

Introduction and Context



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This report compiles and analyses the multiple laws and regulations that govern people and their belongings. This helps us understand how law contributes to the marginalization of unhoused and precariously housed people. Personal belongings have physical and emotional significance for everyone. For precariously housed and unhoused people, personal belongings hold particular importance. Belongings can allow people to survive, particularly in outdoor spaces. Belongings also affirm individual identity and autonomy.

The laws and regulations studied in this report notionally apply to all people. If people have secure housing, the law ensures the protection of belongings. But the personal property rights of those people who lack control over the spaces they occupy are systematically undermined, not protected. The fact that precariously housed and unhoused people generally lack title to land upon which they can control their belongings, means that they experience greater regulatory control. This is compounded by the pervasive stigmatization towards people experiencing poverty and the related devaluation of their belongings, and the broad discretion afforded to those charged with enforcing such regulations regulators of public and private space. This means that the belongings of precariously housed people are at constant threat of seizure and disposal by state and private regulators. Precariously housed and unhoused people thus experience both physical and emotional harms that further their vulnerability and precariousness. The constant cycle of dispossession is a dehumanizing experience that amounts to significant emotional harm.

This inequality is further sharpened by the fact that many unhoused and precariously housed people are forced to continuously move through various public and private spaces, including sidewalks, parks, shelters, transitional housing, storage facilities, rooming houses, single-room accommodations, and other insecure rental housing. Since precariously housed and unhoused people in urban centres almost always lack title or ownership to land, their belongings are at the mercy of landlords, non-profit organizations, corporations, and government actors. Canadian laws provide little recognition and protection of the belongings of precariously housed and unhoused individuals.

Why we focus on belongings

Studying the laws and regulations that govern people and their belongings is therefore important to understand how legislation contributes to the marginalization of people with low income. Compiling the legislation and case law reveals the problematic legal realities these communities face. Legislation that impacts the belongings of precariously housed and unhoused people will in turn impact their stability and thereby their ability to secure and maintain personal arrangements such as shelter, employment, or health services. Further, a study of the laws and regulations that govern people's belongings increases understanding of the equality issues present in the regulation of property in general. Housed people's residential and personal property are afforded significant protections, in part because of the societal importance attributed to residential property, while the personal property of people with low income is subject to exclusionary rules that impact their ability to exist in certain spaces.

Political or legal discussions regarding human rights, Indigenous peoples' rights, municipal planning, community building, poverty, homelessness, encampments, government spending, or sustainability must include serious consideration of the current legal framework around the personal property of people experiencing poverty and homelessness. This legal reality is too often overlooked in such discussions. The regulatory realities faced by people on the streets, in parks, and in precarious accommodations in

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regard to their personal property create significant social inequities that have lasting detrimental effects on people experiencing poverty. Reimagining other ways of relating, and in the meantime, adjusting these laws and policies, directed by the experiences and realities of people most impacted by them, can ensure that municipal and provincial legal systems are functionally accessible and equitable for all people.

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This regulatory matrix, therefore, is fundamentally inequitable, targeting poor people, while upholding the property interests of the more legally secure. This inequity extends beyond questions of social class, however. While contemporary municipal bylaws that restrict sheltering in parks or on sidewalks are not exclusively directed at Indigenous populations, the reality is that a disproportionate number of Indigenous Peoples experience homelessness and poverty and therefore these laws effectively continue to uphold colonial and racist legacies of the control of Indigenous land and belongings.

The legal and cultural concepts of land ownership and private property that have been used to dispossess Indigenous people of their land are the basis upon which laws and bylaws are written and continue to be enforced against precariously housed and unhoused people. Colonization in Canada has been characterized by the displacement of Indigenous communities through the seizure of land and resources in order to advance colonial economic objectives.¹ Contemporary laws that authorize state officials or private landowners to destroy the belongings of precariously housed and unhoused individuals have their roots in these colonial laws and policies of displacement, seizure, and extraction that ignore treaties, and Indigenous legal traditions and concepts of land.



This report focuses on the complex legal realities that precariously housed and unhoused people face in maintaining their belongings. These legal realities are rooted in colonial notions that inherently value private property and devalue Indigenous laws and the lives and survival of precariously housed and unhoused people. Paradigm-shifting changes are required in the way we as a society value property compared to how we value human beings.

What we mean by “unhoused” and “precariously housed”



While the Government of Canada does not have an official definition of poverty², this report focuses on the experiences of people whose low-income has impacted their ability to obtain and maintain stable housing, thus pushing them to periods of homelessness or unstable housing arrangements that often force them to a greater reliance on public space. This report often refers to this population as “*precariously housed and unhoused people*.” This is intended to capture the broad spectrum of housing insecurity that many people face. ‘Precariously housed’ signals a particular legal relationship, in which a person is subject to the will or decision of others (see glossary below). It would include the situation of a person living in a highly insecure rental property (couch surfing with a friend, for example) as well as that of a person camped on public property. This differs from other definitions of the term, which use it to refer only to those who are at risk of losing their housing.

We use the term ‘unhoused’ as a synonym for ‘homelessness’, defined by the [Canadian Observatory on Homelessness](#) as ‘the situation of an individual, family, or community without stable, safe, permanent, appropriate housing, or the immediate prospect means and ability of acquiring it.’ We use ‘houseless’ in place of ‘homeless’ to signal that while a person may lack a physical structure that they can call their own, they still have a social connection with a broader community. We use the two terms, therefore, interchangeably.

A significant number of people in Canada, approximately 10%, who live in unsuitable, inadequate, or unaffordable housing, can be described as precariously housed and unhoused.³ Not all of this population experience enforcement regarding their belongings in the same way. Some are able to exist within the confines of laws, bylaws, and regulations in ways where they avoid regular confrontational interactions with enforcement entities. Others experience lack of stability of their belongings because of being restricted to one location due to being criminalized or medicalized in institutions, but do not regularly cycle through public and private space. While there is a large range of populations that exist as precariously housed or unhoused, this report focuses on those who are forced to continuously move through public and private spaces, including sidewalks, parks, shelters, transitional housing, storage facilities, rooming houses, single-room accommodations, and other insecure rental housing.

Certain populations are more likely to be living in poverty in Canada and thus more likely to be represented in this report. This includes single people aged 45–64, single parents, new immigrants who migrated less than 10 years ago, people with disabilities, and Indigenous Peoples.⁴ Within these populations, certain groups experience greater surveillance and criminalization. Indigenous, Black, and other People of Colour, visibly poor people, people who use drugs, people stigmatized around mental illness or other health conditions, people with disabilities, gender non-conforming people often experience greater enforcement than other precariously housed individuals who exist in these same spaces and are able to exist within the complicated legal matrix of street spaces, or are not stigmatized in the same ways.

Canadian police and enforcement agencies in Canada have been found to be systematically racist.⁵ Indigenous, Black, and other racialized people are disproportionately over-policed in municipalities across the country.⁶ As police and other peace officers are often instigating or involved in the enforcement of laws and bylaws regarding the possessions of precariously housed and unhoused people, systemic racism similarly impacts racialized people and their security of belongings. Racism underscores every discussion about laws and bylaws which have been used, and continue to be used, to control precariously housed and unhoused people and their belongings.

Please see a glossary of other terms used in the report [here](#).

Cities and jurisdictions

This report was written and edited on various traditional Indigenous territories, and discusses colonial laws from various traditional Indigenous territories, including:

- the territories of the xwməθkwəy̓ám (Musqueam), Skwxwú7mesh (Squamish), Stó:lō and Səl̓ilwəta̓/Selilwiltuh (Tseil-Waututh) Nations;
- the territories of the lək̓ʷəŋən (Lkwungen) People;
- the traditional and unceded territories of the Stó:lō people, the Semá:th First Nation and Mathxwí First Nation
- Tkaronto, the traditional territories of the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee, and the Wendat peoples;
- Dish With One Spoon Wampum Belt Covenant Territory, including the traditional territories of the Erie, Neutral, Huron-Wendat, Haudenosaunee and Mississaugas of the Credit
- Adawe/Odawa, un-ceded Anishinabe Algonquin territory

The legislation in this report focuses on the cities of Toronto, Hamilton, Ottawa, Vancouver, Victoria, and Abbotsford. These jurisdictions represent both large metropolitan areas and smaller urban centres, giving a representative range of municipalities in two of Canada's most populous provinces. Other municipalities are referenced throughout to draw distinctions in legislation, to demonstrate the similarities that exist outside of these surveyed examples, and to raise important legal decisions that have implications elsewhere.

The report has a particular focus on formal legal mechanisms such as provincial laws and municipal bylaws, and focuses less on routine forms of governance or extra-legal regulation by private citizens (e.g., vigilante housed community members destroying tents).

Four legal spaces

The report focuses on four interacting and overlapping legal spaces - frequently used by precariously housed and unhoused people - in which belongings are regulated:

Streets

Sidewalks, streets, highways, boulevards, and other spaces that include vehicular and pedestrian traffic governed under municipal streets bylaws in urban centres.

Parks

Public parks, greenspaces, parklets, public squares, playgrounds, paths/trails, beaches, and other publicly accessible space often connected to recreation governed under parks bylaws in urban centres.

Rentals / Tenancies

Indoor rental accommodations governed by provincial residential tenancies legislation. This report focuses on rooming houses and single-room accommodations.

Non-tenancy accommodations

Indoor accommodations that may or may not require rent or maintenance payments and are exempt from residential tenancies legislation. This report focuses on emergency shelters and rooming houses that have shared amenities with the landlord.

The distinction between these four spaces is often not clear. The ways that laws, bylaws, and court orders are enforced in some of these spaces can be dependent on whether the property is considered public or private property. This report highlights how each space is regulated differently based on its understanding as public or private space, and what impact this has on the belongings of precariously housed and unhoused people.

This report focuses on municipal bylaws, as well as provincial laws and regulations and how they impact the belongings of precariously housed and unhoused people. It does not claim to be a comprehensive review of all laws that can impact a person's personal belongings. This would need to include federal legislation that has implications on people's belongings, such as the *Canadian Charter of Rights and Freedoms*, the *Criminal Code of Canada*, or the *Controlled Drugs and Substances Act*.

Where this work comes from

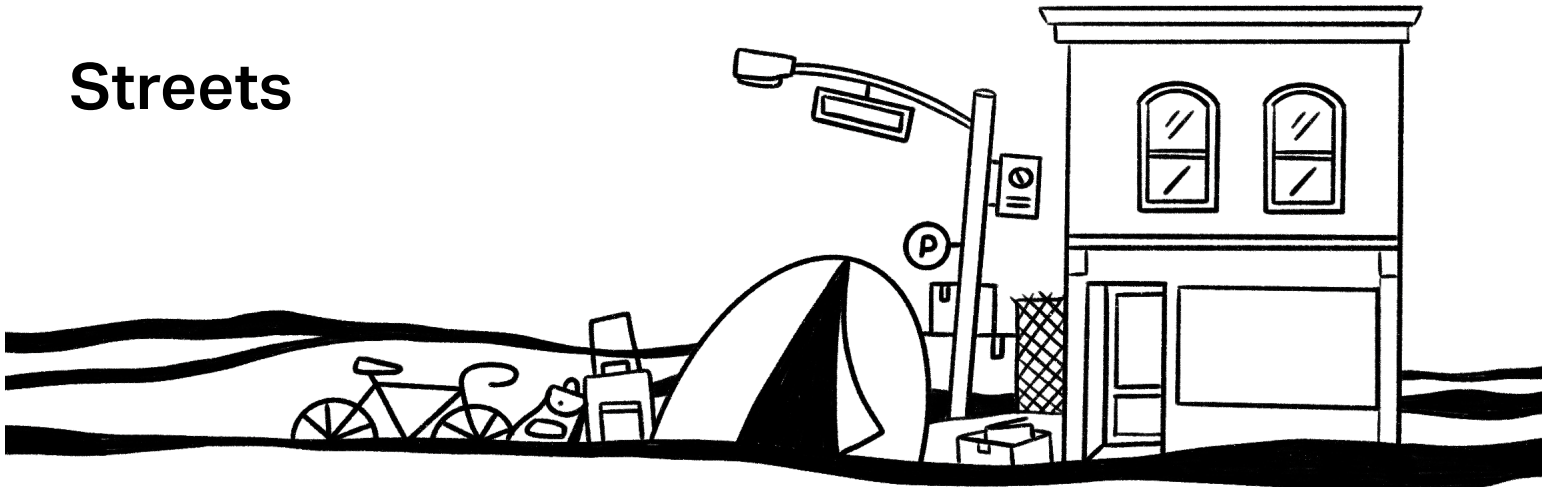
This report was written by scholars and researchers from a variety of institutions across Canada, trained in both legal and social science analysis. It was guided by the advocacy, work, and experiences of people at the frontlines of these legal realities—for example, people with lived and living experience of poverty and homelessness, community organizers, frontline outreach workers, and community legal advocates.

The report would not be possible without the expertise and firsthand legal knowledge of those individuals who have been exposed to laws, regulations, and rules that have impacted their security to their personal belongings. We are deeply grateful for them for sharing their wisdom and experience. We are also grateful for our past research assistants and the many reviewers of this report

The report hopes to fill a valuable gap, serving as a resource to frontline advocates and policy makers, who signaled a need for such an analysis. It focuses on the regulatory matrix governing people's belongings. It does not centre the lived experience of those who are governed by such controls. We do provide vignettes, drawn from the interviews with people with lived experience. The interviews also informed the broad analysis conducted in this report. First-hand testimonies documenting the experience and effect of regulation are analyzed elsewhere. Please see [In Their Own Words](#).

Watch the report launch video [here](#).

Streets



Streets



The laws, bylaws, and regulations that apply to personal belongings in street spaces apply to anyone using public or private street space and anyone with personal belongings in that space. However, these laws disproportionately impact precariously housed people who continuously move through public and private spaces, including sidewalks, parks, shelters, transitional housing, storage facilities, rooming houses, single-room accommodations, and other insecure rental housing. For those who lack secure places to call their own, their increased presence in street spaces means they experience enforcement regarding their belongings beyond that experienced by other users. Even individuals who can access tenancy and non-tenancy private indoor residences or shelters may still heavily rely on public and private street spaces for reasons including lack of security or safety in the indoor accommodation, social support from people who remain living outside, or the need to access formal and informal sources of income.

Certain populations experience greater surveillance and criminalization while existing in street spaces. Indigenous, Black, and other People of Colour, visibly poor people, people who use drugs, people stigmatized around mental illness or other health conditions, people with disabilities, and people who are non-conforming in other ways often experience greater enforcement than others precariously housed individuals who exist in these same spaces and are able to exist within the complicated legal matrix of street spaces, or are not stigmatized in the same ways.

1. How Streets are Defined in this Report

City streets are often grouped by terms like "commercial" or "residential" or "public" or "private." This chapter considers streets by how they are governed by municipal bylaws⁷ and their enabling provincial legislation⁸. In defining streets, we include roads, bridges, lanes, sidewalks, boulevards, alleys, and "any other way normally open to the use of the public."⁹ While municipal streets bylaws mostly focus on the regulation of vehicles, this chapter includes other street-adjacent areas that may be public or private space, including parking lots, transit infrastructure, business entryways, and empty urban lots—effectively any urban space that is not a park, square, or public space as a place where people can congregate.

Precariously housed and unhoused populations use streets for shelter or as spaces where they can simply exist, as they often lack a legally protected, safe, and accessible home. This use of streets, coupled with lack of access to secure storage, means that the personal belongings of precarious housed people also often occupies these spaces. Living in encampments can provide greater stability and safety for people and their belongings. Encampments can exist on streets, but also in parks, and we discuss them in both sections of the report.



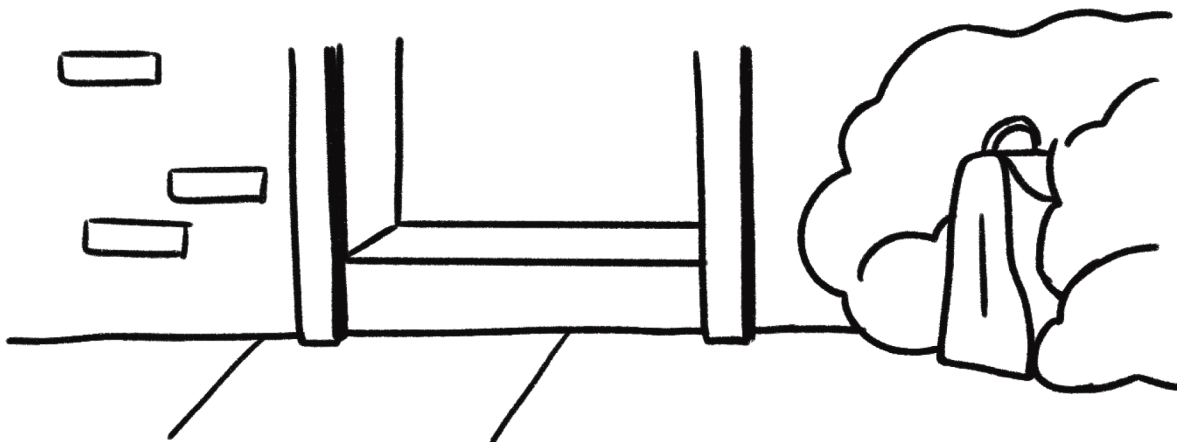
"Public" (streets, sidewalks, boulevards and transit corridors) and "private" spaces (parking lots, business entryways, or privately owned vehicles in public parking areas) are both regulated by municipal bylaws and provincial legislation. These laws limit the control that precariously housed people have over their personal property compared to people who have access to permanent housing or secure storage. These rules also give enforcement agencies authority and discretion to control items that violate the bylaw. While the designation of a space as public or private will impact exactly what legal tools can be used and will therefore have different impacts on the belongings of precariously housed people who rely on these spaces, the final impact on their personal belongings is often the same.

Vignette

Dave was evicted from a privately-owned single-room occupancy (SRO) building where he had been living for nearly five years. He packed up what he could of his clothes, valuables, photos, and other possessions into a few bags and suitcases that he could manage to carry around with him, but he had to sell or discard whatever he could not fit. Having negative experiences in shelters in the past, Dave decided not to stay in the nearby shelter, taking his chances on the street and sleeping rough. He didn't have much outdoor sleeping gear, so he layered up, slept in spaces with awnings when he could, and tucked most of his possessions between himself and whatever building he was next to.¹⁰



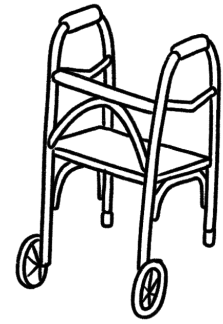
Each morning at 7am, city workers arrived at the entryway of the vacant building where Dave slept, waking him up and telling him to move on. Dave had a flexible part-time job that he had retained through his housing transition, so for several weeks, these wake up calls were uneventful and woke him up in time to get ready to go to work. While the job was within walking distance of the area he was sleeping in, he could not bring all his belongings with him to work. With few options and the inability to afford a private storage locker, in the early mornings Dave hid some of his possessions in some bushes, taking care to make them the least visible to passersby as he could.¹¹ He was able to bring a small bag with him to work and store a few small bags with a former neighbour at his old apartment.



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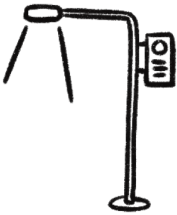


After a few days, Dave returned to the bushes where he stored some belongings to find that his belongings were gone. He learned that City workers had come by and removed his belongings. As it got colder outside with winter approaching, Dave had a more difficult time waking up and packing up his belongings every morning at 7am when city workers showed up. Several times, he ignored them, and stayed wrapped up in his blanket and tarp, waking up to a ticket attached to his backpack. A week later, early one morning, Dave was woken up by city workers telling him he had fifteen minutes to pack his stuff. Dave began placing his belongings in bags and containers but was not able to finish within fifteen minutes. City workers used caution-tape to tape off his belongings and told him that if he crossed the tape, he would be arrested and given criminal charges. City workers allowed him to have one backpack, but proceeded to confiscate his mobility aid¹², his tarp, and the rest of his belongings. From what he understood, the City was supposed to hold onto 'unclaimed' or 'abandoned' property for some amount of time.¹³ But Dave did not know where to go, who to talk to, or what it might cost him to get his belongings back. He considered them to be gone for good, which was a very painful and significant loss.¹⁴ Due to the stress he was experiencing, Dave had a difficult time completing his duties at work, and he ended up losing his job.



2. Public spaces

Streets and Sidewalks



For precariously housed and unhoused people, streets are risky places for belongings. Municipalities create bylaws that state which activities, behaviours, and items are permitted on streets and sidewalks. In Ontario and British Columbia, municipalities have different rules on which specific items, obstructions, and activities are allowed for people who use the street for shelter or as a place to store their belongings. Bylaws may be specific about objects that cannot be placed on city streets (e.g. tents), which therefore target unhoused people. Other bylaws may result in targeted enforcement due to the heightened visibility of unhoused people and the presence of their belongings on the street.

Ontario Municipalities

Most of the surveyed bylaws in Ontario municipalities specify that no one may cause an obstruction on a city street or sidewalk by way of their person, by placing an object, or by erecting a structure.¹⁵ None of the bylaws provide a definition for what they mean by "obstruction" so it is unclear whether an obstruction would need to fully or partially impede pedestrian or vehicle traffic. Without obstruction being defined, it is difficult to know how large an object would need to be or where it would be located for it to be at risk. This would likely depend on each city's enforcement policies and practices. Municipalities can also create, approve, or ignore their own obstructions, like utility poles or other city infrastructure in the middle of a sidewalk.

Tents and other temporary shelters are specifically prohibited on streets in Toronto and Hamilton,¹⁶ and camping, dwelling or lodging on a Toronto street is prohibited.¹⁷ These prohibitions state that a person may not erect or place a structure on, over, or under a street.¹⁸ Thus, people setting up a tent or shelter under an overpass, viaduct, or similar infrastructure would also be in contravention of Toronto and Hamilton's bylaws. Toronto also has a separate bylaw prohibiting people from camping or erecting tents and temporary shelters in the City's public squares.¹⁹ Both cities' bylaws also provide for enforcement by way of removing the structures, as well as any other items in contravention of the bylaw at the expense of the owner. After 60 days, no claims can be made to retrieve impounded objects in Toronto.²⁰

Littering and dumping materials are also highly regulated in Toronto, which can have an impact for precariously housed people where their possessions are devalued and treated like garbage or litter. Toronto's *Municipal Code* on littering and dumping prohibits people from dumping or placing any waste, including garbage, recyclable materials, and organic materials, on any City land and streets. "Garbage" is defined as any non-recyclable, non-organic waste including "unused" or "unusable" materials that appear to have been cast aside or abandoned, to be worthless or of no particular value, or to have been worn out.²¹ However what appears to meet the above definition in the eyes of a City worker or any other person who has the ability to store their belongings, might in fact be immensely valuable to its owner who has placed it on a street.

For example, if a person who engages in binning to earn an income is carrying around a bag or cart full of cans and bottles and needs to put it somewhere on a street so they can access a service or a washroom, those recyclables may be removed as garbage by bylaw enforcement despite them having a monetary or emotional value for the person who collected them and placed them on the street.

British Columbia Municipalities

Vancouver is unique among the surveyed municipalities in having its own bylaw dealing with unclaimed property found in the City. Where B.C.'s *Police (Disposal of Property) Regulation* sets out the responsibilities of provincial police (RCMP) in handling unclaimed property, Vancouver's *Unclaimed Property Bylaw* specifies the responsibilities and practices that the Vancouver Municipal Police Force must follow. The bylaw requires police to retain unclaimed property for at least six months before it can be

auctioned off. However, as is the case with the provincial laws, the police may dispose of the property at any time if it is perishable or of no saleable value.²² Once again, the matter of what is considered of "saleable value" could have an impact on whether an unhoused person's belongings will be retained or disposed of when removed from a street.

Municipalities in B.C., like in Ontario, have street and traffic bylaws that govern the placement of obstructions, structures, and waste on city streets. Vancouver's *Street and Traffic Bylaw* No 2849 is broad in terms of the objects and activities that it regulates. City Engineering workers, accompanied by Vancouver Police, enforce regular "street sweeps" based on practices outlined in the *City of Vancouver Safe Operating Procedure – Dismantling of Transient Camps*.²³ These sweeps include the seizure and destruction of possessions of people sheltering outdoors with the justification of cleaning city property. In addition to similar provisions relating to obstructions, structures, and waste/litter, Vancouver's bylaw prohibits people from placing any merchandise, chattel, or wares on a sidewalk for sale, display, or any other purpose without a permit.²⁴ This is likely to raise problems, for instance, where an unhoused person is selling items on the street as a form of survival income-generation, or where a person perhaps has a diminished capacity to keep their belongings organized in a public space. The visibility of such activities and their belongings increases the likelihood of enforcement.

In Victoria, a person cannot place or leave an object on a city street or sidewalk, especially one that causes an obstruction or nuisance, including garbage and any "offensive" substance or matter.²⁵ Any items can be removed and impounded, and in order to retrieve the items, the owner must sign an undertaking that they will not place it again on a street or sidewalk. Retrieval of belongings can also require the owner to pay detention and removal fees of \$25 or \$40 for a first detention or removal, and \$100 for second removal, and impound fees of \$5 or \$7 per day, both dependent on the weight of the impound.²⁶ If an item is not retrieved, it may be sold at auction after 30 days.²⁷ Another section of Victoria's bylaw specifies that a person cannot set up a tent or temporary structure on a City boulevard. This means that the *Parks Regulation Bylaw* which permits overnight sheltering does not apply on streets and sidewalks.

Abbotsford's *Good Neighbour Bylaw* specifies that no person can camp or erect a tent on a city street or other public place, nor can anyone obstruct another person on a city street, including on sidewalks.²⁸ The City's *Street and Traffic* bylaw notes that any obstruction may be removed and like in Victoria, may be sold at auction after 30 days.²⁹ Abbotsford also prohibits people from "deposit[ing] or throw[ing]" trash, litter, and specifically bottles in any open place.³⁰ This once again relates to the subjective matter of what is considered garbage or trash, and complicates the ability of people who rely on collecting waste and recycling materials for their own consumption or as a form of income to be able to store or leave those items in a public place.

Fire regulations also limit the control that precariously housed people have over their possessions. In August 2022, Vancouver Fire Rescue Services issued a fire order to remove structures and objects of an estimated 400 people in an encampment along the sidewalk of Hastings Street.³¹ This order was made despite a lack of alternative space for people to move to, and despite the city's Street Sweeps Working Group which identified the need for storage facilities and garbage disposal sites to ameliorate fire and garbage concerns in advance of the fire order.³²

Privacy Rights in Tents

What privacy rights does a person living on a street in a tent have or other temporary structure over their belongings? What if the tent owner is suspected of a crime? Can their tent be searched without a warrant, or do they have the same rights to privacy in their home as a person who is housed? This issue was at the centre of a 2018 B.C. case, *R v Picard*.³³ Mr. Picard had been living in a tent located on a sidewalk with his girlfriend for about two years, and was being surveilled by police, who suspected he was trafficking drugs. Police searched his tent without a warrant. Mr. Picard argued that he had a reasonable expectation of privacy regarding the contents of his tent, and therefore that the warrantless search was unreasonable and that his *Charter* rights had been violated. The question was whether his tent, specifically, could be considered analogous to a 'home' that would afford him the highest degree of privacy.

The judge considered the facts that Mr. Picard considered the tent to be a home, that he ate and slept in the tent, that his belongings were mostly in the tent, that he owned the tent, and that he possessed it and controlled access to it. However, the judge also considered the facts that the tent was on City property, that there was a bylaw that prohibited it (even though the tent had never been forcibly removed), that it was mobile and not fixed to the ground, and that he was suspected of selling drugs at the time of the search. The fact that Mr. Picard did not have a legal right to erect his tent on a City sidewalk was an important factor in the judge's finding that his tent was not a 'home.' However, the judge did find that Mr. Picard did have a reasonable expectation of privacy in his tent and its contents even though it was not considered a 'home.' Despite this, the judge determined that the purpose of the police investigation was valid and reasonable, and that the search was conducted in a reasonable manner, so Mr. Picard's *Charter* argument was dismissed.

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Many bylaw violations are subject to different forms of ticketing or fines. One form of ticketing often used for property-related bylaw offences in BC are "municipal ticket informations" (MTIs), which are permitted under the province's *Community Charter*.³⁵ The maximum ticket that can be given with this form of enforcement is \$1000³⁶ and the tickets can be disputed³⁷. Neglecting to pay, however, can have implications on a person's immediate financial status, including a credit score, which can then impact a person's ability to rent or find employment.

Transit

The use of public transit spaces like buses, subways/trains, and transit shelters can also impact the regulation of the belongings of precariously housed people. Public transit is owned by a Crown corporation that is publicly accessible upon payment of a fare, though payment is not always necessary for access to some transit-related spaces.³⁸ Despite the publicly owned nature of transit infrastructure, the lines between what is private or public property can be blurred. For example, there are 67 transit shelters in the City of Richmond, B.C. Of those shelters, 48 are owned by a single private advertising company, 13 are owned by either the local transit authority, the provincial government, or the local airport, and the last 6 are owned by the City.³⁹ Whether a given transit shelter is private property, City property, or provincial government property affects the governance of people and their belongings.

In Ontario, each of the surveyed municipalities or their local transit authorities has enacted specific bylaws regarding the operation of their transit systems and the objects and conduct that are allowed or prohibited on transit. In BC, provincial laws like the *South Coast British Columbia Transportation Authority Act* and the *British Columbia Transit Act* delegate bylaw-making powers to transit authorities. However the transit authorities have not enacted bylaws that directly govern people's belongings. Instead, the transit authorities in BC have published rules, regulations, and policies respecting transit etiquette, bags, animals, etc.⁴⁰

Many of the rules respecting objects and belongings in spaces owned by public transit authorities overlap across municipalities in Ontario and B.C. Some common rules include:

- No bags, luggage, or other belongings are permitted on seats; they must be on the owner's lap or on the floor, and must not obstruct the aisle or other customers
- Guide dogs and service animals are allowed on transit on leashes, but other pets must be in secure hand-held cages that can fit in the owner's lap or floor without blocking other passengers
 - In Ottawa, owners require an Assistant Card proving their animal's status as a service animal
 - In Toronto, animals other than guide/service animals are not allowed during peak hours
- Bylaws in Ontario do not allow people to wear roller blades on transit property and prohibit littering on transit property

Ontario municipalities and transit authorities have rules that are not seen in BC. In Toronto and Ottawa, transit staff can refuse passage to people who are carrying anything that does or is likely to inconvenience other passengers or transit employees.⁴¹ Items that do or are likely to inconvenience others are not defined, leaving enforcement of these provisions up to the discretion of the transit authorities and their employees. People who are refused service or removed from transit property under these provisions are potentially subject to having their fares confiscated and are liable to fines under Ontario's *Provincial Offences Act*.⁴² Given the stigma against the belongings of unhoused people and the vagueness of 'items that are likely to inconvenience,' this could lead to refusals of service where the quantity or quality of items that a person is attempting to bring onto transit are considered objectionable. The City of Hamilton's bylaw is slightly clearer about items that could lead to a person being refused access to transit – any large, bulky, or sharp objects must not be placed in a way that could endanger other passengers.⁴³

On a slightly more promising note for the belongings of unhoused people, the City of Hamilton's transit bylaw specifies that a person who is carrying a bulky item has courtesy seating at the front of a bus, though they are not guaranteed a seat.⁴⁴ Despite this explicit statement in the bylaw, Hamilton's related policies and advertising materials emphasize that courtesy seating is meant for seniors, expectant parents, and people with small children, so it is unclear whether people with large items are accorded courtesy seating in practice.

Bicycles

In all the surveyed municipalities, bikes must be placed on bike racks when the owner is entering a bus, and bike owners are responsible for loading and unloading their bike safely and properly.⁴⁵ A person's ability to do so will depend on whether it is peak time, as most bus bike racks only have two spaces. The status of bikes on other forms of transit, such as trains and trams, varies depending on the transit authority. In Vancouver, electric and folding bikes are allowed on the SkyTrain, Seabus, and WestCoast

Express.⁴⁶ In Toronto, bikes (as well as skis and other large items) are not allowed on transit services during peak hours, except for bikes on bike racks.⁴⁷



Reclaiming Items Lost/Found on Transit

Most of the surveyed municipalities have some procedure to allow people to reclaim items that have been lost on transit property. The Cities of Hamilton, Vancouver, and municipalities covered by B.C. Transit Authority specify that attempts to reclaim bikes must be made by appointment only. The Toronto Transit Commission holds onto most lost items for 60 days, though larger items like bikes are only kept for 30 days due to space limitations.⁴⁸ Unclaimed items are sold at a police auction. In Hamilton, perishable items are disposed of, while other lost items are labelled, logged, and stored for 10 days, after which they are disposed of or donated to charity.⁴⁹ In Ottawa, the transit lost and found is operated by a local non-profit organization which people must contact to reclaim their items, and unclaimed items are either donated to charity or sold by the non-profit.⁵⁰

Other Public Spaces and Items

Provincial laws regulating abandoned and unclaimed property, including animals, in public street space can have a significant impact on the lives of precariously housed people. For example, Ontario's *Police Services Act*⁵¹ and B.C.'s *Unclaimed Property Act*⁵² and *Police Act* (specifically the *Police (Disposal of Property) Regulation*)⁵³ govern any personal property that is held by the government or by police. This could include "abandoned" personal property such as a sleeping bag or backpack found by the RCMP that had been tucked away by the owner who was trying to keep them out of sight until they returned for their belongings. In these cases, the laws require police to retain the personal property for three months to allow the owner a chance to reclaim their property, after which the items may be sold or disposed of.⁵⁴ However, B.C.'s *Regulation* allows for items that are perishable or "unmarketable" to be disposed of at any time.⁵⁵ Given that the possessions of unhoused people are often devalued and stigmatized,⁵⁶ the perceived value of some items may result in their premature disposal as "unmarketable" property. Additionally, this language could mean that items with obvious sentimental value but no obvious saleable value, could be automatically disposable. Some of these laws are not exclusive to streets, and can apply in other public spaces, such as parks, or private spaces.

The City of Vancouver has multiple bylaws that also directly regulate non-park and non-street public property. These bylaws have consequences for unhoused and precariously housed persons and their belongings. Vancouver's *City Land Regulation Bylaw* excludes parks and streets from its definition of city land. The bylaw prohibits people from placing waste on city land and from constructing or placing structures, tents, shelters, and other objects or things on city land.⁵⁷ The bylaw empowers the City manager to remove any tent, shelter, or object that is on city land, and people who contravene the bylaw can be liable to a fine of between \$250 and \$2000 for each offence.⁵⁸ In 2017, the City of Vancouver relied on this bylaw and the provincial *Trespass Act*⁵⁹ to apply for an injunction to remove an encampment and personal belongings from a city-owned lot that had been empty for twenty years.⁶⁰ The City sought the injunction "arising from the City's right to enforce a breach of a City Bylaw due to the trespass of its property"⁶¹ and other grounds. The lot was slated for a new housing development for affordable social housing. The City's application for an injunction was denied because they could not prove irreparable harm. The fact that the land was city-owned was not a factor in deciding against the injunction application, and the City was able to pursue an injunction in the same way as a private owner would have. As such, the designation of public space does not necessarily grant unhoused or precariously housed people greater rights when using this space for shelter or storage of their belongings.

Vancouver also regulates belongings in public space through its *Unclaimed Property* bylaw. If the municipal police find personal property on city-owned public property and cannot identify the owner of the personal property, then the object will be retained for six months before being auctioned, or it will be sold or disposed of immediately if it is perishable or inconvenient to store.⁶² A final example of a Vancouver bylaw that has implications on people's possessions on public property is its *Trailer Courts* bylaw. This bylaw specifies that it is unlawful to park a trailer or 'house-car' (e.g. camper van or RV) anywhere in the city except in a trailer court (trailer park) when the intention is to live and sleep in the vehicle.⁶³

Shopping Carts

Shopping carts are a practical way for precariously housed people to transport their belongings, particularly given the need that many experience to move between spaces. Bags, backpacks, and suitcases can only hold so much, and for people with health concerns or disabilities, being able to push one's belongings can put less of a physical toll on their bodies. Perhaps because of their association with precariously housed people, shopping carts can become a regulatory target. For example, in the City of Vernon, B.C. voted in 2018 to implement a shopping cart bylaw that would prohibit their use in public spaces. It is clear from the way in which some councillors spoke about the use of shopping carts by unhoused people that they stigmatized the possessions of unhoused people as "things that come out of dumpsters," and did not trust unhoused people to know what was actually valuable to them.⁶⁴ A few months after the discussion, however, the City voted to quash the bylaw after receiving a great deal of criticism from advocates which suggested that the ban would not survive a challenge under the *Charter*, and after the City's legal department recommended it not proceed with the ban.⁶⁵



The City of Ottawa is unique among the surveyed municipalities in having a bylaw that directly targets shopping carts that are left on streets and on City property. Where a shopping cart is found on City property, the City may impound the cart and notify the owner, if possible.⁶⁶ "Owner" in this case means the business which originally owned the shopping cart before it was acquired by someone who began to use it for their own purposes. The bylaw does not require the City to notify the owner of the contents of a

shopping cart found on City property. When the shopping cart has not been claimed by the owner of the business for 60 days, the cart and its contents may be disposed of (though perishable items can be disposed of at any time).

