

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH,
MARIO MUSCATO, SHAWN ARNOLD, CASSANDRA JORDAN, JULIA LAUZON, AMMY
LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL, SHERRI
OGDEN, JAHMAL PIERRE, and LINSLEY GREAVES**

Appellants

- and -

CITY OF HAMILTON

Respondent

APPELLANTS' APPEAL BOOK AND COMPENDIUM – VOLUME 7

CIRCLE BARRISTERS

c/o Sujit Choudhry Professional Corporation
319 Sunnyside Avenue, Toronto ON M6R 2R3

Sujit Choudhry (LSO# 45011E)

Tel: (416) 436-3679

sujit.choudhry@circlebarristers.com

**MISSISSAUGA COMMUNITY LEGAL
SERVICES**

130 Dundas St. E Suite 504

Mississauga ON

L5A 3V8

Sharon Crowe (LSO# 47108R)
Tel: (905) 896-2052 ext 20
sharon.crowe@mcls.clcj.ca

ROSS & MCBRIDE LLP
1 King Street West, 10th Floor
Hamilton, ON L8P 1A4

Wade Poziomka (LSO# 59696T)
Tel: (905) 572-5824
wpoziomka@rossmcbride.com

Lawyers for the Appellants

TO:

GOWLING WLG (CANADA) LLP
One Main Street West
Hamilton, ON L8P 4Z5

Bevin Shores (LSO# 56161F)
bevin.shores@gowlingwlg.com

Jordan Diacur (LSO# 65860E)
Tel: 905-540-2500
jordan.diacur@gowlingwlg.com

Jennifer King (LSO# 54325R)
Jennifer.King@gowlingwlg.com
Tel: 905-540-2468

Lawyers for the Respondent

AND TO:

Ministry of the Attorney General – Constitutional Law Branch
4th Floor, McMurtry-Scott Building
720 Bay Street, Toronto, ON M7A 2S9

Andrea Boleiro
Tel.: 437-551-6263
andrea.boleiro@ontario.ca

Lawyer for the Attorney General

INDEX

APPEAL BOOK VOLUME 7		
<i>MEDORA UPPAL</i>		
87.	Affidavit of Medora Uppal dated July 17, 2023	6
a.	Exhibit A – Curriculum Vitae	19
b.	Exhibit B – YWCA Hamilton 2019-2020 Impact Report	21
c.	Exhibit C – Submission to Emergency and Community Services Committee – City of Hamilton Nov 7, 2019	35
d.	Exhibit D – 2021 Point in Time Connection Results 2021	41
e.	Exhibit E – Service Restriction Framework for Women, Trans, Gender-Diverse	72
f.	Exhibit F – Invisible: Single Women’s Experiences of Chronic Homelessness in Hamilton Aug 30, 2018	76
88.	Supplementary Affidavit of Medora Uppal dated June 4, 2024	84
89.	Transcript of the Cross Examination of Medora Uppal dated Aug 20, 2024	91
<i>DR. JILL WIWCHARUK</i>		
90.	Affidavit of Jill Wiwcharuk dated June 7, 2024	107
a.	Exhibit A - Letter of Dr. Wiwcharuk dated May 31, 2022 re: Cory Monahan	111
b.	Exhibit B – Letter of Dr. Wiwcharuk dated June 1, 2022 re: Cassandra Jordan	113
c.	Exhibit C – Letter of Dr. Wiwcharuk dated June 2, 2022 re: Sherri Ogden	115
d.	Exhibit D – Intentionally Omitted – Applicant Removed	117
e.	Exhibit E – June 8, 2022 re: Jammy Pierre	119
f.	Exhibit F – June 9, 2022 re: Mario Muscato	120
g.	Exhibit G – dated June 9, 2022 re: Mysty Marshall	123
h.	Exhibit H – dated June 10, 2022 re: Shawn Arnold	125
91.	Transcript of Cross Examination of Dr. Wiwcharuk dated Aug 16, 2024	129
92.	Transcript of Continued Cross Examination of Dr. Wiwcharuk dated Sept 6, 2024	153
APPELLANTS’ EXPERT WITNESSES		
<i>LEILANI FARHA</i>		
93.	Affidavit of Leilani Farha dated June 15, 2022	163
a.	Exhibit A – Curriculum Vitae	187
b.	Exhibit B - United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right	193

	to Adequate Housing (Art. 11 (1) of the Covenant), December 13, 1991, E/1992/23	
c.	Exhibit C - United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, May 20, 1997, E/1998/2	201
d.	Exhibit D - United Nations Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, September 19, 2018	208
e.	Exhibit E - United Nations Human Rights Council, Access to justice for the right to housing, January 15, 2019	232
f.	Exhibit F - United Nations Human Rights Council, Guidelines for the Implementation of the Right to Adequate Housing, January 25, 2019	252
g.	Exhibit G - UN Special Rapporteur on the Right to Housing, A National Protocol for Homeless Encampments in Canada (April 30, 2020)	275
h.	Exhibit H – International Covenant on Economic, Social and Cultural Rights	316
i.	Exhibit I – The Shift - Homeless Encampments in Hamilton (ON) and Risk of Evictions	325
j.	Exhibit J - City of Hamilton Six Step Encampment Response	328
94.	Form 53 Acknowledgement of Expert’s Duty dated June 15, 2022	338
95.	Undertaking – Updated Curriculum Vitae of Leilani Farha	340
96.	Transcript of the Cross Examination of Leilani Farha dated Aug 27, 2024	346
a.	Exhibit 1 - The case for a human rights response to homeless encampments - NOW Toronto	366
b.	Exhibit 2 - The Shift Website – Main Page	370
c.	Exhibit 3 - The Shift Website - Homeless Encampments Subpage	374

TAB 87

Court File No. CV-21-00077817-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMA et al.

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF Medora Uppal

(Sworn July 17, 2023)

I, Medora Uppal, of the City of Hamilton in the Province of Ontario, AFFIRM AND STATE:

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.

Credentials and Nature of Work

2. A copy of my Curriculum Vitae is attached hereto as **Exhibit “A”** to my affidavit.

3. I am the Chief Executive Officer of the YWCA Hamilton and have held this role since December 2022. I was previously Director of Operations of the YWCA from Hamilton from September 2011 until December 2022.

4. As Director of Operations, I led the development and expansion of women's housing, shelter and gender-based violence services within the YWCA Hamilton. I conceptualized, developed, and launched Carole Anne's Place, a low-barrier drop-in for unsheltered women and non-binary individuals in Hamilton that opened in 2016. From 2016 until April 2022, I was the overseeing Director of Carole Anne's Place staff (including serving as on-call for management when needed), provided advice to staff on challenging client issues, secured external funding, and met reporting requirements to funders. From April 2022 until present, the overseeing Director reports directly to me and I continue to lead on funding development and expansion of the program.

5. Individuals accessing Carole Anne's Place are provided with meals, access to showers and basic needs, low barrier health care, harm reduction and withdrawal management services, safe drug use space from 10 PM to 9 AM, systems navigation and shelter referrals, advocacy, care planning and coordination. Staff provide support within a trauma-informed lens that incorporates a gender-based analysis of homelessness and harm reduction. External services attend on a weekly basis to provide access to additional services including access to housing supports, outreach, mental health, legal and peer support. Access to low barrier sexual and reproductive health care needs are available onsite as well as through the Shelter Health Midwifery team on an on call / as needed basis. Carole Anne's Place provides these services in partnership with St. Joseph's WomanKind Addiction Services, HAMSMaRT, Shelter Health Network and Keeping Six. Carole Anne's Place is located within YWCA Hamilton's MacNab Street location. Clients are admitted from 10 PM to 1 PM daily on a first come, first served basis. As CEO of the YWCA Hamilton, I retain ultimate responsibility for Carole Anne's Place. I still receive daily emails with updates on intakes, and regular reports.

6. In addition to my specific responsibilities for Carole Anne's Place, over the course of my 25-year career in the non-profit sector in Hamilton I have worked extensively on the issue of women's shelters in Hamilton. Much of this work has been through the Women's Housing Planning Collaborative ("WHPC"), which I co-founded as a Good Shepherd representative. I stayed on as a representative for YWCA Hamilton on WHPC when I joined the organization in September 2011. WHPC's member organizations include YWCA Hamilton, Mission Services of Hamilton, Good Shepherd Centres Hamilton, Native Women's Centre, St. Joseph's Healthcare Hamilton – Womankind Addiction Service, Interval House Hamilton, Wesley Centre, Hamilton Regional Indian Centre, The Elizabeth Fry Society – Hamilton. *Ex-officio* partners of WHPC who

attend meetings and / or receive minutes are the Social Planning and Research Council of Hamilton, Service Canada, the City of Hamilton Housing Division, the Ministry of Community and Social Services (MCCSS), and the McMaster University – Community University Policy Alliance (CUPA). I have sat on the Steering Committee of the WHPC since it was founded, and currently serve as Chair.

7. WHPC was created in 2010 to address the challenges facing shelters, transitional housing and other service providers assisting women who are unhoused in Hamilton. Our intention was not to expand shelter beds, as additional shelter beds had just been added to Good Shepherd Mary's Place and Martha House. Rather, our goal was to address expanding support services and funding to help women access housing, address the issues contributing to their homelessness and to bring a gender perspective to planning for housing and homelessness that was largely absent.

8. Finally, I have worked with YWCAs across Canada working with federal, provincial and municipal governments, aligned stakeholders, and people with lived and living experience in women's shelters.

Women's Shelter System in Hamilton

9. Despite best attempts to provide accommodation, there were frequently no shelter beds for women who needed them. Moreover, it is and was common for women to be turned away from shelter if the shelter has an inability to meet the women's needs. These women often presented with complex needs that the space would be unable to adequately address, as they are only funded for minimal staffing for their shelter beds.

10. By 2016, WHPC recognized that despite the increase in shelter beds there were still women who were not being admitted. At the recommendation of WHPC, YWCA Hamilton opened Carole Anne's Place for the winter months to prevent women from sleeping outside in the cold from December to March.

11. Notwithstanding the City of Hamilton's awareness of need in the women's shelter sector, funding continued to be only temporary and not always available through the City. WHPC members sought various sources of funding each year through proposals and advocacy as the problem of women's homelessness persisted.

12. I attach the “2019-2020 Carole Anne’s Place Impact Report” as **Exhibit “B”** to my affidavit, and “From Homelessness to Hope: Support for Carole Anne’s Place November 7, 2019” as **Exhibit “C”** to my affidavit. These are official YWCA Hamilton publications whose preparation I oversaw and ultimately approved, and for which I was ultimately responsible.

13. In the Carole Anne’s Place Winter 2020 Research Findings, the researcher used a point-in-time (“PiT”) analysis popular in data collection on homelessness used by the Federal, Provincial and Municipal governments to provide an example that can be used to represent the status of homelessness across a community. She compared January 23, 2018, 2019 and 2020 to identify the increase in demand for service and the continuing number of turnaways. In this report, women who are unsheltered share their experience of seeing more homeless women in Hamilton and reasons why women cannot access shelters. The women also present solutions which include expanding beds and remodelling the services delivered to meet women’s needs. I adopt this report as part of my opinion in this matter.

14. The increase in demand for shelter for women from 2019 onwards is clear. From December 2018 to March 2019, Carole Anne’s Place supported 260 unique women. We reopened December 2019 and up to March 2022, Carole Anne’s Place supported 660 unique women.

15. Carol Anne’s Place had to turn away people 636 times between December 2019 and March 2022, due to a lack of capacity. This is significant because Carol Anne’s Place is the last resort for a woman attempting to get into shelter because it is the overflow space women can attend when they cannot access the standard shelters.

16. In December of 2019, the City of Hamilton approved one-time funding to re-open Carole Anne’s Place with a maximum capacity of 22 beds. In the face of the pandemic, in March 2020 the City asked YWCA Hamilton to keep Carole Anne’s Place open during the pandemic and increased funding recognizing the need for shelter beds.

17. In 2021, Mission Services was funded by the City of Hamilton to open Emma’s Place, a 15-bed shelter for women. In addition, a hotel was funded by the City in 2020 for single women experiencing homelessness which shifted over to Cathedral and has a maximum capacity goal of 100 beds. A second hotel, originally intended for men experiencing homelessness, began opening rooms for women due to the continued demand for shelter.

18. Throughout the pandemic, despite the increase in shelter capacity for women, Carole Anne's Place continued to bring women in overnight because shelters and hotels were full or could not accommodate and turned women away because of capacity limitations or for safety reasons.

19. The women's shelter sector continues to advise the City of capacity limitations of the shelter system and the need for expanding housing and shelter. I organized weekly triage meetings on behalf of the women's sector during the pandemic to address pressures in women's shelters and hotels. These meetings included City staff. Despite best efforts during triage meetings, with current resources the service providers were unable to confirm shelter or bed space for all the women presented weekly during these meetings.

20. I attach the PiT count from 2021 as **Exhibit "D"** to my affidavit. It indicates that there are more homeless women than men but the increase in shelter beds to date, temporary or permanent, has not resolved this problem.

21. As of March 2022, there were 96 shelter beds designated by the City of Hamilton to Women and 212 for Men. The Emergency Overflow beds have not been broken down by gender and account for an additional 251 beds. Prior to this, the women's beds varied from 26 to 46 and men's beds were as high as 245 and as low as 115 beds.

Violence Against Women

22. Women are at risk of being victims of assaults and sexual assaults even while attempting to access and while accessing women's shelters.

23. During the pandemic I received an increase in reports from staff of violent incidents, stalking and harassment of women at YWCA Hamilton's Transitional Living and Carole Anne's Place at a volume and degree of risk unlike any incidents I previously managed at YWCA or in my career in the women's shelter sector in Hamilton. Both Transitional Living and Carole Anne's Place provide residential services to women and gender diverse people experiencing homelessness.

24. I have received reports of women being sexually assaulted during daylight and evening hours around the building of these services. This includes two incidents where women were being raped in public spaces near the building and on the property. One incident was witnessed and reported by a client and the other by a staff member. One woman was lured by a man when she

was waiting at the door to get into Carole Anne's Place for the night. He took her to a nearby alley and assaulted her.

25. Men have attended the YWCA building searching for women known or unknown to them. In one case, a man was coming to the building, handing out flyers searching for a woman he said he wanted to punish for leaving him. This same man returned to the site multiple times handing out flyers looking for a woman to live with him and provide in home services. I reported the incidents to the police and staff and clients provided statements.

26. I received reports from staff of street level harassment against them as they entered and exited the building. Men were circling the building at different hours asking women to get into their cars. The women approached included staff and clients. I have received reports of staff disrupting these attempts and helping women get out of the vehicles. Many of the women targeted are in visible distress, impaired from drugs or alcohol, and / or presented with mental health or cognitive disabilities.

27. I was contacted by staff twice when women outside the building have been attacked with bear mace. Both incidents were witnessed, and multiple people were affected by the attacks. Emergency services attended the scenes.

28. I have received reports of men chasing women down the street and into the building. Men have attempted to enter the building by breaking in. One broke through the doors and entered. Several have smashed the windows or glass doors. One staff vehicle was targeted. Police were contacted in all instances.

29. I have received reports from staff of men loitering around the building with weapons including steel poles and blow torches and threatening and wielding the weapons. These incidents were reported to the police. One man approached a mother and child attending our childcare centre, threatening to kill the child. The mother did not know the man and the incident was reported to the police by the mother and the staff.

30. In 2021, I contacted Hamilton Police Services to discuss the rising incidents of violence occurring by men targeting women around our building. The Hamilton Police developed a Problem Oriented Policing Project ("POPP") for the 75 MacNab Street South Hamilton area, which is where the YWCA is located. In the Women's Services Advisory Committee to the Chief of Police on

December 7, 2021 which I attended, Hamilton Police Services explained they had tracked a rise in calls to the police from YWCA Hamilton over the year. Hamilton Police Services reported receiving calls from 75 MacNab Street South Hamilton as follows: 89 calls in August 2021, 59 calls in September 2021, 76 calls in October 2021, 58 calls in November 2021. With the POPP active, they reported that by December 6, 2021 there had been 162 calls, 179 proactive calls, 25 individuals asked to leave, 9 individuals arrested, 6 charges laid, and 8 provincial offences. At the recommendation of police and with funding through the City, YWCA Hamilton initiated hiring a security company to monitor the exterior of the building and to prevent violent incidents, redirect men who are loitering and to contact police when needed.

“Service Restrictions”: a Term used by Shelters

31. A “shelter restriction” may be issued against a service user during their stay or can be issued and then remain in place subsequent to their stay. They are issued to shelter users if their behaviours violate shelter policy.

32. The intent in Hamilton’s women’s shelters is that these restrictions only be used when necessary to protect the safety of others.

33. There is not a uniform shelter restriction policy for women’s shelters in Hamilton. There are no mandated standards for women’s shelters in managing service restrictions for a variety of reasons including different funders for shelters, different mandates of shelters, and the different infrastructure, design and physical space of shelters.

34. Historically, women’s shelters have developed their own restriction standards of practice. In 2021, WHPC voluntarily developed with members and in consultation with City staff the “Service Restriction Framework or Services and Shelters Serving Women,” attached hereto at **Exhibit “E”**. It was agreed by members that this document would inform policies, procedures and practices developed by each organization.

35. The length of time people are restricted from shelter services varies based on the specific situation, incidents, and resources available to the shelter.

36. The men’s shelter system has their own service restriction standards with the City.

Carol Anne’s Place

37. Carole Anne’s Place operates as a low barrier overnight program which only opens from

10 PM to 1 PM daily. Low barrier means that it is easy to access, in particular for woman presenting with high acuity needs. This requires women to relocate for the day and return at night to secure a bed if they still need a safe place to sleep.

38. Most women's shelters in Hamilton provide 24/7 service and women secure their bed until they discharge from the program. The length of the shelter stay is determined by the woman and the shelter.

39. For Carole Anne's Place, the closing of the program each day forces a natural break that reduces the risk of behaviors escalating into violence that can lead to a service restriction. In shelters, like Carole Anne's Place, there are few staff to support all the residents but more challenges to managing risks in 24/7 congregate care settings.

The System – Design and Intent

40. Women's shelters and drop-ins are not funded or designed to provide intensive services for people with highly acute needs. For this reason, we often see women with the highest need turned away because their needs exceed what can be provided and/or they are service restricted because their high acuity needs result in behaviors that violate policies.

41. Substance use in shelters has presented challenges to shelter operations. Carole Anne's Place is the only shelter with a legal safe use drug space in Hamilton, which was introduced in April 2022.

42. Without a safe use drug space, women are discouraged or not allowed to use drugs in the shelter. This can result in a number of situations that cause women to lose access to beds. They may leave to use drugs and not return by curfew or for several days, at which point the bed would be turned over because of demand. They may return to the shelter under the influence and not present in a condition where shelter staff feel they can safely bring them into the shelter. The woman then may not return or may lose her bed. They may use drugs with others or distribute drugs that could cause the shelter to discharge the women. They may also leave needles and other drug paraphernalia out, exposing risk to staff or others in the facility.

43. The tolerance to manage drug use in the women's shelter system is dependent on the design, mission, staffing levels and skills, and the composition of the resident group in the shelter.

44. There are women and gender diverse people in Hamilton who have limited or no access to

shelter or overnight beds. They may move from shelter to shelter, spending time on the street, in encampments, in hospital, incarcerated or with acquaintances who pose a danger. These women present behaviors that shelters will try to manage for limited or extended periods but may result in an early discharge or a discharge without secured housing because the shelter does not have the resources to manage the needs of the individual. These cases have been presented regularly through the weekly women's sector triage meetings which includes women's shelters, drop-ins and the City. They have also periodically been presented at the Complex Care System Planning Table, which I chair, that includes shelters, housing, city, hospitals and health care. During the pandemic, the Triage group has attempted to capture this list through the Drop-In services who encounter women who experience the most service restrictions. While this list is fluid and is challenging to maintain with limited resources, I can confirm that at times we have had over 50 women on the list. However, this does not account for the total number of women we continue to see experiencing homelessness for years.

45. I attach the report “[in]visible: Single Women’s Experiences of Chronic Homelessness in Hamilton” 2018 as **Exhibit “F”** to my affidavit. I refer to this report as the “Invisible Project”. I adopt to the “Invisible Project” as part of my opinion in this case. The WHPC commissioned this the “Invisible Project” while I was on the Steering Committee and I approved the researcher to meet with YWCA residents. 70 women and gender diverse people in Hamilton who experienced homelessness were interviewed for the “Invisible Project”. The report found that 34% of women had experienced 4 or more years of homelessness and 15% reported 25 or more years of homelessness.

46. From a philosophical and values perspective, the WHPC members who operate women’s shelters and drop-ins believe women need to have the autonomy to choose where they want to live. When women are with an abusive partner or fleeing abuse many women’s shelters and YWCA programs across Canada encourage women’s autonomy to define and determine her next steps to help her regain a sense of control over her life that was denied by her partner. For this reason, we philosophically respect the choice made by a woman to sleep in an encampment.

47. Prior to the pandemic and increasing during the pandemic, staff have reported to me on women who do not want to move into women’s shelters or Carole Anne’s Place. In these cases, women have identified themselves to staff a variety of reasons. For some women, they prefer the

services of some shelters and drop-ins over others and will not access beds in locations because of past experiences regardless of where they are required to sleep as an alternative.

48. Sometimes women come into Carole Anne's Place to take a break from sleeping "rough," meaning without shelter, out in the open on the street. Some women prefer to stay with male partners or friends who are living outdoors. Several women YWCA Hamilton has supported choose to sleep outside with their male partners during their pregnancies.

49. For some women, women's shelters and / or drop-ins feel too invasive, unsafe and they feel put them at risk. This might be due to past experiences, their own beliefs or fears of others. Service providers may attribute this to mental health or past trauma, but each individual is unique. Women who have been institutionalized or are coping with past trauma may find that shelters interfere with their autonomy as all these spaces have some rules and require some congregation. Some shelters offer less privacy and some spaces have limited or no storage for belongings. There are limitations to how residents move through the space, rules governing resident conduct, and the requirement to meet with staff and share their information.

50. While providers try to work around people's individual needs, there are limitations. In a temporary housing environment, there are limitations as to how long people can be permitted to remain if they refuse to participate in basic requirements that maintain the safety of the other people in the facility, especially when only 1 or 2 staff are available to support 15 to 30 people.

51. Many women whom we encounter in the homeless system for many years have been in hospitals, or first experienced homelessness before the age of 18, grew up in group homes or foster care, and may have been incarcerated. This experience is validated in much research including "The Invisible Project" in Hamilton. For these women, their desire for permanent, independent housing does not always mean that they are comfortable or willing to endure the compromises of living in a women's shelter or sleeping in an overnight drop-in.

52. Supporting women's right to choose helps us as shelter and housing providers to build trust and pushes services to provide solutions that more appropriately meet the needs of women.

53. The invisibility of women's homelessness has led to an underfunding of services historically. In past point-in-time counts, women have represented under 25% of the homeless population. This is in part to several factors including: women having fewer shelter beds available

to them; women staying in violence; women being excluded from shelters; couch surfing; exchanging sex for shelter; or returning to abusive people. Years of advocacy work from women's organizations have gone into making the case to increase investments in women's homelessness.

54. At national conferences, women's homelessness has been sidelined to special population workshops and sessions. Because the Violence against Women's shelters funding is managed through the Province and homelessness shelter funding was downloaded to the Municipalities, the Violence against Women's shelters were utilized as an alternate resource to offset the lack of beds in the homeless system for women. As long as Violence against Women shelters could open their doors to women experiencing homelessness the sector did not need to acknowledge unique and specific needs of women who are homeless. Pressure began to emerge in the system when Violence against Women's shelters were consistently full or could not manage the high needs women were presenting in congregate living with children.

55. The COVID-19 pandemic, according to the World Health Organization, brought with it the "Shadow Pandemic" increasing pressure on Violence against Women shelters as more women are experiencing gender-based violence. The pressure in the Hamilton system came long before the pandemic and has only been exacerbated by the Shadow Pandemic, as male perpetrated violence is increasing in homes and on the street.

56. When women do not have any overnight beds they can access that they feel are safe, they may decide their only choice is to sleep or set up living accommodations outdoors.

57. Women choose hidden spaces or very public spaces to increase their safety.

58. I have witnessed women actively trying to use space around the YWCA building to create temporary homes or beds. This does not provide the dignity or safety they deserve. Staff have reported to me that women visiting Carole Anne's Place who stay in tents identify they can create more secure and comfortable spaces. Some join communities or stay with men who help them feel safe outdoors. Staff have reported to me that displacing these women from their outdoor space with or without a tent leads those women to feel afraid and at risk. Displacement denies their right to choose and define their living conditions. If women have no access to permanent housing, then the only alternative should not be limited to a shelter or drop-in bed.

Sworn remotely by Medora Uppal at the City of Hamilton, in the Province of Ontario, before me on July 17th, 2023 by “zoom” videoconference, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Mohamad Bsar

Commissioner for Taking Affidavits
Mohamad Bsar 75897L, LSO



Medora Uppal

THIS IS EXHIBIT "A" TO THE
AFFIDAVIT OF MEDORA UPPAL
AFFIRMED REMOTELY BEFORE ME AT
THE CITY OF HAMILTON DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
THIS 17th day of July, 2023

Mohamad Bsar

Mohamad Bsar
LSO NO. 75897L
Commissioner for Taking Affidavits, etc

EXPERIENCE

DIRECTOR OF OPERATIONS • YWCA HAMILTON • 2011 - PRESENT

Leading the operations of a multi-service, non-profit organization with 350 employees and a \$25 million budget, reporting directly to the CEO. Developing and implementing the strategic plan, organizational policies, budgets, and capital development. Guiding relationships with government, funders, community partners and developing proposals. Supporting advocacy and community relationships locally and coordinating with YWCA Canada to advance the rights of women, girls, and gender diverse people through community planning tables and government relations. Responsible for developing anti-racism / anti-oppression framework, policies and implementation. Oversight of all programs, services and infrastructure acting as the direct report for management and senior management: child & youth programs, social enterprise, housing and shelter, developmental services, youth programs, parenting supervision services, violence against women services, senior's programs, health and wellness, employment and training, immigration and settlement, and the center for innovation, human resources, facilities management, fund development, IT, and administration.

DIRECTOR OF WOMEN'S SERVICES • GOOD SHEPHERD • 2006 – 2011

Responsible for operations of two emergency women's shelters, one transitional housing programs, second stage, and counselling programs for women and children. Managed labour relations with union. Leader at community planning tables. Secured new funding for legal advocacy program, increased counselling and case management services, second stage housing with 40+ units, major capital funding. Design and develop new and expanded shelter and community facilities for a +\$10 million capital build. Led the implementation of operations in an innovative new facility to provide shelter and programs to women experiencing homelessness and women and children fleeing violence.

ASSISTANT DIRECTOR OF WOMEN'S SERVICES • GOOD SHEPHERD • 2004 - 2006

Reported to the Director and supported management of women's shelters, transitional housing, and counselling programs for women and children. Supported program design, participate in planning tables, and

WOMAN ABUSE EDUCATION & SUPPORT PROGRAM • GOOD SHEPHERD MARTHA HOUSE • 2001 – 2004

Supportive counselling, safety planning and group facilitation programs for women experiencing gender- based violence. Developed workshops, curriculum and public education to address violence against women in community and worked directly with survivors. Community advocacy and organized events and led committees. Coordinated camp programs for 100+ women, children and youth survivors annually and facilitated adventure-based counselling.

CASE MANAGER • Good Shepherd WOMEN'S SERVICES • 1997 – 2001

Case management with women experiencing homelessness at Mary's Place and women (and their children) fleeing violence at Martha House. Advocacy and planning with hospital, housing providers and mental health and addiction services for women. Crisis intervention support to women experiencing violence, suicidality and other mental health and safety issues.

VOLUNTEER & COMMUNITY LEADERSHIP

BOARD MEMBER • 2019–PRESENT • TODAY'S FAMILY

BOARD MEMBER • 2005 – 2007 & BOARD CHAIR • 2007 – 2013 • SACHA (SEXUAL ASSAULT CENTRE HAMILTON)

ACTIVE COMMITTEES • 2022

Co-Chair, Women's Housing Planning Collaborative

Chair, Complex Care System Planning Table

Chair, Equity and Engagement Advisory Group – City of Hamilton Early Years

Member of Women's Services Advisory Committee to the Hamilton Chief of Police

Member of Equity Advisory Council - Greater Hamilton Health Network

Member of City of Hamilton Housing and Homelessness Planning Group

Member of Hamilton is Home

YWCA CANADA • NATIONAL / INTERNATIONAL ENGAGEMENT

United Nations Commission on the Status of Women, 2012

YWCA World Council, Thailand, 2015 – Observer & Workshop Presenter

YWCA World Council, South Africa 2019 – Observer

Member of YWCA Canada Advocacy Committee

Member of YWCA Canada – Housing, Community of Practice

AWARDS

Leadership Award, Good Shepherd, 2009

Woman of Distinction, YWCA Hamilton, 2010

YWCA Canada, 2019

EDUCATION & TRAINING

WOMEN'S STUDIES & PHILOSOPHY • MCMASTER UNIVERSITY • 1996 – 2000

ADVENTURE BASED PROGRAMMING & COUNSELLING • 2002

ANTI-RACISM / ANTI-OPPRESSION TRAINER • 2010

GRADUATE LEADERSHIP PROGRAM • QUEEN'S UNIVERSITY • 2014

INDIGENOUS CANADA COURSE • UNIVERSITY OF ALBERTA • 2021

SAN'YAS INDIGENOUS CULTURE SAFETY TRAINING • 2022

THIS IS EXHIBIT "B" TO THE
AFFIDAVIT OF MEDORA UPPAL
AFFIRMED REMOTELY BEFORE ME AT
THE CITY OF HAMILTON DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
THIS 17th day of July, 2023

Mohamad Bsar

Mohamad Bsar
LSO NO. 75897L
Commissioner for Taking Affidavits, etc



2019-2020

IMPACT REPORT



BOARD OF DIRECTORS

Charaya Thach, President
 Terri Johns, Vice President
 Victoria Walzak-Mosca, Treasurer
 Charlotte Yates, Past President
 Anna D'Angela, Secretary
 Alison Horton
 Dr. Carys Massarella
 Jesse Elders
 Lydia Kipiriri
 Pauline Taggart
 Sue Bennison



To me it seemed like a good opportunity to show that transgender people belong, and we have the capability to achieve the same things as anyone else."

– Dr. Carys Massarella on joining YWCA Hamilton's Board of Directors

EXECUTIVE LEADERSHIP

Denise Christopherson, CEO
 Janet Arsenault, Director of Finance
 Maisie Raymond-Brown, Director of Employment and Training Services
 Medora Uppal, Director of Operations
 Sandra Parker, Director of Child and Youth Services
 Sarah Ernest, Director of Development
 Tricia Thomson, Director of Building Services
 Winnie Linker, Director of Human Resources

SENIOR LEADERSHIP

Alisha Mociak, Human Resources Advisor
 Amy Deschamps, Manager, Transitional Housing
 Carol Fraser, Manager, Developmental Services – Community Supports
 Daniella Bozur, Manager, Family Access Services
 Deborah Schwientek, Manager, Employment and Training Services
 Heather Barkley, Campaign Officer
 Hillary Banks, Human Resources Advisor
 Jennifer Andreoli, Head Chef, At the Table Social Enterprise Café
 Jennifer Noel, Manager of Children's Services
 Joanne Gneith, Manager of Building Operations
 Marnie Warman, Manager, Health and Wellness
 Neanette Atanas, Senior Analyst, Programs & Training
 Nermine Yousseff, Manager, I.T. Systems
 Sandra Litster, Finance Officer
 Sarah Borde, Project Officer, Building Services
 Shannon Cummings, Manager, Enterprise Centre
 Sheryl Nadler, Manager, Media and Communications
 Tracey Helwig, Manager, Developmental Services
 Violetta Nikolskaya, Senior Analyst, Programs and Advocacy

A MESSAGE OF THANKS FROM OUR BOARD PRESIDENT & CEO

This fiscal year was one to remember. In partnership with our community and friends of our mission, we celebrated 130 years of changing the lives of women, girls and families in Hamilton.

Together, we have made major progress in many of our key priority areas identified within our 2018-2022 strategic plan. As an organization, we have officially begun building for our future on Ottawa Street and we have made huge strides within our capital campaign, closing this fiscal year with over \$2 million raised.

In the spring of 2020, we were – and continue to be – tested as an organization, as we faced a global pandemic head on. We are reminded of our legacy of resilience, as YWCA Hamilton has stood the test of time, serving our community for over a century. We will continue to do so, regardless of what this ever-changing world throws at us.

Our mission is tried and true. We were there for those who needed us during the global pandemic of 1918 and we provided services and supports to those impacted during both World

War I and World War II. One thing is evident – YWCA Hamilton has been there – and will always be there – for those who need us most.

Each time we are faced with adversity, we come out stronger.

We are fueled by a deep-rooted passion for justice, equality, and making change for the 10,000+ individuals we serve each and every year. Listening to these diverse voices will continue to inform our work, our priorities, and our path forward as we embark on this new fiscal year and the remaining two years of our strategic plan.

Together, we’ve set some bold goals that are backed by our desire to impact, influence and to innovate. These three pillars will continue to drive our work to make more meaningful change in the lives of those we serve. The work of YWCA Hamilton would not be possible without the tireless dedication and passion of all YWCA Hamilton staff, volunteers and supporters.

Together, we’re inspiring change. And, we are creating a community where women, girls and families thrive.



Charaya Thach,
Board President



Denise Christopherson,
Chief Executive Officer



AT OUR CORE



130+
years serving women, girls & families in Hamilton



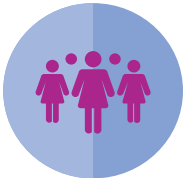
10,000+
people impacted through **60+** programs & services



30+
community based locations



396 staff & **250+** volunteers
championing our mission



330,000+
women & girls supported by YWCAs across Canada

We believe that women and girls must have the rights, resources and opportunities to shape their own lives and define their communities. YWCA Hamilton is part of a global movement connecting over 25 million women in 125 countries.

Our impact is made possible on the lands of the traditional territory of the Haudenosaunee and Anishnaabeg. This territory is covered by the Upper Canada Treaties, within the lands protected by the “Dish With One Spoon” wampum agreement, and is directly adjacent to Haldimand Treaty territory. We respect the longstanding relationships with the local Indigenous communities, the Mississaugas of the Credit First Nation and the Six Nations of the Grand River, and are committed to the recommendations of the Truth and Reconciliation Commission Report.

WE BUILD STRONG LEADERS.

We know that to build a strong community, you must build strong leaders. At YWCA Hamilton, we’re intentional about developing a workplace culture that prioritizes development opportunities, inclusivity, equity and balance. We invest in all of our employees.

5,988 hours of training provided to 976 staff – that’s an increase of 2,508 hours over last year	307 staff trained in Health & Safety		239 staff trained in Non-Violent Crisis Intervention & Crisis Prevention
82 staff trained in First Aid & CPR		79 staff trained in Applied Suicide Intervention Skills & SafeTalk	68 staff trained in Truth & Reconciliation
67 staff trained in Anti-Racism Anti-Oppression	41 staff trained in Trans Inclusion		34 staff trained in Mental Health First Aid
	16 staff trained in opioid overdose response		



The newly-reimagined Ottawa Street YWCA will be named The Putman Family YWCA, thanks to a \$1 million donation from Hamilton’s Putman family, known locally as the founders of Ancaster-based Everest Toys.

The Putmans approached YWCA Hamilton after reading a newspaper story about the lack of funding to Carole Anne’s Place, our emergency overnight shelter for women experiencing homelessness during the winter months.

“We’ve been at the forefront of addressing the affordable housing crisis in Hamilton,” says Denise Christopherson, CEO YWCA Hamilton. “The Putman family contribution will significantly support our efforts to eradicate women’s homelessness in this city.”



Doug Putman announces a \$1m donation at the 2020 Women of Distinction Awards

“We wanted to be part of the solution,” says Doug Putman, who credits his mother Karen with bringing the media story to the attention of the close-knit family. “I obviously have a very strong mother and a very strong sister. I’ve got a very strong wife and I hope I’ve got a very strong daughter as she grows up. I see the impact of a mother on the kids, the family. What better place to support than mothers and families, because you can actually impact that next generation?”

The Putman family, including Bob and Karen, Doug, his wife Kerri Putman and daughter Hadley, as well as Bob and Karen’s daughter Jennifer Putman, her husband Pablo Roque and their daughter Anna Roque took stage at the 2020 Women of Distinction Awards to announce their donation and urged the crowd of 1,000+ guests to invest in women, girls and families in Hamilton.

THE PUTMAN FAMILY YWCA AT A GLANCE

HOUSING FOR WOMEN & CHILDREN



50 affordable apartments

- 28 one-bedroom units
- 6 barrier-free one-bedroom units
- 10 two-bedroom units
- 6 three-bedroom units



15 of which are dedicated for adults with developmental disabilities



In-residence counselling



Wraparound support for residents, including goal-planning, skill-building, resource navigation and supportive counselling



Rooftop garden and community spaces



Passive House design ensuring high levels of comfort

INNOVATION, COMMUNITY & SENIORS SPACES



Innovation Centre dedicated to providing employment training, social enterprise and microlending, new apprenticeships and business start-up support



Seniors Centre encouraging active living and engagement for citizens 55+



Health and wellness programming including fitness, yoga and more



Community Atrium promoting neighbourhood connections and youth programming



Non-YWCA programs and flexible rental spaces for community partner use

WHO WILL BE HOUSED?

The Putman Family YWCA will serve those who need us most. Of the 50 units, households may include women and children:

- who have experienced domestic violence
- who have experienced homelessness
- who are Indigenous
- who are living with developmental disabilities
- who are living with mental health issues
- who have mobility challenges

The Putman Family YWCA is slated to open spring 2021.



WE ELIMINATE FOOD INSECURITY AND INCREASE SKILLS.

Many of the individuals we serve struggle with food insecurity. Access to nutritious food is a basic need and a requirement for empowering women and families. In partnership with local restaurants and supporters, we're tackling food insecurity head on and making an immediate difference through providing dignified access to healthy options.

19,175

meals provided to the women who call YWCA Hamilton home through the Transitional Living Program

15,145

meals prepared through our Be the Recipe for Change Program, a culinary experience with a social purpose, hosted by our At the Table Café

555

healthy, nutritious snacks provided during non-custodial parental visits in our Family Access Centre ensuring that no child or parent went hungry while spending time together.

4,030

meals donated by our generous community

17,160

individuals invested in YWCA Hamilton through At the Table Café purchases



WE PROVIDE SOLUTIONS TO ENDING HOMELESSNESS.

In Hamilton, rent prices have skyrocketed leaving many citizens forced to choose between paying rent and buying food to eat. The waiting list for social housing is over 6,000 and counting and on any given night in Hamilton, over 300 women experience homelessness.

A safe and accessible place to live is a key determinant of overall health. For many women and children, their home is a safe haven; a building block for their future and their protection from abuse.

Women, children and families who come to YWCA Hamilton have struggled with homelessness, isolation and various forms of disability and trauma. Our goal is to provide them with the stability of a home and the resources and opportunities to rebuild their lives.



140

women struggling with poverty, homelessness and violence received safe, affordable housing through Transitional Living and Phoenix Place

212

women had a safe place to rest **3044** times during winter's coldest months at CaroleAnne's Place, our out-of-the-cold emergency shelter – an increase of **62%** from last year

47

women moved on from Transitional Living and into independent housing

352

women safely housed



WE SUPPORT SURVIVORS OF VIOLENCE.

Gender-based violence is the leading cause of women’s homelessness and globally, 243 million women and girls age 15–49 have experienced some form of physical or sexual violence perpetrated by an intimate partner in the past 12 months.

Domestic violence rates have skyrocketed across Canada as a result of the pandemic and in Hamilton, we’ve already seen a 4.6 per cent increase in calls to police about violence in the home.

We are on the frontlines of the fight against violence against women. We are dedicated to ensuring the safety of women and families fleeing violence and offer safe, supportive housing for those escaping violence as well as individualized support, counselling and skill-building to recover from trauma and start anew.

150+	hours of counseling, abuse education, advocacy, legal advice and parenting support to women experiencing violence
39	safety plans completed to support survivors leaving their abusers
40	group sessions providing support to 150+ women fleeing violence through Phoenix Place
145	women, youth and newcomers with limited exposure to the digital world gained digital literacy skills, knowledge and confidence to safely navigate the internet and online communities through the Digital Smarts program



WE ADVANCE WOMEN’S ECONOMIC JUSTICE AND INDEPENDENCE.

Women face unique barriers to accessing gainful employment and are engaged in more precarious work and minimum wage jobs than men. Newcomer women and women of colour experience an even greater earning gap.

Women hold less than 4.5 per cent of all skilled trades jobs across Canada, and in Hamilton, there is a skilled labour shortage of women accessing technical fields and skilled trades.

We are working hard to put women on a path of well-paying growth careers, exploring opportunities within non-traditional occupations and achieving financial independence.

When women have access to training and opportunities, they thrive. And our economy thrives too.

883	individuals supported through Employment and Training Programs with 14 women-led businesses launched through Business Out of the Box, a shipping container reimaged as a storefront for women entrepreneurs
200	young women and non-binary youth ages 15–30 gained meaningful employment after 16 weeks of employability training, 4 weeks of paid in-class training, 7 certification trainings and 12 weeks of paid on the job experience through the SISTER Program
161	female students grades 9–12 across 9 Hamilton high schools explored careers in skilled trades and technical fields and met female mentors to help pave their path forward in non-traditional and STEM fields
300+	clients supported in job search, resume building and increasing employability
30	women are ready to take on the world as trained General Machinists and Electricians through the Pre-Apprenticeship Program in partnership with Mohawk College and Niagara College



“Overall, it was a really great experience and it brought me to where I am today.”

- Shannon, Program Graduate



WE PROMOTE THE HEALTH AND WELLNESS OF ALL PEOPLE.



Robin Mech, Supervisor of 55+ Active Living Centre hand delivering care packages to seniors during the pandemic.

Canadians of low income report the highest rates of food insecurity and those at greatest risk of isolation include seniors with physical and mental health issues, low income seniors, Indigenous seniors and those who are newcomers to Canada.

In Hamilton, over 12,000 seniors are known to be isolated, contributing to increased cognitive decline and depression. Senior women become especially vulnerable to isolation due to taking on the bulk of caregiver responsibilities.

We are focused on promoting the physical and emotional well-being of all Canadians. With our network of volunteers, we're providing in-home social support to isolated seniors, encouraging the full participation of newcomers, supporting new moms and cancer survivors, and providing subsidies to remove barriers for women and families in accessing health and wellness opportunities.

977 patients served through the Shelter Health Clinic at YWCA Hamilton, a health care service designed to reach high-risk populations of people who do not have stable housing and complex health issues

2,309 men, women and children engaged in health and wellness programming

2,347 hours of home visits made to 574 isolated seniors with 445 new connections made to community programs and services through the Senior Peer Connector Program

60 new moms, **74** babies and **36** siblings supported in the comfort of their homes to strengthen bonds and reduce the risks of postpartum depression through Good Beginnings Program

344 women who face financial barriers accessed wellness programming through Women Alive!

4,141 hours of South Asian Punjabi programming provided to 105 senior Punjabi women

55 survivors of breast cancer participated in specialized programming to promote healing, recovery and connectedness among survivors

I have made new friends and enjoy the social component as much as the yoga and exercise. For me, the positive impact is immeasurable. I am grateful for the teachers, my fellow classmates and especially for the individuals involved in creating such a wonderful program for us seniors. Thank you from the bottom of my heart."

– Santokh, YWCA Health & Wellness member



WE STAND FOR DIGNITY AND RESPECT.

A woman with a developmental disability is three times more likely to experience violence. The employment rate of adults aged 16 to 64 with a developmental disability was 22%, less than one-third of the rate for people without a disability and the lowest employment rate of any disability type.

Individuals may also experience isolation within their homes and communities due to mobility challenges and barriers to transportation and care.

We have been serving the needs of youth and adults with developmental disabilities for over 40 years. With a team of dedicated staff, we provide 24-hour support and supervision to adults with differing levels of independence and provide the training, support and care to access meaningful employment opportunities.

342

individuals with developmental disabilities supported through YWCA Hamilton Developmental Services

148

people empowered to move, build confidence and increase their self-esteem through Developmental Services day programming

46

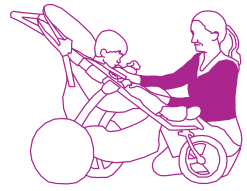
adults provided with 27/7 compassionate care through group living homes and supportive apartment environments

33

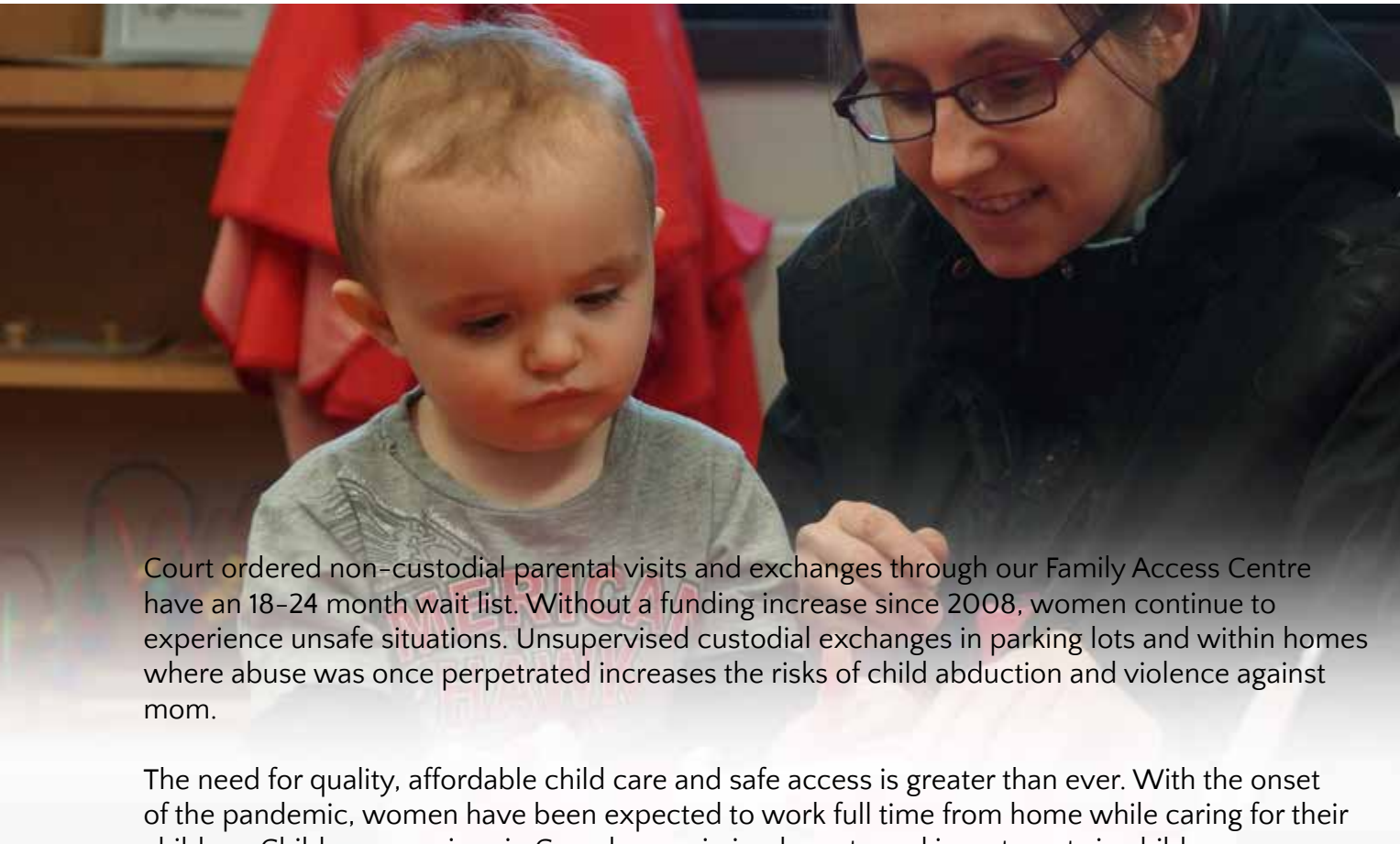
individuals with self-identified disabilities prepared for workforce entry with jobs secured in IT, Food Service, Transportation, Non-profit and the Health Care sector through The Opportunities Program (TOP).



A positive affirmation created and shared by folks within Developmental Services.



WE BELIEVE IN QUALITY, AFFORDABLE CHILD CARE AND SAFE ACCESS.



Court ordered non-custodial parental visits and exchanges through our Family Access Centre have an 18-24 month wait list. Without a funding increase since 2008, women continue to experience unsafe situations. Unsupervised custodial exchanges in parking lots and within homes where abuse was once perpetrated increases the risks of child abduction and violence against mom.

The need for quality, affordable child care and safe access is greater than ever. With the onset of the pandemic, women have been expected to work full time from home while caring for their children. Child care services in Canada remain inadequate and investments in child care are proven to enhance economic security for all women and communities across Canada.

YWCA's are the second largest provider of licensed child care in the country. We advocate tirelessly to invest in quality, affordable and universal child care across all levels of government. Child care is the ramp to women's equality and integral in women's economic empowerment.



555

non-custodial parental visits at our Family Access Centre to ensure safety where domestic violence, mental health, substance abuse or risk of abduction is of concern



130+

children and youth received subsidy to participate in swimming lessons and Youth Fitness Programs



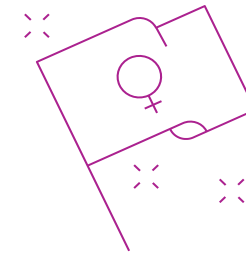
16,100

hours of quality, inclusive programming delivered to 500+ children through YWCA Hamilton Child Care Centres



213

children had a summer to remember at YWCA Hamilton Summer Camps



WE ADVOCATE FOR CHANGE.

At our core, we are social innovators and are part of an international network for Gender and Equity. We were there when women were advocating for the right to vote, for reproductive rights and for maternity leave.

We were there when the first shelters opened. YWCA Hamilton has and continues to be a strong voice dedicated to advancing social justice for women, girls, non-binary and gender fluid folks through our programs, services and advocacy.

We work from an anti-racism anti-oppressive, intersectional feminist framework to understand and challenge power structures, address the root causes of systemic racism and amplify the voices of Black, Brown and Indigenous people in our community. We believe in creating safe, inclusive spaces and are invested in building the leadership potential of young women and non-binary youth to carry the torch in the creation of a just and equal society.



The YWCA taught me as an immigrant from Kenya, how I can find my spot in Canada. The YWCA got to know me. They saw something in me and they saw the passion that I had and they invested in me.

And because they've invested in me, I'm able to touch women in my country. I'm able to help them have a sustainable income, to have money to visit clinics, to educate their children and the whole community can prosper from that.

When you educate a woman and when you invest in a woman, it's going to be green all around. She doesn't only help herself, she helps the people around her."

- Selbina Mwendwa, 2020 Honourary Woman of Distinction, YWCA Hamilton Biz Smarts Program Graduate & CEO of Canadian African Gifts & Décor



610+

youth engaged through youth-led programs, workshops and events that centres the voices of young women, non-binary and gender fluid youth in Hamilton

541

youth across 24 schools attended the Totally Awesome Young Women's Breakfast and left feeling inspired and ready to take on the world

24

girls grades 1-6 empowered through GirlSpace, a free after school program devoted to increasing self-confidence and empowering girls to live healthy, safe lives

15

young women and non-binary individuals identifying as Black, Indigenous, Persons of Colour (BIPOC) claimed power and place in politics to effect change through the Reaching for Power workshop series

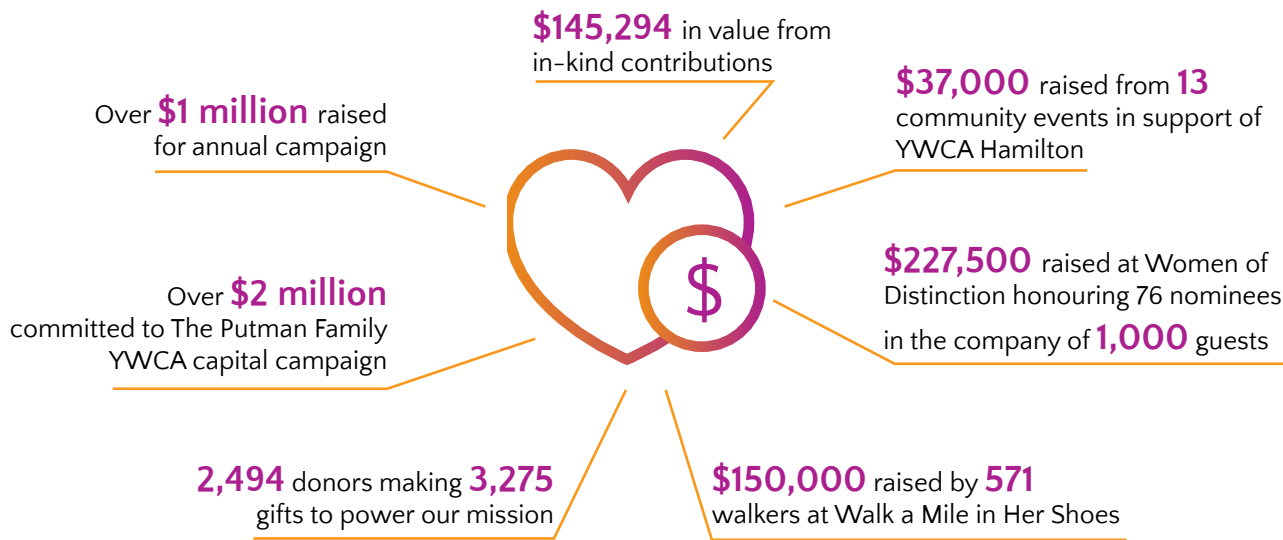


A CULTURE OF PHILANTHROPY.



Your 2020 YWCA Hamilton Women of Distinction Winners.
Bottom (L to R): Dr. Heather Sheardown (Science|Technology|Trades), Chyler Sewell (Young Trailblazer), Blueberry Therapy, Owner Kristen Parise (Outstanding Small Business), Dr. Audrey Hicks (Health)
Top (L to R): Monique Lavallee (Community Leadership), Kayonne Christy (Young Woman of Distinction), Emily O'Brien (Business Leadership|Entrepreneurship), Diana Weir (Arts|Culture|Design), Lena Sutton (Lifetime Achievement)

Fundraising is critical in ensuring the ongoing operations of our programs and services. With the support of our community, partners, funders and generous donors we continue to change the lives of the women and families we serve.



IT WASN'T OUR FIRST PANDEMIC



In March 2020, our organization – like many others – grappled with a new challenge. Covid-19 took our country by storm and we ended our fiscal year navigating the uncharted waters of a global pandemic. But it wasn't the first time.

We were there for the women and families during the global pandemic of 1918, providing supports and services for those in need. And we're still here – supporting and advocating for women and communities disproportionately affected by the pandemic.

With a nimble, passionate team our pandemic response was swift. Together, we:

- ✓ **pivoted our programs** and services to be delivered online where possible;
- ✓ **continued service delivery** within all essential service areas including Transitional Living, Carole Anne's Place, Phoenix Place and all Developmental Services residences;
- ✓ **expanded our women's housing services** in partnership with The City of Hamilton to ensure that women experiencing homelessness had a safe roof over their head and a space to self-isolate;
- ✓ **led the way in developing a virtual visitation** provincial standard to enable safe, virtual court ordered visitations for families through our Family Access & Access Alternatives programming;
- ✓ **stayed connected with isolated seniors** through telephone calls, virtual check-ins and delivering care baskets;
- ✓ **launched a Covid-19 response campaign** raising over \$24,000 to support our pandemic response along with over \$15,000 worth of in-kind donations for programs and collecting 7,000+ pieces of personal protective equipment to ensure the ongoing safety of our staff and clients.

The effects of the pandemic will be felt for years to come. From massive layoffs to increased unpaid work to the surge in domestic violence, women have been disproportionately impacted by Covid-19. **We are dedicated to advancing Canada's first Feminist Economic Recovery Plan and will work tirelessly with YWCAs across the Country to see this through.**

REMEMBERING MILLI GOULD



(L to R): Ben Gould, Milli Gould, Mark Gould, Denise Christopherson

Our CEO Denise Christopherson remembers Milli as a woman who seldom wanted to talk about herself or her own accomplishments, and instead wanted to focus on making the community a better place for women and children.

“I just remember the joy in her eyes as women talked about the businesses they were planning,” Denise said. “She always believed that because someone invested in her potential, she would pay it forward and invest in the potential of other women.”

YWCA Hamilton is deeply grateful for the support and friendship of Milli Gould who was a catalyst for change in the lives of so many women. When you invest in a woman, it has a ripple effect across the community, a concept Milli understood more than most. And her legacy will live on in the women entrepreneurs she supported and who, in turn, supported themselves, their families and helped build Hamilton.

YOU POWER OUR MISSION.



Our heartfelt thanks and appreciation goes out to all supporters of our mission. From our staff team to our volunteers, funders and individual donors, we all contribute our unique offerings to enable our shared success and collective impact. Because of you, women, children and families are thriving.



Government Funders

- City of Hamilton
- Employment & Social Development Canada
- Federal Economic Development Agency
- Health & Social Services Haldimand & Norfolk
- Immigration, Refugees and Citizenship Canada
- Innovation, Science and Economic Development Canada
- Ministry for Seniors & Accessibility
- Ministry of Attorney General
- Ministry of Children, Community and Social Services
- Ministry of Education
- Ministry of Heritage, Sport, Tourism, Culture
- Ministry of Training, Colleges & Universities
- Ontario Trillium Foundation
- Women and Gender Equality Canada



Foundation & Corporate Supporters

- ACCESS Community Capital Fund

Alectra Utilities

Alice Jean Ainsworth Memorial Fund through the Hamilton Community Foundation

Ancaster Lions Club

ArcelorMittal Dofasco Employee Donations Fund

ArcelorMittal Dofasco Inc.

Arvin Air Systems

Atomic Spark

BDO Canada LLP

Bestco Construction Ltd

Beth Jacob Synagogue

Body Shop – Eastgate Square

Boehringer Ingelheim

Brabant Foundation

Brownlow Partners

Burnt Tongue

Cable 14

Cake and Loaf Bakery

Canadian Tire Jumpstart Foundation

Cancer Assistance Program

Carmen’s Group

Cavalier Clothing

Centre de santé communautaire Hamilton/Niagara

Children’s Aid Society of Hamilton

CHML Children’s Fund

CIMA Enoteca

City of Hamilton – Economic Development

Coke Canada

Cogeco Connexion

Collyer Benson Capital Inc.
- Community Arts Fund through the Hamilton Community Foundation

Congregation of the Sisters of St. Joseph in Canada

Coreslab Structures

Council for Canadian Urbanism

Councillor Ninder Nann

Court Holdings Limited

COVID-19 Emergency Fund through the Hamilton Community Foundation

CrossFit Opus

CURE Foundation

Datcor Mechanical a Division of 1826298 Ontario Inc.

