Advance Praise for *The Bylaw State*

"*The Bylaw State* is an important addition to the conversation on how to address homelessness, and it comes at a critical time. Governments are neglecting their human rights obligations and turning to criminalization and enforcement in response to homelessness and encampments. As Federal Housing Advocate, I have heard consistently that bylaws that criminalize homelessness and allow encampment evictions are causing greater harms and instability. As Flynn and Hermer explain, centring dignity, accountability, and legal obligations at the heart of solutions allows municipalities to address homelessness with the urgency and compassion that the crisis demands."

—MARIE-JOSÉE HOULE, Federal Housing Advocate

"*The Bylaw State* describes in legal detail the magical thinking municipal councils engage in as they pass bylaws to address the social problems of homelessness, hoping that a bylaw, the police, or the courts will address these issues. All sorts of euphemisms are used to address homelessness — loitering, vagrancy, panhandling, soliciting, obstruction — instead of calling the problem what it is. And like all magical thinking, the problem remains, and it won't go away until more housing is built and rents are affordable."

—JOHN SEWELL, former mayor, City of Toronto

"Alexandra Flynn and Joe Hermer thoroughly chronicle the rapid emergence and evolution of municipal bylaws across the country as a tool for the removal and criminalization of unhoused people amidst the blatant absence of housing justice. Our country's reliance on bylaws that disrupt human rights is a dystopian response that all Canadians must resist."

—CATHY CROWE, long-time street nurse, C.M.

"This important and timely book alerts us to the powerful and overlooked work of the bylaw in regulating the unhoused. Bylaws are easily overlooked as technical, petty, or antiquated. Flynn and Hermer, however, urge us to take them seriously, revealing their powerful, dehumanizing and exclusionary effects. To fully understand the injustice of the unhoused, they insist, requires careful attention to the alchemy of the bylaw."

—NICHOLAS BLOMLEY, Chair, Department of Geography, Simon Fraser University

"For everyone working to end homelessness, this book provides powerful insights into how bylaws shape exclusion and precarity for people who are unhoused. To create real systemic change, the reader is called to rethink the rules that drive policy and practice in cities. By pulling back the curtain on how bylaws undermine the dignity of individuals trying to survive in public spaces, Flynn and Hermer affirm the need for a response that is based in human rights. Housing justice demands a whole-of-government approach that meets the housing, health and social needs of those most deeply affected. For city leaders, this book is a timely and critical call to action."

—ELIZABETH MCISAAC, President, Maytree

"Passionate, learned, and engaging, Alexandra Flynn and Joe Hermer's *The Bylaw State* details how homelessness has been transformed from a housing and social welfare lens into a 'nuisance' issue that denies the humanity and vulnerability of those most affected. Anyone interested in the sorry state of housing in Canada should read this book — and then act to ensure that municipal governments govern to support their more marginalized citizens."

—CAROLYN WHITZMAN, author *Home Truths* (2024), School of Cities, University of Toronto

"The authoritarian government that many of us in North America today fear will come from the top of the state in the form of legislation and executive orders is already here at the bottom in the form of local bylaws and ordinances designed to provide for public order and safety but increasingly used for the long term governance of the unhoused among us. In *The Bylaw State*, Flynn and Hermer open a door to a side of modern democracy more pervasive than the carceral state, and for many of the most vulnerable among us, just as destructive. A vital contribution to contemporary socio-legal studies."

—JONATHAN SIMON, Lance Robbins Professor of Criminal Justice Law, UC Berkeley School of Law

"Flynn and Hermer expose the limits of the law in achieving justice, highlighting the tensions between court-affirmed rights and the modes of governance carried out by municipalities to side-step the limits placed on their powers. This important and timely book demonstrate how bylaws function as the unseen agents of municipalities, powerful tools of displacement and exclusion that serve to further marginalize and harm the most vulnerable. By reducing the national housing crisis to a matter of law enforcement, Flynn and Hermer unequivocally demonstrate how the bylaw state obscures the harsh reality of homelessness, failing to provide any real solutions while further harming those who already experience the most acute impacts. This empirical and data-driven study remains accessible without simplifying the problems it addresses or reducing the stakes. Attentive to settler-colonialism and the disproportionate impacts experienced by Indigenous, racialized, and marginalized people, this book serves as a national call, reminding us that the housing crisis has not just become the central battleground over property, poverty, and the public, but also for our humanity."

—HEIDI KIIWETINEPINESIIK STARK (Turtle Mountain Ojibwe), Associate Professor, University of Victoria

THE BYLAW STATE

ENCAMPMENT EVICTIONS & THE STRUGGLE FOR PUBLIC SPACE

ALEXANDRA FLYNN & JOE HERMER

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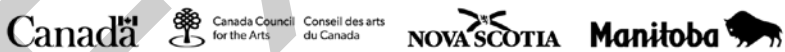

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Contents

Foreword

On August 30, 2021, I sat before the City of Prince George Mayor and Council to provide testimony regarding the introduction of the so-called Safe Streets Bylaw. Prince George is a hub for services for First Nations all over northern BC, including members of my community of Takla. While the city claimed the bylaw was drafted to "help make the streets sidewalks and alleys of Prince George safer for all residents," it was clear that the bylaw's intent was really to remove homeless people from the streets of Prince George. Considering that nearly 70% of homeless people in Prince George are Indigenous,[1] I saw the actions of the mayor and council as another way to justify colonial violence.

