the street, I think at both ends, and they had a bunch of trucks in the middle of the street and so I was like, I want to see what's going on there, so I got to Main and Cordova and the police had barricaded that part of the street off and I could see that they were just intensely focused on this one tent ... and I had talked to the people who lived in the tent on Monday ... and so I kind of wanted to get in there and see what was going on.<sup>308</sup>*

She said that there were activists present who insisted on the police letting the media in. Reporter 8 said that she and Documentary Journalist 6 were initially let in and then almost immediately told they had to move back behind the police line on Cordova Street. She said: "I felt that was really unreasonable because we had been given access ... and they were like physically trying to move us back, and so all of that I just thought was really, really inappropriate."<sup>309</sup> Reporter 8 said that she

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<sup>308</sup> BCOHRC interview with Reporter 8.

<sup>309</sup> BCOHRC interview with Reporter 8.

was told to move back because it was a private moment where a woman was being forced out of her tent. She said no, backed up a few steps and stood her ground. Radio broadcasts from 5:07 p.m. on April 5 confirm that direction was to not allow anyone inside the work zone. Specifically, the VPD radioed, “Just for everybody outside the perimeter for this tent, there’s a bit of a sensitive situation going on inside the tent, so we’ll have nobody allowed inside the work zone please.”<sup>310</sup>

Reporter 8 told us that shortly after this interaction she spoke to the Media Relations Officer. She said, “he was really irate with me because of that earlier tweet where I said media were barred, and he was like media weren’t barred, media were given access all day and, in the end, I just had to be like, okay [Media Relations Officer], thanks for letting me know.” The Media Relations Officer confirmed that he spoke to Reporter 8. He said:

*I asked her about whether or not she had been denied access or whether or not she had had trouble, and she told me that she had gone to Main and Hastings and had been told that she wasn’t allowed to enter and that she had gone around into the lane and entered. And then, again, something that sticks out in my mind for part of that conversation is again, she said to me, “And I was just denied access here.” And that stands out in my mind because I said, “But [Reporter 8], you’re here, but you’re standing, you’re standing here. How were you denied access?” And she pointed to the line behind, and she said, “Well, they told me I couldn’t enter.” But I said, “[Reporter 8] you’re here.”*

## **Independent journalist**

Reporter 8’s story was corroborated by Documentary Journalist 6 who told Commissioner staff that there was a protracted decampment with a resident who was not leaving the area around 321 Main Street. A police line was established around this resident’s tent. Documentary Journalist 6 was able to enter the area with the help of an elder but was told by City staff to stop filming to protect the residents’ privacy. Documentary Journalist 6 said that he was pushed back behind the police lines a couple of times.

Documentary Journalist 6 recalls thinking about how odd it was to be asked to respect the residents’ privacy, a person he has a relationship with, when she was surrounded by police and City workers. He said, “the only thing that I had thought is that the person in the tent would never have been in this situation had this decampment not been happening. And she would not be doing whatever she was doing to resist had this decampment not been happening there. And how it was ... to ask me to not be present to respect this woman’s privacy when she was surrounded by man upon man upon man in uniform ... it really put into focus ... when it comes into these things and the types of things that [the City] consider a threat and things that they don’t consider a threat.”

The experiences of both Reporter 8 and Documentary Journalist 6 are also supported by the recordings of the VPD’s CAD communications for April 5, 2023. At 5:07 p.m., it appears that all the officers in the area received a direction that “there’s a bit of a sensitive situation going on inside the tent, so we’ll have nobody allowed inside the work zone please.”<sup>311</sup> That recording was

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<sup>310</sup> Vancouver Police Department radio broadcasts, April 5, 2023.

<sup>311</sup> Computer-aided dispatch recording no. 3323465, April 5, 2023.

made after the time that Reporter 8 and Documentary Journalist 6 stated they arrived on scene at 4:30 p.m., and once the order was issued, it appears they were asked to leave without any specific consideration being given to their status as media.