De dwa da dehs nye’s Aboriginal Health Centre

Deloitte LLP

Dewildt Honda

Dr. Ravinderpal Singh Ohson Medicine Professional Corporation

Dundas Lioness Club Charity

Edith H. Turner Foundation Fund through the Hamilton Community Foundation

Empower Strategy Group

Enbridge Gas Inc.

Energy Advantage Inc.

Estate of Elizabeth Love

Gallagher

Gentherm

Genworth Canada

Givesome Foundation

Gowling WLG

Graceworks Baptist Church

Grant Thornton LLP

Green Benefits Group

H. Fred Janson Fund

Hamilton Community Foundation
Hamilton Etsy Handmade
Hamilton Fire Fighters Assistance Fund – Local 288
Hamilton Jewish Family Services
Hamilton Out of the Cold
Hamilton Police Service
Hamilton Romanian Community
Hamilton Spectator Summer Camp Fund through the Hamilton Community Foundation
Hamilton Tiger-Cats Football Club
Hamilton–Wentworth Catholic District School Board
Hamilton–Wentworth District School Board
Hamilton–Wentworth Elementary Teachers’ Local
Healthcare & Municipal Employees’ Credit Union
IBEW Local 105
Intact Insurance
Jackman Foundation
Kabuki Spa & Skin Care Centre
Karen & Peter Turkstra Family Foundation through the Hamilton Community Foundation
KMSalter Design
KPMG Foundation
KPMG LLP
Labourer’s International Union of North America (LIUNA) 837
Lamont Law
Lean In Wealth Management
MacKay CEO Forums
MacNeill Baptist Church
Malarkey Kids Inc.
Malloch Foundation Fund through the Hamilton Community Foundation
Maple Leaf Sports and Entertainment
Marz Homes
Martin Foundation Fund through the Hamilton Community Foundation
Mastectomy Lingerie and More
Maxims Limited Partnership (Aird & Berlis LLP)
McCallum, McBride Fund through the Hamilton Community Foundation
McGowan Insulations Ltd.
McMaster University
Meals with Purpose
Mercedes-Benz Burlington
Meridian Credit Union
MERIT Brewing
Mohawk College
MPP Andrea Horwath
MP Filomena Tassi
National Steel Car Limited Employees Charitable Donations
Neighbour to Neighbour Centre
New Horizon Development Group
Nique Restaurant Inc.
Niwasa Kendaaswin Teg
Odds Bar

Ontario Indigenous Centre of Excellence
Ontario REALTORS Care Foundation
Pearson Dunn Insurance Inc.
Pelmen Foods
PV&V Insurance Centre Ltd.
Q Spa
Radius
RBC Royal Bank
Rexall Pharmacy Group Ltd.
Ross McBride LLP
Royal LePage Shelter Foundation
RWAM Insurance Administrators Inc.
Schilthuis Construction Inc.
Scotiabank
Sheraton Hamilton Hotel
SimpsonWigle LAW LLP
Sisters of Charity
Solee Shoes
Sony Music
Soundbox Productions
Starward Homes
Sunrise Records
Superior Boiler Works and Welding Limited
T. Johns Consulting Group Ltd.
Tandia
TD Commercial Banking
The Body Shop – Eastgate Square
The Generator Inc
The Hamilton Spectator
The Mule
The Other Bird
The Shoebox Project
Thier + Curran Architects
TPH The Printing House
TradeLink International Ltd.
United Steelworkers
United Way Halton & Hamilton
Unity Spiritual Centre
VIA Rail Canada Inc.
2WA Consulting
Women 4 Change Fund through Hamilton Community Foundation



Individual Donors (Donating \$500+)

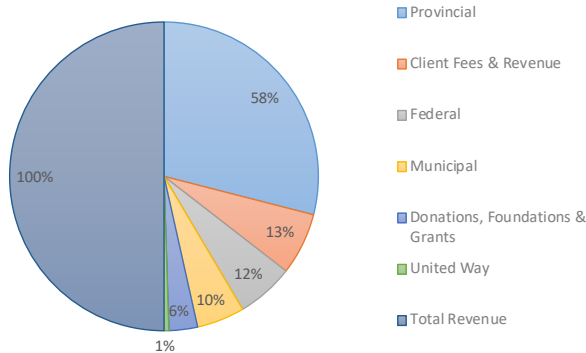
Aaron Gillespie	Debra Kumita	Lisa Hepfner	Ron Foxcroft
Albina Veltman	Deidre Henne	Lisa Owens	Ruth Todd
Alexis Fletcher	Denise Christopherson	Lynda and David Bowen	Sandra Thar
Allison Nielsen	Earle O’Born	Lynn Foye	Sarah Borde and Marc André Brulotte
Amy Campbell	Eileen Campbell	Maisie Raymond–Brown	Sarah Ernest
Andrew Vanderhout	Felicia Van Dyk	Margaret and Ross Warriner	Sarah Lampson
Ani Kaluzny	Gabriela Covaci	Marguerite Langdon	Sarah Wayland
Ann McLaughlin	Gillian Webster	Marie Elliot	Scott McCain
Anna D’Angela	Graham Crawford	Marie Nash	Stephanie McLarty
Anne Tennier	Hazel Collins	Maroussia Ahmed	Stuart Phillips
Annette Hamm	Heather Blandford	Medora Uppal	Sue Bennison
Annette Verschuren	Hoda Kamel	Melanie Noviss	Sue Ramsay
Archie Merigold	Jane Allison	Mindy Tweedle	Susan Reid
Beatrice and Romeo D’Angela	Janet Arsenault	Mylène Vincent	Suzanne Bauman
Bianca Bruzzese	Janet Rush	Nancy Julardija	Suzanne Gibson
Bob Aron	Jean MacKinnon	Neenu Ohson	Suzanne Mammel
Brenda Vrkljan	Jeff Dowding	Nick Luscombe	Suzanne Zandbergen
Brenda Yates	Jesse Elders	Pat Gagic	Tanweer Abbas
Brooke Eady	Jessica Merolli	Patricia Roque	Tara Townson
Carm Bozzo	Jo–Ann Savoie	Patricia Saunders	Ted Stark
Carm Vespi	Joanne McCallum	Paula Bournier	Theresa Picone
Carmela Trombetta	Juliet Daniel	Pauline Taggart	Thomas Corradetti
Catherine Miller	Kaley Gray	Pearl Veenema	Winnie Linker
Cathy MacKenzie	Karin Schuett	Peter J. Van Dyk	Yulena Wan
Charaya Thach	Kathy Hayes	Peter Queck	Ziad Reda
Chelsea Kirkby	Kathy Lerette	Pietrantonio Family	
Chris Rigby	Kathy North	Pike Krpan	
Christina DelBello	Kenneth Ockenden	Putman Family	
Claire Kislinsky	Kim McCallum	Rachel Matthews	
Constance Jain	Laura Babcock	Rafal Tomczuk	
Deborah Sloboda	Lisa Dalia	Robin Cameron	



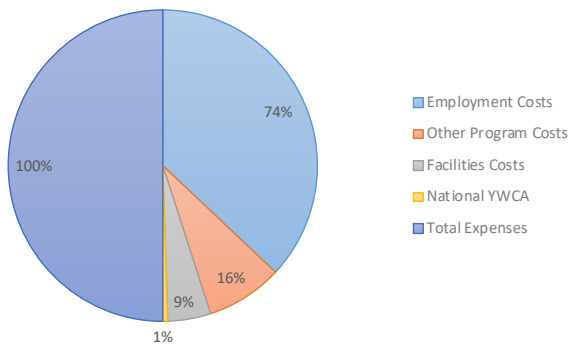
Financial Highlights

Financial information is extracted from the financial statements audited by Deloitte LLP. Anyone requiring a copy of the audited financial statements and financial notes disclosure may contact us.

Revenue



Expenses



**YWCA Hamilton**

75 MacNab St. South
Hamilton, ON L8P 3C1
Charitable Registration BN:
11923 6792 RR0001

ywcahamilton.org



THIS IS EXHIBIT "C" TO THE
AFFIDAVIT OF MEDORA UPPAL
AFFIRMED REMOTELY BEFORE ME AT
THE CITY OF HAMILTON DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
THIS 17th day of July, 2023

Mohamad Bsar

Mohamad Bsar
LSO NO. 75897L
Commissioner for Taking Affidavits, etc



FROM HOMELESSNESS TO HOPE

Support for Carole Anne's Place

Submission to Emergency and Community
Services Committee – City of Hamilton

November 7, 2019

NO PLACE TO CALL HOME – A CRISIS IN HAMILTON

Women are turned away from shelters over 300 times every month.

But all they want tonight is a safe place.

YWCA Hamilton's Carole Anne's Place keeps women who are homeless warm and safe during Canada's coldest winter months.

Every day over the winter, YWCA opens the MacNab Street site at 10pm where staff from St. Joseph Healthcare Centre and YWCA provide overnight space for 10 – 20 women.

Carole Anne's Place closes at 8am and women are given bus tickets to go to Willow's Place. Mission Services extends the hours of Willow's Place, so that women have a place to go when Carole Anne's Place is closed.

A request to fund Carole Anne's Place has been submitted to the Housing Services Department for future years (April 2020 – 2023).

There is no funding for this Winter.



CAROLE ANNE'S PLACE

2018/2019:

Carole Anne's Place offers women a safe, warm place to rest overnight during winter's coldest months. And, our partners at Willow's Place offer daytime drop-in and support until doors open at Carole Anne's Place.

Carole Anne's Place and Willow's Place provides access to hot meals, housing assistance, and winter clothing for women struggling to cope with homelessness or precarious housing situations.

4583
visits

260
women

79%
overnight guests

33
days

December 1st. to March 31st, 2019

accessed safe space at
Carole Anne's & Willow's
Place

required substance use
monitoring (March 2019)

that were below -10 degrees

A LACK OF FUNDING FOR CAROLE ANNE'S PLACE

Without access to emergency shelter, women in Hamilton risk death and injury this winter.

Since 2016, Carole Anne's Place has evolved to create a service that is responsive and helps keep women safe in the winter. Carole Anne's Place relies on the coordination of services between YWCA Hamilton, Mission Services, and St. Joseph Healthcare Centre to respond when the shelters are full or cannot support the women who require a low-barrier option.

The funding gap is **\$228,000**, which supports opening Carole Anne's Place and extending hours at Willow's Place. Contributions of **\$30,000** have already been committed to Carole Anne's Place from St. Joe's, Out of the Cold, and Sisters of Charity.

The Women's Housing Planning Collaborative (WHPC) endorses Carole Anne's Place as a necessary response until other permanent solutions can be established.

Overflow shelter Carole Anne's Place will not be able to open this winter without new funding

The YWCA-run program provided a warm place to sleep for dozens of women turned away from full shelters last winter — but funding for the pilot project has run out.

NEWS 07:50 AM by Matthew Van Dongen The Hamilton Spectator



Carole Anne's Place has run the overflow shelter out of the downtown YWCA for three years between December and March. - The Hamilton Spectator file photo

An emergency overnight stay program for homeless women turned away from full shelters will not be able to open this winter without new funding, says the Hamilton YWCA.

FROM HOMELESSNESS TO HOPE: ONE WOMAN'S STORY

Cathy found a protected alcove near the GO Station, where she and her partner Lindsey could take shelter from the cold for the night. As she settled in and waited for Lindsey to join her, two men entered the small alcove and started using intravenous drugs.

“And here I am, freezing, almost in tears. Don’t know what to do, don’t know where to go. No money, no food, no drinks, no nothing. Absolutely nothing,” says Cathy. “And I sat there and I watched it because I did not want to get beaten up, killed, robbed, raped, or anything. I didn’t want any of that happening because that already happened to me before, years ago. But I was scared for my life.”

A few weeks later, Cathy and Lindsey would find Carole Anne’s Place, where they slept every night from December to March. With support from YWCA Hamilton staff, they were eventually set up with a permanent apartment, a safe place they could finally call home.



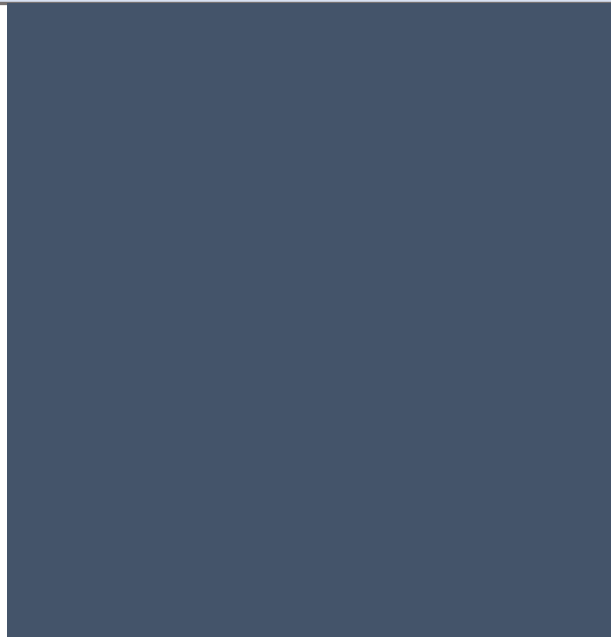
“I’m starting to get our life back together. And you know, if it wasn’t for Carole Anne’s Place pushing us and giving us that support and all the positivity that they have, I honestly don’t believe that I would be here.”

Carole Anne’s Place evolved from the Women’s Housing Planning Collaborative (WHPC) in 2016 and has relied on contributions from Out of the Cold, a non-profit, and the LHIN to operate. Out of the Cold has had to reduce the amount of donated dollars they can contribute and the LHIN has not been able to re-fund the program in 2019/20. To date, the City of Hamilton has not contributed any funding to this crisis response for women.

THIS IS EXHIBIT "D" TO THE
AFFIDAVIT OF MEDORA UPPAL
AFFIRMED REMOTELY BEFORE ME AT
THE CITY OF HAMILTON DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
THIS 17th day of July, 2023

Mohamad Bsar

Mohamad Bsar
LSO NO. 75897L
Commissioner for Taking Affidavits, etc



City of Hamilton

Point in Time Connection Results
2021

Housing Services Division – April 2022

The 2021 Point in Time Connection (PiTC), a joint planning effort with City of Hamilton's Housing Services Division and the Coalition of Hamilton Indigenous Leadership (CHIL), was made possible through the support of a wide range of community partners who assisted greatly in its planning and implementation. The Housing Services Division would like to specifically acknowledge and thank every single survey participant whose contributions allow us to more deeply examine the impact of our ongoing work to end homelessness.

The partnership with, and leadership of, CHIL remain central in efforts to prioritize Indigenous led solutions to homelessness. Recommendations from the Indigenous community guide efforts to ensure that the PiTC is conducted in a way that is safe and culturally appropriate, acknowledging autonomy and self-determination as key pillars of engagement.

For the first time, Hamilton's PiTC was led on the ground exclusively by community partners and City staff without the support of volunteers; these efforts were critical in prioritizing the health and safety of all involved throughout the survey week. Building on this initiative, we continue to strive to centre the voices of unhoused residents to work toward ensuring that their needs are directly prioritized in approaches taken and decisions made in the context of local planning, policy and investment.

Land Acknowledgment

The City of Hamilton is situated upon the traditional territories of the Erie, Neutral, Huron-Wendat, Haudenosaunee and Mississaugas. This land is covered by the Dish With One Spoon Wampum Belt Covenant, which was an agreement between the Haudenosaunee and Anishinaabek to share and care for the resources around the Great Lakes. We further acknowledge that this land is covered by the Between the Lakes Purchase, 1792, between the Crown and the Mississaugas of the Credit First Nation.

Today, the City of Hamilton is home to many Indigenous people from across Turtle Island (North America) and we recognize that we must do more to learn about the rich history of this land so that we can better understand our roles as residents, neighbours, partners and caretakers.

Coming Together to End Homelessness: Hamilton's Systems Planning Framework outlines our strategic local approach to preventing and ending homelessness, which must account for the systemic over-representation of Indigenous persons experiencing homelessness. The Housing Services Division is committed to ongoing coordination with urban Indigenous leadership to ensure that approaches to service coordination and provision are culturally appropriate, safe and built on principles of relationship, trust and informed consent.

Table of Contents

Summary and Key Findings	3
Snapshot of Homelessness in Hamilton on November 19, 2021	4
Introduction	4
COVID-19 Context	4
Overview of Homelessness in Hamilton	5
Sheltered Homelessness	5
Unsheltered Homelessness	6
Shelter System Flow Data	7
Methodology	9
Snapshot.....	10
Survey Participation	11
Profile of Respondents Experiencing Homelessness	11
Age.....	11
Gender Identity.....	12
Indigenous Identity	12
Migration to Canada	13
Racial Identity.....	14
Length of Time in Hamilton.....	14
Family Homelessness	15
Sexual Identity.....	15
Veteran Homelessness	16
Health.....	16
Sources of Income.....	17
Homelessness History	18
Length of Homelessness in Past Year.....	18
Age of First Homeless Experience.....	19
Experience with Foster Care	19
Reasons for Homelessness/Housing Loss	20
Barriers to Finding Housing	21
Service Use Patterns	21
Shelter Use in the Last Year.....	21
Interaction with the Health Care & Criminal Justice System.....	22
Conclusion and Next Steps	23
Appendix A: 2021 PiTC Survey.....	24

Summary and Key Findings

Hamilton's most recent PiTC survey of individuals experiencing homelessness in the city highlights a shift in the demographic profile of those experiencing homelessness, identifies key barriers to maintaining or obtaining housing, and shows specific groups are overrepresented in their experience of homelessness.

Held November 15 to 19, 2021, and jointly planned by the City's Housing Services Division and CHIL, it is the third nationally-coordinated Point-in-Time Count since 2016. The information collected complements existing local efforts to collect and report on key data on the state of homelessness and helps to ensure available resources are used as efficiently and effectively as possible to prevent and end homelessness.

Service staff from community-based social service organizations conducted 545 surveys over the five-day period at emergency shelters, drop-in programs, community agencies, and in unsheltered locations to better understand the needs of people experiencing homelessness in our community.

Results of the survey highlight:

- the overrepresentation of Indigenous peoples, as 23% of all respondents identified as Indigenous or as having Indigenous ancestry;
- a shift in the demographic profile of those experiencing homelessness throughout the COVID-19 pandemic, including an increase in the percentage of respondents who identify as a woman (53%), which was higher than in 2018 (32%) and 2016 (28%);
- key barriers to maintaining or obtaining housing, such as impacts from the COVID-19 pandemic, housing affordability, low income/low income assistance, landlord/tenant conflict, poor housing conditions and discrimination;
- a majority of respondents reported they had most recently stayed in an emergency shelter or a City funded hotel/motel; and,
- the 2021 PiTC engaged a larger number of people staying in outdoor unsheltered locations and encampments (95) compared to 2016 and 2018 (In 2016, 34 survey respondents were unsheltered and/or in encampments compared to 25 survey respondents in 2018).

In keeping with the principles of Indigenous data sovereignty, as directed by the Indigenous Community Advisory Board (ICAB), CHIL has led the analysis of Indigenous respondent data and the City of Hamilton has not and will not use this data without the approval of the ICAB. Housing Services Division continues to prioritize collaborative work with local Indigenous leadership to develop connections to housing and supports

that are culturally appropriate, rooted in the spirit and actions of reconciliation that recognize the values of autonomy and self-determination.

Snapshot of Homelessness in Hamilton on November 19, 2021

- Shelters were at 93% capacity during the period of November 15-19, 2021
- 748: the number of unique individuals that stayed in an emergency shelter during the period of November 15-19, 2021
- 1426: total number of people on the City of Hamilton's By-Name List on November 12, 2022

Introduction

From November 15 to 19, 2021 the City of Hamilton participated in Everyone Counts, the third nationally coordinated Point-in-Time Count in Canada. Completion of the PiTC fulfilled requirements of both the Federal government's Reaching Home: Canada's Homelessness Strategy and the Ontario Ministry of Municipal Affairs and Housing.

Point-in-Time Counts have historically been used to help communities better understand the nature and extent of homelessness and the circumstances of the people experiencing homelessness, while providing information to help shape ongoing system and service responses. Point-in-Time Counts can assist in identifying how many people in a community experience homelessness at any given time; however, it is not an exhaustive count. Through the accompanying survey, the initiative provides information on the demographics and service needs of the local population experiencing homelessness.

545 surveys were completed during the week at emergency shelters, provincially administered Violence Against Women shelters, drop-in programs, community agencies, and in unsheltered locations including encampments. An Indigenous led magnet event was also held in Beasley Park on November 17, 2021 to provide an opportunity for Indigenous community members to be surveyed by Indigenous surveyors.

COVID-19 Context

Investments specifically targeted towards housing-focused interventions in Hamilton to prevent and end people's experience of homelessness total approximately \$25 M annually in regular funding. In addition, since the beginning of the COVID-19 pandemic, the City has sustained an emergency response across the homelessness-serving system directing more than \$60 M in additional pandemic response funds. These funds ensured for a responsive and flexible response throughout the evolving demands of the pandemic.

Through the pandemic, additional investments have enabled the temporary expansion of shelter space across the system from 341 beds up to 548 beds at the highest point plus additional overflow space, as well as a new temporary women's shelter. In addition, these investments supported the expansion of the City's Housing Focused Street Outreach team and have also enabled community drop-in programs to expand and

maintain services for vulnerable residents, including: meals, showers, harm reduction supplies, and overnight access to drop-in services. These investments and the dedicated efforts of agency staff provided additional settings and opportunities for engagement through the PiTC.

Overview of Homelessness in Hamilton

Sheltered Homelessness

Emergency shelters are a critical first-line response to ensure people experiencing homelessness have a safe place to stay while they pursue stable housing. The City's outreach staff work on a daily basis to engage individuals experiencing unsheltered homelessness to offer shelter space and work with them to find safer, humane, and supportive housing options.

There has been growing pressure within the shelter system throughout the course of the pandemic. In 2020, emergency shelter average length of stay increased 18% and the women's system was particularly over-capacity. From 2020 to 2021 there has been an increasing trend in number of unique individuals accessing shelters by month.

Figure 1: Unique Individuals in Shelter by Month

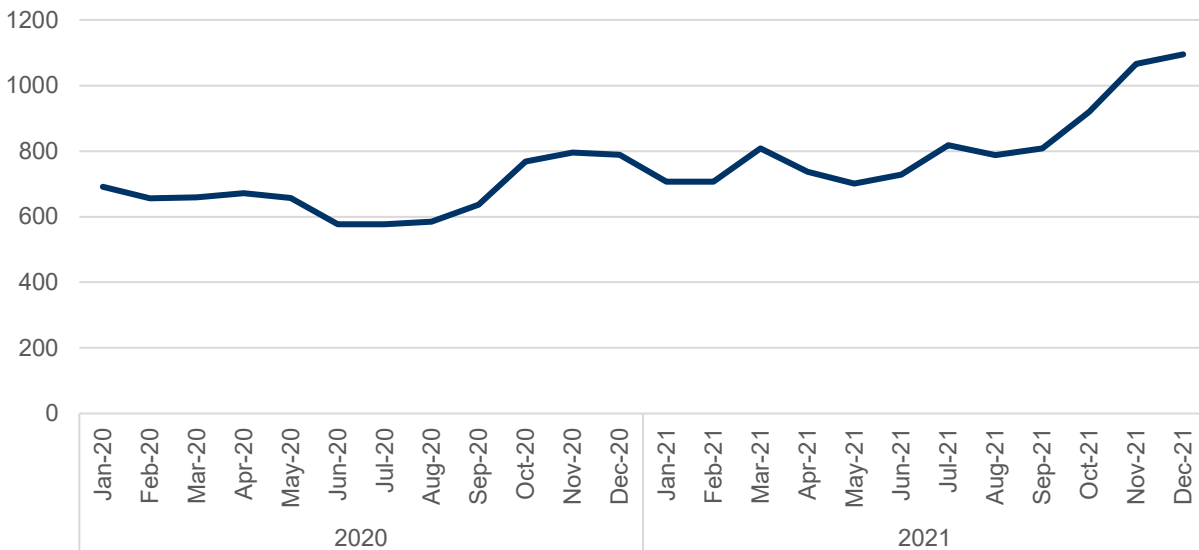


Figure 2: Monthly Shelter Bed Usage and Max Capacity by Month

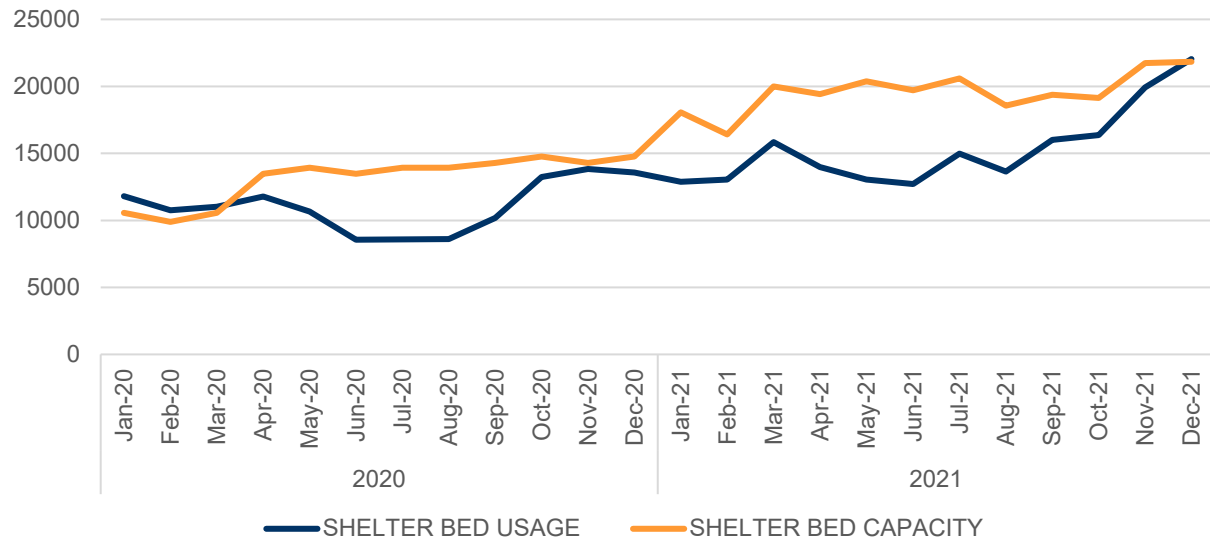
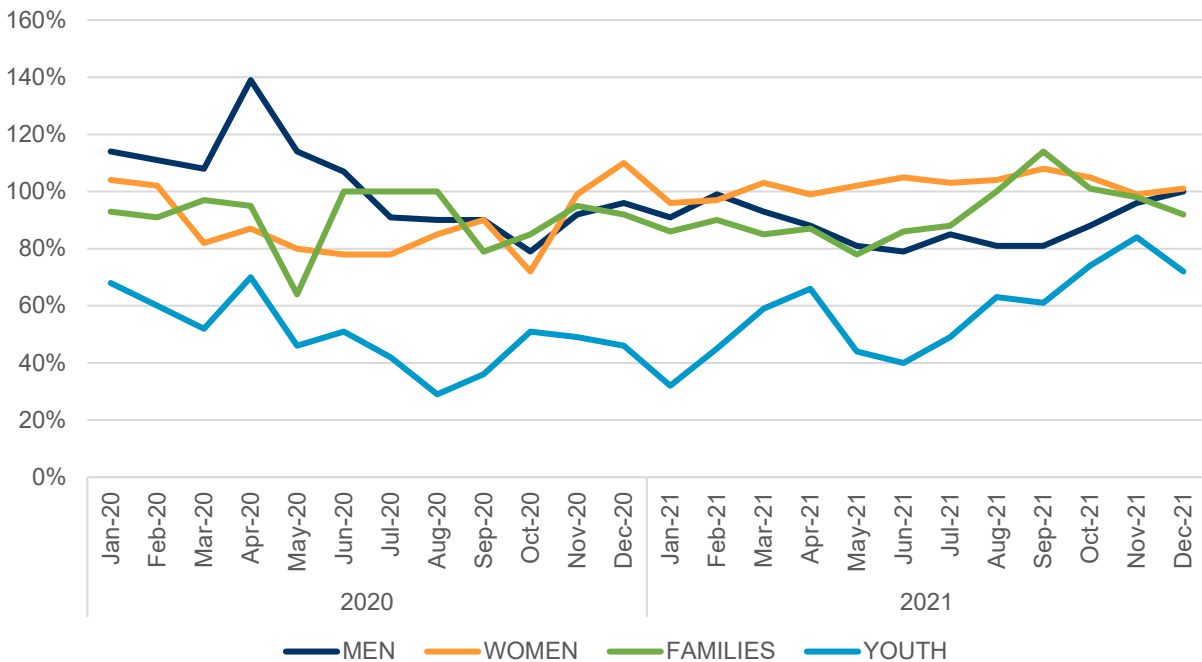


Figure 3: Shelter Occupancy by Sector and Month



Unsheltered Homelessness

During the week of the PiTC (Nov. 15-19, 2021), the City's Housing Focused Street Outreach team reported that there were approximately 90 unique individuals staying in unsheltered locations, including encampments. The rise in, and visibility of, unsheltered

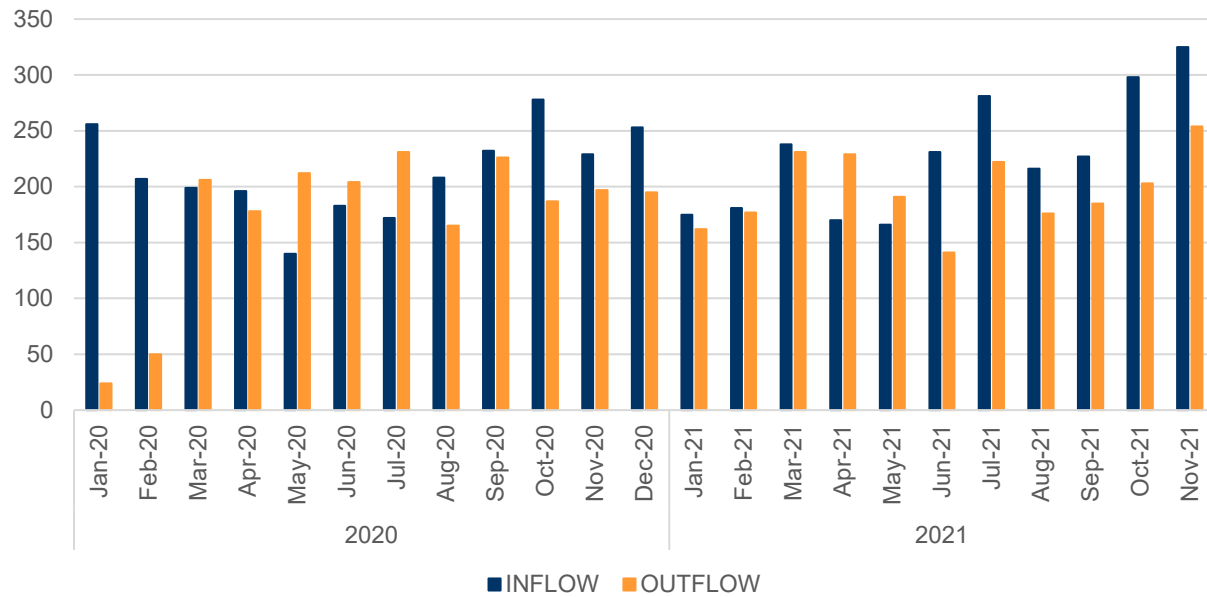
homelessness and encampments throughout many Canadian cities continues to demonstrate how the COVID-19 pandemic persists in exacerbating ongoing systemic challenges and inequities as it relates to housing and homelessness. While the City has worked to develop new strategies and approaches to address these issues locally, unsheltered homelessness remains a persistent reality in Hamilton along with structural barriers to accessing adequate housing and supports.

Shelter System Flow Data

Inflow and outflow are two of the most important measures for monitoring progress towards the goal of ending homelessness. The goal towards ending homelessness is to see outflow exceed inflow. When this happens, it means that more people are exiting from homelessness than are entering the homeless-serving system. As of the end of November 2021, there have been two months where outflow exceeds inflow. In 2020, there were four months where outflow exceeded inflow. Note that outflow data was limited for the first two months of 2020.

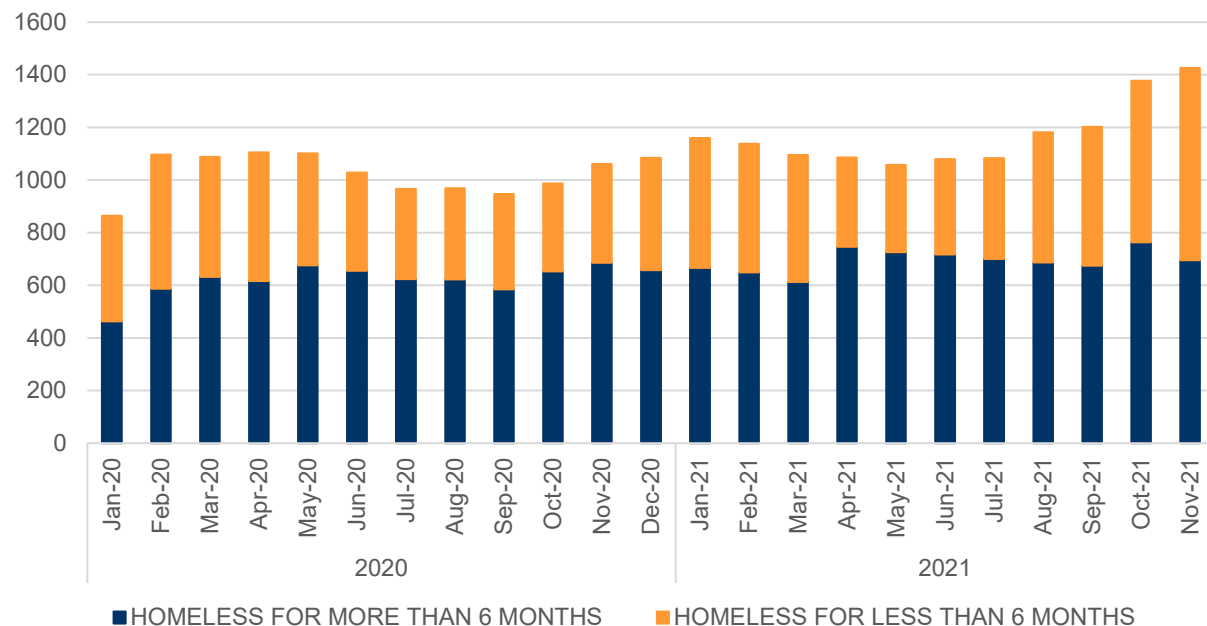
INFLOW	OUTFLOW
Represents the number of individuals: - newly identified as homeless, - returned to homelessness from housing, - returned to homelessness from inactive status.	Represents the number of individuals: - who have moved from housing to housed, - those who have moved to inactive status (meaning they have not interacted with the homeless-serving system for 90+ days).

Figure 4: Individuals (shelter stayers) entering (inflow) or exiting (outflow) homelessness by month



The number of people actively experiencing homelessness is based on data collected by homeless-serving shelters through the Homeless Individuals and Families Information System (HIFIS). Individuals on the By Name List (BNL) who have been engaged only through Outreach and Drop-in programs are not included in this depiction at this time as we look to improve our data reporting.

Figure 5: Individuals (shelter stayers) experiencing homelessness for less than six months and more than six months, by month



Methodology

The nationally coordinated Point-in-Time Count approach includes a set of core standards for the methodology that guide how the counts are conducted in participating communities across Canada. The core standards, identified by Federal and Provincial governments, identify common screening and survey questions that are asked in all participating communities. The approach does give some flexibility for communities to adapt methodology, and Hamilton's survey design and implementation was guided by local partners, including consultation with Indigenous partners through CHIL.

Given the COVID-19 pandemic, adaptations to methodology were made available to communities to support the implementation of Point-in-Time Counts to reduce risks and burden on participants and staff in the homeless serving sector. Adaptations to the 2021 PiTC included:

- expansion of surveying timeline to five days, creating additional flexibility to participate and complete surveys, while avoiding large gatherings to reduce the risk of infection and community spread of COVID-19;
- no additional assessment tool included for 2021, as the survey consisted of only the core anonymous questions;
- 24-hour online survey submission, completed through the Homeless Individuals and Families Information System (HIFIS);
- no additional community volunteers recruited - surveying was conducted exclusively by community social-service agency and City of Hamilton staff;
- full training module completed online; and,
- focus on sheltered sites (emergency shelter, drop in, etc.) and a targeted approach to connect with unsheltered individuals and families in the community in known locations through the City's Housing Focused Street Outreach team, alongside partners from local Indigenous housing organizations.

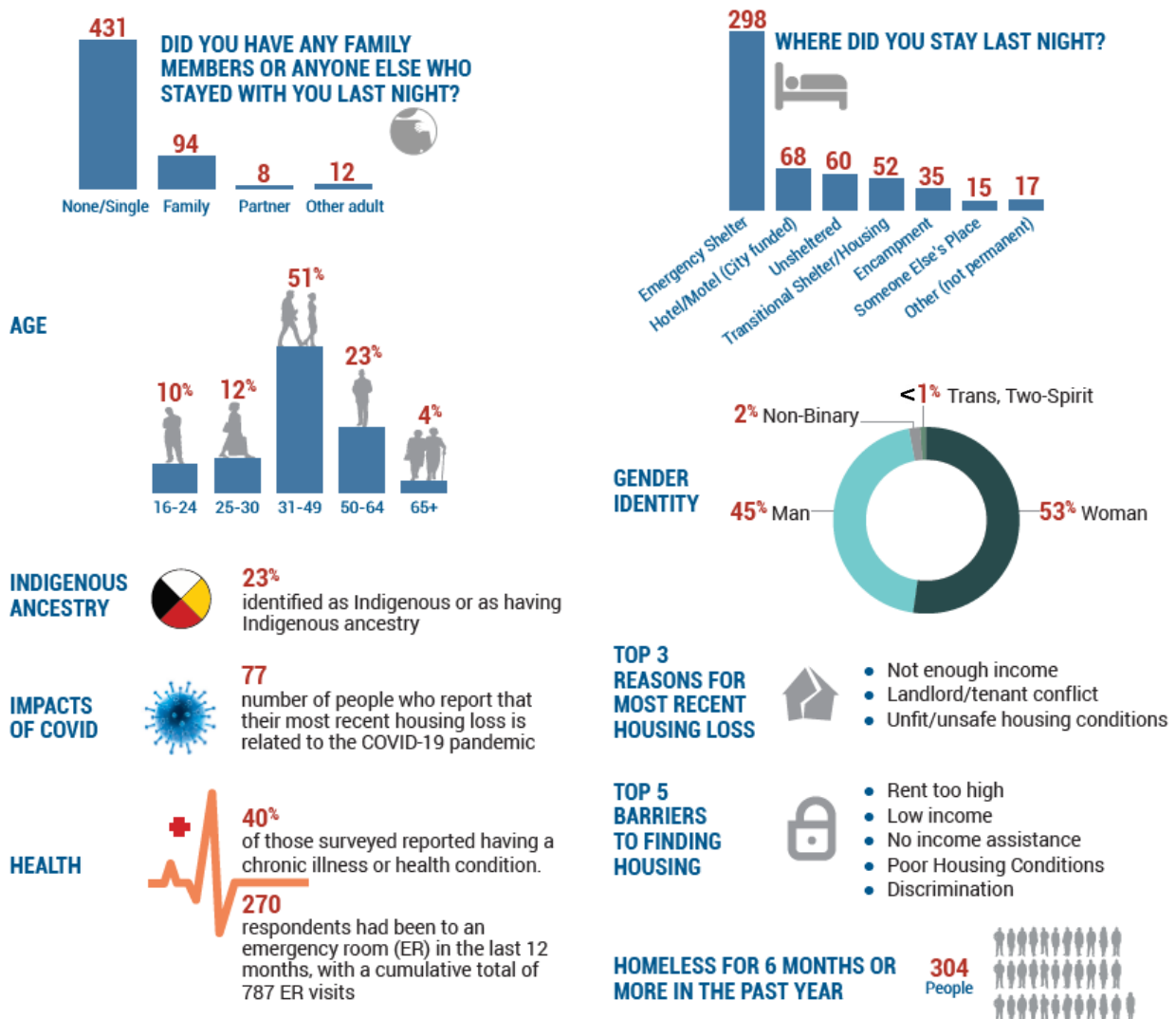
As in 2016 and 2018, an Indigenous led magnet event was held during the week to provide an opportunity for Indigenous community members to be surveyed by Indigenous surveyors. All survey participants of the PiTC were provided a \$15 gift card honorarium upon completion of the survey.

While a number of strategic decisions allowed for increased engagement through the PiTC, there remains limitations in the methodology. In the 2018 PiTC, Hamilton had expanded survey sites to include additional drop-in programs focused on youth, as well as including the Central Library location as a survey site. As a result of enhanced COVID-19 health and safety regulations and limitations on volunteer recruitment, staff were unable to include these additional spaces and build upon learnings and reflections from these survey sites in 2018.

Snapshot

Comparison and analysis of detailed results across multiple PiTC initiatives remains a challenge given the varying contextual factors from year to year. Between PiTC initiatives, the Housing Services Division has worked with community partners to strengthen local reporting on key data related to the state of homelessness and actions towards preventing and ending it. As a part of these broader efforts, the PiTC remains a valuable tool to further support evidence-informed action and improvement within Hamilton's Housing and Homelessness Serving System.

A total of 545 individuals completed voluntary surveys during the 2021 Hamilton Point in Time Connection. Here is a snapshot of the survey results:



Survey Participation

The following chart provides a summary of where the 545 survey respondents reported staying the night before completing the survey:

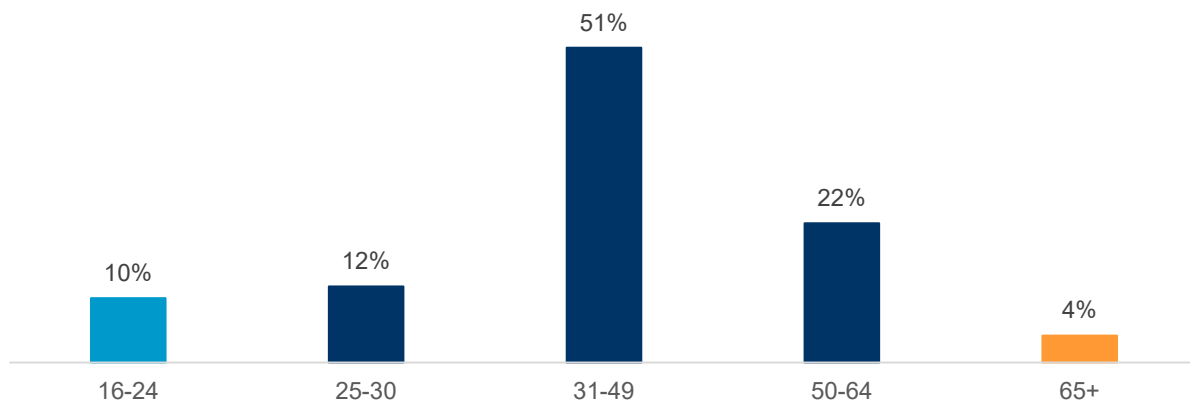
Location	Total	Description
Emergency Shelters	366 (67%)	An emergency shelter, hotel or motel, and domestic violence shelters for emergency accommodation.
Unsheltered	61 (11%)	An unsheltered location in a public space, such as a park, vehicle, or other place not intended for human habitation.
Encampment	35 (6%)	A group of tents, makeshift shelters, or other long-term outdoor settlements.
Couch Surfing	15 (3%)	Staying with a friend, family member, or stranger.
Transitional Housing	52 (10%)	Housing which is a temporary type of accommodation meant to bridge the gap from homelessness to permanent housing.
Motel / Hotel (Self-funded)	1 (0.2%)	Staying in a motel / hotel that was paid for by the individual or family.
Location undetermined	15 (3%)	Location was not reported.

Profile of Respondents Experiencing Homelessness

Age

The average age of respondents was 35 years. Respondents ranged in age from 16 being the youngest and 79 as the oldest. Most respondents (73%) were between the ages of 31 and 64.

Figure 6: Age of Respondents



Gender Identity

A key demographic shift in 2021 results was the percentage of respondents who identified as a woman (53%), which was higher than in 2018 (32%) and 2016 (28%). There are contributing factors to keep in mind when considering this shift in respondent profile, including intentional adaptations to methodology, and where surveys were administered in 2021 in comparison to previous years.

Although not required, Hamilton continues to include people who may be experiencing "hidden homelessness" into the PiTC survey. This has been a standing recommendation by our community to ensure that we better represent populations who may typically not be as highly represented in the mainstream emergency shelter system. Enhanced gender-specific responses during COVID-19, including an expanded emergency shelter system and enhanced drop in locations, along with the option to complete surveys 24 hours a day through the entire duration of the initiative may have also contributed to a shift in response rate.

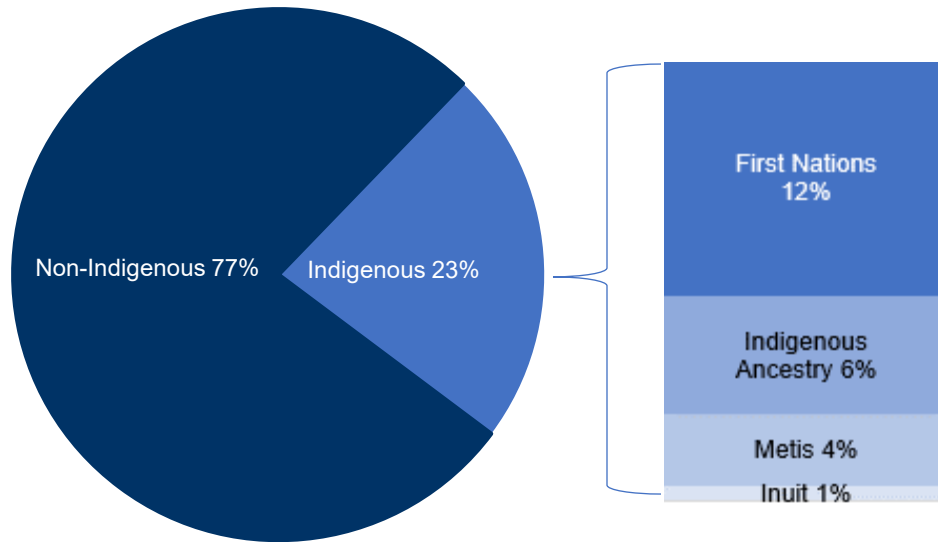
Table 1: Gender Identity of Respondents

Gender	Percentage
Woman	53%
Man	45%
Non-Binary	2%
Trans, Two-Spirit	<1%

Indigenous Identity

In 2021, the PiTC continues to highlight the overrepresentation of Indigenous persons experiencing homelessness in Hamilton (23% of all respondents). A full analysis of Indigenous respondent data can be found in Appendix "B" to Report HSC22021 - 2021 Point in Time Count (Hamilton, Ontario): Indigenous Responses, submitted by CHIL and approved by the ICAB.

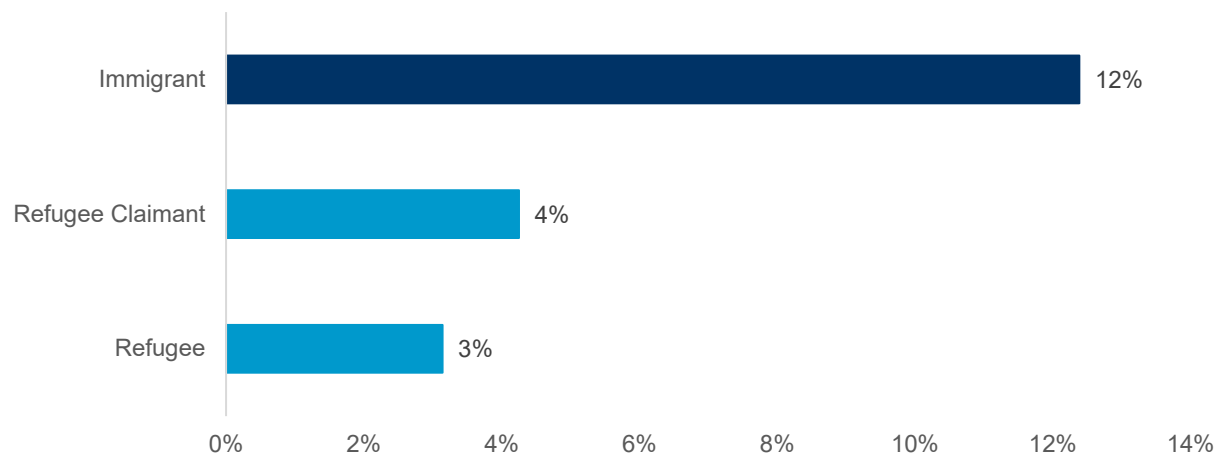
Figure 7: Indigenous Identity of Respondents



Migration to Canada

One-fifth of respondents identified as an immigrant or refugee. A total of 91% reported having been in Canada for one year or more, and 9% reported being in Canada for less than six months.

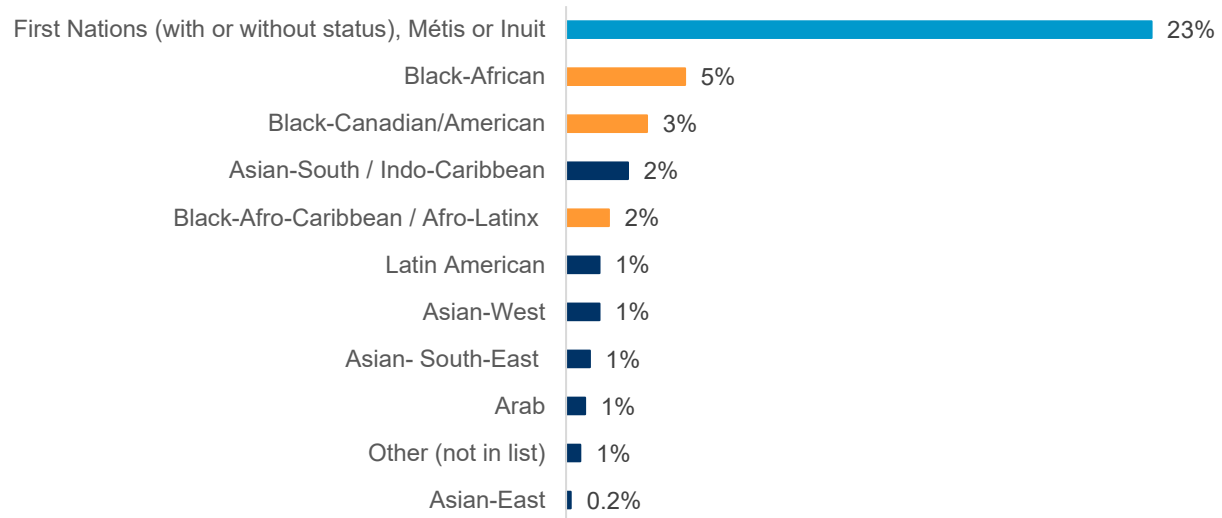
Figure 8: Respondents Migration to Canada



Racial Identity

In 2021, 39% of respondents identified as members of racialized groups, with the largest percentage identifying as First Nations (with or without status), Métis or Inuit (23%). Also, 10% of respondents identified as Black.

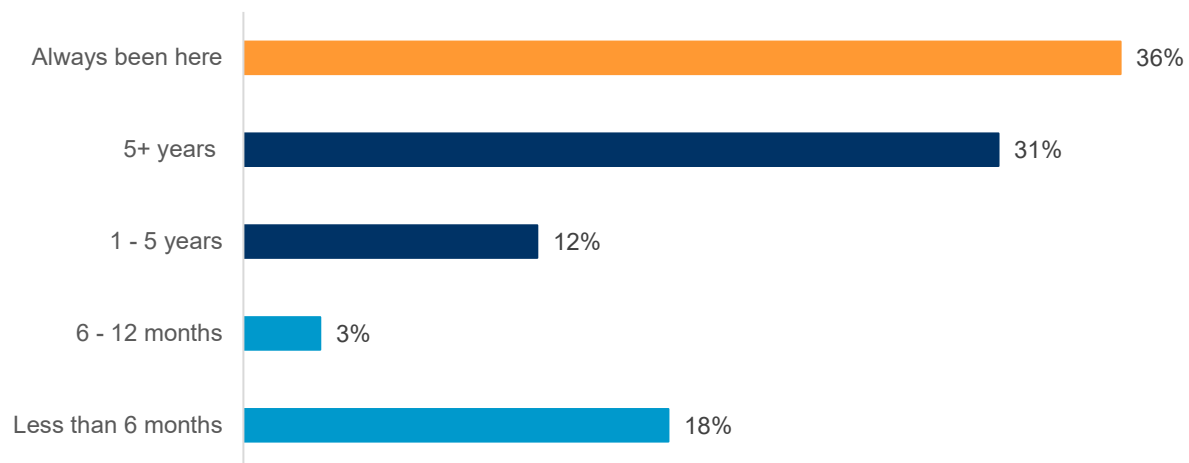
Figure 9: Racial Identity of Respondents



Length of Time in Hamilton

A total of 79% of respondents identified having been in Hamilton for one year or more, including those who reported as always been in Hamilton (36%). 21% of individuals reported being in Hamilton for less than one year.

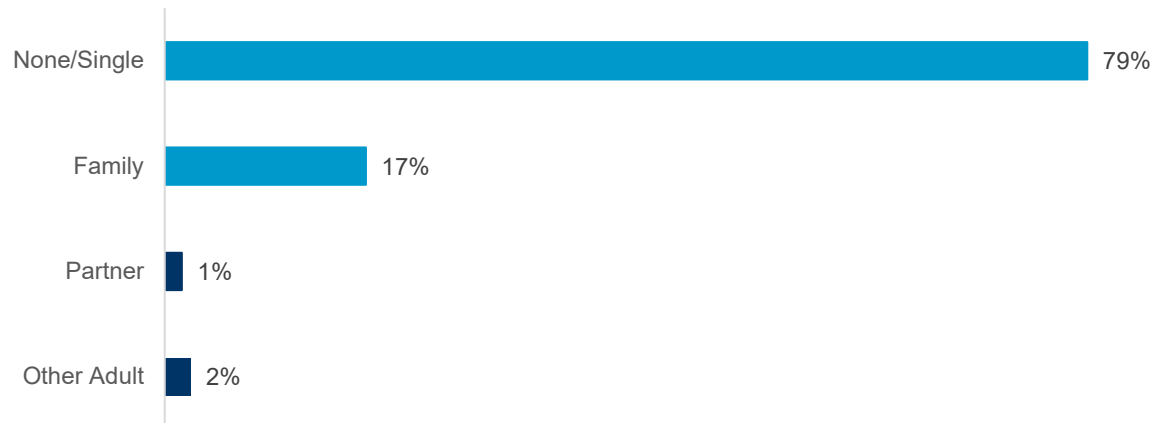
Figure 10: Respondents Length of Time in Hamilton



Family Homelessness

The majority of respondents identified that they were staying alone when surveyed (79%); 21% reported that they had either a partner, other adults or non-adult dependents staying with them that night.

Figure 11: Persons Staying with Respondent on Night of PiTC Survey



Sexual Identity

A total of 10% of respondents identified as 2SLGBTQ+ (Two-spirit, lesbian, gay, bisexual, transgender, queer, questioning, + refers to sexual and gender identities not represented in the acronym). Of those who identified as 2SLGBTQ+ (50), 16% (9) were youth between the ages of 16 and 24.

Figure 12: Sexual Identity of Respondents

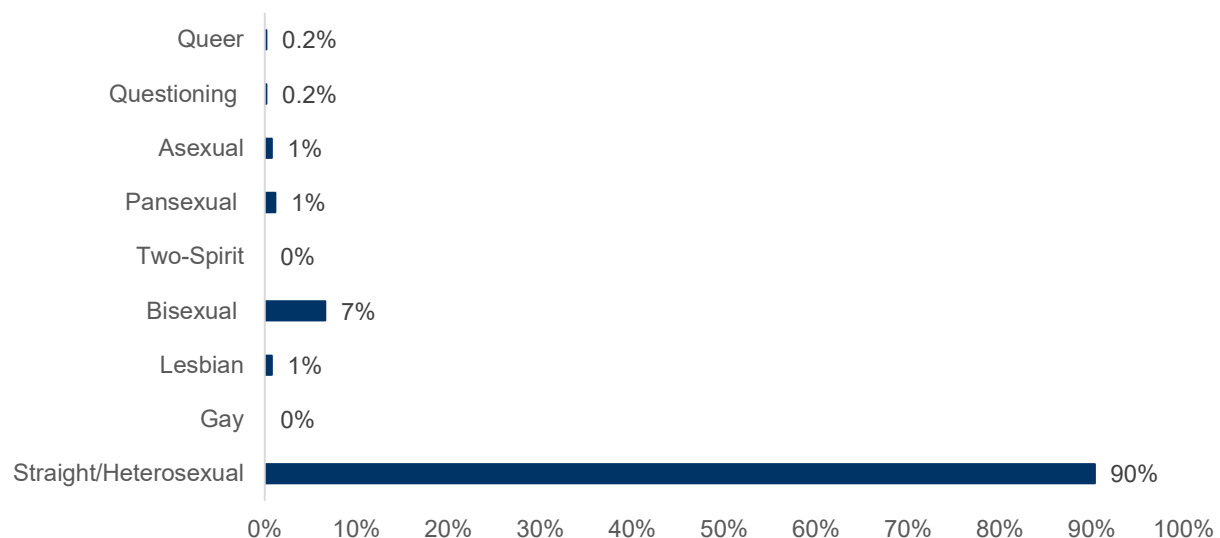
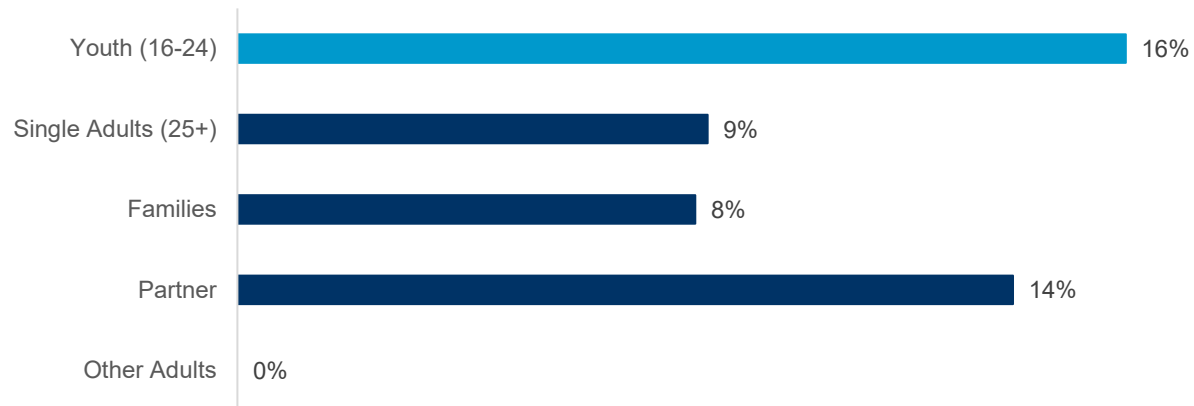


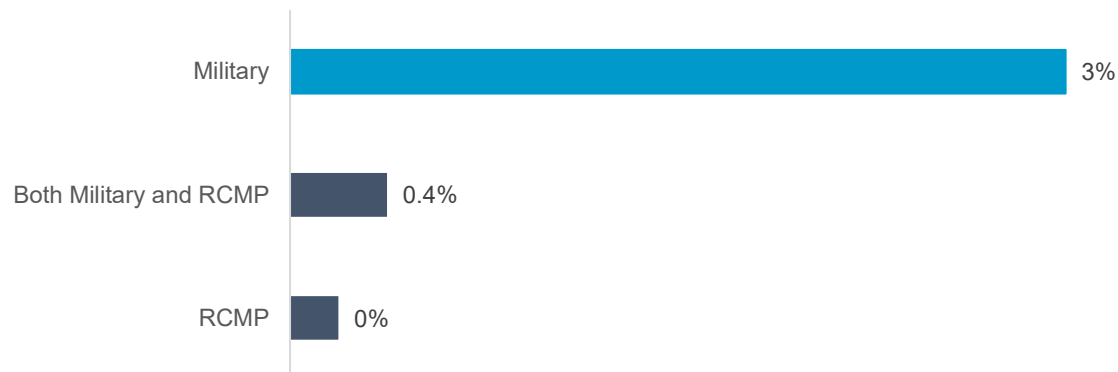
Figure 13: Respondents Identifying as 2SLGBTQ+ by Surveyed Group



Veteran Homelessness

In 2021, 3% of all respondents experiencing homelessness reported having served in the Canadian Military or RCMP.