Shopping carts or other wheeled items are thus important to precariously housed people for storing and transporting their belongings, yet also at risk. To address these concerns, in 2018 engineering students at the University of British Columbia – Okanagan in Kelowna in 2018, were tasked with designing carts that would be strong, light, easily manoeuvrable, and importantly, lockable so that people would be able to securely store their belongings. A spokesperson noted that allowing unhoused people to store their personal belongings with these carts was an important “first small step in restoring their dignity.”⁶⁷



Animals

The pets of precariously housed people can be very significant for their mental health and wellbeing, providing a sense of responsibility, stable social support and companionship, as well as comfort and safety.⁶⁸ Many people consider their pets as members of the family, rather than possessions or objects. Pets are included in this part of the report to reflect the reality that the law generally categorizes pets as personal property, rather than family members. Their status as “personal property” means that pets may contribute to the barriers that their owners experience in accessing shelter and services. Often this is experienced in the form of no-pet policies at shelters and in other forms of housing.⁶⁹ This has contributed to what has been described as a “pet before self” mentality among many unhoused pet owners, where they choose to sleep rough over having to give up their pet.⁷⁰ Owning an animal while experiencing homelessness comes with additional stressors such as maintaining the health and well-being of the animal, and experiencing stigma from people who do not believe the owner can or should own an animal.⁷¹ Studies have shown the experience of losing a pet, whether by relinquishing it to another person or it needing to be put down, is extremely painful, distressing, and traumatic for unhoused pet owners.⁷² This is especially the case for those who describe the companionship of their animal as resembling a relationship between best friends or between a parent and child.⁷³

For people living in parks and on streets with a companion animal, there are additional stressors caused by the heightened surveillance of their animals compared to the pets of housed people. For example, in Ontario, each of the surveyed municipalities has a requirement that dogs must be licensed, cannot be at large, and must be leashed outside of an off-leash area, or else they may be seized and impounded. Even a licensed dog that is off-leash in a public space could be impounded, as licensing systems do not necessarily prevent an animal from being impounded. Licensing systems simply allow impounded pets to be connected with their owners more easily⁷⁴ and can reduce the fees associated with impoundment.⁷⁵

Toronto and Ottawa’s bylaws also set out the responsibility of an animal owner to ensure that the animal has appropriate care, food, water, and shelter.⁷⁶ Going a step further, the portion of Toronto’s municipal code dealing with animals states that a person cannot allow an animal to remain outside during extreme weather unless the animal has access to some enclosure that will protect it from the elements.⁷⁷ In B.C., Vancouver’s animal control bylaw requires an animal owner to “provide for its housing in a suitable manner,”⁷⁸ and the City of Victoria prohibits animal owners from keeping an animal outside without shelter that provides sufficient protection from the elements.⁷⁹ In this framing of animal ownership and responsibility, pets in many of the surveyed cities have a right to adequate shelter while their owners do not. Consider the extreme difficulty a person might have in fully adhering to provincial and municipal legislation such as providing shelter for their animal if they lack adequate shelter themselves.

The pets of people who rely on public space are more visible than pets whose owners have access to their own private property, thereby making them more vulnerable to scrutiny from those looking for signs of animal distress and neglect, and making them more likely to be reported at large and thus impounded.⁸⁰ Impounded animals become the property of the city after five business days in Toronto,⁸¹ or 72 hours in Vancouver,⁸² after which they can be adopted out, sold, or euthanized.

Provincial laws also target animals existing in public spaces like streets. While local bylaws tend to regulate the licensing and impounding of animals, provincial laws like Ontario’s *Provincial Animal Welfare Act*⁸³ and B.C.’s *Prevention of Cruelty to Animals Act*⁸⁴ govern the welfare of abandoned and distressed animals. These acts set out the responsibilities of animal owners, including providing their animals with food, water, and shelter.

3. Private spaces

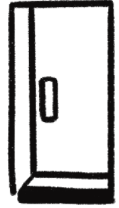
Entryways, Parking Lots, Empty Lots

Publicly owned streets and sidewalks coexist with private spaces. Entryways to commercial spaces, privately-owned and -managed parking lots, and empty lots are subject to provincial trespassing legislation in addition to municipal bylaws. There is heightened enforcement because property owners report violations to enforcement authorities.

In both Ontario and BC, municipalities place a significant amount of responsibility on private property owners and lawful occupants (e.g., tenants) to maintain the property based on certain standards. These regulations can impact precariously housed tenants and any belongings they keep in publicly viewable privately-owned space, such as parking lots, entry ways, and yard spaces. They can also impact people who are living on private property with the permission of the owner, but who have no property rights in the space, as well as those sheltering illegally on private property, such as in a doorway, a private parking lot, or on vacant private land.

Ontario Municipalities

Property maintenance and standards bylaws in Ontario often use both objective and subjective language to describe the kinds of objects and materials that are prohibited from being placed on private property. The property standards section of Toronto's *Municipal Code* uses objective language to require property owners to keep their yards clear of dilapidated, collapsed, and unfinished structures, as well as wrecked and discarded vehicles.⁸⁵ The same section goes on to use more subjective language to require property owners and occupants to keep properties in "clean and sanitary condition" and keep them clear of junk, rubbish, refuse, litter, and other debris.⁸⁶ These subjective criteria can disproportionately impact those who are lower income, precariously housed, particularly in light of societal stigma towards poor and marginalized people, including people experiencing homelessness, a disproportionate number of whom are Indigenous.



As in Toronto, the City of Ottawa's *Property Standards* bylaw employs some language that is drafted in a way that could be interpreted subjectively. The bylaw prohibits appliances, objects, and conditions in yards which could cause a health hazard or an accident hazard.⁸⁷ However, the bylaw also prohibits the accumulation of materials and objects that create unsafe or *unsightly conditions*, and that are *deleterious to the neighbouring environment*.⁸⁸ Any objects that meet these descriptions are to be removed from private property.

British Columbia Municipalities

The B.C. municipalities surveyed in this report have similar property standard bylaws to those in Ontario. Vancouver's *Untidy Premises* bylaw prohibits property owners and occupiers from allowing the accumulation of discarded materials, rubbish, filth, and garbage on their property.⁸⁹ Owners are provided with 10 days notice to remedy the issue if they are in contravention of the bylaw.⁹⁰ Vancouver's *Standards of Maintenance* bylaw also requires private land to be kept clear of rubbish and debris, and wrecked vehicles cannot be stored or left on any land.⁹¹ The City of Abbotsford's *Good Neighbour* bylaw contains more subjective language, prohibiting property owners from allowing their property to become or remain *unsightly* through the accumulation of rubbish, derelict vehicles, appliances, or other discarded materials that can be visible to passersby or from neighbouring properties.⁹² Property occupiers are specifically required under the bylaw to keep the general appearance of rental premises to the standards of similar properties in a neighbourhood.⁹³

The City of Victoria's *Property Maintenance* bylaw differs slightly from each of the bylaws above because it provides an explicit definition for what is meant when something is considered "unsightly." The bylaw defines "unsightly" as a state that is untidy or the otherwise non-aesthetic accumulation of filth, junk, and refuse on a parcel of private property.⁹⁴ However, this definition still seems to remain highly subjective in terms of what is considered "junk" and "refuse."

Trespass

In law, trespass to land occurs when a person intrudes upon another's private property without permission from the owner. Trespass law also applies to objects that have been placed on land without the owner's permission.⁹⁵ (online), *Trespass*, "Trespass: Trespass to Land: General" (II.1.) at §29. Some permission to intrude onto another's property can be implied (e.g., walking on a pathway to deliver a parcel), but if that person remains on the property after the owner asks them to leave, they are trespassing.⁹⁶ The remedies for trespass can be an injunction or damages (compensation). In Ontario, the *Trespass to Property Act* sets out that any person who enters property without express permission from the owner and does not leave when directed to do so is committing an offence.⁹⁷ In BC, the *Trespass Act* similarly sets out that it is an offence to enter enclosed land or engage in a prohibited activity on that land.⁹⁸ In practice, these statutes authorize a property owner to take legal action against a person who is on or has left their belongings on the property or has not vacated the premises when asked. Both private and public property owners (e.g., municipal governments) also have the right to take legal action against a person who does not vacate or stop engaging in certain activities on the premises. Municipal bylaws and other regulations further regulate which activities are permitted on both public and private property.

Where the property owner is a municipality, an injunction is more likely to be sought to remove the trespasser(s). While injunctions are typically regarded as extraordinary measures in trespass,⁹⁹ (online), *Trespass*, "Trespass: Trespass to Land: Remedies: Injunction" (II.9.(a)) at §154, courts are more likely to grant an injunction when the trespass is continuing.¹⁰⁰ Under the law, people who sleep or set up camp on public or private property, including parks,¹⁰¹ are therefore trespassing unless authorized to do so (by bylaw or otherwise).¹⁰²

Although encampments are often described as being 'evicted' or threatened with 'eviction', eviction is a term generally connected to legal occupancy connected tenancies. As such, decampments are more likely to be realized using trespass law.

Vancouver recently extended a Trespass Prevention pilot program, also used in Abbotsford, where business and property owners authorize police to access their properties if unwanted people are "behaving in a manner that interfered with the use and enjoyment of private property."¹⁰³ Owners of private property place a yellow no-trespassing sticker on the door or window of their property, allowing police to actively displace people and their belongings from space without the requirement of the business owner to call for assistance.

Vehicles

Vehicles themselves amount to a personal belonging, one that may be used as shelter and storage, or may contain stored personal belongings even if not used for sleeping. Without the ability to park their vehicles in places that they control, precariously housed people by necessity must park their vehicles either on public streets, in public parking lots, or on private property, and are thus subject to laws, regulations, and zoning schemes pertaining to those spaces. Most municipalities regulate vehicles in terms of where they can be parked and at what times, whether a person can sleep in them overnight, whether recreational vehicles are allowed, when they may be impounded, and how they can be retrieved by the owner. For example, in *Grand Forks (City) v Jennings*,¹⁰⁴ the court granted the city an injunction to remove a family living in their trailer on undeveloped city land. The trailer placement violated city zoning bylaws that only permitted trailers in areas zoned as campgrounds. There are also specific rules related to vehicles in relation to parks [link to relevant section in Parks chapter]. In some cases, this extends beyond the regulation of public spaces. Beyond municipal bylaws, Ontario's *Highway Traffic Act*¹⁰⁵ and British Columbia's *Motor Vehicle Act*¹⁰⁶ define "highway" in a way that includes private parking lots, further making private vehicle ownership a publicly regulated process. Additionally, vehicles and their contents are subject to certain warrantless search and seizure laws connected to possible criminal offences as laid out in the *Criminal Code*,¹⁰⁷ as well as provincial motor vehicle offences.¹⁰⁸

Bylaws can lead to fines and to the impounding of vehicles. For a person who lives in their vehicle, impoundment equals both the loss of their home and their every possession contained within the vehicle. Where city street parking permits are an option, most cities require proof of a residential address, still require vehicles to move regularly, and exclude certain large vehicles.¹⁰⁹

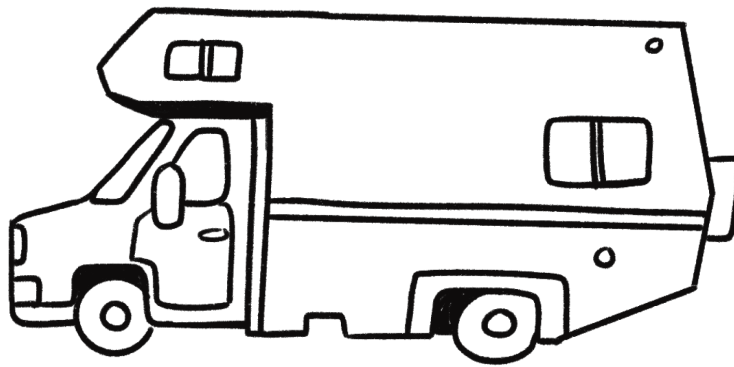


Here are some examples of vehicle-related bylaws in the selected municipalities in Ontario and B.C.:

- In Toronto, there are over 1900 pages of documentation associated with the City's *Traffic and Parking* bylaw that set out the times of day in which stopping or parking on named streets are prohibited.¹¹⁰ These restrictions are indicated on street signs for street users' benefit; however the volume of restrictions is significant for people who need to find a stable spot to park their vehicle in order to meet their needs.
- The City of Victoria explicitly prohibits a person from parking a vehicle on a street for the *purpose* of sleeping overnight and prohibits the *act* of sleeping overnight in one's vehicle when parked on a street.¹¹¹ Additionally, Victoria's *Street and Traffic* bylaw specifies that a motor home, camper truck, or trailer for recreational purposes that is registered in the region cannot be parked on a street between 10pm and 6am.¹¹² Contraventions of these restrictions may result in a vehicle being impounded. The owner must retrieve the vehicle within 20 days and pay \$200 and applicable towing and storage fees or else it will go to auction per the City's vehicle impoundment bylaw.¹¹³
- In addition to restricting where all vehicles can be parked and at what times of day, the City of Vancouver regulates larger vehicles based on their size. Vancouver's *Streets and Traffic* bylaw provides that a vehicle with a height between 2.2m and 6.4m which is not designed primarily for the conveyance of a maximum of nine people must not park on a street between 10pm and 6am.¹¹⁴ This size restriction would likely cover some recreational vehicles used for sleeping, and subject them to impoundment. It is notable however that Vancouver's impounding bylaw allows discretion for a fee waiver where the Vancouver Police Board accepts an owner's claim that payment of the fees associated with the impounding would cause hardship.¹¹⁵
- Toronto's *Municipal Code* has a section governing parking on private or municipal property.¹¹⁶ It states that no person shall park or leave a motor vehicle on municipal property without the consent of the city, or on private property without consent of the owner.¹¹⁷ Police and bylaw officers have the authority to remove any contravening vehicles and fine the owner, though in most cases officers are obligated to wait 30 minutes before impounding a vehicle in case the owner returns within that time.
- Ottawa and Hamilton both have idling bylaws that apply to parked vehicles. Both cities' bylaws specify that a person cannot idle a vehicle for more than three minutes if the outside temperature is between 5 and 27 degrees Celsius,¹¹⁸ a temperature range in which both cities exist for approximately six months of the year. The bylaws are flexible based on temperature to allow a person to idle for a longer period in hot weather to cool their vehicle, and in cold weather to warm their vehicle. However, consider a person living in their vehicle who needs to charge a device, or use their vehicle's power for whatever reason related to their survival for a period longer than three minutes when the temperature is within the range prohibited by the bylaw.
- Vancouver's *Trailer Courts* bylaw requires any 'house-car' like a camper van or RV to be parked in a trailer court when in use for sleeping and living.¹¹⁹ At the time of publication, there appear to be no designated trailer courts within the boundaries of the City of Vancouver. There are trailer courts in the neighbouring municipalities of West Vancouver and Burnaby. However these may not be practical options for many people depending on the cost of parking, spot availability, and the accessibility of other services around the trailer courts. In the absence of any trailer courts within Vancouver, a person living in a camper van, trailer, or RV will necessarily be acting in contravention of Vancouver's bylaws if they are living in such a vehicle anywhere within the City's boundaries.

Sidebar

In May 2021, individuals living in camper vans and other vehicles were facing forced displacement from a section of a Vancouver street where they had been camping for around two years. An advocacy alliance speaking on behalf of the campers emphasized the difficulties that arise when there are strict overnight parking restrictions and prohibitions throughout the City, and the difficulties that people face when large RVs are required to be moved every three hours. The campers spoke of not having anywhere else to go, and called for social housing at welfare and pension rates that is not in the form of supportive housing or SROs.¹²⁰ An enforcement day was set which convinced about half of the RV residents to move on. The remainder received tickets and warnings that bylaw enforcement would return the following week.¹²¹



4. Legal decisions impacting people's belongings on streets

Caselaw demonstrates that the determination of whether a space is public, private, or some combination of both, impacts the legal mechanisms used to enforce and remove people and their belongings. The majority of the caselaw in this chapter surrounds the use of empty lots which may be greenspaces but are not designated as parks.

Much of the case law regarding encampments and people's belongings on streets and in empty lots has occurred in British Columbia and has revolved around the seeking and granting of statutory injunctions. When a municipality seeks an injunction to address a breach of a bylaw or other municipal provision, it seeks a statutory injunction.¹²² The granting of a statutory injunction is determined by one of two tests. Municipalities generally often do not need to prove irreparable harm to be granted an injunction, and injunctions are only refused in exceptional circumstances because of the presumption that the municipality is acting in the public interest ("*Thornhill / Windsor* test").¹²³ Where the seeking of a statutory injunction has *Charter* implications, in order for the injunction to be granted, the municipality must demonstrate three things ("*RJR-MacDonald* test"): (i) that there is a serious question at issue, (ii) that they will suffer irreparable harm if the injunction is not granted, and (iii) that the balance of convenience favours the municipality in granting the injunction. In cases where an injunction is sought on the grounds of trespass on private land, the private property owner merely needs to prove trespass is occurring by proving clear title, without the requirement of proving that they have experienced any harm.¹²⁴ The granting of injunctions to remove people from public space has significant impacts on their security to their personal belongings, which are often named in the injunction removal orders.

In *Vancouver (City) v Maurice*,¹²⁵ the City was granted an injunction to remove around 200 people and their belongings from the sidewalks surrounding the former Woodward's department store because their tents, mattresses and other belongings constituted obstructions which violated the *Street and Traffic Bylaw*. The injunction was granted relying on the *Thornhill* test, in part, because of the public nature of the space being relied upon by those sheltering on the sidewalk. Any potential hardship experienced by those sheltering outside arising from the enforcement of the injunction was not enough to make out exceptional circumstances to refuse the injunction and was outweighed by the public interest of keeping the "busy pedestrian thoroughfares"¹²⁶ available to be used by the public unimpeded.¹²⁷

In January 2023, the Ontario Supreme Court declined to declare that an encampment of people on a city-owned vacant parking lot in Kitchener was contrary to the bylaws. Instead, the court stated that the bylaw which prevented sheltering violated section 7 of the *Charter* by depriving people of life, liberty, and security of the person, and was inoperative if the number of unhoused people exceed the number of shelter beds in the city.¹²⁸ The court determined that even if it did not violate section 7, that it would not to grant the interim and final orders because the Region did not meet its own Encampment Policy terms prior to enforcing the bylaw. The court stated that this amounted to an exceptional circumstance from which to deny the injunction, relying on the *Windsor* test.¹²⁹

In *Fraser Health Authority v Evans*,¹³⁰ because the lot containing a recently closed hospital was determined to be private property, and because the occupants were unable to demonstrate any right of possession, an injunction was granted permitting Fraser Health Authority to remove all "structures, tents, shelters, objects, and things owned, constructed, maintained, placed, or occupied by the defendants..."¹³¹ Despite arguments that the land was government-owned and should be constituted as public land, the determination that this land was private property meant that an injunction was granted without adhering to the *RJR-MacDonald* test because trespass is in itself actionable and does not require proof of damages.¹³²

In other cases, the complex relationship between public and private land played an important role in how the court decided injunction applications. In *Nanaimo (City) v Courtoreille*, the City of Nanaimo was granted an injunction to remove all tents and belongings from city-owned public port authority land, because, as land leased to a conservation-based non-profit who sublet it to a rail company,¹³³ it was not "purely public in nature".¹³⁴ According to the court, the private aspects of this land strengthened the case for an injunction because of the unquantifiable and non-compensable harm associated with the occupation that breached the Zoning bylaw and interfered with third-party rights.¹³⁵ Notably, however, the court recognized the merit in the residents' argument about the benefits of greater stability, security for personal belongings, and access to services.¹³⁶

In *Vancouver Fraser Port Authority v Brett*,¹³⁷ the port authority sought an injunction for an encampment located on Crown land managed by the port authority on several grounds: (i) common law trespass, (ii) the fact that the encampment violated the port authority regulations, and (iii) that they passed the *RJR-MacDonald* test. Encampment residents noted that the land adjoined a public park, had no fence, was unused at the time and thus differed from other public land leased to a third party.¹³⁸ However the court

granted the injunction based on the fact that the lands were being used for private commercial purposes and maintained private property qualities that disallowed public use.¹³⁹

In *Maple Ridge (City) v Scott*, 2019 BCSC 157, an encampment existed on land that was owned by the city and owners of the BC Transportation and Finance Authority (BCTFA), who sought a court order to enforce several fire safety orders that had implications on encampment residents and their belongings. The application was granted. The judge noted that in previous cases involving encampments, significant fire risk has tipped the balance towards favouring the municipality. The occupants were ordered to comply with the fire safety orders, which included distances that tents and belongings had to be from one another and specifications on the use of tarps, heaters, propane and other survival related items.



An injunction is not guaranteed in every case. In *Wallstam*, the City of Vancouver was not able to demonstrate that the occupation of vacant City-owned property by tent city residents caused the City sufficient irreparable harm to meet the requirements for an injunction.¹⁴⁰ The City argued that the presence of the tent city delayed the development of a social housing project to be constructed on the vacant land, however the court found that much of the City's evidence was not admissible and that there was little to show that there was urgency in starting the development. Additionally, the proposed social housing would have fewer units available than the number of occupants of the vacant lot. While the court did not explicitly acknowledge the impacts an injunction would have on the security of the belongings of the encampment residents, the court did accept the residents' evidence about impacts an injunction would have to their safety and survival directly connected to "having a stable place to sleep and live"¹⁴¹ and by extension, presumably, a place to keep their belongings. While the analysis in this case is highly fact-specific and future cases should not rely on the inadmissibility or insufficiency of a municipality's evidence in injunction cases, *Wallstam* demonstrates that it is possible to successfully oppose an injunction application where people have set up shelter on municipally owned land.

Outside of court injunctions, other legal decisions have been made that have implications on people's belongings in street spaces. In *R v Tanton*,¹⁴² the BC Provincial Court determined that bylaw officers did not have authority to seize a person's belongings that were consensually stored on private property. Mr. Tanton had been warned by staff of a local drop-in centre not to leave his shopping cart of belongings in front of the building on the city sidewalk because of the risk of bylaw officers seizing it. Following this advice, with written permission, Mr. Tanton stored his belongings in the private parking lot of the drop-in. Mr. Tanton's belongings were nonetheless seized by Kelowna bylaw officers. The fact that Mr. Tanton's belongings were seized while being stored on privately owned property meant that his section 7 (life, liberty, and security of the person) and section 8 (protection against unreasonable search and seizure) *Charter* rights were violated. A judicial stay of proceedings was granted for charges Mr. Tanton was facing regarding uttering threats.

Additionally, other legal mechanisms have been used to clear encampments. On May 8, 2020, in the context of COVID-19, the Minister of Public Safety and Solicitor General of BC made a Ministerial Safety Order demanding that "[a]ll persons camping in, residing in or occupying" Oppenheimer Park in Vancouver, Topaz Park and the Pandora Avenue corridor in Victoria "must evacuate the area as soon as practicable".¹⁴³ This order spanned public space across both park and street spaces.

5. Conclusion

Provincial and municipal laws significantly restrict the type and number of possessions that a person can have and use in a street environment, whether public or private. These restrictions are further complicated by the lack of storage options in most municipalities and the stigma faced by precariously housed people.

In both Ontario and B.C., people who sleep rough on city streets are faced with a host of laws, bylaws, and City practices that jeopardize the security of their personal property. Unhoused people are severely restricted in their ability to erect tents and other structures on streets and sidewalks, either explicitly or where Cities prohibit "obstructions." Whether or not people have some form of shelter, their belongings are at risk of being removed through City 'sweeps' and taken away by municipal workers. A person's ability to retrieve their removed belongings depends on their ability to get to the site where their belongings are being held, to pay for the retrieval, and whether their belongings have already been discarded as devalued and "unmarketable" property. While many people living in tents in B.C. arguably have a reasonable expectation of privacy to the contents of their tents, their rights are significantly limited.

While the designation of the type of land which precariously housed people find themselves in as either public or private space effects the laws that they are subject to, the practical consequences of the laws end up being effectively the same. If a person finds themselves and their belongings on private property such as a parking lot or entryway, they are governed by provincial trespass laws, laws regulating what police can do with found or abandoned property, and property standards bylaws. These can lead to the dispossession of people's personal belongings, as well as their displacement from private space to public space like streets, sidewalks, and boulevards where they become subject to municipal bylaws. Similarly, private vehicle use and ownership, without being tied to private personal property such as a tenancy or title holding and connected parking privileges, is subject to municipal bylaws regulating public space, such as through parking bylaws and other streets and sidewalks legislation.

In addition to smaller and mid-sized personal belongings that people need to either store or carry around with them, vehicles and animals pose additional limitations. Someone who is living in their vehicle must navigate street and traffic bylaw enforcement that places their vehicle at risk of impoundment. This is as much if not more so the case for people living in camper vans and larger vehicles due to their increased visibility on city streets.

The laws, bylaws, and rules described in this section directly and indirectly target the possessions of unhoused and precariously housed people on city streets. Without adequate storage options, many people have no choice but to risk the removal or theft of their personal property, which can intensify their experiences of homelessness and marginalization and disrupt an individual's ability to secure stable shelter, employment, food, or health services. While the legislation is meant to keep public space like

streets safe and unobstructed, in reality their enforcement perpetuates the vulnerability experienced by precariously housed and unhoused people.

Appendix: Legal Cases

Street Spaces - Legislation and Regulations Impacting People's Possessions

Jurisdiction: **Canada**

Legislation and Bylaws

Purpose ¹⁴⁴

[Canada Marine Act, SC 1998, c 10.](#)

[Port Authorities Operations Regulations, SOR/2000-55.](#)

An Act for making the system of Canadian ports competitive, efficient and commercially oriented, providing for the establishing of port authorities and the divesting of certain harbours and ports

Jurisdiction: **British Columbia**

Laws and Bylaws

Purpose

[Unclaimed Property Act, SBC 1999, c. 48](#)

To reunite owners with their unclaimed property held by government and regulate the duties of holders of unclaimed property.

[Police \(Disposal of Property\) Regulation, BC Reg 87/91](#)

To outline rights of police departments to dispose of abandoned, found property and limit liability from damages.

[Prevention of Cruelty to Animals Act, RSBC 1996, Ch. 372.](#)

To prohibit inflicting harm on animals and outline when government officials may take animals into custody.

[Fire Services Act, RSBC 1996, c 144.](#)

To protect life and property through fire prevention with enforcement and regulation.

Jurisdiction: **Vancouver**

Laws and Bylaws

Purpose

[Street and Traffic By-Law No 2849](#)

To regulate traffic and the use of streets and sidewalks and the activities and objects permitted in these spaces.

[Standards of Maintenance By-Law No 5462](#)

To ensure private property is free from hazards and maintained in compliance with city health, fire and building requirements.

[Unclaimed Property By-Law No 5078](#)

To provide for the disposal of unclaimed property in the possession of the police.

[Impounding By-Law No 3519](#)

To authorize the impounding of vehicles and other chattels unlawfully occupying city streets.

[Animal Control By-Law No 9150](#)

To regulate control and licensing of dogs and other animals and outline impoundment and other enforcement.

Jurisdiction **Victoria**

Laws and Bylaws

Purpose

[Streets and Traffic Bylaw No 09-079](#)

To regulate traffic and the use of streets and sidewalks and the activities and objects permitted in these spaces.

[Animal Responsibility Bylaw No 11-044](#)

To outline requirements of animal owners and authorize city staff to impound

[Vehicle Impoundment Bylaw No 02-121](#)

To authorize the removal, detention, and impounding of vehicles unlawfully occupying a portion of a highway or public place.

Jurisdiction: **Abbotsford**

Laws and Bylaws

Purpose

[Good Neighbour Bylaw, 2003 \(Consolidated\), No 1256-2003](#)

To regulate public space and panhandling, littering, and property maintenance, and authorize city enforcement.

[Street and Traffic Bylaw, No 1536-2006](#)

To regulate traffic and the use of streets and sidewalks and the activities and objects permitted in these spaces.

Jurisdiction: **Ontario**

Laws and Bylaws

Purpose

[Police Services Act, RSO 1990, c. P.15](#)

To broadly outline municipal and provincial police responsibilities, complaints processes, and duties regarding property in police possession.

[Dog Owner's Liability Act, RSO 1990, ch. D.16](#)

To restrict ownership of certain breeds of dogs, outline owner liability, and authorize state seizure and destruction of dogs.

[Provincial Animal Welfare Act, SO 2008, c. 16](#)

To outline obligations and prohibitions regarding care of and harm to animals.

Jurisdiction: **Toronto**

Laws and Bylaws

Purpose

[Toronto Municipal Code Chapter 548, Littering and Dumping](#)

To prohibit the depositing of waste and recyclable materials in public spaces.

Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of	To regulate the objects and activities permitted on streets and sidewalks.
Toronto Municipal Code Chapter 349, Animals	To regulate control and licensing of dogs and other animals and outline impoundment and other enforcement.
Toronto Municipal Code Chapter 636, Municipal Squares	To regulate the permitted uses of public plazas and squares and prohibit activities such as smoking, camping.
Toronto Municipal Code Chapter 950, Traffic and Parking	To regulate parking of vehicles in certain areas and circumstances, issue permits, and authorize vehicle removal.

Jurisdiction: [Ottawa](#)

Laws and Bylaws	Purpose
Use and Care of Roads Bylaw No 2003-498	To regulate the use and care of roads, activities permitted, and authorize city's removal of prohibited items.
Animal Care and Control Bylaw No 2003-77	To provide regulations related to cats, dogs, livestock animals, and prohibited animals include leashing, maximum number of pets permitted per household, registration, removal of waste, etc
Shopping Cart Bylaw No 2013 -252	To prohibit the use of shopping carts except on the premises of the business that owns it and authorize disposal of carts and their contents.

Jurisdiction: [Hamilton](#)

Laws and Bylaws	Purpose
Streets Bylaw (Consolidated), No 9329	To regulate streets and sidewalks, outline activities permitted, and authorize city's removal of prohibited items from these spaces.
Bylaw for Responsible Pet Ownership No 12-031	To require pet licenses and leashes, prohibit certain animals, and permit impounding of animals in violation.

Transit Spaces - Legislation and Regulations Impacting People's Belongings

Jurisdiction: [British Columbia](#)

Law/Bylaw/Policy	Purpose ¹⁴⁵
British Columbia Transit Act, Transit Conduct and Safety Regulation, BC Reg 377/85	To outline transit fare requirements and restrict activities on transit property.

Jurisdiction: Vancouver

Law/Bylaw/Policy	Purpose
Translink Rules and Regulations	To regulate passenger activities on transit vehicles and transit property.
Translink – Etiquette on Transit	To suggest respectful passenger conduct when utilizing transit services.
Translink – Bikes on Transit	To inform cyclists of bicycle etiquette on transit infrastructure.

Jurisdiction: Victoria

Law/Bylaw/Policy	Purpose
BC Transit Victoria Regional Transit System – Bus Etiquette	To suggest respectful passenger conduct when utilizing transit services.
BC Transit Victoria Regional – Parcels, Pets and Strollers	To outline passenger requirements when travelling with certain personal property.

Jurisdiction: Abbotsford

Law/Bylaw/Policy	Purpose
BC Transit Central Fraser Valley Transit System – Bus Etiquette	To suggest respectful passenger conduct when utilizing transit services.
BC Transit Central Fraser Valley – Parcels, Pets and Strollers	To outline passenger requirements when travelling with certain personal property.
BC Transit Central Fraser Valley – Bike Racks and Lockers	To outline proper use and etiquette of bike infrastructure in transit systems.

Jurisdiction: Toronto

Law/Bylaw/Policy	Purpose
Toronto Transit Commission Bylaw No 1	To regulate the use of the local passenger transportation system regarding fares, conduct, and penalties/enforcement.
TTC Lost Articles	To inform how to retrieve items lost on transit, and what happens after items are no longer held.

Jurisdiction: Ottawa

Law/Bylaw/Policy	Purpose
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[Transit Bylaw No 2007-268](#)

To regulate public transit, including fares, proof of payment, general prohibitions, fees and enforcement.

Jurisdiction: [Hamilton](#)

Law/Bylaw/Policy

Purpose

[Hamilton Transit Bylaw No 16-111](#)

To regulate public transit, including fares, conduct, and enforcement.

[Using Hamilton Street Railway - Policies](#)

To suggest respectful passenger conduct when utilizing transit services.

Street Spaces - How courts have decided cases related to street spaces

Case: [Vancouver \(City\) v Maurice, 2002 BCSC 1421](#)

Issue

Outcome

Should the City of Vancouver be granted an injunction to enforce its bylaw and displace 200 people from a tent city outside a building in downtown Vancouver?

Injunction allowed. The court cites an older test for injunctions. Injunction granted because of a lack of exceptional circumstances that might otherwise permit the unlawful conduct of those camping on the sidewalks. Personal hardships are outweighed by public interest of having the law enforced.

Case: [R v Tanton, 2006 BCPC 226](#)

Issue

Outcome

Mr. Tanton left a shopping cart on private property with permission from the owner. Kelowna bylaw officers removed the cart. Mr. Tanton went to City Hall to complain and was arrested with uttering threats.

The charges were stayed.

Were Mr. Tanton's *Charter* rights violated when the bylaw officers removed his shopping cart?

"Mr. Tanton's rights were violated under Sections 7 and 8 of the Charter of Rights and Freedoms. The police did not have authority to direct the seizure of his property when it was located on private property where the owner of the land had given him permission..." (para 44).

Case: [Fraser Health Authority v Evans, 2016 BCSC 1708](#)

Issue

Outcome

Should an injunction be granted to remove tents and possessions? Or does the engagement of the defendant's s. 2(b) *Charter* rights place the balance in their favour?

The injunction was granted because the lands were government-owned private property not intended for public use, so the *Charter* right infringement was held to have been justified.

Case: [Vancouver \(City\) v Wallstam, 2017 BCSC 937](#)

Issue

Outcome

A tent city was erected on the site of a vacant City-owned property. The City argued that it interfered with the development of a social housing project. Tent city residents' affidavits emphasized safety, community, and access to resources while living in the encampment.

The application for the injunction was dismissed. The balance of convenience required to grant an injunction was not met because the City's evidence of irreparable harm was insufficient.

Should the City's application for an injunction be granted?

"The occupants' primary point is that the tent city is providing something they have been unable to obtain anywhere else: a supportive community that is safe and self-regulated. The social housing project being proposed may not fully address those concerns" (para 60).

Case: [Nanaimo \(City\) v Courtoreille, 2018 BCSC 1629](#)

Issue

A tent city was erected on port authority property after an encampment at City Hall was forcibly displaced. The City was concerned about fire safety, crime, and garbage. Residents cited safe storage for personal belongings, safer living conditions, and access to services.

Should the City's petition for a statutory injunction to close and remove the tent city be granted?

Outcome

The court ordered an interim injunction and referred more complex issues to trial.

The court recognized the merit in the residents' argument about the benefits of greater stability, security for personal belongings, and access to services, but emphasized that addressing homelessness is for policymakers and legislators rather than for the courts.

Case: [Maple Ridge \(City\) v Scott, 2019 BCSC 157](#)

Issue

The City had concerns about fire safety in the encampment on City land. The City Fire Department posted fire regulation notices. The City continued to have concerns about the use of in-tent heaters.

Should the City's application for an order requiring occupants to comply with the Fire Department safety orders be granted?

Outcome

The application was granted. The judge noted that in previous cases involving encampments, significant fire risk has tipped the balance towards favouring the municipality. The occupants were ordered to comply with the fire safety orders.

Case: [Vancouver Fraser Port Authority v Brett, 2020 BCSC 876](#)

Issue

A tent city was erected on port authority lands not available for general use of the public.

Should the port authority's application for an injunction be granted?

Outcome

The injunction was granted. The court noted the residents' statements about the benefits of the encampment, including not needing to move their belongings all the time, not losing belongings as much as they do in shelters, and being able to keep pets.

Case: [Grand Forks \(City\) v Jennings, 2020 BCSC 1809](#)

Issue

A family parked their trailer on undeveloped City land.

Should the City's application for an injunction be granted to remove the trailer?

Outcome

The injunction was granted. The trailer placement violated City zoning bylaws that only permitted trailers in areas zoned as campgrounds.

Case: [The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained, 2023 ONSC 670](#)

Issue

An encampment on a city-owned vacant parking lot violated municipal bylaws.

Outcome

The court declared that the bylaw preventing sheltering violated the section 7 Charter rights of the residents and was inoperative if the number of

Should the city's application for an injunction be granted?

shelter spaces were not sufficient for number of people unhoused.

Even if it did not violate s7 rights, the court declared that it would not grant the order because the Region did not meet its own Encampment Policy terms prior to enforcing the bylaw. The court stated that this amounted to an exceptional circumstance from which to deny the injunction, relying on the *Windsor* test

Parks



Parks



The laws, bylaws, and regulations that apply to personal belongings in park spaces apply to anyone using public parks, greenspaces, and city squares. However, these laws disproportionately impact precariously housed people who continuously move through public and private spaces, including sidewalks, parks, shelters, transitional housing, storage facilities, rooming houses, single-room accommodations, and other insecure rental housing. For those who lack secure places to call their own, their increased presence in parks means they experience enforcement of their belongings beyond what other standard users of these spaces experience. Similarly, even individuals who can access tenancy and non-tenancy private indoor residences or shelters may still heavily rely on public parks for reasons including lack of security or safety in the indoor accommodation, social support people who remain living outside, or need to access their formal and informal sources of income.

Certain populations experience greater surveillance and criminalization while existing in public park spaces. Indigenous, Black, and other people of colour, visibly poor people, people who use drugs, people stigmatized around mental illness or other health conditions, people with disabilities, and people who are non-conforming in other ways often experience greater enforcement than others precariously housed individuals who exist in these same spaces and are able to exist within the complicated legal matrix of park spaces, or are not stigmatized in the same ways.

Each of the cities surveyed has at least one bylaw that aims to directly regulate and control the activities of people and objects, including people's possessions, within municipal parks. Some of the cities also have bylaws that regulate specific possessions, such as vehicles and shopping carts, which has an impact on a person's ability to bring or keep those objects in a park space. Generally, parks bylaws in both British Columbia and Ontario municipalities tend to take a similar form when it comes to regulating the hours when people cannot enter a park, what people must avoid damaging, what people can and cannot do without a permit, and how animals must be handled. However, there are a few notable differences between provinces and between municipalities.