In the run-up to the introduction of the bylaw, we saw more unhoused people on the streets of Prince George because they had nowhere to go due to the COVID-19 pandemic; notably, all drop-in centres were closed during that time. We were also seeing an increase in homelessness because many people who had lost their jobs during the pandemic lost their homes as well. The city's approach was to punish homeless people for loitering, littering, or self-medicating. That is not only inhumane — it does nothing to solve the challenges the city, and indeed the entire continent, are facing, and it does nothing to heal our people.

I was joined in my submission by Dr. Joseph Hermer, who appeared online from his office at the University of Toronto Scarborough. The BC Assembly of First Nations had been looking for support to push back against the targeting of homeless people — and Dr. Hermer responded to our call immediately. We reached out to him because of work he'd done mapping anti-homeless bylaws across Canada, including demonstrating how cruel they are in their implementation.

As we said during our testimony, policing is no substitute for adequate care for our brothers and sisters who are suffering. I was shocked by the callous disregard for the lives of people on the street from some members of council. Some city councillors claimed that the bylaw was not meant to target people but to target behaviour. I don't agree. It's clearly targeting people who are already marginalized. Targeting loitering as a behaviour

means moving people along who have no other place to go. Targeting panhandling means cutting people off from an emergency source of income. Research has shown that money earned from panhandling is most often spent on food. Other councillors conflated sitting on the street with more serious crimes, such as breaking and entering; they confused these issues and stoked fires of paranoia that people who have nowhere to sleep pose a threat to regular citizens.

That night, the mayor and city council passed their bylaw, but it was also the beginning of positive working relationship between Dr. Hermer and the British Columbia Assembly of First Nations (BCAFN). Since then, we formed a dedicated partnership committed to the ongoing fight against the colonial violence that these bylaws continue to inflict. Dr. Hermer and the BCAFN have continued to work together since that night in August 2021 to protect some of the most vulnerable people in the city.

Additionally, the BCAFN has carried out work for years now to ensure that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is implemented across the province of BC. Our collaboration with Dr. Hermer is part of our ongoing effort to prevent this type of violence against homeless people.

The harmful actions of the City of Prince George did not stop with the introduction of the bylaw, and I am proud to say that we played a supporting role in securing a protection order in October 2021 for the residents of Moccasin Flats, a homeless encampment. Surprisingly, the city didn't seem to understand that the BC Supreme Court's protection order applied to them. In November 2021, a month after the ruling, they bulldozed Moccasin Flats. In February 2022, they lost another attempt to secure a court order to remove the encampment. Further, the judge in that decision mentioned the contravention of the original protection order.

The BCAFN also worked alongside Dr. Hermer to document the abuses justified by the Safe Streets Bylaw. We ultimately produced two complementary reports in the spring of 2022. Our report, titled *Experiences with Bylaw in Prince George*, focused on the lived experience of homeless people under the Safe Streets Bylaw. Dr. Hermer's report, *Move On: The First Ninety-Nine Days of the City of Prince George Safe Streets Bylaw*, analyzed 427 bylaw enforcement events resulting from the new bylaw. As I stated in 2022, this research has confirmed our assertions that the Safe Streets Bylaw is harmful and discriminatory towards

unhoused people, most of whom are Indigenous. This and other similar bylaws are counterproductive, cruel, and inherently racist.

We don't need to further push unhoused people around; we need to bring them into the centre of a circle of care. We need healing, we need cooperation, and we need to build trust. Evidence shows that the best starting point for action is well-resourced outreach work, provided by peers who share the experience and background of those being supported. Rather than use more of their budget on police and bylaw enforcement, the city should be partnering with existing Indigenous service organizations to improve available services and ensure that people can access housing.

In the meantime, the city's protective services were totally negligent in protecting the residents of Moccasin Flats. It has become clear that the RCMP are not willing to protect those residents from criminal elements, given the rash of arson events to their tiny homes and trailers. Similarly, the Fire Department has not provided fire extinguishers or fire blankets for safety. They've made no effort to see the residents of Moccasin Flats as people who have often been highly victimized. Instead, residents were seen as a criminal threat — from both the RCMP and neighbours. This perspective is a clear continuation of the colonial strategy of dehumanizing First Nations, to justify the theft of our land and the forced displacement of our communities onto tiny reserves.

With complete disregard for the negative impact it would have on residents, in 2023 the city also cleared out the Millennium Park encampment just six weeks after signing a memorandum of understanding with the provincial government that requires supports for residents to be in place prior to removing an encampment.

The homelessness problem in Prince George is not unique. We know that homelessness in Canada is linked directly to impacts of colonialism — both historical and ongoing. In collaboration with Dr. Hermer and many others, we have gathered the data that certainly tells this story. Indigenous people in Canada are eight times more likely to experience homelessness and, according to the 2021 Prince George Point-in-Time Homeless Count Report, over two-thirds of the people experiencing homelessness are Indigenous.[2]

In Prince George, almost half (48%) of those experiencing homelessness were in foster care or group homes as children.[3] The Sixties Scoop removed many children from their homes and continued residential school policies by other means. This practice continues to this day, where

First Nations children are 17 times more likely to be apprehended by child welfare services than non-Indigenous children.[4]

The ongoing legacy of residential schools includes trauma for survivors and intergenerational survivors, including homelessness. In the 2023 Vancouver homelessness count, nearly two-thirds of Indigenous respondents were survivors or had a family connection to residential schools.[5]

According to the Truth and Reconciliation Commission,[6] at the height of the Indian residential school system in 1953, nearly 11,000 Indigenous children were in residential schools. In 2021, federal government figures showed that more than half (54%) of foster children in private homes under the age of 15 were Indigenous, even though only 7.7% of all children in Canada are Indigenous.[7] Chronic underfunding of housing on reserves, coupled with skyrocketing housing prices in Canada, have also contributed to the overrepresentation of First Nations among the homeless population.

