



March 31, 2021

Mayor John Tory

City Hall, 2nd Floor
100 Queen St. W.
Toronto, ON M5H 2N2

Councillor Mike Layton

Toronto City Hall
100 Queen Street West, Suite C47
Toronto, Ontario M5H 2N2

Councillor Gord Perks

100 Queen Street West, Suite A14
Toronto, Ontario M5H 2N2

Councillor Joe Cressy

100 Queen Street West, Suite C53
Toronto, ON M5H 2N2

Councillor Kristyn Wong-Tam

100 Queen St W, Suite A5
Toronto, ON, M5H 2N2

Dear Mayor John Tory, and Councillors Cressy, Layton, Perks and Wong-Tam

Re: Encampment Evictions and Trespass notices

We are writing as a coalition of lawyers at the Black Legal Action Centre, Community Justice Collective, Neighborhood Legal Services, Osgoode Hall Law School's Environmental Justice and Sustainability Clinic, The 519, and Downtown Legal Services at the University of Toronto Faculty of Law, to express our serious concerns about the illegality and discriminatory impact of the City of Toronto's "Pathways Inside Program" (PIP), which impacts residents in your wards.

All of the undersigned work closely with people experiencing homelessness, and specifically with residents of, or outreach workers who work alongside residents of, the four encampments targeted by this program. Many of us are also your constituents and live closeby to one or more of these encampments.

We are gravely concerned about what we have learned in regard to the City's published encampment program, and the trespass notices posted around the encampments two weeks ago. Taken together, it is clear that the focus of PIP is not to permanently house anyone, but to displace and evict people from their chosen communities, and in doing so to invisibilize the City's embarrassing housing crisis.

The implementation of PIP, including discriminatory conditions for access to shelter space and any forced evictions, undermines and likely violates rights protected under the Ontario *Human Rights Code*, the *Charter of Rights and Freedoms*, and international law.

Additionally, it increases criminalization of poor people, especially of Black and Indigenous people in our communities. For the following reasons we urge the City of Toronto to stop the unlawful implementation of this program. We urge the City to urgently focus on meaningful engagement with residents towards the provision of safe, adequate, and permanent housing. The City has the opportunity to position itself as a leader in adopting a rights-based approach to encampments and the right to housing. However, the following concerns must be urgently addressed:

I. Some Shelter Hotels' policies violate residents' rights under the Ontario Human Rights Code. By punishing people for failing to accept discriminatory services, the City of Toronto may also be violating residents' rights under Section 15 of the Charter of Rights and Freedoms.

Many residents of encampments have previously accepted City shelter spaces, but moved back into encampments because of untenable, arbitrary and sometimes illegal rules and restrictions imposed on them.

People who have been offered shelter hotel spaces report that some policies include rules that prohibit the consumption of alcohol, use of drugs, and forbid guests. Substance-dependence is recognized as a disability under the Ontario *Human Rights Code*.¹ Shelters that deny people reasonable accommodations in regards to these disabilities--including accommodations such as substance use and recognized harm reduction strategies such as using substances in the presence of friends--are violating residents' rights.² Outreach workers and residents are carefully tracking shelters' illegal policies and refusals to accommodate needs. Additionally, it appears to be City policy that no resident who has recently left or been kicked out of a shelter hotel can receive a space inside.³ This further compounds the discriminatory impact on residents whose Code-protected needs were not accommodated the first time around.

II. Forced evictions are a violation of international human rights law, which is binding on the City of Toronto.

¹ "Policy on preventing discrimination based on mental health disabilities and addictions." Ontario Human Rights Commission, 2012. Available at: http://www.ohrc.on.ca/sites/default/files/Policy%20on%20Preventing%20discrimination%20based%20on%20mental%20health%20disabilities%20and%20addictions_ENGLISH_accessible.pdf; City report on lack of physical accessibility in shelter-hotels, "Supporting People with Disabilities in Toronto during and beyond COVID-19," Presentation by Directors of SSHA and Housing Secretariat, Nov 22, 2021. Available at: <http://www.toronto.ca/legdocs/mmis/2020/ec/bgrd/backgroundfile-158822.pdf>

² The Supreme Court of Canada has spoken clearly to the required steps that organizations covered under the Human Rights Code must take to fulfill their obligation to reasonable accommodation. See: British Columbia (Public Service Employee Relations Comm.) v. BCGSEU, [1999] 3 S.C.R. 3

³ Recording of a conversation with a City of Toronto employee stating that anyone who has accessed a shelter hotel within the last 30 days is ineligible for a space: <https://soundcloud.com/report-toronto/march-20-2020-trying-to-get-someone-into-a-shelter-hotel>

Forced evictions are a gross violation of international human rights law. Article 11(1) of the UNHR International Covenant on Economic, Social and Cultural Rights declares that all state parties “recognize the right of everyone to an adequate standard of living” including housing and the continuous amelioration of living conditions.⁴ This includes protection from arbitrary or unlawful interference with privacy, family, [or] home, forced eviction, and discrimination. International human rights law also recognizes that “the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person.”⁵ Municipal governments are obligated to comply with the State’s international human rights obligations within their exercise of their jurisdiction.