Figure 14: Respondents Reporting Ever Serviced in the Military or RCMP



Health

Respondents were asked if they had any of the following types of health challenges:

- mental health issue [diagnosed or undiagnosed] (e.g. depression, PTSD, bipolar disorder),
- substance use issue (e.g. tobacco, alcohol, opiates),
- illness or medical condition (e.g. diabetes, arthritis, TB, HIV),
- physical limitation (e.g. challenges with mobility, physical abilities or dexterity),
- learning or cognitive limitations (e.g. dyslexia, autism spectrum disorder, or as a result of ADHD or an acquired brain injury).

A total of 457 respondents identified having at least one health challenge. More than half of respondents indicated having a health challenge relating to mental health (60%)

and substance use (59%). A total of 40% of those surveyed reported having a chronic illness or health condition.

Figure 15: Health Challenges Identified by Respondents



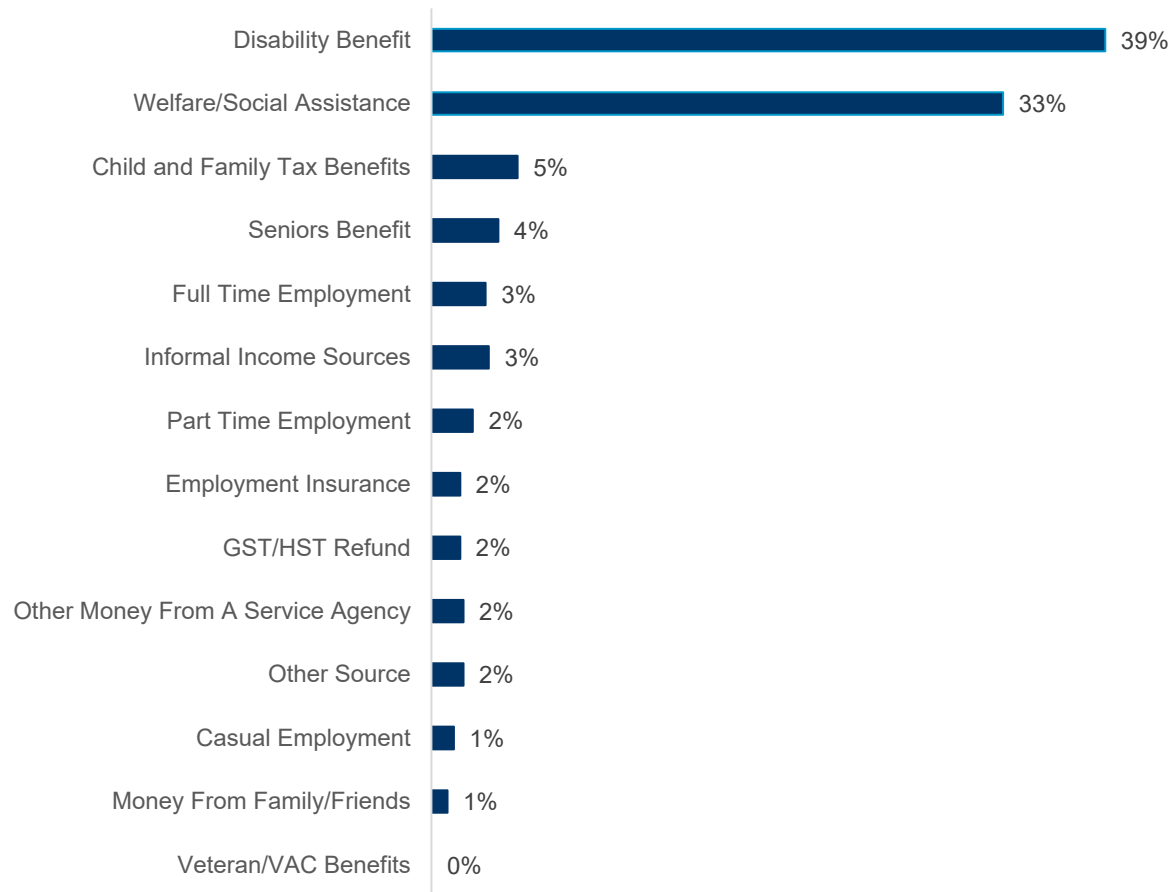
Figure 16: Multiple Types of Health Challenges Identified by Respondents



Sources of Income

The majority of respondents (87%) reported having at least one source of income. The most common sources of income reported in 2021 were disability benefit (39%) and welfare/social assistance (33%). All other sources of income were reported by less than 5% of respondents.

Figure 17: Respondents Source of Income

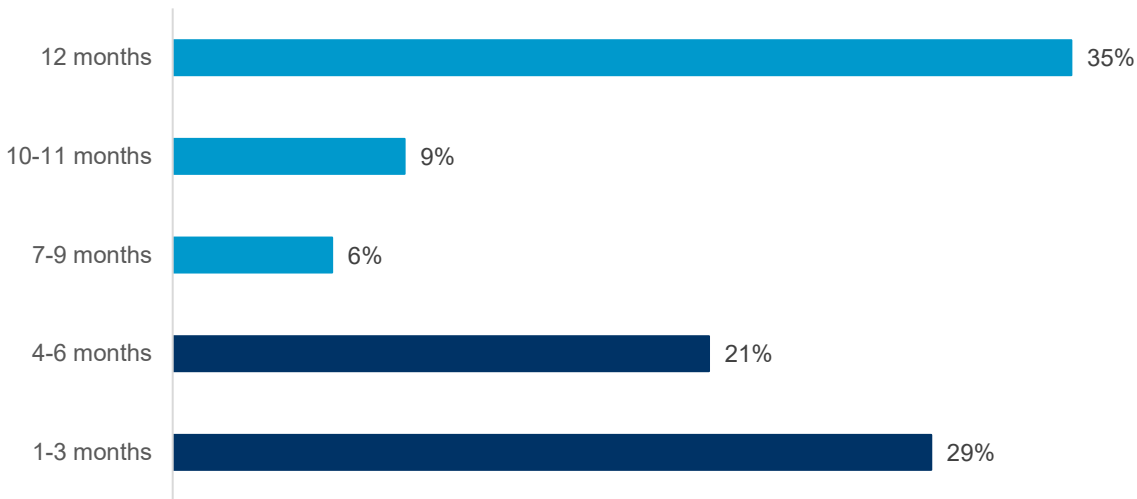


Homelessness History

Length of Homelessness in Past Year

The average reported length of homelessness in the past year was seven months. For the purposes of coordinated point-in-time counts, the federal definition of chronic homelessness is experiencing homelessness for six months or more in the past year. A total of 50% of respondents reported being homeless for more than six months over the past year. 65% of both youth and families identified as being homeless for less than six months in the past year. 57% of single adults identified as being homeless for more than six months in the last year.

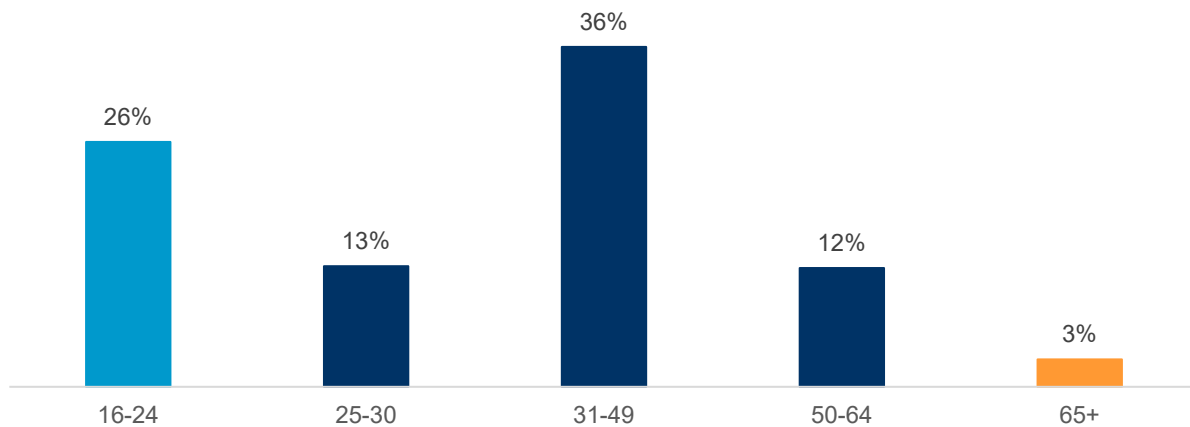
Figure 18: Length of Homelessness in the Past Year



Age of First Homeless Experience

Respondents were asked how old they were the first time they experienced homelessness. A total of 26% of respondents reported being between 16-24 years old the first time they experienced homelessness; 61% were between the ages of 25 and 64.

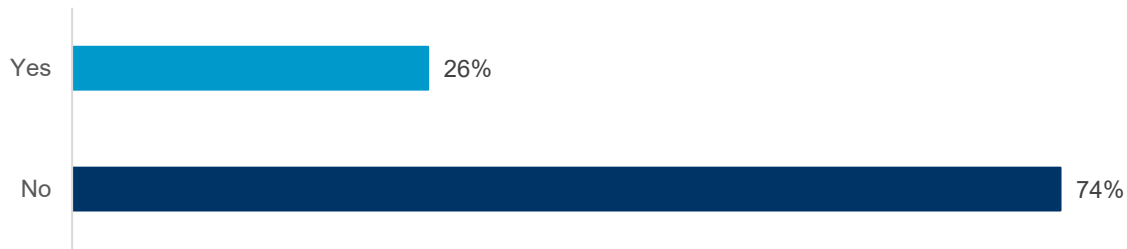
Figure 19: Respondents Age of First Homeless Experience



Experience with Foster Care

A total of 26% of respondents indicated that they had previous experience being in foster care or a youth group home.

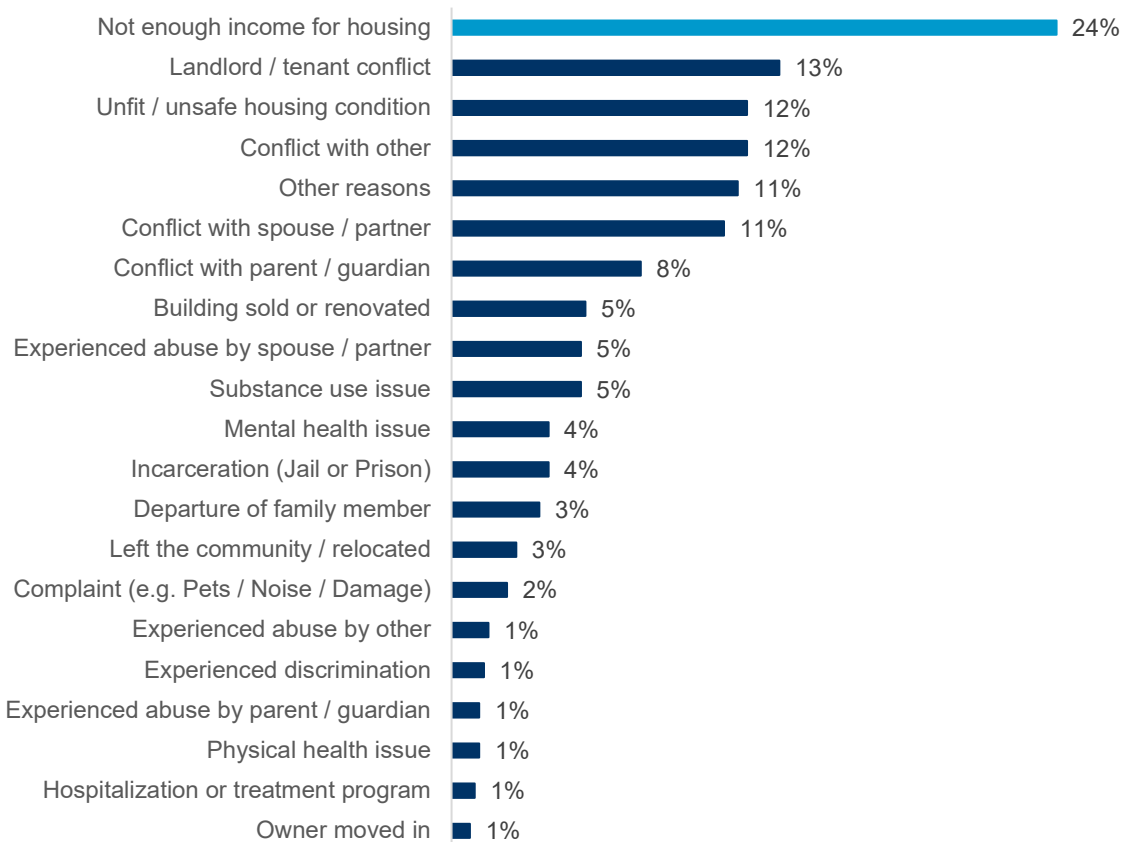
Figure 20: Respondents with Foster Care Experience



Reasons for Homelessness/Housing Loss

When asked what is necessary to maintain and/or find new housing, respondents consistently and clearly identified the need for enhanced income supports and spoke to ongoing challenges with housing affordability. The top reasons for most recent housing loss identified included: not enough income; landlord/tenant conflict; unfit/unsafe housing conditions and conflict with someone other than spouse/partner or parent/guardian.

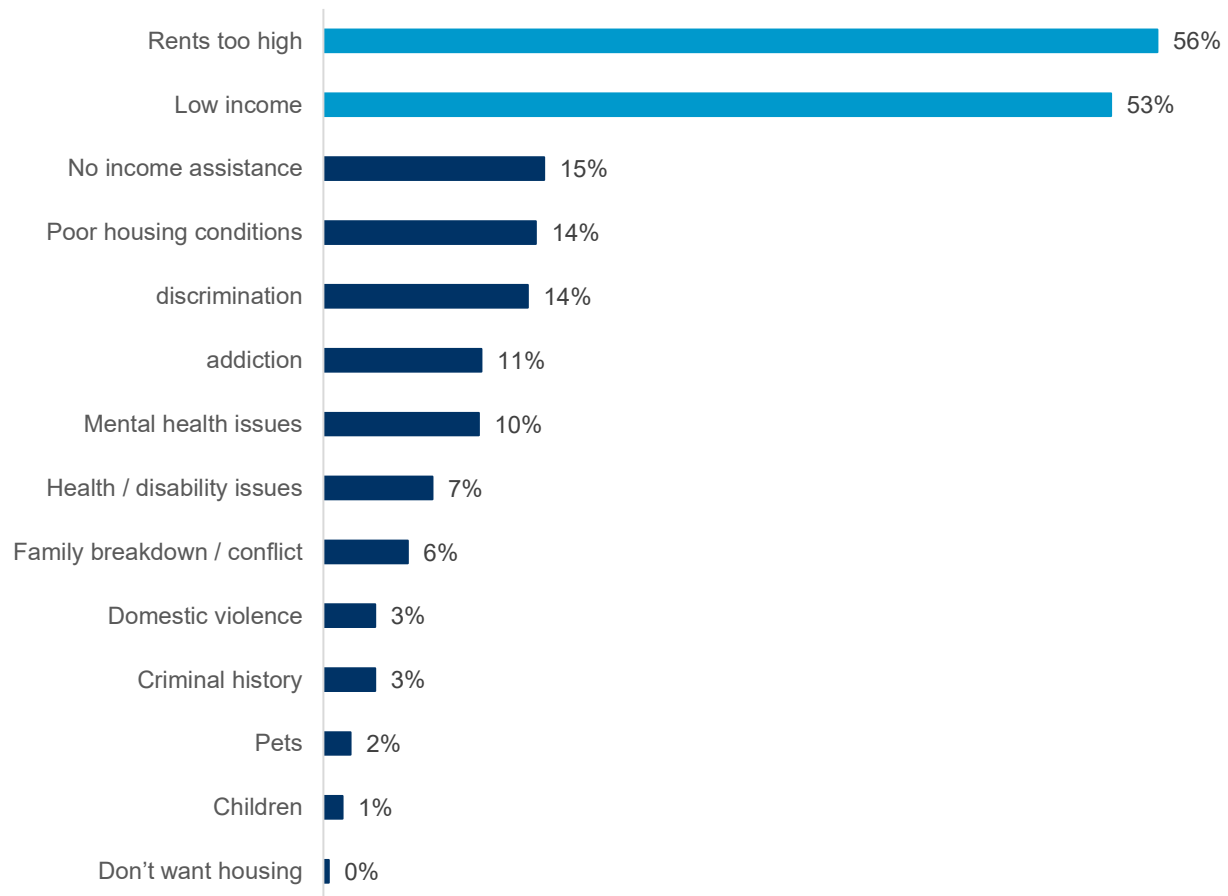
Figure 21: Respondents Reasons for Homelessness



Barriers to Finding Housing

The top barriers and challenges to finding new housing identified by respondents include: rents too high; low income; no income assistance; poor housing conditions; and, discrimination. Additionally, 67 respondents identified having a low credit score as a barrier as well.

Figure 22: Respondents Barriers to Finding Housing

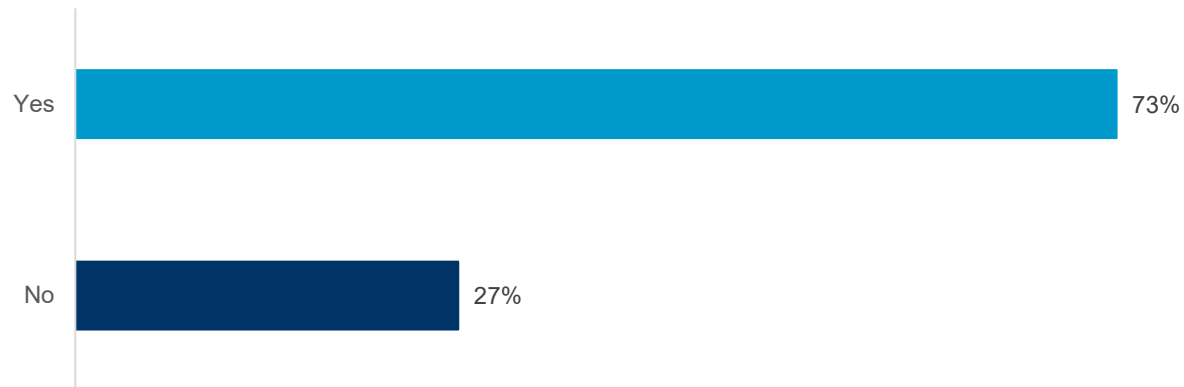


Service Use Patterns

Shelter Use in the Last Year

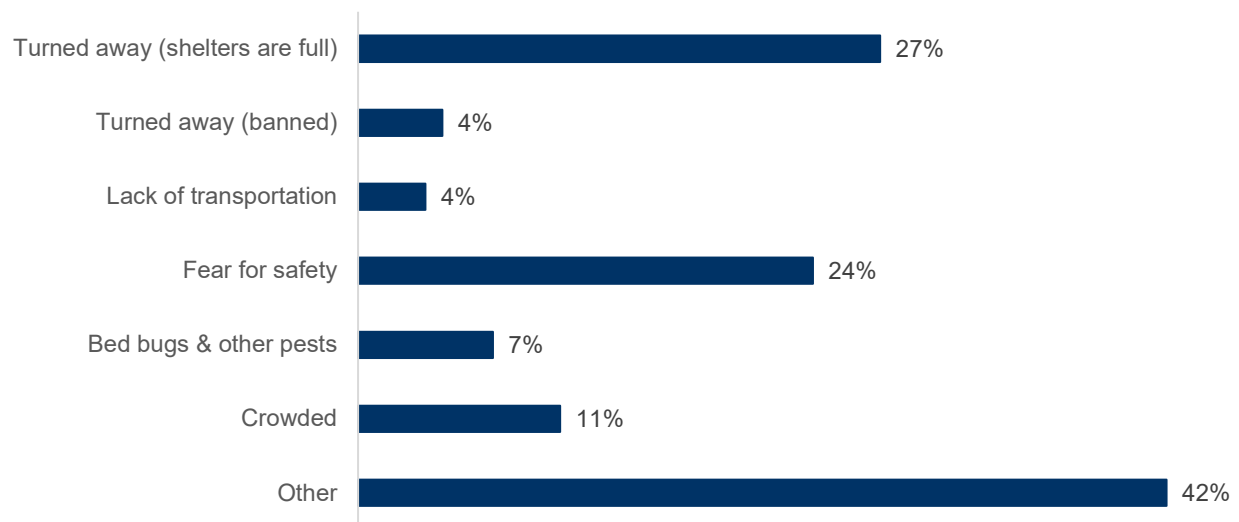
When asked if they have stayed in a shelter in the last year (including emergency and extreme weather shelters), 73% of respondents reported that they had.

Figure 23: Respondents Reporting Staying in Shelter in the Last Year



When individuals were asked about why they decided not to stay in a homeless shelter in the last year, 27% reported that they were turned away because the shelter was full, 24% feared for their safety in a shelter, and 11% expressed concerns about crowding.

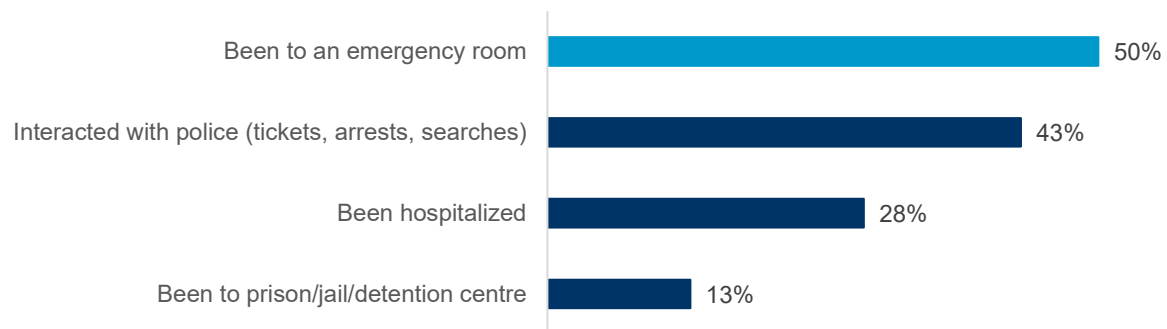
Figure 24: Respondents Reporting Staying in Shelter in the Last Year



Interaction with the Health Care & Criminal Justice System

A total of 270 respondents (50%) reported that they had been to an emergency room (ER) in the last 12 months, with a cumulative total of 787 ER visits. Approximately 61% of those who visited the ER in the last year had been there more than once.

Figure 25: Respondents Interaction with the Health Care and Criminal Justice System



Conclusion and Next Steps

The PiTC remains an important local initiative and a demonstration of Hamilton's commitment to work collaboratively to prevent and end homelessness. As Service System Manager and Designated Community Entity for the provincial and federal funding respectively, the Housing Services Division remains committed to working in partnership with urban Indigenous leadership to build a coordinated housing and homeless-serving system in deep collaboration with community partners to ensure everyone in Hamilton has a home.

In addition, enhanced gender-specific responses and housing options for women, trans-feminine, trans-masculine and non-binary adults remain an important local priority. The Housing Services Division continues to consult with the sector planning tables including the Women's Housing Planning Collaborative, the Street Youth Planning Collaborative and the membership of the Men's Emergency Services Coordination Committee. Through this ongoing engagement and collaboration, it is our goal to continue to share the results and further analysis of the PiTC, while discussing next steps to further centre the voices of unhoused residents in our collective responses.

In the ongoing development and adaptation of systems-level responses, it remains essential that people with living/lived experience are empowered to inform services and hold the homelessness-serving system accountable for delivering on its promise of housing and supports. A distinct focus on Indigenous rights should be prioritized in these efforts, guided by the obligation to respect, protect and fulfil the distinct rights of Indigenous peoples through engagement with unhoused residents. Underpinning further strategic coordination efforts remains the collective obligation to ensure that people experiencing homelessness have access to long-term, adequate housing that meets their needs.

Appendix A: 2021 PiTC Survey

SCREENING TOOL

Hello, my name is _____ and I'm a volunteer for the **Hamilton** Point in Time Connection – a housing needs survey. We are conducting a survey to provide better programs and services to people experiencing homelessness. The survey takes about 10 minutes to complete.

- **Participation is voluntary** and **your name will not be recorded** – participation will not affect the services you receive.
- You can choose to **skip any question** or to **stop the interview at any time**.
- Results will contribute to the understanding of homelessness across Canada, and will help with research to improve services.

A. Have you answered this survey already this week?

[YES: Thank and tally]

[NO: Go to B]

B. Are you willing to participate in the survey?

[YES: Go to C]

[NO: Thank and tally]

C. Where did you stay last night? [DO NOT READ CATEGORIES – circle response]

a. DECLINE TO ANSWER b. OWN APARTMENT / HOUSE	[THANK & END SURVEY]
c. SOMEONE ELSE'S PLACE d. MOTEL/HOTEL (SELF-FUNDED) e. HOSPITAL f. TREATMENT CENTRE g. JAIL, PRISON, REMAND CENTRE	
C1. Do you have access to a permanent residence where you can safely stay as long as you want?	
a. Yes [THANK & END] b. No (not permanent AND/OR not safe) [BEGIN SURVEY] c. Don't Know [BEGIN SURVEY] d. Decline to answer [THANK & END]	
h. HOMELESS SHELTER (EMERGENCY, FAMILY OR DOMESTIC VIOLENCE SHELTER) i. HOTEL/MOTEL (FUNDED BY CITY OR HOMELESS PROGRAM) j. TRANSITIONAL SHELTER/HOUSING k. UNSHELTERED IN A PUBLIC SPACE (E.G. STREET, PARK, BUS SHELTER, FOREST OR ABANDONED BUILDING) l. ENCAMPMENT (E.G. GROUP OF TENTS, MAKESHIFT SHELTERS OR LONG-TERM OUTDOOR SETTLEMENT) m. VEHICLE (CAR, VAN, RV, TRUCK, BOAT) n. UNSURE: INDICATE PROBABLE LOCATION _____	[BEGIN SURVEY]

- You will receive a \$15 gift card as a thank you for your participation.

Survey Number: _____

Location: _____

Time: _____ AM/PM

Interviewer: _____

Contact #: _____

BEGIN SURVEY

1. Did you have any family members or anyone else who stayed with you last night? [Indicate survey number for partners. Check all that apply]

☐ NONE	☐ OTHER (Can include other family or friends)							
☐ PARTNER - Survey #: _____	☐ DECLINE TO ANSWER							
☐ CHILD(REN)/DEPENDENT(S)	1	2	3	4	5	6	7	8
[indicate gender and age for each]								
GENDER								
AGE								

2. How old are you? [OR] What year were you born? [If unsure, ask for best estimate]

☐ AGE _____ OR YEAR BORN _____	☐ DON'T KNOW	☐ DECLINE TO ANSWER

- ➔ For this survey, "homelessness" means any time when you have been without a permanent and secure place to live, including sleeping in shelters, on the streets, or living temporarily with others without having your own permanent housing (e.g. couch surfing).

3. How old were you the first time you experienced homelessness?

☐ AGE _____	☐ DON'T KNOW	☐ DECLINE TO ANSWER

4. In total, for *how much time* have you experienced homelessness over the PAST YEAR (the last 12 months)? [Does not need to be exact. Best estimate.]

☐ LENGTH _____ DAYS WEEKS MONTHS	☐ DON'T KNOW	☐ DECLINE TO ANSWER

5. Have you stayed in a homeless shelter in the past year? For example, (COMMUNITY NOTE: Include examples of emergency shelters and extreme weather shelters for interviewers to provide).

☐ YES	☐ NO	☐ DON'T KNOW	☐ DECLINE TO ANSWER

- 5B➔ If not, what are the main reasons? [Do not read categories; select all that apply]

☐ TURNED AWAY (SHELTERS ARE FULL)	☐ FEAR FOR SAFETY	☐ OTHER: _____
☐ TURNED AWAY (BANNED)	☐ BED BUGS & OTHER PESTS	☐ DON'T KNOW
☐ LACK OF TRANSPORTATION	☐ CROWDED	☐ DECLINE TO ANSWER

6. Did you come to Canada as an immigrant, refugee or a refugee claimant (i.e. applied for refugee status after coming to Canada)?

☐ YES, IMMIGRANT -----> ☐ YES, REFUGEE-----> ☐ YES, REFUGEE CLAIMANT-----> ☐ NO ☐ DON'T KNOW ☐ DECLINE TO ANSWER	If YES: How long have you been in Canada? ☐ LENGTH: _____ DAYS WEEKS MONTHS YEARS OR DATE: ____/____/____ DAY / MONTH / YEAR ☐ DON'T KNOW ☐ DECLINE TO ANSWER

7. How long have you been in Hamilton?

☐ LENGTH _____ DAYS / WEEKS / MONTHS / YEARS ↪ Where did you live before you came here?	☐ ALWAYS BEEN HERE ☐ DON'T KNOW ☐ DECLINE TO ANSWER ☐ CITY: _____ PROVINCE/TERRITORY/COUNTRY: _____ ☐ DECLINE TO ANSWER

8a. Do you identify as First Nations (with or without status), Métis, or Inuit, or do you have North American Indigenous ancestry? [If yes, please specify]

☐ YES, FIRST NATIONS ☐ YES, INUIT	☐ YES, MÉTIS ☐ YES, INDIGENOUS ANCESTRY	☐ NO ☐ DON'T KNOW	☐ DECLINE TO ANSWER

8b. In addition to your response in the question above, do you identify with any of the racialized identities listed below? [Show or Read list. Select all that apply]

☐ ARAB (e.g., Syrian, Egyptian, Yemeni) ☐ ASIAN-EAST (e.g., Chinese, Korean, Japanese) ☐ ASIAN- SOUTH-EAST (e.g., Filipino, Vietnamese, Cambodian, Malaysian, Laotian) ☐ ASIAN-SOUTH OR INDO-CARIBBEAN (e.g., Indian, Pakistani, Sri Lankan, Indo-Guyanese, Indo-Trinidadian) ☐ ASIAN-WEST (e.g., Iranian, Afghan) ☐ BLACK-CANADIAN/AMERICAN ☐ BLACK-AFRICAN (e.g., Ghanaian, Ethiopian, Nigerian)	☐ BLACK-AFRO-CARIBBEAN OR AFRO-LATINX (e.g., Jamaican, Haitian, Afro-Brazilian) ☐ LATIN AMERICAN (e.g., Brazilian, Mexican, Chilean, Cuban) ☐ WHITE (e.g. European, French, Ukrainian, Euro-Latinx) ☐ NOT LISTED (PLEASE SPECIFY): _____ ☐ IDENTIFY AS INDIGENOUS ONLY ☐ DON'T KNOW ☐ DECLINE TO ANSWER

9. Have you ever served in the Canadian Military or RCMP?

[Military includes Canadian Navy, Army, or Air Force]

☐ YES, MILITARY ☐ YES, RCMP	☐ BOTH MILITARY AND RCMP ☐ NO	☐ DON'T KNOW ☐ DECLINE TO ANSWER

10. As a child or youth, were you ever in foster care or in a youth group home (COMMUNITY NOTE: include any other Provincial child welfare programs)? [Note: This question applies specifically to child welfare programs.]

☐ YES ☐ NO ☐ DON'T KNOW ☐ DECLINE TO ANSWER

11. Do you identify as having any of the following health challenges at this time:

ILLNESS OR MEDICAL CONDITION [e.g. diabetes, arthritis, TB, HIV]	☐ YES ☐ NO ☐ DON'T KNOW ☐ DECLINE TO ANSWER

PHYSICAL LIMITATION [e.g. challenges with mobility, physical abilities or dexterity]	☐ YES	☐ NO	☐ DON'T KNOW	☐ DECLINE TO ANSWER
LEARNING OR COGNITIVE LIMITATIONS [e.g. dyslexia, autism spectrum disorder, or as a result of ADHD or an acquired brain injury]	☐ YES	☐ NO	☐ DON'T KNOW	☐ DECLINE TO ANSWER
MENTAL HEALTH ISSUE [diagnosed/undiagnosed] [e.g. depression, Post traumatic stress disorder (PTSD), bipolar disorder]	☐ YES	☐ NO	☐ DON'T KNOW	☐ DECLINE TO ANSWER
SUBSTANCE USE ISSUE [e.g. tobacco, alcohol, opiates]	☐ YES	☐ NO	☐ DON'T KNOW	☐ DECLINE TO ANSWER

12. What gender do you identify with? [Show list.]

☐ WOMAN	☐ TRANS WOMAN	☐ NOT LISTED:
☐ MAN	☐ TRANS MAN	_____
☐ TWO-SPIRIT	☐ NON-BINARY (GENDERQUEER)	☐ DON'T KNOW
		☐ DECLINE TO ANSWER

13. How do you describe your sexual orientation, for example straight, gay, lesbian? [Show list.]

☐ GAY	☐ BISEXUAL	☐ ASEXUAL	☐ NOT LISTED:
☐ LESBIAN	☐ TWO-SPIRIT	☐ QUESTIONING	_____
☐ STRAIGHT/HETEROSEXUAL	☐ PANSEXUAL	☐ QUEER	☐ DON'T KNOW
			☐ DECLINE TO ANSWER

14a. What happened that caused you to lose your housing most recently?

[Do not read the options. Check all that apply. "Housing" does not include temporary arrangements (e.g., couch surfing) or shelter stays. Follow up for the reason if the respondent says "eviction" or that they "chose to leave".]

A: HOUSING AND FINANCIAL ISSUES	B: INTERPERSONAL AND FAMILY ISSUES	C: HEALTH OR CORRECTIONS
☐ NOT ENOUGH INCOME FOR HOUSING (E.G. LOSS OF BENEFIT, INCOME, OR JOB)	☐ EXPERIENCED DISCRIMINATION	☐ PHYSICAL HEALTH ISSUE
☐ UNFIT/UNSAFE HOUSING CONDITION	☐ CONFLICT WITH: SPOUSE / PARTNER	☐ MENTAL HEALTH ISSUE
☐ BUILDING SOLD OR RENNOVATED (RENOVICTION)	☐ CONFLICT WITH: PARENT / GUARDIAN	☐ SUBSTANCE USE ISSUE
☐ OWNER MOVED IN	☐ CONFLICT WITH: OTHER (_____)	☐ HOSPITALIZATION OR TREATMENT PROGRAM
☐ LANDLORD/TENANT CONFLICT	☐ EXPERIENCED ABUSE BY: SPOUSE / PARTNER	☐ INCARCERATION (JAIL OR PRISON)
☐ COMPLAINT (E.G. PETS/NOISE/DAMAGE)	☐ EXPERIENCED ABUSE BY: PARENT / GUARDIAN	
☐ LEFT THE COMMUNITY/RELOCATED	☐ EXPERIENCED ABUSE BY: OTHER (_____)	
☐ DEPARTURE OF FAMILY MEMBER		
☐ OTHER REASON: _____ ☐ DON'T KNOW ☐ DECLINE TO ANSWER		

14b. Was your most recent housing loss related to the COVID-19 pandemic?

- ☐ YES
 ☐ NO
 ☐ DON'T KNOW
 ☐ DECLINE TO ANSWER

14c. How long ago did that happen (that you lost your housing most recently)? (Best estimate)

- ☐ LENGTH _____ DAYS | WEEKS | MONTHS | YEARS
 ☐ DON'T KNOW
 ☐ DECLINE TO ANSWER

15. What are your sources of income? [Reminder that this survey is anonymous. Read list and check all that apply.]

☐ FULL TIME EMPLOYMENT	☐ EMPLOYMENT INSURANCE	☐ CHILD AND FAMILY TAX BENEFITS
☐ PART TIME EMPLOYMENT	☐ DISABILITY BENEFIT [Name of PROV. DISABILITY BENEFIT]	☐ GST/HST REFUND
☐ CASUAL EMPLOYMENT (E.G. CONTRACT WORK)	☐ SENIORS BENEFITS (E.G. CPP/OAS/GIS)	☐ OTHER MONEY FROM A SERVICE AGENCY
☐ INFORMAL INCOME SOURCES (E.G. BOTTLE RETURNS, PANHANDLING)	☐ WELFARE/SOCIAL ASSISTANCE [Prov. Benefit]	☐ OTHER SOURCE: _____
☐ MONEY FROM FAMILY/FRIENDS	☐ VETERAN/VAC BENEFITS	☐ NO INCOME
		☐ DON'T KNOW
		☐ DECLINE TO ANSWER

16. In the past year (12 months) have you: [Ask respondents to give their best estimate]

BEEN TO AN EMERGENCY ROOM ----->	Y ____ N ____	# ____ Times
BEEN HOSPITALIZED ----->	Y ____ N ____	# ____ Times
→ DAYS YOU HAVE SPENT HOSPITALIZED		____ Days Total
INTERACTED WITH POLICE (Tickets, arrests, searches) ----->	Y ____ N ____	# ____ Times
BEEN TO PRISON/JAIL ----->	Y ____ N ____	# ____ Times
→ DAYS YOU HAVE SPENT IN PRISON/JAIL		____ Days Total

17. What challenges or problems have you experienced when trying to find housing? [Select all that apply]

☐ LOW INCOME	☐ MENTAL HEALTH ISSUES	☐ DISCRIMINATION
☐ NO INCOME ASSISTANCE	☐ ADDICTION	☐ DON'T WANT HOUSING
☐ RENTS TOO HIGH	☐ FAMILY BREAKDOWN/CONFLICT	☐ OTHER: _____
☐ POOR HOUSING CONDITIONS	☐ CRIMINAL HISTORY	☐ NO BARRIERS TO HOUSING
☐ DOMESTIC VIOLENCE	☐ PETS	☐ DECLINE TO ANSWER
☐ HEALTH/DISABILITY ISSUES	☐ CHILDREN	

-----END OF SURVEY – PROVIDE GIFT CARD-----

THIS IS EXHIBIT "E" TO THE
AFFIDAVIT OF MEDORA UPPAL
AFFIRMED REMOTELY BEFORE ME AT
THE CITY OF HAMILTON DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
THIS 17th day of July, 2023

Mohamad Bsar

Mohamad Bsar
LSO NO. 75897L
Commissioner for Taking Affidavits, etc

WOMEN'S HOUSING PLANNING COLLABORATIVE

SERVICE RESTRICTION FRAMEWORK for SERVICES and SHELTERS serving WOMEN, TRANS, GENDER-DIVERSE AND NON-BINARY PEOPLE

FRAMEWORK	Agencies in this sector serving women, trans, gender-diverse and non-binary people, may, in the most serious of circumstances, find it necessary to place a service restriction or limitation on a service user's ability to access a service or remain in residence. Serious circumstances may include, but are not limited to, any behavior, possession, or threat, that creates harm to staff, community members or other service users leading to an incapacity to manage safety within a communal living setting.
PURPOSE	The purpose of this framework is to ensure service users are informed of their right to stay engaged in the system and appeal any service restriction with which they disagree. Service restrictions will be considered through a trauma-informed, gender and equity lens in keeping with the mission, vision and values upheld by WHPC, recognizing the systemic barriers faced by women, trans, gender-diverse or non-binary people, and experiencing intersecting oppressions including, but not limited to, race/ethnicity, substance use, mental health, disAbility, gender identity and sexual orientation. The shelter restrictions outlined should be applied by using best practice principles and good professional judgement of staff and leadership, and consider the context surrounding the incident, unique circumstances, and social location of the individual service user. Service restrictions are not to be used as a punitive measure. This service restriction framework has been recommended to promote the operations of a safe, equitable and accessible environment and was developed to help ensure the safety and well-being of all residents, service users and staff. The service restriction framework will aid in guiding communications and processes between violence against women-focused agencies and those serving women experiencing homelessness, as they intersect. This document will guide communications amongst various women's sector agencies to provide a framework for consistency and best practice in how service restrictions are applied and resolved.
SCOPE	This framework applies to all members of WHPC including those that serve single women, trans, gender-diverse or non-binary people experiencing homelessness and those that provide VAW services.

WOMEN'S HOUSING PLANNING COLLABORATIVE

SERVICE RESTRICTION FRAMEWORK for SERVICES and SHELTERS serving WOMEN, TRANS, GENDER-DIVERSE AND NON-BINARY PEOPLE

TERMS and CONDCTIONS	STANDARDS Individuals accessing service will be made aware of the service restriction framework as reflected through each respective agency's ability to post where appropriate. All service restrictions issued by shelters must be reviewed by the manager or designate, within a reasonable time. Shelter staff or management must inform the individual of the reason for service restriction at the time of the incident, where it is safe and reasonable to do so or at next contact. Shelter staff will make all reasonable efforts to support the individual with securing an alternate place of safety. Individuals must be advised of appeal process, either at the time of occurrence, or when it is safe and reasonable to do so. DOCUMENTATION AND COMMUNICATION Services with the Homelessness Individuals and Families Information System (HIFIS) active at their program site must utilize HIFIS to document the Service Restriction and details as established through the process with the City of Hamilton, Housing Services Division. In cases where HIFIS is not active at the program location, the location will maintain an active service restriction list that includes name of service-user, date service restriction was applied, date service-user was informed of service restriction (if different from the date the restriction was applied), the date service restriction ends, and staff signature. Program Manager or designate will initial entries within a reasonable timeframe. Service users should be made aware of the service restriction by the shelter at the time the restriction is applied, or as soon as it is safe to do to. If an agency becomes aware of a service user's intent or potential to cause imminent risk or danger to others, they shall take reasonable efforts to forewarn the threatened individual(s) with the intent of reducing the risk of threat and danger, respecting relevant guiding privacy legislation.

WOMEN'S HOUSING PLANNING COLLABORATIVE

SERVICE RESTRICTION FRAMEWORK for SERVICES and SHELTERS serving WOMEN, TRANS, GENDER-DIVERSE AND NON-BINARY PEOPLE

RESTRICTION GUIDELINES

Access to a particular service may be limited or denied in the following ways:

1. Postponement Period

A brief unspecified time in which the service user is asked to leave the shelter premises with a view of taking time and space to de-escalate their current behavior. In such situations, the client will be invited to return when they are able to manage within expectations of program.

2. Partial Restriction

Applies to individuals who are restricted from one or more program areas within an organization for a specific time.

Someone may be restricted from shelter bed but able to access other programming as stipulated and approved by the manager or designate.

Where a conflict of interest may occur in a specific service, a service user may not be permitted to access this service until the conflict is resolved. When this occurs and it is safe and reasonable to do so, the manager or designate will advise the individual of the parameters of the restriction and make efforts to support the individual in accessing alternate place of safety.

3. Full Restriction

A service user is denied complete access to the service for a specific length of time.

The timeframe will be determined based on each respective agency's assessment, context and in consideration of the following: pattern of behaviour, threats to safety of staff, threats to others in service, oppressive behaviours, substance use/supply or manufacturing in service, health and safety concerns, property damage or theft.

WOMEN'S HOUSING PLANNING COLLABORATIVE**SERVICE RESTRICTION FRAMEWORK for
SERVICES and SHELTERS serving
WOMEN, TRANS, GENDER-DIVERSE AND NON-BINARY PEOPLE****4. System Wide Service Restriction**

In the case of an individual who has acquired multiple restrictions from a number of locations, the service user or provider with consent will have the opportunity to raise the situation at the WHPC Service Coordination Case Conferencing table consider solutions to the situation.

APPEALS PROCESS

Any service user who has been restricted from service is entitled to appeal a service restriction and/or request the length of the restriction be reviewed. The service user has the right for the appeal to be heard in a timely manner with the decision of outcome clearly communicated to the service user once a timely decision has been reached. Appeals will be heard by the service manager or designate, and outcomes will immediately be shared with all applicable employees and documentation will be updated as required.

All agencies will have a written appeal process that will:

- Include how the service user accesses the appeal process,
- Provide reasonable and accountable timelines,
- Be accessible to service-users,
- And be written through an inclusive, anti-oppressive and trauma-informed lens.

THIS IS EXHIBIT "F" TO THE
AFFIDAVIT OF MEDORA UPPAL
AFFIRMED REMOTELY BEFORE ME AT
THE CITY OF HAMILTON DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
THIS 17th day of July, 2023

Mohamad Bsar

Mohamad Bsar
LSO NO. 75897L
Commissioner for Taking Affidavits, etc

[in]visible: Single Women's Experiences of Chronic Homelessness in Hamilton



Mary-Elizabeth Vaccaro

August 30, 2018

About the Project:

[in]visible is a large scale qualitative and arts-based research project investigating the experiences and housing needs of women without children in their care, who have been homeless for one year or longer in Hamilton, Ontario. The project worked with community partners in the city including non-profit organizations, advisory boards and researchers.

Recruitment criteria

Woman-identified, 18 years old or older, not currently caring for children and one or more consecutive years of homelessness in the past two years (chronically homeless).

We collected data from a total of 70 unique women.

Project design

We collected data for the [in]visible project three times over a one year period. Sign up for the Homeless Hub weekly newsletter. Learn more (<https://us1.campaign-archive.com/home/?u=61233be4a0bcc87d8977b631e&id=dbc0a7bb5b>)

Sign Up



Narrative Interviews – April – May 2017

Forty women participated in semi-structured interviews, focusing on experiences of housing and homelessness in Hamilton. These interviews were audio-recorded, transcribed and analyzed by the research team and through NVivo software.

Arts-based brainstorming sessions – October–November 2017

Thirty-four women met in groups of 8–12 to participate in arts-based brainstorming sessions.

Over two-hour meetings, women engaged in conversation about findings from the interview data and used artistic mediums (polaroid camera, markers, written word, recorded word, collaging, etc.) to depict what they imagine as ideal permanent housing.

Follow Up Interviews – December 2017 – January 2018

Six women from the original interviews had a follow-up interview, focusing on brainstorming permanent housing options for ‘single’ women experiencing chronic homelessness based on their own experiences and the findings from this study.

Key Findings from 40 Interviews with Women Experiencing Chronic Homelessness

The findings from this study offer insight into the ways women experience and navigate homelessness throughout their lives. Women’s stories illustrate lengthy histories of unresolved homelessness, complex routes into homelessness and gendered-based strategies of remaining invisible while on the streets. This section shares some of the key findings from the forty narrative interviews, focusing on women’s experiences of homelessness and housing insecurity in Hamilton.

Women’s unresolved and chronic homelessness

During the interviews, women were asked about:

1. How many years it has been since they had permanent housing
2. Any historical experiences of housing instability and chronic homelessness

Our findings showed women had experienced long periods of unresolved homelessness, had relied on temporary accommodations, shelters and their own survival techniques.

- 34% of women have been without permanent housing for four years or longer
- 15% of women describe more than 25 years of consecutive homelessness

We also learned that many women had experienced multiple periods of housing instability and homelessness throughout their lives.

- 85% of women have experienced homelessness at another point in their lives
- 48% of women report experiencing homelessness for the first time before the age of 18

Routes into homelessness for women

During the interviews, women were asked about:

- What they believe caused their first experience of homelessness
- What they believe is causing their current experience of homelessness

For women who had been homeless before the age of 18, stories about family violence, involvement with the child welfare system and young motherhood were common.

- 20% of women identified running away from group homes and foster care as one of their first experiences of homelessness

Violence was one of the leading causes of women's chronic homelessness for participants in this study, however it is important to make a distinction between intimate partner violence and the other forms of violence women are experiencing.

- 30% of women described violence outside the context of intimate relationships (family of origin, adult children, roommates, landlords etc.) as the leading cause of their current homelessness
- 25% of women described leaving an abusive relationship as their route into homelessness

Women described being evicted, coping with the death of loved ones, experiencing floods/fires, losing custody of their children and long-term hospitalization and incarceration as some of the common routes into homelessness.

incarceration as some of the common routes into homelessness.

- 45% of women described more than three occasions where they have secured market rent/subsidized housing and end up experiencing eviction

Women's strategies to remain [In]visible while homeless

During the interviews, women were asked about:

1. Experiences of 'sleeping rough' (living outdoors, in tent cities and in abandoned buildings)
2. Any strategies women used to avoid sleeping rough when shelters and other resources were not available

60% of women had spent one or more nights sleeping on the streets

40% of women had always found somewhere indoors to sleep

Throughout the interviews women described the ways they avoided street homelessness when the shelters were full and they had exhausted their financial resources. Common ways women avoided sleeping outdoors include: staying with family and friends, remaining in abusive partnerships, living in their cars, motels or storage units, trading sex, care and companionship for accommodations, staying in bus stations, hospital waiting rooms and fast food restaurants.

Women's Recommendations for Permanent Housing

Women-centred

- 40% of women identified their ideal permanent housing as being women-only.

Our findings show a need to invest in the development of women-specific permanent housing programs, that can support women to live lives free from violence and exploitation.

Mother-specific supports

- 25% of women wanted to secure permanent housing for themselves and their children. Sign up for the Homeless Hub weekly newsletter. Learn more (<https://us1.campaign-archive.com/home/?u=61233be4a0bcc87d8977b631e&id=dbc0a7bb5b>)

Responding to women's needs requires developing programs that focus on reuniting women with their children. Recommendations include investing in affordable permanent housing that incorporates unique supports for mothers, such as childcare, children's

programming and advocacy with child welfare systems.

Supportive and safe communities of housing

- 75% of women described not wanting to live independently in the community.

Our findings show a need to investigate how models of co-housing, shared accommodations and purposefully building intentional communities could support women in resolving their housing crisis.

Next Steps for the [in]visible Project

Sharing our findings widely

As this is the largest research project focusing on the needs of single women completed in Hamilton, our research team is focusing on widely sharing our findings through conferences, publications and other ways. We created a project video using women's stories and art-work to help convey our findings - [please check it out!](https://vimeo.com/247279536/f377a68e50)
(<https://vimeo.com/247279536/f377a68e50>).

Using women's recommendations to develop housing for women

Two partners of our community-based research team, Good Shepherd Centres and the YWCA are in the process of developing housing for women, informed by the findings from this project.

Our research team will be sharing about these developments at the Canadian Alliance to End Homelessness Conference in Hamilton in November of 2018!

If you wish to learn more about this project, please contact [Mary-Eilizabeth Vaccaro](mailto:vaccarm@mcmaster.ca) (<mailto:vaccarm@mcmaster.ca>).

(<https://www.homelesshub.ca/researchmatters/search?tag=22985>)

Sign up for the Homeless Hub weekly newsletter. Learn more (<https://us1.campaign-archive.com/home/?u=61233be4a0bcc87d8977b631e&id=dbc0a7bb5b>)

English



Land Acknowledgment (<https://www.homelesshub.ca/land-acknowledgment>)

COH's Anti-Racism Statement (<https://www.homelesshub.ca/resource/canadian-observatory-homelessness-anti-racism-statement>)

Privacy Policy (<https://www.homelesshub.ca/privacy-policy>)

Media Room (<https://www.homelesshub.ca/about-us/media-room>)

Contact Us (<https://www.homelesshub.ca/about-us/contact-us>)

© Copyright 2021,

Canadian Observatory on Homelessness (/about-us/about-the-coh)

Sign up for the Homeless Hub weekly newsletter. Learn more (<https://us1.campaign-archive.com/home/?u=61233be4a0bcc87d8977b631e&id=dbc0a7bb5b>)

TAB 88

Court File No. CV-21-00077817-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

KRISTEN HEEGSMA et al.

Applicants

-and-

CITY OF HAMILTON

Respondent

SUPPLEMENTAL AFFIDAVIT OF MEDORA UPPAL

(Sworn June 4, 2024)

I, MEDORA UPPAL, of the City of Hamilton in the Province of Ontario, do AFFIRM AND STATE:

Introduction

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be true and credible.
2. In preparing this Supplemental Affidavit, I have reviewed three documents:
 - a. the Applicants' Request to Admit pursuant to Rule 51.01 (including attachments), dated May 31, 2023;
 - b. the Applicants' Request to Admit pursuant to Rule 51.01 (including attachments), dated August 2, 2023; and
 - c. the City of Hamilton's Response to Request to Admit, dated August 23, 2023 ("**Respondent's Response to RTA**").
3. In this Supplemental Affidavit, I make the following two points:

- a. the data collected and reported by the City of Hamilton (“City”) *undercount* the demand for shelter services in Hamilton; and
- b. the data collected and reported by the City *overcount* shelter bed capacity.

My experience in collecting data on Hamilton’s homeless population and shelter capacity

4. Since December 2022, I have been the Chief Executive Officer of the YWCA Hamilton. From September 2011 to December 2022, I was Director of Operations of YWCA Hamilton. As Director of Operations, I conceptualized, developed, and launched Carole Anne’s Place (“CAP”), a low-barrier drop in for unsheltered women and non-binary individuals in Hamilton that opened in 2016. From 2016 until April 2022, I was the overseeing Director of CAP’s staff. From April 2022 until May 2023, the overseeing Director of CAP reported directly to me.

5. As a senior manager at YWCA Hamilton for many years, I am very experienced in reviewing data on the demand for shelter services and shelter bed capacity to better understand the shelter system and forecast trends in demand. When I was overseeing Director of CAP, I supervised the collection of data on demand for its shelter beds from intakes, and the availability and use of its shelter beds, by staff who reported to me. I was directly responsible for providing this data to the City of Hamilton, and relied on this data in planning and decision-making regarding CAP. After becoming Chief Executive Officer of YWCA Hamilton, I continued to receive and closely monitor this data, and to use it in planning and decision-making regarding CAP, until 2024. Since 2024, the YWCA Hamilton’s Vice President, Strategic Initiatives and Program Development has had primary responsibility for monitoring data from, and overseeing planning for, CAP, and reports directly to me on these issues. The YWCA Hamilton’s Board of Directors places ultimate responsibility of CAP operations on me as the Chief Executive Officer.

6. From CAP’s inception in 2016 until 2019, staff collected data from sign-in sheets that recorded each individual who checked-in to use our services. Staff then entered this information into an organizational database via Excel for record keeping. Moreover, CAP reported these data to the City of Hamilton. However, because CAP did not receive funding from the City, this data was not reflected in the City’s official data on homelessness.

7. In 2019, the City started to provide funding to CAP. This funding allowed CAP workers to have clearer reporting data procedures, including the use of the Homeless Individuals and Families

Information System (“**HIFIS**”) to report data to the City. Unfortunately, HIFIS is imperfect and the training staff received was inadequate. In 2019, CAP staff attended a two day training session on HIFIS hosted by the City. When CAP staff asked technical questions about HIFIS, facilitators advised them that this was not the intended purpose of the training. CAP staff provided a written complaint about the training to the City’s Department of Housing to advise of her concerns. No additional training was provided.

8. CAP’s raw data is more robust and more accurate than HIFIS. HIFIS uses a “point of sale” model, with pre-set fields for entering data, limiting the information collected. CAP provides more than a shower, beds, food, and supplies, but HIFIS does not capture these additional services. Moreover, CAP could not enter case management data into HIFIS, limiting the amount of information available to the City. As a consequence, CAP continued to collect its own data in parallel with inputting data into HIFIS. Moreover, CAP provided its own data to the City on a monthly basis in financial reports which it provides as a condition for City funding. Although the City does not regard CAP as a shelter, it nevertheless uses CAP’s data to calculate overall shelter bed capacity in Hamilton on the Housing and Homelessness Dashboard which it posts online.

9. A Master Guestlist was used by YWCA Hamilton to capture all guests at CAP after we switched to HIFIS, from December 2019 until May 2022. In reviewing the Master Guestlist, it is evident that there was an increasing demand for shelter beds at CAP during this time period. For example, in August 2021, up to 598 unique women had stayed at CAP since it opened in 2016. In May 2022, that figure increased to 786 women. 62 of 101 women who stayed at CAP in May 2022 were also on the Master Guestlist in August 2021 – indicating they remained homeless throughout this period. Sadly, three women on the list from August 2021 had died prior to May 2022. Overall, the Master Guestlist reveals that demand for shelter beds at CAP increased during this time period. Moreover, we turned away women most nights during this time period. Since CAP is an overflow shelter – i.e., it accommodates women who cannot access emergency shelter beds – these women were left without shelter.

10. During the COVID-19 pandemic, I worked alongside the Women’s Housing Planning Collaborative to gather more data about the growing homelessness problem in Hamilton. Over this period, members of the collaborative worked together and identified 50 women who consistently attempted to access shelter services but were chronically unhoused throughout the year, because

they could not be effectively supported in shelter. For those 50 women, there was no housing or supports available to end their homelessness or to shelter them for extended periods within the existing landscape. Moreover, based on my experience, in my opinion the number of women needing services from CAP and Willow's Place drop-ins who were unhoused was actually much higher than 50.

11. I presented this data to Mr. Edward John, then Director of Housing. I also presented data related to these findings to the Emergency and Community Services Committee of Hamilton City Council on: (a) February 21, 2019, with Amy Deschamps; and (b) November 7, 2019, with Denise Christopherson. The goal of these presentations was for the City to better understand how demand for the shelter and drop-in system exceeded supply, and that more funding was required for women experiencing homelessness.