The continuing criminalization of homelessness is in direct conflict with UNDRIP, which was passed into law by the BC government in 2019, in the Declaration on the Rights of Indigenous Peoples Act (DRIPA). Article 10 prohibits the forcible removal of Indigenous peoples. Article 26 underscores the right to the lands that First Nations have traditionally occupied, and Article 32(1) highlights the right to determine how our lands are used. Indeed, every major city in BC is on unceded territory — yet, a majority of homeless people in Prince George are Indigenous, as noted. This is our land, and we are not leaving.

Bylaws are a completely inappropriate tool for dealing with homelessness. As this important book shows, the approach taken by the City of Prince George in enforcing the Safe Streets Bylaw criminalizes people for just trying to survive. These actions reflect a commitment to ongoing systemic racism and colonialism that the City of Prince George must address. The use of the term "squatter," one that has been directed at Indigenous Peoples, ignores the fact that the city sits on unceded territory of the Lheidli T'enneh First Nation. *First Nations people cannot be squatters on their own land*. Moreover, the city has consistently lied about the use of this term, which the city's own staff directly integrated into their bylaw reporting system, as this book demonstrates.

This book also makes clear that the City of Prince George conducted no consultation or engagement, let alone cooperation (as required by

UNDRIP) with local First Nations in determining how to address the ongoing housing and homelessness crisis in Prince George. This is a completely unacceptable approach to this important issue.

To solve the crisis of homelessness in our communities, we must begin on common ground. Canadians need to take on the responsibility of educating themselves about the causes of homelessness and stop scapegoating, demonizing, and criminalizing people who should receive our support and compassion. Article 18 of UNDRIP underscores Indigenous Peoples' rights to decision making over matters that affect our rights, while Article 19 requires colonial governments to coordinate and cooperate with Indigenous Peoples on legislation that impacts us. Municipalities must begin taking responsibility for implementing UNDRIP and stop relying on systemic violence and non-legal approaches to address the problem of homelessness.

In 2024, the Union of BC Municipalities and the First Nations Leadership Council (FNLC) signed a memorandum of understanding to build communication and advance reconciliation. The FNLC also continues to advocate for the alignment of provincial housing initiatives, programs, policies, and legislation with UNDRIP. This is the solution that will make a difference, along with stopping unilateral violence against the most vulnerable in our society and bringing First Nations to the table. Without these steps, institutional and systemic violence will continue to cause harm. Yes, we have made some progress — but, unquestionably, more needs to be done.

If we approach the problem of homelessness in our community with justice and reconciliation, we can work on building solutions that provide support and care for people who have experienced these traumas, rather than continuing the cycle of violence. I am grateful that Dr. Hermer and Dr. Flynn have undertaken this detailed research to demonstrate the ongoing harms that these so-called Safe Streets Bylaws inflict. I am hopeful that their book is one more important piece of evidence we can use to overturn these bylaws and ensure First Nations are at the forefront of decisions being made to end homelessness.

Mussi Cho,
Regional Chief Terry Teegee,
BC Assembly of First Nations
Lheidli T'enneh Territory

ONE

The Explosion of Homeless Encampments in Canada

In the summer of 2022, a small encampment appeared at Millennium Park, at the corner of Quebec Street and Highway 16 in Prince George, British Columbia.[1] By late spring of the next year, roughly thirty people lived there, the tents and makeshift shelters spilling over into the front lawn of the Regional District of Fraser-Fort George. For city officials, the encampment represented a political and a legal dilemma. The City of Prince George had already been chastised by the courts for unlawfully destroying another camp, Moccasin Flats, and was still reeling from the public fallout. The ownership tangle of Millennium Park complicated eviction plans, as did the city's newly signed memorandum of understanding with the provincial government, which required consultation with Indigenous groups and assurances of shelter for displaced residents.[2]

By mid-2023, the city and regional district settled on a two-stage eviction disguised as redevelopment. On June 21, a forced eviction was carried out on the region-owned property on the pretext of building a parking lot. Neither shelters nor housing had been made available, and the belongings of evicted encampment residents were left on the sidewalk. Emboldened, the city prepared to clear the remaining portion of the park using its Parks and Open Spaces Bylaw, but provincial officials questioned whether such an eviction violated the housing agreement they had signed weeks earlier. The city pressed on regardless. On September 11, 2023, the site was cleared under an evacuation order from the Prince George fire chief.[3] The First Nations Leadership Council called the eviction an act of "explicit cruelty,"[4] and the Federal Housing Advocate deemed it a "serious violation of human rights."[5] The provincial government accused the city of bad faith, noting that only a fraction of residents had been offered housing.[6]

But Millennium Park's evictions were no anomaly. They mirror a pattern seen in big and small municipalities across Canada, where the technocratic wording of local bylaws and other regulations are mobilized to evict people from public space. As the Millennium Park example illustrates, a mix of local rules designed to manage public space in the name of public safety are the default manner in which municipal governments govern the crisis of homelessness. Without legal frameworks to set standards for the treatment of those forced to live outside and without mechanisms that embed accountability at local levels, human suffering is considered an administrative problem. As we show in this book, without reform, these local bylaws will continue to play an outsized role in this human rights catastrophe.