The right to housing should not be interpreted narrowly as “having a roof over one’s head”. According to the UNCESCR it should be interpreted as “the right to live somewhere in security, peace and dignity.”⁶ Residents of encampments are rights holders under international law.

III. More than one in three encampment residents in Toronto are Indigenous⁷ and encampments are located on Indigenous lands and Treaty territory. The forced eviction of Indigenous residents is a violation of Indigenous rights and the Treaty relationship. Because these evictions will have a disproportionate impact on Indigenous people, they also likely violate rights protected under the Ontario Human Rights Code and may be a violation of s 15 of the Charter.

Any engagement with encampment residents must be guided by the City’s obligations to Indigenous peoples under both domestic and international law, including recognition of Indigenous people’s constitutionally protected and distinctive relationships with land, equality rights under the *Charter*, and requirements for meaningful and good faith consultation. The City’s actions must also be guided by applicable Treaties with Indigenous nations and informed by consultation with the Treaty holders in the territory. The current Treaty holders, the Mississaugas of the Credit First Nation, have specifically identified the right to housing as a key strategic priority.⁸ The City’s human rights obligations noted above are indivisible from its obligations under the *United Nations Declaration on the Rights of*

⁴ GA, *International Covenant on Economic, Social and Cultural Rights*, Res 2200A (XXI), OHCHR (3 January 1976) 11

⁵ United Nations Human Rights Office of the High Commissioner, “International standards on the right to housing” (2021), online: *OHCHR* <<https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#treaties>>.

⁶ United Nations Human Rights Office of the High Commissioner, “International standards on the right to housing” (2021), online: *OHCHR* <<https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#treaties>>.

⁷ “Street Needs Assessment Results Report” (page 4), City of Toronto, 2018. Available at: <https://www.homelesshub.ca/sites/default/files/attachments/99be-2018-SNA-Results-Report.pdf>

⁸ Mississaugas of the Credit First Nation (2017) “Trailblazers: Mississaugas of the Credit Strategic Plan”, 39 available at <<http://mncfn.ca/wp-content/uploads/2019/11/MCFN-Strategic-Plan-Final.pdf>>

Indigenous Peoples.⁹ Indeed, we note the City adopted *UNDRIP* as part of its commitments to Truth and Reconciliation in 2013, one the first governments in Canada to do so.

Under domestic and international law, the City is obligated to meaningfully consult with Indigenous peoples in good faith when making decisions that may impact them. This is rooted in the recognition of Indigenous peoples as self-determining. Article 23 of *UNDRIP* requires that Indigenous peoples be involved in decision making about health, housing and other social programs affecting them. Canadian courts have recognized that this right of self-determination extends to urban Indigenous communities and that those communities should have equal agency over social programs.¹⁰ Forced evictions of Indigenous people do not comply with requirements for meaningful good faith consultation about and involvement in social programs, nor are they consistent with the recognition of Indigenous self-determination.

IV. Forceful evictions and involuntary relocation to shelter hotels likely violates residents' rights to life, liberty and security of the person under Section 7 of the Charter of Rights and Freedoms. This is particularly true in the current moment, which sees us at the start of a third wave of COVID-19, with at least 14 COVID-19 active outbreaks in shelters as of March 30, 2021.¹¹ Over 1200 people have contracted COVID-19 in City-run shelters¹², while there have been very few reported cases of COVID-19 in encampments.

The City has falsely stated in numerous public documents that the Ontario Superior Court declared its anti-camping bylaws constitutional. While the Superior Court denied an interim injunction on encampment evictions, no Ontario Court has ever made a decision regarding the Charter-compliance of Toronto's bylaws, especially in the context of the COVID-19 pandemic and shelter rules that discriminate against some unhoused people.

Courts in British Columbia have repeatedly found that it violates Charter rights to forbid sleeping in public spaces when people have no adequate, safe alternative which accommodates their needs.¹³ The Courts have been clear that if spaces available are not accessible, safe, or do not offer accommodations, then anti-camping bylaws violate rights of people sleeping outside.¹⁴ Indeed, the Court in *Black* stated "the City will have to consider how and when to enforce its By-law having regard to the continued availability of shelter spaces..."¹⁵ In recent months, encampment residents and their supporters have been closely tracking shelter outbreaks, and failures to offer accommodations to residents who need them

⁹ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295, 46 ILM 1013 (2007) [*UNDRIP*], online: <www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf>.

¹⁰ *Ardoch Algonquin First Nation v. Canada (Attorney General)* [2004] 2 FC 108, 2003 FCA 473, at 36.

¹¹ "COVID-19: Status of Cases in Toronto", Accessed March 30:

<https://www.toronto.ca/home/covid-19/covid-19-latest-city-of-toronto-news/covid-19-status-of-cases-in-toronto/>

¹² *Ibid*.