City's data undercounts the demand for shelter services

12. In my opinion, the data collected and reported by the City *undercount* the demand for shelter services in Hamilton, for *four* reasons. As an illustrative example, I discuss data collection at CAP. However, based on my longstanding experience as a manager in the Hamilton shelter system, I believe these facts to be true of other shelters in Hamilton.

13. *First*, shelters can only report those homeless individuals who come to shelters and identify themselves as homeless. If a person does not come into the shelter or CAP they are not counted. Some homeless individuals do not come to shelters for a variety of reasons, and therefore are not counted. Homeless individuals may have experienced mistreatment in shelters or fears of what may happen to them or their belongings. Sometimes these fears are based on real experiences; in other cases, these fears may reflect underlying mental health issues. Homeless individuals may be unable to follow rules and manage in environments that require communal living and minimal conflict with minimal to no tolerance for violence or aggression. Finally, some homeless individuals may stop coming to shelter, because they have been turned away previously and have concluded it is futile to attempt to access shelter again. I have observed that some of these women sleep outside CAP, for example, on our front window ledges, our building's grates, the sidewalks across the street, and our fire escapes, because they perceive it is safer to be closer to CAP than outside. Moreover, our staff attempt to check on these women, to the extent that our capacity permits.

14. *Second*, shelters can only report data from homeless individuals who have given shelters permission to do so. For example, at CAP, where an individual does not give us permission to share their data, CAP does not include them in the reports sent to the City on shelter demand. As a consequence, those individuals are not reflected in the City's data on the number of homeless persons in Hamilton.

15. *Third*, the data reported by the City only comes from City funded shelters. Since violence against women ("VAW") shelters are *not* funded by the City, the City's data does not include data on shelter demand from those facilities. Since only women can stay in VAW shelters, the City's data on shelter demand therefore systematically undercounts demand for shelters by women, which is higher than the City's data suggests.

City's data overcounts shelter bed capacity

16. The data collected and reported by the City of Hamilton *overcount* shelter bed capacity, for *three* reasons.

17. *First*, not every shelter bed that is reported as "available" is actually available for use on a given night. The reason is that some beds are in rooms with multiple beds, and in some cases, not every bed in a room can be used. It is sometimes unsafe for a complex needs client to share a room with other individuals. A family may use some but not all the beds in a room, rendering the other beds unavailable for other individuals who are not members of the family.

18. *Second*, shelter beds may be physically unavailable on a given night due to maintenance. These maintenance issues include damaged beds (which a shelter may not be able to afford to repair or replace because of a lack of funding) and bed bugs (which requires treatment).

19. *Third*, inadequate staffing on a given night may limit the ability of a shelter to make all its beds available, because of the need for an adequate staff to shelter client ratio. At CAP, inadequate staffing has resulted from high staff turnover rates and limited funding. In addition, inadequate staffing might mean there are not enough staff to turn over a bed vacated by a client in the middle of the night for a new client that same evening.

20. The Respondent's Response to RTA states:

It should also be noted that the "Shelter Beds Available" data does not exhaustively record the number of shelter beds available within the City of Hamilton. The "Shelter Beds

Available” data tracks shelter beds and rooms available in the City-funded emergency shelter system. For example, the City provides partial funding for Violence Against Women’s (VAW) shelters for women escaping violence, which are managed through the Ministry of Children’s and Community Social Services (MCCSS); however the beds available through those shelters are not included in the number of beds in the emergency women’s sector. As well, any shelter beds available through charities or non-City funded sources are not counted in the “Shelter Beds Available” data.

21. This statement is highly misleading. If the City wishes to assert that its own data on shelter beds undercount shelter bed *capacity* because it omits VAW shelter beds, it must accept that its own data also undercounts *demand* for shelter beds because it omits demand for those VAW shelter beds. If the City wishes to count VAW beds toward the supply of shelter beds, it would be inconsistent and create a very inaccurate picture to not count demand for those VAW beds, as the City appears to have done.

Sworn remotely by Medora Uppal in the
Province of Ontario, before me on June 4,
2024 in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

Sujit Choudhry

“Medora Uppal”

Medora Uppal

TAB 89

ONTARIO
SUPERIOR COURT OF JUSTICE

TABLE OF CONTENTS

Page No.

B E T W E E N:

KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH,
MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL,
CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER,
CASSANDRA JORDAN, JULIA LAUZON, AMY LEWIS,
ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL,
SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES
and PATRICK WARD,

Applicants,

- and -

CITY OF HAMILTON,

Respondent,

This is the Cross-examination of MEDORA
UPPAL, on her affidavits sworn July 17, 2023 and June 4,
2024, conducted via Zoom videoconference hosted by the
offices of Nimigan Mihailovich Reporting, One James Street
South, 7th Floor, Hamilton, Ontario, on August 20, 2024 at
10:00 a.m., with all participants attending remotely.

APPEARANCES:

SUJIT CHOUDRY, ESQ. For the Applicants
MS. SHARON CROWE
CURTIS SELL, ESQ.
HCLC

MS. NONYE OKENWA
CLCYR

JORDAN DIACUR, ESQ. For the Respondent
MS. VIVIAN CALDAS
Gowling

NIMIGAN MIHAIOLOVICH REPORTING INC.

NIMIGAN MIHAIOLOVICH REPORTING INC.

MEDORA UPPAL

- 1

1 --Upon commencing at 10:00 a.m.
2 MEDORA UPPAL: AFFIRMED
3 CROSS EXAMINATION BY MR. DIACUR:
4 1. Q. Ma'am, would you state your full name
5 for the record please.
6 A. Medora Uppal.
7 2. Q. Would you spell your last name
8 please.
9 A. U-P-P-A-L.
10 3. Q. Thank you. I'm going to have some
11 questions for you about the two affidavits that
12 you've provided in this matter; the first, July 17,
13 2023, and the second, June 4, 2024. I'm going to
14 be able to put those up on the screen and show you
15 references when I ask you questions about
16 particular parts of those documents, but I wanted
17 to ask you before we began whether you have a copy
18 of those documents handy, either a hard copy or
19 electronically?
20 A. I have hard copies in front of me.
21 4. Q. Do you have any other notes or
22 anything else with you?
23 A. No.
24 5. Q. Where are you signing in from today?
25 A. 75 MacNab Street South, the YWCA

NIMIGAN MIHAIOLOVICH REPORTING INC.

MEDORA UPPAL

- 2

1 Hamilton building and I'm in my office.
2 6. Q. Okay. And nobody else is present
3 with you?
4 A. No one else is here, no.
5 7. Q. Thank you. So, ma'am, what do you
6 understand your role is in this litigation?
7 A. I understand I'm a witness.
8 8. Q. Do you understand your role is
9 providing fact evidence or opinion evidence?
10 A. I understand I'm providing fact
11 evidence.
12 9. Q. To the extent that there is any
13 opinion in your affidavits, we can disregard that?
14 A. What's presented in my affidavit,
15 from my point of view, is facts.
16 10. Q. I'm going to put up on the screen
17 your first affidavit, as I said, that was the July
18 17, 2023 affidavit. You do say in the first
19 paragraph that you have personal knowledge with
20 respect to the facts set out below, but there are
21 several references in this affidavit, I'll take you
22 to one of them, paragraph 13, the last sentence you
23 say, "I adopt this report," and we'll get to it,
24 what that report is, but you say, "I adopt this
25 report as part of my opinion in this matter." When

NIMIGAN MIHAIOLOVICH REPORTING INC.

you say opinion there, what do you mean?

A. So I mean that that is part of my perspective, the information I'm sharing, so I'm using the information from the research findings that I was part of helping to develop as part of the rationale for the information I'm providing.

Q. To be clear, though, you've not been qualified in the past by any court in Ontario as an expert witness?

A. Correct.

Q. And you've not signed or provided an acknowledgement of expert's duty, sometimes called a Form 53 in this matter, correct?

A. Correct.

Q. So I would like to turn to paragraph 9 of this first affidavit, the July 17, 2023 affidavit, it's under the heading, "Women's Shelter System in Hamilton."

A. Okay.

Q. You say in this paragraph, "There were frequently no shelter beds for women who needed them." You say, "Despite best attempts to provide accommodation, there were frequently no shelter beds for women who needed them." Are you referring to the situation before Carol Anne's

Place existed at this point in your affidavit?

A. I'm referring to both when Carol Anne's Place existed and after Carol Anne's Place existence.

Q. So before and after?

A. Yes.

Q. Okay. And you say frequently, so sometimes there were sufficient shelter beds available for women in Hamilton, all women who are seeking such shelter, even before Carol Anne's Place opened, is that right?

A. Yes, there would be times when that would have occurred. Yes.

Q. If we go through to paragraph 14 of your affidavit, you state that, "The increase in demand for shelter for women from 2019 onwards is clear. From December 2018 to March 2019, Carol Anne's Place supported 260 unique women."

A. Yes.

Q. So that's a four-month period; December 2018 to March 2019?

A. Yes.

Q. And then you state, "We reopened December 2019, and up to March 2022, Carol Anne's Place supported 660 unique women." If I'm counting

NIMIGAN MIHAILOVICH REPORTING INC.

NIMIGAN MIHAILOVICH REPORTING INC.

correctly, that's a 28-month period, is that right?

A. Yes, that's a longer period of time.

Q. So to support your assertion that an increase in demand for shelter for women from 2019 onwards occurred, you state that in the four months from December 2018 to March 2019, Carol Anne's Place supported 260 unique individuals, and then you state that in the 28 months from December 2019 to March 2022, Carol Anne's Place supported 660 unique individuals. Do I have that correct?

A. Correct.

Q. So if 260 unique individuals were seeking assistance in a four-month span and 660 received assistance in a 28-month span, doesn't that indicate that there was a decrease in demand over time?

A. No, because there's more homeless women who were seeking our services than were previously. So instead of 260 women, we had 660 women seeking out services from us who were supported during that period.

Q. I understand that, but we are talking about a span that's seven times longer in the second instance where there's 660 unique women served but only two and a half times as many women

received assistance. That's correct, right?

A. That's correct. That's correct that during the shorter period we saw less women, and when we were open longer, we did see more women seeking service. But overall, we saw an increase in the number of women who were seeking service from Carol Anne's Place, recognizing that we saw more women who were homeless, that's what we saw; more women who were homeless than we had seen before. We could've seen 260, we could've seen 300 throughout that whole period if there was no increase in homelessness. There was an increase in homelessness, so we saw 660 women. That number today is higher.

Q. The principal goal in supporting women who are using an emergency shelter is to get them into permanent housing, is that correct?

A. Yes.

Q. And that does happen?

A. Yes.

Q. It happens regularly, would you say?

A. I couldn't say what -- it depends what "regular" means to you. It certainly happens less now than it did previously.

Q. If we move to paragraph 15 in your

NIMIGAN MIHAILOVICH REPORTING INC.

NIMIGAN MIHAILOVICH REPORTING INC.

1 affidavit, you reference a number of turn aways.
 2 You say, "In the 28 months from December 2019 to
 3 March 2022, 636 turn aways occurred." Those aren't
 4 636 unique individuals, correct?

5 A. No.

6 27. Q. Is there a reason that you used
 7 "unique individuals" when counting who Carol Anne's
 8 Place assisted but now you're stating a cumulative
 9 total of all instances of turn away?

10 A. So when we document the individual
 11 women who come in to Carol Anne's Place when we do
 12 turn aways, we aren't necessarily documenting the
 13 unique individual. So we know how many times we
 14 turn people away, but we don't have a number of how
 15 many people are contained within that 636.

16 28. Q. So why isn't that something that's
 17 tracked? It seems like it would be important.

18 A. It's our staffing capacity, we don't
 19 have the resources to do that, and we don't always
 20 -- and the other qualifier here is that we don't
 21 necessarily document the name or seek all the
 22 information if we don't have a bed. We don't then
 23 proceed to ask all the questions that we would
 24 typically ask.

25 29. Q. So there is an uncertain number of

NIMIGAN MIHAILOVICH REPORTING INC.

1 unique individuals who were turned away over this
 2 period?

3 A. Yes. I don't have documentation of
 4 who the unique individuals were who were turned
 5 away.

6 30. Q. And so you're not aware of whether
 7 any or all of them sought shelter elsewhere before
 8 or after coming to Carol Anne's Place, correct?

9 A. No, I would know if some of them had
 10 sought shelter. If we -- sorry, let me be clear.
 11 We know the names of the women who are unsheltered
 12 in the community, certainly not every woman, and we
 13 can identify and we do have communication with the
 14 other shelters around where those women are and if
 15 they have gone to those places. So there's
 16 information available, I can certainly characterize
 17 who are unsheltered women in the community, we have
 18 information about those. But, no, those 636
 19 specifically in the affidavit, I couldn't name
 20 those individuals for you or say where those
 21 individuals have gone.

22 31. Q. So you have the ability to track
 23 certain people when they identify themselves, but
 24 since it's not something that Carol Anne's Place
 25 tracks when there is a turn away, you're not aware

NIMIGAN MIHAILOVICH REPORTING INC.

1 and could not, in fact, be aware whether any or all
 2 of them had sought shelter elsewhere before or
 3 after coming to Carol Anne's Place, is that right?

4 A. I don't think that's accurate.

5 32. Q. I'm confused. You're saying that
 6 it's not something that you track, who these
 7 individuals who were turned away are, but you are
 8 saying that you are able to find out whether or not
 9 these people, who you do not know the names of or
 10 do not keep records on, can be tracked in some way
 11 about where else they have gone?

12 A. Let me explain -- let me give some
 13 clearer information. So we understand -- we have a
 14 number of women we know to be unsheltered in the
 15 community, we have their names, we have a list of
 16 those individuals. We communicate with the other
 17 women's shelters and drop-in programs, we are able
 18 to -- we understand who some of -- where some of
 19 those women are, where some of those women are
 20 going. When we're doing turn aways, we know that
 21 some of those women are in that turn away number.
 22 So, you know, how many times we turned her away and
 23 how many -- those women are represented in that
 24 636, I couldn't explain to you, but do I know who
 25 some of those women are? Do I know where they have

NIMIGAN MIHAILOVICH REPORTING INC.

1 been, where they have gone, whether they are
 2 sheltered now or housed now or unsheltered, some of
 3 that information would be available. So we would
 4 know that -- some of the women we do know and we
 5 track and we can identify are contained within that
 6 636. How many times they are represented, I
 7 couldn't tell you.

8 33. Q. All right. Paragraph 20 of your
 9 affidavit, I'll scroll down to it, this is the
 10 Point In Time count that's attached as Exhibit D to
 11 your affidavit. The report at Exhibit E, which I
 12 will flash forward to here, is dated April 2022,
 13 prepared by the City of Hamilton, but it's results
 14 dating back to 2021, is that right?

15 A. Correct.

16 34. Q. At that time, if we scroll through to
 17 page 5 of the report -- no, that's page 6. So
 18 there's two different numbers, there's page 5 of 29
 19 at the top and at the bottom it's numbered page 4.

20 A. Okay.

21 35. Q. Just for the record, I'm talking
 22 about page 5 of 29 at the top, top right. There's
 23 a reference here, it says, "Snapshot of
 24 homelessness in Hamilton on November 19th, 2021,"
 25 is that the end date of Point In Time count that is

NIMIGAN MIHAILOVICH REPORTING INC.

referenced in this report?

A. I don't know, it might be. I have to review the report.

36. Q. Okay.

A. I didn't create this report.

37. Q. I understand. But you say that you adopt its findings. So the snapshot of homelessness in Hamilton on November 19, 2021, the first bullet point is, "Shelters were at 93 percent capacity during the period November 15-19, 2021."

To your knowledge, is that a correct statement?

A. That's the information I'm reading in front of me. That was what was reported by the City.

38. Q. So you would agree that, at that time, there was capacity in the City funded shelter system?

A. That's possible, yes.

39. Q. Well, if it's 93 percent---

A. On that day, yes.

40. Q. In that period---

A. Yes.

41. Q. ---if it's 93 percent full, then it's seven percent empty, is that fair?

A. Sure, I could agree with that. Yes.

NIMIGAN MIHAILOVICH REPORTING INC.

42. Q. If we go to page 7 of this report

and, again, this is page 7 of 29 in the top right-hand corner, there's a figure, Figure 2, it says, "Monthly shelter bed usage and max capacity by month." Can you see that?

A. Yes.

43. Q. And you can see that the orange line there is shelter bed capacity and the black line is shelter bed usage. Is that accurate?

A. Correct. Yes.

44. Q. And if we look at those two lines as they proceed over time, we can see that in or about March of 2020, shelter bed capacity exceeded shelter bed usage and that remains true until the end of period of the report in November of 2021, is that accurate?

A. Yes.

45. Q. I'm going to go back to your affidavit in just a moment cause there's no simple way to click back to it. I'm going to go to the Table of Contents and click down. After paragraph 20 in your affidavit, in fact, after paragraph 21, beginning in paragraph 22, there's a number of paragraphs that fall under the heading, "Violence Against Women," can you see that?

NIMIGAN MIHAILOVICH REPORTING INC.

A. Yes.

46. Q. Over these several paragraphs beginning with paragraph 22 of your affidavit, you discuss a number of different criminal acts that you've been aware of occurring outside of Carol Anne's Place and you reference assaults, sexual assaults, the use of air mace, breaking and entering, carrying of weapons and a death threat. Is that accurate?

A. Correct.

47. Q. Are there any other crimes that you're aware of having occurred outside of Carol Anne's Place? And I'll scroll down now.

A. Yes, I just had one reported this morning.

48. Q. What was that?

A. The security guard's car was lit on fire and I have photographs of it, and also another car of a staff person was damaged.

49. Q. Is that a suspected arson or an accident?

A. Arson. Suspected arson.

50. Q. That's why I qualified. Lawyers have to say alleged or suspected, I understand that. So that's the most recent, is that right?

NIMIGAN MIHAILOVICH REPORTING INC.

A. Yes, that's this morning. That happened overnight, yes.

51. Q. Understood. It might've been yesterday, it might've been today. Is there anything else to add to that list in terms of criminal acts that you've become aware of occurring outside of Carol Anne's Place?

A. No, there's more than that. Yes.

52. Q. What would you add to that list?

A. So I'm aware of drug trafficking, I'm aware of -- I've been told reports of human trafficking, there was a -- these are outside of Carol Anne's Place, these are not---

53. Q. I'm clear on that. That's the question---

A. Yes.

54. Q. And you're clear in your affidavit on that as well. I'll acknowledge it's outside.

A. Yes. A man was stabbed and died right on the street in front of the building. He was assisted by -- our staff tried to provide first-aid CPR to him. He was stabbed in the heart and died. There have been other incidents of violence around. I met with the police chief last week and I've talked to the police different

NIMIGAN MIHAILOVICH REPORTING INC.

periods of time, confirming that there are incidents of criminal activity around the building. We have -- I'm trying to think. There's so many incidents that go on out of harassment and violence around and we're reporting fairly regularly and contacting the police. So right now, off the top of my head, those are two things that are coming to mind, but there are more incidents than that.

55. Q. Okay. And you did mention the police. In circumstances where a crime is known to have occurred outside of Carol Anne's Place or witnessed, is it Carol Anne's Place staff's practice to contact the police and report it?

A. Yes, it would be.

56. Q. And the police have responded to those calls?

A. For the most part, yes.

57. Q. Are there instances where the police didn't?

A. I wouldn't say they didn't at all. There were early in Carol Anne's Place -- early in the pandemic, I'm sorry, when we were calling and they were not attending to the scene while the incidents were occurring or we were waiting for a response back. Those issues had been addressed by

NIMIGAN MIHAILOVICH REPORTING INC.

shelter system and then---

62. Q. I understand.

A. Yes.

63. Q. So it's not a one-size-fits-all policy, is what you're saying?

A. It doesn't apply at all to the women's shelters. So the women's shelters developed a restriction protocol framework, I think we call it framework in there, and -- yes, so we developed that and then the City was certainly involved in discussions around that, but it's not a City shelter restriction framework, it is our own. And more recently, the City has released a shelter restriction protocol more recently, but we haven't discussed that at the Women's Housing Planning Collaborative.

64. Q. Understood. You'd agree that service restrictions are sometimes necessary to maintain the safety of staff and others inside a shelter, correct?

A. Correct.

65. Q. Staff are entitled to a safe work environment?

A. Correct.

66. Q. I'd like to look at paragraph 40 of

NIMIGAN MIHAILOVICH REPORTING INC.

the police and I would say they're overall very responsive to us now.

58. Q. In paragraph 30 you mention that the Hamilton Police developed what's called a Problem Oriented Policing Project or POPP for the area. Is that still true?

A. That's true. I don't know if they call it a POPP now what they're doing, but they have more support that they provide here and are more actively involved.

59. Q. Understood. So the name may have changed, but the policing -- or increased policing in the area hasn't changed?

A. Yes.

60. Q. If I scroll down to paragraph 33 of this affidavit, you state, "There is not a uniform shelter restriction policy for women's shelters in Hamilton."

A. Yes.

61. Q. I understand the City of Hamilton does have a policy regarding shelter restrictions, are you drawing a distinction between that and ones specifically for women's shelters?

A. Correct. So there's the shelter restrictions that were developed for the men's

NIMIGAN MIHAILOVICH REPORTING INC.

your first affidavit for a moment. I'll put that up on the screen next. This comes after a subheading, "The System - Design and Intent."

You start here discussing the design and intent of the shelter system, but to be clear, and this is the discussion we had at the outset, you're giving your opinion here about those two subjects; the design and the intent of the system?

A. I've been fundamentally involved in the design of some of our women's shelters in Hamilton. I oversaw Good Shepherd Women's Services and the design of both Martha House and Mary's Place in its new site in iteration when we moved in 2010 or 2009, and I had developed the -- Carol Anne's Place from its concept to its inception, and also the transitional living housing program, which is part of the homeless system here at YWCA, I have also developed the program and the design of that, and then, as well, Phoenix Place, which is our second stage VAW shelter in -- which we -- YWCA operates and runs. I also informed the design and development.

67. Q. And these statements in these paragraphs are based on that?

A. So -- yes, these statements and the

NIMIGAN MIHAILOVICH REPORTING INC.

paragraphs are based on my knowledge of the women's shelter system from what I informed and designed as well as from my collaborations in discussions with other women's shelters through the Women's Housing Planning Collaborative.

68. Q. Understood. If we scroll down to paragraph 44 of your affidavit, you say, "There are women and gender diverse people in Hamilton who have limited or no access to shelter or overnight beds." My first question is, who are we talking about here? Any specific individuals?

A. Yes, there are specific individuals who would fit into this.

69. Q. And you're speaking about them generally?

A. Generally, yes.

70. Q. What's the basis for stating limited or no access? Is it limited or is it nonexistent?

A. There is some fluidity to this. So for some women, they'll go through periods where they cannot access any women's shelter or drop-in service. There are times where -- that restrictions will be limited to a particular period of time or a particular shelter or a number of particular shelters. So, for example, there might

NIMIGAN MIHAILOVICH REPORTING INC.

go through to Exhibit F, click down to it, it states that it's a qualitative and art's based research project, what does art's based mean in this context?

A. There was a video that they had done as part of this project and so the researcher used our component to provide and present the information.

74. Q. It's art based as opposed to a study based and a scientific method?

A. I'm not a researcher. There's different methods of research that I'm aware of in the work I do with researchers, so this is one type of research that has validity within a research sector.

75. Q. And it states on the first page of the Invisible Project report, "We collected data from a total of 70 unique women," it's there in italics, do you see that?

A. Yes.

76. Q. Were all of those 70 women seeking assistance from Carol Anne's Place?

A. No.

77. Q. Do you know, was there -- were there records kept of whose those 70 women were?

NIMIGAN MIHAILOVICH REPORTING INC.

be a woman who accesses Carol Anne's Place and that is, in fact, the only shelter or drop-in that she can access overnight because everybody else is service restricted or likewise. There could be service restriction on her at Carol Anne's Place and then Willow's Place or another program is the only place she can attend.

71. Q. So this is partially due to service restrictions, the fluidity between limited access or nonexistent access?

A. So the limited access, those would be service restriction related, and then the other side of that is when all the beds are full and this -- so when all the beds are full and all the spaces taken, there can be because of capacity as well. So capacity can be a limitation and then the other side of it is service restrictions could also be a limitation.

72. Q. Okay. If we go to paragraph 45 of your affidavit, this is where you refer to the Invisible Project---

A. Yes.

73. Q. ---and attach a copy of that at Exhibit F. You state, "I adopt the Invisible Project as part of my opinion in this case." If we

NIMIGAN MIHAILOVICH REPORTING INC.

A. My understanding is that there's a record of those.

78. Q. Do you know what survey method was used?

A. The researcher did interviews.

79. Q. Do you know how the survey group was selected?

A. It was based on -- I believe it was based on who presented themselves. I'm sorry, I don't want to speculate because I don't have that information in front of me.

80. Q. It's just not clear to you how that was done?

A. I'm aware that there were interviews and people voluntarily came forward if they were staying in the Good Shepherd or YWCA, and so they were invited to come forward, offered an opportunity, and so I know that's how the interviews were conducted, but I don't have more information about the process.

81. Q. Understood. If I scroll down to page 4 of this document, there's a number of Women's Recommendations For Permanent Housing, do you see that heading there?

A. Yes.

NIMIGAN MIHAILOVICH REPORTING INC.

1 82. Q. The first subheading is, "Women's
2 Centre," it says, "Forty percent of women
3 identified their ideal permanent housing as being
4 women only." Is that a realistic goal in your
5 experience?

6 A. It's not realistic in that there are
7 very few women's housing only -- permanent women's
8 housing only locations in Hamilton. We built one
9 of them, but there aren't that many and there are
10 transitional housing that are women only.

11 83. Q. When you say you built one of them,
12 what are you referencing?

13 A. YWCA, Putman family YWCA on Ottawa
14 Street.

15 84. Q. Understood. How many spaces does
16 that have?

17 A. Fifty apartments.

18 85. Q. When did that open?

19 A. 2021 or 2022. I should know this
20 date offhand, but admittedly---

21 86. Q. That's fine.

22 A. Okay.

23 87. Q. If I scroll down to page 5 of this
24 document, the Invisible Project still, there's a
25 subheading, "Supportive and Safe Communities of

1 Housing," can you see that there?

2 A. Yes.

3 88. Q. It states, "75 percent of women
4 described not wanting to live independently in the
5 community." Is that a reason that you have seen
6 individuals cite in declining an offer of housing?

7 A. No, I can't say that is.

8 89. Q. But certainly this report indicates
9 that as many as 75 percent of the respondents said
10 that they did not want to live independently in the
11 community?

12 A. That's what it says, yes.

13 90. Q. I'm going to return back to your
14 first affidavit now. I'm going to have to go
15 through the process of clicking through it from the
16 index again. It's paragraph 47 that I'd like to
17 look at now, which I'll scroll to. It's on the
18 screen now. Do I understand that there are
19 individuals who will refuse to enter any shelter no
20 matter when or whether one is available to them?

21 A. Yes.

22 91. Q. That's correct?

23 A. Yes.

24 92. Q. At paragraph 49 you indicate that,
25 "For some women, women's shelters and/or drop-ins

NIMIGAN MIHAILOVICH REPORTING INC.

NIMIGAN MIHAILOVICH REPORTING INC.

1 feel too invasive, unsafe and they feel put them at
2 risk," is that correct?

3 A. That's correct.

4 93. Q. Is CAP invasive or unsafe? I should
5 say Carol Anne's Place.

6 A. It depends on your perspective and
7 your experience and the realities -- your social
8 context. So for some women, it can feel unsafe and
9 it can feel too invasive. There's lots of people
10 in Carol Anne's Place. We have up to -- right now
11 we have up to 70 women and gender diverse people a
12 night. That's a lot of people. The safety --
13 people are presenting with very different issue.
14 Sometimes there are incidents of violence that
15 occur.

16 94. Q. There are incidents of violence that
17 occur even within Carol Anne's Place?

18 A. Yes.

19 95. Q. So at paragraph 58, I'm going to skip
20 down to that for a moment, you reference women
21 actively trying to use space around the YWCA
22 building to create temporary homes or beds. You
23 also say that women have told staff that they can
24 create more secure and comfortable spaces in tents.
25 Is that something that, in your experience, is

1 actually possible?

2 A. I believe that the women believe that
3 that's possible when they're saying it. They're
4 reporting it. I don't have the experience of
5 living in tents. I couldn't speak to what that
6 would be like and I trust that when they represent
7 their interests and what's safe and secure for
8 them, I trust and believe in what they say.

9 96. Q. I understand you believe that these
10 women believe it, but in your experience, is a tent
11 -- staying outside in a tent safer than staying in
12 an indoor space like Carol Anne's Place?

13 A. I think, again, that the experience --
14 their experience of safety says that that does
15 feel safer at times, and I would still invite them
16 in and talk to them about how could we create more
17 safety but recognize that -- sometimes we can't
18 create the conditions that would allow women to
19 feel safe.

20 97. Q. Sometimes you can't create the
21 conditions that would help them feel safe?

22 A. Yes.

23 98. Q. Certainly there are fewer crimes that
24 occur within Carol Anne's Place than just outside
25 it?

NIMIGAN MIHAILOVICH REPORTING INC.

NIMIGAN MIHAILOVICH REPORTING INC.

1 A. Absolutely. There's containment,
2 yes, within Carol Anne's Place.

3 99. Q. I just want to scroll up briefly to
4 paragraph 54 in your affidavit. You mention that
5 Violence Against Women's shelters funding is
6 managed through the province and homelessness
7 shelter funding was downloaded to the
8 municipalities, do you know when that occurred,
9 when that downloading occurred?

10 A. I couldn't say off the top of my
11 head.

12 100. Q. Was it recent or was it a long time
13 ago?

14 A. My understanding it was some time
15 ago.

16 101. Q. Okay.

17 A. Certainly in my time, the
18 responsibility for municipalities -- for homeless
19 and shelters has been on the municipalities while
20 I've been in management in the sector, so it's been
21 a number of years.

22 102. Q. And that's since 2011 if I understand
23 it right?

24 A. No.

25 103. Q. When did you start a management role

NIMIGAN MIHAILOVICH REPORTING INC.

1 in the shelter?

2 A. It's in my CV, I think, so.

3 104. Q. I can go to that.

4 A. Yes, I would refer to that. Also
5 because it's hard to remember some days these days,
6 so 2004.

7 105. Q. I see. The date that I had in my
8 notes was when you began as Director of Operations
9 by YWCA in 2011. So 2004 was when you first entered
10 a management role and that was at Good Shepherd?

11 A. Yes.

12 106. Q. Okay. And at that time, there had
13 been a downloading of the costs of managing
14 homelessness shelters to municipalities?

15 A. Correct.

16 107. Q. Okay. I'd like to now turn to your
17 supplementary affidavit again. This was the June
18 4th, 2024 affidavit that you've provided us. I'm
19 going to put that on the screen as well. Can you
20 see that okay?

21 A. Yes.

22 108. Q. In paragraph 2 you say that you
23 reviewed three documents, including two requests to
24 admit and a response to a request to admit, did you
25 review any other documents beyond those three when

NIMIGAN MIHAILOVICH REPORTING INC.

1 preparing this affidavit?

2 A. When preparing the affidavit? I may
3 have reviewed a number of documents in preparation,
4 but these are the three that were referenced, yes,
5 and included.

6 109. Q. Okay. Do you recall what other
7 documents you reviewed in preparing this?

8 A. I have a lot of documents and
9 research from both the City and also our own
10 documentation, so no, I can't recall which ones
11 I've reviewed.

12 110. Q. They're certainly not referenced by
13 research source or any factual assumptions
14 provided, is that correct?

15 A. Yes.

16 111. Q. If we go to paragraph 4 of this
17 supplemental affidavit, this is under the
18 subheading, "My Experience In Collecting Data on
19 Hamilton's Homeless Population and Shelter
20 Capacity," there are a number of statements about
21 the YWCA Hamilton, Carol Anne's Place, and my first
22 question is, what is the nature of the relationship
23 between YWCA Hamilton and Carol Anne's Place?

24 A. YWCA Hamilton was responsible for
25 starting and -- under my leadership starting and

NIMIGAN MIHAILOVICH REPORTING INC.

1 implementing and operating Carol Anne's Place. We
2 run, we operate Carol Anne's Place at YWCA.

3 112. Q. What's the nature of the relationship
4 between YWCA Hamilton and the City of Hamilton?

5 A. The City of Hamilton provides funding
6 to YWCA to operate some of our services.

7 113. Q. That includes Carol Anne's Place?

8 A. That currently includes Carol Anne's
9 Place.

10 114. Q. Just in terms of the name, who was
11 Carol Anne?

12 A. So Carol Anne was the founder in
13 Hamilton for Out Of The Cold and it was Out Of The
14 Cold who asked us to start a program like Carol
15 Anne's Place, so I decided to name it after Carol
16 Anne.

17 115. Q. So that was a decision you made in
18 order to honour her?

19 A. Yes. She's still alive, but yes.

20 116. Q. Understood. What staffing does Carol
21 Anne's Place have currently?

22 A. Currently our staffing is increased.
23 We have a supervisor, we have a manager, we have a
24 frontline staff on duty, at least two on-site, we
25 have harm reduction workers working in the space

NIMIGAN MIHAILOVICH REPORTING INC.

1 now and we also have staff from St. Joseph
2 Womankind, who provide detox -- not detox, sorry,
3 withdrawal management support, and then we also
4 have other practitioners who come in, other
5 clinicians or social navigators, social workers who
6 come in to assist.

7 117. Q. I understand the City began funding
8 Carol Anne's Place in 2019, is that right?

9 A. Yes.

10 118. Q. I've scrolled down to paragraph 8 of
11 your supplemental affidavit, you mentioned that the
12 City does not regard Carol Anne's Place as a
13 shelter.

14 A. Yes.

15 119. Q. In what way is that true?

16 A. So it's considered a drop-in service
17 with bed capacity. It doesn't qualify as a -- the
18 qualification in shelter is rather complex and
19 maybe arbitrary for the City, but it provides beds,
20 overnight beds and then it also is a low barrier
21 shelter. I would qualify that the staffing I
22 described for you is what we have today on the
23 staffing based on current funding, it is not the
24 staffing we had in 2019.

25 120. Q. Understood. There's been changes in

1 funding levels over time?

2 A. Yes.

3 121. Q. There was a period of time when Carol
4 Anne's Place was not operating, is that correct?

5 A. It started operating in 2016 and up
6 till 2019-2020, it was always run from March to
7 December, and so it was -- there were periods where
8 we wouldn't have a Carol Anne's Place operating in
9 the City.

10 122. Q. The funding levels increased to the
11 point where it could operate year-round?

12 A. That's right.

13 123. Q. It does offer shelter beds?

14 A. It offers overnight beds, yes.

15 124. Q. I would think that including Carol
16 Anne's Place bed count as part of the overall
17 City's shelter capacity is a reasonable choice, is
18 that right?

19 A. Yes.

20 125. Q. And it shows that the City does
21 include it among its other shelters?

22 A. Yes. For bed capacity, yes.

23 126. Q. If we go to paragraph 9 of your
24 supplemental affidavit, you say that, "62 of 101
25 women who stayed at Carol Anne's Place in May 2022

NIMIGAN MIHAILOVICH REPORTING INC.

NIMIGAN MIHAILOVICH REPORTING INC.

1 were also on the Master Guestlist in August 2021
2 indicating that they remained homeless throughout
3 this period." Any or all of those 62 individuals
4 may have obtained housing at least once during that
5 period of ten months, isn't that right?

6 A. They may -- yes, they may have.

7 127. Q. That's not something you're aware of?

8 A. Yes.

9 128. Q. So you're making a generalization
10 about this group of people, about those 62
11 individuals?

12 A. I'm saying those 62 individuals were
13 homeless in May 2022 and they were homeless in
14 August 2021.

15 129. Q. Yes, but you also draw an inference
16 from that that they remained homeless throughout
17 the intervening period, and I'm saying that you
18 don't know that, you're generalizing---

19 A. I see what you're saying. What I'm
20 saying is that they -- whether they had housing or
21 not, they became homeless again. So remained
22 homeless, I would say that for most part of that
23 list. That's my knowledge, is that those
24 individuals remained homeless during that period,
25 but I can't say for certain that none of them had

1 housing and lost that housing.

2 130. Q. Based on what you know, all of them
3 may have obtained housing during that period and
4 then lost---

5 A. No.

6 131. Q. ---and you wouldn't know that.

7 A. I would know that. That, I would
8 know.

9 132. Q. You would know that?

10 A. Yes.

11 133. Q. On what basis?

12 A. On the basis of the staff's reports
13 of who -- I know who the individuals are on that
14 list and could track where they had been and how
15 they've been through the period of time between
16 that time if they've been coming in to Carol Anne's
17 Place. So from August 2021 to May 2022 we could
18 see through their case management notes whether
19 they have obtained housing or not.

20 134. Q. You do have the ability to track
21 whether or not these 62 individuals had obtained
22 housing in the interim?

23 A. We could examine those 62 and we
24 could look to see if they had obtained housing.

25 135. Q. But have you done that or is this a

NIMIGAN MIHAILOVICH REPORTING INC.

NIMIGAN MIHAILOVICH REPORTING INC.

1 generalization and an inference from the fact that
2 they were on the list in May 2022 and in August
3 2021?

4 A. Yes. So this is -- you're correct, I
5 didn't look specifically to see had they had -- is
6 there any reference or indication that they had
7 obtained any kind of housing? No, I didn't do
8 that.

9 136. Q. If we go back just momentarily to
10 paragraph 8 of the supplementary affidavit, you
11 mentioned some of the additional services that
12 Carol Anne's Place offers beyond a bed.

13 A. Yes.

14 137. Q. Many women obtain services from Carol
15 Anne's Place other than shelter, correct?

16 A. Yes.

17 138. Q. And all of those individuals, are
18 they counted by Carol Anne's Place as having
19 accessed services?

20 A. Yes.

21 139. Q. Does Carol Anne's Place keep track of
22 the women it assists who obtain housing?

23 A. Could you clarify that question,
24 sorry.

25 140. Q. Of course. In terms of records that

1 Carol Anne's Place would keep, does it keep track
2 of the women that it assists who obtain housing?

3 A. You're asking -- yes, so once -- if
4 we know them to obtain housing, that would be noted
5 and that information is also available in HIFIS.

6 141. Q. Of the 101 women that you noted who
7 stayed at CAP, Carol Anne's Place, between May 2022
8 and -- or between August of 2021 and May of 2022,
9 do you know how many of them obtained housing?

10 A. Offhand, no, I don't know of any of
11 them obtaining housing.

12 142. Q. But it's not something that you've
13 looked at?

14 A. I could go back and look at that
15 information. I have that information, but I
16 haven't done that.

17 143. Q. You indicate as well that turn aways
18 occurred most nights between August of 2021 and May
19 of 2022. So, again, there were nights when no turn
20 aways occurred, correct?

21 A. Yes.

22 144. Q. And so you would agree that there
23 were times when the shelter capacity of Carol
24 Anne's Place was sufficient?

25 A. Sufficient to respond to who came to

NIMIGAN MIHAILOVICH REPORTING INC.

NIMIGAN MIHAILOVICH REPORTING INC.

1 the door, yes, but not necessarily representative
2 of who was experiencing homelessness in our
3 community.

4 145. Q. Of the people who sought shelter, you
5 were able to provide shelter to all of them on some
6 nights?

7 A. Yes.

8 146. Q. If we go to paragraph 10 of your
9 supplementary affidavit, you had mentioned
10 previously the Women's Housing Planning
11 Collaborative?

12 A. Yes.

13 147. Q. And you do give some information
14 about it in your initial affidavit. That is still
15 operating?

16 A. Yes.

17 148. Q. Who created that collaborative?

18 A. It was a group of women's shelters
19 who created the Collaborative. I was involved in
20 that creation.

21 149. Q. And you mention here 50 women who
22 consistently attempted to access shelter services
23 but were chronically unhoused throughout the year,
24 is that a list that's maintained by the
25 Collaborative?

1 A. So this is -- I would like to
2 clarify. This was a list that was used, it was
3 referenced in my first affidavit, from the triage
4 group, and the triage group represented people who
5 -- agencies that participate in the Women's Housing
6 Planning Collaborative, and that list -- so we had
7 that list and worked -- used that list early in the
8 pandemic of the 50 women who were consistently --
9 and chronically unhoused, so that list is -- it was
10 a list that we were using at that point in time
11 where we were drawing it out from all the women who
12 access our services.

13 150. Q. Understood. So in this paragraph,
14 paragraph 10, you say that that group of 50 women
15 were chronically unhoused throughout the year
16 because they could not be effectively supported in
17 shelters, what does effectively supported mean in
18 this sentence?

19 A. That we didn't have the adequate
20 supports of whether -- it would mostly be staffing
21 supports, to be able to maintain them -- those
22 individuals in a shelter setting, so we couldn't
23 provide whatever level of intensive supports,
24 privacy requirements, it could be a number of
25 things, each one would be different. It also could

NIMIGAN MIHAILOVICH REPORTING INC.

NIMIGAN MIHAILOVICH REPORTING INC.

be because their presentation of mental health issues, it could be because of drug use. We had no ability to provide any kind of safety because we were under resourced as a whole system.

151. Q. In terms of effectively supported, does that also means that there were difficulties in obtaining permanent housing for these women?

A. Yes.

152. Q. And would it be the same reasons that you believe that to be a difficulty for these particular 50 women?

A. It would be same or similar, yes, reasons.

153. Q. In terms of ability to pay, is that an additional issue in terms of obtaining permanent housing for women like the 50 on that list?

A. Not necessarily, particularly at that time, because it wasn't a question of getting the housing allowances or the RGIs or those pieces weren't -- or their income sorted out with ODSP or OW, those weren't the issues that we were confronted with that were challenging, it was the other aspects of their own individual needs and presentations that created the challenges and our limitation in terms of our resources that we had

NIMIGAN MIHAILOVICH REPORTING INC.

available.

154. Q. You used the phrase RGI, is that rent geared to income?

A. Correct.

155. Q. There are rent subsidies available via the City of Hamilton, is that right?

A. Yes.

156. Q. And, of course, there are provincial programs like ODSP and Ontario Works that persons who qualify can access?

A. Yes.

157. Q. In fact, ODSP has a shelter portion that can be accessed if shelter is obtained?

A. Yes.

158. Q. And so I would suggest that there are housing supports available in the City of Hamilton, would you agree with that?

A. Generally there are housing supports for this population. Those supports, no, were not available.

159. Q. If we go to paragraph 12 of your supplemental affidavit, I'll put that on the screen now, it's under the subheading "City's Data Undercounts The Demand For Shelter Services," you say that data collection at Carol Anne's Place is

NIMIGAN MIHAILOVICH REPORTING INC.

different than at other shelters in the City of Hamilton, you'd agree that Carol Anne's Place data may, in fact, not be representative of other shelters in Hamilton then?

A. So the data that we -- so the collection of data being different was that we were not entered into the HIFIS system and our data prior to 2019 wasn't being captured by the City.

160. Q. All right. But you would agree then that that since Carol Anne's Place is different, it may not be representative of other shelters in the City?

A. Do you mean the data may not be representative? I'm sorry, I don't understand the question.

161. Q. There are a couple of ways that we've discussed that Carol Anne's Place is different, but yes, let's limit it to the data collection. Since the data collected at Carol Anne's Place is collected differently than at other shelters in the City of Hamilton, the data collected at Carol Anne's Place may not be representative of the other shelters in the City of Hamilton, is that right?

A. Yes, there might be data not representative of the other shelters. They were

NIMIGAN MIHAILOVICH REPORTING INC.

collecting -- so what we would be collecting and journaling would be similar data, but we're just collecting the information or entering the information differently because we weren't using HIFIS.

162. Q. Paragraph 13 of your supplementary affidavit there are a number of statements, including "Shelters can only report those homeless individuals who come to shelters and identify themselves as homeless." You would agree that if a person does not seek shelter, then they cannot reasonably be counted as seeking shelter, right?

A. Correct, they can't be counted as seeking shelter if they weren't seeking shelter.

163. Q. You list a number of reasons why homeless individuals might not come to shelters. You list past mistreatment, fear of what will happen to belongings, fears that may not be real due to mental illness, an inability to follow rules, perceived futility, have each of these reasons been communicated to you by any identifiable individuals?

A. Yes, so these reasons have been communicated to me by staff, it's been communicated to me through the interactions that staff have had

NIMIGAN MIHAILOVICH REPORTING INC.

1 directly with clients. That would be where that
2 information would come from.

3 164. Q. So it hasn't been communicated to you
4 by any identifiable individuals using the shelter,
5 it's by staff members, is that right?

6 A. It's the notes and documentation from
7 staff that would inform me that this is the reason
8 why, yes. And also, I'd like to clarify not just
9 my staff, but the staff from other women shelters
10 as well.

11 165. Q. Right. Those would be people that
12 you communicate with via the Collaborative?

13 A. Via the Collaborative, yes, or the
14 triage.

15 166. Q. You indicate in this paragraph that
16 some or all of those reasons; past mistreatment, et
17 cetera, may apply to some or all of the individuals
18 that you've seen staying outside Carol Anne's
19 Place, that's an assumption you're making, correct?
20 You haven't gone out and spoken to each of them and
21 asked them why they're not making use of Carol
22 Anne's Place?

23 A. No, I haven't done that.

24 167. Q. You don't know if the women that
25 you've seen outside of Carol Anne's Place have ever

NIMIGAN MIHAILOVICH REPORTING INC.

1 sought assistance from other shelters, correct?

2 A. Yes, I know some of them have.

3 168. Q. Some of them have done that?

4 A. Yes.

5 169. Q. Okay.

6 A. The women outside aren't totally
7 unknown to me. The relationship is I don't have a
8 direct client relationship in my capacity as CEO or
9 in my capacity as Director of Operations. I would
10 come in every day as Director of Operations pre-
11 pandemic, see the women outside, I would -- my
12 interactions were limited to conversations,
13 somebody may ask me for shelter, somebody may say,
14 you know, something critical or may be seeking
15 other kinds of help, but those were limited
16 interactions that I would see and come across and
17 then I would also talk to the staff daily. During
18 the pandemic I was 24/7 on-call, available to
19 staff. I talk directly to staff, I talk directly
20 to the management who were frontline overseeing
21 staff. So my interactions -- there was lots of
22 interactions, but at that capacity as opposed to
23 direct client service delivery. That's not within
24 my role as Director of Operations or CEO.

25 170. Q. Thank you. If we go to paragraph 14

NIMIGAN MIHAILOVICH REPORTING INC.

1 of your supplementary affidavit, you reference that
2 shelters can only report data from homeless
3 individuals who have given shelters permission, how
4 often would you say individuals assisted by Carol
5 Anne's Place refused to provide any data?

6 A. It occurs regularly, but not most
7 individuals.

8 171. Q. You say that Carol Anne's Place does
9 not include those individuals in the report sent to
10 the City on shelter demands, why would a refusal
11 not still be logged?

12 A. We have to enter the name of the
13 person, so that's part of it. We wouldn't provide
14 a name of an individual who said they didn't want
15 us to provide any name.

16 172. Q. Understand. I understand that.

17 A. Yes.

18 173. Q. In terms of what's being provided to
19 the City of Hamilton, is a refusal still logged as
20 a refusal even without a name?

21 A. My understanding is that -- so just
22 to be clear, for most of this time that we have not
23 used HIFIS. It was only after 2019 was data being
24 reported to the City at all. We don't have -- so
25 in terms of the information that's shared, it was

NIMIGAN MIHAILOVICH REPORTING INC.

1 not -- we would send the number of turn aways and
2 we would send the number of beds used and women
3 staying to the City and we would collect that data.

4 174. Q. I appreciate that.

5 A. Okay.

6 175. Q. So if we go to paragraph 13 of your
7 supplementary affidavit, you reference VAW
8 shelters, Violence Against Women shelters, and the
9 fact that they are not funded by the City of
10 Hamilton, but you'd agree with me that there are
11 other organizations in the City of Hamilton;
12 charities, churches, mosques, temples, Gurdwaras
13 that may offer shelter in various capacities, is
14 that right?

15 A. I'm only aware of shelters -- VAW
16 shelters -- charitable VAW shelters that offer
17 beds. I'm sorry, I'm not aware of anyone else
18 offering beds for women. You mentioned Gurdwaras,
19 you mentioned other mosques, I'm not aware of them
20 providing beds.

21 176. Q. To be clear, I'm not solely talking
22 about Violence Against Women assistance, I'm
23 talking about shelter space in general for women.

24 A. No, I'm not aware of any. If there
25 are, I'm not aware of them.

NIMIGAN MIHAILOVICH REPORTING INC.

1 177. Q. You're aware of the Society of St.
2 Vincent de Paul opening a facility called Mary's
3 Ark?

4 A. No, actually, I'm not.

5 178. Q. Mary's Ark specifically for homeless
6 women, you're not aware of that?

7 A. No, that's not information I've had
8 and nor has it been discussed at the Women's
9 Housing Planning Collaborative. I've never heard
10 of it.

11 179. Q. You'd agree that alleviation of
12 poverty is one of the goals of many charities?

13 A. Of charities? There are charities,
14 yes, that would be -- alleviation of poverty would
15 be a goal.

16 180. Q. Would you agree that only counting
17 City funded shelter beds may be under counting the
18 total actual shelter capacity of the City?

19 A. So there are beds that would not --
20 you're saying they're not counted by the City?
21 Yes.

22 181. Q. And that only counting City funded
23 shelter beds would be undercounting the total
24 capacity of the City?

25 A. If you mean the City broadly, you

1 mean the City as in just what's contained within
2 the geography of the City, that there are
3 additional shelter beds that are not City funded?
4 That's correct.

5 182. Q. So only counting City funded shelter
6 beds would be undercounting the total capacity?

7 A. It would be under counting -- it
8 would be not representative of the total shelter,
9 all the shelters -- all the shelter beds across the
10 City, whether they're -- however they are funded,
11 yes.

12 183. Q. Are you aware of how many hospital
13 beds there are in the City of Hamilton for opiate
14 treatment?

15 A. I don't know that number.

16 184. Q. Are you aware of how many hospital
17 beds are available in the City of Hamilton for
18 mental health treatment?

19 A. I don't know that number.

20 185. Q. Are you aware of there being any of
21 those two classes of possible beds available?

22 A. Yes.

23 186. Q. There are such beds in the City of
24 Hamilton?

25 A. Yes, the beds are not the same as the

NIMIGAN MIHAILOVICH REPORTING INC.

NIMIGAN MIHAILOVICH REPORTING INC.

1 shelter beds, may not, you know, keep people
2 overnight. But, yes, there are beds.

3 187. Q. Would you agree that tracking data on
4 the City funded shelter system helps to best deploy
5 the City's resources?

6 A. I would assume that that would be
7 valuable. I would understand that's valuable
8 information. Data -- tracking data helps you
9 design and decide on how you resource the system.

10 188. Q. Would you agree that the City cannot
11 force shelter providers that it's not funding to
12 provide data?

13 A. I agree, they can't be forced.

14 189. Q. If we go to paragraph 17 of your
15 supplemental affidavit, you say, "Not every shelter
16 bed that is reported as available is actually
17 available," or able to be used, I suppose, is
18 another way of paraphrasing that. Would you agree?

19 A. Yes.

20 190. Q. And you reference things like bedbugs
21 or damage due to complex needs of individuals or
22 family use preventing the use of some of those
23 beds?

24 A. Yes.

25 191. Q. Is that something that CAP does

1 experience, loss of beds for those reasons?

2 A. Not specifically for those reasons,
3 but yes, there might be beds that would be
4 unavailable. Yes.

5 192. Q. Are you aware of that ever happening
6 in any other shelters on any particular day?

7 A. Yes, I'm aware that there have been
8 days when beds are not available or nights.

9 193. Q. How does that information come to
10 you?

11 A. So it would get reported. So, for
12 example, staff is looking for a bed for somebody
13 and they can't find the beds because -- so this
14 would happen during the pandemic. For example, I
15 would get a call, we'd have, you know, an
16 individual who needed somewhere to go, there were
17 no beds available, such and such shelter couldn't
18 open up the bed because they were in the process of
19 changing it over or they had a situation, they
20 didn't have the staff to manage to bring in, we'd
21 have to wait until something was done. So that was
22 an occurrence that would get reported to me.

23 194. Q. That's because of the fact that the
24 shelters communicate with one another?

25 A. That's right.

NIMIGAN MIHAILOVICH REPORTING INC.

NIMIGAN MIHAILOVICH REPORTING INC.

1 195. Q. I just want to be clear, in paragraph
2 19 you mention inadequate staffing on a given
3 night, again, that's information that would come to
4 you because of the communication that occurs
5 between shelters?

6 A. Yes.

7 196. Q. But your purview doesn't include
8 monitoring or managing staffing levels at any other
9 shelters, correct?

10 A. Correct.

11 197. Q. And you don't have any evidence
12 regarding the capacity or the usage of beds at any
13 VAW shelter in Hamilton, right?

14 A. I have information that was shared --
15 so what I would have is what was shared at the
16 Women's Housing Planning Collaborative, I would
17 have information from media reports. In terms of
18 monitoring their numbers, no, I don't have any
19 information.

20 198. Q. In paragraph 21 of your supplemental
21 affidavit you say that the demand for VAW beds is
22 not tracked by the City, given that VAW beds are
23 also not tracked by the City, you'd agree that
24 there's nothing misleading or inconsistent about
25 the City's data, it doesn't include either one?

NIMIGAN MIHAILOVICH REPORTING INC.

1 A. I think that the City's data doesn't
2 represent the demand -- the total demand of -- for
3 women shelter beds, and I think that by the
4 representation of what is available, doesn't
5 express the whole picture, and by representing who
6 -- the number of people who seek out or receive
7 service from City shelter beds doesn't tell the
8 whole picture. So I do think that within that
9 scope, it is misleading. I don't think it's
10 intended to be misleading. I don't want to paint
11 that. But it is misleading and the picture is
12 bigger than what is shared by the City.

13 199. Q. I could see saying that the City's
14 data is misleading or inconsistent if the City was
15 including VAW beds as available capacity but not
16 including their usage. But the City isn't doing
17 that, right?

18 A. I'm not aware of the City doing that.
19 I'm aware the City doesn't take in the whole
20 picture of what the demand for service is.

21 200. Q. Right. But I mean they're also not
22 referencing the supply, and that's reasonable,
23 wouldn't you say?

24 A. But they're also not referencing then
25 the turn aways and, you know, the families who are

NIMIGAN MIHAILOVICH REPORTING INC.

1 staying or the individual women who have had to
2 sleep in an office or on a chair or in a boardroom.

3 201. Q. The City just doesn't have access to
4 VAW data at all and the City has openly
5 acknowledged that in its response to request to
6 admit that you've reviewed and referenced in your
7 affidavit, right?

8 A. So the City doesn't -- what access
9 they have, I don't know. What they report, what's
10 visible, what's visibly shared is that the -- only
11 the City-funded services.

12 202. Q. To be clear, the City has said in the
13 response to request to admit that you reference in
14 your affidavit, that they don't have access to VAW
15 data at all. You don't have any reason to
16 disbelieve or challenge that evidence?

17 A. At the Women's Housing Planning
18 Collaborative we presented VAW data, so I know
19 that's being provided to the City. But does the
20 City have regular, consistent access, that's
21 between the City and the VAW shelters and the
22 province. I don't think it's unfair to say that
23 there's limitations or challenges to the sharing of
24 data, but the data has been presented through the
25 Women's Housing Planning collaborative since its

NIMIGAN MIHAILOVICH REPORTING INC.

1 inception.

2 203. Q. Final question: at the end of your
3 supplementary affidavit there's just your name in
4 quotation marks, can you just confirm for me that
5 you agreed that this document would bear an
6 electronic signature and that you approved it?

7 A. Yes, I can confirm that.

8 204. MR. DIACUR: Counsel, just a momentary
9 indulgence but I believe I'm finished.

10 DISCUSSION OFF THE RECORD

11 BRIEF RECESS

12 BY MR. DIACUR:

13 205. Q. Are you a proponent of the Housing
14 First philosophy?

15 A. Meaning am I -- do I promote the
16 Housing First philosophy?

17 206. Q. Do you believe it? Do you think that
18 it is scientifically sound and it should be
19 applied?

20 A. So I believe that there's validity in
21 Housing First supports with -- Housing First with
22 the right supports in place. I don't believe
23 Housing First is always implemented as it's fully
24 intended and as it was studied in the original
25 study by---

NIMIGAN MIHAILOVICH REPORTING INC.

MR. CHOUDRY: Mr. Diacur, are you asking

Ms. Uppal for an opinion?

MR. DIACUR: No. I'm asking her whether she considers Housing First to be a scientifically sound method of addressing the unhoused individuals that she personally works with.

MR. CHOUDRY: It sounds to me like a bit of an opinion.

MR. DIACUR: If that's a refusal, that's fine. Those are all my questions, Counsel. Thank you.

DISCUSSION OFF THE RECORD

BRIEF RECESS 11:14 - 11:20

RE-EXAMINATION BY MR. CHOUDRY:

Q. I have two questions, Ms. Uppal. The first is Mr. Diacur asked you about criminal incidents outside Carol Anne's Place in addition to what you described in your affidavit, but he didn't ask you to specify the timeframe and nor did you. So the examples you gave, what kind of period of time were you describing?

A. Within the last year, the examples I provided.

Q. Was that a comprehensive list of

examples?

A. No, not at all.

Q. Are you able to estimate how many -- Mr. Diacur asked you about crimes and you gave certain types of crimes as examples.

A. Yes.

Q. Are you able to estimate, in your experience, how many crimes against persons or property occur outside CAP a week or a month?

A. To estimate -- I can go back to the affidavit where I specifically report the number of incidents that the police have had reported on an increasing -- I have to find it.

Q. Sure, you're welcome to refer to your affidavit in any answer, so if you want to take a moment to get to it, please do.

A. Okay. So it was in the first affidavit from July 2023 at paragraph 30. I speak about the number of calls we would make to police for Carol Anne's Place, and so those accounts would represent from December 6, 2021 and it talks about the number of nine individuals arrested, six charges laid in eight provincial offences in that period, to go and look at what's happened since that time, I actually have been looking at some of

NIMIGAN MIHAILOVICH REPORTING INC.

NIMIGAN MIHAILOVICH REPORTING INC.

that data but I couldn't estimate for you how much. We call the police weekly, every few days at least, and so there's a number of incidents that we continue to report.

Q. Another topic that Mr. Diacur asked you about was the VAW shelter system.

A. Yes.

Q. I'm just wondering, have you ever worked in the VAW shelter system in any capacity?

A. Yes. So the first part of my career when I was with Good Shepherd was working with the VAW system starting with Martha House. I was a manager overseeing VAW programs, and the VAW shelter, which was Martha House. And then when I came to YWCA and we acquired Phoenix Place, which is a VAW second stage funded service through the same funding portfolio from the province, as well as other services for Violence Against Women supports. So we've continued to operate and run residential and nonresidential VAW services.

Q. Those are all my questions. Thank you, Ms. Uppal.

---Whereupon the cross-examination was concluded at 11:25 a.m.