THE BYLAW STATE

This book begins with a simple premise: that bylaws are not harmless, technical rules, but robust legal instruments with tremendous power over people's daily lives. To read them closely, to hear how they are spoken about, and to watch what they justify is to see how cities govern homelessness and to imagine how they might govern differently. What do we mean by our title, *The Bylaw State*? By showing that bylaws constitute the primary response of "the state" to unhoused people living and surviving in public space, we argue that these bylaws should be taken seriously as powerful and often violent legal instruments. As we discuss in the next chapter, the mundane and unassuming character of bylaws makes them an extremely effective tool to banish unhoused people from public space. The first line of attack in moving municipalities from a criminalization-and-policing mindset with regard to unhoused people to a housing-centred and humanitarian approach is to dismantle the enactment and use of bylaws to regulate homelessness.

The "state" in *The Bylaw State* is not one specific thing or action or entity. We do not see a highly rational or organized model of what municipal governments intend in enacting and enforcing bylaws, other than the short-term goal of clearing unhoused people from public spaces. Quite to the contrary, bylaw enactment and enforcement are overtly political, grossly unaccountable, legally dubious, and often involve decision making driven by bias and intentional ignorance. It is a myopic way of understanding the issues at stake. The goal of municipal governments in employing bylaws is not to address the causes or impacts of homelessness,

nor does it reflect an overarching plan about how to design public space for all. The common feature of anti-homeless bylaw offences is that they ignore the suffering and endangerment of homeless people.

The result of this state of bylaws in Canada with respect to unhoused people is powerfully illustrated by a bylaw enforcement request form in the City of Nelson, BC, where a member of the public can tick off their area of complaint. "Homeless camp" is listed plainly with nuisances related to snow, noise, parking, animals, and businesses. The camp is treated like an object of annoyance — like unshovelled snow, an illegally parked car, an unfriendly dog, or a loud noise from a construction site. Unhoused people surviving in public space are simply a problem, something that is "out of place," a suspicious threat. This objectification of people begins the moment a bylaw is discussed in terms of how it can get rid of homeless people from public space. The resulting dehumanization continues through a process that invites the most reactionary and prejudicial voices to comment and discounts any real expertise or meaningful public consultation. People whose lives depend on camping outside are treated at best as non-human objects that have no voice and at worst as criminals and a threat to public safety.

This book is situated within scholarship and debate on encampments and the presence of unhoused people in public space. Much important work has documented the experiences of unhoused people, the role of frontline service providers, and the ongoing legacies of settler–colonialism that shape housing insecurity, much of which we cite. Our aim here is different. We consider this book an intervention into the ways municipal bylaws are thought about and used. Bylaws are often treated as mundane or technical, the background noise of urban governance. But as we show, in practice, they are anything but neutral. We see them as an antiquated technology, an outdated regulatory form that cities nonetheless rely upon to manage, control, and displace unhoused people.

By turning our attention directly to bylaws, we make visible their character and workings: how they render unhoused people as problems to be regulated rather than as rights-holders; how they empower enforcement rather than care; and how they enable displacement instead of security. Our analysis shows that bylaws are not simple administrative tools; rather, they are instruments of exclusion that lead to injustice.

While we take seriously Canada's settler-colonial history and while our work is informed by sociolegal theory, this book is not a deep dive into

theory. Nor does it include the important testimony of unhoused people themselves or detail the everyday work of outreach and social care. Many others are doing that urgent and necessary work. Our contribution lies in exposing the legal architecture through which cities govern homelessness and in showing how bylaws — these seemingly benign and technical rules — operate as powerful mechanisms of displacement and control. To take bylaws seriously is to take seriously the everyday technologies of injustice and to recognize them as sites where the struggle for housing and human rights must be waged. This is but one of many ways that the struggle for justice must be undertaken.

HOMELESSNESS AND THE COVID-19 PANDEMIC

On March 11, 2020, the World Health Organization's declaration of a global pandemic set off a chain reaction of events that would have catastrophic consequences for precariously housed people, some of whom lost access to indoor shelter. In this book, we refer to these people as homeless or unhoused, meaning those who do not have secure and adequate indoor shelter. In the weeks and months that followed, thousands of homeless people became visible in public spaces across Canada, seen in hundreds of encampments in cities and in rural communities of all sizes. Homeless encampments, which are informal settlements where those without secure housing reside, are not a new phenomenon in most Canadian cities.[7] However, people camping in the open air on public property took on a new visibility in major city parks and in areas close to residential and recreational areas. This new proximity to the general public arose out of encampment residents' need for immediate survival space, as well as to be closer to whatever social care services remained open.

At first glance, it appeared that this increase was due to the displacement of people from shelters or services that had been shut down or severely curtailed as COVID-19 safety protocols were set in place. But the reality is much more complicated. A picture emerged that reflects a broken system for how we care for very poor people. Many of the most vulnerable homeless residents were not in shelter systems in the first place because of inadequate services or unsafe conditions. Others had already been banned outright from shelters that were not equipped or willing to assist those with the most complex needs and vulnerabilities.