1. How Parks are Defined in this Report

Public parks, green spaces, and city squares are essential elements of civic life in urban centres, offering some of the only common, public space accessible to the general public that permits certain types of congregation. This section of the report categorizes park spaces based on how parks are defined in municipal bylaws and codes. This includes public parks, green spaces, city squares, playgrounds, beaches, paths, cemeteries, golf courses, and "any other area owned, leased or used by the City and devoted to active or passive recreation".¹⁴⁶ For the purposes of this report, since encampments occur in a variety of urban spaces, they will be explored in the context of both Streets and Parks. This chapter also includes discussions about yards as privately owned greenspaces.



These spaces are commonly utilized by precariously housed and unhoused populations for shelter and as spaces where they can simply exist if they lack access to their own safe, accessible, and exclusive

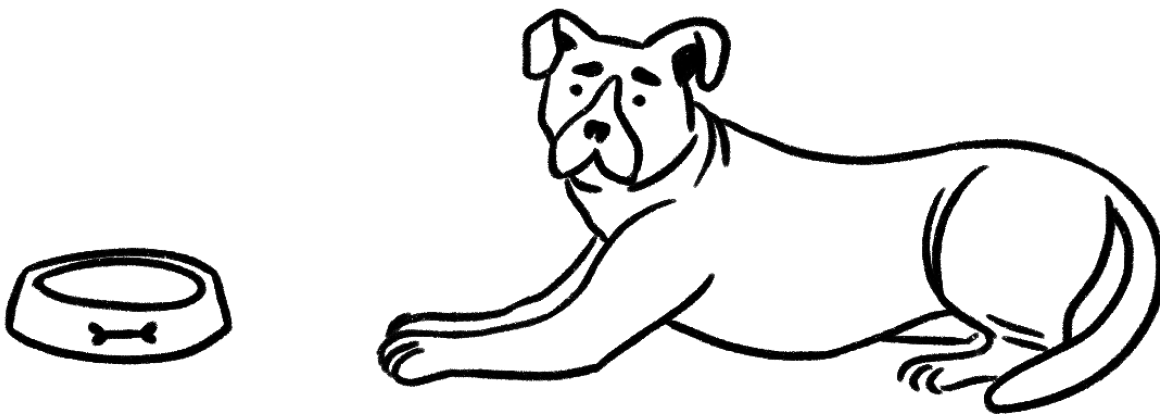
property, such as their own home or tenancy. As such, their personal belongings are also often located in these spaces.

Park spaces are regulated by municipal bylaws and provincial legislation regarding personal belongings in public space. While city parks are commonly understood as a form of public space, they often include overlapping private property elements. These can include green spaces that are used as public space but are technically privately owned land, private uses of property within the public green space (such as vehicle use and parking), and the enforcement of provincial trespass laws on public greenspaces and parks.

Bylaws and other legislation hinder the ability of certain individuals to exercise control over their personal property in park space compared to people who have access to permanent housing or can secure storage for their belongings. This gives enforcement agencies authority and discretion to impound and destroy items that violate the bylaw, as well as regulating parking and other vehicular restrictions. While the overlapping laws and designation of a space as public or private will impact exactly which legislation is used and will therefore have different impacts on the belongings of precariously housed people who rely on these spaces, the final impact on their personal belongings is effectively the same. In the context of people and their personal belongings, park spaces differ from street spaces in some jurisdictions because of the decision *Victoria (City) v Adams*, which permits people experiencing homelessness to erect overnight shelters in parks. This overnight sheltering rule, however, does not apply on streets, boulevards, or sidewalks.

Vignette

Jordan had been unoused for the last three years.¹⁴⁷ She avoided staying in shelters because she had a beloved pit bull mix and several other large possessions, including a tent, a bicycle, and a small cart that she used to transport her belongings. Jordan did not want to give up any of these things to access a shelter,¹⁴⁸ or risk having them stolen when staying around other people in a shelter.¹⁴⁹ Before she got her dog from a friend, she had stayed on and off in shelters and had lost a few treasured belongings to theft. She preferred setting up camp in parks, often with a friend or two, where there were fewer people around and she could keep an eye on her belongings. She had been on a list for social housing for over a year, but in the past she had found it difficult to follow restrictive housing rules,¹⁵⁰ and was now worried about what would happen if any housing she was offered was not pet-friendly. Even though her dog was calm and well-behaved, she knew that a lot of housing providers never gave someone with a dog a chance.¹⁵¹



Jordan and a couple of friends were camping in a park near the university when they heard that there was a group of people who had set up an encampment in a City park closer to downtown. The encampment residents were keeping their tents set up during the day in opposition to City bylaws. Jordan was nervous about joining an encampment because it would mean an increased police presence,¹⁵² and she knew that past encampments in town had eventually been cleared out, but she wanted to be downtown because it was closer to a variety of health and social services that she needed to access, as well as a vet clinic.¹⁵³ It would also be good to not have to take her tent down every morning, and the idea of being able to leave some of her belongings in one place with people she trusted while she went about her day was encouraging.¹⁵⁴

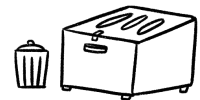
Jordan and her friends joined the encampment and began to develop a strong sense of identity and community with the other encampment residents.¹⁵⁵ It was not perfect, but people were able to look out for one another. A couple of her things were stolen by non-residents, which was hard for her, but overall, she found she was less stressed in her daily life than she had been when she was packing up every day and having to move all of her belongings, and a lot fewer of her possessions were going missing.¹⁵⁶

Jordan was nervous about joining an encampment because it would mean an increased police presence

Police and City representatives would routinely come by and ask people to move and clear their belongings during the day, but the campers were not forced to move until the City was granted an injunction and the encampment residents were given a deadline to clear the park. In the meantime, City representatives accompanied by outreach workers offered accommodation to residents. A lot of people that Jordan knew refused because they would only be allowed to bring two bags with them.¹⁵⁷ When Jordan was offered accommodation, the available rooms would not allow dogs, so she refused.¹⁵⁸ The deadline came and City workers started to clear out the encampment. Jordan had packed up most of her belongings, but before she could pack up her tent and a few other small belongings that were inside, the City came and took them away and threw them in the garbage.¹⁵⁹ Jordan and her dog slept rough for a while until she was able to acquire a new tent, which increased her stress and anxiety due to the increased exposure to the elements as well as the increased risk of violence and theft while she was sleeping.¹⁶⁰



Jordan had packed up most of her belongings, but before she could pack up her tent and a few other small belongings ...the City came and took them away and threw them in the garbage



2. Bylaws related to Urban Parks and Green Spaces

Ontario Municipalities

In Ontario, the local parks bylaws surveyed are consistent in banning camping and the act of erecting a temporary tent or shelter without a permit. Toronto's *Municipal Code* is brief on the matter:

- § 608-13. Camping and lodging. Unless authorized by permit, no person shall dwell, camp or lodge in a park.
- § 608-14. Tents and structures. Unless authorized by permit, no person shall place, install, attach or erect a temporary or permanent tent, structure or shelter at, in or to a park.¹⁶¹

The language used in Hamilton's parks bylaw is nearly identical to Toronto's municipal code, while the Ottawa parks bylaw conveys the same intent.

However, enforcement in Toronto is not as clear cut as the text of the bylaw would suggest. Bylaw enforcement measures are modified by Toronto's Interdepartmental Service Protocol for Homeless People Camping in Public Spaces, which was created in 2005 as part of the City's first annual report on its Streets to Homes initiative.¹⁶² The document prioritizes the provision and coordination of outreach services prior to officials enforcing bylaws that could displace unhoused people and remove their belongings. Enforcement of the bylaws occurs only after all support efforts have been attempted without success and after notice to vacate has been provided to the people involved.

The protocol also specifies that staff must make efforts to "ensure personal items such as identification, documents and photographs are not lost by sorting through all of the materials before the site is cleared of debris."¹⁶³ While these personal items are undoubtedly important and losing them can induce a great deal of hardship for unhoused people, this approach suggests that other personal belongings, such as tents, tarps, sleeping bags, food, etc. that are unequivocally critical for an unhoused person's survival are likely to be disposed of with less care during an encampment clearing. As the following examples illustrate, whether the protocol prevents or mitigates the harms associated with bylaw enforcement that removes people's possessions is not clear.

Example 1:

In July 2020, an encampment in Toronto's Moss Park was given notice that the activities at the park, including personal goods being left there, structures being erected without authority, and illegal camping, were contrary to the *Municipal Code*.¹⁶⁴ Residents were ordered to remove their possessions within 24 hours of the notice or else the possessions would be stored at a nearby facility and most would be disposed of if not claimed within a month. Though a City outreach team found temporary accommodation for some 156 people who were living in the park, and were purportedly working to find more permanent housing for the residents, some campers refused the offer for various reasons including the many rules in temporary hotels, there being a lot of people coming and going, and health

concerns about potentially contracting COVID-19.¹⁶⁵ A lawyer assisting the encampment residents argued that 24 hour notice was not sufficient and emphasized the “irreparable harm” the residents would suffer “if their belongings, including tents and shelters they rely upon for protection from the elements, as well as essential belongings like food, water, clothing, bedding, sentimental belongings, personal hygiene supplies, medication and medical supplies, were removed from the park and disposed of.”¹⁶⁶ The City said it would continue to engage with park residents who expressed a need for secure shelter or housing, but it is unclear from their statement whether that included people who had refused temporary hotel rooms due to the concerns that had been voiced, or if the City was no longer engaging with those people.

Example 2:

In 2020, Khaleel Seivwright, a carpenter, started building insulated wooden shelters for unhoused people, with lockable doors where they can sleep and store their possessions, many of which have been placed in City parks. The City issued warnings to Seivwright, and eventually filed an injunction application in February 2021 to order him to stop placing the structures on City land, citing its bylaws prohibiting camping and living in parks.¹⁶⁷ A letter supporting encampments and Seivwright called on the City not to remove the shelters, stating that “in the absence of real shelters...[small shelters] prevent people from freezing to death, provide a modicum of security and a regular place to sleep and store items.”¹⁶⁸ The letter was also critical of the shelter spaces that the City was offering to encampment residents, citing the lack of privacy and the fact that residents were only allowed to bring two bags of belongings with them.¹⁶⁹

“One of the problems with living out here is you never know if your things are going to get stolen, and I don’t have the mobility to carry my stuff with me, like every time I go to the bathroom or go somewhere else. With the shelter, they lock from the outside, you can also lock it from the inside, and as long as you put an empty lock on it when you’re in there so no one can lock you in, then it’s safe. And you know, I didn’t have to worry about having my medication or all my stuff stolen, cause it’s not safe to walk around with a month’s worth of medication on you at all times, you’ll get robbed. So, the shelter provides safety too.”¹⁷⁰

Example 3:

The 2021 displacement of an encampment at Toronto’s L’Amport Stadium Park resulted in police arresting at least one non-resident supporter of the encampment.¹⁷¹ The encampment residents were given a trespass notice a week before the displacement occurred, and City workers conducted the displacement by breaking down tents and loading them into garbage trucks. The City claimed outreach workers had visited the encampment over 100 times since January 2021 in order to offer alternative shelter spaces, but it is unclear how many people accepted the shelter and whether the offers included conditions regarding their belongings.

These examples demonstrate that even if bylaw enforcement postpones encampment displacement from City parks under the Protocol, this will not necessarily prevent the loss of personal belongings or mitigate related harms where the alternative shelters and services being offered are inadequate and do not meet the needs of those being displaced. When the shelter that is offered does not allow people to bring more than two bags or does not allow pets, for example, many people feel as if they have no option but to continue camping and sleeping rough, thereby placing their belongings at risk of being removed through bylaw enforcement measures. When they resist these measures, their belongings are nonetheless removed and disposed of, a difficult and traumatic experience that contributes to further precarity.

British Columbia Municipalities

In British Columbia, bylaws respecting camping in parks have been influenced by a body of legal cases that have sought to clarify the rights of unhoused people to live in parks and on other City lands. In *Victoria (City) v Adams*,¹⁷² the B.C. Court of Appeal ruled that a Victoria bylaw which prevented unhoused people from erecting temporary shelters in City parks overnight violated their section 7 *Charter* rights to life, liberty and security of the person¹⁷³ and was not justified under section 1 of the *Charter*. The court however noted that the ruling was contingent on the fact that the City had insufficient shelter spaces, and that if other accommodation were available the bylaw sections may have been valid.¹⁷⁴ This seminal case was later followed by *Abbotsford (City) v Shantz*,¹⁷⁵ in which the B.C.



Supreme Court held that certain sections of Abbotsford's *Consolidated Parks Bylaw* and its *Good Neighbour Bylaw*, to the extent that they applied to unhoused people in Abbotsford and prevented them from erecting shelter and sleeping in City parks overnight, violated their section 7 *Charter* rights and were not saved by section 1 of the *Charter*. The decision in *Shantz* thus specified that unhoused people had a right to set up camp in a City park overnight between 7pm and 9am, and acknowledged the barriers that many unhoused people experience in accessing adequate shelter space even where space was technically available.

Victoria's *Parks Regulation Bylaw*, amended after the *Adams* decision, currently contains a section specifically targeted toward unhoused people constructing overnight shelter in parks. The bylaw states that an unhoused person may erect or place a structure such as a tent or other shelter overnight between 7pm and 7am,¹⁷⁶ but also that the shelter may not be set up in certain areas including playgrounds or environmentally sensitive areas.¹⁷⁷ The Abbotsford post-*Shantz* parks bylaw permits a "Homeless Person" (defined as a person "who has neither a fixed address nor a predictable residence to return to on a daily basis,"¹⁷⁸ to "erect a temporary shelter and camp in a City park between 7pm and 9am the next day, so long as the shelter is not set up in a prescribed area or facility, when "where there is no accessible shelter accommodation available in the City".¹⁷⁹ The City retains the right to remove any temporary shelter that is in violation of the bylaw.¹⁸⁰

In line with the relevant case law, Vancouver's parks bylaw contains a similar allowance for a person experiencing homelessness to camp and set up temporary shelter in a park so long as they do not do so in a restricted area of a park, the shelter complies with the bylaw, and the shelter is removed in accordance with the bylaw.¹⁸¹ Temporary shelters may only be erected between dusk and 7 a.m. the following day, must be dismantled by 8 a.m., must not take up more than 9 square metres of space, must not contain any campfire or propane stoves, and must not be left unattended.¹⁸²

The bylaws that permit overnight sheltering seem to provide park dwellers with an amount of respite compared to jurisdictions where setting up temporary shelters could lead to the immediate enforcement through ticketing, or seizure or destruction of their belongings. However, unhoused and precariously housed people often have complex lives and needs, and the cycle of needing to dismantle a shelter and move one's belongings before setting up again in the evening is not sustainable for most people, particularly given challenges in accessing secure storage for their possessions. For example, in *VFFPA v Brett*, one encampment resident who provided evidence stated that he was unable to camp overnight in situations where he was required to move his belongings from the site during the day because he had severe mobility issues.¹⁸³ Bylaw provisions that require people to dismantle their shelters and move their belongings each morning contribute and perpetuate instability of people who are often sheltering outdoors because of a lack of shelter spaces, or shelter spaces that are not adequate for their needs, personal belongings, or lifestyle.

Example 1:

Legal scholars and advocates in B.C. have lobbied the public and the government about the effects of forcible decampments on precariously housed people and their ability to retain their belongings. UBC Law professor Stepan Wood has criticized decampment policies, given that the process ignores the various benefits of tent cities such as stability and storage of people's belongings, and undermines harm reduction initiatives, the consequences of which can be life threatening.¹⁸⁴ Decampment also creates a cycle of continual displacement where people have less control over their lives and possessions, and often their belongings are destroyed during the process. Pivot Legal Society has criticized the threats of forced displacement that lead to a 'siege' mentality of encampment residents, where they fear that all their possessions will be gone if they leave for even a short period of time, and therefore they fail to meet their basic needs in the attempt to protect their belongings. Pivot cites a harm reduction worker who spoke about the concerns that encampment residents experience:

"People are only allowed to bring two tote bins inside [temporary accommodation offered by the City], totally insufficient to address survival needs. Many people are very concerned about having to give up their possessions in order to move inside, especially as hotel rooms are not a permanent solution and they fear not being able to afford a new tent, sleeping bag, and camping gear if they need them again. People have been promised safe storage for their belongings but that hasn't materialized yet and it's not clear whether tents and other sheltering supplies will be considered people's belongings and stored along with the rest of their things, or whether those will be considered government property and (needlessly and wastefully) destroyed"¹⁸⁵

Example 2:

Even for people who are willing to accept temporary accommodation that has been offered to them during a decampment process, there is concern and confusion about their belongings when the information that is provided is incomplete or unclear. During the mass decampment and relocation into temporary housing of hundreds of residents of Oppenheimer Park in Vancouver, and Topaz Park and Pandora Avenue in Victoria, there was a reported lack of communication that created confusion about the storage of belongings. One advocate stated that in addition to the two tote bins they could bring with them into their temporary housing, people were allowed to place two extra bins into storage. However, there was an apparent lack of communication about how long people could store their belongings for and how they would be able to retrieve them.¹⁸⁶ It is unknown exactly what consequences this had for people trying to manage their belongings during their move into temporary accommodation, but it is possible that people were forced to give up possessions that they mistakenly thought they would not be able to put into storage.

Example 3:

A tent city that was set up in a Port Alberni park in B.C. was forcibly displaced after two verbal warnings and after campers were issued a trespass notice.¹⁸⁷ The City's manager of community safety said that the six campers "were not permitted to camp overnight in the city-owned park."¹⁸⁸ It is unclear whether or not there was adequate shelter space in the City such that overnight camping should have been permitted per *Adams* and *Shantz*, however it appears that the accessibility or availability of shelter space was a precipitating factor in the organization of the tent city. When the camp was eventually forced to leave, "everything was torn down and put into a small garbage truck, including Naloxone kits that were clearly labeled." A few days later, some belongings were returned to the tent city's organizer and to volunteers, but very little was salvageable.

As with the surveyed municipalities in Ontario, an issue that continues to emerge is the inadequacy of the temporary housing that is offered to people living in parks when they are displaced, and the rules or requirements that come with (or are perceived to come with) that temporary housing. Despite bylaws in B.C. which allow people to take up temporary shelter overnight in City parks, the enforcement of contraventions of these bylaws remains harmful and traumatic for people who often lose their belongings in the process, whether or not they are offered or choose to accept temporary accommodation. Further, not everyone living in a park will receive an offer of housing before being displaced, which has contributed to some choosing to form encampments in order to increase the chance that as a group they will be offered temporary housing.¹⁸⁹ With larger encampments - and the benefits they provide, such as having other people to watch one's belongings - come more enforcement measures and risks to the security of one's home and possessions.

Provincial Legislation

While municipalities have jurisdiction to enact bylaws governing parks, there are provincial acts that have consequences for people who set up a shelter or camp in a municipal park. For example, British Columbia's *Police (Disposal of Property) Regulation*¹⁹⁰ permits police to dispose of stolen, abandoned or found personal property where they are unable to identify the true owner of the property. Non-perishable or valuable goods must be kept by the police for a minimum of three months and after that point they can dispose of them. Perishable or 'unmarketable' items can be disposed of at any time. In situations where a person leaves their tent or belongings in a park so that they can acquire food or access services, their property, if considered to be 'unmarketable', is likely to be disposed of before the owner has a chance to try to reclaim their possessions. Ontario's *Police Services Act*¹⁹¹ has an even shorter one-month retention timeline for most items, except for vehicles and bicycles which are disposed of after three months. Under B.C.'s *Prevention of Cruelty to Animals Act* a person's pet could be removed if it is considered to be in distress, and under Ontario's *Dog Owner's Liability Act*, a pit bull or dog that is believed to potentially cause harm can be seized by a peace officer in a public place.



3. Vehicles in public parks

Parking in municipal parks is regulated in most of the surveyed cities as ways of attempting to deter people from parking their vehicles and sleeping overnight.

Ontario Municipalities

The surveyed municipalities in Ontario each have similar regulations including the times of day during which a vehicle can drive or park in a designated area of a municipal park. Toronto's Municipal Code provides that a vehicle cannot be parked between midnight and 5:30 a.m. in a city park, except in a designated area for overnight parking, and a vehicle cannot be parked for a period longer than 24 hours.¹⁹² The City of Hamilton's parks bylaw is phrased in a similar way, prohibiting parking or leaving a vehicle between 11 p.m. and 6 a.m., except in a designated area for overnight parking, and a vehicle cannot be parked for a period longer than any posted time limit.¹⁹³ The City of Ottawa parks bylaw is less detailed when it comes to vehicles, however a person cannot drive or park a vehicle except during the hours designated. Ottawa's *Traffic and Parking* bylaw supplements the gaps in its parks bylaw by clarifying that a person cannot park their vehicle in a park between 11 p.m. and 5 a.m.¹⁹⁴



Where vehicles are parked in contravention of local parks bylaws, Ontario municipalities have the power to enforce their bylaws by way of impounding and removing those vehicles. In Toronto, a vehicle may be removed and “all costs and charged for removing, care of and storing the vehicle, if any, are a lien upon the vehicle” under the provincial *Repair and Storage Liens Act*.¹⁹⁵ Further, anyone who contravenes a provision of the bylaw is subject to an administrative penalty (a fine), unless a vehicle was in the possession of another person without the owner’s consent and was parked in contravention of the bylaw.¹⁹⁶ The City of Hamilton has near-identical enforcement provisions compared to Toronto, placing a lien on impounded vehicles and subjecting the owners of vehicles to a fine unless it was parked by another person without their permission.¹⁹⁷ The enforcement of vehicle parking in Ottawa parks is again governed by its *Traffic and Parking* bylaw, which states that a contravening vehicle may be impounded, with all costs being charged to the owner and with a lien being placed on the vehicle.¹⁹⁸

British Columbia Municipalities

In B.C., while local parks bylaws permit a limited degree of temporary overnight parking in city parks, these periods are very short and the act of sleeping overnight in one’s vehicle in a park is explicitly prohibited by at least one bylaw. In Vancouver, a vehicle may be parked for up to 30 minutes in a City park between 10 p.m. and 6 a.m.¹⁹⁹ A contravention of this, and any other vehicle-related provision of the bylaw, may subject the vehicle to being removed at the owner’s expense. The City of Victoria’s parks bylaw, like its *Streets and Traffic* bylaw, is much more explicitly targeted at the act of sleeping overnight in a park. Per the bylaw, no person may:

- (h) park a vehicle in a park for longer than 3.5 hours between 7:00 a.m. and 6:00 p.m. of any day from Monday to Friday;
- (i) park a vehicle for the purpose other than visiting the park;²⁰⁰ ...
- (k) park a vehicle in a park for the purpose of sleeping overnight in the vehicle;
- (l) sleep overnight in a vehicle in a park;²⁰¹

While the bylaw also contains provisions that specify closing hours in particular named City parks, it is interesting that Victoria seems to allow some amount of temporary overnight parking in parks on weekends, so long as the purpose is not to sleep in the vehicle overnight. Nevertheless, Victoria’s parks bylaw was the only bylaw surveyed in both B.C. and Ontario which puts an outright prohibition in sleeping in one’s vehicle overnight in a City park (though such a prohibition is implicit in other cities where parking overnight is not permitted). Further, a vehicle parked overnight in contravention of the bylaw is subject to being removed at the owner’s expense.

4. Legal decisions impacting people’s belongings in parks

Most cases involving the ability of people to camp and live in municipal parks have emerged from British Columbia. Most of these cases are centred around the municipalities’ applications for interim injunctions which would require any campers to remove their structures and tents from the parks, and which give the cities a legal basis to enforce decampment measures. With a few exceptions, most cases have not had positive outcomes for precariously housed people living in public parks, as well as their belongings situated in these spaces. Please see a list of legal cases at the end of this section.



Where the property owner is a municipality, an injunction is more likely to be sought to remove the trespasser(s). While injunctions are typically regarded as extraordinary measures in trespass,²⁰² (online), *Trespass*, “Trespass: Trespass to Land: Remedies: Injunction” (II.9.(a)) at §154, courts are more likely to interfere to grant an injunction when the trespass is continuing.²⁰³ Under the law, people who sleep or set up camp on public or private property, including parks, are therefore trespassing unless authorized to do so (by bylaw or otherwise). In *Abbotsford (City) v Shantz*, it was held that where people had been given notice to vacate a park, cease lighting fires, cease camping overnight, and remove their tents and structures, they had committed an offence of trespass.²⁰⁴ Although encampments are often described as being ‘evicted’ or threatened with ‘eviction’, eviction is a term generally connected to legal occupancy connected to tenancies. As such, As such, decampments are more likely to be realized using trespass law.

When a municipality seeks an injunction to address a breach of a bylaw or other municipal provision, it seeks a statutory injunction. The granting of a statutory injunction is determined by one of two tests. Municipalities generally often do not need to prove irreparable harm to be granted an injunction, and injunctions are only refused in exceptional circumstances because of the presumption that the municipality is acting in the public interest (“*Thornhill / Windsor* test”).²⁰⁵ Where the seeking of a statutory injunction has *Charter* implications, in order for the injunction to be granted, the municipality must demonstrate three things (“*RJR-MacDonald* test”): (i) that there is a serious question at issue, (ii) that they will suffer irreparable harm if the injunction is not granted, and (iii) that the balance of convenience favours the municipality in granting the injunction.²⁰⁶ In cases where an injunction is sought on the grounds of trespass on private land, the private property owner merely needs to prove trespass is occurring by proving clear title, without the requirement of proving that they have experienced any harm.²⁰⁷ The granting of injunctions to remove people from public space has significant impacts on their security to their personal belongings, which are often named in the injunction removal orders.

Since *Victoria (City) v Adams* in 2009—where it was held that Victoria’s *Parks Regulation Bylaw* violated unsheltered people’s constitutional rights to life, liberty and security of the person under section 7 of the *Charter* by prohibiting erecting temporary shelter in parks at night—municipalities across the province have adopted bylaws permitting overnight sheltering in parks. This decision was reaffirmed in *Abbotsford (City) v Shantz*²⁰⁸ where the court held that the city’s *Consolidated Parks Bylaw* and *Good Neighbour Bylaw* violated section 7 rights, and again in 2020 when the Vancouver city council voted to align bylaws with *Adams* and *Shantz* and permit temporary overnight shelters in parks.²⁰⁹ Importantly, the right to erect overnight shelters is restricted to overnight sheltering,²¹⁰ can exclude certain areas of parks such as environmentally sensitive areas,²¹¹ and is contingent on the fact that the City has insufficient shelter spaces.

While these cases and other cases discussing encampments and sheltering in parks have implications on people's belongings, only recently did the courts specifically address the importance of people's belongings and the impacts that losing these items has on people's wellbeing. In *Bamberger v Vancouver (Board of Parks and Recreation)* the court held that decampment requirements caused by overnight sheltering bylaws, coupled with lack of storage and sheltering options, effectively forcing people to move all of their personal property on a daily basis, was a "substantial hardship" for many.²¹² In *Prince George (City) v Stewart*²¹³ the court acknowledged that available shelter spaces were "not sufficiently low barrier and accessible to all of the occupants of the encampments"²¹⁴ and therefore rejected the City's injunction application to dismantle an encampment on a city greenspace. The subsequent case, *Prince George (City) v Johnny*²¹⁵, stated that the City's dismantling of the encampment and destruction of people's personal belongings when the city still lacked sufficient accessible shelter amounted to "serious harm on vulnerable people".²¹⁶ These cases demonstrate some judicial acknowledgement of the significant impact that loss of belongings can have on people sheltering in parks and other public spaces, and how the personal property is a consideration that must be made when determining the accessibility and suitability of indoor shelter spaces.

Despite these recent developments, owners of public land have begun to adopt different approaches to injunctions depending on how the land is categorized. In *Vancouver Fraser Port Authority v Brett*,²¹⁷ an encampment located on Crown land managed by the port authority was ordered to be removed through an injunction. Encampment residents noted that the land adjoined a public park, had no fence, was unused at the time and thus differed from other public land leased to a third party.²¹⁸ However the court determined it to be "private property and not intended for public use."²¹⁹ Although the land in this case was an empty lot rather than a clear park space, park spaces can also be subject to the concepts of public and private space which can impact how a court decides. In a reference case regarding Beacon Hill Park in Victoria in 2022,²²⁰ the City of Victoria inquired as to whether a park, held in trust by the city through an 1882 Crown grant, could be used for temporary sheltering by people experiencing homelessness. The court held that sheltering in the park was not consistent with the terms of the trust which was "to maintain and preserve ... for the use recreation [sic] and enjoyment of the public."²²¹ This recreation-centered language, embedded in the colonial instrument of a trust, led the court to decide that temporary sheltering by people experiencing homelessness could not be considered a 'use' and was thus prohibited.²²² While this decision did not amount to an order or a granted injunction, these decisions together signal that cities could use various land-use agreements such as trusts or leases of public land to deal with encampments in the future.

One other exception to the dominant trend of granting municipalities injunctions is the Ontario case of *Black et al v City of Toronto*.²²³ In that case, residents of encampments in parks across the city brought a motion for an injunction to prevent the City of Toronto from enforcing its bylaw that prohibits camping, tents and structures in City parks during the COVID-19 pandemic. The applicants argued that during the pandemic and in the context of Toronto's housing crisis, enforcing the City's bylaw would violate their section 7, 12, and 15 *Charter* rights. While the judge in this case acknowledged the principles set out in *Adams* and *Shantz* coming from B.C., the motion was dismissed. This was based on the judge's finding that the City shelter system had been updated to respond to COVID-19 concerns, and that there "is no evidence that the shelter system does not have the capacity to accommodate, safely, those currently living in the parks who wish to seek shelter."²²⁴ However, aligning with BC's *Victoria (City) v Adams*, in January 2023, the Ontario Supreme Court declined to declare that an encampment of people on a city-owned vacant parking lot in Kitchener was contrary to the bylaws. Instead, the court stated that the bylaw which prevented sheltering violated section 7 of the Charter by depriving people of life, liberty, and security of the person, and was inoperative if the number of unhoused people exceed the number of shelter beds in the city.²²⁵ The court determined that even if it did not violate section 7, that it would not grant the interim and final orders because the Region did not meet its own Encampment Policy terms prior to enforcing the bylaw, and that this amounted to an exceptional circumstance from which to deny the injunction.²²⁶ While this decision addresses bylaws about vacant city-owned land rather than the city's parks bylaw, it may have implications on similar anti-sheltering provisions in parks-related bylaws in this and other jurisdictions across Ontario.

Beyond court injunctions, other legal mechanisms have been used to clear encampments. On May 8, 2020, in the context of COVID-19, the Minister of Public Safety and Solicitor General of BC made a Ministerial Safety Order demanding that "[a]ll persons camping in, residing in or occupying" Oppenheimer Park in Vancouver, Topaz Park and the Pandora Avenue corridor in Victoria "must evacuate the area as soon as practicable".²²⁷ This order spanned public space across both park and street spaces.

The trends in case law suggests that where a municipality seeks an injunction, it is most likely to be granted, allowing them to remove the people and possessions that take up residence in parks. While injunctions have been granted to cities to dismantle encampments on streets and sidewalks, most injunction cases in BC have been in the context of city parks. This is perhaps in part due to the high demand and limited number of green spaces and public pressure on city officials to remove signs of visible homelessness from those spaces, exacerbated by travel and distancing restrictions during the COVID-19 pandemic. This is not to suggest that a group of unhoused people will never again be successful in defending against an application for an injunction – a successful *Charter* challenge or demonstration of exceptional circumstances could be possible. However, as has been seen post-*Adams* and *Shantz*, such an argument will likely need to be narrow in scope. As most unhoused people do not have the resources to fight an injunction,²²⁸ and absent advocacy work and systemic policy change, most campers and tent city residents facing injunction applications are likely to be on the receiving end of displacement processes which place them at risk at losing many of their belongings.

5. Conclusion

A precariously housed person or group of people who set up temporary shelter in a park may do so for a variety of reasons, many of them related to their belongings. They may have had experiences with theft of their possessions in city shelters, they may have a greater ability to watch over their belongings in a park shelter, and they may develop a sense of community that helps them manage their day to day lives. A tent might be preferable to low-income or temporary housing that puts restrictions on what they can do and how many bags of belongings they can have with them. But a person living in a park is subjected to a numerous laws and local bylaws that govern their ability to set up camp, stay there for a length of time they would prefer, and have full control over where they can keep their belongings. By placing their



belongings in parks, they become more visible to regulators, and subject to regulations that target structures and objects in such spaces.

In both Ontario and B.C., a person who sets up a tent in a park will be at constant risk of having their belongings removed. Under provincial laws, if they leave their shelter and belongings to access services, for example, they could return to find their belongings have been removed if they were considered to be abandoned or to find their pets have been removed if they were considered to be in distress. In B.C., bylaws based in provincial case law allow people to set up temporary shelter overnight in parks, but the right is limited, and it is not practical for many people to engage in a constant setting up and dismantling of their homes. People's belongings are at risk as soon as their tents remain during the daytime. While City officials will often provide notice to remove the structures and vacate the space, those who remain are at risk of increased enforcement measures and of being the target of court injunctions that order their removal. That is, at least in B.C., cities tend to wait for an injunction before forcibly displacing larger encampments and putting people at risk of losing their belongings. In Ontario, there is no provision for temporary overnight shelter set out in municipal bylaws. However, after a recent Ontario Supreme Court decision that stated that a bylaw was inoperative if it prevented people from sheltering on city-owned land, this may change. The City of Toronto has a protocol to follow when working to clear unhoused people from public space, but on the ground the harms of losing many of one's belongings does not seem to be mitigated by this process. Further, municipalities in Ontario seem to be less inclined to seek court injunctions before displacing gatherings of people who are living in parks, which has led to difficult and traumatic situations for people whose belongings are removed and thrown away without having the opportunity to defend themselves against an application to have them removed.

The possessions of precariously housed people in parks heighten their visibility to the general public thereby increasing their risk of being reported and being the targets of law and bylaw enforcement. The principle and value of human dignity should seek to facilitate the ability of people to retain their belongings wherever possible, especially those belongings that are critical to their survival. The increasing public awareness of the issue has created an opportunity for enforcement authorities to examine, reform, and abolish current policies and practices that perpetuate housing precarity and put people at further risk of harm.

Appendix: Legal Cases

Park Spaces - Legislation and Regulations Impacting People's Possessions

Jurisdiction: **British Columbia**

Legislation and Bylaws

Purpose²²⁹

[Unclaimed Property Act, SBC 1999, c. 48](#)

To reunite owners with their unclaimed property held by government and regulate the duties of holders of unclaimed property.

[Police \(Disposal of Property\) Regulation, BC Reg. 97/91](#)

To outline rights of police departments to dispose of abandoned, found property and limit liability from damages.

[Prevention of Cruelty to Animals Act, RSBC 1996, c. 372](#)

To prohibit inflicting harm on animals and outline when government officials may take animals into custody.

Jurisdiction: **Vancouver**

Laws and Bylaws

Purpose

[City Land Regulation By-Law No. 8735](#)

To regulate how people use city land and empower City to remove objects from city land and levy fines for violations.

[Park By-Laws \(Consolidated\)](#)

To control, regulate, protect public parks and of persons who use parks by outlining acceptable activities and authorize enforcement.

[Impounding By-Law, 2016 \(Consolidated\), No. 3519](#)

To authorize the impounding of vehicles and other chattels unlawfully occupying city streets.

Jurisdiction: **Victoria**

Laws and Bylaws

Purpose

[Parks Regulation Bylaw, 2015 \(Consolidated\), No. 07-059](#)

To outline permitted uses of public parks, regulate prohibited activities, and authorize enforcement and

Jurisdiction: **Abbotsford**

Laws and Bylaws

Purpose

[Parks Bylaw, 2016 \(Consolidated\) – Bylaw No. 2456-2015](#)

To protect, maintain and enhance public parks and promote safety of park users, avoid conflicts in the use of space in parks, and the protect the parks' natural conditions.

Jurisdiction: **Ontario**

Laws and Bylaws

Purpose

[Dog Owner's Liability Act, RSO 1990, Ch. D.16](#)

To restrict ownership of certain breeds of dogs, outline owner liability, and authorize state seizure and destruction of dogs.

[Health Protection and Promotion Act, RSO 1990, Ch. H.7](#)

To promote community health, prevent communicable disease, and regulate public health administration and enforcement.

[Police Services Act, RSO 1990, Ch. P.15](#)

To broadly outline municipal and provincial police responsibilities, complaints processes, and duties regarding property in police possession.

Jurisdiction: **Toronto**

Laws and Bylaws

Purpose

[Toronto Municipal Code Chapter 608, Parks](#)

To regulate use and conduct in public parks including recreation, vehicles, animals and sheltering.

[City of Toronto Interdepartmental Service Protocol for Homeless People Camping in Public Spaces](#)

To outline protocol in offering outreach services to people sheltering in public space prior to displacement and removal of belongings.

Jurisdiction: **Ottawa**

Laws and Bylaws

Purpose

[Parks and Facilities By-Law \(2016\), No. 2004-276](#)

To regulate certain uses of public parks and promote responsible enjoyment and use of parks and facilities.

Jurisdiction: [Hamilton](#)**Laws and Bylaws****Purpose**[Parks By-Law, \(2001\) No. 01-219](#)

To manage and regulate prohibited and permitted activities in municipal parks and authorize police and bylaw enforcement.

Park Spaces - How courts have decided cases related to parks**Case:** [Vancouver Parks Board v Mickelson, 2003 BCSC 1271](#)**Issue****Outcome**

Should an injunction be granted to require the 40+ occupants of a tent city to remove their structures and belongings from Thornton Park?

The court determined that the defendants' *Charter* claims did not raise a serious question to be tried, and the injunction was granted.**Case:** [Vancouver Board of Parks and Recreation v Sterritt, 2003 BCSC 1421](#)**Issue****Outcome**

Should an injunction be granted to require occupants of Portside Park [CRAB Park] to remove all their structures, tents, and belongings?