¹³ See *Abbotsford (City) v. Shantz*, 2015 BCSC 1909; *British Columbia v. Adamson*, 2016 BCSC 584

¹⁴ *Ibid*

¹⁵ *Black et al. v. City of Toronto*, 2020 ONSC 6398, para 8

on Code-protected grounds. Additionally, they have been recording each time encampment residents are told there are no available spaces inside, at all. This happens frequently. Such a denial was recorded as recently as yesterday. In this context, the City must urgently reconsider the enforcement of the By-law or risk an injunction forcing it to do so.

V. Invoking trespass laws criminalizes unhoused persons, disproportionately impacting racialized, newcomer and Indigenous peoples, and undermining the City's relationships with encampment residents and unhoused persons.

While we support the creation of additional shelter spaces, we are extremely concerned about the City of Toronto's intention to criminalize encampment residents who cannot, or do not want to accept the current shelter spaces that are available. The Trespass Notices posted in encampments make it clear that the City is prioritizing the enforcement of bylaws over its human rights obligation to encampment residents.

Relying on trespass laws to address encampments encourages police and bylaw officers to use their discretionary powers to charge anyone who does not vacate the parks under the *Provincial Offences Act*. In doing so, the City is choosing to deploy the threat of criminalization against people who are already disproportionately targeted by the criminal legal system. Racialized people, newcomers, and Indigenous people are disproportionately represented in the homeless population. Statistics make clear that these populations are also over-policed and over-criminalized. While 5% of people in Canada identify as Indigenous, over 30% of people incarcerated in federal prisons are Indigenous.¹⁶ In Toronto, Black people are four times as likely to be charged with crimes as White people.¹⁷ This flies in the face of the City's own stated commitments, as well as statements that each of you have made committing to fighting discrimination in policing and the criminal legal system.¹⁸ It is also notable that the city is already taking legal action against Khaleel Seivright, a Black man whose only involvement with the housing crisis was to build small shelters to protect people from freezing to death and from the elements. The City can, and must, choose a different

¹⁶ "National travesty": report shows one third of Canada's prisoners are Indigenous," Leyland Cecco, *The Guardian*, 2020, <https://www.theguardian.com/world/2020/jan/22/one-third-canada-prisoners-indigenous-report>

¹⁷ "A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service," Ontario Human Rights Commission, 2020, Accessible at: http://www.ohrc.on.ca/en/news_centre/new-ohrc-report-confirms-black-people-disproportionately-arrested-charged-subjected-use-force

¹⁸ "My Statement on anti-Black and anti-Indigenous Racism and the Toronto Police Services Budget," Councillor Joe Cressy, June 18, 2020, https://www.joecressy.com/my_statement_on_anti_black_and_anti_indigenous_racism_and_the_toronto_police_services_budget; "Member Motion on the Toronto Police Budget: defund, rebalance and invest in a new approach." Councillor Kristyn Wong-Tam, June 8, 2020, https://www.kristynwongtam.ca/member_motion_defundtps; "The violence and police actions we are seeing against our Black and Indigenous brothers and sisters must end. We can't let this keep happening. Now is the time for action." Tweet of Councillor Mike Layton, June 13, 2020, https://twitter.com/m_layton/status/1271795108199968768; "Policing in Toronto, and Anti-Black & Indigenous Racism", Councillor Gord Perks, <https://gordperks.ca/policing-in-toronto-and-anti-black-indigenous-racism/>

approach - one grounded in a rights-based framework that recognizes encampment residents as rights-holders and experts on their own lives.

Housing is recognized as a human right under international law, and by decent people everywhere. The City of Toronto is not offering encampment residents housing, but shelter spaces with unpredictable and unknown expiration dates. For residents who have already been in shelters, or who live outside the four “priority” encampments, the City is threatening eviction without even guaranteeing shelter space.

An alternative plan of action is urgently needed. Shelter outbreaks are increasing, and the crisis will only worsen if you continue to force people into these dangerous environments, and out of the communities where they feel safest. Encampment residents and the people who love and support them are waiting on a new announcement that prioritizes their lives and their safety.

We stress that your current strategy will lead to prolonged court battles. Lawyers, along with others across the city, are organized and ready to defend encampment residents’ rights to dignity, autonomy and safe housing that meets their needs. The city’s actions are likely illegal, and are clearly immoral, misguided, and inhumane.

We urge you to engage in meaningful conversations with residents, who are best able to articulate their needs, and to really listen to your constituents--ourselves included--who oppose these policies of cruelty and displacement.

Signed,



Community Justice Collective
Per: Leora Smith, Sima Atri, Aliah El-houni



Black Legal Action Centre
Per: Fareeda Adam, Mewded Mengesha, Piera Savage



Neighbourhood Legal Services
Jennifer Stone, Executive Director



Environmental Justice and Sustainability Clinic, Osgoode Hall Law School
Estair Van Wagner, Co-Director and Associate Professor



The 519
Per: Pam Hrick, Chair of the Board of Management



Downtown Legal Services
Benjamin Ries, Supervising Lawyer (Housing Law)