As the pandemic unfolded, and street outreach and day services closed, many unhoused people moved closer to whatever remaining

services were available.[8] As shelter systems adjusted to offer limited services, some of those who had returned to the shelters soon left because of the severe isolation of quarantined spaces and restrictive pandemic rules. The few qualities that made shelters bearable for some homeless people — the daily social contact and friendship, having a coffee or meal together, and personal help with a range of housing or medical issues — had been all but taken away with social distancing and isolation measures. Against this background, encampments soon became focused sites of social care outreach, food, and harm reduction, as mutual aid groups and homeless advocates mobilized to help.

All through this, however, those who are particularly vulnerable suffered high rates of victimization and trauma; as well, Indigenous people, those who identify as Black and racialized, sex workers, and gender-diverse people suffered even greater displacement and isolation. The pandemic cracked open the fragile ground of the poorest and most vulnerable, many of whom were already being failed by the inadequate social and shelter services available to them.

Governments at all levels rushed to implement emergency public health orders and pandemic containment measures during the first wave of COVID-19. Those with homes and stable accommodation adjusted to working from home, social distancing, mask-wearing, and the loss of public spaces for recreation. Municipal authorities across the country prohibited access to or shut down the very outdoor spaces that were now the last survival option for thousands of unhoused people, often marking the areas with bright yellow tape and barricades. Homeless and public health advocates made it clear that regardless of these restrictions, homeless people who were "sheltering in place" outside should not be moved or evicted: significantly, street-involved people were more likely to both contract COVID-19 and suffer the worst consequences of the virus.[9]

CURRENT CRISIS OF HOMELESSNESS IN CANADA

At the time of this book's publication, rates of homelessness have increased by almost 50% from pre-pandemic counts, and encampments are common in many cities.[10] During the acute phase of the pandemic in Canada, significant numbers of unsheltered persons were staying outdoors overnight in encampments.[11] The pandemic both exacerbated and was made more harmful by two other factors: an ongoing overdose crisis became even more deadly given an increasingly toxic drug supply;

and a housing crisis was heightened by high costs and a desperate shortage of shelters and social housing. The result is that most Canadians — and not just those in large cities — now view poor people sleeping and living outside in their communities as a fact of daily life.[12]

Homeless encampments are the most glaring symptom of the lack of adequate affordable housing and the shortcomings of housing and other policies at all levels of government across Canada. Homelessness is linked to the disinvestment in affordable and social housing across the country and the corresponding financialization of housing; the increase in precarious labour and thus lower income levels for many people; and the defunding of social welfare programs, which leaves vulnerable people even more unsafe and at risk.[13] As federal and provincial governments moved away from providing housing and social supports, municipalities played an increasingly outsized role in regulating homelessness, addressing the crisis with temporary shelters and drop-in programs and through policing via municipal bylaws.[14] Compounding this human rights struggle is that municipalities are left to confront the most immediate realities of homelessness without adequate resources or funding tools from provincial and federal governments. In addition, municipalities may not understand human rights standards as binding, nor do provincial governments clarify municipal obligations to unhoused people, whether in legislation or otherwise.

The lack of affordable housing, the overdose crisis, racial injustice, the expansion of policing, and ongoing colonization all converge at encampments. Encampments are both a *prima facie* violation of the right to housing and simultaneously a form of rights claim in the face of exclusionary formal systems.[15] "Refusing to be made invisible" and claiming space is an expression of the right to housing when systems have so egregiously failed unhoused individuals.[16]

In 2019, in response to the country's failures to ensure adequate housing for those who need it, the Government of Canada enacted the National Housing Strategy Act [NHSA], which recognizes the right to adequate housing, declaring "the housing policy of the Government of Canada to (a) recognize that the right to adequate housing is a fundamental human right affirmed in international law."[17] Despite this important recognition of federal obligations in relation to housing, the population of those most acutely in need — those living in encampments — has ballooned in Canadian municipalities.[18] In 2022, out of 72

municipalities across Canada, 94% reported having current or historical homeless encampments, about 67% reported that most encampments are in relatively urban areas, and 28% have developed official encampment response plans for the community.[19]

Notwithstanding the current lack of coordination between federal, provincial/territorial, and municipal levels of government regarding the right to housing or adoption of a rights-based approach to housing, the criminalization of homelessness and forced displacement of encampment residents is in violation of the international human rights law, which is enshrined in the NHSA. At their very core, encampment evictions constitute a human rights concern. Municipal bylaws serve a central and often devastating role in local responses to encampments. In some cases, municipalities have introduced regulations related to homeless encampments or temporary shelters that actively denies the rights of persons in or at risk of homelessness.

HOMELESS ENCAMPMENTS AND MUNICIPALITIES

Homelessness has moved to the forefront of urban agendas in Canadian municipalities as the number of unhoused people has risen over the past two decades.[20] The number of people living outside is alarming given Canada's relative wealth and purported commitment to human rights. Each municipality has its unique context that shapes drivers and responses to homelessness; however, many more of the unhoused are sheltering outdoors in parks, in single tents or together with others in an encampment.