Facts were very similar to *Mickelson*, and a similar injunction was granted.**Case:** [Victoria \(City\) v. Adams, 2009 BCCA 563](#)**Issue****Outcome**When the number of homeless people exceeds the number of available shelter beds, does a bylaw that prohibits homeless people from erecting temporary shelter at night violate their constitutional rights to life, liberty and security of the person under s. 7 of the *Canadian Charter of Rights and Freedoms*?Parks bylaw found to violate s. 7 rights and was not justified under section 1 of the *Charter*. The ruling was contingent on the fact that (1) the City had insufficient shelter spaces, and (2) that if other accommodation were available the bylaw sections may have been valid. The court narrowed the ruling to night-time sheltering only.**Case:** [Vancouver \(City\) v O'Flynn-Magee, 2011 BCSC 1647](#)**Issue****Outcome**

Occupy Vancouver protestors erected tents, structures, and shelters on the city-owned plaza of the Vancouver Art Gallery.

Should the City's application for an interlocutory injunction be granted?

An interlocutory injunction was granted pursuant to s.334 of *Vancouver Charter* to enforce removal of structures, tents, shelters, and other objects that had been constructed and placed by the protestors.**Case:** [Johnston v Victoria \(City\), 2011 BCCA 400](#)**Issue****Outcome**Are homeless people in Victoria entitled by section 7 of the *Charter* to erect and maintainThe court confirmed that the outcome in *Adams* was to allow **temporary overnight shelter**

shelters on City property **during the day?**

Johnston argued that there are people who cannot sleep at night and need shelter during the day, and that few daytime shelter beds are available.

in City parks and property (para 16), and not enough evidence was provided to support a *Charter* claim based on daytime needs. Johnston's appeal was dismissed.

Case: Vancouver Board of Parks and Recreation v Williams, 2014 BCSC 1926

Issue

Should an injunction be granted to require approximately 150 occupants of a tent city at Oppenheimer Park to remove their tents, structures, and other belongings?

The Park Board asked for a delayed end date "to allow sufficient time to connect people living in the Park with resources to assist them and to facilitate an orderly transition out of the Park" (para 2).

Outcome

The judge made a point of hearing and summarizing the evidence provided by park residents and advocates about their circumstances and barriers to being housed. However, the injunction was granted, effective a week from the date of the decision.

Case: British Columbia/Yukon Association of Drug War Survivors v Abbotsford (City), 2015 BCCA 142

Issue

People were removed from a tent city in Jubilee Park. Advocate associated argued that City 'displacement tactics' like spreading chicken manure and destroying belongings infringed homeless people's section 2, 7 and 15 *Charter* rights. Does the association have standing?

Outcome

The court dismissed the City's appeal and determined that the association has standing to advance a *Charter* challenge.

Case: British Columbia v Adamson, 2016 BCSC 1245

Issue

An encampment was set up on Victoria courthouse property. The land belonged to the province.

Should an injunction be granted to order the occupants to vacate the property?

Outcome

The province met the test for an injunction in part due to increased fire, health, and safety risks posed by pathways blocked by garbage, "hoarders" keeping items of "questionable worth" (para 53), aggressive dogs, and used harm reduction supplies. The occupants were ordered to vacate.

Case: Saanich (District) v Brett, 2018 BCSC 1648

Issue

Should an injunction be granted to require occupants of Regina Park to remove their structures and belongings?

The named defendant had previously been removed by injunction from a park in Duncan.

Outcome

The court cited each of the cases above, among others. The court noted that Saanich's bylaw met the requirements set out in *Shantz*, and the injunction was granted based on a balancing of the relevant factors.

Case: Maple Ridge (City) v Scott, 2019 BCSC 157

Issue

The City had concerns about fire safety in the encampment on City land. The City Fire Department posted fire regulation notices. The

Outcome

The application was granted. The judge noted that in previous cases involving encampments, significant fire risk has tipped the balance towards

City continued to have concerns about the use of in-tent heaters.

favouring the municipality. The occupants were ordered to comply with the fire safety orders.

Should the City's application for an order requiring occupants to comply with the Fire Department safety orders be granted?

Case: British Columbia/Yukon Association of Drug War Survivors v Abbotsford (City), 2020 BCHRT 86

Issue

Outcome

The City removed homeless persons and their possessions from a tent city in Jubilee Park. The complainants alleged that City conduct was discriminatory based on race, ancestry, disability and place of origin.

The tribunal determined that the allegations that the City pepper sprayed tents and personal property, and that the City destroyed and disposed of the residents' personal property would proceed to a hearing.

Which issues raised by the complainants should proceed to a hearing?

Case: Victoria (City) v Smith, 2020 BCSC 1173

Issue

Outcome

Should an injunction be granted to require occupants of Beacon Hill Park to remove their structures and belongings?

It was significant that the campers had set up in environmentally or culturally sensitive areas of the park, and the injunction was granted.

Case: Bamberger v Vancouver (Board of Parks and Recreation), 2022 BCSC 49

Issue

Outcome

An encampment at a public park on federal port land leased by the City is ordered to close by way of the *Parks Control By-law*. Encampment residents seek judicial review of the orders. Parks Board seeks injunction to compel encampment residents to comply with orders.

Application for judicial review granted. Parks Board application for injunction adjourned pending the judicial review.

Are the Parks Board's orders for eviction valid and enforceable?

Court acknowledges impacts of a daily decamping requirement; recognizes that lack of storage, sheltering options make moving belongings a significant hardship.

Case: Prince George (City) v Johnny, 2022 BCSC 282

Issue

Outcome

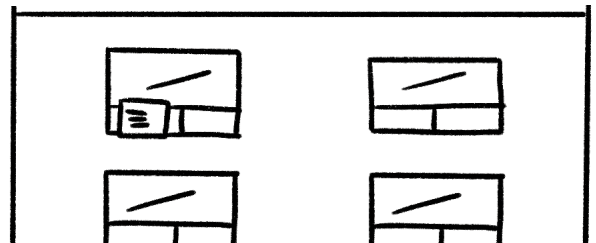
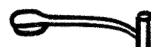
City's previous injunction application to close an encampment on city-owned greenspace for contravention of Zoning Bylaw was rejected due to lack of accessible housing and daytime facilities.²³⁰ City seeks another injunction to dismantle encampment claiming it procured sufficient housing facilities.

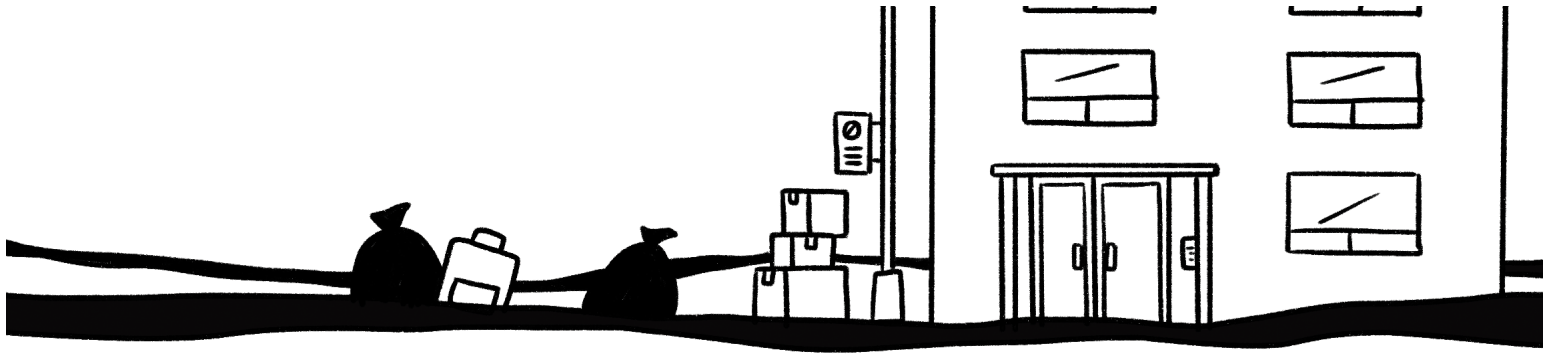
City's injunction application is dismissed because the City dismantled the majority of encampment prior to returning to court to seek an order, and without procuring sufficient *accessible*

Should the City be granted an injunction to remove the remaining encampment residents?

housing and daytime facilities or identifying number of people remaining in the encampment. This "inflicted serious harm on vulnerable people" (para 82).

Rental Housing





Rental Housing

In Canada, approximately one-third of the population live in rental accommodations and are therefore subject to residential tenancy laws.²³¹ Single-room occupancies, rooming houses, and supportive housing buildings are often some of the only affordable housing in major urban centres. Residents of these types of housing often still navigate through public spaces and shelters for various reasons including feeling unsafe in the accommodation in which they have tenancy rights, accessing their support networks or sources of income, inadequate income to cover rent, rules and policies of the housing provider, lack of knowledge of their tenancy rights, and the precarious legal status of the rental itself.

Certain populations experience poverty at disproportionate rates, meaning they are more likely to live in precarious housing and be impacted by residential tenancy legislation or supportive housing policies. Indigenous, Black, and other people of colour, people who use drugs, people stigmatized around mental illness or other health conditions, people with disabilities, and people who are non-conforming in other ways often experience greater enforcement than other precariously housed individuals who exist in these same spaces.

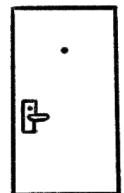
This section outlines caselaw and provincial and municipal legislation in BC and Ontario that impacts the belongings of people who exist in a variety of tenancies. Provincial residential tenancies statutes and regulations set out the housing-specific rights of tenants and their rights regarding their personal belongings. In precarious housing situations, it is not always clear whether residential tenancies legislation applies at all. This can leave tenants with less clarity as to what property rights they have or where they can go to resolve issues related to their belongings.

1. How “rental housing” is defined

This chapter categorizes rental housing based on its definition in provincial residential tenancies legislation. This includes tenancy agreements, rental units and other residential property.²³² Both market rental tenancies and government-owned and run supportive housing amount to private property in that they are not open-air spaces that permit access to the general public (like parks or streets), and are not subject to the same municipal bylaws and provincial legislation governing these public spaces. However, the distinction between public and private space still effects the legal regulation of people’s personal belongings. Thus, this section discusses publicly funded, publicly run supportive housing projects and the complications involved in their designation as residential tenancies and the implications this has on people’s belongings. While a full analysis is outside of the scope of this chapter, the legal complexities between supportive housing and residential tenancies should be explored further. This section also explores private residential tenancy legislation in Ontario and British Columbia, with a particular focus on rooming houses and single-room occupancy hotels (SROs) and the private tenancy rights that accompany these spaces, given their “critical role...in low income housing stock as a last resort before homelessness for many...vulnerable tenants.”²³³

In addition, this section highlights some of the limitations of current residential tenancies legislation in protecting people and their belongings, and the process of leasing public storage lockers as a tactic in responding to precariousness of housing and personal belongings. This chapter also explores how municipal bylaws and jurisdiction can impact how tenancies are regulated and accessed in different municipalities and how this can impact people’s security of their belongings. Finally, this chapter includes the information about Property Standards bylaws and legislation and how that relates to tenancies.

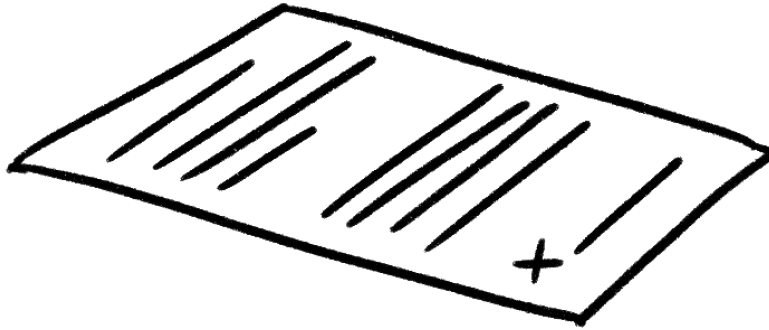
In some accommodation situations, a person may not be protected by residential tenancy legislation, for example, if they share a kitchen or bathroom with their landlord, if they live in transitional housing situations, or if they live in shelters. Some of these situations will be discussed elsewhere in this report .



Vignette

Rayne moved into the city from a northern community to attend university.²³⁴ ²³⁵ Rayne was in their 20s and was able to stay with family acquaintances for a few days until the end of the month when the high-rise apartment unit they had lined up online would be available to move in. The day before move-in day, Rayne went to meet the landlord to get keys and sign a lease. Upon meeting the landlord in front of the building, the landlord told Rayne that she had rented

the unit to someone else who had a "better rental record" and could move in earlier. The landlord said that she had no other suites available.



Rayne had only two days before the end of the month and only three days until the start of their first semester at university. Rayne didn't want to impose on their family acquaintances any longer, so they found a place online, the only place they could afford that was available short notice. The online listing said it was a large house with shared bathroom and kitchen, but that it was a quiet place with mostly older adults.²³⁶ Luckily it was walking distance to city transit that could get them to university within twenty minutes, and had a free parking spot where they could leave their car.

In the anxious hustle of moving, getting keys, getting ready for university and paying first month's rent, Rayne forgot to do a walk-through of the unit and forgot to sign a lease agreement. They called the landlord who said he would stop by in a few days once Rayne had settled in. The landlord never returned with the lease papers.²³⁷

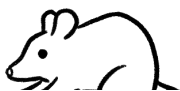
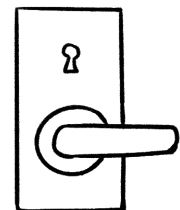
Rayne moved in their belongings from their car which included computer gear, a small desk, and family gifts. Shortly after, Rayne purchased a nice used bed and bed frame online. They set up internet so they could study from home and game with their friends on the weekends.

In the anxious hustle of moving, getting keys, getting ready for university and paying first month's rent, Rayne forgot to do a walk-through of the unit and forgot to sign a lease agreement

After living in the apartment for the whole first semester, Rayne barely ever saw their landlord and paid rent monthly by online bank transfers. Over the months they notified the landlord by text about a mouse sighting, the shared bathroom having some mold and a leaky faucet, and one of the stove burners which stopped working, but the landlord never responded. Rayne made friends with a roommate named Terri, an older person who used a walker and came from a community neighbouring that of Rayne's. Terri told Rayne that they were pretty sure they could not report anything to the Residential Tenancies office because their building was unlicensed.²³⁸

Returning home from writing their first final exam of the semester, Rayne's key no longer opened the front door. Rayne texted their landlord who claimed that Rayne had been short on rent and that they had moved Rayne's belongings into a communal storage room which Rayne had to have emptied by the next day.²³⁹ Rayne was certain they were not short on rent but did not have time to argue, as they had another exam in a few days. Plus, they did not know who to make a complaint to because they did not have a signed lease, and did not want to risk getting Terri evicted. Rayne was pretty sure the landlord evicted them for asking too many questions about the building's maintenance.²⁴⁰

Rayne met the landlord the next day to gather their belongings and load them into their car. The storage room was accessible by anyone in the building, so when Rayne got there, their belongings had been picked over. Their bed was gone and their internet modem was missing. Luckily Rayne still had their laptop, but they would be charged a few hundred dollars for the modem itself.²⁴¹ Rayne sat in their car, loaded with what little belongings they had left, not knowing where they would go next.





Rayne was pretty sure the landlord evicted them for asking too many questions about the building's maintenance.

2. Privately owned rental units

Tenancies and a tenant's rights to their personal belongings are governed by a large number of provincial and municipal statutes, the most relevant of which being provincial residential tenancies legislation. Tenants' rights and their rights to their personal belongings are also affected by local bylaws such as fire bylaws,²⁴² building standards bylaws,²⁴³ or bylaws specific to housing.²⁴⁴ In some jurisdictions, municipalities are moving towards amending ticketing and licensing bylaws to allow for some municipal involvement in housing in accordance with provincial residential tenancies legislation.²⁴⁵

In both the jurisdictions of Ontario and British Columbia, rights apply in a wide range of tenancy situations. Determining if an agreement amounts to a tenancy will have significant impacts on an individual's rights regarding their personal belongings. In Toronto, tenants are often unsure about their rights and avoid acting on what rights they may have for fear of losing the only affordable housing they can access. This is largely caused by a lack of clarity regarding applicable enforcement entities and the misalignment of local bylaws with provincial landlord-tenant legislation. Similarly in British Columbia, although tenants in SRAs, supportive housing, and unofficial tenancies can access the *BC RTA*, lack of clarity regarding tenant rights in these settings mean that tenants and their personal belongings continue to be vulnerable.

Ontario Municipalities

Ontario's *Residential Tenancies Act*²⁴⁶ (*ON RTA*) outlines certain rights held by tenants in regard to their belongings, including specific requirements on landlords at the end of a tenancy. These rights are held by anyone in a tenancy agreement laid out in the *ON RTA*, which includes verbal tenancies,²⁴⁷ and those living in multi-tenant housing.²⁴⁸ Exceptions, however, include multi-tenant housing where tenants and the owner live in the same building while "shar[ing] a bathroom or kitchen facility with the owner" or owner's family.²⁴⁹

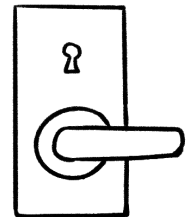
The *ON RTA* protects a tenant's rights to their belongings by preventing a landlord from interfering with a tenant's occupancy of a rental unit (s 22) and preventing a landlord from entering a rental unit without notice in most cases (ss 26-27). An individual's belongings must not prevent the reasonable enjoyment of other tenants, or put the health and safety of tenants or the landlord's property at risk (ss 64, 66). For example, a landlord could apply to the ONLTB for an eviction order if they determine that an accumulation of a tenant's belongings (commonly referred to as 'hoarding') amounted to a risk to person or property. If it could be determined that the accumulation of belongings was associated to a person's mental or physical disability, the *Ontario Human Rights Code* would require the landlord to accommodate the person to the point of undue hardship.

The *ON RTA* requires a landlord to hold a tenant's belongings for 72 hours after an eviction has been enforced by the Sheriff.²⁵⁰ After this period, as long as the tenant was not prevented by the landlord in accessing their belongings, the landlord may proceed to sell, keep, or dispose of the property.²⁵¹ In the event that a unit was abandoned, a landlord must hold or store the tenant's property for 30 days before being able to sell, keep, or dispose of the property.²⁵² In most other situations of an ended tenancy, such as a written notice by either party, landlords can immediately sell, keep, or dispose of a former tenant's personal property upon the tenant vacating the premises.²⁵³

Multi-tenant housing (also known as 'rooming houses' or 'dwelling houses') are tenancies characterized by shared facilities, usually kitchens or washrooms, between three or more people who pay rent individually.²⁵⁴ In the districts of the City of Toronto and Etobicoke, multi-tenant housing is permitted under zoning bylaws—in Toronto through the Municipal Licensing and Standards (MLS) division, and in Etobicoke through Toronto Public Health (TPH). In the district of York, multi-tenant homes are permitted with no licence required.²⁵⁵ However, within the City of Toronto's districts of East and North York and Scarborough, multi-tenant housing is not permitted, but nonetheless continues to operate.²⁵⁶

For rooming house tenants in Toronto, a city with varying licensing schemes and overlapping provincial and municipal regulations, accessing residential tenancy rights is complicated and impacts people's ability to maintain control over their belongings. For example, a tenant in an unlicensed rooming house is technically able to access the Landlord Tenant Board through rights laid out in the *ON RTA*, regardless of whether it is in a district that permits rooming houses. However, many rooming house tenants in unlicensed housing avoid formal complaints mechanisms even when exposed to substandard conditions. This is often because of a lack of awareness of their rights²⁵⁷. In a complicated system of overlapping laws, bylaws, and rules, tenants are unclear of whether they are covered under the *ON RTA* or if they are required to report issues to municipal enforcement entities. Additionally, rooming house tenants often avoid reporting issues to the provincial residential tenancies office out of fear that doing so could flag the tenant's unlicensed rooming house to the city with a risk that it could be shut down, thereby risking a loss of housing with few affordable alternatives.²⁵⁸

In fact, the majority of complaints filed about rooming houses in Toronto came from neighbours, suggesting that the enforcement mechanisms which are underused by tenants are more often used in ways that increase their housing precarity and risk displacement.²⁵⁹ *Fraser v Beach*²⁶⁰ demonstrates that neighbours or property owners are not able to seek eviction for illegal rooming house tenants through the courts, as the Landlord Tenant Board has exclusive jurisdiction in granting



evictions.²⁶¹ However, as seen in *Davies v Syed*,²⁶² tenants of illegal rooming houses can effectively be evicted by a third party through a court-ordered injunction if the rooming house is violating municipal bylaws or other laws. As such, the precarity of tenants of illegal rooming houses is increased both by lack of effective access to enforcement measures under the *ON RTA* and also by being the targets of enforcement by third parties.

Living in licensed and authorized multi-tenant housing allows a tenant to access their rights with less concern of putting themselves and their housing at risk.²⁶³ However even rooming house tenants in licensed buildings are subject to an “unclear complaints process” between the city’s MLS branch and TPH, the Landlord Tenancy Board, and the Rooming House Licensing commissioner.²⁶⁴ The complex and bureaucratic reality of Toronto-area rooming house regulations means that tenants subject to those rules live under a complicated, unclear regime that increases the precarity of their housing situation, including the degree of control they have over their belongings.

British Columbia



The British Columbia *Residential Tenancy Act*²⁶⁵ (*BC RTA*) and *Residential Tenancy Regulation*²⁶⁶ (*BC Regulations*) requires a landlord to store a tenant’s belongings for 60 days if the belongings are considered to be abandoned. Although there are some variables to determine whether property has been abandoned, a landlord is not required to store abandoned belongings if they have a value under \$500, if the value of the items is less than the cost of storing and selling them, or if the landlord “reasonably believes that the storage of the property would be unsanitary or unsafe.”²⁶⁷ If a landlord obtains a writ of possession from the BC Supreme Court, tenants have two days to collect certain items including clothing, medical and dental aids, and tools or property used to earn income, after which court bailiffs have authority to remove and sell the tenant’s belongings.²⁶⁸ Similar to Ontario residential tenancy legislation, in BC, a landlord can end a tenancy if an individual (and therefore their belongings) jeopardize the health or safety of the landlord or other occupants, or puts the landlord’s property at significant risk.²⁶⁹ For example, an accumulation of a tenant’s belongings that is deemed excessive (commonly referred to as ‘hoarding’) that amounts to a risk to person or property could be grounds for a landlord to seek an eviction. If it could be determined that the accumulation of belongings was associated to a person’s mental or physical disability, the *BC Human Rights Code* would require the landlord to accommodate the person to the point of undue hardship.

Much of the low-cost and affordable housing options in Vancouver are single-room accommodations (SRAs) which include rooming houses and single-room-occupancy hotels (SROs).²⁷⁰ SRAs can be owned privately or by a non-profit organization, and provide minimal quality of housing usually consisting of a small room with a basic cooking setup and shared bathroom.²⁷¹ Tenants of SRAs are covered by British Columbia’s *Residential Tenancy Act*²⁷², which protects them from landlord seizure or interference with access to their belongings, unless the landlord has court authorization or the tenant has abandoned the unit (s26).

In Vancouver, the city’s role as regulator of SRAs through the *Single Room Accommodation By-law* and through health and safety bylaws such as the *Standards of Maintenance By-law*, *Building By-law*, and *Fire By-law* all have implications on SRA tenants and their belongings. SRO tenants generally lack information, resources, and support regarding tenancy rights when facing evictions or dealing with maintenance and privacy issues.²⁷³ Relatedly, illegal SRA management practices and power imbalances between tenants and owners create feelings of fear and insecurity among SRO tenants which could impact their ability or safety in approaching the Residential Tenancy Branch.²⁷⁴ Some SRO tenants have expressed fears of asking for minor repairs for justified fear of “backlash or potential eviction”.²⁷⁵ Given the small size of SRO units, tenants can easily be accused of hoarding by landlords. The various City bylaw schemes combined with provincial BC RTA can lead to confusion among SRO tenants as to the most effective way to access their rights. This has led Housing Vancouver to call for a more accessible, transparent complaints process with the City, including an improved system for SRO tenants to access documents of notices of violation that could be used as evidence at the Residential Tenancies Board (RTB).²⁷⁶ These factors suggest that although Vancouver SRAs are part of BC RTA legislation, that tenants are not always able to access their rights to protect themselves and their personal property due to power imbalances, and lack of access to tenant rights supports. Evidence from front line workers also indicate that RTB arbitrators lack an understanding of the realities of SRO lives, and the heightened precarity of SRO tenants.

3. Publicly owned rental units

Publicly funded and publicly run supportive housing tenancies provide individuals with certain levels of security for their belongings. However, the determination of whether an accommodation is covered under residential tenancy legislation can have significant impacts on a person’s right to their personal property. For example, in one Ontario Landlord Tenant Board (LTB) case,²⁷⁷ a housing provider believed they were exempt from the Ontario *Residential Tenancies Act* (ON RTA) as a transitional housing program and evicted a tenant and disposed of his belongings. The LTB found that the program was not transitional housing, and thus that the eviction and disposal were illegal. However, this was after the person’s belongings were already lost. In cases where landlord-tenant legislation does not apply, residents have to rely on arguably less accessible forms of mediation such as small claims court or human rights tribunals, depending on the issue.²⁷⁸

Supportive housing is “long-term or permanent living accommodation for individuals who need support services to live independently”.²⁷⁹ In British Columbia, although the *BC RTA* officially applies to supportive housing,²⁸⁰ most supportive housing providers have argued that they are exempt from landlord obligations under the *BC RTA*, asserting their services to be transitional housing, “a housing based health facility that provides hospitality support services and personal health care”,²⁸¹ providing rehabilitative or therapeutic treatment,²⁸² or under the *Community Care and Assisted Living Act*.²⁸³ By claiming that their living accommodations and services are not governed by landlord-tenant legislation, supportive housing providers can attempt to avoid accountability in the same way as traditional landlords when it comes to interacting with tenants and their belongings,²⁸⁴ allowing providers to handle tenants’ belongings without abiding by the same obligations required of private landlords. Supportive housing projects commonly assert that their residents are subject to “program agreements” rather than tenancy

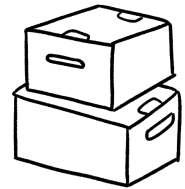
agreements, in an attempt to maintain a level of control over the space with rules they could not otherwise implement under a regular tenancy agreement. Notably, however, residential tenancies legislation in both BC and Ontario clearly state that landlords may not avoid or “contract out” of the legislation or regulations.²⁸⁵

In *PHS Community Services Society v Swait*, the housing provider argued that the facility was exempt from the *BC RTA* as a “living accommodation in a housing based health facility that provides hospitality support services and personal health care”²⁸⁶ and therefore could enforce tenant guest restrictions contrary to the *BC RTA*. The court affirmed an arbitrator’s assertion that the tenancy was subject to the *BC RTA*, and thus the tenant was entitled to the rights of having guests without restriction. While supportive housing applies to the *BC RTA*, there are times where even the RTB has difficulty determining whether the living accommodation falls under landlord-tenant legislation.²⁸⁷

Suites that are considered unauthorized or illegal because of their lack of compliance with municipal bylaws still apply under the *BC RTA* if the tenant can prove that a tenancy exists.²⁸⁸ Similarly, although landlords are required to provide a written tenancy agreement, the lack of a written document does not preclude a landlord from having obligations and responsibilities under the *BC RTA*.²⁸⁹

4. Storage in rental units

Storage is a significant issue for precariously housed and unhoused individuals. In a study of residential evictions of people who use drugs, for example, participants described how they would be threatened with eviction due to an accumulation of possessions and would be the targets of nuisance complaints related to their possessions.²⁹⁰ One woman spoke of the difficulties she faced when moving between rooms of different sizes, creating a disparity between the large amount of possessions she had and the decreased amount of space she could fit them in, which eventually resulted in the landlord evicting her.²⁹¹ Further, though landlords have particular obligations when it comes to storing belongings that have been left behind by tenants, participants in the previously mentioned study reported that landlords were frequently disposing of whatever belongings the tenants could not bring with them when evicted, and they even reported that the landlords would threaten them with the destruction of their personal property to compel them to vacate their units.²⁹² Where tenants do not vacate their units, landlords and property managers may get court bailiffs to remove a person’s possessions, as was the case in *Dawson* where the tenant was unable to get any of her treasured belongings back.²⁹³ When facing eviction, precariously housed people have limited options for storing the belongings that they can hold onto. Some possessions may be sold to offset any debts that the owners have.²⁹⁴



Public storage lockers may be an option for some people. Storage locker leases however have conditions on the kinds of possessions that can be stored, like flammable materials, illegal substances, perishable goods, and anything that could emit fumes.²⁹⁵ Many storage lockers are also specifically designed to discourage people from using storage lockers as a form of shelter by, for example, not installing power outlets or lights in units.²⁹⁶ Many if not most storage locker tenancy agreements will make non-habitation of the unit a condition of the lease.²⁹⁷ There are also some other barriers to accessing a storage locker; for most leases, a tenant must have two pieces of ID (and in some cases a current address)²⁹⁸, and there is the issue of having the means to transport possessions to a storage locker and the ability to remove them from the site at a later date. If a person can no longer afford their storage locker, stops paying, and does not have the means to remove their possessions from the locker, the contents are likely to go to auction.²⁹⁹

Sidebar

The idea of living in a storage locker is a serious consideration for some people. When there are few affordable housing options, living temporarily in a climate-controlled shelter that is private and provides a secure space for one’s belongings can seem inviting. In 2017, a Vancouver man posted a video of a complex living set up he had constructed for himself in a U-Haul storage locker for \$205 per month.³⁰⁰ Over the course of the guided tour of his space, the man shows an extension cord he ran from the hallway to provide his unit with power, his hotplate, TV, bed, drawers that he built under the bed, and a mechanism to provide himself with running water. He said he spent about \$100 on hardware, which included installing several wooden fixtures to help him organize his possessions and live efficiently within the small space for the two months he was there. While the man claimed that facility staff knew he was living there and were tolerating him so long as he kept a low profile, U-Haul spokespeople stated that he was evicted before the video was posted online. The end of the video and a subsequent video on the man’s channel show that he had found an apartment to live in.³⁰¹ While there is little context from the video about the man’s circumstances which led to him living in the storage locker (the titles of his other videos show an affinity for DIY projects), he is most certainly not the only person who has lived or currently lives to some degree in a storage locker. Regardless of whether someone is between apartments and wants to save money, or has experienced an eviction and feels they have few other options, a person’s circumstances and the ability to be close to their belongings can be crucial in considering their options for shelter.



5. Yards and Private Green Spaces

Bylaws may apply to belongings located on private space, for example: tenants with yard space, and people living on another's property with the owner's permission (for example in a tent or vehicle in the owner's yard). The visibility of their belongings on private property and the prospect of both formal enforcement and informal social pressure can have an impact on the security of their ability to continue living in a particular space.

Trespass to land occurs when a person intrudes upon another's private property without permission from the owner. Trespass law also applies to objects that have been placed on land without the owner's permission.³⁰² Some permission to intrude onto another's property can be implied (e.g., walking on a pathway to deliver a parcel), but if that person remains on the property after the owner asks them to leave, they are trespassing.³⁰³ The remedies for trespass can be an injunction or damages (compensation). In Ontario, the *Trespass to Property Act* sets out that any person who enters property without express permission from the owner and does not leave when directed to do so is committing an offence.³⁰⁴ In B.C., the *Trespass Act* similarly sets out that it is an offence to enter enclosed land or engage in a prohibited activity on that land.³⁰⁵ In practice, these statutes authorize a property owner to take legal action against a person who is on or has left their belongings on the property or has not vacated the premises when asked. Both private and public property owners (e.g., municipal governments) also have the right to take legal action against a person who does not vacate or stop engaging in certain activities on the premises.

Municipal bylaws further regulate which activities are permitted on both public and private property.

Ontario Municipalities

Property maintenance and standards bylaws in Ontario often use both objective and subjective language to describe the kinds of objects and materials that are prohibited from being placed on private property. The property standards section of Toronto's *Municipal Code* uses objective language to require property owners to keep their yards clear of dilapidated, collapsed, and unfinished structures, as well as wrecked and discarded vehicles.³⁰⁶ The same section goes on to use more subjective language to require property owners and occupants to keep properties in "clean and sanitary condition" and keep them clear of junk, rubbish, refuse, litter, and other debris.³⁰⁷ These subjective criteria can disproportionately impact those who are lower income, precariously housed, particularly in light of societal stigma towards poor and marginalized people, including people experiencing homelessness, a disproportionate number of whom are Indigenous.

As in Toronto, the City of Ottawa's *Property Standards* bylaw employs some language that is drafted in a way that could be interpreted subjectively. The bylaw prohibits appliances, objects, and conditions in yards which could cause a health hazard or an accident hazard.³⁰⁸ However, the bylaw also prohibits the accumulation of materials and objects that create unsafe or *unsightly conditions*, and that are *deleterious to the neighbouring environment*.³⁰⁹ Any objects that meet these descriptions are to be removed from private property.

British Columbia Municipalities

The B.C. municipalities surveyed in this report have similar property standard bylaws to those in Ontario. Vancouver's *Untidy Premises* bylaw prohibits property owners and occupants from allowing the accumulation of discarded materials, rubbish, filth, and garbage on their property.³¹⁰ Owners are provided with 10 days notice to remedy the issue if they are in contravention of the bylaw.³¹¹ Vancouver's *Standards of Maintenance* bylaw also requires private land to be kept clear of rubbish and debris, and wrecked vehicles cannot be stored or left on any land.³¹² The City of Abbotsford's *Good Neighbour* bylaw contains more subjective language, prohibiting property owners from allowing their property to become or remain *unsightly* through the accumulation of rubbish, derelict vehicles, appliances, or other discarded materials that can be visible to passersby or from neighbouring properties.³¹³ Property occupiers are specifically required under the bylaw to keep the general appearance of rental premises to the standards of similar properties in a neighbourhood.³¹⁴

The City of Victoria's *Property Maintenance* bylaw differs slightly from each of the bylaws above because it provides an explicit definition for what is meant when something is considered "unsightly." The bylaw defines "unsightly" as a state that is untidy or the otherwise non-aesthetic accumulation of filth, junk, and refuse on a parcel of private property.³¹⁵ However, this definition still seems to remain highly subjective in terms of what is considered "junk" and "refuse."

6. Legal decisions impacting people's belongings in rental housing

Conflicts in residential tenancies are formally addressed through administrative tribunals; the BC Residential Tenancy Branch Dispute Resolution Services ("BC RTB"), and the Ontario Landlord Tenant Board ("ON LTB"). Administrative decisions by the BC RTB and ON LTB can be challenged upon judicial review to the BC Supreme Court and Ontario Superior Court Justice respectively. As administrative tribunals, the BC RTB and ON LTB make a significant number of decisions on a yearly basis and are not bound by previous precedent cases in the same way that courts are.³¹⁶ As such, this section focuses on caselaw and other legal decisions outside of the residential tenancies tribunals, which impact the belongings of people living in tenancies, with a particular focus on municipal decisions and related court decisions.

Type of tenancy and other remedies

The designation of whether a property is a tenancy can have implications on whether a person and their belongings are subject to the protections that exist in residential tenancy legislation. In *PHS Community Services Society v Swait*,³¹⁷ the court affirmed the decision of the BC RTB that the supportive housing program was subject to the BC RTA despite a supportive housing provider arguing that the facility was exempt as a "living accommodation in a housing based health facility that provides hospitality support services and personal health care."³¹⁸ While this case revolved around the right to have guests without restrictions, it demonstrates that designation under or exemption from residential tenancies legislation can similarly impact the few protections that tenants' belongings are afforded under landlord-tenant laws.



Further, the designation of whether a property is a rooming house can have even more important implications on tenants' protections related to their belongings. Rooming houses that are covered under residential tenancy legislation are still often understood by tribunal members as spaces where tenants "cannot expect the same level of privacy that they would enjoy if they rented their own apartment".³¹⁹ *Fraser v Beach* demonstrates that rooming houses that do not conform with municipal bylaws but still fall under landlord-tenant legislation cannot be evicted by neighbours' applications to the Superior Court because the jurisdiction to order eviction is granted exclusively to the ON LTB.³²⁰ However *Davies v Syed* demonstrates that other civil actions such as injunctions can be used to effectively evict tenants through an order for the closure of rooming houses that do not comply with municipal bylaws. This means that although tenants of rooming houses, and their belongings, are protected under residential tenancy legislation, rooming house tenants in certain jurisdictions are still subject to legal mechanisms that can put their tenancies and their belongings at risk.

Despite this reality, whether or not a person is found to be a tenant does not necessarily prevent them from seeking remedies outside of the residential tenancies legislation for lost or destroyed belongings. In *Khachatryan v Sookedeo*,³²¹ the Khachatryans purchased a home in which the Sookedeos were living. Having not moved out by the agreed vacancy possession date, the Khachatryans removed the Sookedeo's furniture, clothing, mattresses, family photos, and electronics. The items were placed outside on the ground without any covering and were eventually damaged by the rain. The trial judge found that the Sookedeos were tenants and thus their belongings were protected under residential tenancy legislation. However, the court held that even if the Sookedeos were not covered under a tenancy, the Khachatryans, as the party that had purchased and therefore controlled the property, had an obligation to "maintain the integrity"³²² of the Sookedeos' personal belongings under the tort of bailment. The Khachatryans were held liable for damages to the Sookedeos' personal property up to \$25,000.

In seeking remedies outside of residential tenancies legislation for lost or damaged belongings, however, tenants need to be careful to consider the jurisdiction of courts. In *Tuka v Butt*,³²³ a tenant made a counter-claim on a small claims court action. The counter-claim included the loss of personal property she claimed was wrongfully retained by the landlord after eviction. Because the landlord acted within the ON RTA that permitted the disposal of belongings after items were made available for 72 hours after eviction, and because the ON LTB had exclusive jurisdiction over the matter,³²⁴ the Ontario Small Claims Court had no jurisdiction over the claim related to the loss of her personal belongings.³²⁵ As seen in *French v H&R Property Management*,³²⁶ as long as a landlord complies with its obligations under the residential tenancy legislation, "it will not be liable to any person for selling, retaining or otherwise disposing of a tenant's property."³²⁷

Municipal roles and jurisdiction in tenancies

While residential tenancy legislation falls under provincial jurisdiction, municipal bylaws and licensing schemes can have direct impacts on housing considerations such as affordability and evictions, thus impacting tenant stability and rights to their personal belongings. In the current housing affordability crises, some municipalities have used their regulatory powers to address local housing needs. The Ontario Human Rights Commission calls on municipalities to consider human rights frameworks and consult Human Rights Code-protected populations when drafting, reviewing, and monitoring bylaws.³²⁸ Municipalities have a unique role in addressing an ongoing housing crisis. By leveraging their position and aligning their bylaws with both human rights codes and provincial tenancy legislation, municipalities can promote access to stable and affordable housing, and subsequently, stability in people's ability to maintain their personal property. This type of municipal involvement in tenancy regulation has raised constitutional and jurisdictional debates in the courts, some of which are outlined below.