## Media experiences on April 6, 2023

### Vancouver Sun

Reporter 5 returned to the Downtown Eastside around 9 a.m. on April 6, 2023. He arrived between 9:30–10:00 a.m. on Hastings between Main and Gore. He said that Hastings was barricaded off between Gore and Main and that the road was closed to traffic. He told us that he interviewed some people from behind the police barricades—including a person who operates the space the City was using to store residents' belongings on the corner of Main and Hastings and another person who had spent the night on a park bench because there were no shelter spaces for him. Reporter 5 said he observed police at the barricades who were turning people away unless they lived or worked in the block. Because of the restrictions he faced on April 5, he decided to access the block through the alley. He told Commissioner staff, "I didn't spend a lot of time near the barriers, with the barrier cops because I got the sense that they were the ones who like were tasked with keeping people out and the other police—that wasn't their job so they just didn't care." Reporter 5 was not asked to leave the block once he entered and he spent about two hours in the block between Main and Gore.

The Commissioner finds that Reporter 5 did not seek police permission to enter the zone on April 6 because of his experiences the previous day and because he saw barricades and people being turned away. After he entered through an alley, he was not prevented from being there.

### Global News

At 10:20 a.m., a reporter from Global News was restricted from entering the work zone. The Media Relations Officer radioed: "I am understanding there may have been a guy from Global who was turned away and was told it was for residents only. I told them to make their way back and explain who they are and they should get closer access so if anyone encounters a guy from Global ... can you please facilitate some closer access to the area where you are working."<sup>312</sup> It is unclear how the Media Relations Officer was informed that Global News was restricted. This interaction was followed by, "[T]here's a lot of media in here, direction was for to let legitimate media in" and then, "Yeah, thanks everybody. There's some people who are trying to make an issue and I want to be sure we don't allow them to do it."<sup>313</sup>

It is unclear if Global News returned and whether they eventually were provided with access. It is also unclear if the VPD planned for Global News to be the pool camera again on April 6. The Commissioner finds that Global News was restricted from entering the work zone in the morning of April 6 before 10:20 a.m.

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<sup>312</sup> Vancouver Police Department radio broadcasts, April 6, 2023.

<sup>313</sup> Vancouver Police Department radio broadcasts, April 6, 2023.

## **CBC**

At 10:58 a.m., a VPD officer radioed asking if the Media Relations Officer was on the ground. The response was that [the Media Relations Officer] was available but not on the ground. The Media Relations Officer chimed in saying, “I am monitoring. Can get down there if needed. What’s up?” The response was, “Got a couple of CBC reporters that are being really pushy at 300 Main. Can you phone me so we can talk about it, give you more information.”<sup>314</sup> It is unclear if the CBC reporters were seeking access to the work zone or if they were permitted to access.

## **Independent journalist**

Documentary Journalist 6 returned to the Downtown Eastside on April 6. He described being surprised at how big the operation was on that day. He said, “[T]hough it wasn’t as big, it was still like vehicular warfare, lines of trucks, blocks shut down to traffic. But not as many people on the block. Not as many advocates. Not as many police but still the significant presence.” He said that he was not restricted from accessing the work zone on April 6 and was able to move in and out of the restricted areas. He described not being comfortable shifting back to his role as an advocate again until after they stopped setting up exclusion zones, given the challenges he faced on April 5.<sup>315</sup>

## **Media Outlet A**

Reporter 11 with Media Outlet A drove to the Downtown Eastside on April 6 before noon. She said she was on Hastings Street east of Main and observed the City taking down tents that were set up overnight and a VPD presence. She drove towards Oppenheimer Park and saw a bunch of tents being set up outside the Hastings encampment area. She said, “[T]hey’ve cleared out people from here [the Hastings Street Encampment area] but now they’ve been displaced to other areas.” She said she didn’t encounter any police or restrictions. She said she got out of her car near Oppenheimer Park to take some photographs but that she didn’t stay long. She said it was raining that day and she “didn’t want to damage the equipment or make a target” of herself. She did not encounter any restrictions, but she also does not appear to have been in the specific areas where the City was working.<sup>316</sup>

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<sup>314</sup> Vancouver Police Department radio broadcasts, April 5, 2023.

<sup>315</sup> BCOHRC interview with Documentary Journalist 6.

<sup>316</sup> BCOHRC interview with Media Outlet A.





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