Methods of enumerating the number of homeless people are deeply problematic, often underreporting how many people are without housing. Even so, the data offer a helpful lens to understand the gravity of the issue. In 2024, national point-in-time (PiT) counts estimated that nearly 60,000 people in 74 communities across Canada were identified as experiencing homelessness on a single night.[21] This included 35,864 people experiencing homelessness in temporary shelters, 17,088 in unsheltered locations, including encampments, and 6,872 provisionally accommodated in transitional housing programs. Out of the 74 communities, 56 had conducted PiT counts in 2018 and 2020–22. For these communities, there was a 79% increase in the numbers since the previous counts (2020–22). Compared to 2020–22, the number of those enumerated in 2024 in an unsheltered location more than doubled (a 107% increase), while those in sheltered locations increased by 71%, and those in transitional housing

increased by 62%. Compared to 2018, the number of people in 2024 in an unsheltered location quadrupled (a 303% increase), representing the fastest-growing segment of the homeless population. Compared to 2018, the number of people in 2024 in sheltered locations increased by 77%, and those in transitional housing increased by 26%. Importantly, the national PiT count affirmed that the number of people accessing transitional housing also grew over the 2018–24 period, but the proportion of the homeless population accessing these locations decreased.

These numeric data bolster what advocates and unhoused people themselves have long been saying: the population living outside has soared over the past decade. Moreover, unhoused people continue to remain outside even where indoor shelters are available. In documenting this data, the federal government stated that the results highlight "an urgent need to address the root causes of the housing crisis, as homelessness continues to grow in spite of expanded shelter capacity and adaptation within the sector."[22]

These findings are echoed in legal cases and research. For example, in the *Bamberger* decision, the British Columbia Supreme Court emphasized the challenges that unhoused people have with indoor shelters:

> Persons sheltering in the Park have deposed, unsurprisingly, that the state of being homeless is difficult and dangerous. They universally state they would prefer to shelter indoors but they dispute there are sufficient indoor spaces to shelter them. They say the spaces that are available are not suitable to their needs.[23]

The court cited the need for the following: shelters with locked doors for survivors of physical and domestic abuse; places that permit sheltering despite lack of identification; and shelters that supply secure locations for belongings. The court's acknowledgement of the preference of unhoused people to stay in encampments because of the dehumanizing and unsafe constraints in temporary shelters is consistent with social control literature.[24] Accounts of encampment residents include specific challenges with shelters that relate to their social control processes, such as long waits, strict curfews, not being able to stay with partners or pets, demeaning treatment by staff, and the inability to store their belongings. When asked why they "choose" to camp as opposed to other alternatives, unhoused people focus on the benefits of the camps as compared with shelters, not whether shelters are available.

While these numbers may not seem high relative to Canada's population, they are likely undercounts due to the notorious limitations of PiT count methodologies. These numbers also don't speak to the conditions of temporary shelters. Unfortunately, conditions only worsened during the COVID-19 pandemic lockdowns, which led to service shortages, reduced shelter capacity, and overcrowded conditions. In particular, during the lockdown period, unsheltered persons were "unable to comply with 'stay-at-home' orders," and shelters had COVID-19 outbreaks.[25] For example, in Canada, between 2019 and 2020, shelter capacity, or the number of beds available, fell by about 21%.[26]

VULNERABLE POPULATIONS ARE DISPROPORTIONATELY HOMELESS

Closer analysis of the characteristics of those experiencing homelessness in Canadian municipalities reveals shared challenges and drivers of homelessness. Chronic homelessness — experiencing homelessness for six or more months in the previous year — is common across municipalities.[27] Nationally, the most significant factors driving housing loss are insufficient income to pay rent and lack of affordable housing options. Other contributing factors are addiction or substance use, landlord or tenant conflict, conflicts with a spouse or partner, and mental health challenges. In Prince George, discrimination was also noted as a barrier to obtaining housing. People who are or have experienced homelessness are also more likely to face multiple health conditions, including learning disabilities or cognitive impairments, physical disability, medical condition or illness, mental health issues, or addiction.[28]

Importantly, people identifying as Indigenous are far more likely to be overrepresented in this population and in those seeking emergency shelters, compared to the general population.[29] This is most evident in Prince George, where more than two-thirds of unhoused people identified themselves as being of Indigenous descent. In Vancouver, about 39% of people experiencing homelessness identified as Indigenous, despite accounting for about 2% of the city population. Even so, shelter-based and PiT statistics underestimate the number of unhoused people identifying as Indigenous.[30]

Indigenous homelessness is not experienced in the same way as non-Indigenous homelessness and has a unique definition: "First Nations,

Métis and Inuit individuals, families or communities lacking stable, permanent, appropriate housing, or the immediate prospect, means or ability to acquire such housing."[31] This definition is not solely related to the presence of a structure or habitation. While homelessness rates have increased significantly across many years, the severity of this issue is not new for those who identify as Indigenous. In 1996, the *Report on the Royal Commission on Aboriginal Peoples* recognized that Indigenous housing and community services "are in a bad state, by all measures falling below the standards that prevail elsewhere in Canada and threatening the health and well-being of [Indigenous] people."[32]

Indigenous homelessness is also directly connected to Canada's colonial legacy, which courts now recognize. Professor Jesse Thistle (Métis-Cree) states,

> The observable manifestations of intergenerational trauma in Indigenous Peoples, such as intemperance, addiction and street-engaged poverty, are incorrectly assumed to be causes of homelessness in popular and worldwide blame-the-victim discourses. Obscured behind these discourses are the historical processes and narrative prejudices practised by the Canadian state and settler society that have produced Indigenous homelessness.[33]