New Westminster's bylaws regarding renovations, Vancouver's bylaws regarding rental licenses, and Toronto's discussions regarding multi-tenant housing bylaws, demonstrate that municipalities can use their jurisdiction and adjust their bylaws to make meaningful impacts on the rights of individuals and their property, in the tenancy context or other housing arrangements. Conversely, as we see in Penticton, when municipalities make decisions contrary to provincial mandate, legal conflict ensues, and precariously housed individuals experience increased precarity. Municipalities may also try to resist regulating rentals, as seen in the example of Toronto's rooming house regulations.

Toronto: Rooming House Regulations

In October 2021, the City of Toronto delayed voting on new rooming house regulations that would implement a consistent city-wide zoning scheme to multi-tenant homes across all districts, including those where multi-tenant housing is currently prohibited.³²⁹ Failing to develop consistent mechanisms to regulate multi-tenant homes throughout the city, and continuing a ban on multi-tenant homes in certain areas where they still continue to exist, risks "driving operators and tenants underground".³³⁰ This perpetuates situations where tenants are less able to safely access their rights, thereby "creating further risks to safety [which] disproportionately [affect] equity seeking groups".³³¹ The act of prohibiting multi-tenant housing in certain pockets of the city "falls short"³³² of the Ontario Human Rights Code and could

lead to a human rights challenge “over the current inequity in rules and protections” for tenants living in multi-tenant homes in Toronto.³³³

New Westminster: Renovictions

In 2020, the municipality of New Westminster, British Columbia, part of Metro Vancouver, amended its *Business Regulations and Licensing (Rental Units) Bylaw*³³⁴ to restrict ‘renovictions’. Renovictions include the “eviction of tenants under the guise of performing major renovations on units and then significantly increasing the rent on those units”.³³⁵ Shortly after the amendment, a landlord looking to perform renovations on a 21-unit building challenged the municipal bylaw, arguing that the bylaw’s actions fell under the authority of the provincial BC RTA and thus outside of municipal jurisdiction.³³⁶ The British Columbia Court of Appeal (BCCA) held that the City had the right to regulate renovictions at a local level through its powers of the *Community Charter*³³⁷ in part because the BC RTA is not exhaustive legislation in regards to rent control and evictions. A leave to appeal the BCCA decision was dismissed by the Supreme Court of Canada.³³⁸ New Westminster’s recent bylaw amendment demonstrates that municipalities can creatively legislate in the field of tenancies and the maintenance of affordable housing stock, as long as the provisions “supplement and do not contravene those of the [BC RTA]”.³³⁹ Given the risk to tenants’ belongings associated with evictions, this is an important move.

City of Vancouver: SRA Vacancy Control

For many years, Vancouver housing advocates and some city officials have been advocating to the provincial government to include vacancy control provisions for SRO units in the *BC RTA*.³⁴⁰ This reflects the particular vulnerability of SRO residents, including their possessions, to evictions. Currently, the *BC RTA* regulates what is an allowable rental rate increase during a tenancy, but does not regulate rate increases between tenancies. In 2018, the Provincial Rental Housing Task Force opted not to recommend vacancy control legislation tied to the unit rather than the tenant, rooted in the concern that this would limit new rental construction and cause landlords to remove rental stock.³⁴¹ However, the province has shown no opposition to the City of Vancouver implementing vacancy control measures on SRO hotels exclusively, arguing that SROs are to be phased out entirely in the coming years.³⁴²

In November 2021, Vancouver city council voted to approve a vacancy control policy that capped rental rate increases for SRAs at the rate of inflation, and tied this policy to the unit rather than renter.³⁴³ This move, preventing landlords from increasing rent between tenants, was promptly challenged in court by several owners of SRA buildings.³⁴⁴ In two separate actions, several landlords claim the City’s bylaw amendments are outside of municipal jurisdiction and conflict with the provisions of the *BC RTA*. Citing the province’s 2018 decision not to implement vacancy control, it is argued that this regulation “by omission” is demonstrative of the City’s inability to create bylaws in the same field.³⁴⁵ Additionally, the court challenge by SRA owners suggests that the bylaw amendments directly conflict with landlords’ positive rights regarding rent hikes currently laid out in the *BC RTA*.³⁴⁶ The challenges go further and accuse the City of both unreasonable and bad faith dealings in amending the bylaws by “effectively requiring... SRA owners to subsidize low-income Vancouverites”³⁴⁷ and purposefully attempting to reduce the value of properties the City has open plans to purchase.³⁴⁸ The City of Vancouver asserts that it has jurisdictional authority to implement vacancy control under the provincial legislation of the *Vancouver Charter*³⁴⁹ which authorizes the City to regulate and impose terms and conditions on business license holders.³⁵⁰ Only if the new bylaws create a situation where landlords are unable to comply with both the *BC RTA* and city bylaws, the City asserts, would the bylaws be inoperable.³⁵¹ In August 2022, the British Columbia Supreme Court agreed with the landlords, determining that the City does not have authority to impose licensing regimes regulating rent control, and made an order to quash the bylaws.³⁵² The city has filed an appeal.³⁵³

Penticton and Provincial oversight

In March 2021 the BC provincial government used statutory immunity provisions to overrule the rejection by Penticton city council for a BC Housing application for a temporary use permit to a temporary shelter for forty-two residents.³⁵⁴ According to BC’s *Interpretation Act*, the province is exempt from any municipal or provincial enactments that pertain to land use and development.³⁵⁵ BC Housing applied for the temporary use permit out of courtesy, but based on this exemption is not bound by city permits and bylaws.³⁵⁶ Penticton city council subsequently filed a challenge to the BC Supreme Court, questioning the province’s use of the exemption powers.³⁵⁷ Upon announcing that BC Housing found an alternative location for the shelter, the City of Penticton withdrew their suit against the province.

While the situation in Penticton arises from a debate about a permit for a shelter rather than permanent housing, it demonstrates the unique position of municipal governments in discussions of housing and homelessness: using their own jurisdictional powers to respond to (or avoid responding to) local housing realities, while straddling provincial policy and legislation. The province’s decision to override Penticton city council could set a precedent for future provincial engagement with other municipalities, thereby impacting municipal ability to respond creatively to compounding issues in the fields of housing and homelessness.

7. Limitations of residential tenancies legislation

In the cases where residents are aware of their rights through landlord-tenant legislation, particular limits remain as to the effectiveness of these statutes in protecting people’s rights to their personal belongings. These limits include reactive rather than preventative responses, lack of collaboration between government systems, difficulties in presenting evidence in claims, and discretion given to landlords.

Residential tenancies legislation and complaint processes, while more accessible than many other forms of judicial procedure, are largely reactive rather than preventative. Although the “purpose of adequate notice and due process” in the termination of a tenancy “is to prevent loss of property when a tenancy is terminated”,³⁵⁸ it is common that people approach mediation through residential tenancies offices after they have been evicted, have become homeless, or have lost their belongings. Attempts to intervene before this point can often be fruitless. As seen above, many people living in precarious housing situations such as rooming houses or SROs live under a complicated, overlapping enforcement system and are often unclear of where to go to address issues in their tenancies. Additionally, some police forces have non-intervention policies regarding illegal lockouts and forced evictions, thereby preventing tenants from claiming their space and possessions in the moment of an illegal eviction or other adverse emergency housing situation.³⁵⁹ Even in jurisdictions where police may intervene and mediate difficult tenancy terminations, many marginalized and racialized populations living in precarious housing situations may not feel safe interacting with law enforcement, further requiring tenants to rely on reactive public policy mechanisms such as residential tenancies legislation to uphold their rights. This reality has led advocates to call for amendments to the BC RTA to increase the Residential Tenancy Board’s investigative and administrative powers to prevent problems before they escalate.³⁶⁰

Another limit to existing landlord-tenant legislation is the lack of coordination between government systems and landlords or landlord-tenant legislation entities. For example, a determination of abandonment of property can have significant impact on a landlord’s right to remove or dispose of a tenant’s personal belongings. Personal situations such as incarceration or hospitalization can mean that a tenant is not able to communicate with landlords regarding their absence, which can often lead to “an eviction, or at minimum coming back into a precarious housing situation because rent was behind or roommates had moved on.”³⁶¹ For example, in *Holewell v Lally*,³⁶² a tenant was given an eviction notice after 10 months of hospitalization due to a breakdown in communication with the landlord around rent abatement related to unit renovations. Although there was a debate regarding the cause of rodent problems leading to necessary renovations, the tenant’s inability to move his belongings in part due to his hospitalization and disability eventually contributed to his eviction. Connected to police non-intervention policies, since public and social services systems are not designed to work in conjunction with landlords, landlord-tenant legislation, or its entities, tenant stability and personal property rights are thereby impacted.

Residential tenancies legislation in some jurisdictions also leaves significant amounts of discretion in the hands of landlords when determining how to proceed with the storage or disposal of a tenant’s belongings. For example, according to British Columbia’s *Residential Tenancy Regulation*³⁶³ a landlord can dispose of belongings determined to be abandoned if they deem them to have a total market value under \$500, or if they reasonably believe them to be unsanitary or unsafe.³⁶⁴ Similarly in Ontario, a landlord can immediately dispose of “unsafe or unhygienic items” if determined abandoned.³⁶⁵ Unclear guidance means that significant discretion is given to landlords regarding what they can do with a tenant’s property in certain situations.

In the event that an issue reaches a residential tenancy hearing, evidence can also be a barrier to successful claims of lost property.³⁶⁶ Providing sufficient evidence of lost or damaged property at the hands of a landlord can include photos, receipts, or other means.³⁶⁷ Many tenants are not able to produce such evidence, especially in instances where a person’s entire belongings have been seized or disposed of by a landlord. Further, a tenant’s inability to provide evidence that their living situation amounts to a tenancy agreement can restrict their ability to recover damages from damaged or discarded personal belongings.³⁶⁸ In some cases where landlords fail to provide proper notice regarding the termination of tenancy, hearings have acknowledged the impossibility of providing such evidence and have taken this into account when making a decision in assessing damages.³⁶⁹

8. Conclusion

Provincial and municipal legislation both have direct impacts on a person’s tenancy and their rights to their personal belongings. Residential tenancy legislation offers certain protection to tenants, however gaps remain, especially for people in precarious housing situations where there is a lack of clarity of tenant rights and inherent power imbalances in what is often the only affordable housing available. Provincial and municipal legislation that does not align leads to a patchwork of response mechanisms that leaves tenants either under-protected, unaware of what their rights are, or unclear of where to go to assert their rights to housing and their personal belongings. Municipalities are in a unique position to creatively use their bylaws to fill gaps left by provincial legislation, allowing them to respond to the housing crisis in a localized fashion. Finding ways for all levels of government response to complement one another may be an important step in addressing an ongoing housing crisis and ensuring tenant and landlord rights are clear, transparent, and equitable.

Appendix: Legal Cases

Tenancies - Legislation and Regulations Impacting People’s Possessions

Jurisdiction: **British Columbia**

Law/Bylaw

[Residential Tenancy Act, SBC 2002, c 78](#)

Purpose³⁷⁰

To outline rights and responsibilities of landlords and tenants including what constitutes a tenancy, steps to be taken at the beginning of a tenancy,

how to act during a tenancy and how to end a tenancy.

Residential Tenancy Regulation, BC Reg 477/2003

To detail landlord duties and rights including rent increases, abandonment of property, penalties, and evictions.

Unclaimed Property Act, SBC 1999, c 48

To reunite owners with their unclaimed property held by government and regulate the duties of holders of unclaimed property.

Human Rights Code, RSBC 1996, c 210

To ensure that people can participate equally in economic, social, political and cultural life by forbidding discrimination based on certain personal characteristics in areas of daily life.

Warehouse Lien Act, RSBC 1996, c 480

To regulate the requirements of storage and repair facilities regarding third party personal possessions.

Warehouse Receipt Act, RSBC 1996, c 481

To regulate the requirements of storage and warehouse facilities regarding third party personal possessions.

Jurisdiction: Vancouver

Law/Bylaw

Purpose

Single Room Accommodation By-Law No 8733

To regulate designation of, conversion and demolition of, and enforcement of single-room-occupancy tenancies.

Standards of Maintenance By-Law No 5462

To ensure private property is free from hazards and maintained in compliance with city health, fire and building requirements.

Building By-Law No 12511

To regulate standards for fire safety in buildings and facilities and to adopt the provincial fire code.

Fire By-Law No 12472

To regulate standards for fire safety in buildings and facilities and to adopt the provincial fire code.

License By-Law No 4450

To regulate the licensing of business, trade, professions, and other occupations.

Ticket Offences By-Law No 9360

To authorize tickets and fines for violation of municipal bylaws.

Jurisdiction: Victoria

Law/Bylaw

Purpose

Rental Property Standards of Maintenance Bylaw No 20-091

To establish minimum standards of maintenance for rental units and residential properties for the

health, safety and protection of tenants and existing rental stock, and better regulation of residential rental businesses.

Property Maintenance Bylaw No 07-050

To regulate, prohibit, impose requirements on private property owners regarding garbage, water, weeds, graffiti.

Fire Prevention and Regulation Bylaw No 14-100

To establish regulations pertaining to fire protection, fire prevention, fire suppression and the operation of the Fire Department.

Jurisdiction: **New Westminster**

Law/Bylaw

Purpose

Business Regulations and Licensing (Rental Units) Bylaw No 6926

To regulate and licence leasing rooms for living purposes and to prescribe standards for the maintenance of residential property and rental units.

Jurisdiction: **Ontario**

Law/Bylaw

Purpose

Residential Tenancies Act, 2006, SO 2006, c 17

To outline rights and responsibilities of landlords and tenants including what constitutes a tenancy, steps to be taken at the beginning of a tenancy, how to act during a tenancy and how to end a tenancy.

Residential Tenancies General Regulations, O Reg 516/06

To detail landlord duties and rights including rent increases, and specify definitions of certain tenancies.

Human Rights Code, RSO 1990, c H.19

To ensure that people can participate equally in economic, social, political and cultural life by forbidding discrimination based on certain personal characteristics in areas of daily life.

Ontario Fire Code, O Reg 213/07

To regulate safety for building occupants by eliminating fire hazards, and establishing of fire safety plans.

Health Protection and Promotion Act, RSO 1990, c H.7

To promote community health, prevent communicable disease, and regulate public health administration and enforcement.

Repair and Storage Liens Act, RSO 1990, c R.25

To regulate the requirements of storage and repair facilities regarding third party personal possessions.

Warehouse Receipts Act, RSO 1990, c W.3

To regulate the requirements of storage and warehouse facilities regarding third party personal possessions.

Jurisdiction: Toronto

Law/Bylaw	Purpose
Toronto Municipal Code, c 285, Rooming Houses	To regulate licensing, inspection, owner responsibilities, and enforcement of violations of rooming houses.
Toronto Municipal Code, c166, Etobicoke Lodging Houses	To regulate licensing, inspection, owner responsibilities, and enforcement of violations of lodging houses.
Toronto Municipal Code, c 629, Property Standards	To regulate, prohibit, impose duties on private property owners regarding maintenance of indoor and outdoor areas.

Jurisdiction: Ottawa

Law/Bylaw	Purpose
Building Bylaw No 2014-220	To administer and enforce provincial building codes respecting building construction, renovation or any change of use of buildings.
Property Maintenance Bylaw No 2005-208	To regulate storage of materials, garbage, and debris on private property.
Property Standards Bylaw No 2013-416	To provide standards under which private properties are maintained, including the storage of waste.

Jurisdiction: Hamilton

Law/Bylaw	Purpose
Yard Maintenance Bylaw No 10-118	To regulate maintenance and repair of interior and exterior of private property to protect the health and safety of occupants and the general public.
Property Standards Bylaw No 10-221	To regulate exterior private property maintenance including vegetation, waste and graffiti.

Tenancies – Examples of how courts have decided cases related to tenancies and personal belongings

Case: [PHS Community Services Society v Swait, 2018 BCSC 824](#)

Relevant Issue	Outcome
Is a supportive housing facility a tenancy and therefore subject to the Residential Tenancy Act? Or is it exempt as a "living accommodation in a housing based health facility that provides hospitality support services and personal health care"?	The court determined that the decision of the residential tribunal branch was correct when finding that the supportive housing project was subject to the residential tenancy legislation. By restricting Mr. Swait's access to guests, PHS violated his tenancy rights

While this case revolved around the right to have guests without restrictions, it demonstrates that designation under or exemption from residential tenancies legislation can similarly impact the few protections that tenants' belongings are afforded under landlord-tenant laws.

Case: [Fraser v Beach, \[2005\] 252 DLR \(4th\), 75 OR \(3d\) 383 \(CA\)](#)

Relevant Issue

Can the Superior Court order an eviction of tenants of an illegal rooming house?

Outcome

Rooming houses that do not conform with municipal bylaws but still fall under landlord-tenant legislation cannot be *evicted* by neighbours' applications to the Superior Court because the jurisdiction to order eviction is granted exclusively to the ON LTB.

However, see *Davies v Syed* below.

Case: [Davies v Syed, 2020 ONSC 5732](#)

Relevant Issue

Can the Superior court grant an injunction to order the closure of rooming houses that do not comply with municipal bylaws?

Outcome

Although the Superior Court cannot order evictions, injunctions can be used to effectively evict tenants through an order for the closure of rooming houses that do not comply with municipal bylaws. This means that although tenants of rooming houses, and their belongings, are protected under residential tenancy legislation, rooming house tenants in certain jurisdictions are still subject to legal mechanisms that can put their tenancies and their belongings at risk.

Case: [Khachatryan v Sookedeeo, 2017 ONSC 194](#)

Relevant Issue

Do other legal remedies exist for the loss or damage of personal belongings outside of residential tenancy legislation?

Outcome

Even if a party is not a tenant, but merely an occupant and therefore not covered under a tenancy, in some instances the tort of bailment may apply.

Case: [Tuka v Butt, 238 ACWS \(3d\) 972, 2014 CanLII 7228 \(ON SCSM\)](#), [French v H&R Property Management Ltd, 2018 ONSC 769](#)

Relevant Issue

Can a tenant bring an action in small claims regarding the loss or damage of personal property related to a tenancy?

Outcome

In *Tuka v Butt*, because the landlord acted within the ON RTA that permitted the disposal of belongings after items were made available for 72 hours after eviction, and because the ON LTB had exclusive jurisdiction over the matter, the Ontario Small Claims Court had no jurisdiction over the claim related to the loss of her personal belongings.

French v H&R Property Management states that if a landlord complies with its obligations under the residential tenancy legislation, "it will not be liable to any person for selling, retaining or otherwise disposing of a tenant's property."

Case: [1193652 BC Ltd v New Westminster \(City\), 2021 BCCA 176](#)

Relevant Issue

Does the city's bylaw restricting renovations fall under the authority of the provincial BC RTA and is therefore outside of municipal jurisdiction?

Outcome

The city has a right to regulate renovations at a local level through powers given to it in the provincial the *Community Charter*, in part because the BC RTA is not exhaustive legislation in regards to rent control and evictions. Municipalities can creatively legislate in the field of tenancies and the maintenance of affordable housing stock, as long as the provisions "supplement and do not contravene those of the [BC RTA]".

Case: [0733603 BC Ltd v Vancouver \(City\), 2022 BCSC 1302](#)

Relevant Issue

Does the city have jurisdiction to approve a vacancy control policy that ties rental rate increases for SRAs to the unit rather than renter? Does the City of Vancouver have jurisdictional authority to implement vacancy control under the provincial legislation of the *Vancouver Charter* which authorizes the City to regulate and impose terms and conditions on business license holders?

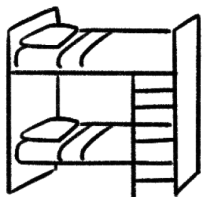
Outcome

The court held that the City does not have authority to impose licensing regimes regulating rent control, as this is the exclusive jurisdiction of the province. The court made an order to quash the bylaws.

Shelters and Non-Tenancy Accommodations



Shelters and Non-Tenancy Accommodations

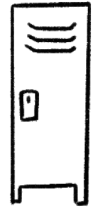


Precariously housed people often use informal housing options, such as shelters and rooming houses.³⁷¹ In some cases, despite including formal agreements, these indoor accommodations are not covered under local residential tenancy legislation, whether those accommodations are perceived to be temporary or explicitly permanent. This creates problems for precariously housed individuals and their relationship to their personal property. This includes lack of sufficient and secure storage, and confiscation and theft of belongings. This is exacerbated by a lack of accessible remedies, such as small claims court or human rights tribunals, depending on the issue, to address these challenges. As a result, the belongings of residents of such spaces are often no more secure than they would be on the streets.

1. How Non-Tenancy Accommodations are defined in this report

This chapter discusses "non-tenancy accommodations": types of housing or indoor accommodations that are not included in provincial residential tenancies legislation in Ontario³⁷² and in B.C.,³⁷³ and therefore do not offer its residents the same rights regarding their belongings. Examples of non-tenancy accommodations include hotels, jails, hospitals, housing cooperatives, emergency shelters, transitional housing,³⁷⁴ and care homes.

Although there is a broad range of non-tenancy accommodations, this chapter focuses on two: (i) rooming houses where a tenant lives with and shares a bathroom and/or kitchen with the owner or owner's family, and (ii) emergency shelters. These accommodations are chosen as they are some of the only affordable options in many urban centres and are commonly accessed by people with fixed or informal incomes, and by people who rely on public space.³⁷⁵



Despite the definitions and requirements laid out in landlord-tenant legislation, landlord-tenant laws do not always apply to rooming houses. Residential tenancies legislation in Ontario and British Columbia does not apply to shelters³⁷⁶ or rooming houses with shared amenities with the owner.³⁷⁷ Short-term shelters are generally exempt from residential tenancies legislation. This has implications for a tenant's rights to their personal property: if residential tenancy protections don't apply, then the provisions that protect belongings don't apply either.³⁷⁸

2. Shelters

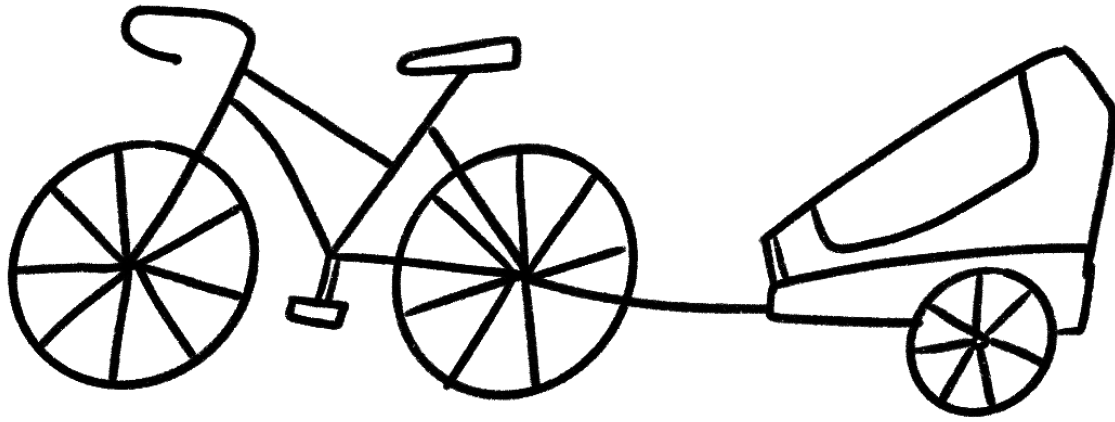
An average of 14,000 people use shelters on a nightly basis in Canada, with over 130,000 different shelter users per year.³⁷⁹ Certain populations experience poverty at disproportionate rates, meaning they are more likely to be forced to use emergency shelters. Indigenous people are ten times more likely to use a shelter than non-Indigenous people, with Indigenous women being the most overrepresented.³⁸⁰ Newcomers and immigrants to Canada make up approximately 5% of shelter users. People over the age of 50 are also increasingly being forced to use emergency shelters.³⁸¹ People of colour, people who use drugs, people stigmatized around mental illness or other health conditions, 2SLGBTQIA+ people, people with disabilities, and people who are non-conforming in other ways disproportionately experience homelessness.³⁸² Although shelter providers may not keep statistics based on these demographics, the fact that these populations are more likely to experience poverty and homelessness in turn means that they are likely more likely to be forced to use shelters. Similarly, because of their affordability in urban areas, rooming houses, including those not covered by residential tenancies legislation, are often accessed by newcomers to Canada, students, seniors, racialized individuals, people with disabilities, and people who have experienced homelessness.³⁸³

Shelters differ from streets, parks, and tenancies in the context of a person's rights to their personal belongings. As neither fully private spaces, nor open to the general public, shelters are a kind of 'hybrid space' where shelter-users reside within private real property but lack the same protections to their personal possessions as someone comfortably housed.³⁸⁴ In order to escape fines, arrest, or risk of their belongings being impounded by city employees, many precariously housed people are forced to rely on emergency shelters, exposes them to shelter rules and practices that can place their belongings at risk.³⁸⁵

Being exempt from residential tenancies legislation means that shelters lack clarity as to residents' rights to their personal property; in some ways, a person's rights to their belongings are clearer on the streets or in parks.³⁸⁶ Shelter standards frameworks such as the *Toronto Shelter Standards* and *BC Housing Emergency Shelter Program Framework* offer shelter-users general guidelines regarding the requirements of shelters in regards to topics such as storage and complaint mechanisms. However, due to inadequate and insecure storage, the prevalence of theft, and shelter program agreements that waive shelter providers' liability in the event of lost or missing belongings, shelter-users exist in spaces that offer minimal protection to their personal property.

Vignette

Kamran, 55, had been staying with a friend and looking for an apartment of his own when the landlord changed the building rules to no longer allow guests.³⁸⁷ He bounced around between other friends' homes, and for a few nights slept in doorways next to his bike and bike trailer. Eventually he heard about an encampment on the edge of town which had regular visits from housing workers, outreach teams, and even doctors. He gathered his belongings from his various friends' apartments and set up a makeshift shelter on the edge of the encampment in a small stand of trees.

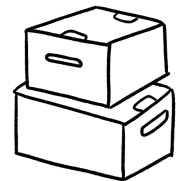


A few weeks later, someone with a clipboard approached Kamran when he was working on his bike outside of his tent to inform him that the encampment was closing due to a court ordered injunction, and that there was a spot in a shelter for Kamran which would eventually lead to permanent, stable housing. Though Kamran had never stayed in a shelter before, he was excited at the prospect of his own place. Kamran decided he could handle a shelter for a few months and left his name and contact info with the housing worker.

On the day of the move, a contracted demolition crew showed up to Kamran's tent and told him that he was only permitted to bring two plastic bins of his property and one bike into the shelter.³⁸⁸ They said they could store his bike trailer and extra belongings for him, but after watching the demo crew discard people's stuff over the past week, Kamran did not feel comfortable doing so. He didn't want to leave his belongings at the encampment site to gather them later, as he had heard of other encampment residents having their belongings seized by bylaw after they had moved into housing.³⁸⁹ Kamran sent two bins of his belongings with the demo crew, found a place in the industrial part of town to stash his remaining belongings, and locked his bike trailer to a bike rack nearby. He would have to deal with his stuff tomorrow.

Though Kamran had never stayed in a shelter before, he was excited at the prospect of his own place.

Kamran biked to the shelter where his two bins had already arrived. He locked his bike in the bike storage area and was given a tour of the space; a large warehouse where every guest had their own cubicle. However, since the shelter was brand new they had not yet installed lockers so storage of valuables would have to be done by staff in the backroom where only staff had access. Kamran signed his intake document that stated the shelter provider was not responsible for his belongings and that if he moved out, they would only hold his belongings for two weeks.³⁹⁰ Shelter staff asked to go through his belongings to which Kamran agreed. Staff found a small pocket knife, a gift from Kamran's late father, and informed Kamran that they would have to store it in the backroom until he moved out.³⁹¹ Although the knife was the last remaining item he had from his father, the staff seemed nice and the place seemed secure, so Kamran eventually agreed, hoping he would not stay in the shelter long before they moved him into his own apartment.



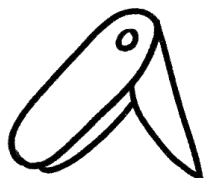
Having sheltered outside for the past few weeks, Kamran's first order of business was to catch up on his sleep. He plugged his phone into the outlet next to his bed and had his first dry, warm sleep in weeks. Upon waking up, Kamran noticed his phone and charger were no longer plugged into the wall.³⁹² He checked his bags, bins, and pockets. He checked with staff who said they would keep an eye out for it but reminded him that he was responsible for his own belongings. Feeling that his belongings were no longer safe, he immediately became worried about his father's knife. He asked staff to locate it so he could give it to a friend to hold onto it. After twenty minutes, staff returned from the backroom unable to locate his knife, telling him that he would have to wait until the day manager was in on Monday.³⁹³ Kamran panicked. He felt as though he and his belongings were safer in the encampment, but he didn't want to give up his possibility of getting his own housing. Kamran sat on the edge of his bed weighing the pros and cons of staying in the shelter.



Feeling that his belongings were no longer safe, he immediately became worried about his father's knife.



Standards that govern possessions of people in shelters



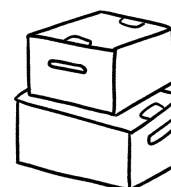
Shelters are often guided by shelter standards frameworks enacted by provinces or municipalities, such as the Toronto Shelter Standards (TSS),³⁹⁴ or the BC Housing Emergency Shelter Program Framework.³⁹⁵ These frameworks are implemented to ensure quality of service, consistency across the shelter system, and a clear set of expectations and minimum requirements for shelter users.³⁹⁶ and are meant to guide shelter policies and procedures included as part of a program agreement between the shelter provider and the city or province. However, these frameworks lack enforceability and operate only insofar as they do not interfere with existing federal, provincial, municipal laws, bylaws, regulations, and codes.³⁹⁷ Some standards frameworks state that shelters funded or operated by the City are "required to adhere"³⁹⁸ to the shelter standards, and others include checklists for site compliance reviews for shelter certification³⁹⁹ or audits,⁴⁰⁰ however offer no indication of if or how these standards would be enforced.

Shelter standards frameworks often include personal storage for shelter-users as an essential or basic service requirement⁴⁰¹ and lay out standards regarding confiscation and storage of medications, harm reduction supplies, and weapons. Others consider personal storage as an "important aspect to consider"⁴⁰² in the context of safety and security of residents, but instead leave a significant regulatory gap and put the responsibility on shelter residents to "respect the private property and belongings of others" and to "maintain their own personal belongings".⁴⁰³

In Ontario, shelter standards frameworks require shelters to have policies and procedures in place laying out their service restrictions (e.g. unplanned discharge, eviction) and appeals process.⁴⁰⁴ Service restrictions can result from missed curfew, assault, violence, possession of a weapon, substance use, trafficking drugs, or other actions that compromise staff and client health and safety depending on the shelter's policies and the jurisdiction's shelter standards guidelines.⁴⁰⁵ Additionally, the TSS guidelines and Ottawa Emergency Shelter Standards (OESS) highlight a requirement for shelter providers to develop policies around retrieval, storage, and disposal of belongings in the event of a shelter discharge. However this requirement is made without explicitly suggesting what those policies and procedures should be.⁴⁰⁶

Storage in Shelters

Shelters offer only marginally more security of belongings than found on streets or parks. This can be seen in restrictions in the amount of belongings people are permitted to keep in the shelter, the timeframe in which they can store their belongings, their autonomy over the items stored, and the limits on the shelter provider's liability and thus security of the storage itself.



Rules limiting the amount of personal property a shelter-user may bring into a shelter have become commonplace.⁴⁰⁷ Shelter-users are often restricted to two bags or plastic tote bins, a trend seen especially when decamping residents into temporary indoor situations.⁴⁰⁸ Limits on personal belongings and lack of storage have been raised as discrimination under human rights codes. In *Pressello v Union Gospel Mission*,⁴⁰⁹ the complainant, a person with disabilities, argued that a lack of storage they experienced when others served by the Union Gospel Mission have available storage, amounted to discrimination. The claim was dismissed because Union Gospel Mission was able to demonstrate that their code of conduct stated that daytime storage is not available, that items left behind would be discarded, and that the storage they did offer was for a substance use treatment program separate from the shelter program. In *Ferron v Governing Council of Salvation Army*⁴¹⁰ the complainant argued that he had been discriminated against for being evicted from a shelter without notice for having "too much stuff" when it was commonplace for shelter-users to violate policies regarding personal belongings. The claim was dismissed because the application was filed after the one-year limitation period had passed, because of a lack of evidence, and because of a determination that the complainant was a vexatious litigant.

When shelter users are able to access the storage options provided by shelters, there remain concerns about the security of and personal autonomy over their belongings, especially money or personal identification.⁴¹¹ Shelter intake processes often include notice of a shelter provider's right to dispose of resident belongings in certain circumstances⁴¹² and their limited responsibility over shelter-users' property.⁴¹³ Further, when items are stored by staff, residents lack control over ready access to their belongings, as they are only available when shelter workers have time to access them.⁴¹⁴ Additionally, cases discussing shelter employment standards have demonstrated arbitrary, insecure storage of shelter-user property.⁴¹⁵

Lack of sufficient and secure storage within shelters has proven to be a major barrier to shelter users. Shelters that do not offer sufficient storage, or any daytime storage at all, force shelter users to carry their belongings with them, or risk having them confiscated and destroyed by municipal actors. Shelters that do offer storage are held to minimal regulatory requirements regarding that storage, often leading to storage solutions that are inadequate, insecure, and impractical for shelter users, putting their belongings at risk of theft, or disposal by shelter providers.



A 2011 British Columbia government report determined that that many benefits emerged when people had storage space when they were transitioning between housing, homelessness, and back to housing.⁴¹⁶ Despite the project being considered successful, it was discontinued on a long-term. More recently, in 2018 the City of Victoria approved an allocation of funding to a local drop-in centre to build

and operate a storage facility for up to 100 unhoused and precariously housed people.⁴¹⁷ The model was based on a similar operation run by a ministry society in Vancouver, which itself unfortunately was shut down in 2019 due to funding and flooding issues.⁴¹⁸ The ministry society worked to install lockers for their 60 upstairs shelter residents, but many people were left without storage options. Even these kinds of ad hoc operations, as important as they are, out of necessity need to limit when people can access their belongings and how much they can store at any given time. The difficulty that these different organizations have on the ground in trying to address the issue of storage space for the people they serve highlights the need for greater government investment in the infrastructure and operational costs involved in maintaining accessible storage options.

Theft and Confiscation in Shelters

Intimately connected with lack of sufficient, secure storage in shelters is the occurrence of theft. Theft in shelters has long been cited as a problem by shelter-users and researchers, with incidents ranging from storage lockers being broken into⁴¹⁹ to shelter-users being forced to sleep on top of their belongings to keep them from being stolen.⁴²⁰ Theft in shelters is a common reason unhoused individuals gravitate towards the streets rather than shelters, even in extreme weather.⁴²¹ In a study of affidavits collected from encampment residents in Victoria in 2016, theft in shelters was determined as one factor that made shelters a “site of systemic failures” essentially “forcing [people] to shelter outside”.⁴²² Although shelter users are often guilty of theft, a generalized lack of security and storage in shelters can surely be attributed to shelter providers.

While some may assume that theft occurs exclusively at the hands of other shelter users, perceptions of theft occurring at the hands of shelter staff is not uncommon, both by shelter users and fellow shelter employees. In one small claims civil tribunal case, the complainant argued that shelter staff stole his clothing after he was asked to leave the shelter.⁴²³ The complaint, however, was largely ignored due to the fact that he had signed a shelter agreement stating that residents are responsible for their own property, and due to a lack of evidence. In *Headley v City of Toronto*,⁴²⁴ a shelter employee was found to have been wrongfully dismissed after having been accused of theft of client maintenance (rent) payments. Although the accused has found not to have stolen client funds, the court found that theft was a regular occurrence at the shelter and that the shelter lacked consistent procedures for storing and tracking client money.

Confiscation of certain classes of belongings by shelter employees enforcing shelter protocols is also noteworthy. In some jurisdictions, shelter standards state that shelter employees should not prohibit or confiscate life-saving medications or naloxone, hormones for transgender clients, or harm reduction supplies.⁴²⁵ Conversely, some jurisdictions require shelter-users to “hand over” illegal substances and prescription drugs at risk of eviction from the program.⁴²⁶ Shelter standards frameworks generally require abstinence-based shelters to inform clients of their prohibition on alcohol and drugs prior to admission into the shelter so confiscation is a known part of the program.⁴²⁷ Regardless of if a shelter resident agrees to these terms, the confiscation of substances, prescription or otherwise, could have significant impacts on a shelter user’s mental and physical health and wellbeing. Similarly, weapons prohibitions permit shelter employees to confiscate items deemed to be dangerous for the general safety of shelter users. However, shelter standards around weapons or prohibited items often permit shelters to refuse admission if a potential client does not consent to a search of their belongings, and permits shelter employees broad discretion in refusing to admit a person if they have reasonable grounds to believe the client has a prohibited item.⁴²⁸

Implications of Theft and Confiscation in Shelters

The actual or possible theft or confiscation of shelter users’ personal belongings have implications ranging from emotional and psychological impacts, to losses that affect a person’s ability to survive, to state decisions regarding a person’s personal autonomy. The possessions of precariously housed individuals “not only [help] them live but can also be part of who they are as persons”.⁴²⁹ As such, the loss of any personal belongings can have significant negative effects on the emotional and psychological well-being of shelter-users. Additionally, the loss of survival supplies such as tents⁴³⁰ or other critical items such as sleeping bags, food, clothing, identification documents, and medication can directly impact a person’s ability to survive.⁴³¹ In one case, an individual with an acquired brain injury had a computer and other possessions stolen while staying in a shelter.⁴³² Losing his belongings played a part in a determination of incapacity and subsequent guardianship transferred to the Ontario Public Guardian and Trustee. This determination was made because of his perceived inability to manage his property that was stolen in the shelter, but also because during his capacity assessment he lacked his glasses, and in particular, his laptop which he used as an “aid to compensate for some of the repercussions from his [brain] injury” such as short term memory loss.⁴³³



Theft and the devastating impacts theft has on people experiencing homelessness could be effectively addressed with sufficient, secure storage within shelters, provided by other non-profit or governmental actors in other settings, or more effectively, by offering accessible and affordable housing. Additionally, shelter standards frameworks could extend to requiring shelters to provide sufficient indoor and outdoor secure storage to ensure that shelter-users are not further marginalized through the further loss of personal property.