NIMIGAN MIHAILOVICH REPORTING INC.

I hereby certify the foregoing to be the evidence of MEDOR UPPAL, given under oath before me on the 20th day of August, 2024, recorded verbatim and later transcribed by me.

CERTIFIED CORRECT:

Helen Matsos

Helen Matsos, CVR

Certified Verbatim Reporter

Commissioner of Oaths (Expires July 18, 2025)

This document must bear the original signature and certification of the Reporter in Attendance at the examination of the witness in the above captioned matter. Absence of this certification and signature is indication this document has been reproduced without the permission of Nimigan Mihailovich Reporting Inc., and as such, is not an original document.

NIMIGAN MIHAILOVICH REPORTING INC.

TAB 90

Court File No. CV-21-00077187-0000

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO
MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, CHRISTINE
DELOREY, GLENN GNATUK, TAYLOR GOGO- HORNER, CASSANDRA
JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD,
COREY MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL
PIERRE, LINSLEY GREAVES and PATRICK WARD**

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF JILL WIWCHARUK
SWORN JUNE 7, 2024

I, Doctor Jill Wiwcharuk, of the City of Victoria in the Province of British Columbia,

AFFIRM AND STATE:

1. I have personal knowledge with respect to the facts and reports set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.

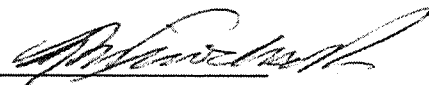
2. I am a physician formally with the Shelter Health Network (SHN) and the Hamilton Social Medicine Response Team (HAMSMaRT). These organizations provide medical care to individuals affected by homelessness or housing precarity.
3. I provided a report to the Hamilton Community Legal Clinic dated May 31, 2022 with respect to Cory Monahan. Attached hereto and marked as **Exhibit "A"** is a copy of this medical letter.
4. I provided a report to the Hamilton Community Legal Clinic dated June 1, 2022 with respect to Cassandra Jordan. Attached hereto and marked as **Exhibit "B"** is a copy of this medical letter.
5. I provided a report to the Hamilton Community Legal Clinic dated June 2, 2022 with respect to Sherri Ogden. Attached hereto and marked as **Exhibit "C"** is a copy of this medical letter.
6. I provided a report to the Hamilton Community Legal Clinic dated June 3, 2022 with respect to Patrick Ward. Attached hereto and marked as **Exhibit "D"** is a copy of this medical letter.
7. I provided a report to the Hamilton Community Legal Clinic dated June 8, 2022 with respect to Jahmal (Jammy) Pierre. Attached hereto and marked as **Exhibit "E"** is a copy of this medical letter.

8. I provided a report to the Hamilton Community Legal Clinic dated June 9, 2022 with respect to Mario Muscato. Attached hereto and marked as **Exhibit "F"** is a copy of this medical letter.
9. I provided a report to the Hamilton Community Legal Clinic dated June 9, 2022 with respect to Misty Marshall. Attached hereto and marked as **Exhibit "G"** is a copy of this medical letter.
10. I provided a report to the Hamilton Community Legal Clinic dated June 10, 2022 with respect to Shawn Arnold. Attached hereto and marked as **Exhibit "H"** is a copy of this medical letter.

Affirmed remotely by Dr. Jill Wiwarchuk stated as being located in the City of Victoria in the Province of British Columbia, before me at the City of Richmond Hill, Province of Ontario, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
Sharon Crowe LSO 47108R



Dr. Jill Wiwcharuk

SCHEDULE



82 Stinson St
Hamilton, Ontario
L8N 1S2
Phone: 905-526-7137
Fax: 905-526-7969
Shelterhealthnetwork.ca

May 31, 2022

Hamilton Community Legal Clinic

100 Main St. E. Suite 203

Hamilton ON L8N 3W4

ATTN: Sharon Crowe and Stephanie Cox

RE: Cory Monahan, dob: April 26, 1976

This is Exhibit "A" referred to in the
affidavit of J. W. W. W. W. W.
sworn before me, this 7
day of June 2022
Sharon Crowe, Notary Public, etc.

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed. Mr Monahan has accessed medical care through the Shelter Health Network since April, 2020. Throughout this time, notes indicate that this gentleman has been homeless and has commonly been sleeping rough (ie: not accessing shelters and instead sleeping outdoors). One note dated March 9, 2022 outlines his distress at sleeping outside in the cold and wishing for help accessing a shelter bed. He had been trying to access a men's shelter bed and had been unable to do so. He notes he "is frustrated he can't get into a shelter" and that he "just wants to feel warm again." At that time, the health care practitioner who saw him advocated for agency staff to use the HIFIS system to check on whether there were service restrictions in place. She was able to help secure a bed for him at Mission Services Men's Centre on that occasion.

~~As is common in the homeless population who often only access healthcare episodically~~ We do not have in depth medical records available for this gentleman. I do know that this gentleman suffers from opioid use disorder, stimulant use disorder and I am convinced that he has undiagnosed mental health issues. He has had near fatal opioid overdoses which required multiple doses of naloxone (opioid antidote) and emergency care. Mr Monahan has mostly made contact with the SHN looking for help with acute skin infections. On July 28, 2020 he saw us with infected bites on his body. Note was made that he was sleeping outside and had no access to a tent. ~~It is likely that if Mr Monahan had had access to a tent, he would have had fewer bug bites resulting in infection~~

I have spoken to Mr Monahan about his homeless status and he has shared the mental distress this causes him. He has broken down in tears on occasion when he speaks to me about his desperate desire to be housed. I believe that his homeless state causes him deep, ongoing stress that negatively impacts his mental health. This increased state of anxiety is often cited as a reason why people use illicit substances, to cope with stressors that feel insurmountable.

I hope this is helpful. Please let me know how I can be of further assistance.



Dr Jill Wiwcharuk, MD, CCFP (EM)



**Shelter
Health
Network**

82 Stinson St
Hamilton, Ontario
L8N 1S2
Phone: 905-526-7137
Fax: 905-526-7969
Shelterhealthnetwork.ca

Hamilton Community Legal Clinic
100 Main St. E. Suite 203
Hamilton ON L8N 3W4

This is Exhibit ^{1 B} referred to in the
affidavit of Dr. W. W. W. W. W.
sworn before me, this 1
day of June 2021
Sharon Crowe
Notary Public, ETC.

June 1, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Cassandra Jordan, dob: April 29, 1983

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed. Ms Jordan has accessed medical care sporadically through the Shelter Health Network since October, 2020.

~~As is common in the homeless population who often only access healthcare episodically,~~ We do not have in depth medical records available for this woman. I do know that she suffers from opioid use disorder, stimulant use disorder, chronic pain and a recent acetabular fracture and hip dislocation requiring surgery. I am also certain she has significant undiagnosed mental health issues.

On November 24, 2021, I provided medical care to Ms Jordan in her tent at JC Beemer Park. She had sustained a significant burn to the back of her leg two days prior. This was a partial thickness burn that encompassed $\frac{1}{4}$ of her back upper thigh and was causing her significant pain. If she had presented to hospital, she would likely have been admitted to a specialized burn unit.

While I was assessing her and providing care, there was a large police presence who were engaged in clearing this encampment. Ms Jordan was very distressed in that she had no appropriate options available to her with regards to where she could go. She had a large tent

with significant possessions and was totally overwhelmed as to how to keep her possessions safe.

Follow-up for high quality wound care was paramount to treating this burn. I tried my best to organize follow up for her but it was essentially impossible because she had no idea where she was going to be the following day. She did end up accessing the Barrett Centre (a crisis shelter that is only for short stays up to 5 days usually) and was seen the following day by a nurse practitioner from the SHN. Unfortunately, she left the Barrett Centre after a few days and did not receive any other care for her burn that I am aware of. I saw her two months later in January and her burn had healed by that time.

Given the severity of her injury, if Ms Jordan had not been evicted from her encampment, I would have made it a priority to see her daily for wound care. As it played out, being evicted from the encampment while in the midst of a significant medical issue like that made it impossible for me to follow up with her on an ongoing basis. Her priorities in this case were far more focused on keeping her tent and her possessions and finding a new place to stay than on her medical care. ~~This is a common hierarchy of priorities among people who are homeless.~~

More recently, I saw Ms Jordan during her stay at the Hamilton General Hospital after she sustained an acetabular fracture and hip dislocation secondary to an altercation with police on May 6, 2022. She required surgery at that time. I was involved in providing addiction related care for her during her inpatient stay. She had significant pain from this injury and is likely to develop chronic pain in this hip in the future.

I hope this is helpful. Please be in touch if I can be of further assistance.



Dr Jill Wiwcharuk, MD, CCFP (EM)



**Shelter
Health
Network**

82 Stinson St
Hamilton, Ontario
L8N 1S2
Phone: 905-526-7137
Fax: 905-526-7969
Shelterhealthnetwork.ca

Hamilton Community Legal Clinic
100 Main St. E. Suite 203
Hamilton ON L8N 3W4

*This is Exhibit "C" referred to in the
affidavit of JIM WIMICHANUK
sworn before me, this 7
day of June 20²⁴
Sharon Crowe
Sharon Crowe, J.S.T., ETC.*

June 2, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Sherri Ogden, dob: July 31, 1993

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed. Ms Ogden has accessed medical care through the Shelter Health Network since 2010 when she was 17 years old. Initially she was seen infrequently but she has been seen regularly since September 2020. I am certain she has been homeless since 2020 and I suspect she has been in and out of homelessness her entire adult life.

Ms Ogden has a family physician outside of SHN whom she sees sporadically. She has only ever seen SHN practitioners for issues related to contraception, poor sleep or aches/pains and various rashes. I am certain that she has very significant undiagnosed mental health illness. Many people who are homeless are unable to access specialized medical care as they have so many competing priorities in their lives. Medical records do not always capture all the conditions that a homeless individual struggles with, because they access care so sporadically and often do not have the time or inclination to address some of the underlying issues.

For the majority of the last two years, Ms Ogden has been sleeping rough. At one point she was sleeping in a tent in her mother's back yard. Other times she sleeps outside of the Wesley Day Centre. On November 11, 2021 she came to see me and stated that she wanted to get inside from the cold and asked for help getting into a shelter. I asked Wesley staff to help her with this process. To my knowledge she did not end up securing a shelter bed at that time.

Ms Ogden would often see me with complaints of poor sleep and being tired. Although she would sometimes have a tent, many other times she was sleeping entirely unsheltered. This can result in a lot of anxiety and stress and a feeling of constantly having to be on the look-out. Women in particular

~~describe feeling unsafe sleeping unsheltered outside,~~ I would often see her sleeping in the Wesley Day Centre during the day, simply exhausted from having slept so poorly outside the night before.

Hospital records indicate that Ms Ogden has accessed the emergency department on 10 occasions since the fall of 2020. I notice that all of these visits were for functional pain. Functional pain diagnoses are things like headaches and abdominal pain that can often be related to stress and anxiety but have no underlying pathology and is not associated with any abnormal labwork or imaging. This would be in keeping with the extraordinarily stressful situation that Ms Ogden has been in as she continues to remain homeless, often unsheltered and at times unable to access a shelter bed when she feels she needs one.

I hope this is helpful. Please let me know if I can be of further assistance.



Dr Jill Wiwcharuk, MD, CCFP (EM)

INTENTIONALLY OMITTED - APPLICANT REMOVED

INTENTIONALLY OMITTED - APPLICANT REMOVED



**Shelter
Health
Network**

*This is Exhibit "E" referred to in the
affidavit of Dr. Wiwcharuk*

sworn before me, this 7

day of June 20, 2021

Sharon Crowe
Sharon Crowe, COMMISSIONER, ETC.

82 Stinson St
Hamilton, Ontario

L8N 1S2

Phone: 905-526-7137

Fax: 905-526-7969

Shelterhealthnetwork.ca

June 8, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Jahmal (Jammy) Pierre, dob: Dec 20, 1989

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed.

Ms Pierre is a trans woman who suffers from stimulant use disorder and opiate use disorder. She has rarely sought help through the Shelter Health Network so the medical history I can provide is very limited. She has only been seen on three occasions and these were all related to opiate overdoses in 2020. On one occasion in August she had an unintentional opiate overdose and was hospitalized in the Intensive Care Unit for a period of time. She was encouraged to follow up with doctors at the YWCA after that incident and that is when she saw my SHN colleagues. Ms Pierre described this overdose as entirely unintentional. She had used a contaminated supply of methamphetamine and did not know that there was street fentanyl in the supply that she had received. ~~Ms Pierre was lucky to have survived as I have had had many opiate-naive patients in the exact same situation who have died in this scenario.~~

In November of 2020, I was doing outreach work and saw Ms Pierre slumped over on the sidewalk. I approached her and quickly recognized that she had suffered an opiate overdose. It required many doses of the opiate antidote naloxone to get her to start breathing spontaneously on her own. Once again, she was very lucky to survive. I saw her later that day in the emergency department where she had been brought by EMS. Unfortunately, she was not at a point where she was ready to engage with treatment for her substance use disorders. Given this, she continues to be at an extremely high risk of overdose in the future.

I hope this is helpful. If there is any way I can be of further assistance, please let me know.

Sincerely,

Dr. Jill Wiwcharuk, MD, CCFP (EM)



**Shelter
Health
Network**

82 Stinson St
Hamilton, Ontario
L8N 1S2
Phone: 905-526-7137
Fax: 905-526-7969
Shelterhealthnetwork.ca

Hamilton Community Legal Clinic
100 Main St. E. Suite 203
Hamilton ON L8N 3W4

This is Exhibit ^{"F"}..... referred to in the
affidavit of Dr. W. W. W. W. W.
sworn before me, this 1
day of June 2024
Sharon Crowe
.....
Sharon Crowe, JUDGE, JUDGE, ETC.

June 9, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Mario Muscato, dob: Oct 31, 1973

I am a physician with the Shelter Health Network in Hamilton, Ontario. I also practice addiction medicine at The Hamilton Clinic. I regularly provide healthcare to people who are homeless or precariously housed. Mr Muscato has been a patient of mine since early 2019 and I see him both at SHN clinics and at The Hamilton Clinic. I often see him several times a week for medical care. Mr Muscato has been homeless the entire time I have cared for him. He is often unable to access shelter beds due to service restrictions and shelters being at capacity. For this reason, he often ends up sleeping rough. Despite Mr Muscato's very significant disabilities, he has never been prioritized for housing in an effective way.

Mr Muscato has very significant disabilities. He suffers from opioid use disorder, stimulant use disorder, HIV, post-traumatic stress disorder, major depressive disorder, acquired brain injury, left partial forearm amputation, extensive burn injuries to neck and face resulting in chronic pain, severe neuropathy to both upper extremities, right forearm amputation, tendon and nerve grafts to left forearm resulting in severely compromised use of this arm.

Mr Muscato suffered a near fatal electrocution in 2018 which resulted in the partial amputation of his left forearm. He also had severe burn injuries to his right forearm and there was extensive grafting that needed to be done to try to salvage any use of this hand/arm. Unfortunately, the grafting was only partially successful. So Mr Muscato now has extremely limited use of his right forearm. He is unable to fully extend the arm, and his fingers are

permanently fixed in a claw-like grip. He has no sensation to any of these fingers which puts him at a constant risk of further injury. For example, he has seen me for burns to these fingers from the top of an electric stove that he was cleaning and he didn't even know that the stove was hot. In the winter, he has suffered frostbite injuries to this hand due to an inability to feel the cold.

When he suffered this near fatal electrocution, he also ended up with a bleed in his brain. This eventually improved with time, but I believe he has been left with a significant acquired brain injury. ~~People with acquired brain injuries struggle with things like memory, mood lability (ie: are often quick to anger and have difficulties with their emotions), chronic headaches, etc. They will have a harder time managing psychiatric diagnoses such as anxiety and depression and have a high propensity for addictions.~~

Mr Muscato would be eligible for a right arm prosthesis, ~~but the process to obtain one requires multiple appointments and fittings. His precarious housing situation, rarely having reliable access to a phone, his acquired brain injury and the chaotic lifestyle that ensues due to his unstable addictions have made it impossible for him to follow up as is necessary to obtain a prosthesis.~~

Mr Muscato's mental health has suffered. As I mentioned, he has posttraumatic stress disorder both from adverse events in childhood (physical and sexual abuse) as well as from the electrocution injury in 2018. In order to use drugs intravenously, he relies on other people to inject him due to his disability. He has spoken to me on numerous occasions of feeling so depressed that he would like to die by overdose and to do that he feels he would need to trick someone into injecting too much fentanyl.

Another significant health issue of Mr Muscato's is that he has untreated HIV. In order to benefit from medications for HIV, an individual has to be able to take medications consistently. If this is not possible, it is highly likely that the virus will become treatment-resistant and therefore harder to treat. ~~Because Mr Muscato's lifestyle is so chaotic, he has never been able to access medications consistently. He is a target on the street due to his disability and often has his belongings stolen. So when he does have medications on him, more often than not, they are lost or stolen within a few days. From a practical standpoint, it would be near impossible for him to even open a standard pharmacy bottle of pills on his own. Given his untreated HIV, he is at risk of developing AIDS down the road if he does not find enough stability to start accessing medications regularly.~~

Mr Muscato sees me regularly in most part for addictions related care. He wants to access opioid replacement therapy and stop using street drugs. ~~To get to a therapeutic dose of opioid replacement therapy (ie: methadone), he needs to access a pharmacy every day to receive his dose. This consistency has been his biggest struggle. His housing instability is the main factor behind this inability to access a pharmacy daily. Because he bounces between shelters, encampments and couch surfing, he can rarely count on being able to access medications from~~

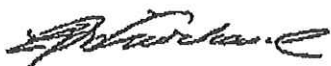
~~One geographic location every day. For example, someone that is housed knows that they will wake up in the same place every day and can simply build a routine of waking up and walking to a nearby pharmacy for their daily dose of medication. Mr Muscato does not have this luxury.~~

~~On April 11, 2019, note is made in Mr Muscato's chart that "this patient needs housing above all else" and this is reiterated in his medical chart over the subsequent years. This is specifically because his most critical medical issues are simply not being effectively treated while housing is so unstable. There were times when he would receive two weeks of opioid agonist therapy consistently but then he would be service restricted from a shelter or moved from an encampment and he would lose that stability and have to restart again down the road.~~

Mr Muscato has spoken to me on numerous occasions about difficulties that he encounters in the shelter system. He has cited racism as one of the issues that he faces. He feels that he is commonly discriminated against due to his Indigenous status. He also has difficulty in congregate settings because his physical needs are so different than others. For example, he needs much more time to eat a meal due to his compromised ability to manipulate utensils. He also often needs much longer in bathrooms or other hygiene facilities due to his disability. He has people getting angry at him when he cannot complete tasks in the same time that it takes an able-bodied individual to do so.

I hope this has been helpful. Please be in touch if there is any further way I can be of assistance.

Sincerely,



Dr Jill Wiwcharuk, MD, CCFP (EM)



82 Stinson St
Hamilton, Ontario
L8N 1S2
Phone: 905-526-7137
Fax: 905-526-7969
Shelterhealthnetwork.ca

Hamilton Community Legal Clinic
100 Main St. E. Suite 203
Hamilton ON L8N 3W4

*This is Exhibit "G" referred to in the
affidavit of J.M. Winchank
sworn before me, this 7
day of June 2024
Sharon Crowe
COMMISSIONER, ETC.*

June 9, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Mysty Marshall, dob: Dec 18, 1991

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed. I first met Ms Marshall when she was living in a tent on Ferguson Avenue in the summer of 2020. Since that time she has remained homeless. Prior to that, she was couch surfing or staying in budget motels (which is also a form of homelessness). I am unsure how long she was in that position.

To my knowledge, Ms Marshall has a past medical history of opiate use disorder, stimulant use disorder, major depressive disorder with suicidal ideation and asthma. She has a history of abuse in childhood and has been in abusive relationships throughout her adult years.

I saw Ms Marshall initially for asthma exacerbations when she was homeless and living in a tent on Ferguson Avenue. The heat and humidity were very oppressive and this often exacerbates asthma in people who are unable to access cooler indoor air. I saw her on October 1st and was able to reassess her the following week. I noted that her asthma had worsened and she needed some emergency treatment at that time. I was glad that she was in the same area because knowing that she was at risk of deteriorating medically, I was able to reassess her and provide the emergency treatment when it was needed.

In September, 2021, I again saw Ms Marshall at a drop-in centre for individuals experiencing homelessness. She was extremely disheveled, had dirty clothes and extensive matting of her

hair with a severe case of head lice that was causing underlying cellulitis (skin infection) to her scalp and ears. She also had an extensive body rash that was likely caused by scabies. ~~It was clear she had had no access to shower or laundry facilities for a long period of time.~~ I suspected that she was profoundly depressed as well.

Despite having an addiction to opioids, she has not been ready to engage with treatment. Nor does she readily engage with anyone regarding her mental health. It is noted that she does not accept help from people readily. ~~This is not at all uncommon in the Indigenous population who face systemic racism in many colonial institutions, often preferring to avoid these institutions altogether.~~

~~In instances like this, what is needed above all else is regular contact with someone to slowly build trust over time. Once Ms Marshall was evicted from the encampment on Ferguson Avenue, I did not see her for a year and when I did finally see her again, she had drastically decompensated physically and mentally. When I knew where she was living, I was able to follow up with her from a medical perspective and treat the issues that were surfacing. It is my opinion that if she had remained in one place, she would not have decompensated to the extent that she did. I would also have had a chance to build more of a relationship with her and help build the trust that many people require to start engaging in addictions and mental health treatment.~~

I hope this is helpful. Please be in touch if I can be of further assistance.

Sincerely,



Dr Jill Wiwcharuk, MD, CCFP (EM)



**Shelter
Health
Network**

82 Stinson St
Hamilton, Ontario
L8N 1S2
Phone: 905-526-7137
Fax: 905-526-7969
Shelterhealthnetwork.ca

Hamilton Community Legal Clinic
100 Main St. E. Suite 203
Hamilton ON L8N 3W4

*This is Exhibit H..... referred to in the
affidavit of J.M. Wawchenko.....
sworn before me, this 7.....
day of June..... 2022.....
.....Sharon Crowe.....
Sharon Crowe, Notary Public, ETC.*

June 10, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Shawn Arnold, dob: July 23, 1969

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed. I am also a physician with The Hamilton Clinic which is an addiction medicine clinic. Mr Arnold has been a regular patient of mine both through the SHN and The Hamilton Clinic since 2020 although I sporadically provided care to him since 2018.. His past medical history is significant for opiate use disorder, stimulant use disorder, attention deficit hyperactive disorder, hepatitis C (recently treated) and chronic left shoulder pain.

I saw Mr Arnold regularly during 2021. He was living in a tent at JC Beemer Park in the winter of 2020/21. Prior to that time, he only came to see me sporadically but would always talk about his desire to treat his opioid use disorder and get on opioid agonist therapy (ie: methadone). However, he was unable to follow up regularly enough to do so. Getting to a therapeutic dose of methadone requires attending a pharmacy daily for doses and not missing appointments. From at least the summer of 2020 (and possibly earlier), Mr Arnold was homeless and regularly sleeping outside. He found the crowded conditions in shelters too hard to manage and he would end up sleeping outside or couch surf somewhere.

Once he was settled at JC Beemer Park, Mr Arnold was able to see me regularly and attend a pharmacy daily. He was able to stay on a methadone maintenance program for well over a year and used much less illicit street drugs than he had ever used previously. Because of his

consistency, I was also able to treat his hepatitis C. He followed through on the entire two month program of anti-virals and is now cured from hepatitis C. This is something that can only be achieved when people are able to take their medications daily. Otherwise, treatment resistant strains of hepatitis can develop.

~~If Mr Arnold had been forced to move from place to place the entire winter, it is clear to me that he would not have reached the level of stability he did with regards to treatment of his addiction and his hepatitis C. He was able to engage with housing workers who ultimately knew where to find him and were able to follow up with him because he was in one place. This led to him becoming housed later in 2021.~~

I hope this is helpful. Please let me know if I can be of further assistance.

Sincerely,



Dr Jill Wiwcharuk, MD, CCFP (EM)

Heegsma et al
Applicants

-and-

CITY of HAMILTON
Respondents

Court File No. CV-21-00077187-0000

Ontario
Superior Court of Justice

PROCEEDING COMMENCED AT HAMILTON

Affidavit of Dr. Jill Wiwcharuk

COMMUNITY LEGAL CLINIC OF YORK REGION

21 Dunlop Street, Richmond Hill, ON L4C 2M6

Sharon Crowe (LSO# 47108R)

sharon.crowe@yr.clcj.ca

Michelle Sutherland (LSO# 70159T)

michelle.sutherland@yr.clcj.ca

Curtis Sell (LSO # 84128A)

curtis.sell@yr.clcj.ca

Nonye Okenwa (LSO # 82307U)

nonye.okenwa@yr.clcj.ca

HĀKI CHAMBERS

319 Sunnyside Avenue, Toronto, ON M6R 2R3

Sujit Choudhry (LSO# 45011E)

sujit.choudhry@hakichambers.com

ROSS & MCBRIDE LLP

1 King Street West, 10th Floor, Hamilton, ON L8P 1A4

Wade Poziomka (LSO# 59696T)

wpoziomka@rossmcbride.com

KASTNER KO LLP

55 University Avenue, Suite 1800, Toronto, ON M5J 2H7

Ashley Wilson (LSO# 82988A)

awilson@kastnerko.com

Counsel to the Applicants

TAB 91

1 Court File No. CV-21-77187 ONTARIO SUPERIOR COURT OF JUSTICE BETWEEN: KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and PATRICK WARD - and - CITY OF HAMILTON Applicants Respondent CROSS-EXAMINATION OF DR. JILL WIWCHARUK, on behalf of the Applicants, on her affidavit dated June 7, 2024, held via Zoom Videoconference hosted by the offices of Nimigan Mihailovich Reporting Inc., Hamilton, Ontario, on Friday, August 16, 2024, at 11:17 a.m. EDT APPEARANCES: Sujit Choudhry for the Applicants Sharon Crowe Curtis Sell Michelle Sutherland Nnonyechi Okenwa Bevin Shores for the Respondent Jordan Diacur Vivian Caldas ALSO PRESENT: Jojo Johnson Articling Student NIMIGAN MIHAILOVICH REPORTING INC.	3129 Zoom Videoconference --- Upon commencing on Friday, August 16, 2024, at 11:17 a.m. EDT AFFIRMED: DR. JILL WIWCHARUK CROSS-EXAMINATION BY MR. DIACUR: 1 Q. Good morning, Dr. Wiwcharuk. My name is Jordan Diacur. I'm a lawyer acting for the City of Hamilton. So my questions are going to be posed to you from that perspective. I understand that there is an affidavit in your name with a date of June 7th -- I can pull it up -- June 7, 2024. Do you have a hard copy of that document? A. I do in front of me, yes. 2 Q. Okay. And I can see that you're in a room that looks like it's got some other documents in it. Is that the only document that you have in front of you? A. Correct. 3 Q. Okay. Are you at home? A. I am, in my office at home. 4 Q. And are you alone in the room? A. I am indeed. 5 Q. So just to be clear, if there are any interruptions or if anyone enters the NIMIGAN MIHAILOVICH REPORTING INC.
2 INDEX PAGE AFFIRMED: DR. JILL WIWCHARUK 3 CROSS-EXAMINATION BY MR. DIACUR 3 LIST OF UNDERTAKINGS, REFUSALS, & UNDER ADVISEMENTS Undertakings (U / T) found at pages: NONE Refusals (REF) found at pages: NONE Under Advisements (U / A) found at pages: 21 NIMIGAN MIHAILOVICH REPORTING INC.	4 room, I'd like you to tell me. We can always take a break if something happens, or if you need one, let me know. But for purposes of this examination, you are to be alone and have just a copy of your affidavit with you, not to refer to any other documents. A. That sounds fine. No problem. 6 Q. Thank you. So I'm also going to share my screen so that there's a copy of the affidavit that I'm referencing up on the screen. You can reference either that or the hard copy that you have in front of you, just as long as you have a copy that you are able to reference. So my first question for you has to do with the form of the affidavit. I note that at the beginning it does say "Sworn June 7, 2024." However, if I scroll through it to the end, it indicates that it was, in fact, affirmed remotely by you and that you stated that you were located in the city of Victoria. Is that accurate that this affidavit was affirmed and it was done remotely with you in the city of Victoria in British Columbia? NIMIGAN MIHAILOVICH REPORTING INC.

1 **A. Yes.**

2 **7 Q.** Okay. And I note that this
3 part of the affidavit, called the jurat, doesn't
4 indicate a date that it was commissioned. Do you
5 recall the date that you signed this affidavit?
6 **A. I would have to look at my**
7 **notes. So no, I don't recall that date off the**
8 **top of my head. I assume it's the date that was**
9 **noted, June 7, 2024, but that would just be an**
10 **assumption. I'd have to look at my calendar.**

11 MS. CROWE: Sorry, if I could
12 interject for one second and just direct your
13 attention to the first page where it indicates
14 sworn June 7, 2024 --

15 MR. DIACUR: Yes, I understand that
16 it references that it's sworn June 7, 2024, on the
17 first page. I posed that question to the witness,
18 but she's also indicated that she didn't swear it
19 -- in fact, she affirmed it -- and there's no date
20 in the jurat. So I'm trying to establish the date
21 that it was actually signed. If the witness
22 doesn't recall, I'll accept that answer.

23 MR. CHOUDHRY: We'll provide an
24 undertaking to give it.

25 MS. CROWE: We will provide you
NIMIGAN MIHAIOVICH REPORTING INC.

1 with an undertaking to provide that information.

2 MR. DIACUR: To provide what
3 information?

4 MS. CROWE: The date that it was
5 affirmed.

6 MR. DIACUR: The witness doesn't
7 recall. That was the question. I don't know how
8 you can answer on behalf of the witness.

9 MR. CHOUDHRY: Counsel, we can
10 provide you with an undertaking to get you the
11 information as counsel. I think we've settled it.
12 So why don't you move on.

13 MR. DIACUR: I don't believe that
14 we've settled anything. The witness stated that
15 she doesn't recall when she swore the affidavit,
16 or I should say affirmed the affidavit. I'm
17 accepting that answer.

18 **8 Q.** Now, if I scroll through this
19 affidavit, you indicate that you have personal
20 knowledge with respect to the facts and reports
21 set out below, except where stated otherwise. You
22 state:

23 "Where the information is not based
24 on my personal knowledge, it is
25 based upon information provided by

NIMIGAN MIHAIOVICH REPORTING INC.

1 others which I believe to be
2 credible and true." (As read.)

3 You then state:

4 "I am a physician formally with the
5 Shelter Health Network, SHN, and
6 the Hamilton Social Medicine
7 Response Team, HAMSMaRT." (As
8 read.)

9 The word "formally," does that mean that you are
10 still with the Shelter Health Network, SHN, and
11 the Hamilton Social Medicine Response Team,
12 HAMSMaRT, as of the date of this affidavit?

13 **A. As of the date that I -- that**
14 **I wrote the letters is when I was -- I was part of**
15 **Shelter Health Network and Hamilton Social -- the**
16 **HAMSMaRT.**

17 **9 Q.** Okay. It's perhaps the word
18 "formally" that's causing the issue. Do you mean
19 formerly, F-O-R-M-E-R-L-Y?

20 **A. No. No, no. No. I believe**
21 **it is meant to be formally. I am a physician**
22 **with the -- yeah, I don't believe it's formerly.**
23 **It's meant to be formally. Yeah.**

24 **10 Q.** As of today's date, are you
25 still a physician with the Shelter Health Network,
NIMIGAN MIHAIOVICH REPORTING INC.

1 SHN, and the Hamilton Social Medicine Response
2 Team, HAMSMaRT?

3 **A. No.**

4 **11 Q.** So as of today's date, you are
5 formerly a physician --

6 **A. Yeah, as of today's date,**
7 **indeed. Yeah.**

8 **12 Q.** And as of the date that you
9 swore this affidavit, whatever date that was, you
10 were formally with them?

11 **A. So I -- yes, absolutely,**
12 **because I swore that when I swore it.**

13 **13 Q.** And I understand --

14 **A. I think I -- I think I'm mixed**
15 **up between swearing and affirming. I'm not -- I'm**
16 **not clear on what those terms are and what -- what**
17 **the dates --**

18 **14 Q.** When this affidavit was signed
19 by you, was it explained to you that you had the
20 opportunity to take an oath in order to, as you've
21 done today, tell the truth?

22 **A. Well, that's exactly what I**
23 **did when I swore it. That's what I do -- yeah.**

24 **15 Q.** Was it explained to you that
25 there's a difference between swearing to tell the

NIMIGAN MIHAIOVICH REPORTING INC.

1 truth on a holy book that binds your conscience or
2 to take an oath affirming that you will tell the
3 truth without doing so on a holy book that binds
4 your conscience?

5 **A. I do not recall.**

6 **16 Q.** Do I understand that you are
7 no longer practising medicine in Hamilton?

8 **A. Correct.**

9 **17 Q.** When did you cease practising
10 medicine in Hamilton?

11 **A. June 30, 2022.**

12 **18 Q.** Did you resign from the
13 College of Physicians and Surgeons of Ontario as
14 of that date?

15 **A. Yes.**

16 **19 Q.** And have you considered -- or
17 continued, I should say, practising medicine in
18 the province of British Columbia?

19 **A. Yes.**

20 **20 Q.** And you currently reside in
21 the city of Victoria, British Columbia?

22 **A. Yes.**

23 **21 Q.** And scrolling down beyond
24 paragraph 2 of your affidavit, you then begin to
25 reference a series of what you call reports to the
NIMIGAN MIHAILOVICH REPORTING INC.

1 Hamilton Community Legal Clinic. They're on
2 various dates and they're attached as exhibits to
3 your affidavit; is that accurate?

4 **A. Yes.**

5 **22 Q.** And beyond stating that you
6 provided reports to the Hamilton Community Legal
7 Clinic on certain dates with respect to certain
8 individuals, which are also referred to as medical
9 letters, there are no other statements in your
10 affidavit?

11 **A. Yes, correct.**

12 **23 Q.** There's no statement in your
13 affidavit that you adopt any of the statements in
14 the exhibits to your affidavit as true. Your
15 affidavit is limited to providing copies of these
16 reports, or what you call medical letters; is that
17 accurate?

18 **A. Can you say that one more**
19 **time? I'm -- this seems -- like, you're**
20 **getting --**

21 **24 Q.** There is no statement in your
22 affidavit, as we've just seen, that you adopt any
23 of the statements in any of the exhibits to your
24 affidavit as true. Your affidavit is limited to
25 providing copies of what you refer to as reports

NIMIGAN MIHAILOVICH REPORTING INC.

1 or medical letters; that's accurate?

2 **A. No, that's not accurate**

3 **because Number 1 says that the information --**

4 "I have personal knowledge with
5 respect to these facts... Where the
6 information is not based upon my
7 personal knowledge, it's based upon
8 information provided by others
9 which I believe to be credible and
10 true." (As read.)

11 I'm not in the habit of writing letters that I do
12 not believe are true.

13 **25 Q.** I understand that.

14 But you do not state in your
15 affidavit that you adopt any of the statements in
16 the exhibits to your affidavit as true. Your
17 affidavit is limited to providing copies of the
18 reports, or what you call medical letters; is that
19 accurate?

20 **A. Yes.**

21 **26 Q.** In this matter, you've not
22 provided any current or up-to-date curriculum
23 vitae, or CV; is that accurate?

24 **A. Yes. I believe that can be**
25 **found in a -- my CV is in evidence in the**
NIMIGAN MIHAILOVICH REPORTING INC.

1 **injunction motion, that I believe you have a**
2 **copy of.**

3 **27 Q.** The injunction motion occurred
4 in 2021. You've not provided any current or
5 up-to-date curriculum vitae, or CV, in this
6 matter; is that accurate?

7 **A. Yes.**

8 **28 Q.** You've not signed any form
9 entitled "Form 53, Acknowledgement of Expert's
10 Duty" in this matter; is that accurate?

11 **A. Yes.**

12 **29 Q.** And in this affidavit, you do
13 not describe any factual assumptions on which any
14 of your opinions are based; is that accurate?

15 **A. Do not describe any factual**
16 **assumptions -- I don't think I understand what**
17 **that means.**

18 **30 Q.** Well, as we've just scrolled
19 through, there are no statements in this affidavit
20 which state "I am assuming to be true for purposes
21 of my opinion X, Y or Z facts." Is that accurate?

22 **A. Yes.**

23 **31 Q.** And in this affidavit, you do
24 not describe any research conducted by you that
25 led you to form any opinions; is that accurate?

NIMIGAN MIHAILOVICH REPORTING INC.

1 **A. Yes.**

2 **32 Q.** And in this affidavit, you do
3 not describe or list any documents, if any, relied
4 upon in forming any opinions; is that accurate?

5 **A. No. I -- I refer to medical**
6 **records for every one of these patients, legal**
7 **medical record documents.**

8 **33 Q.** So the documents that are
9 referenced in the reports, or what you call
10 medical letters, attached as exhibits to this
11 affidavit are the extent of the documents that you
12 relied upon in forming any opinions that are
13 expressed?

14 **A. No. That's not accurate. I**
15 **wrote these letters based on medical records that**
16 **-- for each of these patients.**

17 **34 Q.** Yes. So the medical letters
18 referenced in the reports, or what you call
19 medical letters, attached as exhibits to this
20 affidavit are the extent of the documents on which
21 you relied in forming any opinions that are
22 expressed?

23 **A. No. These medical reports are**
24 **not medical records. The medical reports are**
25 **based on medical records that are not part of the**
NIMIGAN MIHAIOVICH REPORTING INC.

1 **affidavit. They're -- they're in an electronic**
2 **medical record that is part of the patient's**
3 **health record.**

4 **35 Q.** Yes, Doctor. I'd ask that you
5 listen to my question.
6 The medical records or notes
7 referenced in the reports, or medical letters,
8 that are attached as exhibits to your affidavit
9 are the extent of the documents that you reviewed
10 or relied upon in forming any opinions that are
11 expressed; is that accurate?

12 **A. No, because in Number 1, I**
13 **said when information is not based on my personal**
14 **knowledge, it's based upon other information. So,**
15 **for example, if I said that I -- at times, I would**
16 **ask a -- well, there's -- there's examples of that**
17 **in the letters.**

18 **36 Q.** Examples of what in the
19 letters?

20 **A. Where something was based --**
21 **like, I -- for example, I would ask a shelter**
22 **worker to find a bed for one of my patients. I**
23 **would ask someone at a drop-in centre to find a**
24 **bed for one of my patients, and then I would -- I**
25 **would note to my knowledge, that was not available**
NIMIGAN MIHAIOVICH REPORTING INC.

1 **or, if it was available, that it became available.**

2 **But it's not solely medical-record information**
3 **that I was giving there.**

4 **37 Q.** No, I understand.

5 We're solely talking about
6 documents; you understand? I'm saying the --

7 **A. Okay. Documents. Okay.**

8 **38 Q.** The medical records or notes
9 that are referenced in the reports, or what you
10 call medical letters, that are exhibits to your
11 affidavit form the extent of the documents on
12 which you relied in forming any opinions that are
13 communicated; is that accurate?

14 REF MS. CROWE: Asked and answered.

15 THE WITNESS: Yes.

16 MR. DIACUR: That has not been
17 answered. She --

18 MR. CHOUDHRY: Counsel, she just
19 said, "Yes."

20 THE WITNESS: Yep. Let's move on.

21 MR. CHOUDHRY: She just said,
22 "Yes."

23 MR. DIACUR: So after an objection
24 was raised to the question being asked and
25 answered, the answer was given? I want to --

NIMIGAN MIHAIOVICH REPORTING INC.

1 THE WITNESS: No. Actually, it --

2 MR. DIACUR: -- be clear for the
3 record.

4 THE WITNESS: Actually, it happened
5 at the same time. I said "Yes" at the same time.

6 MR. DIACUR: No. That's not going
7 to be clear on the record. I'm not going to
8 accept an answer that's given after an objection
9 by counsel. I want to --

10 MS. CROWE: No, no, no --

11 MR. DIACUR: -- ask this question
12 and get an answer to it. Are you --

13 MR. CHOUDHRY: Mr. Diacur --

14 MR. DIACUR: -- objecting to the
15 question?

16 MR. CHOUDHRY: Mr. Diacur, please
17 watch your tone. Why don't you restate your
18 question calmly and then --

19 MR. DIACUR: I am perfectly calm.

20 I am responding to an objection

21 from counsel. Is the question objected to or not?

22 MS. CROWE: It is because our
23 position is that, prior to the objection, the
24 question had been asked and answered. She's
25 explained what she has done, what kind of

NIMIGAN MIHAIOVICH REPORTING INC.

1 consultations she undertook --
2 MR. DIACUR: Yes. That's not a
3 response to the answer to the question. Talking
4 about oral conversations she had with others is
5 not an answer to a question about documentation,
6 and I want, on the record, an answer to the
7 question.

8 **39 Q.** Dr. Wiwcharuk, other than any
9 medical records or notes that are referenced in
10 the reports, or what you call medical letters,
11 that are attached as exhibits to your affidavit,
12 were there any documents that you relied upon in
13 forming any opinions expressed?

14 **A. Was there any documents that I**
15 **relied upon. That's a different question than you**
16 **first asked -- no, there wasn't any other**
17 **documents I relied upon.**

18 **40 Q.** Thank you.

19 **A. Yes, no.**

20 **41 Q.** Dr. Wiwcharuk, do you consider
21 yourself to be independent in this case?

22 **A. Yes. I'm a treating physician**
23 **of these patients.**

24 **42 Q.** You consider yourself to be
25 independent in this case?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. Yes.**

2 **43 Q.** And by that, I mean you do not
3 favour one side or the other?

4 **A. I am the treating physician of**
5 **these patients in front of me, and I'm here to**
6 **provide objective evidence of that. That is what**
7 **I'm here for.**

8 **44 Q.** You prepared the medical
9 letters or reports referenced in your affidavit at
10 the request of the lawyers for the applicants; is
11 that correct?

12 **A. Yes.**

13 **45 Q.** In fact, you addressed the
14 letters to the lawyers for the applicants?

15 **A. Indeed.**

16 **46 Q.** The letters were prepared at
17 or after the time that this litigation began?

18 **A. Yes.**

19 **47 Q.** You've not included any of the
20 applicant lawyers' requests or instructions to you
21 in your affidavit or in the attached medical
22 letters; is that accurate?

23 **A. Yes.**

24 **48 Q.** Is there -- I'm sorry, you're
25 saying that you have not done that?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. Sorry, can you repeat that**
2 **question one more time?**

3 **49 Q.** Yes. You have not included
4 the applicants' lawyers' requests or instructions
5 to you in the affidavit or in the attached medical
6 letters; is that accurate?

7 **A. I don't have any instructions**
8 **from the lawyers regarding these applicants. I**
9 **was simply asked to provide a letter for them.**

10 **50 Q.** Is there any additional
11 correspondence -- emails, letters, notes of calls
12 -- between you and the applicants' lawyers with
13 reference to this matter?

14 **A. With reference to each**
15 **individual patient?**

16 **51 Q.** With reference to this
17 litigation, this matter.

18 **A. I can't recall of any off the**
19 **top of my head right now, no. But there -- I**
20 **mean, probably if I go back in my emails.**

21 **52 Q.** Did you prepare the medical
22 letters on your own, or did the applicants'
23 lawyers assist you with that?

24 **A. I 100 percent prepared these**
25 **letters on my own. There was -- there was no one**
NIMIGAN MIHAIOVICH REPORTING INC.

1 **helping me with that, at all.**

2 **53 Q.** Well, tell me about how you
3 were contacted and asked to provide the letters.

4 **A. Okay. I'm trying to bring**
5 **this back. This is 2021 that I wrote these**
6 **letters. So there's a bit of a time gap here. I**
7 **--**

8 **54 Q.** Well, just to be clear,
9 they're dated in 2022; correct?

10 **A. Sorry, 2022. That's right.**
11 **Sorry, my bad. My mistake.**

12 **So I guess I can't recall exactly.**
13 **I know that I would receive an email stating that**
14 **this -- that someone has been -- well, actually,**
15 **no, I -- I can't recall exactly. I would have to**
16 **check my emails. I was requested to provide a**
17 **letter, a medical letter, and I did so. And there**
18 **-- that's all I can speak to.**

19 MR. DIACUR: Counsel, I'd request
20 an undertaking that copies of any emails that
21 Dr. Wiwcharuk is able to locate with respect to
22 the instructions or requests that she provide
23 these medical letters attached to her affidavit be
24 disclosed.

25 MR. CHOUDHRY: We're happy to do
NIMIGAN MIHAIOVICH REPORTING INC.

1 so, subject to litigation privilege.

2 MR. DIACUR: Is there an assertion
3 that litigation privilege attaches --

4 MR. CHOUDHRY: We'll look at the --
5 sorry, go ahead. Just to be clear, I just want to
6 make sure --

7 MR. DIACUR: Is there an assertion
8 of litigation privilege with respect to
9 instructions or requests being made to a
10 participant expert? Is that --

11 MR. CHOUDHRY: No.

12 MR. DIACUR: -- the case?

13 MR. CHOUDHRY: No, I said subject
14 to it. So we'll review the correspondence and
15 determine whether to make any assertions of
16 privilege in relation to them.

17 MR. DIACUR: And so you're taking
18 that under advisement?

19 U/A MR. CHOUDHRY: We're taking it
20 under advisement. We'll get back to you.

21 MR. DIACUR: Thank you.
22 **55 Q.** Dr. Wiwcharuk, did you review
23 the notice of application in this litigation
24 before preparing the reports or medical letters?

A. No.
NIMIGAN MIHAIOVICH REPORTING INC.

1 **56 Q.** Did you speak with any of the
2 applicants before preparing medical letters or
3 reports with respect to them?

4 **A. Well, they're my patients. I**
5 **spoke to them regularly. I would see them.**

6 **57 Q.** So at the time you were
7 preparing the reports or medical letters attached
8 to the affidavits, did you speak again with the
9 applicants?

10 **A. Well, I would ask for their**
11 **consent because I would never -- I would never**
12 **provide something to someone, a third party,**
13 **without consent from a patient.**

14 **58 Q.** So I don't believe that's
15 referenced in the reports or medical letters. So
16 you obtained the consent of each of the applicants
17 that are referenced in these reports or medical
18 letters before preparing them?

19 **A. That is a standard procedure**
20 **for any -- for any physician who is providing**
21 **medical -- medical information to a third party.**
22 **That is -- it would be entirely unethical to do**
23 **otherwise.**

24 **59 Q.** Did you provide drafts to the
25 applicants before finalizing the letters?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. Absolutely not. That is**

2 **not -- no.**

3 **60 Q.** What information did you
4 provide to the applicants when seeking their
5 consent?

6 **A. I would ask them if they were**
7 **okay with me providing their medical history to**
8 **the legal clinic as requested by the lawyers.**
9 **That is what I would ask them.**

10 **61 Q.** Was consent obtained in
11 writing?

12 **A. No. Verbal consent would have**
13 **been obtained and documented in their medical**
14 **record, as is common practice amongst physicians.**

15 **62 Q.** Did you review the applicants'
16 own affidavits in this matter before preparing
17 your reports or your medical letters?

18 **A. No.**

19 **63 Q.** You're aware that some of the
20 affidavits were prepared before the dates of your
21 medical letters?

22 **A. I'm not aware of that.**

23 **64 Q.** Are you aware of the other
24 portions of the record in this case, other experts
25 on behalf of the applicants or on behalf of the

NIMIGAN MIHAIOVICH REPORTING INC.

1 City of Hamilton, and did you review that material
2 before preparing your affidavit?

3 **A. Not before -- no. So there's**
4 **two questions you just asked there. I'm not sure**
5 **which one you want me to answer, but --**

6 **65 Q.** Are you aware of any other
7 parts of the record in this case?

8 **A. I am aware of other people's**
9 **names that are mentioned as witnesses, yes.**

10 **66 Q.** Did you review any affidavits
11 by any other person before preparing your own
12 affidavit?

13 **A. No.**

14 **67 Q.** Did you review the evidence of
15 Dr. Koivu given by affidavit on behalf of the City
16 of Hamilton?

17 **A. Just a week or two ago.**

18 **68 Q.** You did not prepare any reply
19 affidavit responding to the evidence of Dr. Koivu;
20 is that accurate?

21 **A. Correct.**

22 **69 Q.** You did not prepare any reply
23 affidavit responding to the evidence of any other
24 witness on behalf of the City of Hamilton; is that
25 accurate?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. Yes.**

2 **70 Q.** I'd like to know, while you
3 were employed or working on behalf of the Shelter
4 Health Network or HAMSMaRT, how you provided
5 services to patients. Can you explain that?

6 **A. Yeah. I was a -- I worked in**
7 **a clinic in the basement of the Salvation Army,**
8 **and so every Monday, I would be there providing**
9 **care throughout the entire day for people that**
10 **would come and see me for health care, not just**
11 **residents of the Salvation Army.**

12 **I also worked a full day a week at**
13 **a drop-in centre for people experiencing**
14 **homelessness, at the Wesley Day Centre, and I**
15 **would also do outreach work. So I worked -- I**
16 **would go directly to encampments, directly to**
17 **people living outside, providing health care and**
18 **so would often be -- you know, would come in my**
19 **car with medical supplies. In my car, I'm able to**
20 **provide direct care there.**

21 **I am also -- being an addiction**
22 **medicine specialist trained with a diploma from**
23 **the International Society of Addiction Medicine, I**
24 **also provided addiction care in my role as**
25 **outreach and -- outreach -- as an outreach doctor.**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **71 Q.** And was that the sole -- the
2 sole -- I'll ask it this way. In terms of your
3 medical practice, was that the only services that
4 you were providing to patients, or did you have a
5 broader medical practice than this?

6 **A. Yes. I'm also an emergency**
7 **doctor.**

8 **72 Q.** So you have hospital
9 privileges and served in emergency departments in
10 hospitals?

11 **A. Yes. And at that time, I was**
12 **also working as an inpatient addiction medicine**
13 **specialist.**

14 **73 Q.** And at what hospitals did you
15 provide emergency services?

16 **A. Brantford General Hospital.**

17 **74 Q.** Any others?

18 **A. Not at that time, no.**

19 **You did -- oh, no. Go ahead.**

20 **75 Q.** I did what?

21 **A. I -- no, that's fine. I was**
22 **just -- I was curious if you had asked about the**
23 **affidavit from Dr. Koivu as I was -- as I was**
24 **describing my medical practice, which is, in**
25 **particular, working with people who are homeless**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **in encampments, in shelters.**

2 **It -- I was thinking of the fact**
3 **that with that experience of 13 years -- at this**
4 **time, I guess 11 years in 2022 -- working directly**
5 **with people in their own environments, whether**
6 **that be shelter or encampments, I certainly**
7 **have -- you know, I was able to see very clearly**
8 **what was happening with these patients as opposed**
9 **to just working in a hospital setting.**

10 **76 Q.** Were there any other parts to
11 your practice at these times?

12 **A. No, that was them. Oh, sorry,**
13 **I had a -- I had a -- no, that's wrong. I had an**
14 **addiction practice as well, a very specific**
15 **addiction practice at The Hamilton Clinic, and so**
16 **--**

17 **77 Q.** At which Hamilton clinic?

18 **A. It was called "The Hamilton**
19 **Clinic."**

20 **78 Q.** Okay, at The Hamilton Clinic?

21 **A. You got it. Capital "T."**

22 **79 Q.** Understood.

23 Anything else you can recall about
24 your practice?

25 **A. I enjoyed it.**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **80 Q.** You'd agree that in treating a
2 patient, just as a general statement, it's
3 important to obtain an accurate medical history;
4 is that right?

5 **A. Yes.**

6 **81 Q.** And it's important that a
7 medical history be comprehensive?

8 **A. So that, I do not always agree**
9 **with, no. And the reason for that -- or, well,**
10 **no.**

11 **82 Q.** Comprehensive in the sense
12 that it doesn't leave out anything significant?

13 **A. So when -- when you are**
14 **dealing with people who have a lot of competing**
15 **priorities and who are homeless and are often in a**
16 **state of crisis, it is not an appropriate time**
17 **to -- there are some times when you cannot get an**
18 **extremely comprehensive health history.**

19 **83 Q.** You'd agree that an accurate
20 medical history is important in giving a medical
21 opinion?

22 **A. Oh, yes.**

23 **84 Q.** And you'd agree that having an
24 inaccurate or an incomplete medical history may
25 affect the reliability of a medical opinion or a

NIMIGAN MIHAIOVICH REPORTING INC.

1 medical assessment?

2 **A. No, I would not agree with**
3 **that.**

4 **85 Q.** On what basis?

5 **A. Because when you provide**
6 **patient-centred care, you -- you do what is best**
7 **for the patients given -- given the circumstances**
8 **that are there and given the difficulties that**
9 **they're facing. So you -- over time, you may get**
10 **an entire medical -- you slowly develop the**
11 **medical history over time.**

12 **Classically, you might have the**
13 **idea of a patient coming in and you have a**
14 **40-minute intake and you discuss all your past**
15 **medical history with all previous reports, and**
16 **that is a very privileged way of being able to**
17 **access health care, and it's not the reality for**
18 **the majority of people that are -- have**
19 **significant mental health and addictions**
20 **histories.**

21 **So in my extensive practice working**
22 **with people in these scenarios, I have found that**
23 **I can absolutely get an accurate medical history**
24 **over the time that I spend with them, and it might**
25 **not all be in one specific time and it might be**
NIMIGAN MIHAILOVICH REPORTING INC.

1 **put together over time, but a medical opinion that**
2 **is -- that is given from that is absolutely just**
3 **as -- just as accurate as it would be if I had**
4 **spent more time -- you know, if they were able to**
5 **give me more time at the beginning of a session.**

6 **86 Q.** I understand that you can
7 develop a more accurate picture of a patient over
8 time. But you would agree that an inaccurate or
9 incomplete medical history would affect the
10 reliability of a medical opinion or assessment?

11 **A. No, I would not agree with**
12 **that.**

13 **87 Q.** On what basis?

14 **A. Because there are all sorts of**
15 **medical opinions that can be given. If I were to**
16 **give a medical opinion of a certain part of**
17 **something on someone, then yes, I might need an**
18 **entire medical history. But if I were to give a**
19 **very specific medical opinion on something, I**
20 **would not do so unless I had an accurate history**
21 **on which to do that.**

22 **88 Q.** So I --

23 **A. So I actually --**

24 **89 Q.** So, again, I appreciate that
25 an accurate history can be obtained. But if you

NIMIGAN MIHAILOVICH REPORTING INC.

1 had an inaccurate history, it would affect the
2 reliability of a medical opinion or assessment;
3 isn't that accurate?

4 **A. That is not accurate because**
5 **there are different medical opinions. There**
6 **are -- there are different medical opinions that**
7 **someone can give for different things. So if you**
8 **were to ask me a medical opinion on a certain**
9 **specific -- a specific area for I do not have an**
10 **accurate medical history, then yes, I would not be**
11 **able to -- I would not be able to provide that.**

12 **But other -- you know, you -- I can**
13 **absolutely give accurate medical opinions based**
14 **on -- and I would never -- I would never pretend**
15 **to give a medical opinion that wasn't accurate**
16 **with -- with -- I wouldn't -- if I didn't have --**
17 **if I didn't have information on which to base my**
18 **medical opinion, I would never presume to give a**
19 **medical opinion.**

20 **90 Q.** A medical opinion or
21 assessment would be less reliable if the medical
22 history that you had was inaccurate or incomplete;
23 is that true?

24 **A. That would depend on what the**
25 **medical opinion -- what medical opinion is being**
NIMIGAN MIHAILOVICH REPORTING INC.

1 **asked, is being requested.**

2 **91 Q.** You'd agree that some patients
3 may not be able to give you an accurate or a
4 comprehensive medical history for themselves; is
5 that true?

6 **A. Yes. I have -- I have**
7 **referenced that in my letters.**

8 **92 Q.** And patients may not be able
9 to comprehensively report their own experiences;
10 is that true?

11 **A. Yes, that's true. And**
12 **physicians get medical histories from more places**
13 **than just the -- than just the patient. We're**
14 **often accessing -- well, all the time, we're**
15 **accessing hospital records, former psychiatric**
16 **records, other doctors' records. So the patient's**
17 **history is just one place where we get medical**
18 **history.**

19 **93 Q.** So in taking a medical history
20 from a patient, obtaining it from these various
21 sources, do you take any steps to account for the
22 possibility that there may be inaccuracies?

23 **A. We do that all the time.**
24 **That's what we do as doctors.**

25 **94 Q.** What steps do you take?

NIMIGAN MIHAILOVICH REPORTING INC.

1 **A. We cross-reference. We check**
 2 **things out in emergency records. We check things**
 3 **out in addictions records. We call other**
 4 **providers to -- to get collaboration. We -- we --**
 5 **that's how we -- that's how we build a medical**
 6 **record, and that is what I do with my patients as**
 7 **well, of course.**

8 **95 Q.** So if I understand, there are
 9 times when you would render a medical opinion
 10 without gathering a complete medical history?

11 **A. No, absolutely not. And I**
 12 **find that quite offensive.**

13 **96 Q.** Well, if I understood your
 14 answer previously, it's that you may render an
 15 opinion on a small part of a person's treatment
 16 without having a full understanding of their
 17 medical history. Did I misunderstand?

18 **A. Yes, you did.**

19 **97 Q.** All right. So you would not
 20 render a medical opinion without gathering a
 21 complete medical history on a patient?

22 **A. Do you want me to say**
 23 **something after that? You're telling -- sorry --**

24 **98 Q.** Is that correct, the
 25 proposition I've just put to you?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. Sorry, can you say that one**
 2 **more time?**

3 **99 Q.** You would not render a medical
 4 opinion with respect to a patient without
 5 gathering a complete medical history on that
 6 patient; is that accurate?

7 **A. No, but I'm happy to rephrase**
 8 **that to make it accurate. I would not render a**
 9 **medical opinion on someone unless I had**
 10 **appropriate past medical history and a medical to**
 11 **do so.**

12 **100 Q.** So you would render a medical
 13 opinion with respect to a patient without having a
 14 complete medical history on that patient in some
 15 circumstances; is that true?

16 **A. No. I told you that a medical**
 17 **opinion on a certain aspect, you -- there are --**
 18 **for -- I would not -- I would not render a medical**
 19 **opinion on someone without having all the medical**
 20 **history I needed to provide that medical opinion.**
 21 **Absolutely not. I would never do that.**

22 **101 Q.** And that would involve
 23 reviewing all of the necessary medical records?

24 **A. All of the necessary medical**
 25 **records, correct.**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **102 Q.** And it would involve taking
 2 time to carefully examine the patient?

3 **A. Of course.**

4 **103 Q.** And you would agree that your
 5 opinion would not be valid if you did not review
 6 the appropriate medical records and if you did not
 7 carefully examine the patient?