This seemingly endless loop of inadequate affordable, accessible housing, absence of enforceable rights, and enactment and policing of bylaws sidesteps the importance of housing beyond merely shelter. Thistle further explains,

> Racism and discrimination aimed at Indigenous peoples are firmly entrenched in Canadian society, producing impenetrable systemic and societal barriers, such as a lack of affordable and appropriate housing, insufficient and culturally inappropriate health and education services, irrelevant and inadequate employment opportunities, and a crumbling infrastructure in First Nations, Inuit, and Métis communities. The fiduciary abandonment of Indigenous communities by the state, which has greatly contributed to Indigenous homelessness, is manifested by chronic underfunding by the federal, provincial and territorial governments of Canada.[34]

The colonial definition of homelessness — focused narrowly on the question of whether someone has indoor shelter — fails to account for Indigenous worldviews in which homelessness is also a disconnection from land, culture, spirituality, and community. Thistle's broadened definition is legally significant because it highlights how Canadian housing law and policy, premised on a Western, individualistic conception of shelter, systematically excludes Indigenous experiences of displacement. If courts, governments, and tribunals continue to assess housing claims only through the lens of whether minimal shelter is provided, they overlook the deeper constitutional and treaty dimensions of Indigenous homelessness: the loss of access to land, language, and culture that are integral to the exercise of Aboriginal and treaty rights protected under s. 35 of the Constitution.

Other priority groups are also overrepresented among unhoused populations. Reports from 2022 show that, nationally, 35% of people experiencing homelessness identified as women, a higher figure than in previous years. As well, 2SLGBTQIA+ individuals are disproportionately represented in the population, comprising 13% of the unhoused population, of whom more than 25% are youth.[35] Municipal officials similarly note the increasing number of women, who often contend with unique health challenges, experiencing homelessness in Canadian cities, along with the disproportionately low number of shelter spaces available.[36] Significantly, the mere presence of bed spaces in temporary emergency shelters does not necessarily equate to adequate or supportive environments for people experiencing homelessness, especially for those identifying as Indigenous, women, and 2SLGBTQIA+[37] This is because homelessness strategies and shelters do not adequately address the unique needs of these populations.[38]

Court rulings on encampment evictions have found that simply providing enough shelter beds does not qualify as adequate, accessible alternate housing options for homeless persons; importantly, available shelters must be "accessible in a way that takes into account the complexity of homelessness."[39] Shelter systems consist of policies restricting access and behaviour, enforcing social control on people seeking refuge, which may result in unhoused persons feeling unsafe, unwelcome, or dehumanized.[40] For example, shelters may restrict access on the basis of zero tolerance for drug and alcohol use, deny access for peoples' belongings, limit shelter options for families, impose strict curfews, or

not allow pets.[41] In Prince George, encampment residents described not seeking out emergency shelters because of fears for their safety, being turned away due to full shelter capacity, bedbugs and other pests, or having been frequently banned from any services at all.

The inadequacy of the shelter system is a condition that produces and reproduces vulnerability. For those who cannot access stable housing, temporary shelters are often presented as the only option. When they fail to adequately house people based on their restrictions, unhoused people are left with no real choice but to inhabit public space. The machinery of legal governance through municipal bylaws steps in, and homelessness is managed by turning to the blunt instrument of the rules. While bylaws may appear technical and neutral, their effects are to displace unhoused people and punish survival strategies. In this way, the inadequacy of the shelter system and the deployment of bylaws are two sides of the same coin: together, they create a bylaw state that entrenches vulnerability and normalizes exclusion under the guise of urban order.

BYLAWS AND HOMELESS ENCAMPMENTS

This book frames bylaws as central to the story of homelessness and urban governance. Bylaws are powerful instruments of governance that determine who is permitted to exist in public space, under what conditions, and with what consequences. Bylaws authorize police and city officials to displace encampment residents, confiscate belongings, and criminalize daily acts of survival. If we want justice in our cities, we must confront bylaws head-on. In this book we examine how cities across Canada deploy bylaws to regulate encampments, what these regulations reveal about municipal power, and how bylaws intersect with broader constitutional and human rights frameworks. We trace the ways in which bylaws function as an old, yet persistent technology for managing poverty.

How Bylaws Govern

Chapters 2 and 3 detail how bylaws govern homeless encampments, examining the relevant legal frameworks. We begin with a deep dive into the power of bylaws in Chapter 2, exploring the unique character of anti-homeless bylaws as part of an environment that is increasingly inhospitable to unsheltered people. We argue that a major movement has unfolded since the late 1990s to invoke bylaws to target homeless people, a movement that has gained momentum since the onset of the

pandemic. These bylaws operate as major weapons against poor people, their belongings, and the spaces and peer support they rely upon. We call these bylaws "neo-vagrancy" laws because they resuscitate archaic and repealed vagrancy offences that police economic and social status.[42] They are applied to "suspicious" persons, which include drug users, racialized and Indigenous people, sex workers, and those with diverse gender or sexual identities who are occupying public space. A primary characteristic of neo-vagrancy bylaws are that they are promiscuous in how they borrow, mix, and adapt vagrancy offences and disorder tropes. While bylaws seemingly regulate the use of public space rather than people, in practice, they are deployed to target unhoused people and those living on the streets.