3. Rooming houses with shared amenities

Multi-tenant housing (also known as ‘rooming houses’ or ‘dwelling houses’) are tenancies characterized by shared facilities, usually kitchens or washrooms, between three or more people who pay rent individually.⁴³⁴ Rooming houses are privately-owned and run dwellings. Rooming houses “provide deep affordability... [to] members of some of the most vulnerable groups”.⁴³⁵ In some jurisdictions rooming houses are covered under landlord-tenant legislation, but remain unlicensed and therefore unregulated, meaning the arrangements in rooming houses can be fluid and include power imbalances. The unique arrangement of rooming houses and the mix of enforcement and licensing mechanisms that govern them

can lead to confusion regarding tenant's rights which often has implications on a tenant's ability to retain and access their personal belongings.

Rooming houses where a tenant lives with and shares a bathroom and/or kitchen with the owner or owner's family⁴³⁶ are not included in landlord-tenant legislation in both Ontario and British Columbia. Living in housing arrangements that are exempt from landlord-tenant legislation means that individuals may lack certain tenant-based rights to their personal belongings, or lack clarity as to what their rights are. This can happen despite paying rent or participating in formal agreements similar to those between a recognized tenant and landlord. The following tribunal decisions demonstrate the complicated reality of determining if landlord-tenant laws apply to a rooming house, and in some instances, the implications this can have on a person's belongings.

In a 2014 BC Residential Tenancy Board decision, a renter's application to recover the value of belongings withheld in a wrongful eviction was dismissed because the landlord lived in the rooming house part time.⁴³⁷ Despite a signed agreement, it did not fall under the residential tenancy legislation and the renter had no means to mediation. The renter was evicted, had their belongings removed, destroyed, and some items retained by the landlord for non-payment of rent.⁴³⁸

In other instances, residential tenancy legislation was found to apply even though the landlord lived in the same building. In a 2016 Ontario Landlord Tenancy Board (LTB) decision, the owner of a rooming house moved back into the home after having given the tenant exclusive use of the unit. Upon moving back in, the owner restricted the tenant's access to their belongings, and eventually evicted them under the claim that the tenant lacked rights under the ON RTA by sharing the unit with the owner. The LTB decision led to the tenant being awarded damages for wrongful eviction. However this occurred after the tenant had already been detained by police and experienced significant stress due to the lack of clarity regarding rooming house designation based on the owner's use of the property. A 2015 BC Residential Tenancy Board decision stated that because the landlord did not use the same shared bathroom or kitchen facilities as the tenant, the BC Residential Tenancy Act ("BC RTA") was found to apply.⁴³⁹ In an Ontario LTB decision, the landlord began using the tenant washroom more frequently after having a stroke, despite having her own personal bathroom in the house.⁴⁴⁰ Focusing on the wording of the ON RTA provision, because the tenant was not "required" to use the same washroom (because the landlord had their own bathroom), it was decided that the ON RTA applied.

Although rooming house tenants living with their landlord generally lack access to landlord-tenant legislation, they can potentially still rely on the validity of the contract related to their residency, as was the case in *Chehresaz v Sadegh Khalesi*.⁴⁴¹ In this case, the court awarded damages to the tenant for the landlord's lack of reasonable notice of termination of contract, lack of duty of good faith in performance of contract, and for the tort of conversion in the landlord's holding of the tenant's laptop.

In addition to being excluded from residential tenancy legislation, people living in rooming houses with shared amenities with the owner or owner's family are also unable to rely on provincial human rights legislation. The BC *Human Rights Code* and the Ontario *Human Rights Code* contain explicit provisions that exclude these types of rooming house situations from the same anti-discrimination protections offered to tenancies.⁴⁴²

4. Legal decisions impacting people's belongings in non-tenancy accommodations

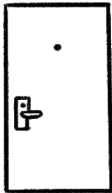
The legal ambiguity surrounding shelters and other accommodations that do not fall under provincial residential tenancy legislation means that caselaw in this field is not as developed as it is for parks and street spaces, especially in regards to the impacts on peoples belongings. Decisions regarding people's belongings in these settings have been made at various levels, from small claims courts and BC's Civil Resolution Tribunal, to human rights tribunals, to BC and Ontario Supreme Court, and even residential tenancy administrative tribunals. Below are some notable cases from BC and Ontario that have implications on people's belongings in shelters and other non-tenancy accommodations.

Since *Victoria (City) v Adams*,⁴⁴³ particular focus has been paid to the availability of shelter spaces relative to a municipality's ability to enforce laws, bylaws, and be granted injunctions to dismantle encampments. However, a minimal count of whether there are sufficient shelter spaces fails to consider the quality or suitability of these shelter spaces.⁴⁴⁴ Further, it is not always possible to conduct 'quantitative assessments' given the specific needs of those living in encampments, including the degree to which shelters store and secure people's belongings.⁴⁴⁵

More recently, courts have held that the number of shelter spaces must also be truly accessible and suitable in order for cities to be permitted to dismantle encampments based on the number of available shelter spaces.⁴⁴⁶ Particularly in *Bamberger*, when determining not to grant the City of Vancouver an injunction to dismantle an encampment at CRAB Park, the court recognized a lack of storage within and outside of shelters and its implications on finding accessible, suitable shelter.⁴⁴⁷ This holding suggests that a lack of accessible storage within shelters, or more broadly within municipalities, could be understood as a reason shelters are not accessible in the context of municipalities seeking injunctions to close encampments, and in Constitutional challenges to existing legislation.

An Ontario Small Claims Court case, *Chehresaz v Sadegh Khalesi*,⁴⁴⁸ was relevant for the decision that rooming house residents who do not have rights as tenants can still rely on the validity of their residency contract with the rooming house owner. While the resident did not have the protections of their belongings that are offered through residential tenancies legislation, the court awarded damages to the tenant for the landlord's lack of reasonable notice of termination of contract, the landlord's lack of duty of good faith in performance of contract, and for the tort of conversion in the landlord's holding of the tenant's laptop.

This same principle has been applied in the context of transitional housing in a decision of the BC Civil Resolution Tribunal ("CRT") in *Semenoff v Many Ways Home Housing*.⁴⁴⁹ Being exempt from the BC RTA, the CRT was found to have jurisdiction to resolve the dispute. The CRT is an entirely online tribunal with



jurisdiction over small claims under \$5000, motor vehicle accidents with minor injuries, strata bylaws, and non-profit and housing associations. Despite the lack of a written rental agreement, the parties maintained a binding contract which was violated by the non-profit entity when they evicted Mr. Semenoff without notice. Upon his eviction, the housing provider offered to send his belongings to a shelter. He stated that he did not want his belongings shipped to a shelter because of the shelter's lack of secure storage. However, because the housing provider offered to ship his belongings to a shelter and thus made his belongings available to him, they were found to be not liable for the cost of the eventually discarded belongings. Additionally, Mr. Semenoff was denied his \$250 deposit in part because of the housing provider's assertion that they were required to take contaminated items to the dump. This case demonstrates the shifted jurisdiction of residencies that are not covered under landlord-tenant law, and the ways that courts and tribunals devalue the belongings of precariously housed individuals.

Provincial human rights legislation can address issues of discrimination in services customarily available to the public, including housing and other accommodations. However human rights law explicitly excludes rooming houses where the tenant shares the space with the owner or owner's family. Seeking remedy through human rights tribunals for loss of personal belongings requires that people establish that discrimination occurred based on a recognized grounds such as race, disability, or gender identity which can raise evidentiary issues. In an Ontario Human Rights Tribunal case *Ferron v Governing Council of Salvation Army*,⁴⁵⁰ the complainant argued that he had been discriminated against for being evicted from a shelter without notice for having "too much stuff" when it was commonplace for shelter-users to violate policies regarding personal belongings. The claim did not go forward, having been determined to have no reasonable prospect for success because the application was filed after the one-year limitation period had passed, and because of a lack of evidence that the eviction was related to a protected grounds under Ontario's *Human Rights Code*.

5. Conclusion

As shelters and certain rooming house arrangements are explicitly exempt from residential tenancies legislation, people in these accommodations lack the same rights and protections over their tenure and their belongings as do people in recognized tenancies. This is despite the fact that many emergency shelter and rooming house options require both contractual agreements and monthly maintenance/rent payments. This lack of regulation leaves many precariously housed people with less security and less clarity as to their rights to their personal property.

While many jurisdictions have developed shelter standards frameworks to ensure that shelters provide consistent services with opportunities for resident input and complaints processes, these frameworks often lack enforceability and the types of clear provisions that constitute governmental statutes such as residential tenancies legislation. If shelters and certain rooming houses are to remain exempt from residential tenancies legislation, other legislation regulating a person's rights to personal belongings, storage, and privacy should be considered by municipal and provincial governments guided by relationships with local Indigenous communities and governments.

As theft in shelters is a significant barrier to safety and effectiveness of shelters, sufficient and secure storage options within shelters or offered separately by municipal, non-profit, or subsidized private storage programs could address these concerns. Documents released by BC Housing such as the *Shelter Design Guidelines*⁴⁵¹ recommend the provision of adequate indoor and outdoor storage in new or retrofitted shelter buildings. However these documents lack the legislative power to require secure storage in shelters. As the personal property of shelter-users and other precariously housed individuals is often important to their mental wellbeing and physical survival, shelter providers and municipalities should prioritize storage space to ensure shelters achieve their functional purpose of a safe place for precariously housed individuals. The locations and rules governing use of storage should be designed so as to maximize users' accessibility.

Appendix: Legal Cases

Non-Tenancy Accommodations - Legislation and Regulations Impacting People's Possessions

Jurisdiction: British Columbia

Law/Bylaw/Rule

Purpose

[Residential Tenancy Act, SBC 2002, c 78](#)

To outline rights and responsibilities of landlords and tenants including what constitutes a tenancy, steps to be taken at the beginning of a tenancy, how to act during a tenancy and how to end a tenancy.

[Residential Tenancy Regulation, BC Reg 477/2003](#)

To detail landlord duties and rights including rent increases, abandonment of property, penalties, and evictions.

Assistance to Shelter Act, SBC 2009, c 32	To regulate the implementation of emergency shelter programs in extreme weather events.
Unclaimed Property Act, SBC 1999, c 48	To reunite owners with their unclaimed property held by government and regulate the duties of holders of unclaimed property.
Community Care and Assisted Living Act, SBC 2002, c 75	To provide licensing for community care facilities for vulnerable populations in residential settings.
Human Rights Code, RSBC 1996, c 210	To ensure that people can participate equally in economic, social, political and cultural life by forbidding discrimination based on certain personal characteristics in areas of daily life.
BC Housing Emergency Shelter Program Framework	To outline program elements, standards and guidelines, and defines the roles and responsibilities of shelter providers.
Community Charter, SBC 2003, c 26	To incorporate the municipalities across BC and outline areas of authority including bylaw enforcement and other regulatory powers.

Jurisdiction: Vancouver

Law/Bylaw/Rule	Purpose
Police (Disposal of Property) Regulation, BC Reg 87/91 (under the Police Act, RSBC 1996, c 367)	To outline rights of police departments to dispose of abandoned or found property and limit liability from damages
Building By-Law No 12472	To regulate standards for fire safety in buildings and facilities and to adopt the provincial fire code.
Fire By-law No 12472	To regulate standards for fire safety in buildings and facilities and to adopt the provincial fire code.

Jurisdiction: Ontario

Law/Bylaw/Rule	Purpose
Residential Tenancies Act, 2006, SO 2006, c 17	To outline rights and responsibilities of landlords and tenants including what constitutes a tenancy, steps to be taken at the beginning of a tenancy, how to act during a tenancy and how to end a tenancy.
General Regulations, O Reg 516/06	To detail landlord duties and rights including rent increases and specify definitions of certain tenancies.
Housing Services Act, 2011, SO 2011, c 6, Sch 1	To provide planning and delivery of housing and homelessness services.

Human Rights Code, RSO 1990, c H.19

To ensure that people can participate equally in economic, social, political, and cultural life by forbidding discrimination based on certain personal characteristics in areas of daily life.

Ontario Fire Code, O Reg 213/07

To regulate safety for building occupants by eliminating fire hazards and establishing of fire safety plans.

Jurisdiction: **Toronto**

Law/Bylaw/Rule

Purpose

Municipal Code Chapter 629, Property Standards

To regulate, prohibit, impose duties on private property owners regarding maintenance of indoor and outdoor areas.

Toronto Shelter Standards

To and provide shelter users with a clear set of expectations, guidelines, and minimum requirements for the provision of shelter services.

Jurisdiction: **Ottawa**

Law/Bylaw/Rule

Purpose

Ottawa Emergency Shelter Standards

To regulate consistent shelter programming, ensure minimum standards, and provided a tool for accountability.

Jurisdiction: **Hamilton**

Law/Bylaw/Rule

Purpose

Blueprint for Emergency Shelter Services

To develop a sustainable system to better support homeless people as they move to permanent housing.

Jurisdiction: **London**

Law/Bylaw/Rule

Purpose

City of London Emergency Shelter Guidelines

To provide a consistent service framework for shelter providers.

Shelters and Non-tenancy accommodations – Examples of how courts have decided cases related to shelters and personal belongings

Case: **Victoria (City) v Adams, 2009 BCCA 563**

Relevant Issue

Outcome

When the number of homeless people exceeds the number of available shelter beds, does a bylaw that prohibits homeless people from erecting temporary shelter at night violate their constitutional rights to life, liberty and security of the person under s. 7 of the *Canadian Charter of Rights and Freedoms*?

Parks bylaw found to violate s. 7 rights and was not justified under section 1 of the *Charter*. The ruling was contingent on the fact that (1) the City had insufficient shelter spaces, and (2) that if other accommodation were available the bylaw sections may have been valid. The court narrowed the ruling to night-time sheltering only.

Case: [Bamberger v Vancouver \(Board of Parks and Recreation\), 2022 BCSC 49](#)

Relevant Issue

An encampment at a public park on federal port land leased by the City is ordered to close by way of the *Parks Control By-law*. Encampment residents seek judicial review of the orders. Parks Board seeks injunction to compel encampment residents to comply with orders.

Are the Parks Board's orders for eviction valid and enforceable?

Outcome

Application for judicial review granted. Parks Board application for injunction adjourned pending the judicial review.

Court acknowledges impacts of a daily decamping requirement; recognizes that lack of storage, sheltering options make moving belongings a significant hardship.

Case: [Chehresaz v Sadegh Khalesi, 2015 CanLII 8736 \(ON SCSM\)](#)

Relevant Issue

Can a resident of a rooming house that is exempt from residential tenancy legislation seek a remedy in small claims court?

Outcome

Rooming house residents who do not have rights as tenants can still rely on the validity of their residency contract with the rooming house owner. While the resident did not have the protections of their belongings that are offered through residential tenancies legislation, the court awarded damages to the tenant for the landlord's lack of reasonable notice of termination of contract, the landlord's lack of duty of good faith in performance of contract, and for the tort of conversion in the landlord's holding of the tenant's laptop.

Case: [Semenoff v Many Ways Home Housing Society, 2021 BCCRT 362](#)

Relevant Issue

Can a resident of transitional housing seek a remedy in small claims court?

Outcome

Being exempt from the BC RTA, the BC Civil Resolution Tribunal was found to have jurisdiction to resolve the dispute. Despite the lack of a written rental agreement, the parties maintained a binding contract which was violated by the non-profit entity when they evicted Mr. Semenoff without notice.

However, because the housing provider offered to ship his belongings to a shelter and thus made his belongings available to him, they were found to be not liable for the cost of the eventually discarded belongings. Additionally, Mr. Semenoff was denied his \$250 deposit in part because of the housing provider's assertion that they were required to take contaminated items to the dump.

Analysis



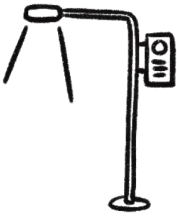
What We Know

Four major findings regarding precariously housed and unhoused people in regard to their personal belongings emerge from analyzing the case law, legislation, and research:

1. There is a lack of safe and secure places to keep the belongings of precariously housed people.
2. Routine and frequent seizure and destruction of belongings by officials and private actors under various statutes, bylaws and rules is widespread.
3. The seizure and destruction of precariously housed people's belongings exacerbates and perpetuates vulnerability.
4. There are a lack of remedies available to precariously housed people.

1. There is a lack of safe and secure places to keep belongings of precariously housed people

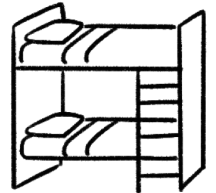
Lack of secure places on streets and in parks



Precariously housed people lack access to safe, adequate, and secure places to keep their personal belongings due to the lack of secure tenure to land. This lack of security of belongings means that precariously housed people have limited control over their belongings, in many cases forcing them to move their personal property on a daily basis to avoid impound or theft. Others are legally empowered to make decisions regarding precariously housed people's belongings. The lack of security of belongings experienced by unhoused people depends on and is informed by the category of space they occupy, and the formal and informal rules that govern that public or private space. Public land is regulated through municipal legislation specific to parks, streets, and in some jurisdictions, vacant city-owned property, and through provincial legislation that governs unclaimed property. Private land and personal property on private land is regulated through provincial trespass legislation and municipal property standards bylaws that outline the public responsibilities of private property owners. As a result, many unhoused people are obliged to carry all their personal belongings with them.

Lack of security of belongings in shelters

Existing in between the public and private realms, shelters and transitional housing offer the impression of stability and security for person and possession. However, the fact that shelters offer minimal secure storage ⁴⁵² (and at times no daytime storage capacity whatsoever ⁴⁵³) and that they are exempt from residential tenancy legislation, means shelter-users' rights differ little from those they have on the streets; they are at risk of theft and loss of belongings under shelter regulations and rules. Shelter standards frameworks which include loose requirements for storage, policies regarding storage of belongings upon client discharge, and other procedures, lack the teeth to ensure shelter residents are guaranteed adequate storage and rights mechanisms. As such, shelter-users often see encampments as the only place they can keep their belongings safe from theft and thus often choose them over shelters, despite risks of municipal enforcement through bylaws or injunctions. ⁴⁵⁴



Precarious housing leads to vulnerability of belongings

Laws and regulations that govern people in precarious housing situations, whether their accommodations are covered by landlord-tenant legislation or not, purport to offer security of belongings. In reality they include broad regulatory gaps that leave people vulnerable to the loss of personal property. While tenants of rooming houses and SROs, some of the only affordable options in cities like Toronto and Vancouver, are protected by landlord-tenant legislation, in practice, misaligned provincial and municipal statutes often leave tenants unsure of their rights, and are vulnerable to power imbalances between landlord and tenant. Rooming house tenants in Toronto, for example, may live in a district where rooming houses are illegal according to municipal bylaw yet covered under provincial landlord-tenant legislation, leaving them unsure which regulatory body could best meet their needs without risking their tenancy, and in turn, the security of their belongings. Municipal complaints mechanisms then become predominantly used by neighbouring home-owners reporting rooming houses that are unregistered or in neighbourhoods that ban them altogether, rather than by tenants of rooming houses for substandard maintenance. ⁴⁵⁵ The lack of clarity and understanding of tenancy rights, created in part by misaligned municipal and provincial legislation, means that the few benefits afforded to precariously housed tenants through residential tenancy legislation are often neglected, thus creating further precarity for their tenancies and personal property.

2. Routine and frequent seizure and destruction of belongings by officials and private actors under various statutes, bylaws and rules is widespread



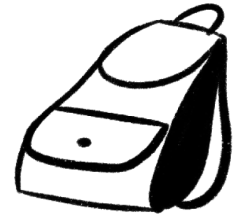
As precariously housed and unhoused people generally lack title to land upon which they can store and control their possessions, they are more likely to experience heightened exposure to municipal and provincial legislation. In practice, this municipal and provincial legislation permits government workers, landlords, and governmental or non-profit housing and shelter employees to seize or destroy belongings if they are determined to be in the wrong place at the wrong time. This creates a widespread matrix of overlapping control. For those sheltering outside, this is done through street sweeps, daily displacements, and in the case of larger encampments, through court ordered injunctions (in BC) or wider scale enforcement (in Ontario). For those in shelters, this is done through program or shelter agreements that limit shelter providers' responsibility and permit them to dispose of personal property in certain circumstances,⁴⁵⁶ and shelter programs that lack storage leading to loss and theft of belongings. For those precariously housed in rental agreements, although some protection exists through landlord-tenant legislation, complicated municipal and provincial regulatory worlds mean that people in SROs, rooming houses, transitional or supportive housing, or other housing arrangements not covered by residential tenancies acts are left vulnerable to loss of tenancy and loss of belongings.

The seizure and destruction of poor peoples' belongings is intensified by several factors: the visibility of precariously housed and unhoused individuals forced to tote around their belongings; the broad discretion exercised by those enforcing the legislation and the related stigma towards both people experiencing poverty and their belongings; the lack of clarity that accompanies the various regulatory schemes and enforcement tactics; and an understanding of colonization and the impacts of enforcement and displacement of Indigenous populations.

Regulatory controls of precariously housed people's belongings exist in all the spaces – public and private – that people access and use. As a result, people and their belongings are constantly at risk of seizure and control by others. The daily need to negotiate this matrix forces precariously housed people to make impossible and unsustainable choices regarding their possessions. This flowchart [add link] sets out these very difficult challenges.

Visibility

Precariously housed and unhoused people's belongings are particularly vulnerable because of their material visibility. Regulation such as municipal bylaws tend to focus less on the person, due to understandable equality concerns, than on material objects. Thus, while it may not be an offence for a visibly poor person to occupy a public park, given the repeal of vagrancy laws, the placement of their belongings may become legally targeted. The same municipal and provincial laws that make it extremely difficult to exist with personal property in parks, on streets, and on certain forms of private property, permit municipal workers to immediately seize and destroy the belongings of unhoused people forced to shelter outdoors.⁴⁵⁷ This is illustrated in *Grand Forks (City) v Jennings*,⁴⁵⁸ where the visibility of a family living out of a van led to housed residents pressuring government officials to enforcement and eventually seeking an injunction. Visibility attracts enforcement of streets and parks bylaws that target unhoused people, such as daytime sheltering bans. Enforcement perpetuates vulnerability through loss of belongings, fines, and displacement which contributes to further visibility. Municipal and provincial legislation regulating a person's ability to exist in public and private space, therefore, constitutes a cycle of enforcement creating vulnerability which leads to more enforcement.



The connection between visibility and enforcement is still an issue for people using shelter programs. As shelters often lack secure places for people to keep their belongings, shelter-users are still expected to carry the majority or entirety of their belongings with them during the day, making them more visible and therefore more vulnerable to enforcement. This means that shelter-users are subject to both the rules and restrictions on their belongings in both shelters and on the streets, and in some sense could put their belongings doubly at risk of being destroyed.⁴⁵⁹ When people are housed or able to access storage, visibility become less of an issue.

Discretion and Stigma

Related to visibility, enforcement mechanisms include subjective processes that can often be informed by public stigma towards people experiencing poverty and their personal property. Enforcement agencies are afforded discretion when determining which personal possessions are retained, spared, or stored, and which are impounded or destroyed. Words and phrases such as 'obstruction', 'garbage', 'offensive', 'unmarketable', 'unsafe', and even 'value under \$500' are codified in provincial tenancy legislation and municipal bylaws, permitting government enforcement and private landlords to make value judgements regarding people's personal belongings without transparency or accountability regarding how those are determined. While legislation that lacks space for any discretion can create problems of its own, legislation that permits broad discretion by enforcement entities, paired with the stigma that exists towards people experiencing poverty and their belongings, can lead to people's possessions being destroyed based on outsider perspectives that may not take into account sentimental, emotional, survival, or other individual reasons for holding onto certain possessions.⁴⁶⁰

Lack of Transparency

The lack of transparency and consultation during periods of enforcement, transition, or decampment, have impacts on people and their personal belongings. These periods are often characterized by lack of clear communication regarding what rights a person has to their belongings, how much they are able to take with them, and what their rights are in the new location.⁴⁶¹ This was seen in the transition of encampment residents to the Knights Inn in Prince George in 2021 where the belongings of encampment

residents were destroyed without warning and with little time to gather belongings after people had been relocated to an indoor space.⁴⁶²

Tenants in precarious housing settings such as rooming houses, SROs, supportive housing, and transitional housing, also experience lack of clarity regarding whether their tenancy is covered by residential tenancy legislation, meaning they are often unaware of whether their belongings are protected by the few provisions meant to protect tenants and their belongings. Further, in certain jurisdictions, unclear overlapping and misaligning provincial and municipal laws regarding tenancies means that people are often unaware of their rights as tenants, and of the most appropriate place to address complaints and concerns.

Some of this uncertainty can be attributed to communication breakdowns between levels of government (e.g. provincial landlord-tenant legislation and municipal housing bylaw enforcement) as well as within governments (municipal bylaw enforcement and police services). For example, public and social services systems are not designed to work in conjunction with landlords, landlord-tenant legislation, or its entities, and because of this, tenant stability and personal property rights are thereby impacted. Additionally, lack of clarity in enforcement can at times be attributed to the level of discretion granted to enforcement entities, meaning people are left guessing how laws will be enforced.

Colonization, displacement, and property

Statutes, bylaws, and rules that permit officials to seize and destroy the belongings of precariously housed and unhoused people must be considered in the context of historic and ongoing colonialism and displacement of Indigenous people across the continent. Canada's history of settler colonialism has included laws and policies with the ideology of removal, displacement, dispossession, and genocide of thousands of unique Indigenous communities.⁴⁶³ Canada's major urban centres are "crucial sites of displacement" of what were often historic Indigenous communities due to "rich access to resources" and transportation.⁴⁶⁴ This seizure of land and resources, and simultaneous displacement of Indigenous communities, is a purposeful tool of advancing colonial economic objectives.⁴⁶⁵

Contemporary laws that displace precariously housed and unhoused individuals have their roots in these colonial policies of displacement, seizure, and extraction. While contemporary municipal bylaws that restrict sheltering in parks or on sidewalks are not exclusively directed at Indigenous populations, the reality is that a disproportionate number of Indigenous people experience homelessness and poverty⁴⁶⁶ and thus these laws continue to disproportionately impact Indigenous people. Additionally, statutes that perpetuate displacement, seizure, and destruction of belongings are rooted in colonial concepts of land and property that ignore Indigenous legal traditions and concepts of land, treaties, and the fact that much of what is known as Canada is unceded territory.

Understanding the current regulatory matrices that exist in cities regarding the personal belongings of people experiencing poverty and homelessness can only be done when one understands context of historic and ongoing genocide of Indigenous peoples.

3. The seizure and destruction of precariously housed people's belongings exacerbates and perpetuates vulnerability

The impacts of laws, bylaws, and rules that target precariously housed and unhoused people through impound, disposal, and theft of their belongings causes harm and trauma, and intensifies existing forms of vulnerability. The effects of these laws are counterproductive to their presumed intended goals of deterring certain behaviours in public space and addressing visible homelessness. Instead, these laws criminalize the condition of poverty and exacerbate the condition of homelessness. Not only are these various statutes, bylaws, and rules financially unsustainable for people who are forced to continue to purchase or source new belongings, and for the organizations and branches of government that offer material and financial support,⁴⁶⁷ they actively cause harm to those people frequently subjected to their enforcement. Interconnected physical and mental harms caused by the loss of belongings intensify and lengthen people's experiences of homelessness and marginalization by impeding their ability to secure stable arrangements such as shelter, employment, food, and health services. The seizure and destruction of poor people's belongings is counterproductive, unsustainable, and actively perpetuates vulnerability of people already experiencing poverty and housing precarity.

Physical harms and vulnerability



When precariously housed and unhoused people have their personal belongings seized and destroyed by government actors it increases their experiences of marginalization through physical harm. The loss of critical survival belongings such as tents, sleeping bags, medication, and food can have significant impacts on one's physical wellbeing by exacerbating health issues.⁴⁶⁸ The loss of mobility aids,⁴⁶⁹ harm reduction supplies and naloxone,⁴⁷⁰ and both legalized and criminalized substances can have serious physical impacts such as increased risk of injury, disease transmission, withdrawal, and overdose. Similarly, some people may forego important medical treatment out of fears their belongings would be seized when they were seeking medical care.⁴⁷¹ Beyond the loss of survival supplies, the impound and destruction of people's personal belongings also impact people's ability to earn an income and sustain themselves. Bylaws in certain municipalities target depositing "any quantity of waste on any land",⁴⁷² and other bylaws that target the use of shopping carts⁴⁷³ impacts the financial autonomy of people who engage in recovery of recyclable and other sellable items to generate an income. Loss of phones, government-issued ID, legal and medical documents and laboratory requisitions, and art supplies are other examples of items taken by government actors that impact people's ability to survive, access services, deal with legal matters, and generate income while precariously house.⁴⁷⁴ All these physical harms caused by the seizure and destruction of personal possessions increases vulnerability by requiring people to perpetually spend their time and energy on ensuring their physical survival.

Mental/Emotional/Psychological harms and vulnerability

There is an intimate connection between physical and mental harms caused by the seizure and disposal of the personal belongings of precariously housed and unhoused people. The loss of survival supplies and shelter, such as through the seizure of a tent or impound of a vehicle used for sleeping, directly impacts a person's physical wellbeing, and relatedly, impacts their feelings of safety of having a relatively stable place to sleep, live, and shelter from the elements.⁴⁷⁵ The impound and destruction of any belongings with emotional value, whether or not they are integral to one's immediate physical survival, can have lasting mental, emotional, and psychological impacts through feelings of hopelessness, constant stress, alienation, and community breakdown.⁴⁷⁶ This can be seen in the loss and seizure of cellphones, family photos and heirlooms, cultural objects, personal journals and art, a deceased relative's ashes, and pets.⁴⁷⁷ Regardless of what the object is, the loss of one's belongings can threaten that person's sense of identity, security, and autonomy, making precarious people even more vulnerable.⁴⁷⁸ In addition to actual seizure, the ever-present threat of seizure or destruction of belongings can also create profound harm.

Just as the destruction of personal belongings has impacts on a person's mental wellbeing due to the actual loss of the physical object, the stigmatization informing that process also impacts one's emotional, mental, and psychological well-being. Statutes and bylaws that rely on the discretion of the enforcement entity in determining whether belongings are "unsightly" (Victoria *Property Maintenance* bylaw), "deleterious to the neighbourhood" (Ottawa *Property Standards*), "unmarketable" (BC *Police (Disposal of Property) Regulation*) or filth, junk, or refuse (Victoria *Property Maintenance* bylaw) permit enforcement officials to make value judgments on a person's belongings, and by association on the person themselves. This contributes to further marginalization through both destroying belongings but also through stigmatization of their existence in public space.

Institutional Recognition

Some institutions are beginning to take into the consideration the increased precarity and vulnerability that comes with the seizure and destruction of people's belongings. In recent instances of municipalities seeking injunctions in *Wallstam*, *Courtoreille*, *Bamberger*, and *Johnny*, courts have begun to recognize the physical and mental toll related to loss of belongings and displacement of encampments, even acknowledging it as "serious harm on vulnerable people".⁴⁷⁹ Similarly, shelter standards frameworks in some jurisdictions restrict shelter providers from confiscating certain belongings such as harm reduction supplies, life-saving medicine and naloxone, and hormones for transgender clients,⁴⁸⁰ and Toronto's Interdepartmental Service Protocol for Homeless People Camping in Public Spaces requires staff to sort through materials before clearing a site to look for personal items such as photos, documents, and ID.⁴⁸¹ While these steps acknowledge the importance of certain belongings, they continue to allow enforcement entities to make value judgments regarding what belongings of precariously housed and unhoused people are important, and neglect to consider that the loss of any belongings to government entities amounts to physical and mental harm that perpetuates vulnerability of people already vulnerable as precariously housed or unhoused people. Moreover, the daily practice of regulation may continue to differ from such new mandates.

4. Precariously housed people have few (if any) remedies

Precariously housed and unhoused people have few fair and accessible remedies available to them when their belongings are seized or destroyed by government actors or private entities. Just as there is lack of clarity in how legislation regarding precariously housed people's belongings is enforced, there is similar lack of clarity in what remedies exist when people want to recover their belongings or make a complaint about the process.⁴⁸² When belongings are seized and held by public or private entities, there are rarely clear, formal processes for recovering their belongings, and those options that do exist are often inaccessible. When belongings are destroyed according to (or outside of) the pertinent legislation, there are few avenues available for compensation. Processes that would allow for broader systemic changes, such as police complaints, ombudsperson complaints, or *Charter* challenges also present significant barriers and generally provide no tangible or immediate remedy to the initial loss of belongings. Where remedies do exist, people may not have the ability or willingness to engage in the same bureaucratic systems and processes that resulted in the seizure and destruction of their belongings in the first place.

People exposed to street sweeps have expressed difficulties in recovering their belongings from municipalities,⁴⁸³ in some jurisdictions because of the immediate disposal of the seized items.⁴⁸⁴ Additionally, as some processes would require the attendance of government offices in-person, unhoused people would be required to either leave their belongings behind and risk further seizure or carrying all their belongings with them to ensure their safety. Processes that involve initiating and following up via internet or phone require access to, and the ability to charge a cellular phone, a difficult task for many precariously housed people. Further barriers exist for people with vulnerable migration status, or people with outstanding criminal or civil charges who may fear being reported when accessing certain remedies.

The lack of meaningful remedies means that impound and disposal of people's belongings by governmental actors is effectively the same, and has the same impacts, as theft by other third parties. The seizure and disposal of belongings without the ability to get them back, or without access to compensation if the actions were done contrary to the statute or bylaw, means that the victim is made more vulnerable as a result. While, in theory, there are some remedies available for people whose belongings have been seized or destroyed by government actors, either for the return of their belongings, for compensation for their destroyed belongings, or for systemic changes in legislation or enforcement, in practice these processes are largely inaccessible, lengthy, and rarely amount to the return of a person's belongings.⁴⁸⁵

Return of belongings as remedy

Depending on the circumstances, location, and jurisdiction from which a person's belongings were seized, there may be different processes to recover belongings that have not yet been destroyed. Tenancies offer the most protection, requiring the landlord to hold a tenant's belongings in the event of an eviction or property determined to be abandoned, with the tenant able to approach the local office of the residential tenancies if they have difficulties accessing their belongings.



For precariously housed and unhoused individuals living in accommodations not covered by tenancy legislation, however, there are few clear avenues to recovering belongings seized by the state or non-governmental organizations. Property that is unclaimed or abandoned as determined by city staff or police is held and can be claimed for up to several months, depending on the jurisdiction.⁴⁸⁶ However unclaimed property legislation often does not include methods for the original owner to claim or recover their belongings, and in some cases even waive government liability for the disposal of the property.⁴⁸⁷ For items seized in street sweeps or encampment displacement, lack of transparency means that people are often unaware if their belongings have been seized or destroyed or how to locate their belongings after the fact⁴⁸⁸ in the legislated timeframe.⁴⁸⁹ If the items are able to be retrieved, some jurisdictions require the owner to sign an undertaking agreeing not to place it on a street or sidewalk again, in addition to paying a fine.⁴⁹⁰ People who live in accommodations not protected by landlord-tenant legislation, such as shelters or some rooming house situations, have no direct legal recourse comparable to landlord-tenant legislation and therefore must negotiate directly with the shelter provider or landlord, or pursue other legal avenues such as claims in conversion.⁴⁹¹

In many jurisdictions, 'personal property deemed abandoned' or property seized by city staff in street sweeps or encampment closures must be recovered at police stations or from bylaw enforcement. In some cases, this process requires a person to make an appointment ahead of time, and to provide two pieces of identification, one of which must contain name, date of birth, and a photo.⁴⁹² Many marginalized community members may not feel safe attending a police station or contacting other enforcement entities to recover belongings, although in some jurisdictions they may designate another person to do so.⁴⁹³ In instances when people have been able to recover their belongings from city staff, people have reported that belongings are often missing or damaged.⁴⁹⁴

Compensation as remedy

When a person's belongings are seized and subsequently destroyed, people have the option of seeking compensation through legal avenues such as tribunals or small claims civil court. Landlord-tenant tribunals such as the Landlord Tenant Board in Ontario and the Residential Tenancies Branch in B.C. allow tenants to make a claim for belongings destroyed by a landlord illegally, giving tenants a possibility of compensation for destroyed belongings.⁴⁹⁵ However, for those not covered under landlord-tenant legislation, either in indoor accommodations or sheltering outside, claims for compensation could be made through national⁴⁹⁶ or provincial human rights tribunals, or small claims court.