8 **A. No. I believe that my medical**
 9 **opinion would be valid based on my practice for**
 10 **the last 13 years, which is always -- I would**
 11 **never -- again, as -- as a physician with**
 12 **integrity, one does not provide medical opinions**
 13 **unless they would be accurate.**

14 **104 Q.** I'm not sure that was an
 15 answer to my question.

16 **A. Yeah.**

17 **105 Q.** You would agree that your
 18 opinion would not be valid if you did not review
 19 the appropriate medical records and did not
 20 carefully examine the patient you were --

21 **A. Yeah. No, I -- I suppose,**
 22 **yeah. Yeah, I agree that it would not be valid if**
 23 **I -- yeah. Yeah, no. That's --**

24 **106 Q.** I'd like to turn now to the --

25 **A. Sorry, can I just ask -- I**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **have 30 minutes booked for this time and I have**
 2 **medical care that I need to -- I have things going**
 3 **on. Are we at 30 minutes here, or where -- what's**
 4 **going on here? Can I just double-check on the**
 5 **time?**

6 **107 Q.** I'm going to be posing
 7 questions to you. If you have to leave, then we
 8 can address it via counsel.

9 **A. I --**

10 MS. CROWE: Sorry. Sorry,
 11 Dr. Wiwcharuk. One moment.

12 Mr. Diacur, do you have an estimate
 13 for how much longer you have in your examination?

14 MR. DIACUR: Well, it would be
 15 difficult for me to estimate. I have some
 16 questions about each of the reports and medical
 17 letters attached to the affidavit. I would
 18 estimate about another half an hour, maybe 45
 19 minutes.

20 THE WITNESS: That is a lot longer.

21 MS. CROWE: Can we go off record
 22 for a moment?

23 MR. CHOUDHRY: Can we go off record
 24 for a moment?

25 MR. DIACUR: Yes, that's fine.

NIMIGAN MIHAIOVICH REPORTING INC.

1 --- (Off-the-record discussion.)

2 MR. DIACUR:

3 **108 Q.** I'd like to turn briefly to
4 Exhibit A to your affidavit. It's a report or
5 letter relating to Corey Monahan.

6 **A. Yes. I have it here.**

7 **109 Q.** It's dated May 31, 2022.

8 **A. Mm-hmm.**

9 **110 Q.** Now, you state that this
10 letter is based on your review of Mr. Monahan's
11 medical records; is that accurate?

12 **A. Yes.**

13 **111 Q.** And you reference notes; one
14 note dated March 9, 2022, for example?

15 **A. I do reference that.**

16 **112 Q.** And that's not a note that you
17 prepared?

18 **A. Yeah, that was a note that I**
19 **made in his medical -- well, actually, I can't be**
20 **absolutely certain that it was me that wrote that**
21 **note in his medical record. But it was in his**
22 **Shelter Health Network EMR, yes.**

23 **113 Q.** And you also reference a
24 health-care practitioner who saw him at a
25 different time. Do you see that?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. Yes. I -- where does it say**
2 **different time, though?**

3 **114 Q.** It says "At that time" --

4 **A. Yeah, at that time --**

5 **115 Q.** -- "the health-care
6 practitioner who saw him" --

7 **A. Yeah.**

8 **116 Q.** That was not you?

9 **A. I -- I cannot confirm or deny**
10 **that. I have -- I don't know. I'm just speaking**
11 **to the note in his medical record.**

12 **117 Q.** And you do not attach the
13 medical note that you referred to dated March 9,
14 2022?

15 **A. No.**

16 **118 Q.** Have you ever personally
17 observed Mr. Monahan outside of a clinic
18 circumstance?

19 **A. Oh, yes.**

20 **119 Q.** Is that part of your visits to
21 encampments? Is that when that would have
22 occurred?

23 **A. Well, not necessarily. Just**
24 **in everyday -- like, at a soup kitchen. I would**
25 **see him walking around town. People that are**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **homeless are very visible. They're around all the**
2 **time because they have no place to stay inside,**
3 **often. So I --**

4 **120 Q.** There were times that you
5 observed him outside of the clinic just walking
6 around?

7 **A. And in a clinic and in an**
8 **encampment, possibly, and at a soup kitchen,**
9 **possibly.**

10 **121 Q.** Did you ever personally assess
11 Corey Monahan?

12 **A. Many times, yes.**

13 **122 Q.** Was that part of treating
14 Mr. Monahan?

15 **A. Yes.**

16 **123 Q.** Do you recall how many times
17 you saw Mr. Monahan for treatment?

18 **A. No.**

19 **124 Q.** Do you recall when you started
20 treating Mr. Monahan yourself?

21 **A. Not off the top of my head,**
22 **no.**

23 **125 Q.** Do you keep medical notes when
24 you were treating Mr. Monahan?

25 **A. Of course I do.**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **126 Q.** And you have not produced any
2 medical records evidencing your treatment of
3 Mr. Monahan?

4 **A. They are all sitting in his**
5 **record. I don't have any in my affidavit here.**
6 **My notes are based on those, on the EMR. My notes**
7 **are based on his medical records, as noted.**

8 **127 Q.** Do you recall when you spoke
9 with Mr. Monahan about his homeless status?

10 **A. It comes up at every single**
11 **appointment with someone. It's -- so every time I**
12 **would have seen him, it would have been a**
13 **discussion.**

14 **128 Q.** Did you discuss Mr. Monahan's
15 homeless status with him after you were asked to
16 prepare the medical letter at Exhibit A to your
17 affidavit?

18 **A. I have no idea.**

19 **129 Q.** It's possible?

20 **A. I -- I can't remember. I do**
21 **not recall.**

22 **130 Q.** I'd like to turn to Exhibit B
23 to your affidavit, which has to do with Cassandra
24 Jordan. This letter is dated June 1, 2022.

25 Do you have a copy of that?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. I do.**
 2 **131 Q.** You state in the second
 3 paragraph:
 4 "I do know that she suffers from
 5 opioid use disorder, stimulant use
 6 disorder, chronic pain and a recent
 7 acetabular fracture and hip
 8 dislocation requiring surgery. I
 9 am convinced she has significant
 10 undiagnosed mental health issues."
 11 (As read.)
 12 **A. Yes. No, "I am also certain**
 13 **she has" is what it reads, but yes.**
 14 **132 Q.** Did you personally assess
 15 Ms. Jordan to establish these diagnoses?
 16 **A. Well, I have -- as noted here,**
 17 **they're undiagnosed.**
 18 **133 Q.** Did you ever personally assess
 19 Ms. Jordan at all?
 20 **A. Yes.**
 21 **134 Q.** Was that part of treating
 22 Ms. Jordan?
 23 **A. Yes.**
 24 **135 Q.** Do you recall how many times
 25 you saw Ms. Jordan for treatment?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. I do not recall.**
 2 **136 Q.** And, again, you have not
 3 produced any medical records evidencing your
 4 treatment of Ms. Jordan?
 5 **A. No. The letter that I've**
 6 **written is based on her medical records.**
 7 **137 Q.** In terms of undiagnosed mental
 8 issues, or mental health issues, do you ever make
 9 referrals to mental health practitioners so that
 10 such diagnoses could be considered?
 11 **A. Yes, regularly when -- when**
 12 **that's something that is in the patient's best**
 13 **interest. Yes. Many times --**
 14 **138 Q.** Did you do that with --
 15 **A. Many times, family doctors or**
 16 **addictions doctors like myself can also make those**
 17 **diagnoses when there's --**
 18 **139 Q.** Did you do that with respect
 19 to Ms. Jordan?
 20 **A. Did I do what?**
 21 **140 Q.** Make a referral to a mental
 22 health practitioner so that a diagnosis could be
 23 pursued.
 24 **A. One -- just give me one**
 25 **second. I have to read the thing.**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **No, and the reason is because she**
 2 **was -- she was receiving care from another doctor**
 3 **regarding -- this particular patient had another**
 4 **doctor that was involved in their care and she was**
 5 **seeing him at his clinic, and I was only involved**
 6 **for the wound care that was -- that I talk about**
 7 **in this -- in this report.**
 8 **141 Q.** So that is the burn that you
 9 reference?
 10 **A. Yes.**
 11 **142 Q.** You indicate that if she had
 12 presented to hospital, she would likely have been
 13 admitted to a specialized burn unit. Did she
 14 decline such care?
 15 **A. Yes. I reference that in my**
 16 **letter, yeah. She was --**
 17 **143 Q.** And that burn --
 18 **A. She --**
 19 **144 Q.** Sorry, please continue.
 20 **A. She was living in a tent and**
 21 **there was a huge police presence all around her,**
 22 **and she was afraid of having all her possessions**
 23 **taken if she were to leave. So she -- again, her**
 24 **health care -- health care goes way down on a list**
 25 **of priorities when someone is afraid that**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **everything they own in the world is going to be**
 2 **taken away.**
 3 **So that's why she felt she was**
 4 **absolutely unable to go to the hospital, and**
 5 **that's why she asked that I come back and that I**
 6 **take care of her wound as best I can, which I did**
 7 **until she was no longer at that park and I could**
 8 **no longer find her.**
 9 **145 Q.** And that burn healed without
 10 being admitted to hospital or a specialized burn
 11 unit; is that accurate?
 12 **A. In this case, yes, it did.**
 13 **She will have had a much larger scar and may be**
 14 **left with chronic pain from that scar. So it may**
 15 **not have been the most optimal healing process,**
 16 **and it likely would have been much better had she**
 17 **received specialized wound care.**
 18 **146 Q.** Did you treat her for chronic
 19 pain?
 20 **A. No, I did not treat her for**
 21 **chronic pain at that time. No. Again, as noted,**
 22 **she did have another doctor that was involved in**
 23 **her care as well.**
 24 **147 Q.** And when you say that she may
 25 have suffered from chronic pain, that's an

NIMIGAN MIHAIOVICH REPORTING INC.

1 assumption you're making?

2 **A. That is an assumption, yeah.**

3 **148 Q.** Did you treat Ms. Jordan in an

4 encampment or in a clinic setting?

5 **A. In an encampment.**

6 **149 Q.** Were you present and saw the

7 police presence that you just referenced, or is

8 that something reported to you by Ms. Jordan?

9 **A. I was present.**

10 **150 Q.** Have you listed in this letter

11 all the instances where you provided medical care

12 to Ms. Jordan?

13 **A. I can't recall. Yeah. Again,**

14 **a lot of times people come to us for episodic care**

15 **only because there's an acute infection or there's**

16 **an acute -- you know, there's something and**

17 **they're unable to get to their regular provider.**

18 **So we do often provide -- we can, in some**

19 **circumstances, be providing acute ad hoc care.**

20 **Most people are really only seeing**

21 **us. But this -- in particular, this patient also**

22 **had an addictions and -- an addictions doctor that**

23 **was also providing some family care, some family**

24 **medicine care, at another clinic.**

25 **151 Q.** You do also reference on the

NIMIGAN MIHAILOVICH REPORTING INC.

1 second page an altercation with police on May 6,

2 2022, in the second-last paragraph. Now, is it

3 the case that you did not observe the alleged

4 altercation with police?

5 **A. No, but I was -- I was privy**

6 **to hospital records that spoke to that.**

7 **152 Q.** And it was also something

8 reported to you by Ms. Jordan?

9 **A. Yes.**

10 **153 Q.** You provided Ms. Jordan with

11 addiction-related care; is that true?

12 **A. Yes, because I was an**

13 **inpatient addiction medicine doctor and she had an**

14 **inpatient stay in hospital. So I saw her in that**

15 **capacity as well, while she was in hospital, yeah.**

16 **154 Q.** What addiction-related care

17 did you provide?

18 **A. Opioid agonist therapy.**

19 **155 Q.** The expected progression of an

20 opioid-addicted patient who is not getting such

21 treatment is to worsen; is that true?

22 **A. Not always, no.**

23 **156 Q.** That's not the expected

24 progression?

25 **A. No. No, it's not -- that's --**

NIMIGAN MIHAILOVICH REPORTING INC.

1 **no, that's not the expected progression.**

2 **157 Q.** The best practice for treating

3 a patient with opioid addiction is to get a

4 baseline; is that true?

5 **A. I don't even know what getting**

6 **a baseline would mean.**

7 **158 Q.** How do you assess if somebody

8 is getting better or not?

9 **A. By looking at their social**

10 **situation, their work situation, their**

11 **relationship situation, their housing situation,**

12 **how much -- like, how much -- how much -- how many**

13 **substances they're using, how they're interacting**

14 **with people. You look at it all and, most**

15 **importantly, you talk and listen to the patient.**

16 **159 Q.** So in terms of my question

17 about getting a baseline, that would be a baseline

18 for their current usage of opiates. So is it best

19 practice for treating a patient with opioid

20 addiction to get a baseline for their opiate

21 usage?

22 **A. Oh, yeah. Okay. Mm-hmm, yes.**

23 **160 Q.** Is it an accepted premise in

24 addiction medicine that the goal is for the

25 patient to stop using the opiates that they are

NIMIGAN MIHAILOVICH REPORTING INC.

1 addicted to?

2 **A. Not necessarily, no. That**

3 **does not have to be -- that does not have to --**

4 **that's certainly not everyone's goal. That's**

5 **where harm reduction and an understanding of harm**

6 **reduction comes in.**

7 **161 Q.** The four pillars of addiction

8 medicine are prevention, treatment, harm reduction

9 and enforcement; is that true?

10 **A. I've never heard of**

11 **enforcement in those pillars. I'm not aware of --**

12 **I'm not aware of -- of where that -- that**

13 **specific -- those specific four pillars -- like,**

14 **I -- I'm -- certainly, the first three ring true**

15 **to me. Enforcement, I am not at all sure about.**

16 **162 Q.** Is it true that changes in the

17 brain of an addicted person affect their executive

18 function?

19 **A. Sorry, can I -- are we -- I'm**

20 **here to provide evidence for these affidavits, as**

21 **a treating physician of these affidavits -- of**

22 **these patients of mine. Is this -- is this**

23 **relevant to that?**

24 **163 Q.** Yes.

25 **A. Okay. Can you ask the**

NIMIGAN MIHAILOVICH REPORTING INC.

1 question again?

2 **164 Q.** Is it true that changes in the
3 brain of an addicted person will affect their
4 executive function?

5 **A. Yes.**

6 **165 Q.** Is it true that patients rely
7 on health-care providers to provide them with the
8 information they need in order to make an informed
9 decision about something like opioid agonist
10 therapy?

11 **A. That is a part of the picture.**

12 **Many of the decisions that are -- I mean, we take**
13 **our direction from patients on what their goals**
14 **are, and that is how -- that is what**
15 **patient-centred care is and that is what harm**
16 **reduction is, which is by far the more -- the more**
17 **successful way of treating people with opiate use**
18 **disorder.**

19 **166 Q.** So opioid agonist therapy is
20 still something that you use in your practice?

21 **A. Every single day, yes.**

22 **167 Q.** What form of opioid agonist
23 therapy do you recommend or use?

24 **A. Well, those are two questions.**

25 **But I use methadone. I use Kadian, which is**
NIMIGAN MIHAIOVICH REPORTING INC.

1 long-acting, sustained-release oral morphine. I
2 also use buprenorphine, both sublingual tablets
3 and extended-release injection, and I use
4 hydromorphone.

5 **There's -- I mean, there's many**
6 **different medications that are used for opioid**
7 **agonist -- again, I am -- I'm not entirely sure**
8 **where -- how this is relating to the affidavits in**
9 **front of me.**

10 **168 Q.** What is --

11 **A. I thought I was here as a**
12 **treating medical physician of these -- of these**
13 **patients.**

14 **169 Q.** What is the reason why one
15 form of opioid agonist therapy might be used as
16 opposed to another?

17 **A. There's all sorts of different**
18 **reasons. It depends on patients' goals above and**
19 **-- above and beyond anything else.**

20 **170 Q.** What form of opioid agonist
21 therapy was Ms. Jordan put on?

22 **A. So she was not treated by me.**
23 **I was not her -- I was not her addictions doctor,**
24 **and I make -- I make no reference to being her --**
25 **in hospital, when she was in the hospital, she was**
NIMIGAN MIHAIOVICH REPORTING INC.

1 on opioid agonist therapy, and I can't recall what
2 that was.

3 **But as an outpatient, prior to**
4 **being in hospital, she was being treated for her**
5 **opiate use disorder by another doctor, and I was**
6 **just providing wound care for her. In the --**
7 **however, again, in the hospital, I don't know what**
8 **her opiate -- I cannot recall what her opiate**
9 **agonist therapy was.**

10 **171 Q.** Do you recall what
11 practitioner was providing her with those
12 services?

13 **A. In -- as an outpatient? Yes.**

14 **172 Q.** Who was that?

15 **A. Dr. Dennis Divalentino.**

16 **I remember also, because she was so**
17 **distressed in that tent with the police all around**
18 **her, she had no way of getting to the pharmacy to**
19 **get her medications for her addiction because she**
20 **was so -- so worked up and distressed.**

21 **And I went to the pharmacy around**
22 **the corner to get her medications for her while**
23 **she stayed in her tent trying to protect her**
24 **belongings from this huge presence at the park.**
25 **So I specifically remember going to the pharmacy,**
NIMIGAN MIHAIOVICH REPORTING INC.

1 picking those medications up and bringing them
2 back to her that day.

3 **173 Q.** So she was on a form of opioid
4 agonist therapy that required her to go to a
5 pharmacy every day?

6 **A. Yes.**

7 **174 Q.** There are forms of opioid
8 agonist therapy that do not require that; is that
9 true?

10 **A. Yes.**

11 **175 Q.** Was there any consideration
12 given to putting her on a form of opioid
13 agonist therapy that would --

14 **A. I was not her addiction**
15 **medicine doctor.**

16 **MR. CHOUDHRY: Mr. Diacur, I**
17 **understand -- I mean, I think -- just if I could**
18 **clarify, I think she provided addiction-related**
19 **treatment on an inpatient basis but not on an**
20 **outpatient basis, and she's indicated that another**
21 **doctor did.**

22 **A lot of the questions you're**
23 **asking are about outpatient addiction treatment**
24 **care that this witness is not -- doesn't have**
25 **information about. So I'm not sure what the value**

NIMIGAN MIHAIOVICH REPORTING INC.

1 is of asking her questions about treatments she
2 didn't provide.

3 MR. DIACUR: Comments noted,
4 Counsel.

5 She references opioid agonist
6 therapy in the document that she's attached and
7 I'm examining her on her statements.

8 MR. CHOUDHRY: Yeah, but I think
9 she also has clarified, Counsel, with respect,
10 that she provided therapy on an inpatient basis,
11 and you're asking lots -- and she's also indicated
12 and given you the name of the physician who
13 provided her addiction therapy on an outpatient
14 basis, and she said she didn't provide that; she
15 only provided wound care.

16 And on one occasion, I believe,
17 she's provided evidence that she went to a
18 pharmacy to get that medication. So I'm not quite
19 sure what else she can tell you other than to say
20 she doesn't know. And she shouldn't be giving
21 evidence about care she didn't provide and doesn't
22 know about, unless she --

23 MR. DIACUR: I certainly agree with
24 you on that, Counsel.

25 MR. CHOUDHRY: Yes, and --

NIMIGAN MIHAIOVICH REPORTING INC.

1 MR. DIACUR: I'll take that answer
2 as -- I'll take that as noted.

3 MR. CHOUDHRY: Yeah. Thanks,
4 Mr. Diacur.

5 I just don't know what the value is
6 of asking her about care that she wasn't
7 responsible for providing.

8 MR. DIACUR: No, I agree.

9 **176 Q.** So let's move on to --

10 **A. I just want to -- Counsel, do**
11 **you know the difference between inpatient and**
12 **outpatient? Do you know what those terms mean?**

13 **177 Q.** Yes, I understand --

14 **A. Okay. I just wanted to be**
15 **sure. I wondered if that was the --**

16 **178 Q.** No. I appreciate the comment
17 of counsel stating that you shouldn't be giving
18 evidence about something that you didn't do.

19 **A. Yes. I agree as well.**

20 **179 Q.** So in Exhibit C to your
21 affidavit, this is a letter dated June 2, 2022,
22 regarding a Sherri Ogden.

23 It appears from this letter that
24 you treated Ms. Ogden at least once; is that true?

25 **A. I treated her many times, yes.**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **Many times.**

2 **180 Q.** And is it the case that you
3 did not obtain a complete medical history or
4 examine Ms. Ogden with respect to medical -- or
5 with respect to mental health complaints? Is that
6 accurate?

7 **A. That is untrue. Entirely**
8 **untrue.**

9 **181 Q.** Well, if I'm reading this
10 letter correctly, you state:

11 "She has only ever seen SHN
12 practitioners for issues related to
13 contraception, poor sleep or aches
14 or pain and various rashes." (As
15 read.)

16 **A. Yep.**

17 **182 Q.** That's true?

18 **A. Yes. And when you -- when you**
19 **see someone -- when someone walks in to say, "This**
20 **is my concern," I look at that patient's concern**
21 **and I also look at the whole person, every time**
22 **they come to see me.**

23 **So they -- they are here because**
24 **they have a rash. I am there. I see the rash and**
25 **I look at the whole person, and I see their**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **past -- I see the mental health issues that**
2 **they're struggling with, and I see all the social**
3 **determinants of health that are causing poor**
4 **health outcomes. I see that stuff as well.**

5 **So that is part -- they're coming**
6 **to us with one thing, because that is their**
7 **concern, and as a doctor with the years of**
8 **experience I have, I am looking at the whole**
9 **person and I am seeing the background stuff. So**
10 **yes, every time she came to see me, I would also**
11 **see the fact that she had significant undiagnosed**
12 **mental health issues.**

13 **183 Q.** Yes. You refer to undiagnosed
14 mental health illness.

15 You're qualified to diagnose mental
16 health illnesses?

17 **A. Yes.**

18 **184 Q.** And you did not diagnose
19 Ms. Ogden with any mental health illness?

20 **A. That I can -- so I can't -- I**
21 **have not looked in my -- in those medical records**
22 **recently, and I can't recall if I have -- if -- I**
23 **can't recall.**

24 **185 Q.** Did you ever see Ms. Ogden
25 subsequent to writing this letter?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. I'm -- I don't recall.**
 2 **186 Q.** You refer to any mental health
 3 illness she may have as undiagnosed. Can we not
 4 infer from that that you did not diagnose her with
 5 anything?
 6 **A. No, I would say we can't,**
 7 **because it doesn't say that I have -- that I have**
 8 **actually not diagnosed certain mental illnesses as**
 9 **well. So I may very well have diagnosed certain**
 10 **illnesses, but there may have been other ones that**
 11 **were undiagnosed.**
 12 **187 Q.** You've not provided any
 13 medical records or reports with any diagnosis with
 14 respect to any mental health issue suffered by
 15 Sherri Ogden; is that true?
 16 **A. In this letter? No, I have**
 17 **not, yes.**
 18 **188 Q.** And, in fact, in your
 19 affidavit, you've not provided any medical records
 20 or reports of your diagnosis of any mental health
 21 issue by any person?
 22 **A. Correct. There's no --**
 23 **there's no -- yeah, no medical records that are**
 24 **attached, just the letters.**
 25 **189 Q.** There is no treatment plan
NIMIGAN MIHAIOVICH REPORTING INC.

1 attached to this medical letter or any treatment
 2 plan for Ms. Ogden, period?
 3 **A. No. As noted, I'm not her --**
 4 **I was not her family doctor. She has a family**
 5 **doctor outside of Shelter Health Network, who she**
 6 **also sees sporadically, who would have -- who**
 7 **would presumably have more medical records.**
 8 **190 Q.** Did you provide any medical
 9 care to Ms. Ogden with respect to the issues of
 10 contraception, poor sleep or aches or pains and
 11 various rashes?
 12 **A. Yes.**
 13 **191 Q.** Did anyone else at the Shelter
 14 Health Network do so?
 15 **A. I am -- I don't know. I think**
 16 **likely -- I think it's highly likely, but I can't**
 17 **be certain without looking at the medical record.**
 18 **192 Q.** Do you know where you saw
 19 Ms. Ogden, in a clinic or in an encampment?
 20 **A. I definitely saw her at the**
 21 **Wesley Drop-in Centre, the Wesley Day Centre, and**
 22 **I can't recall if I've seen her in other places.**
 23 **193 Q.** You refer to some hospital
 24 records in this letter. Did you see Ms. Ogden
 25 when she accessed an emergency department?
NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. No, but the reference to that**
 2 **goes back to how I say we find our medical records**
 3 **on people. You go into hospital records and look**
 4 **to help build a bigger picture and understanding**
 5 **of the issues at hand. It's part of being a**
 6 **comprehensive and good doctor.**
 7 **194 Q.** You reference Ms. Ogden
 8 suffering from functional pain. Is that something
 9 that you diagnosed Ms. Ogden with?
 10 **A. Let me look.**
 11 **No. I do indicate that these are**
 12 **hospital records. All the hospital records were**
 13 **noted to be visits for functional pain, which is**
 14 **commonly seen in people that have mental health**
 15 **issues.**
 16 **195 Q.** Is that something that you
 17 treated Ms. Ogden for?
 18 **A. Yes, and I referenced that we**
 19 **would see her for aches and pains -- poor sleep or**
 20 **aches and pains and various rashes, so yes.**
 21 **196 Q.** Is functional pain something
 22 that is a symptom of withdrawal from opiates?
 23 **A. No. Not necessarily, no.**
 24 **197 Q.** Is --
 25 **A. Pain can be. Pain can be, but**
NIMIGAN MIHAIOVICH REPORTING INC.

1 **not functional pain, necessarily.**
 2 **198 Q.** Not necessarily. So sometimes
 3 it is?
 4 **A. No. No, it's not. It**
 5 **actually -- it would be a different diagnosis of**
 6 **pain.**
 7 **199 Q.** I'd like to turn to Exhibit D
 8 to your affidavit. This is a letter dated June 3,
 9 2022, with reference to a Patrick Ward.
 10 Do you have that?
 11 **A. Yes.**
 12 **200 Q.** How did you see Mr. Ward for
 13 medical treatment?
 14 **A. I don't understand the**
 15 **question.**
 16 **201 Q.** Did you see him in a clinic
 17 setting or in an encampment?
 18 **A. Mostly in a clinic setting,**
 19 **and sometimes I would see -- I believe I may**
 20 **have -- actually, I can't be absolutely certain if**
 21 **I saw him in an encampment. I'd have to access my**
 22 **medical records.**
 23 **202 Q.** And you've not attached any
 24 medical records to this letter; is that accurate?
 25 **A. That is accurate.**
NIMIGAN MIHAIOVICH REPORTING INC.

- 1 **203** Q. In paragraph 2 there's a list
2 of different portions of a past medical history.
3 Is that something that you treated Mr. Ward for?
4 **A. Every single one of those**
5 **issues? Is that what you're asking?**
6 **204** Q. Yes, the list.
7 **A. I think it's unlikely that I**
8 **treated him for every single one of these issues.**
9 **No. A past medical history is not about what one**
10 **doctor has treated someone for. It's their --**
11 **over their health history.**
12 **205** Q. So it's possible that many
13 other physicians have provided treatment for
14 Mr. Ward with respect to all of these things?
15 **A. No. That's unlikely because**
16 **he is someone that doesn't access health care**
17 **regularly. But he -- he will -- and hepatitis C,**
18 **for example, sometimes people never receive**
19 **treatment for that.**
20 **206** Q. But this is a past medical
21 history.
22 **A. Right.**
23 **207** Q. So, clearly, he has received
24 some form of treatment for all of these things;
25 isn't that accurate?

NIMIGAN MIHAIOVICH REPORTING INC.

- 1 **A. That is absolutely not**
2 **accurate. You do not -- you have your hand up.**
3 **Sorry.**
4 **No. People can have medical issues**
5 **that do not get treated and that never get treated**
6 **because their mental health might be too poor,**
7 **because their housing -- because all sorts of --**
8 **all sorts of reasons why they might never receive**
9 **care for their -- for their health issues.**
10 **Having a diagnosis of something**
11 **absolutely does not mean that you are -- that you**
12 **have at some point in your life received care for**
13 **that. You have received a diagnosis. You have**
14 **not necessarily received care.**
15 **208** Q. I see. So you're drawing a
16 distinction between seeing a doctor and the doctor
17 doing anything to assist?
18 **A. No, that's not what I'm doing.**
19 **You assist a patient in many ways, not just by**
20 **handing them a pill and not just by treating their**
21 **whatever it is. Every time you see a patient,**
22 **when you have -- when you have a patient-centred**
23 **encounter with that patient, you have been**
24 **assisting that patient.**
25 **209** Q. So does diagnosis include

NIMIGAN MIHAIOVICH REPORTING INC.

- 1 treatment?
2 **A. No.**
3 **210** Q. So you're drawing a
4 distinction between diagnosis and treatment.
5 You're saying that Mr. Ward has a
6 past medical history of diagnosis with this list
7 of things -- alcohol use disorder, stimulant use
8 disorder, peptic ulcer disease, pancreatitis,
9 hepatitis C, major depressive disorder,
10 osteoarthritis causing chronic pain, as well as
11 previous fractures in spine, pelvis and wrist
12 causing chronic pain, and substance-induced
13 psychosis -- is that accurate?
14 **A. You just read a big, long**
15 **list. What did you start with? What was the**
16 **question?**
17 **211** Q. Mr. Ward has been diagnosed
18 with all of these things --
19 **A. Yes, he has. He's been**
20 **diagnosed with all of -- and I've actually treated**
21 **him for many of them, but not all of them.**
22 **212** Q. You've provided treatment to
23 him for some of these things?
24 **A. For many of them is what I**
25 **just said.**

NIMIGAN MIHAIOVICH REPORTING INC.

- 1 **213** Q. And you are unable to tell me
2 whether any other medical practitioner treated him
3 for any of the others or for some that you --
4 **A. Oh, he had -- for his peptic**
5 **ulcer disease, he was in the -- he was -- had an**
6 **inpatient stay in hospital receiving blood**
7 **transfusions because he was -- he nearly died**
8 **during a perforated peptic ulcer disease. So he**
9 **-- he received hospital care for that, yes.**
10 **214** Q. For the aspects of this list
11 that you've not provided treatment, you're not
12 able to tell us whether anyone else has provided
13 treatment?
14 **A. I just told you that he**
15 **received treatment in hospital by other providers**
16 **as well.**
17 **215** Q. You mentioned in the third
18 paragraph that Mr. Ward has been sleeping rough.
19 What does that mean?
20 **A. Sleeping outside unsheltered.**
21 **216** Q. Does that include --
22 **A. Or in a tent. It could --**
23 **it's sleeping when you're outside.**
24 **217** Q. Does that include being housed
25 in a shelter system?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. No. Sleeping rough is**
2 **sleeping outside.**
3 **218 Q.** Potentially in a tent,
4 potentially completely unsheltered?
5 **A. Correct.**
6 **219 Q.** And you're not aware of the
7 full chronology of when Mr. Ward has been
8 sheltered indoors versus not?
9 **A. I would have to access my**
10 **notes, and even then I'm not sure it would give an**
11 **exact chronological picture.**
12 **220 Q.** In the fourth paragraph, you
13 mention that Mr. Ward was unable to tolerate the
14 close quarters of homeless shelters and all of the
15 stress that these can incur on individuals.
16 That's what he reported to you?
17 **A. Yes.**
18 **221 Q.** Is that something that you've
19 seen firsthand?
20 **A. Commonly, yes.**
21 **222 Q.** No, I mean in Mr. Ward.
22 **A. Yes.**
23 **223 Q.** How did that come to pass?
24 **A. He -- given his -- he just**
25 **shuts off. He gets -- he has to leave. He has a**
NIMIGAN MIHAIOVICH REPORTING INC.

1 **hard time with all the close quarters. Like many**
2 **people who have very significant mental health**
3 **issues, it makes his stress level go really high.**
4 **He would feel extremely uncomfortable and he**
5 **wouldn't be able to tolerate. It was -- it was**
6 **very clear.**
7 **224 Q.** Again, this is something he's
8 reporting to you?
9 **A. Well, and I saw it.**
10 **225 Q.** Where did you see it?
11 **A. I would -- I would also see**
12 **him in -- I mean, when I saw him even inside a**
13 **crowded soup kitchen, if he wasn't sleeping, which**
14 **he often was, but if he would -- you know, if he**
15 **was up, he would often not being able to tolerate**
16 **being in large crowds for a long time.**
17 **226 Q.** When would you have seen him
18 in a soup kitchen?
19 **A. At the Wesley Day Centre,**
20 **where I provided care for him.**
21 **227 Q.** Anywhere else?
22 **A. I can't recall. It's**
23 **possible. I can't recall.**
24 **228 Q.** I'd like to move to Exhibit E.
25 This is a letter dated June 8, 2022, with respect
NIMIGAN MIHAIOVICH REPORTING INC.

1 to a Jahmal Jammy Pierre.
2 Do you see that?
3 **A. Yep.**
4 **229 Q.** Now, from the letter, it
5 appears that you may have treated Ms. Pierre once
6 when doing outreach work. It's not clear. Do you
7 recall how many times you saw Ms. Pierre?
8 **A. Let me see here.**
9 **I saw her on three occasions.**
10 **Well, me or another person saw her on three**
11 **occasions for --**
12 **230 Q.** That's the area that I'm
13 unclear on. It says that she's only been seen on
14 three occasions. Do you recall seeing her on more
15 than one occasion?
16 **A. I -- I don't recall, no. I**
17 **can't be absolutely certain that I saw her other**
18 **than that very significant overdose in the street**
19 **that I talk about here.**
20 **231 Q.** So it's possible that parts of
21 this letter are based on the reports of others?
22 **A. Well, that's what -- an**
23 **electronic medical record is made up of -- of**
24 **reports of all the health-care providers -- I mean**
25 **of all the doctors that are part of that specific**
NIMIGAN MIHAIOVICH REPORTING INC.

1 **-- you know, in this case, Shelter Health Network.**
2 **So it's her Shelter Health Network record that I**
3 **would have accessed.**
4 **232 Q.** And those records are not
5 identified or included with this letter?
6 **A. Correct.**
7 **233 Q.** You indicate here that records
8 indicate that the overdose was unintentional, the
9 significant overdose that you just referenced?
10 **A. Let me see.**
11 **Well, I see that she told me they**
12 **were entirely unintentional, that she described it**
13 **as entirely unintentional, as most overdoses are.**
14 **234 Q.** Now, did she describe that to
15 you, or was that somebody else that reported that
16 description within a reference for it --
17 **A. Oh, she was --**
18 **235 Q.** -- on the medical note?
19 **A. She described that directly to**
20 **me, and I would have then put it in her medical**
21 **record.**
22 **236 Q.** I just want to be clear. What
23 the letter states is:
24 "She was encouraged to follow up
25 with doctors at the YWCA after that
NIMIGAN MIHAIOVICH REPORTING INC.

1 incident, and that is when she saw
2 my SHN colleagues. Ms. Pierre
3 described this overdose as entirely
4 unintentional." (As read.)
5 **A. Yeah. She -- she described**
6 **that to me. I responded to her overdose with**
7 **multiple doses of naloxone in the street. We**
8 **called EMS. She went straight to the hospital.**
9 **As noted, I am also an inpatient addiction**
10 **specialist, and I subsequently saw her in the**
11 **hospital several hours later, hoping to engage --**

12 **237 Q.** I see. I understand now. I
13 think that there's confusion over the timeline.

14 **A. Okay.**

15 **238 Q.** So at the second paragraph of
16 this letter, you state:

17 "On one occasion in August she had
18 an unintentional opiate overdose
19 and was hospitalized in the
20 intensive care unit for a period of
21 time." (As read.)

22 **A. Yep.**

23 **239 Q.** In the third paragraph, you
24 reference a different time, November of 2020, and
25 you say, "I was doing outreach work and saw

NIMIGAN MIHAIOVICH REPORTING INC.

1 Ms. Pierre slumped over," and you recognized that
2 she'd suffered an opiate overdose.

3 **A. Oh, yes.**

4 **240 Q.** Then you're talking about the
5 occasion in August, and you say that she saw your
6 SHN colleagues and that Ms. Pierre described the
7 overdose in August as entirely unintentional.

8 **A. She may have told me -- she**
9 **may have told me that -- well, I know she told me**
10 **that her opioid overdoses were unintentional. One**
11 **of the things is that she wasn't an opiate user.**
12 **She didn't -- she didn't have opioid use disorder.**

13 **So she was entirely opiate-naive**
14 **and she used a contaminated supply of a stimulant,**
15 **and that is why she had such a severe overdose,**
16 **because she had no tolerance to opiates. So that**
17 **is -- so she would tell me each time, "Oh, my God,**
18 **I can't believe I overdosed," and when I say**
19 **"unintentional," she unintentionally used opiates.**
20 **She did not want to use opiates.**

21 **She had -- she -- she had a**
22 **stimulant use disorder and used a contaminated**
23 **supply. So I referenced that many of my patients**
24 **have died in this scenario when they have no**
25 **opiate tolerance and use a contaminated supply of**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **a stimulant, yeah.**

2 **So each time I saw her, she would**
3 **say, "I --" you know, that it was entirely**
4 **unintentional. She didn't -- what I mean by that,**
5 **it was unintentional that she used opiates at all.**
6 **She thought she was accessing either crack or**
7 **crystal meth.**

8 **241 Q.** And then she became diagnosed
9 with opiate use disorder subsequent to that time?
10 It's indicated there --

11 **A. She absolutely very well may**
12 **have. So those -- those overdoses, oftentimes**
13 **someone with stimulant use disorder might go on to**
14 **develop opiate use disorder. That would not be**
15 **uncommon. But with those, the specific overdoses**
16 **that I am referencing here, she has -- they were**
17 **when she was opiate-naive and only using**
18 **stimulants.**

19 **So she -- she did -- subsequently,**
20 **after these, she developed opiate use disorder**
21 **because that is something that -- as noted, that**
22 **is something that you often, you know -- it can**
23 **lead -- one can lead to another. So she initially**
24 **was a stimulant -- had stimulant use disorder**
25 **only, had these unintentional overdoses, and then**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **started using opiates and did develop an opiate**
2 **use disorder.**

3 **242 Q.** You indicate in the second
4 paragraph:

5 "She was not at a point where she
6 was ready to engage with treatment
7 for her substance use disorders."
8 (As read.)

9 Is that based on your assessment of her or based
10 on a review of notes?

11 **A. I'm not sure. Probably both.**

12 **243 Q.** There's no indication in this
13 letter of any options being presented to her for
14 treatment for her substance use disorders; is that
15 true?

16 **A. The fact that she was in the**
17 **emergency department and went to the ER and was**
18 **seen by multiple doctors and was even seen by me**
19 **in the ER as the inpatient addiction doctor, it is**
20 **absolutely presumed that she was -- and, in fact,**
21 **I remember very clearly begging her to get on**
22 **opiate agonist therapy, would help -- which would**
23 **help protect her from future overdoses.**

24 **244 Q.** That's not referenced anywhere
25 in this letter?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. And I -- I reference that I**
 2 **saw her in the ER, I believe. Yeah. I went**
 3 **specifically to the ER to see her and try to**
 4 **engage with her further to -- to start some**
 5 **treatment, which would help protect her from**
 6 **future overdoses, namely Suboxone, buprenorphine.**
 7 **245 Q.** And it was determined she was
 8 not ready for that?
 9 **A. She determined that, indeed.**
 10 **She determined that.**
 11 **246 Q.** I'd like to turn to Exhibit F
 12 to your affidavit now, a letter dated June 9,
 13 2022, with reference to a Mario Muscato.
 14 Do you have a copy of that?
 15 **A. I do, and I'm looking at --**
 16 **yeah. Yeah. Okay. Let's keep going.**
 17 **247 Q.** You state in the letter that
 18 he can't get regular treatment but also that he
 19 sees you -- or saw you regularly, several times a
 20 week, in fact, on the second page of this letter.
 21 **A. Yep.**
 22 **248 Q.** That's accurate?
 23 **A. Yes. So by "regular**
 24 **treatment," I mean getting to a pharmacy every day**
 25 **to get a dose of opioid agonist therapy. He was**
NIMIGAN MIHAILOVICH REPORTING INC.

1 **not able to manage that. His -- he was sleeping**
 2 **in a different place every night and not able to**
 3 **get there.**
 4 **249 Q.** Right. And I think we
 5 established earlier that there are other forms of
 6 opioid agonist therapy. You referenced
 7 buprenorphine; right?
 8 **A. Yes, and that is appropriate**
 9 **for some people and it's inappropriate for others.**
 10 **250 Q.** It doesn't need to be
 11 administered daily?
 12 **A. That is an -- that's an**
 13 **injection that is monthly that -- at the time, it**
 14 **was a very new -- it was newly covered in Ontario**
 15 **at that time, but unfortunately it was not in**
 16 **keeping with Mr. Muscato's goals. It would not**
 17 **have been an appropriate medication for him.**
 18 **251 Q.** Well, you mention in this
 19 letter that there were times that Mr. Muscato
 20 would receive two weeks of opioid agonist therapy.
 21 Is that true?
 22 **A. If I wrote it in the letter,**
 23 **it's true. I -- it's a rather lengthy one, if you**
 24 **want to remind me where that is.**
 25 **252 Q.** So we can go to that. It's in
NIMIGAN MIHAILOVICH REPORTING INC.

1 the first full paragraph on page 3. So it's on
 2 the screen now:
 3 "There were times when he would
 4 receive two weeks of opioid agonist
 5 therapy consistently but then he
 6 would be service-restricted from a
 7 shelter or moved to an encampment
 8 and he would lose that stability
 9 and have to restart again down the
 10 road." (As read.)
 11 That's accurate?
 12 **A. Yes. Over and over, yes.**
 13 **253 Q.** Now, if I understand how
 14 buprenorphine works, there's a week of Suboxone
 15 first, which is administered daily at a pharmacy,
 16 and then there is the injection you referenced,
 17 which lasts for a month, and that's the
 18 buprenorphine; is that accurate?
 19 **A. That is only one way that it**
 20 **can be -- and I -- there are intricacies to**
 21 **addiction medicine that specialists -- I mean, I**
 22 **could talk to you about five different ways of**
 23 **starting buprenorphine, and I'm not interested in**
 24 **explaining that to you here because I have**
 25 **patients that are waiting to get it from me at my**
NIMIGAN MIHAILOVICH REPORTING INC.

1 **clinic right now, but yes.**
 2 **254 Q.** Is what I just put to you
 3 accurate?
 4 **A. No. It is only one way that**
 5 **buprenorphine is started. Buprenorphine is**
 6 **started many different ways.**
 7 **255 Q.** Mr. Muscato showed the ability
 8 to, for a period of two weeks at a time, attend
 9 daily and receive opioid agonist therapy. He
 10 could have attended for one week to receive
 11 Suboxone; isn't that true?
 12 **A. If he wanted Suboxone, that**
 13 **would have been true. As I've noted when you**
 14 **asked me about all the different types of opioid**
 15 **agonist therapy, I said different ones are**
 16 **appropriate for different people, and it is -- the**
 17 **number-one thing is patient preference.**
 18 **And when someone does not have**
 19 **buy-in to a certain type of opioid agonist**
 20 **therapy, it is by far -- what kind of**
 21 **paternalistic approach would I be if I said, "This**
 22 **is what you need, because I know better than you**
 23 **what you need."**
 24 **Of course I would offer every**
 25 **single type of opioid agonist therapy to every**
NIMIGAN MIHAILOVICH REPORTING INC.

1 patient I had in hopes that they would take one to
2 somehow have higher chances of remaining alive
3 down the road. But they do not -- when they
4 are -- they will decline certain types of
5 medications that are not in keeping with their
6 goals, and he declined Suboxone.

7 256 Q. You're saying that you did
8 offer it to him and he declined it?

9 A. Many times. And there -- and
10 yes, he was also -- we even tried Suboxone at
11 different times. We tried several different types
12 -- I think we've -- I think we tried all three
13 different types of opioid agonist therapy with
14 him, including methadone, buprenorphine, and
15 Kadian, all three lines.

16 257 Q. Is there a reason that wasn't
17 referenced in this medical letter?

18 A. Because I'm -- there's -- this
19 is a lengthy letter and there's no reason for me
20 to -- I mean, I'm not -- I don't know what you --
21 for some reason, you would think you would need to
22 know that I -- I, you know, try to get my patients
23 to access opioid agonist therapy every single time
24 I see them in an effort to help them stay alive.

25 That is actually something that one
NIMIGAN MIHAIOVICH REPORTING INC.

1 would assume an addiction doctor is doing every
2 day that they see the patient. That's -- I
3 wouldn't -- I wouldn't presume that would have to
4 be written down in a letter. I provided -- I saw
5 him multiple times a week at times when he was
6 able to get in to see me. I was his addiction
7 medicine doctor and I provided him with all sorts
8 of different avenues for care.

9 258 Q. You'd agree that it is the
10 case that doctors have more information about what
11 treatments are available or appropriate than
12 patients?

13 A. I don't. People -- people
14 with opioid agonist therapy are on -- are always
15 taking to each other on the street. They're
16 always discussing different -- what people are
17 doing here, what people are doing there.

18 Only when a new therapy becomes
19 available would a -- would a doctor necessarily
20 have more information than a patient. I mean, you
21 know, certainly there are certain patients that
22 are more informed than other patients, but
23 patients come to us very well-informed about
24 what's available.

25 259 Q. Would you consider

NIMIGAN MIHAIOVICH REPORTING INC.

1 Suboxone and buprenorphine more appropriate for a
2 patient who has difficulty attending a pharmacy
3 daily?

4 A. I would -- not necessarily.
5 Again, I told you it's about patient goals. And I
6 could sit here and describe the pharmacology of
7 buprenorphine. Buprenorphine -- which I -- which
8 I'm not very interested in doing right now.

9 But buprenorphine blocks opioid
10 receptors. Some people, in a harm reduction
11 approach, they still want to be able to access a
12 high, a euphoria when they use. When you use --
13 when someone is on buprenorphine, it will be
14 harder for them to have any sense of euphoria.

15 Again, people access this euphoria
16 because they are -- they are having a lot of --
17 often self-treating mental health issues and other
18 stresses in their life. So when people are on
19 buprenorphine, it is much harder for them to
20 actually have any sense of euphoria and to get
21 high. So many people don't want buprenorphine at
22 all.

23 260 Q. Did you ever provide treatment
24 to a Linsley Greaves?

25 A. I -- I believe I did, yes. I
NIMIGAN MIHAIOVICH REPORTING INC.

1 don't have an affidavit here in front of me.

2 261 Q. No, I understand that.

3 We've heard his evidence, and he
4 said that he saw you for a complaint of frostbite.
5 Do you have any recollection of that?

6 A. Yes. I do remember him having
7 frostbite. Clearly, actually. Yeah.

8 262 Q. I'm going to show you,
9 briefly, his affidavit because he makes some
10 reference to you. I'm just going to click through
11 to that.

12 So what I have on the screen is the
13 Affidavit of Linsley Greaves sworn June 2, 2022,
14 and at paragraph 32 he states:

15 "I only learned of this application
16 today after meeting with
17 Dr. Wiwcharuk at the Wesley Day
18 Centre for treatment of my
19 frostbite." (As read.)

20 A. Yes. Mm-hmm.

21 263 Q. Is it true that you were the
22 one who informed him of this litigation?

23 A. Sorry, do I -- I don't have an
24 affidavit in front of me for -- am I here to
25 provide -- I'm just trying to -- am I missing

NIMIGAN MIHAIOVICH REPORTING INC.

1 **something? Am I supposed to have an affidavit**
2 **about my information for Linsley Greaves?**

3 MR. CHOUDHRY: Dr. Wiwcharuk?

4 THE WITNESS: Yeah?

5 MR. CHOUDHRY: There's an affidavit
6 on the screen.

7 THE WITNESS: Yeah.

8 MR. CHOUDHRY: That's from
9 Mr. Greaves.

10 THE WITNESS: Yep.

11 MR. CHOUDHRY: And there's a
12 statement there --

13 THE WITNESS: Oh, yeah.

14 MR. CHOUDHRY: -- at paragraph 32,
15 and I think you should -- I think Mr. Diacur is
16 asking you a question based on Mr. Greaves'
17 evidence, which he's put on the screen for you to
18 review.

19 THE WITNESS: Okay. Yeah, mm-hmm.
20 So yeah, I believe that's accurate. Yeah.

21 MR. DIACUR:

22 **264 Q.** Can you tell me what you told
23 Mr. Greaves about this litigation?

24 **A. I can't recall. I -- I'm -- I**
25 **can't recall with certainty. I suspect that --**

NIMIGAN MIHAILOVICH REPORTING INC.

1 **based on what I'm seeing here, I do absolutely**
2 **remember him, his frostbite. I remember his toes**
3 **were essentially autoamputating; they were**
4 **starting to fall off.**

5 **I had -- I had seen that he had --**
6 **he had sustained significant harm from being**
7 **unsheltered, from losing his tent, from losing his**
8 **source of warmth, and we were in the middle of**
9 **some -- of, you know, this litigation that was**
10 **coming up, and I asked him if he wanted to -- if**
11 **this -- he -- he was distraught at this and very**
12 **angry at the fact that it had happened.**

13 **And I asked him if he would like**
14 **to -- if he'd like me to connect him with someone**
15 **who -- with one of the lawyers who was doing some**
16 **work, and after that I made a connection. And**
17 **that would have been the extent of my -- my part**
18 **in letting him know about that.**

19 **265 Q.** And he references, at
20 paragraph 31 just before that, getting frostbite
21 on his left foot and toes last winter.

22 **A. Yeah.**

23 **266 Q.** You saw him in June of 2022;
24 is that accurate?

25 **A. Yep, and that's about how long**

NIMIGAN MIHAILOVICH REPORTING INC.

1 **it takes for toes to autoamputate. It's a long**
2 **process.**

3 **267 Q.** So frostbite doesn't always
4 result in amputation?

5 **A. No, not always. Not always,**
6 **but many times it does. It's very common. I have**
7 **many patients who are missing the ends of multiple**
8 **digits, and it can take up to six months or even**
9 **longer for them to slowly, again, autoamputate,**
10 **kind of fall off. They become black and they**
11 **eventually fall off.**

12 **268 Q.** In particular, it's unlikely
13 that frostbite will result in amputation if it's
14 treated properly?

15 **A. That is inaccurate.**

16 **269 Q.** In what way?

17 **A. In that frostbite, once you**
18 **have -- so frostbite is difficult -- is just about**
19 **impossible to treat. Once you have established**
20 **frostbite and you have lost those capillaries, it**
21 **is a waiting game. You can't get back circulation**
22 **to tissue that was -- that has been lost to**
23 **frostbite. So the only way to ensure that one**
24 **does not lose digits from frostbite is to ensure**
25 **that frostbite does not happen.**

NIMIGAN MIHAILOVICH REPORTING INC.

1 **270 Q.** When Linsley Greaves presented
2 to you with this frostbite that he says was months
3 old, did you refer him for any treatment? What
4 did you do?

5 **A. I -- I don't have an affidavit**
6 **in front of me and I haven't referenced his**
7 **medical records. So I don't know. This is a**
8 **question out of the blue. This is over, you know**
9 **--**

10 **271 Q.** You recall meeting with him
11 and you recall his frostbite. Do you recall what
12 treatment you recommended or referred him for?

13 MR. CHOUDHRY: Mr. Diacur?

14 MR. DIACUR: Yes?

15 MR. CHOUDHRY: Out of fairness,
16 could you maybe scroll through the affidavit to
17 the top so she can at least read the rest of this
18 affidavit before she answers questions about it?

19 MR. DIACUR: Well, I'm not asking
20 her about the affidavit in front of her.

21 MR. CHOUDHRY: I think --

22 MR. DIACUR: She remembers meeting
23 with him. I'm asking if she remembers what
24 treatment was recommended.

25 MR. CHOUDHRY: So, Mr. Diacur,

NIMIGAN MIHAILOVICH REPORTING INC.

1 you're putting to her an affidavit from another
 2 witness. I think it's fair when anyone does that
 3 in this proceeding to any other witness that they
 4 be provided with that affidavit in full and they
 5 be able to review it.
 6 MR. DIACUR: I disagree. I think
 7 that --
 8 MR. CHOUDHRY: Well, I disagree
 9 with --
 10 MR. DIACUR: -- she understands
 11 what I'm asking her. I'm asking her about a
 12 meeting that she recalls. I'm only asking her if
 13 she recalls what treatment she recommended at that
 14 time. That's it.

15 THE WITNESS: I don't recall.

16 MR. DIACUR:

17 **272 Q.** Thank you.

18 So just a brief indulgence. I
 19 believe I may be finished. I just want make sure
 20 that I haven't inadvertently skipped a question.
 21 Just a moment.

22 **A. So I will have a brief**
 23 **indulgence after that, if you don't mind.**

24 MR. DIACUR: Yes. I confirm those
 25 are all of my questions for this witness.

NIMIGAN MIHAIOVICH REPORTING INC.

1 Thank you, Dr. Wiwcharuk, for
 2 attending and answering.
 3 THE WITNESS: I am appalled that
 4 you took this long when you had me here for half
 5 an hour.
 6 MR. CHOUDHRY: Dr. Wiwcharuk,
 7 please --
 8 THE WITNESS: Okay.
 9 MR. CHOUDHRY: Okay, please. We're
 10 all doing our best here.
 11 So, Dr. Wiwcharuk, now what happens
 12 is there's something called redirect, and we
 13 realize that you have patients and I can see the
 14 impatience in your face and I'm very, very sorry
 15 about this.

16 THE WITNESS: Okay. All right.

17 MR. CHOUDHRY: We have a couple of
 18 different options, and I'm trying to do this
 19 collaboratively with our friends from the City.
 20 Option one is that we take a short break so that
 21 Ms. Crowe and I can collect ourselves and assess
 22 what the scope of the redirect would be, and
 23 Ms. Crowe would lead those questions. She would
 24 try to be as efficient as possible. I expect she
 25 would be 10 to 15 minutes.

NIMIGAN MIHAIOVICH REPORTING INC.

1 MS. CROWE: Yes, no more.
 2 MR. CHOUDHRY: No more than 10 to
 3 15 minutes.
 4 Option 2 is to do what we call --
 5 is to not dismiss you but to what's called adjourn
 6 this cross-examination and then to schedule, at a
 7 time that works for everyone, the redirection by
 8 Ms. Crowe, which again would be no more than 10 or
 9 15 minutes. But if we were to do that, I have to
 10 put on the record that you are still under oath.

11 THE WITNESS: Yep.

12 MR. CHOUDHRY: You cannot speak
 13 with me or anyone from this legal team. You
 14 cannot be in touch with us.

15 THE WITNESS: Yep.

16 MR. CHOUDHRY: You cannot speak
 17 with anyone else about this evidence or this
 18 testimony. You are still under oath. You have to
 19 be -- unfortunately, you have to be in -- you're
 20 in that room for the purpose --

21 THE WITNESS: Yep. That's no
 22 problem. That is no problem at all.

23 MR. CHOUDHRY: I just want to
 24 clarify that it's very natural to want to speak
 25 with partners or loved ones about these

NIMIGAN MIHAIOVICH REPORTING INC.

1 experiences, and you can't.
 2 THE WITNESS: No.
 3 MR. CHOUDHRY: Okay?
 4 THE WITNESS: Yep.
 5 MR. CHOUDHRY: So given that we're
 6 way past time, I think we'd like to present you
 7 with these two options: Push it on a bit further,
 8 with giving us a bit of a break -- so 10 minutes
 9 of a break and then 10 to 15 minutes more,
 10 possibly, so 20, 25 -- or we adjourn under those
 11 very strict conditions and we work with you simply
 12 -- we communicate with you simply for the purposes
 13 of scheduling, and the communications will be with
 14 all counsel copied on these emails.

15 THE WITNESS: That is -- yeah.

16 MR. CHOUDHRY: So what would you
 17 prefer of those two options?

18 THE WITNESS: Thank you very much
 19 for giving me the option. I have to take number
 20 two. I'm so sorry because I know it's just harder
 21 for everyone involved. I'm really sorry, but I do
 22 -- I am -- I have a commitment to my patients who
 23 are all waiting for me right now.

24 MR. CHOUDHRY: So just to be clear,
 25 and, Mr. Diacur, just -- so what we will do is we

NIMIGAN MIHAIOVICH REPORTING INC.

1 will adjourn this cross-examination but not
2 dismiss.

3 We will -- you and I or someone
4 from our team and someone from your team,
5 Mr. Diacur, will work -- will communicate jointly
6 to Dr. Wiwcharuk to propose some alternative
7 times. She's on the west coast, I'm gathering.
8 So there's a three-hour time difference that we
9 should be alert to.

10 And we will be in touch with you as
11 soon as possible, Dr. Wiwcharuk.

12 Mr. Diacur, is that acceptable?

13 MR. DIACUR: That's fine.

14 MR. CHOUDHRY: Okay, good. Thank
15 you.

16 THE WITNESS: I can be very
17 flexible because in, like, three hours I am on
18 vacation for two weeks. I can -- anytime you tell
19 me, I can be available.

20 MR. CHOUDHRY: Okay. We will be --
21 we really are grateful for your time, and we will
22 jointly be in touch with you; okay? And so please
23 -- don't call us; we'll call you. Okay?

24 THE WITNESS: Okay. Thank you.

25 MR. CHOUDHRY: Okay. Thank you.

NIMIGAN MIHAILOVICH REPORTING INC.

1 MS. CROWE: Thank you.
2 --- Whereupon the proceedings adjourned at
3 12:53 p.m. sine die

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NIMIGAN MIHAILOVICH REPORTING INC.

* * * * *

This is to hereby certify that the foregoing is a
true and accurate transcript of DR. JILL WIWCHARUK
to the best of my skill and ability.



Kristy Fulton
Court Reporter

NIMIGAN MIHAILOVICH REPORTING INC.

TAB 92

COURT FILE NO. CV-21-77187

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and PATRICK WARD

Applicants

-AND-

CITY OF HAMILTON

Respondent

The Continued Cross-Examination of Dr. Jill Wiwcharuk, on Affidavits dated October 3rd, 2021, and June 7, 2024, taken upon affirmation in the above action this, 6th of September, 2024, conducted via videoconference hosted by the offices of Nimigan Mihailovich Reporting Inc.

APPEARANCES:

For the Applicants:

For the Hamilton Community Legal Clinic:

SHARON CROWE

For the Community Legal Clinic of York Region:

MICHELLE SUTHERLAND

NONYE OKENWA

BENJAMIN HOGNESTAD

For the City of Hamilton:

JORDAN DIACUR

JOJO JOHNSON

Gowling WLG (Canada) LLP

INDEX

PAGE

WITNESS: DR. JILL WIWCHARUK

Re-Examination by MS. CROWE 29

EXHIBITS

GUIDE TO UNDERTAKINGS, ADVISEMENTS, and REFUSALS:

This should be regarded as a guide and does not necessarily constitute a complete list:

UNDERTAKINGS:

(None noted).

UNDER ADVISEMENTS:

(None noted).

REFUSALS:

(None noted).