In Chapter 3, we review how the courts have come to play a critical and meaningful role in mediating municipal bylaw use, highlighting some recent decisions that have slowly expanded the public-space rights of unsheltered people. This chapter explores how the lack of a legislative or constitutional framework, combined with Canada's federal model, has led to an enhanced role for both municipal governments and the courts. Despite how bylaws are structured around so-called "neutral" rules, they nonetheless prescribe or prohibit a wide range of activities that are life-sustaining for homeless people. Homeless people depend on the courts to challenge bylaws that breach human rights or procedural fairness, although these cases focus on the specific facts and circumstances of encampments, not the broader context and issue. Court decisions unnecessarily limit the range of solutions available to challenge bylaws, but they are nevertheless one of the only vehicles available to stop municipal practices. This makes them an essential tool for advocates. This chapter also explains the laws that are not applied to homeless encampments, including constitutional provisions that concern Indigenous Peoples.

Role of Courts in Municipal Oversight of Encampments

In the second part of the book, we chronicle two case studies involving homeless encampments, paying close attention to how courts understand and make decisions related to municipal bylaws. We focus on these two encampments based on our involvement with the legal and political challenges that took place over many years at these sites. Chapter 4 explores three legal cases in Prince George, in northern BC. Located at the

acute intersection of two crises — drug overdoses and housing — the city turned to an aggressive and punitive response to homeless encampments and unhoused people in specific public spaces. In the summer of 2021, the city enacted a "safe streets" bylaw whose explicit purpose was to "regulate and control unlawful occupation."[43] In tandem with this bylaw, the city applied for an injunction to remove encampments, including the main encampment, Moccasin Flats, which was situated on city property zoned for parks.

We examine the battle between the city and encampment residents that stretched over three court cases and almost four years, detailing the logic and evidence put forward in these cases, most notably in terms of what constitutes "accessible shelter" that satisfy what is now known as the "*Stewart* conditions." Particular attention is paid to how the courts balanced the circumstances of unhoused people in relation to a common public interest in dismantling the encampment. When the city finally did get a court order to dismantle the encampment in the summer of 2025, it was under conditions that left Prince George with no choice but to start to take the availability and accessibility of shelter and housing seriously.

We then move to Vancouver in Chapter 5. CRAB Park has an unusual history in that for at least two decades it has served a place for unhoused people to use and, sometimes, camp and live. The legal status of the land on which CRAB sits is also atypical: it is unceded Indigenous territory owned under Canadian law by the federal government, and thus subject to the United Nations Declaration of the Rights of Indigenous Peoples.[44] While legally untested, the fact that it is federal land also implicates the NHSA, which includes a right to housing as recognized under international law. With the onset of the COVID-19 pandemic, CRAB Park became an important survival site for homeless and vulnerable people. A two-year legal battle ensued between encampment residents and the Vancouver Fraser Park Authority, with the outcome favouring the encampment residents. We review these cases and how this outcome, while falling short of recognizing the rights embedded in the NHSA, did underline the importance of consulting residents on what constitutes adequate and accessible shelter. We also explore the brief period that CRAB Park was legally protected, albeit precariously, and the central role that bylaws played in its governance and ultimate displacement.

Decentring Bylaws and Courts in the Regulation of Encampments

The third section of the book examines more deeply the regulation of encampments through the lens of how bylaws are seen and unseen. Building on early chapters that explain how bylaws are crafted and how they regulate encampments, we delve into recent bylaw-related practices used by cities. In Chapter 6, we look at how bylaws are *seen* — that is, how signage sends signals about the use of public space. While scholars have noted a "visual turn" in work on everyday order, we note that this is particularly true in regard to the contested status of homeless encampments.[45] Thus, the visual aspect of encampment governance — both on the street and in the courts — can be understood in three core ways: (1) the hostile environment within which encampment residents and homeless people are forced to exist; (2) how anti-encampment actors have used forms of knowledge that establish visual truths regarding what was or can be seen; and (3) how bylaws themselves enforce a visual range of order that prioritizes narrow forms of citizenship, belonging, and community.

We next examine, in Chapter 7, how bylaws are *unseen* — that is, how they limit the use of public space, creating the threat of bylaw breaches across municipal space, without any explicit notification at all. We detail how the introduction of encampment bylaws in Vancouver and Prince George invisibly limits where encampments can be set up. This includes restrictions near amenities, flora, and slopes. We show how bylaws translate into no actual space available for encampments and into spaces that are far away from the services that unhoused people rely upon. We note how the use of bylaws in this manner undermines the limited protections provided by the courts.

In Chapter 8, we argue that bylaws are the wrong way to address homeless encampments and unhoused people in public spaces. We reflect on how relying on legal cases to purportedly solve the dire crisis of encampments, including visibly homeless people, remains a crude and unsatisfactory response. We argue that bylaws matter and that their use in relation to unhoused people must be scrutinized at the local level to a very high degree of accountability. This requires two key elements: (1) cities must think differently about unhoused people and the use of bylaws; and (2) the public must be provided with a clearer picture of

the limits and consequences of bylaws and public safety in relation to democratic principles of local decision making. The public, in our view, must include precariously housed people.

While we are clear-eyed about the dire situation of encampment regulation, this book nonetheless looks forward. By exposing the architecture of bylaw governance, we open up space for imagining how governments might do things differently, grounding their authority in care, rights, and justice, rather than displacement. In doing so, we join a growing chorus of scholars, advocates, and community members who are calling for a fundamental rethinking of the legal and political tools that regulate homelessness and public space, most visibly manifested in encampments.