Human rights tribunals can grant monetary and non-monetary remedies to individuals if they experience discrimination on a protected ground (i.e. age, race, disability, gender identity) or protected social area (i.e. housing, employment). These remedies can include compensation for lost wages, compensation for additional costs of obtaining alternate goods, and compensation for pain and suffering, as well as non-monetary remedies such as a requirement that the person or entity cease the discriminatory practice and make available the rights, opportunities, or privileges originally denied.⁴⁹⁷ However, as a 'social condition' such as poverty is not recognized as a protected grounds in most provinces and territories, precariously housed and unhoused people would only be able to receive compensation for their destroyed belongings if they could prove that they were discriminated against based on a recognized grounds, such as race, disability, or gender identity.⁴⁹⁸ Source of income is a protected grounds in BC and Ontario, however this is only protected in the area of tenancy.⁴⁹⁹

Compensation can also be sought through Small Claims Court in Ontario, or BC's Civil Resolution Tribunal, or other potential civil claims. Small claims court processes generally have a two-year limitation period,⁵⁰⁰ and require evidence to back the claim, which could be difficult to provide in moments of crisis and when people's personal belongings are seized in their entirety. Further, there is a cost of filing claims, however these costs can be waived with proof of low income.⁵⁰¹ Although private law civil claims can lead to compensation for damaged or destroyed belongings, the actions can be lengthy, time consuming, and present significant accessibility issues for unhoused and precariously housed people who often already have limited resources and access to justice issues.⁵⁰²

Other remedies

When precariously housed and unhoused people's belongings are seized and destroyed, they have the option of pursuing remedies that push for broader systemic change, rather than compensation or return of the specific belongings. Police complaints and ombudsperson/ombudsman complaints, as well as potential *Charter* challenges allow for more holistic reviews of legislation and procedures that lead to the destruction of people's belongings, however each option presents certain limitations of time, cost, and re-traumatization, without addressing the immediate issues that arise due to the destroyed personal belongings.

Complaints about police officers can be made directly to the department in question, or to independent police oversight agencies, such as the Office of the Independent Police Review Director (OIPRD) in Ontario,⁵⁰³ or the Office of the Police Complaint Commissioner in BC (OPCC)⁵⁰⁴ and could result in anything from policy changes,⁵⁰⁵ to an officer's reprimand, suspension, or dismissal,⁵⁰⁶ to the allegations being determined as unsubstantiated and thus the case being closed. Complaints, however, cannot be made anonymously and cannot be made against special constables such as transit or campus police.⁵⁰⁷

Complaints or claims about the conduct of bylaw officers or other city staff or the policies that govern them, however, generally lack similar formal processes as police complaint mechanisms. Initially, such complaints must be made through the local government⁵⁰⁸ within two months of the loss in BC⁵⁰⁹ or two years in Ontario.⁵¹⁰ In the event that the person making the claim is not satisfied with the outcome, they could pursue legal action as previously discussed, or a complaint to the local or provincial ombudsperson.⁵¹¹ Ombudsperson/ombudsman investigations can be lengthy, and are only considered if no other complaints process is available, or if other avenues have been exhausted.

Successful and prospective *Charter* challenges have arisen in the context of people's rights to their personal belongings and have had impacts on the success of government injunctions for enforcement against encampments or other forms of visible homelessness. In *R v Tanton* it was held that Mr. Tanton's rights to life, liberty, and security of the person (section 7) and right to be free from unreasonable search and seizure (section 8) were violated when police seized his shopping cart that was located with permission on private property.⁵¹² In *Victoria (City) v Adams* a city bylaw was deemed to violate section 7 *Charter* rights by preventing people from sheltering in city parks overnight.⁵¹³ The potential for future *Charter* challenges (ss 2, 7, 12, 15) in this field have been considered, particularly s7 and s15 (discrimination) regarding daytime sheltering as a protected *Charter* right, and people's rights to their personal belongings.

A *Charter* challenge, however, is a years-long process, is limited to government actions (i.e., not applicable to non-profit shelter providers), would not amount to recovery or compensation for lost belongings, and as such is practically and financially inaccessible for many people.⁵¹⁴

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Footnotes

1. See United Nations Economic and Social Affairs, *State of the World's Indigenous Peoples*, UNDESA, UN DocST/ESA/328 (2009) at 21. See Jeffrey Monaghan, "Uphold the Right: Police, Conservatism, and White Supremacy" in Shiri Pasternak, Kevin Walby & Abby Stadnyk, eds, *Disarm, Defund, Dismantle: Police Abolition in Canada*, (Toronto: Between the Lines, 2022) at 16-17.
2. Government of Canada, "Towards a Poverty Reduction Strategy: A backgrounder on poverty in Canada" (October 2016), [online \(pdf\)](#) at 1 [*Towards a Poverty Reduction Strategy*].
3. See Statistics Canada, "Core housing need in Canada" (21 September 2022), [online](#).
4. See *Towards a Poverty Reduction Strategy*, *supra* note 2 at 2.
5. See Kerri Breen, "Systemic racism exists in RCMP, commissioner admits after backlash", *Global News* (12 June 2020), [online](#); House of Commons, *Report of the Standing Committee on Public Safety and National Security* (June 2021) (Chair: Hon. John McKay), [online \(pdf\)](#).
6. See Ron Fanfair, "Race-Based Data Shows Over-Policing", *Toronto Police Service* (15 June 2022), [online](#); Akshay Kulkarni, "Data shows Indigenous, Black people have more police interactions. Advocates say it reflects systemic racism" (12 February 2023), [online](#).
7. This report focuses on the Ontario municipalities of Toronto, Hamilton, and Ottawa, and the BC Municipalities of Vancouver, Victoria, and Abbotsford. See City of Vancouver, by-law No 2849, *Street and Traffic By-Law* (1 March 2022), [online \(pdf\)](#), s 3; City of Victoria, by-law No 09-079, *Streets and Traffic Bylaw*, (1 May 2023) [online \(pdf\)](#) at s 4 [*Victoria Streets Bylaw*]; See of Abbotsford, by-law No 1536-2006, *Street and Traffic Bylaw (Consolidated)* (2021), [online](#); See *Toronto Municipal Code*, c 313-1, *Streets and Sidewalks*, [online \(pdf\)](#); See City of Hamilton, by-law No 9329, *Streets By-law (Consolidated)* (25 February 1986), [online \(pdf\)](#) [*Hamilton Streets Bylaw*]; See City of Ottawa, by-law No 2003-498, *Use and Care of Roads Bylaw* (8 October 2003), [online](#).
8. *Motor Vehicle Act*, RSBC 1996, c318, s1; *Transportation Act*, SBC 2004, c 44, s 1; *Community Charter*, SBC 2003, c 26, Schedule 1; *Municipal Act*, SO 2001, c 25, s1.
9. City of Vancouver, by-law No 2849, *Street and Traffic By-Law* (1 March 2022), [online \(pdf\)](#), s 3.
10. This and other vignettes are not real-life stories of specific individuals. They are composites of experiences that people have described regarding the ways in which they navigate a variety of laws, bylaws and policies that impact their ability to retain their possessions or access services with their belongings. These stories reflect the experiences of real people who have shared their experiences with us, whether as individually identifiable people or as participants in studies that have contributed to knowledge on this issue. The elements that make up the stories are derived from multiple municipalities, so it would be inaccurate to name a particular municipality in any of them. The relevant body of research concerning these kinds of experiences focuses on particular areas in which people have been impacted, rather than on their entire experiences moving across different spaces.
11. Joshua Daniel Phillips, *From Losing Everything to Finding Community: How Homeless People Narrate Their Lived Experiences* (PhD Dissertation, Department of Speech Communication Southern Illinois University Carbondale, 2014) [unpublished] at 86: since storing personal possessions is an issue for most unhoused people "they must always travel with everything they own or hide their belongings in public places such as dumpsters, bushes, or drainage pipes."
12. Jen St. Denis, "'Unprofessional and Disrespectful': Walker Among Items Taken from Homeless People", *The Tyee* (20 Jan 2021), [online](#)
13. People have described their experiences with Vancouver sanitation workers engaging in street sweeps, taking their possessions, and the difficulty in getting their possessions back: St. Denis, *supra* note 7. In San Francisco, the Stolen Belonging project is highlighting the immediate disposal of people's belongings after these sweeps, such that it ends up becoming impossible to get one's belongings back: "Stolen Belonging", [online](#).
14. In *Dawson v Boundary Management Inc (No. 2)*, 2020 BCHRT 177 [online](#), the tribunal acknowledged the pain and devastation that occurred when the complainant had all of her "treasured" possessions taken away from her (at paras 71-73).
15. *Toronto Municipal Code*, c 743, *Streets and Sidewalks, Use of*, [online \(pdf\)](#) [*Toronto Streets Code*]; City of Hamilton, by-law No 9329, *Streets By-law (Consolidated)* (25 February 1986), [online \(pdf\)](#) [*Hamilton Streets Bylaw*].
16. *Ibid.*

17. *Toronto Streets Code*, *supra* note 10 at §743-9(Q). This prohibition is subject to the application of Toronto's Interdepartmental Protocol for Homeless People Camping in Public Spaces, discussed in greater detail in the Parks section of [this report](#).

18. *Toronto Streets Code*, *supra* note 10; *Hamilton Streets Bylaw*, *supra* note 116.

19. *Toronto Municipal Code*, c 636, Municipal Squares, [online \(pdf\)](#).

20. *Toronto Streets Code*, *supra* note 10, ss 743-46.

21. *Toronto Municipal Code*, c 548, Littering and Dumping, [online \(pdf\)](#) at s 548-1.

22. City of Vancouver, by-law No 5078, *Unclaimed Property By-Law* (22 June 1993), [online \(pdf\)](#) [*Unclaimed Property Bylaw*] at ss 4(a) and (d).

23. Meenakshi Mannoe, "#Stop the Sweeps: Ending Cyclical Displacement and Criminalized Poverty in Vancouver" (2 May 2022) [online \(pdf\)](#) at 9.

24. City of Vancouver, by-law No 2849, *Street and Traffic By-Law* (1 March 2022), [online \(pdf\)](#), s 66(1).

25. *Victoria Streets Bylaw*, *supra* note 1. What is considered "offensive" is not clearly defined.

26. City of Victoria, by-law No 09-079, *Streets and Traffic Bylaw*, (1 May 2023) [online \(pdf\)](#) Schedule H.

27. *Ibid* at ss 102(4) and (6).

28. *Good Neighbour Bylaw (Consolidated)* (31 August 2020), [online](#) [*Good Neighbour Bylaw*] at s 2.7.

29. City of Abbotsford, by-law No 1536-2006, *Street and Traffic Bylaw (Consolidated)* (2021), [online](#) at ss 23.3 and 23.5.

30. *Good Neighbour Bylaw*, *supra* note 23 at s 3.4.

31. Eva Uguen-Csenge, "No plan to house hundreds of people living in tents on Vancouver's Hastings Street, say advocates", *CBC News* (10 August 2022), [online](#).

32. Pivot Legal Society, "Hastings Tent City Residents Give City of Vancouver and Vancouver Fire Rescue Services an Overall 'E' Grade" (9 August 2022) [online](#) [*Hastings Tent City*].

33. *R v Picard*, 2018 BCPC 344, [online](#). See also Ferencz, Sarah, Alexandra Flynn, Nicholas Blomley & Marie-Eve Sylvestre (2022). Are tents a 'home'? Extending section 8 privacy rights for the precariously housed. *McGill Law Journal*. 67, 4, 371-407.

34. *R v Picard*, 2018 BCPC 344, [online](#). See also Ferencz, Sarah, Alexandra Flynn, Nicholas Blomley & Marie-Eve Sylvestre (2022). Are tents a 'home'? Extending section 8 privacy rights for the precariously housed. *McGill Law Journal*. 67, 4, 371-407.

35. See *Community Charter*, SBC 2003, c 26, Part 8.

36. British Columbia, "Municipal ticketing and Offence Act Prosecutions" (last accessed July 26, 2023), [online](#).

37. British Columbia, "Municipal ticketing" (last accessed July 26, 2023), [online](#).

38. Consider the difference between paying to enter and take a bus, versus not necessarily needing to pay to enter the sheltered portion of a subway station without advancing beyond the fare gates.

39. City of Richmond, "Transit Shelters – FAQs" (2015), [online](#): *Let's Talk Richmond*.

40. Metro Vancouver's regional transit authority, Translink, has a list of Rules and Regulations which indicates that the rules are subject to the provincial *Offence Act*, RSBC 1996, c 338, and the published document advises readers to consult the applicable legislation. However, no directly applicable official legislation could be found on the matter other than the document published by Translink.

41. Toronto Transit Commission, by-law No 1 (21 January 2009), [online](#) [TTC Bylaw] at s 3.34(c); City of Ottawa, by-law No 2007-268, *Transit By-Law*, [online \(pdf\)](#) [Ottawa Transit] at s 32(d).

42. *TTC Bylaw*, *ibid* at ss 4.1-4.2; *Ottawa Transit*, *ibid* at s 35(1).

43. City of Hamilton, by-law No 16-111, *Passenger Transportation System Bylaw* (27 April 2016), [online \(pdf\)](#) at s 10(1)(c).

44. *Ibid* at s 7(2).

45. See e.g. Translink, "Bikes on Transit" (last accessed 6 July 2021), [online](#).

46. *Ibid*.

47. Toronto Transit Commission, by-law No 1 (21 January 2009), [online](#) at s 3.34(c).

48. Toronto Transit Commission, "Lost Articles" (last accessed 5 July 2021), [online](#).

49. City of Hamilton, "Using HSR" (last accessed 6 July 2021), [h](#).

50. Heartwood House, "OC Transpo Lost & Found" (last accessed 6 July 2021), [online](#).

51. *Police Services Act*, RSO 1990, c P.15.

52. *Unclaimed Property Act*, SBC 1999, c 48.

53. *Police (Disposal of Property) Regulation*, BC Reg 87/91.

54. See *ibid* at s 6.

55. See *ibid* at s 4.

56. See Nicholas Blomley, Alexandra Flynn & Marie-Eve Sylvestre, "Governing the Belongings of the Precariously Housed: A Critical Legal Geography," (2020) 16 *Ann Rev of Law & Soc Sci* 165 at 166 and 174; Christine Coulter, "Vernon Votes to Rein in Homeless By Banning Shopping Carts in All Public Spaces", *CBC News BC* (25 July 2018), [online](#).

57. City of Vancouver, by-law No 8735, *City Land Regulation By-Law* (8 June 2022) [online \(pdf\)](#) at s 3.

58. *Ibid*, at ss 4 and 6.

59. RSBC 1996, c 462.

60. See *Wallstam*, *supra* note 4.

61. *Ibid* at para 35.

62. *Unclaimed Property Bylaw*, *supra* note 17.

63. City of Vancouver, by-law No 3644, *Trailer Courts By-Law* (29 January 2013), [online \(pdf\)](#) [*Vancouver Trailer Courts Bylaw*].

64. See Coulter, *supra* note 51.

65. Brady Strachan, "Vernon, B.C., Abandons Shopping Cart Ban as Way to Discourage Homelessness", *CBC News BC* (5 September 2018), [online](#).

66. City of Ottawa, by-law No 2013-252, *Shopping Cart Bylaw*, [online \(pdf\)](#) at ss 8-9.

67. Patty Wellborn, "UBC's Personal Belongings Cart Ready to Hit the Streets", *UBC Okanagan News* (16 May 2018), [online](#).

68. Nick Kerman et al, "A Multilevel Intervention Framework for Supporting People Experiencing Homelessness with Pets" (2020) 10:1869 *Animals* 1.

69. See *ibid* at 3-5.

70. Michelle Lem et al, "Effects of Companion Animal Ownership Among Canadian Street-Involved Youth:

71. *Ibid* at 295-96.

72. Jennifer Labrecque & Christine A. Walsh, "Homeless Women's Voices on Incorporating Companion Animals into Shelter Services" (2011) 24:1 *Anthrozoös* 79 at 90.

73. Lem et al, *supra* note 65 at 296.

74. See City of Toronto, "Pet Licensing," [online](#).

75. See City of Vancouver, "Vancouver Animal Services fines and fees," [online](#).

76. See *Toronto Municipal Code*, c 349, Animals, [online \(pdf\)](#) at s 349-6(B) [*Municipal Code Animals*]; See City of Ottawa, by-law No 2003-77, *Animal Care and Control By-law* (February 2016), [online \(pdf\)](#) at s 3(1)(b) [*Ottawa Animal Bylaw*].

77. See *Municipal Code Animals*, *ibid* at s 349-6(C).

78. City of Vancouver, by-law No 9150, *Animal Control By-law*, at ss 6.1, 7.6 [*Vancouver Animal By-law*].

79. City of Victoria, by-law No 11-044, *Animal Control Bylaw* (1 January 2015), [online \(pdf\)](#) at s 10.

80. There is a considerable amount of stigma towards unhoused pet owners, the (usually misplaced) assumption being that because they have difficulty taking care of themselves, they will not be able to take care of an animal: See Kerman et al, *supra* note 63 at 8; Rebecca Ledger, "Pet Therapy: The Importance of Support for Homeless People and Their Pets", *Vancouver Sun* (25 March 2016), [online](#).

81. See *Municipal Code Animals*, *supra* note 71 at chapter 349-14 D.

82. See *Vancouver Animal By-law*, *supra* note 73 at s 6.8.

83. *Provincial Animal Welfare Act*, SO 2008, c 16.

84. *Prevention of Cruelty to Animals Act*, RSBC 1996, c 372.

85. See *Toronto Municipal Code*, c 629, Property Standards, [online \(pdf\)](#) at s 629-10(D).

86. *Ibid* at ss 629-6 and 629-10(B).

87. City of Ottawa, bylaw No 2013-416, *Property Standards Bylaw*, [online](#) [*Ottawa Property Standards*] at s 6(1).

88. *Ibid* at s 6(13).

89. City of Vancouver, by-law No 4548, *Untidy Premises By-Law* (10 September 2019), [online \(pdf\)](#) at s 3 [*Untidy Premises*].

90. *Ibid* at s 6(1).

91. City of Vancouver, by-law No 5462, *Standards of Maintenance By-Law* (17 September 2014), [online \(pdf\)](#) at s 4.1. [*Vancouver Maintenance Bylaw*].

92. *Good Neighbour Bylaw*, *supra* note 23 at s 4.4.

93. *Ibid*, s 4.10.

94. City of Victoria, by-law No 07-050, *Property Maintenance Bylaw*, (1 February 2015) [online \(pdf\)](#) [*Victoria Property Bylaw*] at s 2.

95. CED 4th

96. "Trespassing on Someone's Property" (last accessed 3 August, 2020), [online](#): *Legal Line*.

97. *Trespass to Property Act*, RSO 1990 c T.21, s 2.

98. *Trespass Act*, RSBC 2018, c 3, s 2.

99. CED 4th

100. *Ibid* at §157.

101. See *Abbotsford (City) v Shantz*, 2015 BCSC 1909 [*Shantz*], [online](#) at para 255.

102. *Fraser Health Authority v Evans*, 2016 BCSC 1708 [Evans], [online](#) at para 45.

103. Mike Howell, "Controversial Vancouver police 'trespass prevention program' goes citywide", *Vancouver Is Awesome* (4 May 2022), [online](#).

104. 2020 BCSC 1809.

105. RSO 1990, c H.8, s 1.

106. RSBC 1996, c 318, s 1.

107. RSC 1985, c C-46.

108. *R v Nolet*, 2010 SCC 24, [online](#).

109. See City of Toronto, "Residential On-Street Parking" [online](#). See City of Vancouver, "Buy an annual or a short-term residential parking permit" [online](#).

110. *Toronto Municipal Code*, c 950 Schedule XIII: No Parking, [online \(pdf\)](#); *Toronto Municipal Code*, c 950 Schedule XIV: No Stopping, Traffic and Parking, [online \(pdf\)](#); *Toronto Municipal Code*, c 950 Schedule XV: Parking for Restricted Periods, [online \(pdf\)](#).

111. *Victoria Streets Bylaw*, *supra* note 1 at s 84.

112. *Ibid* at s 83.

113. City of Victoria, by-law No 02-121, *Vehicle Impoundment Bylaw*, (1 June 2015) [online \(pdf\)](#) at ss 4-5.

114. City of Vancouver, by-law No 2849, *Street and Traffic By-Law* (1 March 2022), [online \(pdf\)](#) at s 20.1.

115. City of Vancouver, by-law No 3519, *Impounding By-Law* (20 July 2022), [online \(pdf\)](#) at s 5(c).

116. *Toronto Municipal Code*, c 915, Parking on Private or Municipal Property, [online \(pdf\)](#).

117. *Ibid* at s 915-2.

118. *Ottawa Idling Bylaw*, *supra* note 20, at ss 2-3; *Hamilton Idling Bylaw*, *supra* note 20 at ss 3.1-3.2.

119. *Vancouver Trailer Courts Bylaw*, *supra* note 58 at s 3(1).

120. Carlito Pablo, "Homeless People Living in Camper Vans and Cars Defy City of Vancouver Order to Break Up Camp by May 26", *The Georgia Straight* (18 May 2021), [online](#).

121. Christopher Cheung, "Vancouver's RV Residents Prepare for a Crackdown", *The Tyee* (28 May 2021), [online](#).

122. *Nanaimo (City) v Courtoreille*, 2018 BCSC 1629, [online](#) at para 110; *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, 1994 CanLII 117, [online](#).

123. *Maple Ridge (District) v Thornhill Aggregates Ltd.* (1998), 54 BCLR (3d) 155, [1999] 3 WWR 93, 1998 CanLII 6446 (BCCA), [online](#); *The Corporation of the City of Windsor v Persons Unknown*, 2022 ONSC 1168, [online](#) at paras 51-56.

124. See *Evans*, *supra* note 97 at para 49.

125. 2002 BCSC 1421, [online](#).

126. *Ibid* at para 4.

127. *Ibid* at para 6.

128. *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2023 ONSC 670, [online](#) at para 152.

129. See *ibid* at para 143.

130. See *Evans*, *supra* note 119.

131. *Ibid* at para 53.

132. *Ibid* at para 50.

133. *Ibid* at para 10.

134. *Ibid* at para 118.

135. *Ibid* at para 118.

136. *Ibid* at para 130.

137. See *Vancouver Fraser Port Authority v Brett*, 2020 BCSC 876, [online](#).

138. See *ibid* at para 88.

139. See *ibid* at paras 85, 98.

140. See *Wallstam*, *supra* note 4.

141. *Ibid* at para 61.

142. *R v Tanton*, 2006 BCPC 226, [online](#).

143. *Emergency Program Act*, M150/2020 (8 May 2020), BC Ministerial Orders; *Emergency Program Act*, M128/2020 (24 April 2020), BC Ministerial Orders.

144. The 'Purpose' of each law is often stated directly in the preamble or body of the law and is understood as the general objective of the law from the perspective of law makers. This purpose does not necessarily consider the ways the effects of the law may diverge from their stated purpose, and how this inevitably impacts people in precarious housing situations.

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146. City of Ottawa, by-law No 2004-276, *Parks and Facilities By-law* (1 August 2004), [online](#) at s 1; See also *Toronto Municipal Code*, c 608-1, Parks, [online](#) (pdf) [*Toronto Parks Code*]; See also City of Victoria, by-law No 07-059, *Parks Regulation Bylaw* (14 May 2021), [online](#) (pdf) at s 2 [*Victoria Parks Bylaw*]; See also City of Abbotsford, by-law No 2456-2015, *Parks Bylaw (Consolidated)* (2021), [online](#) (pdf) at Schedule "A"; See also City of Hamilton, by-law No 01-219, *A By-law to Manage and Regulate Municipal Parks* (16 May 2007), [online](#) (pdf) at s 1(t); See also City of Vancouver, Consolidated by-laws, *Parks By-Laws (Consolidated)* (21 June 2021), [online](#) (pdf) at s 1(l).

147. The stories described at the beginning of each chapter are not real-life stories of specific individuals. They are composites of experiences that people have described regarding the ways in which they navigate a variety of laws, bylaws and policies that impact their ability to retain their possessions or access services with their belongings. These stories reflect the experiences of real people who have shared their experiences, whether as individually identifiable people or as participants in studies that have contributed to knowledge on this issue. The elements that make up the stories are derived from multiple municipalities, so it would be inaccurate to name a particular municipality in any of them. The relevant body of research concerning these kinds of experiences focuses on particular areas in which people have been impacted, rather than on their entire experiences moving across different spaces.

148. See Michelle Lem et al, "Effects of Companion Animal Ownership Among Canadian Street-Involved Youth: A Qualitative Analysis" (2013) 40:4 J Sociology and Soc Welfare 285 at 291 for a discussion of the ways in which many unhoused pet owners will put their pets' needs before their own; See also Jennifer Labrecque & Christine A. Walsh, "Homeless Women's Voices on Incorporating Companion Animals into

Shelter Services” (2011) 24:1 *Anthrozoös* 79 at 90 for an overview of the extreme pain, distress, and trauma that relinquishing a pet can have for unhoused women.

149. *Vancouver Board of Parks and Recreation v Williams*, 2014 BCSC [online](#) 1926 at para 26 [*VBPR v Williams*], the manager of an emergency shelter gave evidence stating that many people “do not want to go into shelter because they feel anxious about sharing a space with a large group of strangers, they fear assaults... or theft of their belongings.”; Sylvia Novac et al, “Justice and Injustice: Homelessness, Crime, Victimization, and the Criminal Justice System” (November 2006), [online](#) (pdf) at 61 and 64 describe how most survey respondents had had belongings stolen at a shelter or other location.

150. Taylor Fleming et al, “Housing in Crisis: A Qualitative Study of the Socio-Legal Contexts of Residential Evictions in Vancouver’s Downtown Eastside,” (2019) 71 *Intl J Drug Policy* 169 at 172 describe some of the ways in which low-income and social housing policies and rules can often fail to account for the social relationships and survival needs of their residents.

151. Lem et al, *supra* note 3 at 292 report that having a dog that is legislated to be ‘dangerous’ can make it even harder for people to find housing. Pit bulls are banned in Ontario: *Dog Owner’s Liability Act*, RSO 1990, ch. D.16.

152. Nicholas Blomley, Alexandra Flynn & Marie-Eve Sylvestre, “Governing the Belongings of the Precariously Housed: A Critical Legal Geography,” (2020) 16 *Ann Rev of Law & Soc Sci* 165 at 168 at 167.

153. *Vancouver Fraser Port Authority v Brett*, 2020 BCSC 876 [online](#) at para 64 [*Brett*]. Generally, encampment residents asserted to the court that “their centralized and established structure attracts local service providers and allow[s] them to benefit from an increased ability to access services where they are, in a safe and familiar space.” They also stated that the encampment provided “physical safety for both residents and their belongings.”

154. *Ibid.*

155. *Black et al v City of Toronto*, 2020 ONSC 6398 (CanLII) [online](#) at para 100. Dr. Wivcharuk states in her expert evidence that “there is often a sense of community that develops among encampment residents, and people come to rely on one another to watch their belongings when they leave the encampment site (although thefts do take place).”

156. *Brett*, *supra* note 8 at para 24. Encampment resident Tony Cahoose gave evidence that his possessions went missing when he was in shelters, but they did not go missing when he lived in the encampment.

157. It has been common in encampment displacement and closure situations for the accommodation being offered to only allow people to bring two bags or totes with them, and people have faced other restrictions on pets and guests. Anna Cooper & Caitlin Shane, “Decampment of Topaz Park and Pandora Avenue Corridor” (14 May 2020), [online](#): *Pivot Legal*; Stepan Wood, “Temporary Overnight Shelter is Not Enough, Vancouver Should Authorize Stable 24/7 Homeless Encampment”, *The Vancouver Sun* (17 July 2020), [online](#); Jesse Winter, “Vancouver Works to Close Strathcona Park Tent Encampment”, *The Globe and Mail* (26 April 2021), [online](#).

158. *Brett*, *supra* note 8 at para 25. Encampment resident Ryan McNabb gave evidence that he declined an offer of housing that would not allow him to bring his puppy with him.

159. During the forced displacement of a tent city in Port Alberni, residents’ belongings were reportedly put in a small garbage truck, and while some of the belongings were later returned to the organizers and volunteers, much was not salvageable: Susie Quinn, “Port Alberni Tent City Evicted Again”, *Vancouver Island Free Daily* (24 November 2020), [online](#); In Toronto, City workers broke down tents and put them into garbage trucks while clearing out an encampment: CBC News, “Toronto Police Make Several Arrests After Clashes at Lamport Stadium During Encampment Clearing”, CBC News Toronto (19 May 2021), [online](#) [Lamport Stadium].

160. Sleeping rough on the streets puts people in a state of vulnerability to violence when another person tries to take the sleeper’s belongings, leading to both physical and mental distress: Joshua Daniel Phillips, *From Losing Everything to Finding Community: How Homeless People Narrate Their Lived Experiences* (PhD Dissertation, Department of Speech Communication Southern Illinois University Carbondale, 2014) [unpublished] at 29.

161. *Toronto Parks Code*, *supra* note 1.

162. Toronto General Manager, Shelter, Support and Housing Administration, “Annual Report on From the Streets into Homes: A Strategy to Assist Homeless Persons Find Permanent Housing” (29 December 2005), [online](#) (pdf): *City of Toronto*. [*Streets to Homes*].

163. *Ibid* at 9.

164. Joanna Lavoie, “Last Remaining Moss Park Encampment Residents Demand Permanent Housing”, *Toronto.com* (16 July 2020), [online](#).

165. *Ibid.*

166. *Ibid*

167. Liam Casey, "Toronto Seeks Injunction to Stop Man from Putting Tiny Shelters for the Homeless in City Parks", *CBC Toronto* (19 February 2021), [online](#); Muriel Draaisma, "Toronto Carpenter Who Builds Tiny Shelters for Unhoused People Calls on City to Drop Legal Fight", *CBC News Toronto* (22 February 2021), [online](#).

168. CBC News, "Academics, Lawyers, Musicians Launch Public Letters Urging City to Halt Encampment Evictions", *CBC News Toronto* (4 December 2020), [online](#).

169. *Ibid.*

170. Toronto Tiny Shelters, "Tiny Shelter Testimonials" (24 January 2021) at 00h:00m:41s, [online](#) (video): *YouTube*.

171. *Lamport Stadium*, *supra* note 14; CityNews Toronto Staff, "Man Charged as City Dismantles Homeless Encampment at Lamport Stadium", *City News Toronto* (19 May 2021), [online](#).

172. *Victoria (City) v Adams*, 2009 BCCA 563 [Adams] [online](#).

173. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 7.

174. *Adams*, *supra* note 627 at para 162

175. *Abbotsford (City) v Shantz*, 2015 BCSC 1909 [online](#) at para 47 [Shantz].

176. Or between 8pm and 7am when Daylight Saving time is in effect. See *Victoria Parks Bylaw*, *supra* note 1.

177. See *ibid.*

178. City of Abbotsford, by-law No 2456-2015, *Parks Bylaw, 2016* (31 August 2020), [online](#) at Schedule A.)

179. *Ibid* at ss 14(b) and 17(c).

180. *Ibid* at s 14(b).

181. City of Vancouver, *Park By-Laws (Consolidated)* (21 June 2021), [online \(pdf\)](#) at s 11A [*Vancouver Park Bylaw*].

182. *Ibid* at s 11B.

183. *Brett*, *supra* note 8 at para 20.

184. *Wood*, *supra* note 12.

185. *Cooper & Shane*, *supra* note 12.

186. Brenna Owen, "Nearly 600 Campers Moved Into Temporary Housing Amid COVID-19: B.C. Government", *CTV News* (21 May 2020), [online](#).

187. *Quinn*, *supra* note 14.

188. I have been unable to locate the relevant Port Alberni bylaw relating to the City employee's statement.

189. *Wood*, *supra* note 12.

190. *Police (Disposal of Property) Regulation*, BC Reg 97/91.

191. *Police Services Act*, RSO 1990, c P.15.

192. See *Toronto Parks Code*, *supra* note 1 at s 608-27.

193. City of Hamilton, by-law No 01-219, *To Manage and Regulate Municipal Parks (Consolidated)*, [online \(pdf\)](#) at s 32 [*Hamilton Parks Bylaw*].

194. City of Ottawa, by-law No 2017-301, *Traffic and Parking Bylaw* (June 2018), [online \(pdf\)](#) at s 97 [*Ottawa Traffic Bylaw*].

195. *Toronto Parks Code*, *supra* note 1 at s 608-55.

196. *Ibid* at s 608-54.

197. *Hamilton Parks Bylaw*, *supra* note 94 at ss 54-5.

198. *Ottawa Traffic Bylaw*, *supra* note 95 at s 109.

199. *Adams*, *supra* note 60.

200. Combined with subsection (h), the bylaws effectively limit 'visits' to the City park to 3.5 hours if the person parks their vehicle in or adjacent to the City park.

201. *Victoria Parks Bylaw*, *supra* note 1 at ss 12(1)(k) and (l).

202. CED 4th.

203. *Ibid* at §157.

204. *Shantz*, *supra* note 30 at para 47.

205. *Maple Ridge (District) v Thornhill Aggregates Ltd.* (1998), 54 BCLR (3d) 155, [1999] 3 WWR 93, 1998 CanLII 6446 (BCCA), [online](#); *The Corporation of the City of Windsor v Persons Unknown*, 2022 ONSC 1168 (CanLII) [online](#) at paras 51-56.

206. *Nanaimo (City) v Courtoreille*, 2018 BCSC 1629, [online](#) at para 110; *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, 1994 CanLII 117 [online](#).

207. *Fraser Health Authority v Evans*, 2016 BCSC 1708, [online](#) at para 49.

208. See *Shantz*, *supra* note 30.

209. CBC News, "Vancouver Park Board votes in favour of allowing overnight camping in parks", *CBC News* (15 July 2020), [online](#).

210. See *Johnston v Victoria (City)*, 2011 BCCA 400 [*Johnston*] [online](#).

211. See *Victoria (City) v Smith*, 2020 BCSC 1173 [online](#).

212. See *Bamberger v Vancouver (Board of Parks and Recreation)* 2022 BCSC 49 [Bamberger] [online](#) at para 194. See also *Brett*, *supra* note 8 at para 64.

213. 2021 BCSC 2089 at para 115 [*Stewart*] [online](#).

214. *Ibid* at para 96.

215. 2022 BCSC 282 at para 82 [*Johnny*].

216. *Ibid* at para 82.

217. See *Brett*, *supra* note 8.

218. See *ibid* at para 88.

219. *Ibid* at para 98.

220. *Beacon Hill Park Trust (Re)*, 2022 BCSC 284 [*BHP Trust*] [online](#).

221. *Ibid* para 120.

222. See *ibid* at para 131.

223. 2020 ONSC 6398 [*Black*] [online](#).

224. *Ibid* at para 5.

225. *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2023 ONSC 670 [online](#) at para 152.

226. See *ibid* at para 43.

227. *Emergency Program Act*, M150/2020 (8 May 2020), BC Ministerial Orders; *Emergency Program Act*, M128/2020 (24 April 2020), BC Ministerial Orders.

228. In *Vancouver Board of Parks and Recreation v Sterritt*, 2003 BCSC 1421 [online](#), Mr. Sterritt was self-represented in his defence.

229. The 'Purpose' of each law is often stated directly in the preamble or body of the law and is understood as the general objective of the law from the perspective of law makers. This purpose does not necessarily consider the ways the effects of the law may diverge from their stated purpose, and how this inevitably impacts people in precarious housing situations.

230. *Prince George (City) v Stewart*, 2021 BCSC 2089 [online](#) at para 115 [*Stewart*].

231. See Statistics Canada, "To buy or to rent: The housing market continues to be reshaped by several factors as Canadians search for an affordable place to call home", (21 September 2022) [online](#).

232. *Residential Tenancy Act*, SBC 2002, c 78, s 2 [*BC RTA*]; *Residential Tenancies Act*, 2006, SO 2006, c 17, s 3 [*ON RTA*].

233. Housing Vancouver, "Single Room Occupancy (SRO) Revitalization Action Plan" (November 2017), [online](#) (pdf): *City of Vancouver* at 5 [*Housing Vancouver*].

234. The stories described at the beginning of each chapter are not real-life stories of specific individuals. They are composites of experiences that people have described regarding the ways in which they navigate a variety of laws, bylaws and policies that impact their ability to retain their possessions or access services with their belongings. These stories reflect the experiences of real people who have shared their experiences, whether as individually identifiable people or as participants in studies that have contributed to knowledge on this issue. The elements that make up the stories are derived from multiple municipalities, so it would be inaccurate to name a particular municipality in any of them. The relevant body of research concerning these kinds of experiences focuses on particular areas in which people have been impacted, rather than on their entire experiences moving across different spaces.

235. See *TNT-43402-13-RV (Re)* (10 March 2015), [online](#): ON LTB [43402].

236. See Emily Paradis, "Saving room: Community action and municipal policy to protect dwelling room stock in North American cities" (November 2018), [online](#) (pdf): *Parkdale Neighbourhood Land Trust* at 7, for description of statistically common rooming house tenants.

237. See *ON RTA*, *supra* note 1 at s 2(1); see *BC RTA*, *supra* note 1 at s 1. See e.g. *Decision 6699* (2 September 2015), [online](#) (pdf): BC RTB Dispute Resolution Services[6699].

238. See Maytree, "A Human Rights Review of Toronto's Multi-Tenant Homes Policies" (October 2020), [online](#) (pdf): *Maytree* at 14 [*Maytree*].

239. See 43402, *supra* note 5.

240. See *TNL-97174-17-RV (Re)* (22 March 2018), [online](#): ON LTB [97174].

241. See 43402, *supra* note 5.

242. Both municipal bylaws and provincial codes. See e.g. *Vancouver Fire Bylaw No 12472*; *Ontario Fire Code, O Reg 213/07*.

243. See City of Vancouver, by-law No 5462, *Standards of Maintenance By-Law* (17 September 2014), [online](#) (pdf) at s 4.1. [*Vancouver Maintenance Bylaw*].

244. See *Toronto Municipal Code*, c 285, Rooming Houses, [online \(pdf\)](#): at s 349-6(B) [*Rooming House Code*]; City of Vancouver, by-law No 8733, *Single Room Accommodation By-law* (10 December 2020), [online \(pdf\)](#) [*Vancouver SRA Bylaw*]; City of Victoria, by-law No 20-091, *Rental Property Standards of Maintenance Bylaw*, [online \(pdf\)](#).