1 --- Commencing at 1:23 p.m.

2 DR. JILL WIWCHARUK,

3 THE WITNESS HEREINBEFORE NAMED,

4 Having been duly sworn by me to testify to the truth,

5 testified on their oath as follows, to wit:

6 RE-EXAMINATION BY MS. CROWE:

7 70 Q. This is a follow-up to the examination that

8 took place a couple of weeks ago with Mr. Diacur. And so

9 you indicated that you were practising with

10 Shelter Health Network and HAMSMaRT at the time of

11 completing your affidavit.

12 Are there other doctors with either of

13 those organizations?

14 A. Yes.

15 71 Q. Do you know how many?

16 A. I don't know exactly how many there were

17 with Shelter Health Network. It was at least 18. At

18 least 18. And with HAMSMaRT, there were, I believe,

19 three.

20 72 Q. Okay. And were there any other types of

21 medical practitioners with either organization?

22 A. Oh, yes, many. Certainly with

23 Shelter Health Network, there were numerous nurses, and

24 nurse practitioners, and social workers.

25 And with HAMSMaRT, there were peer workers

1 and a midwife. Yeah.

2 73 Q. Okay. What about non-medical practitioners

3 working with either organization?

4 MR. DIACUR: No. I object to that. That's

5 not a new issue whatsoever. There's nothing asked of her

6 about nonmedical practitioners and there is no ambiguity

7 in her answers about these questions.

8 That's not proper re-examination, counsel.

9 BY MS. CROWE:

10 74 Q. Okay. That's fine. We will move on.

11 Mr. Diacur asked you about what information

12 sources for patient records you consult and you indicated

13 that you often access hospital records, former psychiatric

14 records, other doctors' records.

15 Was this is an exhaustive list of where you

16 might get information about a patient's history or are

17 there other sources of information?

18 A. There are other sources. I would also talk

19 to a pharmacist. I would look at pharmacy records,

20 especially regarding opioid agonist therapy because it

21 would help me know what they have been taking and how

22 often they're getting their medication if they are missing

23 doses, et cetera.

24 And sometimes it would also just be calling

25 another doctor and speaking over the phone without getting

1 official records, but calling. And as we are all part of

2 the circle of care, and discussing the patient, and

3 working together to provide best care.

4 75 Q. Sorry, what do you mean by "circle of

5 care"?

6 A. Circle of care is when there are multiple

7 different providers involved in providing care for

8 someone. Yeah. So that would be a circle of care.

9 And I would also, with patient's consent, I

10 would also speak to, for example, shelter workers about

11 issues, and housing workers, and even ministry workers.

12 If there's any involvement with the

13 Ministry, often people are obviously on social assistance,

14 and ministry workers can be an area of support. So with

15 patient consent, I would speak to many different people.

16 76 Q. Okay. And Mr. Diacur also asked about

17 steps that you take to account for the possibility that

18 there might be inaccuracies in a patient history; and you

19 responded that you cross-reference:

20 "We checked things in emergency

21 records. We checked things in addiction

22 records. We call other providers to get

23 collaboration."

24 What are the other providers you are

25 referring to?

1 A. The other. Well, for example, sometimes I

2 will be the addiction doctor for someone and they have a

3 family doctor elsewhere. There was one patient in

4 particular we had discussed about that.

5 So, yeah, their family doctor would be a

6 very important source of collaboration.

7 77 Q. Okay.

8 A. Yes. Sometimes -- I'm trying to think of

9 other. You are asking about other healthcare providers in

10 particular?

11 78 Q. You just indicated you call other

12 providers --

13 A. Yeah.

14 79 Q. -- in collaboration?

15 A. A pharmacist also would be another source

16 because they see a patient every single day for their OAT,

17 when they are on opioid agonist therapy. So sometimes I

18 would want to know, hey, are they getting their dose every

19 day. And also how are they when they come in. Are they

20 reliable? Do they look like they are in a reliable and

21 mentally health space when they are there because

22 certainly pharmacists are big collaborators with us as

23 well.

24 80 Q. Okay. And then you mentioned "accessing

25 addiction records". Where are those records that you

1 would have access to?

2 A. So accessing addiction records. Do you

3 remember the context in which I said that just so that I

4 know exactly what?

5 81 Q. Yes. It was a question about potential

6 inaccuracies and having a fulsome having a sense of a

7 patient's medical history.

8 A. Yeah.

9 82 Q. And you were explaining what things you

10 might check or cross-reference.

11 A. Yes. So hospital records are really

12 important because it can even tell us the reasons that

13 people are visiting the emergency department.

14 It could be very clear that they are being

15 seen for addiction-related issues or addiction-related

16 sequela. So I can see, for example, that they were seen

17 for multiple abscesses, for example, for many years back;

18 and then I could say, Is it possible that you been

19 injecting for this long because I see that you've been

20 seen for a lot of abscesses, and then it might help

21 clarify a timeline.

22 Do you know what I mean?

23 So hospital records would be a really good

24 source of that.

25 And also whenever someone is on social

1 assistance, you can -- and their meds are getting paid for

2 them, that's just about every single addiction patient

3 that I would see, there is a provincial record of their

4 medications that I can access. So I can see how long

5 they've been receiving methadone, or Suboxone, or whatever

6 it may be.

7 83 Q. Thank you.

8 Mr. Diacur also asked you about what steps

9 must be taken before you can give a valid medical opinion

10 and put it to you that your opinion would not be valid if

11 you didn't review the appropriate medical records and

12 didn't carefully examine the patient.

13 There was some back-and-forth where you

14 answered both yes and a no and so I would like to clarify.

15 In your past practice with

16 Shelter Health Network and HAMSMaRT what steps did you

17 take to ensure that you formed a valid medical opinion for

18 a particular patient?

19 A. Well, it's communication with a patient.

20 It's having an appropriate interaction with the patient so

21 that they feel non-judged so that they can actually open

22 up to me and tell me what they are feeling and that is

23 something that addiction doctors do, I think, really well.

24 And so a lot of it is getting information

25 from the patient. And then, again, if there's any

1 ambiguity -- some people are able to give you a very

2 accurate history it's very clear that they are not at all

3 feeling -- just that they are able to give you a really

4 accurate history that is -- that they understand as well.

5 Some people have more understanding of

6 health issues than others so some people need more

7 cross-referencing than others. You know, when there is

8 ambiguity, when people aren't sure, that's when I need to

9 do some more checking; and with their permission, reach

10 out to other people, and other people in their circle of

11 care, to be asking and double-checking things.

12 But these, again, are generally patients

13 that you get to know over weeks and months. Sometimes I

14 would see people three times a week. You get to know

15 folks really, really well. Like, I know about their

16 struggles, you know, oftentimes in the past as well as the

17 present; medical issues that they've let go to the

18 wayside.

19 Other things are their goals as wanting to

20 get healthcare issues taking care of.

21 These are not people that I meet on a

22 one-off. These are patients that I know, I know really

23 well, because addictions doctors see patients, again, like

24 I said, sometimes multiple times a week.

25 So it is an ongoing part of their medical

1 history is something that you get on an ongoing basis.

2 84 Q. Thank you.

3 Mr. Diacur asked you about the medical

4 history that you had for Sherri Ogden. And you indicated

5 that every time she came to see, you would also see the

6 fact that she had significant undiagnosed mental health

7 issues.

8 What did you mean that you could see that

9 she had significant undiagnosed mental health issues?

10 A. So she -- let's see, you know, there's a

11 large part of -- so sometimes people have, for example,

12 personality disorders, right?

13 So that is something, again, that takes and

14 is often a process to diagnose. It might take quite a

15 while of getting to know someone and observing how they

16 interact with other people and the world around them.

17 Personality disorders. So I think you

18 often as a doctor you often get a feel for someone having

19 access to issues or personality disorders that have

20 affected their way of interacting with the world and made

21 things difficult for them.

22 I had a feeling that, and I'm quite sure

23 that she has a personality disorder, and it's not really

24 important for me to write that on her chart and formally

25 diagnose that. It's just not, again, I wasn't her main

1 family doctor.

2 Also, again, I think that there is an

3 intellectual disability. So that was obvious also with me

4 interacting with her, speaking with her. I am

5 suspicious -- and I have many patients who have

6 Fetal Alcohol Syndrome, for example. Again, that is a

7 really hard thing. That's really not diagnosable unless

8 you know birth history and things like that; and neither

9 is it really super relevant for the things that I was

10 helping her with.

11 So she is coming to me with issues. I am

12 in the background recognizing there's a whole lot of other

13 stuff going on here, but that is undiagnosed that is not

14 on -- it is not her priority right now to deal with. And

15 it's not my place. It's not important for me to be

16 writing down labels on her chart. I know.

17 I know that this is part of the whole

18 picture of the person that I'm seeing in front of me and I

19 can park that and go ahead with what her issues are on

20 that day.

21 85 Q. What is your memory of Ms. Ogden and how

22 she presented?

23 A. She was very, very vulnerable and mainly

24 because she was so extraordinarily naïve. And I think

25 that points to her repeated trauma that she would

1 experience. She -- I remember just feeling sick sometimes

2 knowing that she was being taken advantage of by people on

3 the streets because she just didn't have a strong voice

4 for herself.

5 And, again, I think it -- she was also very

6 small she's a very small person and she has a bit of a

7 phenotype for Fetal Alcohol Syndrome. And I just was

8 always thinking there's intellectual disability here.

9 There is -- and she's got so many stacks against her.

10 And her whole thing, you know, she was just

11 struggling with some of the most basic, basic issues like

12 housing. Like staying warm at night. And then, you know,

13 she had a mom and sometimes she would be putting her tent

14 in her mom's backyard and it really spoke to

15 intergenerational trauma and issues.

16 She is also part of a family that has -- I

17 know that in the community, that there is, again, very

18 much intergenerational trauma, and addictions, and mental

19 health struggles.

20 86 Q. Thank you, Dr. Wiwcharuk, those are my

21 questions.

22 A. Okay.

23 --- The examination concluded at 1:38 p.m.

24

25

I hereby certify the foregoing is a full, true, and correct
transcription of all of my oral stenographic notes to the best
of my ability so taken at the Continued Cross-Examination of
DR. JILL WIWCHARUK, given under oath before me on the 6th of
September, 2024.

Amy Armstrong, CVR-RVR

Certified Realtime Verbatim Reporter #7305

Certified Commissioner of Oaths

Certified this 8th of September, 2024

Reproductions of this transcript are in direction violation of
the O.R. 587/91 of The Administration of Justice Act January 1,
1990, and are not certified without the original signature of
the Certified Court Reporter. Absence of this certification
and signature is indication this document has been reproduced
without the permission of Nimigan Mihalovich Reporting Inc.,
and as such is not an original document.

		Canada [1] 26/15
BY MS. CROWE: [1] 30/9	Alcohol [2] 37/6 38/7	care [8] 31/2 31/3 31/5 31/6 31/7 31/8
MR. DIACUR: [1] 30/4	all [3] 31/1 35/2 39/2	carefully [1] 34/12
-	also [14] 30/18 30/24 31/9 31/10 31/16	CASSANDRA [1] 25/8
-- in [1] 32/14	32/15 32/19 33/25 34/8 36/5 37/2 37/3	certainly [2] 29/22 32/22
-AND [1] 25/14	38/5 38/16	certification [1] 39/19
1	always [1] 38/8	certified [5] 39/12 39/13 39/14 39/18
18 [2] 29/17 29/18	am [2] 37/4 37/11	39/19
1990 [1] 39/18	ambiguity [3] 30/6 35/1 35/8	certify [1] 39/1
1:23 [1] 29/1	AMMY [1] 25/9	cetera [1] 30/23
1:38 [1] 38/23	Amy [1] 39/8	chart [2] 36/24 37/16
2	another [2] 30/25 32/15	check [1] 33/10
2021 [1] 25/20	answered [1] 34/14	checked [2] 31/20 31/21
2024 [3] 25/20 25/21 39/5	answers [1] 30/7	checking [2] 35/9 35/11
3	any [3] 29/20 31/12 34/25	CHRISTINE [1] 25/7
3rd [1] 25/20	APPEARANCES [1] 25/24	circle [5] 31/2 31/4 31/6 31/8 35/10
5	Applicants [2] 25/13 26/2	CITY [2] 25/16 26/12
587/91 [1] 39/17	appropriate [2] 34/11 34/20	clarify [2] 33/21 34/14
6	are [34] 29/12 30/16 30/18 30/22 31/1	clear [2] 33/14 35/2
6th [1] 39/4	31/6 31/13 31/24 31/24 32/9 32/17	Clinic [2] 26/4 26/7
7	32/18 32/19 32/19 32/20 32/21 32/22	collaboration [3] 31/23 32/6 32/14
7305 [1] 39/12	32/25 33/11 33/13 33/14 34/1 34/22	collaborators [1] 32/22
77187 [1] 25/1	35/1 35/2 35/3 35/12 35/19 35/21	come [1] 32/19
8	35/22 37/19 38/20 39/16 39/18	coming [1] 37/11
8th [1] 39/14	area [1] 31/14	Commencing [1] 29/1
9	aren't [1] 35/8	Commissioner [1] 39/13
91 [1] 39/17	Armstrong [1] 39/8	communication [1] 34/19
A	ARNOLD [1] 25/7	community [3] 26/4 26/7 38/17
ability [1] 39/3	around [1] 36/16	complete [1] 28/3
able [2] 35/1 35/3	as [10] 28/2 29/5 31/1 32/22 35/4	completing [1] 29/11
about [14] 30/2 30/6 30/7 30/11 30/16	35/16 35/16 35/19 36/18 39/22	concluded [1] 38/23
31/10 31/16 32/4 32/9 33/5 34/2 34/8	ASHLEY [1] 25/9	conducted [1] 25/21
35/15 36/3	asked [5] 30/5 30/11 31/16 34/8 36/3	consent [2] 31/9 31/15
above [1] 25/21	asking [2] 32/9 35/11	constitute [1] 28/3
abscesses [2] 33/17 33/20	assistance [2] 31/13 34/1	consult [1] 30/12
Absence [1] 39/19	at [9] 29/1 29/10 29/17 29/17 30/19	context [1] 33/3
access [4] 30/13 33/1 34/4 36/19	35/2 38/12 38/23 39/3	Continued [2] 25/20 39/3
accessing [2] 32/24 33/2	B	COREY [1] 25/9
account [1] 31/17	back [2] 33/17 34/13	correct [1] 39/1
accurate [2] 35/2 35/4	background [1] 37/12	could [3] 33/14 33/18 36/8
Act [1] 39/17	backyard [1] 38/14	counsel [1] 30/8
action [1] 25/21	basic [2] 38/11 38/11	couple [1] 29/8
actually [1] 34/21	basis [1] 36/1	COURT [3] 25/1 25/3 39/19
addiction [8] 31/21 32/2 32/25 33/2	be [16] 28/2 30/24 31/8 31/14 31/18	cross [5] 25/20 31/19 33/10 35/7 39/3
33/15 33/15 34/2 34/23	32/2 32/5 32/15 33/14 33/23 34/6 34/9	Cross-Examination [2] 25/20 39/3
addiction-related [2] 33/15 33/15	34/10 35/11 37/15 38/13	cross-reference [2] 31/19 33/10
addictions [2] 35/23 38/18	because [8] 30/20 32/16 32/21 33/12	cross-referencing [1] 35/7
Administration [1] 39/17	33/19 35/23 37/24 38/3	CROWE [3] 26/5 27/4 29/6
advantage [1] 38/2	been [6] 29/4 30/21 33/18 33/19 34/5	CV [1] 25/1
ADVISEMENTS [2] 28/1 28/8	39/20	CV-21-77187 [1] 25/1
affected [1] 36/20	before [2] 34/9 39/4	CVR [1] 39/8
affidavit [1] 29/11	being [2] 33/14 38/2	CVR-RVR [1] 39/8
Affidavits [1] 25/20	believe [1] 29/18	D
affirmation [1] 25/21	BENJAMIN [1] 26/10	DARRIN [1] 25/6
again [9] 34/25 35/12 35/23 36/13	best [2] 31/3 39/2	dated [1] 25/20
36/25 37/2 37/6 38/5 38/17	BETWEEN [1] 25/4	day [3] 32/16 32/19 37/20
against [1] 38/9	big [1] 32/22	deal [1] 37/14
ago [1] 29/8	birth [1] 37/8	DELOREY [1] 25/7
agonist [2] 30/20 32/17	bit [1] 38/6	department [1] 33/13
ahead [1] 37/19	both [1] 34/14	DIACUR [6] 26/13 29/8 30/11 31/16
	BRADLEY [1] 25/7	34/8 36/3
	but [3] 31/1 35/12 37/13	diagnosable [1] 37/7
	C	diagnose [2] 36/14 36/25
	CALDWELL [1] 25/7	did [2] 34/16 36/8
	call [2] 31/22 32/11	didn't [3] 34/11 34/12 38/3
	calling [2] 30/24 31/1	different [2] 31/7 31/15
	came [1] 36/5	difficult [1] 36/21
	can [9] 31/14 33/12 33/16 34/1 34/4	direction [1] 39/16
	34/4 34/9 34/21 37/19	

D disability [2] 37/3 38/8 discussed [1] 32/4 discussing [1] 31/2 disorder [1] 36/23 disorders [3] 36/12 36/17 36/19 do [7] 29/15 31/4 32/20 33/2 33/22 34/23 35/9 doctor [6] 30/25 32/2 32/3 32/5 36/18 37/1 doctors [3] 29/12 34/23 35/23 doctors' [1] 30/14 document [2] 39/20 39/22 does [1] 28/2 don't [1] 29/16 dose [1] 32/18 doses [1] 30/23 double [1] 35/11 double-checking [1] 35/11 down [1] 37/16 Dr [4] 25/20 27/3 29/2 39/4 Dr. [1] 38/20 Dr. Wiwcharuk [1] 38/20 duly [1] 29/4	G generally [1] 35/12 get [7] 30/16 31/22 35/13 35/14 35/20 36/1 36/18 getting [6] 30/22 30/25 32/18 34/1 34/24 36/15 give [3] 34/9 35/1 35/3 given [1] 39/4 GLEN [1] 25/8 GNATUK [1] 25/8 go [2] 35/17 37/19 goals [1] 35/19 GOGO [1] 25/8 GOGO-HORNER [1] 25/8 going [1] 37/13 good [1] 33/23 GORD [1] 25/6 got [1] 38/9 Gowling [1] 26/15 GREAVES [1] 25/11 guide [2] 27/12 28/2	34/24 injecting [1] 33/19 intellectual [2] 37/3 38/8 158 interact [1] 36/16 interacting [2] 36/20 37/4 interaction [1] 34/20 intergenerational [2] 38/15 38/18 involved [1] 31/7 involvement [1] 31/12 is [30] 29/7 30/6 30/15 31/6 33/18 33/25 34/3 34/22 34/24 35/4 35/7 35/25 36/1 36/13 36/14 37/2 37/6 37/9 37/11 37/13 37/13 37/14 37/17 37/21 38/9 38/16 38/17 39/1 39/20 39/22 issue [1] 30/5 issues [12] 31/11 33/15 35/6 35/17 35/20 36/7 36/9 36/19 37/11 37/19 38/11 38/15 it [17] 29/17 30/20 30/24 33/5 33/12 33/14 33/18 33/20 34/6 34/10 34/24 35/25 36/14 37/9 37/14 38/5 38/14 it's [7] 34/19 34/20 35/2 36/23 36/25 37/15 37/15
E either [3] 29/12 29/21 30/3 elsewhere [1] 32/3 emergency [2] 31/20 33/13 ensure [1] 34/17 especially [1] 30/20 et [1] 30/23 et cetera [1] 30/23 even [2] 31/11 33/12 every [4] 32/16 32/18 34/2 36/5 exactly [2] 29/16 33/4 examination [6] 25/20 29/6 29/7 30/8 38/23 39/3 examine [1] 34/12 example [6] 31/10 32/1 33/16 33/17 36/11 37/6 exhaustive [1] 30/15 EXHIBITS [1] 27/7 experience [1] 38/1 explaining [1] 33/9 extraordinarily [1] 37/24	H had [6] 32/4 36/4 36/6 36/9 36/22 38/13 HAMILTON [3] 25/16 26/4 26/12 HAMSMaRT [4] 29/10 29/18 29/25 34/16 hard [1] 37/7 has [4] 36/23 38/6 38/16 39/20 have [9] 30/21 32/2 33/1 35/5 36/11 36/19 37/5 37/5 38/3 having [5] 29/4 33/6 33/6 34/20 36/18 health [9] 29/10 29/17 29/23 32/21 34/16 35/6 36/6 36/9 38/19 healthcare [2] 32/9 35/20 HEEGSMA [1] 25/6 help [2] 30/21 33/20 helping [1] 37/10 her [15] 30/5 30/7 36/24 36/25 37/4 37/4 37/10 37/14 37/16 37/19 37/25 38/9 38/10 38/13 38/14 here [2] 37/13 38/8 hereby [1] 39/1 HEREINBEFORE [1] 29/3 herself [1] 38/4 hey [1] 32/18 history [8] 30/16 31/18 33/7 35/2 35/4 36/1 36/4 37/8 HOGNESTAD [1] 26/10 HORNER [1] 25/8 hospital [3] 30/13 33/11 33/23 hosted [1] 25/21 housing [2] 31/11 38/12 how [7] 29/15 29/16 30/21 32/19 34/4 36/15 37/21	J JAHMAL [1] 25/10 January [1] 39/17 Jill [4] 25/20 27/3 29/2 39/4 JOHNSON [1] 26/14 JOJO [1] 26/14 JORDAN [2] 25/8 26/13 judged [1] 34/21 JULIA [1] 25/9 JULIA LAUZON [1] 25/9 June [1] 25/20 just [10] 30/24 32/11 33/3 34/2 35/3 36/25 38/1 38/3 38/7 38/10 JUSTICE [2] 25/3 39/17
F fact [1] 36/6 family [4] 32/3 32/5 37/1 38/16 feel [2] 34/21 36/18 feeling [4] 34/22 35/3 36/22 38/1 Fetal [2] 37/6 38/7 Fetal Alcohol Syndrome [2] 37/6 38/7 FILE [1] 25/1 fine [1] 30/10 folks [1] 35/15 follow [1] 29/7 follow-up [1] 29/7 follows [1] 29/5 foregoing [1] 39/1 formally [1] 36/24 formed [1] 34/17 former [1] 30/13 forth [1] 34/13 front [1] 37/18 full [1] 39/1 fulsome [1] 33/6	I I'm [3] 32/8 36/22 37/18 if [4] 30/22 31/12 34/10 34/25 important [4] 32/6 33/12 36/24 37/15 in [20] 25/21 30/7 31/7 31/18 31/20 31/21 32/3 32/9 32/14 32/19 32/20 33/3 34/15 35/10 35/16 37/12 37/18 38/14 38/17 39/16 inaccuracies [2] 31/18 33/6 Inc [2] 25/22 39/21 indicated [4] 29/9 30/12 32/11 36/4 indication [1] 39/20 information [4] 30/11 30/16 30/17	K know [21] 29/15 29/16 30/21 32/18 33/4 33/22 35/7 35/13 35/14 35/15 35/16 35/22 35/22 36/10 36/15 37/8 37/16 37/17 38/10 38/12 38/17 knowing [1] 38/2 KRISTEN [1] 25/6 L labels [1] 37/16 large [1] 36/11 LAUZON [1] 25/9 least [2] 29/17 29/18 Legal [2] 26/4 26/7 let [1] 35/17 let's [1] 36/10 LEWIS [1] 25/9 like [7] 32/20 34/14 35/15 35/23 37/8 38/11 38/12 LINSLEY [1] 25/10 list [2] 28/3 30/15 LLP [1] 26/15 long [2] 33/19 34/4 look [2] 30/19 32/20 lot [3] 33/20 34/24 37/12 M MACDONALD [1] 25/9 made [1] 36/20 main [1] 36/25 mainly [1] 37/23

M many [7] 29/15 29/16 29/22 31/15 33/17 37/5 38/9 MARCHAND [1] 25/6 MARIO [1] 25/6 MARSHALL [1] 25/10 may [1] 34/6 me [10] 29/4 30/21 34/22 34/22 36/24 37/3 37/11 37/15 37/18 39/4 mean [3] 31/4 33/22 36/8 medical [9] 29/21 30/2 33/7 34/9 34/11 34/17 35/17 35/25 36/3 medication [1] 30/22 medications [1] 34/4 meds [1] 34/1 meet [1] 35/21 memory [1] 37/21 mental [3] 36/6 36/9 38/18 mentally [1] 32/21 mentioned [1] 32/24 methadone [1] 34/5 MICHELLE [1] 26/8 midwife [1] 30/1 might [5] 30/16 31/18 33/10 33/20 36/14 Mihailovich [2] 25/22 39/21 ministry [3] 31/11 31/13 31/14 missing [1] 30/22 MISTY [1] 25/10 mom [1] 38/13 mom's [1] 38/14 MONAHAN [1] 25/9 months [1] 35/13 more [3] 35/5 35/6 35/9 most [1] 38/11 move [1] 30/10 Mr [1] 34/8 Mr. [4] 29/8 30/11 31/16 36/3 Mr. Diacur [4] 29/8 30/11 31/16 36/3 MS [2] 27/4 29/6 Ms. [1] 37/21 Ms. Ogden [1] 37/21 much [1] 38/18 multiple [3] 31/6 33/17 35/24 MUSCATO [1] 25/7 must [1] 34/9 my [4] 37/15 38/20 39/2 39/3	nothing [1] 30/5 now [1] 37/14 numerous [1] 29/23 nurse [1] 29/24 nurses [1] 29/23 O O.R [1] 39/17 OAT [1] 32/16 oath [2] 29/5 39/4 Oaths [1] 39/13 object [1] 30/4 observing [1] 36/15 obvious [1] 37/3 obviously [1] 31/13 October [1] 25/20 off [1] 35/22 offices [1] 25/22 official [1] 31/1 often [6] 30/13 30/22 31/13 36/14 36/18 36/18 oftentimes [1] 35/16 OGDEN [3] 25/10 36/4 37/21 Oh [1] 29/22 Okay [7] 29/20 30/2 30/10 31/16 32/7 32/24 38/22 OKENWA [1] 26/9 on [15] 25/20 29/5 30/10 31/13 32/17 33/25 35/21 36/1 36/24 37/13 37/14 37/16 37/19 38/2 39/4 one [2] 32/3 35/22 one-off [1] 35/22 ongoing [2] 35/25 36/1 ONTARIO [1] 25/2 open [1] 34/21 opinion [3] 34/9 34/10 34/17 opioid [2] 30/20 32/17 or [6] 30/16 33/10 33/15 34/5 34/5 36/19 oral [1] 39/2 organization [2] 29/21 30/3 organizations [1] 29/13 original [2] 39/18 39/22 other [16] 29/12 29/20 30/14 30/17 30/18 31/22 31/24 32/1 32/9 32/9 32/11 35/10 35/10 35/19 36/16 37/12 others [2] 35/6 35/7 out [1] 35/10 over [2] 30/25 35/13	personality [4] 36/12 36/17 36/19 36/23 pharmacist [2] 30/19 32/15 pharmacists [1] 32/22 pharmacy [1] 30/19 phenotype [1] 38/7 phone [1] 30/25 picture [1] 37/18 PIERRE [1] 25/10 place [2] 29/8 37/15 points [1] 37/25 possibility [1] 31/17 possible [1] 33/18 potential [1] 33/5 practice [1] 34/15 practising [1] 29/9 practitioners [4] 29/21 29/24 30/2 30/6 present [1] 35/17 presented [1] 37/22 priority [1] 37/14 process [1] 36/14 proper [1] 30/8 provide [1] 31/3 providers [5] 31/7 31/22 31/24 32/9 32/12 providing [1] 31/7 provincial [1] 34/3 psychiatric [1] 30/13 put [1] 34/10 putting [1] 38/13
N NAMED [1] 29/3 naïve [1] 37/24 necessarily [1] 28/3 need [2] 35/6 35/8 neither [1] 37/8 Network [4] 29/10 29/17 29/23 34/16 new [1] 30/5 night [1] 38/12 Nimigan [2] 25/22 39/21 no [4] 25/1 30/4 30/6 34/14 non [2] 30/2 34/21 non-judged [1] 34/21 non-medical [1] 30/2 None [3] 28/6 28/9 28/12 nonmedical [1] 30/6 NONYE [1] 26/9 not [15] 28/2 30/5 30/8 34/10 35/2 35/21 36/23 36/25 37/7 37/13 37/14 37/15 37/15 39/18 39/22 noted [3] 28/6 28/9 28/12 notes [1] 39/2	P p.m [2] 29/1 38/23 PAGE [1] 27/2 paid [1] 34/1 park [1] 37/19 part [5] 31/1 35/25 36/11 37/17 38/16 particular [3] 32/4 32/10 34/18 past [2] 34/15 35/16 patient [12] 30/12 31/2 31/15 31/18 32/3 32/16 34/2 34/12 34/18 34/19 34/20 34/25 patient's [3] 30/16 31/9 33/7 patients [4] 35/12 35/22 35/23 37/5 PATRICK [1] 25/11 peer [1] 29/25 people [14] 31/13 31/15 33/13 35/1 35/5 35/6 35/8 35/10 35/10 35/14 35/21 36/11 36/16 38/2 permission [2] 35/9 39/21 person [2] 37/18 38/6	Q question [1] 33/5 questions [2] 30/7 38/21 quite [2] 36/14 36/22 R re [2] 29/6 30/8 re-examination [2] 29/6 30/8 reach [1] 35/9 really [12] 33/11 33/23 34/23 35/3 35/15 35/15 35/22 36/23 37/7 37/7 37/9 38/14 Realtime [1] 39/12 reasons [1] 33/12 receiving [1] 34/5 recognizing [1] 37/12 record [1] 34/3 records [14] 30/12 30/13 30/14 30/14 30/19 31/1 31/21 31/22 32/25 32/25 33/2 33/11 33/23 34/11 reference [2] 31/19 33/10 referencing [1] 35/7 referring [1] 31/25 REFUSALS [2] 28/1 28/11 regarded [1] 28/2 regarding [1] 30/20 Region [1] 26/7 related [2] 33/15 33/15 relevant [1] 37/9 reliable [2] 32/20 32/20 remember [2] 33/3 38/1 repeated [1] 37/25 Reporter [2] 39/12 39/19 Reporting [2] 25/22 39/21 reproduced [1] 39/20 Reproductions [1] 39/16 responded [1] 31/19 Respondent [1] 25/18 review [1] 34/11 right [2] 36/12 37/14

R	suspicious [1] 37/5 SUTHERLAND [1] 26/8 sworn [1] 29/4 Syndrome [2] 37/6 38/7	trying [1] 32/8 types [1] 29/20
RVR [1] 39/8		160
S	T	U
said [2] 33/3 35/24 say [1] 33/18 see [11] 32/16 33/16 33/19 34/3 34/4 35/14 35/23 36/5 36/5 36/8 36/10 seeing [1] 37/18 seen [3] 33/15 33/16 33/20 sense [1] 33/6 September [1] 39/5 September, [1] 25/21 September,2024 [1] 39/14 sequela [1] 33/16 SHARON [1] 26/5 SHAWN [1] 25/7 she [19] 36/5 36/6 36/9 36/10 36/23 37/11 37/22 37/23 37/24 37/25 38/1 38/2 38/3 38/5 38/6 38/10 38/13 38/13 38/16 she's [2] 38/6 38/9 shelter [5] 29/10 29/17 29/23 31/10 34/16 Shelter Health Network [4] 29/10 29/17 29/23 34/16 SHERRI [2] 25/10 36/4 Sherri Ogden [1] 36/4 should [1] 28/2 sick [1] 38/1 signature [2] 39/18 39/20 significant [2] 36/6 36/9 single [2] 32/16 34/2 small [2] 38/6 38/6 SMYTH [1] 25/6 so [26] 29/8 31/8 31/14 32/5 32/17 33/2 33/3 33/11 33/16 33/23 34/4 34/14 34/20 34/21 34/24 35/6 35/25 36/10 36/11 36/13 36/17 37/3 37/11 37/24 38/9 39/3 social [3] 29/24 31/13 33/25 some [6] 34/13 35/1 35/5 35/6 35/9 38/11 someone [5] 31/8 32/2 33/25 36/15 36/18 something [3] 34/23 36/1 36/13 sometimes [9] 30/24 32/1 32/8 32/17 35/13 35/24 36/11 38/1 38/13 Sorry [1] 31/4 source [3] 32/6 32/15 33/24 sources [3] 30/12 30/17 30/18 space [1] 32/21 speak [2] 31/10 31/15 speaking [2] 30/25 37/4 spoke [1] 38/14 stacks [1] 38/9 staying [1] 38/12 stenographic [1] 39/2 steps [3] 31/17 34/8 34/16 streets [1] 38/3 strong [1] 38/3 struggles [2] 35/16 38/19 struggling [1] 38/11 stuff [1] 37/13 Suboxone [1] 34/5 such [1] 39/22 super [1] 37/9 SUPERIOR [1] 25/3 support [1] 31/14 sure [2] 35/8 36/22	take [3] 31/17 34/17 36/14 taken [4] 25/20 34/9 38/2 39/3 takes [1] 36/13 taking [2] 30/21 35/20 talk [1] 30/18 TAYLOR [1] 25/8 tell [2] 33/12 34/22 tent [1] 38/13 testified [1] 29/5 testify [1] 29/4 than [2] 35/6 35/7 Thank [3] 34/7 36/2 38/20 that [64] 29/7 29/9 30/4 30/13 31/8 31/17 31/17 31/19 32/4 32/25 33/3 33/3 33/12 33/14 33/16 33/18 33/19 33/24 34/3 34/4 34/10 34/17 34/21 34/21 34/22 34/23 35/2 35/3 35/4 35/4 35/13 35/17 35/21 35/22 36/1 36/4 36/5 36/6 36/8 36/8 36/13 36/13 36/19 36/22 36/23 36/24 36/25 37/2 37/3 37/6 37/8 37/9 37/13 37/13 37/17 37/18 37/19 37/20 37/25 37/25 38/2 38/16 38/17 38/17 that's [6] 30/4 30/8 30/10 34/2 35/8 37/7 their [13] 29/5 30/22 32/5 32/16 32/18 34/1 34/3 35/9 35/10 35/15 35/19 35/25 36/20 them [3] 34/2 36/16 36/21 then [5] 32/24 33/18 33/20 34/25 38/12 therapy [2] 30/20 32/17 there [19] 29/12 29/16 29/18 29/20 29/23 29/25 30/6 30/17 30/18 31/6 31/18 32/3 32/21 34/3 34/13 35/7 37/2 38/9 38/17 there's [6] 30/5 31/12 34/25 36/10 37/12 38/8 these [4] 30/7 35/12 35/21 35/22 they [21] 30/21 30/22 32/2 32/16 32/17 32/18 32/19 32/19 32/19 32/20 32/20 32/21 33/14 33/16 34/21 34/21 34/22 35/2 35/3 35/4 36/15 they're [1] 30/22 they've [2] 34/5 35/17 thing [2] 37/7 38/10 things [8] 31/20 31/21 33/9 35/11 35/19 36/21 37/8 37/9 think [6] 32/8 34/23 36/17 37/2 37/24 38/5 thinking [1] 38/8 this [10] 25/21 28/2 29/7 30/15 33/19 37/17 39/14 39/16 39/19 39/20 those [3] 29/13 32/25 38/20 three [2] 29/19 35/14 time [2] 29/10 36/5 timeline [1] 33/21 times [2] 35/14 35/24 together [1] 31/3 took [1] 29/8 transcript [1] 39/16 transcription [1] 39/2 trauma [3] 37/25 38/15 38/18 true [1] 39/1 truth [1] 29/4	under [2] 28/8 39/4 understand [1] 35/4 understanding [1] 35/5 UNDERTAKINGS [2] 28/1 28/5 undiagnosed [3] 36/6 36/9 37/13 unless [1] 37/7 up [2] 29/7 34/22 upon [1] 25/21 us [2] 32/22 33/12
		V
		valid [3] 34/9 34/10 34/17 Verbatim [1] 39/12 very [9] 32/6 33/14 35/1 35/2 37/23 37/23 38/5 38/6 38/17 via [1] 25/21 videoconference [1] 25/21 violation [1] 39/16 visiting [1] 33/13 voice [1] 38/3 vulnerable [1] 37/23
		W
		want [1] 32/18 wanting [1] 35/19 WARD [1] 25/11 warm [1] 38/12 was [13] 29/17 30/15 32/3 33/5 34/13 37/3 37/9 37/23 37/24 38/2 38/5 38/7 38/10 wasn't [1] 36/25 way [1] 36/20 wayside [1] 35/18 we [6] 30/10 31/1 31/20 31/21 31/22 32/4 week [2] 35/14 35/24 weeks [2] 29/8 35/13 well [8] 32/1 32/23 34/19 34/23 35/4 35/15 35/16 35/23 were [8] 29/9 29/16 29/18 29/20 29/23 29/25 33/9 33/16 what [14] 30/2 30/11 30/21 31/4 31/24 33/4 33/9 33/22 34/8 34/16 34/22 36/8 37/19 37/21 whatever [1] 34/5 whatsoever [1] 30/5 when [7] 31/6 32/17 32/19 32/21 35/7 35/8 35/8 whenever [1] 33/25 where [3] 30/15 32/25 34/13 which [1] 33/3 while [1] 36/15 who [1] 37/5 whole [3] 37/12 37/17 38/10 will [2] 30/10 32/2 wit [1] 29/5 without [3] 30/25 39/18 39/21 WITNESS [2] 27/3 29/3 Wiwcharuk [5] 25/20 27/3 29/2 38/20 39/4 WLG [1] 26/15 workers [6] 29/24 29/25 31/10 31/11 31/11 31/14 working [2] 30/3 31/3 world [2] 36/16 36/20 would [20] 30/18 30/19 30/21 30/24

W would... [16] 31/8 31/9 31/10 31/15 32/5 32/15 32/18 33/1 33/23 34/3 34/10 34/14 35/14 36/5 37/25 38/13 write [1] 36/24 writing [1] 37/16 Y yeah [5] 30/1 31/8 32/5 32/13 33/8 years [1] 33/17 yes [6] 29/14 29/22 32/8 33/5 33/11 34/14 York [1] 26/7 you [53] 29/9 29/9 29/15 30/11 30/12 30/12 30/13 30/15 31/4 31/17 31/18 31/19 31/24 32/9 32/11 32/11 32/24 32/25 33/2 33/9 33/9 33/18 33/22 34/1 34/7 34/8 34/9 34/10 34/11 34/13 34/16 34/17 35/1 35/3 35/7 35/13 35/14 35/16 36/1 36/2 36/3 36/4 36/4 36/5 36/8 36/8 36/10 36/17 36/18 37/8 38/10 38/12 38/20 you've [1] 33/19 your [4] 29/11 34/10 34/15 37/21		161

TAB 93

Court File No. CV-21-00077817-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
SHAWN ARNOLD, ET AL.**

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF LEILANI FARHA

SWORN JUNE 15, 2022

1. I, Leilani Farha, of the City of Ottawa, in the Province of Ontario, AFFIRM AND SAY:
2. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.

Professional Background and Expertise

3. I am a lawyer by training. I am a Canadian citizen. I have worked for the past 20 years both internationally and domestically in Canada on the implementation of the right to adequate housing for the most marginalized groups. I attach as **Exhibit “A”** to this affidavit a copy of my CV.

4. I am currently the Global Director of The Shift, an international movement to secure the right to housing. Launched in 2017 with the United Nations Office of the High Commissioner for Human Rights and United Cities and Local Government, The Shift works with multi-level stakeholders around the world to advance the right to housing, including in several municipalities in Canada.

5. I previously served as United Nations Special Rapporteur on Adequate Housing (sometimes referred to as the United Nations Special Rapporteur on the Right to Housing), from May 2014 until April 2020. Prior to and during my appointment as United Nations Special Rapporteur, I served as Executive Director of Canada Without Poverty in Ottawa, Ontario and before that, the Centre for Equality Rights in Accommodation, in Toronto, Ontario. Since 2021, I have been a Commissioner at the International Commission of Jurists, in Geneva, Switzerland.

6. In my capacity as UN Special Rapporteur, I contributed to global human rights standards on the right to housing, including through thematic reports to the UN General Assembly and the UN Human Rights Council on homelessness, the financialization of housing, informal settlements, rights-based housing strategies, and the first United Nations Guidelines for the implementation of the right to housing. Within the United Nations human rights system, I helped spearhead the first resolution regarding women and the right to adequate housing. I have appeared before various

United Nations human rights mechanisms to address economic, social and cultural rights issues; and I was a member of the Advisory Group on Forced Evictions for UN-Habitat.

7. I have researched and published widely on issues related to housing rights, including on forced evictions, securing land rights for indigenous peoples, and housing indigenous peoples in cities. As a central dimension in all my activities, I have worked extensively on women's economic, social and cultural rights, playing a pivotal role in raising awareness about the gender dimensions of these rights. I was also a founding member of the ESCR-Net – an international network of organizations committed to economic, social and cultural rights.

International human rights law and evictions

8. In this affidavit, I describe international rights law and standards governing evictions, including evictions from encampments. I refer to the following documents:

- a. United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, December 13, 1991, E/1992/23 (“**General Comment 4**”). I attach *General Comment 4* as **Exhibit “B”** to this affidavit.
- b. United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*, May 20, 1997, E/1998/2 (“**General Comment 7**”). I attach *General Comment 7* as **Exhibit “C”** to this affidavit.

- c. United Nations Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, September 19, 2018, A/73/310/Rev.1. I am the author of this document (“***Informal Settlements Report***”). I attach the *Informal Settlements Report* as **Exhibit “D”** to this affidavit.
 - d. United Nations Human Rights Council, *Access to justice for the right to housing*, January 15, 2019, A/HRC/40/61. I am the author of this document. I attach the *Access to justice for the right to housing* as **Exhibit “E”** to this affidavit.
 - e. United Nations Human Rights Council, *Guidelines for the Implementation of the Right to Adequate Housing*, January 25, 2019, A/HRC/43/43. I am the author of this document (“***Right to Housing Guidelines***”). I attach the *Right to Housing Guidelines* as **Exhibit “F”** to this affidavit.
 - f. UN Special Rapporteur on the Right to Housing, *A National Protocol for Homeless Encampments in Canada* (April 30, 2020). I am the co-author of this document with Dr. Kaitlin Schwan (“***Encampments National Protocol***”). I attach the *Encampments National Protocol* as **Exhibit “G”** to this affidavit.
9. To assist the Court, I have extracted below the portions of Exhibits “B” through “G” which I believe to be most relevant to the eviction of individuals from encampments.
10. In addition, in this affidavit I set out The Shift’s positions on the legality of the City of Hamilton’s policies on encampments under international human rights law.

General Comment 4 (Exhibit “B”)

11. *General Comment 4* addresses the right to adequate housing guaranteed by Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, *United Nations, Treaty Series*, vol. 993 (“*ICESCR*”). I attach the *ICESCR* as **Exhibit “H”** to this affidavit. Article 11(1) provides in relevant part:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

12. Paragraph 7 of *General Comment 4* states in part:

In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised.

13. Paragraph 8 of *General Comment 4* states in part:

(a) *Legal security of tenure*. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of

tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups ...

14. Paragraph 18 of *General Comment 4* states in part:

... the Committee considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

General Comment 7 (**Exhibit “C”**)

15. *General Comment 7* addresses the legality of forced evictions under Article 11(1) of the *ICESCR*.

16. Paragraph 3 of *General Comment 7* states in part:

The term "forced evictions" as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.

17. Paragraph 13 of *General Comment 7* states in part:

States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.

18. Paragraph 15 of *General Comment 7* states:

Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

19. Paragraph 16 of *General Comment 7* states:

Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

Informal Settlements Report (Exhibit “D”)

20. The *Informal Settlements Report* sets out international legal obligations that arise from the right to adequate housing under Article 11(1) of the *ICESCR* in relation to informal settlements.

21. Paragraph 7 of the *Informal Settlements Report* defines informal settlements to include “constantly displaced homeless encampments in the most affluent countries”.

22. Paragraph 26 of the *Informal Settlements Report* states: “The right to remain in one’s home and community is central to the right to housing.”

23. Paragraph 27 of the *Informal Settlements Report* states in part:

In situ upgrading allows residents to retain their connections to their locality, protects social cohesion and can help to avoid disrupting livelihoods. Relocation, in contrast, has many possible negative consequences and often results in a poorer quality of life. It has particularly negative repercussions for people with disabilities, the elderly, and children and young people.

24. Paragraph 28 of the *Informal Settlements Report* states in part: “The right to in situ upgrading must be recognized in law and communities should be provided with representation to seek enforcement of this right.”

25. Paragraph 29 of the *Informal Settlements Report* states:

States should immediately cease and desist from seeking to justify evictions of residents of informal settlements under domestic legal procedures. Courts should refuse to authorize such evictions in any but the most exceptional circumstances, and only when residents have been fully engaged in the process, when alternative housing of comparable or better quality is being provided and when all other requirements of international human rights have been honoured. Applications to evict are almost always indicative of flawed processes and lack of meaningful engagement with communities.

26. Paragraph 32 of the *Informal Settlements Report* states:

Where the government proposes relocation, the burden of proof is on the State to show why in situ upgrading is unfeasible. Authorities must publish and disseminate their reasoning to the community and allow it to be reviewed by a body capable of reversing the decision to relocate, providing a full hearing to residents.

27. Paragraph 32 of the *Informal Settlements Report* states in part:

In any instance of relocation, whether temporary or permanent, or from public or private land, ... relocation sites should be located in the vicinity of the original site,

have access to all necessary amenities (particularly water, sanitation and electricity) and maintain access to livelihoods.

Access to justice for the right to housing (Exhibit “E”)

17. *Access to justice for the right to housing* sets out the obligations on states under international human rights law to provide legal mechanisms to enforce the right to housing under Article 11(1) of the *ICESCR*.

18. Paragraph 36 of *Access to justice for the right to housing* states in part:

Access to justice must ensure that eviction is only carried out as a last resort, in accordance with all legal requirements and with prior genuine consultation with those affected, that all viable alternatives to the eviction are explored, and that no one will be rendered homeless as a result of the eviction. Courts must require all appropriate measures to be taken to ensure, where possible, that adequate alternative land and housing are available.

Right to Housing Guidelines (Exhibit “F”)

19. The *Right to Housing Guidelines* sets out a series of guidelines based on, and to ensure compliance with, international legal obligations that arise from the right to adequate housing under Article 11(1) of the *ICESCR*.

20. Guideline No. 6 (on page 8 of the *Right to Housing Guidelines*) is “Prohibit forced evictions and prevent evictions whenever possible”. Paragraphs 34 through 38 explain the legal basis for Guideline No. 6 in international human rights law:

[34] Forced evictions are defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection that are compliant with international human rights law. Forced evictions have long been recognized as a gross violation of human rights.

[35] In order for any eviction to comply with international human rights law, a number of criteria must be met, including meaningful engagement with those affected, exploration of all viable alternatives, relocation to adequate housing agreed upon by the affected households so that no one is rendered homeless, access to justice to ensure procedural fairness, and compliance with all human rights. Where these criteria are not met, evictions are deemed to have been forced and to constitute a violation of the right to housing.

[36] Forced evictions are widespread and devastating in their consequences. They are frequently carried out to make way for large-scale development projects, natural resource extraction and agribusiness projects, to clear informal settlements or homeless encampments, to replace existing lower-cost housing with luxury housing or commercial developments or ostensibly for public order, safety and city beautification. In some contexts, they involve brutal violence, including gender-based violence and deaths. Evictions have also become a more frequent response to rent or mortgage arrears in the context of rising housing costs, and in many cases national law governing such evictions is not compliant with international human rights.

[37] States must prohibit forced evictions and ensure that any evictions under domestic law are fully compliant with international law. Meaningful engagement with communities

should ensure the development of plans that respect the rights of residents and can be implemented cooperatively, without the need for eviction procedures or police enforcement.

[38] Implementation measures:

(a) Forced evictions as defined under international human rights law must be prohibited in all circumstances, regardless of ownership or tenure status of those affected. Victims of forced evictions must receive adequate compensation, reparation and access to housing or productive land as appropriate.

(b) National laws governing evictions must be compliant with human rights norms, including the principle of respect for human dignity and the general principles of reasonableness, proportionality and due process, and should equally apply to those living in homeless encampments. Access to justice must be ensured throughout the process and not just when eviction is imminent. All feasible alternatives to eviction must be explored, in consultation with affected persons. If, after meaningful engagement with those affected, relocation is deemed necessary and/or desired by the community, adequate alternative housing of similar size, quality and cost must be provided in close proximity to the original place of residence and source of livelihood. Evictions must not render people homeless. Access to justice must be ensured throughout the process and not just when eviction is imminent;

(c) In instances of mortgage foreclosure or rent arrears, evictions should only occur as a last resort and after a full exploration of alternative means to resolve

outstanding debt, such as through emergency housing benefits, debt rescheduling or, if required, relocation to more affordable housing units meeting adequacy standards;

(d) States should implement programmes to prevent evictions through measures such as rent stabilization and controls, rental assistance, land reform and other initiatives to promote land and tenure security in urban and rural settings. Preventive measures should also be adopted to eliminate the underlying causes of eviction and displacement, such as speculation in land, real estate and housing. No relocation of indigenous peoples is permitted without their free, prior and informed consent.

Encampments National Protocol (Exhibit “G”)

21. The *Encampments National Protocol* sets out a series of Principles. Paragraph 37 of the *Encampments National Protocol* sets out the legal basis of the Principles in international human rights law:

It is critical that all levels of government in Canada employ an integrated human rights-based approach when engaging with encampments. The Principles outlined here aim to support the right to housing for all encampment residents as part of Canada’s commitment to the right to housing under international human rights treaties and domestic law.

22. The Principles in the *Encampments National Protocol* are based on the international legal obligations set out, *inter alia*, in *General Comment 4*, *General Comment 7*, *Informal Settlements*

Report, Access to justice for the right to housing, Right to Housing Guidelines, and Encampments National Protocol.

23. Principle 3 (on page 19 of the *Encampments National Protocol*) is “Prohibition of forced evictions of encampments”. Paragraphs 45 through 49 explain the legal basis for Principle 3 in international human rights law:

[45] Under international human rights law, forced evictions constitute a gross violation of human rights and are prohibited in all circumstances, including in the context of encampments.

[46] Forced evictions are defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection ... in conformity with the provisions of the International Covenants on Human Rights.”

[47] Forced evictions are impermissible irrespective of the tenure status of those affected. This means that the forced eviction of encampments is prohibited if appropriate forms of protection are not provided – including all of the requirements described in this Protocol. It may also be considered a forced eviction when governments’ and those acting on their behalf harass, intimidate, or threaten encampment residents, causing residents to vacate the property.

[48] Common reasons used to justify evictions of encampments, such as ‘public interest,’ ‘city beautification’, development or re-development, or at the behest of

private actors (e.g., real estate firms), do not justify forced evictions. Evictions (as opposed to “forced evictions”) may be justified in rare circumstances, but they may only be carried out after exploring all viable alternatives with residents, in accordance with law and consistent with the right to housing, as described in this Protocol.

[49] Governments must repeal any laws or policies that sanction forced evictions and must refrain from adopting any such laws, including for example anti-camping laws, move-along laws, laws prohibiting tents being erected overnight, laws prohibiting personal belongings on the street, and other laws that penalize and punish people experiencing homelessness and residing in encampments.

24. A box (on page 20 of the *Encampments National Protocol*) entitled “Principle 3 in Action: Forced Eviction & Harassment of Homeless Encampment Residents” states:

In cities around the world, people experiencing homelessness are frequently subject to discriminatory treatment, harassment, and extreme forms of violence because of their housing status. People residing in homeless encampments are exposed to similar or worse treatment, particularly when faced with pressure to relocate or disperse.

In some cases, local laws, policies, or practices can provide the mechanisms for this harassment. For example, in British Columbia local authorities enforced a bylaw prohibiting overnight shelters in parks by using tactics that included spreading chicken manure and fish fertilizer on a homeless encampment. Residents and allies of the homeless encampment subsequently filed a human rights complaint with regard to these practices (*Abbotsford (City) v. Shantz*), and the BC Supreme Court found that certain

bylaws violated encampment residents' constitutional rights to life, liberty and security of the person.

Under international human rights law, such activities are strictly prohibited and constitute instances of forced eviction, even if they align with local laws or policies. Given this, it is critical that Canadian governments review local and national policies and laws to ensure they do not violate the prohibition against the forced eviction of homeless encampments.

25. Principle 4 (on page 20 of the *Encampments National Protocol*) is “Explore all viable alternatives to eviction”. Paragraphs 50 through 53 explain the legal basis for Principle 4 in international human rights law:

[50] Government authorities must explore all viable alternatives to eviction, in consultation with encampment residents. This means ensuring their meaningful and effective participation in discussions regarding the future of the encampment.

[51] Free and independent legal advice should be made available to all residents to help them understand the options, processes, and their rights. Consultations should be conducted at times and locations that are appropriate and accessible for residents to ensure their participation is maximised. Financial and other support should be available to residents so that they can fully participate in all discussions regarding the future of the encampment and so that residents can retain outside consultants (e.g., environmental engineers, architects) where needed to assist them in developing alternative options to eviction.

[52] Discussions regarding viable alternatives to eviction must include meaningfully [*sic*] engagement with Indigenous Peoples and be grounded in principles of self-determination, free, prior and informed consent. In urban contexts, for example, urban Indigenous organisations should be engaged early in the planning process to establish service delivery roles and to ensure the availability of culturally appropriate services.

[53] Where personal needs differ amongst residents of encampments such that a singular best alternative is not unanimous, governments will have to develop several solutions each of which is consistent with the principles outlined in this Protocol.

26. Principle 5 (on page 21 of the *Encampments National Protocol*) is “Ensure that any relocation is human rights compliant”. Paragraphs 54 through 59 explain the legal basis for Principle 5 in international human rights law:

[54] Homeless encampments are not a solution to homelessness, nor are they a form of adequate housing. Governments have an urgent, positive obligation to ensure encampment residents have access to long-term, adequate housing that meets their needs, accompanied by necessary supports. Rather than eviction, governments must engage with homeless encampments with a view to ensuring residents are able to access such housing.

[55] Despite this obligation, many governments respond to encampments by simply moving residents from one bad site to another through the use of law enforcement, physical barriers, or other means, and without meaningfully engaging residents. This in no way addresses the underlying violations of the right to housing experienced by residents of encampments, is often costly, and can contribute to increased

marginalization. If relocation is deemed necessary and/or desired by encampment residents, it is critical that it is conducted in a human rights compliant manner.

[56] As a starting point, meaningful, robust, and ongoing engagement with residents (as defined in Principle 2) is required for the development of any relocation of homeless encampments or of their residents. Meaningful engagement with communities should ensure the development of plans that respect the rights of residents and can be implemented cooperatively, without police enforcement. Considerations regarding relocation must be grounded in the principle that “the right to remain in one’s home and community is central to the right to housing.” If relocation is consistent with the human rights of residents, it will almost always be achievable without the use of force.

[57] If government authorities propose the relocation of residents of homeless encampments, and the residents desire to remain in situ, the burden of proof is on the government to demonstrate why in situ upgrading is unfeasible.

[58] If, after meaningful engagement with those affected, relocation is deemed necessary and/or desired by encampment residents, adequate alternative housing must be provided in close proximity to the original place of residence and source of livelihood. If governments have failed to provide residents with housing options that they find acceptable, residents must be permitted to remain or be provided with a satisfactory alternative location, while adequate permanent housing options are negotiated and put in place.

[59] If, in the exceptional case there is no viable alternative to eviction by authorities, eviction must be compliant with all aspects of international human rights law. Compliance with international human rights law requires:

i. Prohibition against the removal of residents' private property without their knowledge and consent. The removal of residents' private property by governments and those acting on their behalf, including the police, without their knowledge and consent, in [*sic*] strictly prohibited. Such actions are contrary to the rights of residents and may contribute to the deepening of residents' marginalization, exclusion, and homelessness. Governments and police must also seek to actively prevent the removal of homeless residents' private property by private actors or any other form of harassment.

ii. Adherence to the right to housing and other human rights standards when relocation is necessary or preferred. Adequate alternative housing, with all necessary amenities (particularly water, sanitation and electricity), must be in place for all residents prior to their eviction. Alternative housing arrangements should be in close proximity to the original place of residence and to services, community support, and livelihood. It is critical that all encampment residents be allowed to participate in decisions regarding relocation, including the timing and site of relocation. A full hearing of the residents' concerns with the proposed relocation should be held, and alternatives explored.

iii. Relocation must not result in the continuation or exacerbation of homelessness, or require the fracturing of families or partnerships. Relocation

must not result in the continuation or deepening of homelessness for residents. Relocation must not require the separation of families or partners, as defined by rights-holders themselves, including chosen family and other kinship networks. Governments should engage encampments with a view to keeping the community intact, if this is desired by the residents. Governments should also ensure that relevant housing policies are supportive of the ways in which rights-holders define their own families, partnerships, communities and extended Indigenous kinship structures, and accommodate these whenever possible in public or social housing.

iv. Access to justice to ensure procedural fairness and compliance with all human rights. Access to justice must be ensured at all stages of government engagement with encampment residents, not just when eviction is imminent. Access to justice and legal protection must meet international human rights law standards, including the provision of due process, access to legal aid, access to fair and impartial legal advice, and the ability to file complaints in a relevant forums (including Indigenous forums) that are geographically proximate.

27. Paragraphs 18 through 22 of the *Encampments National Protocol* state:

[18] The fact that encampments violate the right to housing does not in any way absolve governments of their obligations to uphold the basic human rights and dignity of encampment residents while they wait for adequate, affordable housing solutions that meet their needs. The Principles outlined in this Protocol seek to support governments and other stakeholders to ensure that their engagements with encampments are rights-based and recognize residents as rights holders, with a view to realizing the right to

adequate housing for these groups while respecting their dignity, autonomy, individual circumstances, and personal choices.

[19] International human rights law does not permit government to use force to destroy peoples' homes, even if they are made of canvas or improvised from available materials and constructed without legal authority or title. States may not remove residents from encampments without meaningfully engaging them to identify alternative places to live that are acceptable to them. Any such removal from their homes or from the land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection, consistent with international human rights law is defined as a 'forced eviction' and is considered a gross violation of human rights.

[20] Unfortunately, such forced evictions or sweeps have become common in Canada. Evictions have contravened international law by being carried out without meaningful consultation with communities and without measures to ensure that those affected have access to alternative housing. They have been justified on the basis that the residents are there illegally, are at risk to themselves, are on land that is slated for development, or are obstructing the enjoyment of the community by others. Declining conditions at encampments and public health and safety concerns are also frequently the grounds on which local governments and provinces seek injunctions for removal. The impact of municipalities' failure to proactively provide resources and services to mitigate or improve those conditions and concerns is most often ignored. Some communities have engaged bylaw officers or local police to tear down encampments at first sight.