245. See City of New Westminster, by-law No 6926-2004, *Business Regulations and Licensing (Rental Units) Bylaw* (16 November 2021), [online \(pdf\)](#) [*New West Bylaw*]; City of Vancouver, by-law No 4450, *License By-law* (7 June 2022), [online \(pdf\)](#); City of Vancouver, by-law No 9360, *Ticket Offences By-law* (7 June 2022), [online \(pdf\)](#).

246. See *ON RTA*, *supra* note 1.

247. See 6699, *supra* note 7; *TNT-11384-10 (Re)* (10 May 2011), [online](#) ON LTB [11384].

248. See Emily Paradis, "Saving room: Community action and municipal policy to protect dwelling room stock in North American cities" (November 2018), [online \(pdf\)](#): *Parkdale Neighbourhood Land Trust* at 9.

249. See *ON RTA*, *supra* note 1 at s5(i).

250. *ON RTA*, *supra* note 1 at s41(2). See also Tribunals Ontario, "Property left behind when a tenant moves out" (4 January 2010), [online \(pdf\)](#) [*Tribunals ON 1*].

251. See *Tuka v Butt*, 238 ACWS (3d) 972, 2014 CanLII 7228 (ON SCSM) [online](#) at paras 40-46 where tenant's counter-claim for damages for loss of personal property at the hands of landlord was rejected because of *ON RTA* s41 that permits landlord to dispose of belongings as long as items are made available for 72 hours after eviction. No evidence of breach of duty or interference with tenant's ability to retrieve belongings meant the landlord was entitled to dispose of the tenant's belongings.

252. *ON RTA*, *supra* note 1 at s42(3). See also *Tribunals ON 1*, *supra* note 20.

253. Community Legal Education Ontario, "Can your landlord take your stuff?" (March 2017), [online \(pdf\)](#); *Tribunals ON 1*, *supra* note 20.

254. Municipal Licensing and Standards, "Multi-Tenant (Rooming) Houses: Owner Guide" (November 2020), [online \(pdf\)](#): *City of Toronto*.

255. City of Toronto, "Multi-Tenant House Owners & Operators: Where Multi-Tenant Houses Are Permitted" (last accessed 26 March 2022), [online](#): *City of Toronto*.

256. See *Maytree*, *supra* note 8 at 12.

257. See *ibid* at 14.

258. See *ibid* at 14, 23.

259. See *ibid* at 5.

260. [2005] 252 DLR (4th), 75 OR (3d) 383 (CA) [*Moffat*] [online](#).

261. See *ibid* at para 15. Note this decision was made regarding the now repealed *Tenant Protection Act*, 1997, SO 1997, c 24, as repealed by *Residential Tenancies Act*, 2006, SO 2006, c 17.

262. 2020 ONSC 5732 [*Davies*] [online](#).

263. See *Maytree*, *supra* note 8 at 24.

264. See *ibid* at 23.

265. See *BC RTA*, *supra* note 1.

266. BC Reg 477/2003 [*BC Regs*].

267. *Ibid* at s 25(2)(c).

268. Tenant Resource and Advisory Centre, "Enforcing an Eviction" (last accessed 27 March 2022), [online](#).

269. See *BC RTA*, *supra* note 1 at s 47.

270. See *Vancouver SRA Bylaw*, *supra* note 14.

271. See *ibid.*

272. See *BC RTA*, *supra* note 1 at s 2(1); See *ibid*

273. See *Housing Vancouver*, *supra* note 2 at 20-21.

274. See *ibid.*

275. See Jen St. Denis, "Rent Control for Private SROs Passes in Vancouver", *The Tyee* (18 November 2021) [online](#).

276. See *Housing Vancouver*, *supra* note 2 at 28.

277. See *SOT-91560-18 (Re)* (12 June 2018), [online](#) : ON LTB.

278. See *Semenoff v Many Ways Home Housing Society*, 2021 BCCRT 362 [*Semenoff*] [online](#) ; *Chehresaz v Khalesi*, 251 ACWS (3d) 144, 2015 CanLII 8736 (ON SCSM) [*Khalesi*] [online](#).

279. British Columbia, "Residential Tenancy Policy Guideline 46-1: Emergency Shelters, Transitional Housing, Supportive Housing" (June 2020), [online \(pdf\)](#) [*Guideline 46-1*].

280. See *ibid.*

281. See *PHS Community Services Society v Swait*, 2018 BCSC 824 [online](#) at para 33; See *BC RTA*, *supra* note 1 at s 2(1)(v).

282. See *BC RTA*, *supra* note 1 at s 2(1)(vi). See also *Decision 1164* (14 July 2009), [online \(pdf\)](#): BC RTB Dispute Resolution Services, where tenancy that included provision of methadone was considered therapeutic service and thus was exempt from *BC RTA*.

283. SBC 2002, c 75; See e.g. *Decision 6148* (9 September 2021), [online \(pdf\)](#): BC RTB Dispute Resolution Services [*Decision 6148*].

284. See *Decision 1814* (2 August 2011), [online \(pdf\)](#): BC RTB Dispute Resolution Services.

285. See *BC RTA*, *supra* note 1 at s 5; See *ON RTA*, *supra* note 1 at s 3.

286. See *BC RTA*, *supra* note 1 at s 2(1)(v).

287. See *Decision 6148*, *supra* note 69.

288. British Columbia, "Is My Tenancy Covered Under B.C.'s Tenancy Laws?" (last accessed 27 March 2022), [online](#).

289. See *ibid.*

290. Taylor Fleming et al, "Housing in Crisis: A Qualitative Study of the Socio-Legal Contexts of Residential Evictions in Vancouver's Downtown Eastside," (2019) 71 *Intl J Drug Policy* 169 at 172.

291. *Ibid.*

292. *Ibid* at 173

293. *Dawson v Boundary Management Inc (No. 2)*, 2020 BCHRT 177 (CanLII) [*Dawson*] [online](#) at para 71.

294. Nicholas Blomley, Alexandra Flynn & Marie-Eve Sylvestre, "Governing the Belongings of the Precariously Housed: A Critical Legal Geography," (2020) 16 *Ann Rev of Law & Soc Sci* 165 at 168 at 167.

295. See e.g different policies put forth by storage locker providers: Maple Leaf Storage (Vancouver), "FAQs" (last accessed 30 September 2022) [online](#), XYZ Storage (Toronto), "Things you can't store" (last accessed 30 September 2020) [online](#); Acceptable Storage (Ottawa), "Frequently Asked Questions" (last accessed 30 September 2022) [online](#).

296. See Maple Leaf Storage, *ibid*; Pockit Self-Storage (Abbotsford) [online](#).

297. XYZ Storage, *supra* note 52. The website recognizes the issue of unaffordable housing while emphasizing its policies: "as tempting as it may seem for the rates that storage units go for, [living in a storage unit is] unsafe (and illegal)."

298. See e.g. Public Storage in Vancouver which requires tenants to be 19, have valid government photo ID with a current address, as well as a credit card, Public Storage Canada, "FAQ Storing" (last accessed 30 September 2022), [online](#).

299. Storage locker auctions are commonplace, and there are entire websites dedicated to tracking available storage locker contents that are being auctioned. See e.g. Bid13, "Storage Auctions in British Columbia" (last accessed 30 September 2022), [online](#); I Bid 4 Storage, "Find an Auction" (last accessed 30 September 2020), [online](#). An American teenager recently made headlines for buying the contents of multiple storage lockers at auction and subsequently tracking down their owners to return their possessions: Cathy Fee, "A Teen Buys Repossessed Storage Units at Auction, Then Gives the Contents Back to the Original Owners", *The Washington Post* (16 June 2021), [online](#).

300. Mike Laanela, "U-Haul Evicted Man Living in Vancouver Storage Locker", *CBC News BC* (13 January 2017), [online](#); 007craft, "Living Out of a Storage Locker for 2 Months, In Style!" (12 January 2017), [online](#) (video): *YouTube*.

301. "007craft" (accessed 22 June 2021), [online](#): *YouTube*.

302. CED 4th (online), *Trespass*, "Trespass: Trespass to Land: General" (ll.1.) at §29.

303. "Trespassing on Someone's Property" (last accessed 3 August, 2020), [online](#), *Legal Line*.

304. *Trespass to Property Act*, RSO 1990 c T.21, s 2.

305. *Trespass Act*, RSBC 2018, c 3, s 2.

306. See *Toronto Municipal Code*, c 629, Property Standards, [online](#) (pdf) at s 629-10(D).

307. *Ibid* at ss 629-6 and 629-10(B).

308. City of Ottawa, bylaw No 2013-416, *Property Standards Bylaw*, [online](#) [*Ottawa Property Standards*] at s 6(1).

309. *Ibid* at s 6(13).

310. City of Vancouver, by-law No 4548, *Untidy Premises By-Law* (10 September 2019), [online](#) (pdf) at s 3 [*Untidy Premises*].

311. *Ibid* at s 6(1).

312. City of Vancouver, by-law No 5462, *Standards of Maintenance By-Law* (17 September 2014), [online](#) (pdf) at s 4.1. [*Vancouver Maintenance Bylaw*]

313. *Good Neighbour Bylaw*, *supra* note 23 at s 4.4.

314. *Ibid*, s 4.10.

315. City of Victoria, by-law No 07-050, *Property Maintenance Bylaw*, (1 February 2015) [online](#) (pdf) [*Victoria Property Bylaw*] at s 2.

316. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [online](#).

317. *PHS Community Services Society v Swait*, 2018 BCSC 824 [online](#).

318. See *BC RTA*, *supra* note 1 at s 2(1)(v).

319. *Ali v Glenesk*, 2002 CarswellOnt 8725 at para 14.

320. [2005] 252 DLR (4th), 75 OR (3d) 383 (CA) [*Beach*] [online](#).

321. 2017 ONSC 194 [online](#).

322. *Ibid* at para 7.

323. 238 ACWS (3d) 972, 2014 CanLII 7228 (ON SCSM) [*Butt*] [online](#).

324. *Residential Tenancies Act*, SO 2006, c 17, s 168(2).

325. See *Butt*, *supra* note 91 at para 47.

326. 2018 ONSC 769 [online](#).

327. *Ibid* at para 25.

328. Ontario Human Rights Commission, "Room for Everyone: Human rights and rental housing licensing" (2013) [online](#) (pdf): at 12 [*Room for Everyone*].

329. David Rider, "John Tory suffered a rare loss at Toronto council over legalizing rooming houses. An inside look at a move that baffled and outraged housing critics", *Toronto Star* (26 October 2021) [online](#).

330. *Maytree*, *supra* note 8 at 13.

331. *Ibid*.

332. *Ibid*.

333. See Rider, *supra* note 97.

334. See *New West Bylaw*, *supra* note 15.

335. *1193652 BC Ltd v New Westminster (City)*, 2021 BCCA 176 [online](#) at para 21 [*New West*].

336. See *ibid*.

337. SBC 2003, c 26.

338. *1193652 BC Ltd v Corporation of the City of New Westminster*, 2021 CanLII 126365 (SCC) [online](#).

339. See *New West*, *supra* note 103 at para 2.

340. See *Housing Vancouver*, *supra* note 2 at 28.

341. City of Vancouver, "Vacancy Control Regulations in Single Room Accommodation (SRA) Designated Properties" (4 November 2021) [online](#) (pdf) at 9 [*Vacancy Control Report*]

342. See *ibid*.

343. See *St. Denis*, *supra* note 45.

344. See *0733603 BC Ltd v Vancouver (City)*, Vancouver Law Courts Petition, File Number 220082 (7 January 2022) [*Abbott St*] [online](#); *Pender Lodge Holdings Ltd v Vancouver (City)*, Vancouver Law Courts Petition, File Number 220064 (6 January 2022) [*Pender*].

345. See *Pender*, *ibid* at 110.

346. See *Abbott St*, *supra* note 331 at 31.

347. *Pender*, *supra* note 331 at 135.

348. See *ibid* at 146.

349. SBC 1953, c 55.

350. See *Vacancy Control Report*, *supra* note 328 at 10.

351. See *0733603 BC Ltd v Vancouver (City)*, Vancouver Law Courts Petition Response, File Number 220082 (25 February 2022) [online](#) at 58; *Pender Lodge Holdings Ltd v Vancouver (City)*, Vancouver Law Courts Petition Response, File Number 220064 (25 February 2022) at 37.

352. See *0733603 BC Ltd v Vancouver (City)*, 2022 BCSC 1302 [online](#) at para 94.

353. Chad Pawson, "B.C. Supreme Court quashes Vancouver bylaws limiting rent increase between single occupancy housing tenancies", *CBC News* (5 August 2022), [online](#).

354. Katie DeRosa, "Attorney general will overrule Penticton city council on closure of homeless shelter", *Vancouver Sun* (18 March 2021), [online](#).

355. See *Interpretation Act*, RSBC 1996, c 238, s14(2) [online](#).

356. Shelby Thom, "BC Housing wants City of Penticton's lawsuit over emergency shelter tossed out", *Global News* (26 September 2021), [online](#).

357. Brennan Phillips, "Update: Minister Eby 'disappointed' over Penticton council's decision to go to court over homeless shelter", *Penticton Western News* (7 July 2021) [online](#).

358. *TNT-64667-14 (Re)* (27 January 2015), [online](#): ON LTB [emphasis added] [64667].

359. See Robert Tarantino, "Creating Conflict: Legal Strategies for Housing the Homeless in Vancouver's Downtown Eastside" 28 *Windsor Rev Legal & Soc Issues* 109.

360. See "BC's Residential Tenancy System: 13 Recommendations for Positive Change" (2013), [online](#) [*BC RTA Recommendations*].

361. Marianne Quirouette et al, "Conflict with the Law': Regulation & Homeless Youth Trajectories Toward Stability" (2016) 31:3 *Can JL & Soc'y* 383.

362. 2019 BCSC 1567 [online](#).

363. See *BC Regs*, *supra* note 36.

364. See *ibid* at s 25(2).

365. *ON RTA*, *supra* note 1 at s 42(2).

366. See *Decision 2319* (14 August 2012), [online \(pdf\)](#): BC RTB Dispute Resolution Services; see also *Decision 1695* (6 January 2011), [online \(pdf\)](#): BC RTB Dispute Resolution Services.

367. See *TST-57219-14-AM (Re)* (18 February 2016), [online](#): ON LTB at 58.

368. See *Decision 6148* (9 September 2021), [online \(pdf\)](#): BC RTB Dispute Resolution Services [*Decision 6148*].

369. See *64667*, *supra* note 59 at 16.

370. The 'Purpose' of each law is often stated directly in the preamble or body of the law and is understood as the general objective of the law from the perspective of law makers. This purpose does not necessarily consider the ways the effects of the law may diverge from their stated purpose, and how this inevitably impacts people in precarious housing situations.

371. See *Semenoff v Many Ways Home Housing Society*, 2021 BCCRT 362 [*Semenoff*] [online](#); *Chehresaz v Khalesi*, 251 ACWS (3d) 144, 2015 CanLII 8736 (ON SCSM) [*Khalesi*] [online](#).

372. See *Residential Tenancies Act*, 2006, SO 2006, c 17, s 2(1) [*ON RTA*] at ss 5, 5.1.

373. See *Residential Tenancy Act*, SBC 2002, c 78, s 1 [*BC RTA*] at s 4.

374. *ON RTA* does not use the term 'transitional housing' but lays out in depth what is required for programs intended to assist tenants towards "more permanent living accommodation" (s 5.1(2)2) to be exempt from *ON RTA* in s 5(k) and s 5.1. *BC RTA* uses the term 'transitional housing' (s 4(f)) and defines the term in s1 of the Residential Tenancy Regulation.

375. While transitional housing or transitional shelters are similarly exempt from landlord tenant legislation, this report does not focus this form of accommodation, in part due to the complexity that often arises when determining whether or not transitional housing qualifies as a tenancy (see section on rental housing, including transitional housing). Additionally, government institutions such as hospitals, psychiatric wards, and federal and provincial prisons are similarly exempt from residential tenancy legislation and place many precariously housed people in situations where their personal belongings are constantly under threat of seizure or destruction. Other types of non-tenancy accommodations not

addressed include couch surfing, long-term informal stays with friends or family, living in a motel or hotel, squatting, or rehabilitative housing.

376. See *BC RTA*, *supra* note 4 at s 4(f) and *ON RTA*, *supra* note 3 at s 5(f).

377. See *ibid*, *BC RTA* at s 4(c) and *ON RTA* at s5(i).

378. This lack of clarity has become even more significant in the context of governmental responses to the housing crisis in the COVID-19 pandemic, where the line between supportive housing, transitional housing, and emergency shelter is often unclear. While the distinction between transitional and supportive housing is unclear at the best of times, it was especially in the case of self-isolation hotels seen in BC. In 2020 the BC provincial government clarified that living accommodations provided in relation to COVID-19 emergency response fell under the definition of emergency shelter and was thus exempt from the BC RTA. See British Columbia, "Residential Tenancy Policy Guideline 46-1: Emergency Shelters, Transitional Housing, Supportive Housing" (June 2020), [online](#) (pdf) [Guideline 46-1]; Residential Tenancy Regulation, BC Reg 477/2003, s 1.1. However, several hotels used as emergency response shelters were eventually purchased by BC Housing, transitioning to temporary supportive housing, which can have varying applicability to residential tenancies legislation depending on the features of the program. See Attorney General of British Columbia, "More housing coming for people in Victoria" (28 April 2021) [online](#).

379. Aaron Segart, "Homeless Partnering Strategy: National Shelter Study 2005-2014" (2017) at 5-6, [online](#) (pdf); *Employment and Social Development Canada*.

380. See *ibid* at 37.

381. See *ibid* at 6.

382. Canada Mortgage and Housing Corporation, "2SLGBTQIA+ Housing Needs and Challenges" (15 June 2022), [online](#); Reaching Home: Canada's Homelessness Strategy, "Report on addiction, substance use and homelessness" (21 April 2022), [online](#).

383. See Maytree, "A Human Rights Review of Toronto's Multi-Tenant Homes Policies" (October 2020), [online](#) (pdf); *Maytree* at 1 [*Maytree*].

384. See See Nicholas Blomley, Alexandra Flynn & Marie-Eve Sylvestre, "Governing the Belongings of the Precariously Housed: A Critical Legal Geography," (2020) 16 *Ann Rev of Law & Soc Sci* 165 at 172.

385. Terry Skolnik, "Freedom and Access to Housing" (2018) 35 *Windsor Yearbook of Access to Justice* 226.

386. See *Garcia v City of Los Angeles*, No. 20-55522 (9th Cir. 2021) [*Garcia*] where a city ordinance that allowed the city to remove of bulky items without notice was found to violate Fourth Amendment protections against unreasonable seizures. See *Lavan v City of Los Angeles*, 693 F3d 1022 (9th Cir 2021) [*Lavan*] where a court determined that belongings left unattended could not be considered abandoned. See also *Connecticut v Mooney*, 218 Conn. 85 (1991) where a tent under a bridge was constitutionally protected as a home.

387. The stories described at the beginning of each section are not real-life stories of specific individuals. They are composites of experiences that people have described regarding the ways in which they navigate a variety of laws, bylaws and policies that impact their ability to retain their possessions or access services with their belongings. These stories reflect the experiences of real people who have shared their experiences, whether as individually identifiable people or as participants in studies that have contributed to knowledge on this issue. The elements that make up the stories are derived from multiple municipalities, so it would be inaccurate to name a particular municipality in any of them. The relevant body of research concerning these kinds of experiences focuses on particular areas in which people have been impacted, rather than on their entire experiences moving across different spaces.

388. See *Prince George (City) v Johnny* 2022 BCSC 282 [*Johnny*] [online](#) at para 50.

389. See *ibid* at para 46.

390. See *Gunn v The Governing Council of the Salvation Army in Canada*, 2019 BCCRT 1082 [online](#) at para 10 [*Gunn*].

391. See City of Toronto, "Toronto Shelter Standards" (Version 4) [online](#) (pdf) at s 11.2.1 [*TSS*]; City of Ottawa, "Ottawa Emergency Shelter Standards" (24 February 2021) [online](#) (pdf) at s 11.2 [*OESS*]; City of London, "Emergency Shelter Guidelines" (February 2011) [online](#) (pdf) at s 6.7 [*London Shelter*].

392. See *Victoria (City) v Adams*, 2009 BCCA 563 [*Adams*] [online](#) at para 53.

393. See *Poff v City of Hamilton*, 2021 ONSC 7224 [online](#) at para 58 [*Poff*] where encampment resident comments on storing belongings in shelters: "when they have been placed in a safe place by staff, it can

be difficult to get staff to retrieve them because they are often busy and ask me to return at a later time".

394. See *supra* note 17.

395. BC Housing, "BC Housing Emergency Shelter Program Framework" (January 2018) [online](#) (pdf); [*BC Housing Shelter*].

396. See *TSS*, *supra* note 17 at Preamble (i).

397. See *ibid* at s 4(b)(i); See *OESS*, *supra* note 17 at s 4.

398. *TSS*, *supra* note 17 at Preamble (i).

399. See *OESS*, *supra* note 17 at 78.

400. See *TSS*, *supra* note 17 at s 12.2.2.

401. See *BC Housing Shelter*, *supra* note 52 at s5.7; See *OESS*, *supra* note 17 at s 9.4(a).

402. *London Shelter*, *supra* note 17 at s C 6.3.

403. *Ibid* at s E 1.0.

404. See *TSS*, *supra* note 17 at s 8.4.2(a); *OESS*, *supra* note 17 at s 7.7.2, *London Shelter*, *supra* note 17 at s D 1.7)

405. See *TSS*, *supra* note 17 at s 8.4.2; See *OESS*, *supra* note at 7.7.2(a)(b). In Toronto, however, this requirement is waived in the event that a transitional shelter provider uses rental agreements in their service model, in which case they are required to follow evictions processes through the Landlord Tenant Board (LTB) as laid out by the *ON RTA*. See *TSS*, *supra* note 17 at 8.4.2(a).

406. See *OESS*, *ibid* at 7.7; See *TSS*, *supra* note 17 at 8.4.

407. *Ibid* at 12.

408. *Ibid*; See also *Gunn*, *supra* note 16 where intake assessment rules limit residents to two bags of personal property; *Johnny*, *supra* note 14 at para 50 where people were only permitted to carry two bins in a shuttle from an encampment to a hotel; *Black v Toronto (City)*, 2020 ONSC 6398 [online](#) at para 113 where encampment residents were only permitted to bring two bags of belongings to a shelter, respite, or hotel, and if they refused to accept shelter would be issued trespass notices and cleared within 72 hours.

409. 2017 BCHRT 49 [*Pressello*] [online](#).

410. 2017 HRTO 505 [online](#).

411. Novac et al, "Justice and Injustice: Homelessness, Crime, Victimization, and the Criminal Justice System" (November 2006), [online](#) (pdf): at 61.

412. See *Pressello*, *supra* note 25 at para 16 where shelter code of conduct states the shelter will dispose of belongings left at the shelter during the day; See also *Gunn*, *supra* note 16 where intake process informs residents of shelter's policy of disposing of belongings two weeks after discharge.

413. See *Gunn*, *supra* note 16 at para 10.

414. See *Poff*, *supra* note 19 at para 58.

415. See *Headley v City of Toronto*, 2019 ONSC 4496 [online](#); Decision No. 991/07, 2010 ONWSIAT 935 [online](#).

416. *Ibid* at 12.

417. Bill Cleverly, "City of Victoria to pay \$130,000 for Storage Lockers for Homeless", *Times Colonist* (10 October 2018), [online](#): *Times Colonist*.

418. First United Church, "Storage Program Closure Advisory" (20 August 2019), [online](#); Jon Hernandez, "I Basically Have to Toss All of My Stuff: Unique DTES Storage Program Shuts Down", *CBC News BC* (18 November 2018), [online](#).

419. See Gwendolyn Dordick, "More Than Refuge: The Social World of a Homeless Shelter" (1996) 24:4 J Contemporary Ethnography 373.

420. See Mark Zion, "Making Time for Critique: Canadian 'Right to Shelter' Debates in a Chrono-Political Frame", (2020) 37 Windsor Yearbook on Access to Justice 88; See Amy Donley & James Wright, "Safer Outside: A Qualitative Exploration of Homeless People's Resistance to Homeless Shelters" (2012) 12:4 J Forensic Psychology Practice 288; See Anthony Marcus, "Shelterization revisited: Some methodological dangers of institutional studies of the homeless" (2003) 62:2 Human Organization 134.

421. See *Bamberger v Vancouver (Board of Parks and Recreation)* 2022 BCSC 49 [*Bamberger*] [online](#) at paras 113, 119, 129; See *Poff*, *supra* note 19 at para 178; See Blomley et al, *supra* note 20 at 168; See Mitchell Duneier. 1999. *Sidewalk*. New York: Farrar, Straus and Giroux.

422. Nicholas Olson & Bernie Pauly, "'Forced to become a community': Encampment residents' perspectives on systemic failures, precarity, and constrained choice" *International Journal of Homelessness*, forthcoming.

423. See *Gunn*, *supra* note 16.

424. 2019 ONSC 4496 [online](#).

425. See *OESS*, *supra* note 17 at s 10.2.1; See *TSS*, *supra* note 17 at s 11.2.1.

426. See *London Shelter*, *supra* note 17 at s C 6.6(c).

427. See *TSS*, *supra* note 17 at s 11.2(d).

428. See *TSS*, *ibid* at 11.2.1; See *OESS*, *supra* note 17 at s 11.2; See *London Shelter*, *supra* note 17 at s C6.7(b).

429. Larry J Zimmerman & Jessica Welch, "Displaced and barely visible: archaeology and the culture of homelessness" (2011) 45:1 *Historical Archaeology* 67 at 70.

430. See *Bamberger*, *supra* note 38 at para 119.

431. See Amanda Eisenmann & Francis Origanti, "Homeless Rights: A Call for Change" (2021) 30:1 J Soc Distress & Homelessness 90 at 92.

432. See *Hillier v Milojevic*, 2010 ONSC 4514 [online](#).

433. *Ibid* at para 51.

434. Municipal Licensing and Standards, "Multi-Tenant (Rooming) Houses: Owner Guide" (November 2020), [online \(pdf\)](#): *City of Toronto*.

435. See *Maytree*, *supra* note 12 at 3.

436. See *BC RTA*, *supra* note 4 at s 4; *ON RTA*, *supra* note 3 at s 5(i).

437. *Decision 1035* (1 April 2014), [online \(pdf\)](#): BC RTB Dispute Resolution Services.

438. See *SOT-66343-15 (Re)* (1 November 2016), [online](#): ON LTB.

439. *Decision 6468* (29 January 2015), [online \(pdf\)](#): BC RTB Dispute Resolution Services.

440. See *TST-26870-12 (Re)* (23 July 2012), [online](#): ON LTB. See also *TNT-11384-10 (Re)* (10 May 2011), [online](#): ON LTB [11384] where *ON RTA* was found to apply when a landlord moved into a rooming house because the tenant had not been required to share a washroom or kitchen with landlord for previous 10 months.

441. See *Khalesi*, *supra* note 1.

442. See *Human Rights Code*, RSO 1990, c H.19, s 21(1); See *Human Rights Code*, RSBC 1996, c 210, s 10(2)(a).

443. See *Adams*, *supra* note 18.

444. See Terry Skolnik, "How and Why Homeless People Are Regulated Differently" (2018) 43:2 *Queens LJ* 297.

445. See *ibid.*

446. See *Abbotsford (City) v Shantz*, 2015 BCSC 1909 [online](#) at para 82; See *Prince George (City) v Stewart*, 2021 BCSC 2089 [online](#) at para 74; See *Bamberger*, *supra* note 38 at para 15.

447. See *Bamberger*, *ibid* at para 212.

448. See *Khalesi*, *supra* note 1.

449. See *Semenoff*, *supra* note 1.

450. 2017 HRTO 505 [online](#).

451. BC Housing, "Shelter Design Guidelines" (September 2017) [online \(pdf\)](#).

452. See *Gunn v The Governing Council of the Salvation Army in Canada*, 2019 BCCRT [online](#) at para 10 [*Gunn*]; *George (City) v Johnny* 2022 BCSC 282 [online](#) at para 82 [*Johnny*]; *Black et al v City of Toronto*, 2020 ONSC 6398 (CanLII) [online](#) at para 100 [*Black*].

453. See *Pressello v Union Gospel Mission* 2017 BCHRT 49 [*Pressello*] [online](#).

454. See *Nanaimo (City) v Courtoreille*, 2018 BCSC 1629 [online](#) at para 28.

455. See Maytree, "A Human Rights Review of Toronto's Multi-Tenant Homes Policies" (October 2020), [online \(pdf\)](#): *Maytree* at 5 [*Maytree*]; See e.g. *Beach v Moffat* [2005] 252 DLR (4th), 75 OR (3d) 383 (CA) [*Moffat*] [online](#); *Davies v Syed* 2020 ONSC 5732 [*Davies*] [online](#).

456. See *Gunn*, *supra* note 18; See *Pressello*, *supra* note 19.

457. Stolen Belonging Project, "Interview with former DPW worker disclosing human rights violations, theft and city workers profiting off items they take in the sweeps" (2019) [online](#).

458. See *Grand Forks (City) v Jennings*, 2020 BCSC 1809 [*Jennings*] [online](#).

459. See Meenakshi Manoe, "#Stop the Sweeps: Ending Cyclical Displacement and Criminalized Poverty in Vancouver" (2 May 2022) [online \(pdf\)](#): at 27.

460. See Blomley et al, *supra* note 12 at 166 and 174; Christine Coulter, "Vernon Votes to Rein in Homeless By Banning Shopping Carts in All Public Spaces", *CBC News BC* (25 July 2018), [online](#).

461. See Brenna Owen, "Nearly 600 Campers Moved Into Temporary Housing Amid COVID-19: B.C. Government", *CTV News* (21 May 2020), [online](#).

462. See *Johnny*, *supra* note 18 at paras 46, 76.

463. See Shiri Pasternak, "Canada is a Bad Company" in *Disarm, Defund, Dismantle: Police Abolition in Canada* (2022), Toronto: Between the Lines.

464. See Doug Anderson & Alexandra Flynn, "Rethinking 'Duty': The City of Toronto, a Stretch of the Humber River, and Indigenous-Municipal Relationships" (2020) 58:1 *Alta L Rev* 107 at para 11.

465. See *ibid.*

466. See Paula Arriagada, Tara Hahmann and Vivian O'Donnell, "Indigenous people in urban areas: Vulnerabilities to the socioeconomic impacts of COVID-19" (2020) [online](#); Yale D Belanger, Olu Awosoga & Gabrielle Weasel Head, "Homelessness, Urban Aboriginal People, and the Need for a National Enumeration" (2013), 2:2 *Aboriginal Policy Studies*, [online](#); CBC News, "Disproportionate number of Black, Indigenous, Latin people counted in Metro Vancouver homeless survey", *CBC News* (5 August 2020), [online](#).

467. See Jen St. Denis, "'Unprofessional and Disrespectful': Walker Among Items Taken from Homeless People", *The Tyee* (20 Jan 2021), [online](#).

468. See *Manoe*, *supra* note 25; See also Joshua Daniel Phillips, *From Losing Everything to Finding Community: How Homeless People Narrate Their Lived Experiences* (PhD Dissertation, Department of

469. See Manno, *supra* note 25; See also Joshua Daniel Phillips, *From Losing Everything to Finding Community: How Homeless People Narrate Their Lived Experiences* (PhD Dissertation, Department of Speech Communication Southern Illinois University Carbondale, 2014) [unpublished] at 86.

470. Susie Quinn, "Port Alberni Tent City Evicted Again", *Vancouver Island Free Daily* (24 November 2020), [online](#).

471. See Blomley et al, *supra* note 12 at 168.

472. *Toronto Municipal Code*, c 548-3 and c 548-4.

473. City of Ottawa, by-law No 2013-252, *Shopping Cart Bylaw*, [online](#) (PDF): at ss 13–15 [*Ottawa Shopping Cart Bylaw*].

474. See Manno, *supra* note 25 at 31.

475. See *Vancouver (City) v Wallstam*, 2017 BCSC 937 [online](#) at para 61.

476. See Manno, *supra* note 25 at 26.

477. See Manno, *supra* note 25 at 10; Wawmeesh Hamilton, "VPD accused of losing Indigenous mother's ashes during Downtown Eastside street cleanup", *CBC News* (26 May 2021), [online](#).

478. See Blomley et al, *supra* note 12 at 174.

479. See *Johnny*, *supra* note 18 at para 82.

480. See City of Toronto, "Toronto Shelter Standards" (Version 4) [online](#) (pdf): at s 11.2.1 at s 11.2 [TSS].

481. See Toronto General Manager, Shelter, Support and Housing Administration, "Annual Report on From the Streets into Homes: A Strategy to Assist Homeless Persons Find Permanent Housing" (29 December 2005), [online](#) (pdf): *City of Toronto*. [*Streets to Homes*].

482. See *Johnny*, *supra* note 18 at 50 where a community supporter reached out to city officials via email and Facebook about how to recover belongings taken during demolition of an encampment, receiving no response.

483. See St. Denis, *supra* note 33.

484. Stolen Belonging Project, "Episode 1: Recognize Our Humanity" (23 May 2019), [online](#) (video).

485. See Manno, *supra* note 25 at 27.

486. According to Vancouver's *Unclaimed Property By-law*, objects will be retained for six months before being auctioned, or will be sold or disposed of immediately if perishable or inconvenient to store. See City of Vancouver, by-law No 5078, *Unclaimed Property By-Law* (22 June 1993), [online](#) (pdf): at s 4 [*Unclaimed Property Bylaw*]; In Ontario, items will be held for 3 months. See *Police Services Act*, RSO 1990, c P 15, s 132(4)1; In BC more generally, items will be held by police for 3 months. See *Police (Disposal of Property) Regulation*, BC Reg 87/91, s 6(1) [*BC Disposal*].

487. See *BC Disposal*, *ibid* at s 9.

488. See Manno, *supra* note 25 at 34 in "Demands" asking for clear instructions of how to recover seized belongings.

489. See e.g. City of Victoria, by-law No 09-079, *Streets and Traffic Bylaw*, (1 June 2015) [online](#) (pdf): at s 102 [*Victoria Streets Bylaw*] at ss 102(4) and (6) where people have 30 days to recover seized belongings; *Toronto Municipal Code*, c 743, *Streets and Sidewalks, Use of*, [online](#) (pdf): at c 743-46 [*Toronto Streets Code*] where people have 60 days to recover seized belongings.

490. See *Victoria Streets Bylaw*, *supra* note 55 at s 102.

491. See *Chehresaz v Khalesi*, 251 ACWS (3d) 144, 2015 CanLII 8736 (ON SCSM) [*Khalesi*].

492. See Hamilton Police Service, "Collect my property" (3 June 2022) [online](#).

493. See *ibid.*

494. See Quinn, *supra* note 36.

495. See e.g. *TNT-43402-13-RV (Re)* (10 March 2015), [online](#): ON LTB [43402] where tenant was evicted, not given chance to collect property, and thus awarded compensation; See also *TNL-97174-17-RV (Re)* (22 March 2018), [online](#): ON LTB [97174] where landlord sold, retained, or disposed of property before 72 hours elapsed after eviction or did not make property available to be retrieved and tenant was awarded compensation.

496. The Canada Human Rights Commission refers cases to the Canada Human Rights Tribunal, and is only for complaints of discrimination by federally regulated employers. For the most part, when people's belongings are seized it is done by provincial or municipal entities. However in some jurisdictions, Prince George BC for example, the RCMP could be involved or present in the dismantling and disposal of a person's personal belongings; See *Johnny*, *supra* note 18.

497. See *Canadian Human Rights Act*, RSC 1985, c H-6, s 53; *Human Rights Code*, RSO 1990, c H19, s 45.2 [ON HR Code]; *Human Rights Code*, RSBC 1996, c 210, s 37 [BC HR Code].

498. See Manno, *supra* note 25 at 39.

499. See *ON HR Code*, *supra* note 63 at s 2; See *BC HR Code*, *supra* note 63 at s 10.

500. See Civil Resolution Tribunal, "Making a Claim with the CRT: Small Claims" (11 March 2022) [online](#) (pdf).

501. Civil Resolution Tribunal, "Fees" [online](#): where costs begin at \$75-100 in BC; See Ontario, "Small claims court: suing someone" (6 July 2021) [online](#): where costs begin at \$89 in Ontario.

502. See Manno, *supra* note 25 at 40.

503. See *Independent Police Review Act*, 2007, SO 2007, c 5.

504. See *Police Act*, RSBC 1996 c 367.

505. See Office of the Police Complaint Commissioner, "About Us" [online](#).

506. See Office of the Independent Police Review Director, "Hearings" [online](#).

507. See Office of the Independent Police Review Director, "Complaints" [online](#).

508. See License Inspectors' and Bylaw Officers' Association, "Frequently Asked Questions" [online](#): [BC Bylaw Association].

509. See *Local Government Act*, RSBC 2015, c 1, s 736 [Local Govt Act BC]; See *Vancouver Charter*, SBC 1953, c 55 s 294(2).

510. See *Limitations Act*, 2002, SO 2002, c 24, Sched. B, s 4 [Limitations Act OM]; See also City of Toronto, "Taking Legal Action Against The City" [online](#).

511. See *BC Bylaw Association*, *supra* note 74. See also, for example, the Toronto Ombudsman's decision to investigate the City's clearing of encampments: Ombudsman Toronto, "Toronto's Ombudsman to investigate city's clearing of encampments" [online](#).

512. See *Tanton*, *supra* note 15.

513. See *Victoria (City) v Adams*, 2009 BCCA 563 [Adams] [online](#).

514. See *Bamberger*, *supra* note 16 at para 168 where the court acknowledges the "severe practical and financial barriers" to *Charter* challenges.

The Report

Glossary

In Their Own Words

Resources

Who We Are

EMAIL

info@belongingsmatter.ca

SOCIAL