[21] None of these reasons, however, justify forced evictions under international law. Forced evictions often have harmful or disastrous consequences for encampment residents. Victims may face life-threatening situations that compromise their health and security, or result in the loss of access to food, social supports, social and medical services, and other resources.

[22] Few governments have recognized encampments as a response to violations of fundamental human rights and a response to the isolation and indignity of homelessness. They have failed to treat those living in such encampments as legally entitled to the protection of their homes and their dignity.

The Shift Positions on City of Hamilton Encampment Policies

20. On August 27, 2021, The Shift issued a statement, “Homeless Encampments in Hamilton (ON) and Risk of Evictions”. I am one of the authors of this statement and agree with its contents. I attach this statement as **Exhibit “I”** to this affidavit.

21. The statement was issued in response to the City of Hamilton’s announcement that effective August 30, 2021 it would revoke the Bylaw Enforcement Protocol agreed to by the City and encampments residents, advocates, and community partners. The following passage appears in the statement (on page 1):

Should the City revoke the Protocol, evict encampments, and fail to ensure access to adequate housing for encampment residents, the City of Hamilton will be in breach of their human rights obligations as outlined by the UN Special Rapporteur on the Right to

Adequate Housing in A National Protocol on Homeless Encampments in Canada – A Human Rights Approach (2020).

22. The following passages also appear in the statement (on page 2):

The City of Hamilton – like all governments in Canada – has an obligation to urgently address encampments in a human rights compliant manner and to ensure that all those living in encampments are recognized as rights holders, on a path towards secure, permanent housing. In order to be consistent with international human rights law and federal government housing policy under the National Housing Strategy Act, the City of Hamilton must:

- Abstain from evicting encampments in the absence of consent from encampment residents and without providing adequate, alternative housing, with necessary supports, to encampment residents.
- Ensure any plans, policies, decisions, and actions made by the City in relation to encampments are only made following meaningful consultation with encampment residents, ensuring these residents opportunities to meaningfully influence the policies that affect them.
- Recognize that relying on temporary accommodation such as shelters and hotels to accommodate people evicted from encampments is wholly inconsistent with the human right to adequate housing. Shelters and hotels do not provide the long-term, secure housing that people who have experienced homelessness have a right to.

- Urgently take continual steps toward providing adequate, affordable, and secure housing for those living in homelessness, using all means and resources available.
- Adopt a policy approach to encampments that aligns with the obligations outlined in A National Protocol on Homeless Encampments in Canada – A Human Rights Approach.

23. I have reviewed the City of Hamilton's "Six Step Encampment Response" provided in Encampment Response Update dated September 9, 2021, by Edward John Manager of Housing Services. I attach this document as **Exhibit "J"** to this affidavit. I am of the opinion that this process and the response to encampments by the City of Hamilton, does not adhere to or align with the *National Encampments Protocol*.

Sworn remotely by Leilani Farha at the City of Ottawa in the Province of Ontario, before me on June 15, 2022 via "zoom videoconference in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

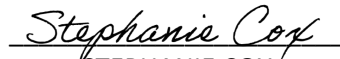
Stephanie Cox

Commissioner for Taking Affidavits
Stephanie Cox, LSO# 65464F

Leilani Farha

Leilani Farha

THIS IS EXHIBIT "A" TO THE
AFFIDAVIT OF LEILANI FARHA
AFFIRMED REMOTELY BEFORE ME AT THE
CITY OF OTTAWA DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG.431/20,
ADMINISTERNG OATH OR DECLARATION REMOTELY
THIS 15TH DAY OF JUNE, 2022


STEPHANIE COX

LSO NO. 65464F

Commissioner for Taking Affidavits, etc

LEILANI FARHA

67 Sunnymede Ave. Ottawa, ON K1Y 2L5 Canada
 +1.613.302.7769
 leilani@maketheshift.org

HIGHLIGHTS

- International Commission of Jurists, Commissioner (2021 – Present)
- Council on Urban Initiatives (2021 – Present)
- Open Society Foundation – Fellow (June 2020 – June 2022).
- Co-Host of PUSHBACK Talks – podcast about cities, housing, homelessness, finance and human rights. Listeners in over 135 countries.
- Canadian Housing and Renewal [Leadership Award](#), (September 2020).
- UN Special Rapporteur on adequate housing (May 2014 – April 2020).
- World Premiere of award-winning documentary film PUSH, CPH:Dox Festival, Copenhagen, Denmark. (March 2019, lead character).
- Jack Layton Award for Progressive Leadership (March 2019).
- Honorary Doctorate, Mount Saint Vincent University, Halifax, Nova Scotia (November 2015).

EDUCATION AND QUALIFICATIONS

2015	Honorary Doctor of Humane Letters (DHumL) Mount Saint Vincent University, Halifax, Nova Scotia.
1997	Admitted to the Bar of Ontario, in good standing
1991 - 95	Bachelor of Law (LLB), University of Toronto Master of Social Work (MSW), University of Toronto
1986 - 90	Bachelor of Arts, English Literature (B.A.), Honours University of Toronto, Victoria College

WORK EXPERIENCE

2020 – Present	The Shift – established in partnership with the UN Office of the High Commissioner for Human Rights

and **United Cities and Local Governments**, incubated
by the **Canadian Urban Institute**
Global Director

2014 – 2020

***UN Special Rapporteur on the right to adequate
housing and to non-discrimination in that context***

2012 – 2020

Canada Without Poverty
Executive Director

2002 – 2012

Centre for Equality Rights in Accommodation
Executive Director

2000 – 2002

Centre for Equality Rights in Accommodation
Staff Lawyer

1997 – 2001

**Centre on Housing Rights and Evictions (COHRE),
Women's Programme Coordinator/Legal Officer**

SELECTED RECENT SPEECHES + PRESENTATIONS

Architekturmuseum Der Tum (The Architecture Museum). Keynote, “Who is next: Homelessness, Architecture, and Cities, (Virtual: February 3, 2022).

London School of Economics and Political Science. Guest Lecturer. Executive Master's in Cities “Housing Challenges”, (Virtual: October 5, 2021).

Homelessness Services Association of British Columbia. Keynote, Annual General Meeting. (Virtual September 16, 2021).

International Conference on Canadian, Chinese, and African Sustainable Urbanization (ICCCASU-4). Keynote, “What a Wonderful World it Could Be!”, (Virtual: July 28, 2021).

American Civil Liberties Union, Southern California. Panelist, “Upfront Series: Dignity for All: Solutions to Houselessness”, (Virtual: July 28, 2021).

Spanish Parliament. Expert witness, “Obligations of States and Application of International Human Rights Law”, (Virtual: June 17, 2021).

Government of Canada, House of Commons Standing Committee on Finance. Expert witness on financialization, (Virtual: May 4, 2021).

McGill University, Max Bell School of Public Policy. Guest Lecturer. (Virtual: April 22, 2021).

University of Miami, School of Law. Panelist, “International Law & COVID-19 Symposium”, (Virtual: April 12, 2021).

UN-Habitat NY, Panelist, “Addressing Systemic Poverty and Inequality”, (Virtual: December 8th, 2020).

Harvard Graduate School of Design, Panelist, “Is Housing a Universal Human Right?” with Benjamin Applebaum Sr. Editor of the NY Times, Prof. Richard Sennett and Michael Lehrer, Architect (Virtual: December 3rd, 2020).

Future Cities Canada, #UnexpectedSolutions – Creating Resilient Cities, Together, “The Right to

Housing - A Conversation with Evan Siddall” (Virtual: November 23rd, 2020).

Innovative Approaches to Affordable Housing in Waterloo Region, Do More Good Dialogue Kitchener-Waterloo, Guest Speaker (Virtual: November 4th, 2020).

OECD, Keynote Address, Roundtable on Housing Policy Responses to the Covid-19 Crisis (Virtual: May 14th, 2020).

United Cities and Local Government, Live Learning Experience, [The Right to Housing and COVID-19](#), (March 25th, 2020).

“Corporate Capture of Housing and Human Rights” *Chet Mitchell Lecture, Carleton University*, (Ottawa: January 28th, 2019).

“Housing for All”, Keynote Address, *International Conference on Housing for All*. (Vienna: December 7th, 2019).

“A place to call home or a place to accumulate wealth? Inequality and exclusion in housing markets”, Panelist, CMHC National Housing Conference (Ottawa: 2018).

“[The Human Right to Housing](#)”, Keynote Address, Canadian Alliance to End Homelessness, The National Conference on Ending Homelessness 2018 (November 8th, 2018).

“[Making the Shift - From Hot Markets to Homelessness and the Right to Housing](#)”, Visiting Lectureship in Human Rights, University of Alberta (Edmonton: November 2017).

“The right to housing and micro-finance” Keynote Address, *8e Prix Europeen de la Microfinance*, (Luxembourg: November 29th, 2017).

SELECTED OPINION PIECES

“[Here’s How Rocketing Rents and Unaffordable House Prices can be Fixed](#)”, The Guardian (2 June 2022).

“[Profit Mongers Should Have No Home in Canada’s Housing Market](#)” co-authored with Julieta Perucca, The Globe and Mail (16 June 2021).

“[The Landlord and Tenant Board is in crisis](#)” co-authored with Alissa Brierley, NOW Magazine (15 December, 2020).

“[Homelessness is rising but is neither inevitable nor unstoppable](#)” co-authored with Juha Kaakinen, The Guardian (10 December 2020)

“[States have to ensure adequate housing amid the pandemic](#)”, Al-Jazeera Opinion, (August 19, 2020).

“[How can billions of people ‘stay home’ to beat Covid-19 without a safe place to live](#)”, The Guardian (April 29, 2020).

[When Governments sell out to developers, housing is no longer a human right](#), The Guardian (February 29, 2020).

[The case for a human rights response to homelessness](#), co-authored with Haseena Manek, NOW Magazine, (February 11, 2020).

[“How corporates capture housing and colonize cities”](#) *Place – Thomson Reuters*, (January 22nd, 2018).

[“Grenfell Tower is a terrible betrayal of human rights”](#) *The Guardian*, (June 21st, 2017).

[“Housing is a human right, not a commodity”](#) *The Globe and Mail*, (March 30, 2017).

[“Homeless people are not cockroaches or vermin – they are human and have rights”](#) *The Guardian* (December 21st, 2015).

SPECIAL RAPPORTEUR SELECTED THEMATIC REPORTS

2020

Guidelines for the Implementation of the Right to Housing
A National Protocol for Homeless Encampments in Canada

2019

The Right to Housing of Indigenous Peoples
The Right to Housing and Access to Justice

2018

Upgrading Informal Settlements and Encampments
Human Rights Based Housing Strategies

2017

The Financialization of Housing and Human Rights
The Right to Housing of Persons With Disabilities

2016

Homelessness and the Right to Housing

2015

The International Human Rights Obligations of Sub-National Governments

RECENT SELECTED PUBLICATIONS

“Homelessness, Housing and Human Rights Accountability” in *Displacement City* (University of Toronto Press, forthcoming).

[The Shift Directives – From Financialized to Human Rights Based Housing](#), with Sam Freeman (June 2022).

“Hanging by a Thread – Confronting Urban Homelessness with Human Rights” in *Who’s Next? Homelessness, Architecture, and Cities*, Munich (2022).

NOT LONDON – Focus on the Forgotten, Anthony Dawton, Photographs, Foreward (2021).

The Human Right to Housing in the Age of Financialization in [Research Handbook on Human Rights and Poverty](#), co-authored with Kaitlin Schwan, ed. Martha Davis and Morton Kjaerum (June 2021).

[Model Emergency Housing Legislation](#): Protecting the Right to Housing during Covid-19, co-authored with Open Society et al. (December 2020).

[*The Frontline Defence: Housing and Human Rights in the time of COVID-19*](#), in [*Vulnerable: The Law, Policy and Ethics of Covid-19*](#), eds. Coleen Flood, Jane Philpott et. al (2020).

Housing Shock: The Irish Housing Crisis and How to Solve It, Rory Hearne, Foreword (2020).

[*A National Protocol for Homeless Encampments in Canada*](#). Co-authored with Kaitlin Schwan (April 2020).

[*Guidance Notes on Covid-19 and the right to housing*](#): Prohibition on evictions; Protecting rent and mortgage payers; Protecting residents of Informal Settlements; Protection for those living in homelessness; and Financialization (March/April 2020).

Homelessness in 2030, Juha Kaakinen et al. (2019), Foreword.

SELECTED STRATEGIC LITIGATION

Intervenor Application, High Court of the Northern Territory, Australia in the Santa Theresa Case involving Indigenous peoples and the “habitability” of housing (forthcoming).

Amicus Curiae brief submitted to the Constitutional Court of Hungary in Case [No. III/01628/2018](#), initiated by Kaposvár District Court (Kaposvári Járásbíróság) regarding the constitutionality of amendments to section 178/B of the Act II of 2012 on Misdemeanors, in relation to persons residing in public spaces as habitual dwelling. (Submission: December 2018).

Canada Without Poverty vs. Canada – Charter of Rights and Freedoms, Freedom of Expression challenge to income tax act provisions governing charities. (Decision: July 2018).

Amicus Curiae brief submitted to the Constitutional Court of the Republic of Guatemala, Ref. File No. 2698-2017 regarding the [Community of Laguna Larga](#).

[*MDB et al. v. Spain*](#) - Third Party Intervention to the Committee on Economic, Social and Cultural Rights with respect to Communication 5/2015. (Decision: January 2017).

SELECTED HUMAN RIGHTS RESEARCH MISSIONS

2015 - 2020

Countries: Cabo Verde, Chile, Egypt, France, India, New Zealand, Nigeria, Portugal, Serbia and Kosovo, South Korea,

Cities: Barcelona, Berlin, Detroit, Dublin, Jakarta, Lausanne, London, Los Angeles, Manila, Mexico City, Oakland, San Diego, San Francisco, Toronto, Vancouver, Vienna.

THIS IS EXHIBIT "B" TO THE
AFFIDAVIT OF LEILANI FARHA
AFFIRMED REMOTELY BEFORE ME AT THE
CITY OF OTTAWA DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG.431/20,
ADMINISTERNG OATH OR DECLARATION REMOTELY
THIS 15TH DAY OF JUNE, 2022

Stephanie Cox

STEPHANIE COX
LSO NO. 65464F
Commissioner for Taking Affidavits, etc



**CESCR General Comment No. 4: The Right to Adequate Housing
(Art. 11 (1) of the Covenant)**

*Adopted at the Sixth Session of the Committee on Economic,
Social and Cultural Rights, on 13 December 1991
(Contained in Document E/1992/23)*

1. Pursuant to article 11 (1) of the Covenant, States parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.
2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, para. 312) and fourth sessions (E/1990/23, paras. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987.¹ The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.²
3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing³ article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.
4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11 (1) of the Covenant and

¹ *Official Records of the General Assembly, Forty-third Session, Supplement No. 8, addendum (A/43/8/Add.1).*

² Commission on Human Rights resolutions 1986/36 and 1987/22; reports by Mr. Danilo Türk, Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139); see also Sub-Commission resolution 1991/26.

³ See, for example, article 25 (1) of the Universal Declaration of Human Rights, article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, article 27 (3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 (*Report of Habitat: United Nations Conference on Human Settlements* (United Nations publication, Sales No. E.76.IV.7 and corrigendum, chap. I), article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115)).



the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed.⁴ There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This general comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While the reference to “himself and his family” reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of “family” must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.

7. In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This “the inherent dignity of the human person” from which the rights in the Covenant are said to derive requires that the term “housing” be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost”.

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into

⁴ See note 1.



account in determining whether particular forms of shelter can be considered to constitute “adequate housing” for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) *Legal security of tenure.* Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) *Availability of services, materials, facilities and infrastructure.* An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) *Affordability.* Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) *Habitability.* Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the *Health Principles of Housing*⁵ prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

⁵ Geneva, World Health Organization, 1990.



(e) *Accessibility.* Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) *Location.* Adequate housing must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) *Cultural adequacy.* The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible



for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its general comment No. 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

12. While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in paragraph 32 of the Global Strategy for Shelter, “defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time frame for the implementation of the necessary measures”. Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to “provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing”. They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in “illegal” settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party’s obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most



usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of “enabling strategies”, combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (paras. 6-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

18. In this regard, the Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

19. Finally, article 11 (1) concludes with the obligation of States parties to recognize “the essential importance of international cooperation based on free consent”. Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should,



when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

THIS IS EXHIBIT "C" TO THE
AFFIDAVIT OF LEILANI FARHA
AFFIRMED REMOTELY BEFORE ME AT THE
CITY OF OTTAWA DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG.431/20,
ADMINISTERNG OATH OR DECLARATION REMOTELY
THIS 15TH DAY OF JUNE, 2022



STEPHANIE COX

LSO NO. 65464F

Commissioner for Taking Affidavits, etc



OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS



***The right to adequate housing (Art.11.1): forced evictions : .
20/05/97.***

CESCR General comment 7. (General Comments)

Convention Abbreviation: CESCR

GENERAL COMMENT 7

The right to adequate housing (art. 11.1 of the Covenant):
forced evictions

(Sixteenth session, 1997)*

1. In its General Comment No. 4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.

2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to "undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made".^{1/} In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the "fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them" was recognized.^{2/} Agenda 21 stated that "people should be protected by law against unfair eviction from their homes or land".^{3/} In the Habitat Agenda Governments committed themselves to "protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided".^{4/} The Commission on Human Rights has also indicated that "forced evictions are a gross violation of human rights".^{5/} However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of

spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.

3. The use of the term "forced evictions" is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to "forced evictions" is a tautology, while others have criticized the expression "illegal evictions" on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term "unfair evictions" is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to "forced evictions", primarily since all suggested alternatives also suffer from many such defects. The term "forced evictions" as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

4. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, 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, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

5. Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States parties. Even in situations where it may be necessary to impose limitations on such a right, full compliance with article 4 of the Covenant is required so that any limitations imposed must be "determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society".

6. Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.

7. Other instances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing

renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.

8. In essence, the obligations of States parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use "all appropriate means" to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against "arbitrary or unlawful interference" with one's home. It is to be noted that the State's obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

9. Article 2.1 of the Covenant requires States parties to use "all appropriate means", including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

11. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.

12. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.

13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure "an effective remedy" for persons whose rights have been violated and the obligation upon the "competent authorities (to) enforce such remedies when granted".

14. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person's home can only take place "in cases envisaged by the law". The Committee observed that the law "should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances". The Committee also indicated that "relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted".

15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

17. The Committee is aware that various development projects financed by international agencies within the territories of State parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No. 2 (1990) which states, *inter alia*, that "international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account".^{6/}

18. Some institutions, such as the World Bank and the Organisation for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of and human suffering associated with forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States parties to the Covenant. The Committee recalls in this respect the statement in the Vienna Declaration and Programme of Action to the effect that "while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights" (Part I, para. 10).

19. In accordance with the guidelines for reporting adopted by the Committee, State parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the "number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction", (b) "legislation concerning the rights of tenants to security of tenure, to protection from eviction" and (c) "legislation prohibiting any form of eviction".^{7/}

20. Information is also sought as to "measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) 'beautiful city' campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites".

^{8/} However, few States parties have included the requisite information in their reports to the Committee. The Committee therefore wishes to emphasize the importance it attaches to the receipt of such information.

21. Some States parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate housing, either by the Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States parties to

ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

Notes

* Contained in document E/1998/22, annex IV.

1/ Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May - 11 June 1976 (A/CONF.70/15), chap. II, recommendation B.8, para. C (ii).

2/ Report of the Commission on Human Settlements on the work of its eleventh session, Addendum (A/43/8/Add.1), para. 13.

3/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Vol. I (A/CONF.151/26/Rev.1(vol.I), annex II, Agenda 21, chap. 7.9 (b).

4/ Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, para. 40 (n).

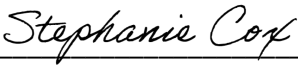
5/ Commission on Human Rights resolution 1993/77, para. 1.

6/ E/1990/23, annex III, paras. 6 and 8 (d).

7/ E/C.12/1999/8, annex IV.

8/ Ibid.

THIS IS EXHIBIT "D" TO THE
AFFIDAVIT OF LEILANI FARHA
AFFIRMED REMOTELY BEFORE ME AT THE
CITY OF OTTAWA DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG.431/20,
ADMINISTERNG OATH OR DECLARATION REMOTELY
THIS 15TH DAY OF JUNE, 2022



STEPHANIE COX

LSO NO. 65464F

Commissioner for Taking Affidavits, etc



General Assembly

Distr.: General
19 September 2018

Original: English

Seventy-third session

Item 74 (b) of the provisional agenda*

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, submitted pursuant to Human Rights Council resolutions 15/8 and 34/9.

* [A/73/150](#).



Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Summary

In the present report, the Special Rapporteur examines the issue of the right to housing for residents of informal settlements and the commitment made by States to upgrade such settlements by 2030. Nearly one quarter of the world's urban population lives in informal settlements or encampments, most in developing countries but increasingly also in the most affluent. Living conditions are shocking and intolerable. Residents often live without water and sanitation, and are in constant fear of eviction.

Past approaches have been premised on the idea of eliminating "slums", often resorting to evictions and relocating residents to remote locations on the outskirts of cities. The present report proposes a very different, rights-based approach that builds upon informal settlement communities and their inherent capacities. It understands informality as resulting from systemic exclusion and advances a set of recommendations for supporting and enabling residents to become full participants in upgrading. The recommendations have their basis in international human rights obligations, particularly those flowing from the right to housing, and cover a number of areas, including the right to participation, access to justice, international cooperation and development assistance, environmental concerns, and business and human rights.

The report reaches some simple but urgent conclusions: the scope and severity of the living conditions in informal settlements make this one of the most pervasive violations of human rights globally. The world has come to accept the unacceptable. It is a human rights imperative that informal settlements be upgraded to meet basic standards of human dignity. Recognizing this, and mobilizing all actors within a shared human rights paradigm, can make the 2030 upgrading agenda achievable.

Contents

	<i>Page</i>
I. The right to housing and informal settlements	4
A. The Sustainable Development Goals imperative: upgrade informal settlements by 2030	4
B. Informal settlements or “slums”?	4
C. Understanding informal settlements as both rights violations and as rights claims	6
II. Recommendations for rights-based upgrading of informal settlements	7
A. Core principles of rights-based upgrading	7
B. Right to participation and inclusion	16
C. Monitoring and access to justice	18
D. Informal settlements and the environment	19
E. International cooperation and development assistance	20
F. Violence and crime	21
G. Business and human rights	22
III. The way forward	23

I. The right to housing and informal settlements

A. The Sustainable Development Goals imperative: upgrade informal settlements by 2030

1. Nearly one quarter of the world's urban population, 883 million people, live in informal settlements; 520 million of these people are in Asia. In sub-Saharan Africa, over half of city dwellers live in informal settlements; in Latin America and the Caribbean the estimate is 21 per cent.¹ Conditions in these settlements are often inhumane. Many residents live in overcrowded, insecure dwellings, without water and sanitation, fearful of eviction and subject to preventable life-threatening illnesses.

2. States have committed to taking action. Goal 11 of the 2030 Agenda for Sustainable Development commits States to “upgrade slums” by 2030. This is attached to the broader commitment to ensure access for all to “adequate, safe and affordable housing” by 2030.

3. This is a tall order, to say the least. The aim of the present report is to provide concrete guidance on how to draw on human rights-based approaches that have proven successful, building on the capacities of residents of informal settlements to direct and manage upgrading processes. Rather than criminalizing residents of informal settlements, the proposed approach recognizes and supports them as rights claimants. The report provides a set of recommendations developed with input from residents of informal settlements, experts and responses to a questionnaire from governments, non-governmental organizations, national human rights institutions and international financial institutions, as well as through information gathered by the Special Rapporteur during country visits. They are grounded in applicable international human rights standards.²

B. Informal settlements or “slums”?

4. While Agenda 2030 refers to “slums”, the Special Rapporteur prefers the term “informal settlements” as one that is more in keeping with a human rights-based approach to housing. The term “slum” is often considered pejorative and stigmatizing and has generally led to bad policy: “slums” are often viewed as a problem requiring “clearance”, rather than as communities to be supported.³ Households reported by governments as having been “upgraded” have often been warehoused in housing blocks devoid of dignity, culture or community, or displaced to outlying urban wastelands with no access to work, social ties, transportation or services.

5. The present report proposes a radically different approach centred on the right to housing. It understands that informality is created and exacerbated by the imposition of a particular system of laws, private markets, planning and resource allocation that neglects and violates the fundamental rights of those who have no choice but to rely on informal settlements. Colonizing systems of land and property

¹ United Nations, *The Sustainable Development Goals Report 2018* (New York, 2018) p. 24; and report of the Secretary-General on progress towards the Sustainable Development Goals (E/2018/64, statistical annex, p. 83).

² Officials and development actors involved in upgrading of informal settlements should also be aware of and apply the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I) and the guiding principles on security of tenure for the urban poor (A/HRC/25/54), and fully comply with them in their planning and project implementation.

³ For a discussion of terminology, see United Nations Conference on Housing and Sustainable Urban Development (Habitat III), issue paper No. 22, “Informal settlements” (31 May 2015).

have been imposed on indigenous peoples' relationships to land and housing. In developing countries, large segments of the population are deemed illegal when housing themselves in the best manner they can and live under constant threat of forced removal from their homes. In affluent countries, the law not only prevents the construction of rudimentary shelter by those who are homeless, it criminalizes them, sometimes even for eating and sleeping.

6. Informality is a response to exclusionary formal systems. Those who migrate to cities for work or who are displaced from other neighbourhoods must create, through informal settlements, a subsidiary housing system to meet urgent needs that the formal housing system has failed to meet. Land at the margins of cities is often first settled informally, with informal businesses arising to respond to needs for water, sanitation, electricity, transportation, food, clothing and other necessities. These settlements provide necessary housing for the labourers and service providers on whom cities rely, yet they are criminalized, denied services, face widespread discrimination and are forced to pay exorbitant prices for basic necessities or go without.

7. Informal settlements range from constantly displaced homeless encampments in the most affluent countries,⁴ to massive communities in the global South, such as Orangi Town, in Karachi, Pakistan, with an estimated 2.4 million inhabitants.⁵ Modalities include squats in abandoned buildings, improvised homes in containers, tents or boats or shacks made of whatever materials can be scavenged. Elsewhere, long established informal communities may consist of durable housing of bricks and mortar. Unregulated and often exploitative informal rental markets constitute a growing component of informal housing.

8. Residents of informal settlements affirm humanity in the most inhumane circumstances. The Special Rapporteur has visited many informal settlements in the global North and South. She has found the severity of the living conditions and the failure of States to respond to them profoundly disturbing.

9. In a large informal settlement in Mumbai, India, the Rapporteur saw a rodent infestation caused by a lack of waste removal. She met children playing on garbage heaps as if they were trampolines in a Roma settlement in Belgrade. She visited residents in overcrowded shacks in Mexico City stretching alongside a functioning railway line. She experienced complete darkness — during the daytime — in the homes of persons of African descent who had no access to electricity living just outside of Lisbon. She saw children with disabilities languishing alone in the back of homes in settlements in Cabo Verde. She visited migrants in Santiago living in damp abandoned buildings with live electrical wires exposed. She has sat with people in homeless encampments under highway bypasses and on pavements in California and in Delhi, India, with no access to toilets or showers and constantly fearing being “cleaned” off the streets. In Buenos Aires, she toured an unrecognized settlement to which police and ambulances refuse services. In Seoul she met with residents living amid rubble, in half-demolished homes on the site of violent forced evictions — surrounded by skyscrapers. In Indonesia and the Philippines, she visited informal communities in flood prone areas, fearful of being evicted and forced to move away from their homes and communities.

10. And yet, despite these disastrous outcomes of imposed informality, residents express a strong sense of community and home. Streets are named, houses numbered, residents' associations formed, community centres and schools built, social

⁴ See National Law Center on Homelessness and Poverty, “Tent city, USA: the growth of America’s homeless encampments and how communities are responding” (2017).

⁵ Tabrez Uz Zaman, H.D. Goswami and Yamin Hassan, “The impact of growth and development of slums on the health status and health awareness of slum dwellers”, *International Journal of Medical Research and Health Sciences*, vol. 7, No. 3 (2018), p. 56.

programmes instituted and shops and services established. In fact, for all their informality, these settlements are critical components of the economies of most major cities and are a main provider of housing in the global South and economies in transition.

C. Understanding informal settlements as both rights violations and as rights claims

11. From a human rights perspective, informal settlements have a dual nature. On the one hand, they are systemic human rights violations, the effects of State actions, inaction and policies that deprive millions of their fundamental human rights.

12. A State is in violation of international human rights law if any significant portion of the population is deprived of access to basic shelter or housing. States are obliged to adopt “enabling strategies” to implement the right to housing for residents of informal settlements within the shortest possible time, by all appropriate means, using the maximum of available resources.⁶ It is obvious that most States are in clear non-compliance with this obligation. Indeed, the scope and severity of the living conditions in informal settlements make them one of the most pervasive violations of the human rights of dignity, security, health and life worldwide. It is critical that they be recognized as such.

13. On the other hand, informal settlements are often an incredible accomplishment, a profound expression of individuals, families and communities claiming their place and their right to housing. They are “habitats made by people”, who are creating homes, culture and community life in the most adverse circumstances.⁷ The act of claiming places in cities and constructing homes challenges spatial exclusion, the appropriation of land and property by the wealthy for no purpose but speculation, the colonization of indigenous territories and attempts by authorities to render entire communities invisible by not recognizing them. In response, informal settlements are a statement: “we are here” and “we will not disappear”. They are a form of grass-roots human rights practice led by those excluded from housing, women, those who experience the effects of economic inequality, people with disabilities, migrants, and those facing racial and ethnic discrimination. It is within this dual recognition of informality as rights violating and rights claiming that a rights-based approach must be grounded.

14. A human rights-based approach to informal settlement upgrading, based on the right to remain in situ where possible, and to be adequately housed nearby when relocation is necessary or preferred, is an essential component of a broader commitment to bringing human rights to cities, and to the new urban agenda of sustainable inclusive development. An integrated human rights approach, as proposed in the present report, focuses on securing adequate housing, in all of its dimensions, as a response to structural conditions and societal dynamics that deprive residents of the right to housing, with a view to enabling communities to define, for themselves, what constitutes a home that provides dignity and security.

15. The following recommendations for rights-based upgrading have been fashioned to assist in the implementation of the 2030 Agenda for Sustainable Development and the New Urban Agenda by harnessing the potential of a human

⁶ Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties’ obligations, para. 10, and general comment No. 4 (1991) on the right to adequate housing, para. 14.

⁷ Lorena Zárate, “They are not ‘informal settlements’ — they are habitats made by people”, The Nature of Cities, 26 April 2016.

rights-based approach. They demand a significant shift in the relationship between governments and informal communities from one in which governments criminalize, penalize and obstruct the process of claiming the right to housing within informal settlements, to one in which this process is community led and enabled through new approaches to ownership, tenure, inclusive planning, innovative legislative and programmatic initiatives, and rights-based participation and accountability. The recommendations should inform the actions of all levels of government, development agencies, non-governmental organizations and private actors involved in upgrading of informal settlements.

II. Recommendations for rights-based upgrading of informal settlements

A. Core principles of rights-based upgrading

1. Require that upgrading programmes comply with the right to adequate housing

16. The overriding objective for informal settlement upgrading should be the full enjoyment of the right to adequate housing. Upgrading policies, programmes and strategies should incorporate each of the principles for human rights-based housing strategies described in the report of the Special Rapporteur to the Human Rights Council contained in document [A/HRC/37/53](#).

17. Effective and accessible procedures must be established to ensure that residents can hold governments and other actors accountable for all aspects of the right to housing, including the positive obligations to apply the “maximum” of “available resources” and “all appropriate means” to address the conditions in which people in informal settlements live.⁸

18. Decision-making at all levels of government, as well as within development agencies and international financial institutions, must be held accountable to this standard.

19. Residents of informal settlements must be provided with information about the right to housing. It is helpful if declarations or principles based on the right to housing are adopted and applied to all aspects of upgrading. An agreement concerning urbanization of informal settlements adopted by the Asociación Civil por la Igualdad y la Justicia affirms 10 key upgrading principles based on the right to housing and offers a good example.⁹

20. The Kenya National Commission on Human Rights was engaged through a court order to oversee the allocation of upgraded units to the residents of Kibera Soweto East. The Commission reports that it has adopted the values and principles of a human rights-based approach, rooted in constitutional provisions requiring that state organs and persons respect the rule of law, participation of the people, human dignity, human rights, equity, social justice, non-discrimination, integrity, transparency and accountability.¹⁰

⁸ International Covenant on Economic, Social and Cultural Rights, art. 2, para. 1; and Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 14.

⁹ “Acuerdo por la urbanización de las villas”, available at <http://acuerdoportalurbanizacion.org/wp-content/uploads/2016/10/AcuerdoXlaUrbanizacion-1.pdf> (Spanish only).

¹⁰ Submission of the Kenya National Commission on Human Rights for the present report.

2. Address all of the components of the right to housing in an integrated fashion, recognizing the links between housing and other social rights

21. As an end goal, upgrading schemes must fulfil all aspects of the right to adequate housing under international human rights law. This includes living without discrimination, in security, peace and dignity, in housing with secure tenure, that is affordable, habitable, culturally adequate, in a decent location, accessible, and where services are available.¹¹ These requirements should be refined by communities and households themselves to address different contexts.

22. Programmes to address particular components of the right to adequate housing, such as securing formal title or providing access to water or sanitation infrastructure, should not be implemented in isolation from, or at the expense of, other adequacy dimensions. For example, fees charged for sanitation or water may compromise the ability to remain in housing. Creating secure formal title may give rise to speculation and erode affordability, leading to the displacement of the poorest residents. Upgrading must begin by surveying and accurately identifying the housing, social, economic, health, educational and other needs of residents. A holistic approach, addressing this wide range of needs, should be adopted in all upgrading strategies.

3. Recognize the links between adequate housing and access to livelihood in the informal economy and support community economic development

23. The struggle for a livelihood dominates everyday life for residents of informal settlements. Unregulated markets and lack of rule of law can lead to exploitation and further economic hardship. Many must pay significant amounts to private operators for transportation from the settlement to work or school. Residents are often denied access to water and sanitation by unaffordable fees and access to essential services may be ruled by cartels. Ensuring access to water and toilets and other necessities, regardless of residents' ability to pay, is an immediate priority in upgrading.

24. It must also be recognized that many residents rely on informal economic activity carried out from home to survive, whether they be hairstylists, shop or cafe owners, mechanics, or recyclers. Informal residents must be able to ensure that the location and design of upgraded housing supports their means of livelihood.

25. In Delhi, India, the Kathputli Colony, made up of street performers (musicians, puppeteers, magicians and others) relied on spaces within their informal settlement to perform, but were relocated to apartment blocks. They had unsuccessfully challenged the relocation in court, asking for an assurance that the project would be executed in such a manner that sufficient space would be made available for them to undertake the unique character of their vocation and display their skills for earning a livelihood.¹²

4. Recognize the right to remain in situ

26. The right to remain in one's home and community is central to the right to housing.

27. In situ upgrading allows residents to retain their connections to their locality, protects social cohesion and can help to avoid disrupting livelihoods.¹³ Relocation, in contrast, has many possible negative consequences and often results in a poorer

¹¹ Committee on Economic, Social and Cultural Rights, general comment No. 4.

¹² High Court of Delhi, Bhule Bisre Kalakar Co-Operative Industrial Production Society Ltd. and Others v. Union of India and Others, W.P.(C) 1290/2014 and CM APPL. 3834/2014, 30 March 2014, para. 5. Available at www.kathputlicolonydda.com/pdfs/Judgement-dated-20.03.2014.pdf.

¹³ See guiding principles on security of tenure.

quality of life. It has particularly negative repercussions for people with disabilities, the elderly, and children and young people. As Youth for Unity and Voluntary Action has demonstrated in India in its collaboration with Leher on the #UprootedChildhoods campaign, the effects of displacement and relocation on children include disrupted schooling and social networks and often the loss of safe spaces to play.¹⁴

28. The right to in situ upgrading must be recognized in law and communities should be provided with representation to seek enforcement of this right. Barrio Rodrigo Bueno in Buenos Aires, visited by the Special Rapporteur in 2016, has been successful in this respect. Situated in the midst of commercial and luxury residential developments, the community successfully contested applications for eviction and won the right to in situ upgrading.¹⁵ Legislation has recently been enacted which provides for the upgrading of the community with ongoing communication with and collaboration of residents.¹⁶

5. Rely on meaningful engagement and cease the use of eviction procedures

29. States should immediately cease and desist from seeking to justify evictions of residents of informal settlements under domestic legal procedures. Courts should refuse to authorize such evictions in any but the most exceptional circumstances, and only when residents have been fully engaged in the process, when alternative housing of comparable or better quality is being provided and when all other requirements of international human rights have been honoured. Applications to evict are almost always indicative of flawed processes and lack of meaningful engagement with communities.

30. The approach taken by the South African courts moves in the right direction and should be applied by other courts. In the *Melani* case, the Slovo Park informal settlement challenged the decision of the City of Johannesburg not to apply for in situ upgrading and instead to relocate the community to an alternative location 11 km away.¹⁷ The court held that the Government's upgrading policy, as required by the constitutional right to housing, envisages "a holistic development approach with minimum disruption or distortion of existing fragile community networks and support structures and encourages engagement between local authorities and residents living within informal settlements".¹⁸ Relocation must be "the exception and not the rule" and any relocation must be to a location "as close as possible to the existing settlement".¹⁹ On this basis, the City was ordered to reverse the decision to relocate the community and apply for funding for in situ upgrading.²⁰

¹⁴ See <http://leher.org/campaigns/uprootedchildhoods/>.

¹⁵ See the work of the Centro de Estudios Legales y Sociales at www.cels.org.ar/web/2015/04/amicus-por-el-barrio-rodrigo-bueno/.

¹⁶ Argentina, *Rodrigo Bueno urbanization law*, No. 5798 (23 March 2017), available at <http://www2.cedom.gob.ar/es/legislacion/normas/leyes/ley5798.html>. Proposals to designate the community land as public so as to avoid inflationary pressures were not, however, incorporated into the legislation (see Asociación Civil por la Igualdad y la Justicia, supplementary document concerning land management policies for redevelopment of informal settlements, available at www.acuerdoporlaurbanizacion.org/#complementario (Spanish only)).

¹⁷ High Court of South Africa, *Mohau Melani and Others v. City of Johannesburg and Others*, Case No. 02752/2014, 22 March 2016.

¹⁸ *Ibid.*, para. 34.

¹⁹ *Ibid.*, para. 35.

²⁰ *Ibid.*, Order, paras. 1 and 2.

6. Where relocation is necessary or preferred, ensure compliance with the right to housing and all other human rights standards

31. Sometimes upgrading requires relocation and resettlement because of hazardous or dangerous conditions that cannot be mitigated, or relocation may be chosen by communities for other reasons. In these cases, all affected groups and households must be allowed to participate in the decisions regarding relocation, including the geographic site, the timing of relocation and the allocation and design of the new housing.

32. Where the government proposes relocation, the burden of proof is on the State to show why in situ upgrading is unfeasible. Authorities must publish and disseminate their reasoning to the community and allow it to be reviewed by a body capable of reversing the decision to relocate, providing a full hearing to residents.

33. Where most residents of a community prefer relocation but some do not consent, those residents, where possible, should be allowed to remain. Where temporary relocation is required for in situ upgrading, this must be time-limited and meet adequacy and all human rights standards.

34. In any instance of relocation, whether temporary or permanent, or from public or private land,²¹ States must comply with the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I). These require, in particular, that relocation sites should be located in the vicinity of the original site, have access to all necessary amenities (particularly water, sanitation and electricity) and maintain access to livelihoods. Authorities must provide full and adequate real and personal compensation for any costs.²² Relocation sites must provide land and housing to residents that are of equal or better size and quality as that which they left (ibid.).

35. In Dakar, informal settlement dwellers had to be relocated to make way for a new road. Residents identified as their central needs access to basic infrastructure, preventing flooding and obtaining secure tenure. All of these needs were met. The cost of land in the resettlement site was adjusted based on household means, with the most vulnerable obtaining title without cost. Business owners were compensated for loss of revenue, homeowners were offered cash compensation or a free house and renters were given six months' free rent.²³

7. Prohibit any forced eviction and recognize a wide range of tenure systems

36. The right to a secure home is a universal right under international human rights law. Lack of security of tenure can never justify forced evictions of those residing in informal settlements. Security of tenure under domestic law should not, therefore, be restricted to those with formal title or contractual rights to their land or housing. As noted by the previous Special Rapporteur in the guiding principles on security of tenure (A/HRC/25/54, para. 5), security of tenure should be understood broadly as "a set of relationships with respect to housing and land, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one's home in security, peace and dignity". In order to protect the security of home in all circumstances, States must promote, protect and strengthen a variety of tenure forms.

²¹ See, for example, Constitutional Court of South Africa, *City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties 39 (Pty) Ltd and Another*, Case No. CCT 37/11, 1 December 2011, para. 95.

²² See submission of Afghanistan Independent Human Rights Commission for the present report.

²³ Pierre Graftieaux, "Moving people to help people move", *Transportation Research Procedia*, Vol. 27 (2017).

Tenure arrangements of the most vulnerable and marginalized should be accorded priority (ibid.).

37. Communities should be supported in collecting and documenting understandings of informal tenure status through enumerations and tenure registration, with a view to ensuring long-term security. Administrative processes aimed at facilitating the regularization of informal settlements must be affordable, accessible, timely and not overly complex.

38. Namibia has informed the Special Rapporteur that the Flexible Land Tenure Act of 2012 provided for more planning, servicing and ownership of land in informal settlements in order to create alternative forms of land title that are simpler and cheaper to administer than existing forms of land title; to provide security of title for persons who live in informal settlements or who are provided with low income housing; and to empower the persons concerned economically by means of these rights.²⁴

8. Revise laws to recognize informal settlements and adopt inclusionary planning and zoning

39. Planning and zoning should never be used to justify unwarranted demolition of informal settlements, to deny access to services or to prevent relocation to proximate lands. In Lagos, Nigeria, the Urban and Regional Planning and Development Law of 2010 retroactively granted powers to authorities to seal up and demolish structures that contravened Lagos planning laws, resulting in the demolition of the informal settlement of Makoko, which housed approximately 85,000 people.²⁵

40. Planning and zoning often serve to benefit more affluent communities, investors and development interests at the expense of those in need of housing. Planning must prioritize the allocation of appropriate land, services and zoning for residential housing close to services, employment and transportation and extend services and transportation to areas where informal settlements are located. In Medellin, Colombia, inclusionary planning included urban escalators and cable cars connecting informal neighbourhoods to central nodes of the city, leading to revitalization and successful upgrading.²⁶

41. No urban development proposals should be approved if they fail to include housing for those already living in the area being developed. Any development must provide existing residents with housing that fully meets their needs, in terms of affordability, design and adequacy.

9. Provide access to serviced land and economical building materials

42. Where it is not possible to provide new arrivals to cities with built housing, land should be set aside or acquired for housing those in need, with water and sanitation facilities and temporary shelter available while houses are built on allocated plots. Tax incentives should be implemented to encourage private owners to make vacant land available for housing.

43. Economical materials should be provided for self-construction of homes. Innovations Housing, a non-governmental organization working in East Africa, has

²⁴ Submission of Namibia for the present report.

²⁵ Akinola E Akintayo, "Planning law versus the right of the poor to adequate housing: a progressive assessment of the Lagos state of Nigeria's Urban and Regional Planning and Development Law of 2010", *African Human Rights Law Journal*, vol. 14, No. 2 (2014).

²⁶ Luisa Sotomayor, "Medellin: the new celebrity?" *Spatial Planning in Latin America*, 26 August 2013.

supported social enterprises to develop economical building materials such as “soil bricks”.²⁷

10. Combat and prohibit discrimination and harassment against informal settlement residents and cease punitive denials of access to basic services

44. People living in informal settlements face widespread discrimination and harassment on the basis of their housing status. This includes harassment of residents, bullying of children in schools, denial of access to credit, basic services, social programmes, public transportation, health care and education, and arrest and incarceration of community leaders. Residents are also frequently denied social support and employment for lack of a formal address.

45. In Canada, local authorities used tactics that included spreading chicken manure and fish fertilizer on an encampment, to enforce a by-law prohibiting overnight shelters in parks. Residents mobilized and the by-law was subsequently found by a court to violate constitutional rights to life, liberty and security of the person of residents of the encampment.²⁸

46. Attempting to discourage residents from remaining in informal settlements or encampments by denying access to water, sanitation and health services and other basic necessities, as has been witnessed by the Special Rapporteur in San Francisco and Oakland, California, United States of America,²⁹ constitutes cruel and inhuman treatment and is a violation of multiple human rights, including the rights to life, housing, health and water and sanitation. Such punitive policies must be prohibited in law and immediately ceased.³⁰ Following expressions of concern from the Human Rights Committee, the United States federal Government introduced funding incentives for municipalities to rescind by-laws that criminalize homelessness.³¹ More robust measures, however, are required.

47. States must adopt measures to ensure that discrimination, harassment or criminalization on the basis of tenure or housing status is prohibited in all areas and human rights institutions should address this form of discrimination.³²

11. Recognize diverse household circumstances and address needs of marginalized groups

48. Upgrading programmes must ensure that the unique needs and different experiences of women, persons with disabilities, migrants, non-citizens, the elderly, children and other marginalized groups are recognized and addressed.

49. The unique needs of women and girls, including vulnerability to violence and sexual assault, discussed below, must always be a priority. Consideration must also be given to practical needs related to menstruation and societal perceptions of privacy and expectations of modesty. A woman in the Mukuru settlement in Nairobi explained: “During my monthly period I can’t urinate in the tin so I have to wait until

²⁷ See Innovations Housing website (<http://innovationshousing.com/projects/africa.htm>).

²⁸ Supreme Court of British Columbia, *Abbotsford (City) v. Shantz*, 2015 BCSC 1909, 21 October 2015.

²⁹ Darwin Bond Graham, “United Nations expert describes Oakland and California’s homeless crisis as ‘cruel’”, *East Bay Express*, 21 January 2018.

³⁰ See concluding observations of the Human Rights Committee on the fourth periodic report of the United States of America (CCPR/C/USA/CO/4, para. 19) and <https://wraphome.org/what/homeless-bill-of-rights/california-right-to-rest-act/>.

³¹ National Law Center on Homelessness and Poverty, “The cost of criminalizing homelessness just went up by \$1.9 billion”, press release, 18 September 2015, available at www.nlchp.org/press_releases/2015.09.18_HUD_NOFA_criminalization.

³² Guiding principles on security of tenure (A/HRC/25/54, para. 5), paras. 10 and 50–59.

morning. Because sometimes some drops of blood can remain in the tin and everyone uses the tin so it's embarrassing".³³

50. For persons with mobility impairments, toilets are difficult to reach when offered on a communal basis and are rarely accessible, leaving persons with disabilities to manage within their homes.³⁴

51. Upgrading programmes must be culturally sensitive. This requires attention to spatial planning, colour, size of units, facilities and diverse religious customs. Upgrading indigenous settlements must ensure that indigenous people themselves are actively involved in developing their housing, drawing on their knowledge and practices.³⁵ While visiting Mexico City, the Special Rapporteur was struck by the contrast between government designed housing lacking in cultural influence and an urban upgrading project designed by indigenous residents which incorporated indigenous art, a sweat lodge, a gathering space and social enterprises.³⁶

12. Ensure adequate budgeting and resource allocation with the input and oversight of residents

52. Ensuring adequate budgetary allocations to address housing needs in informal settlements is a central human rights obligation of States. To date, the international community, domestic courts and human rights bodies have failed to adequately hold States accountable to the obligation under international human rights law to apply the maximum of available resources to upgrading informal settlements. States must ensure that public expenditure is sufficient to meet commitments in the 2030 Agenda while also adopting taxation measures, to discourage investors from leaving land and property vacant for speculative purposes and to address growing disparities in wealth and income.

53. Governments frequently subsidize housing, infrastructure and commercial projects in formal areas that primarily benefit wealthy and middle-class populations, while denying subsidies to the residents of informal settlements. States must review budgetary measures to ensure that subsidies are directed to those most in need.

54. Budgeting and resource allocation for upgrading must be subject to transparency, accountability and effective oversight by affected residents.

55. In the Saeng Mook Da settlement in Thailand, the government informs community leaders when funding for construction and upgrading work is available. Community members then convene and make collective decisions regarding allocations with particular attention to those without sufficient means as beneficiaries. A community committee reviews all decisions on allocation of funds.³⁷

13. Ensure a non-discriminatory human rights-based approach to credit and microfinance

56. Upgrading programmes too often rely on financing of home ownership through mortgage subsidies, even though 60 to 80 per cent of those in need of housing cannot

³³ Extract from story prepared by Edith Kalela of the Muungano wa Wanavijiji/Akiba Mashinani Trust, on file with the authors; see further Inga T. Winkler and Virginia Roaf, "Taking the bloody linen out of the closet: menstrual hygiene as a priority for achieving gender equality", *Cardozo Journal of Law and Gender*, vol. 21, No. 1 (2015).

³⁴ See submission of Kenya for the present report.

³⁵ See United Nations Declaration on the Rights of Indigenous Peoples, arts. 23 and 24.

³⁶ See the work of the Habitat International Coalition (www.hic-gs.org/).

³⁷ Nausica Castanas and others, "Leave no one behind: community driven urban development in Thailand", working paper (London, International Institute for Environment and Development, December 2016).

qualify for them.³⁸ In sub-Saharan Africa, only about 3 per cent of households have access to mortgages from the formal financial system.³⁹

57. Microfinance may be a preferred option, as it can be tailored to incremental building of housing and upgrading, is not secured through a lien on one's home and does not require land title.

58. In Tajikistan, a microfinance scheme implemented by the local Habitat for Humanity in coordination with domestic microfinance firms assisted more than 112,000 people to improve their living conditions through microfinance loans.⁴⁰

59. Although microfinance is targeted at poorer individuals and households, selection is usually based on perceived credit risk rather than need. Interest rates tend to be higher than in mainstream financial institutions. Monitoring of the microfinance sector, with participation by affected communities, must be undertaken to ensure accountability and accessibility for those most in need.

60. Measures should also be taken to prevent banks and other financial institutions from unreasonably refusing to offer credit to informal settlement residents. Assessing credit worthiness on alternative bases so as not to exclude informal households is a human rights obligation and good business practice.

61. Credit provision, however, is too often advanced as the sole strategy to ensure access to housing. Such initiatives should be regarded as additional to, and not in lieu of, direct government investment in upgrading.⁴¹

14. Integrate the skills and labour capital of residents into upgrading programmes

62. Upgrading programmes require the employment of large numbers of people in numerous skilled and manual roles. Upgrading projects should employ local residents and pay fair remuneration. The input and expertise of community members should be drawn upon with respect to land and materials acquisition, building design, construction and other areas.

63. In Hanna Nasif, in the United Republic of Tanzania, community members who wished to participate were trained in construction and other areas. The skills gained through the programme increased their employability and income.⁴²

15. Address inflationary effects of upgrading and combat speculation

64. In situ upgrading of settlements can attract middle-income households and drive up housing prices, which in turn leads to displacement of residents from their upgraded communities.

65. Following an upgrading programme in Dar es Salaam, United Republic of Tanzania, landlords increased rents per room by an average of 160 per cent.⁴³ In

³⁸ United Nations Conference on Housing and Sustainable Urban Development (Habitat III), issue paper No. 20, "Housing" (31 May 2015).

³⁹ Liam Clegg, "The World Bank and the globalisation of housing finance: mortgaging development" (London, Bretton Woods Project, July 2018).

⁴⁰ See www.habitat.org/where-we-build/tajikistan.

⁴¹ Ananya Roy, *Poverty Capital: Microfinance and the Making of Development* (Routledge, 2010).

⁴² Anna Anael, Stephen Mukiibi and Nicholas Makoba, "The impacts of informal settlement upgrading on housing affordability: the experience of Hanna Nassif in Dar es Salaam, Tanzania" *Africa Habitat Review*, vol. 10, No. 10 (November 2016).

⁴³ Rasmus Precht, "Informal settlement upgrading and low-income rental housing: impact and untapped potentials of a community-based upgrading project in Dar es Salaam, Tanzania" (2005). Available at <http://siteresources.worldbank.org/INTURBANDEVELOPMENT/Resources/336387-1269364699096/6892630-1269364758309/precht.pdf>.

Kibera, Kenya, studies have found that former residents have been unable to afford to purchase or pay monthly rents for new upgraded properties.⁴⁴

66. Measures such as subsidies to assist with rental payments or purchase prices and caps on rental and sale prices must be put in place to ensure that housing in upgraded settlements remains affordable to residents and that speculation and profit-making from upgrading is curbed. Other measures could also include designating land on which upgrading occurs as a public asset, placing restrictions on who can purchase or rent upgraded housing and imposing time limits on when it can be sold.

16. Upgrade refugee and humanitarian relief camps to ensure the right to housing

67. Housing provided through humanitarian relief is often considered to be temporary when in fact the camps have become longer-term homes, akin to informal settlements. Residents live in temporary structures that are inadequate for longer-term occupancy and are often denied access to essential services such as electricity and sewerage.⁴⁵ The Zaatari refugee camp, housing close to 80,000 people, has been described as Jordan's fourth largest city, and yet residents, who are unlikely to be able to return to their homes of origin, continue to live in tents and caravans without access to basic services.⁴⁶

68. Humanitarian relief provided on a long-term basis must be made fully compliant with the right to adequate housing and when relief camps become de facto informal settlements, they must be upgraded to meet standards applicable to longer-term housing.

17. Address and prevent corruption

69. With lack of governance structures, rule of law and oversight mechanisms, corruption among developers, the construction industry and public officials is a common challenge in upgrading schemes. The precarious legal status of many residents, combined with their general vulnerability, means that corruption often goes unchallenged. Corruption increases costs, discourages international assistance and damages the integrity of participation processes.

70. During the slum upgrading programme (KENSUP) in Soweto East in Nairobi, Kenya, 31 per cent of residents believed corruption would mean they would not benefit from the project.⁴⁷

71. Measures must be put in place to prevent corruption at all stages of upgrading, from land acquisition, to tendering of contracts, to the allocation of upgraded housing units. Rigorous independent oversight of all aspects of the upgrading process, including all public-private partnerships, should be put in place and, where appropriate, communities should be afforded oversight and decision-making authority over resource allocation and anti-corruption measures.

⁴⁴ Bernardine Mutanu and Faith Nyamai, "Upgraded slum houses 'too expensive'", *Daily Nation*, Nairobi, 28 August 2013.

⁴⁵ See, for example, "15 minutes to leave: denial of the right to adequate housing in post-quake Haiti" (London, Amnesty International, 2015)

⁴⁶ Office of the United Nations High Commissioner for Refugees, Zaatari Refugee Camp February Factsheet. Available at <https://reliefweb.int/sites/reliefweb.int/files/resources/2018.02.04FACTSHEET-ZaatariRefugeeCampFEB2018.pdf>.

⁴⁷ Rosa Flores Fernandez and Bernard Calas, "The Kibera Soweto East Project in Nairobi, Kenya", Institut français de recherche en Afrique, Nairobi (2011).

B. Right to participation and inclusion

18. Recognize and implement participation of residents as a right at all stages of the upgrading process

72. Fundamental to all relocation strategies is the right of residents to participate. This is both a legal requirement and an operational necessity. Failure to involve residents in relocation planning and implementation means the residents' understandings of challenges and their vital input on how to address them will be lost. Residents' full participation in upgrading programmes builds local capacity for governance, promotes resourcefulness, efficiency, adaptation to local conditions and local ownership and ensures the achievement of sustainable results.⁴⁸

73. The right to participation should be protected in law through constitutional or legislative provisions, as in the Constitution of Kenya.⁴⁹ The right to participate must be ensured from the earliest stage of designing and planning through to implementation, monitoring and evaluation.⁵⁰

74. The right to participate should be implemented in a clear and precise manner, and must ensure engagement with actual residents, and not just owners or informal landlords. Where appropriate, a formal, binding community engagement agreement should be negotiated with residents establishing when and how the community will be engaged at each stage of the process.

75. The Makhaza community in South Africa was able to rely on a formal agreement reached with the City of Cape Town to successfully reverse the City's decision to refuse to provide enclosures for privacy in newly installed communal toilets.⁵¹

19. Establish community-based processes for democratic decision-making

76. Participation in upgrading requires democratic processes through which the community can make collective decisions. These processes should facilitate community meetings, the appointment of spokespersons and effective sharing of information.

77. The "people's process" implemented in Kabul ensures community leadership and control over the upgrading process with an organizational structure that engages different levels of government. At the community level, local residents elect community development councils responsible for the selection, design, implementation and maintenance of the projects. At the municipal level, the City trains staff to work alongside residents in implementing and completing upgrading.⁵²

78. Participation in upgrading should include engagement with existing community structures and organizations where these are considered by the community to be legitimate and representative.⁵³

⁴⁸ South Africa, Development Action Group, Department of Human Settlements and Housing Development Agency, "Participatory action planning for informal settlement upgrading" (2015); and National Upgrading Support Programme, "NUSP resource kit, part 3: building partnerships".

⁴⁹ Constitution of Kenya, art. 10(2)(a).

⁵⁰ United Nations, guiding principles on extreme poverty and human rights, foundational principles, para. 38.

⁵¹ South Africa, Western Cape High Court, *Beja and Others v. Premier of the Western Cape and Others*, Case No. 21332/10, 29 April 2011.

⁵² Haroon Nazire and others, "Effects of informal settlement upgrading in Kabul City, Afghanistan: a case study of Afshar area", *Current Urban Studies*, vol. 4, No. 4 (28 December 2016).

⁵³ Promoting Legal Empowerment in Informal Settlements: Recommendations and Lessons Learned, International Development Research Centre, Africa-Latin America Partners Workshop, Quito, Ecuador, 26 and 27 March 2018.

20. Ensure access to information and provide resources for community advocates

79. In order to exercise their right to participate, residents must be provided with accessible information regarding the upgrading process, including relevant laws and information about their rights. Advocates, chosen by the community, should be provided with necessary resources so they can advise communities on what is at stake and assist in ensuring effective community oversight.⁵⁴ Professionals should be provided with training in community engagement and accountability. Resources and disbursements for expenses should be provided to support the participation of residents.⁵⁵ Remuneration should also be available to residents, chosen by the community, who play particular leadership roles.

21. Document the unique profile of each community, linking upgrading to historical struggles for rights

80. Residents of informal settlements should be supported in documenting the history of their settlement. Planners and development partners need to consider informal settlements not only as geographically but also as historically defined communities, considering how and why the site was chosen, what claims have been made by residents and other parties, and how the right to housing is understood by those who live there.⁵⁶

81. Demographic information should be gathered to build a complete picture of the community and the needs of residents, including detailed maps of the settlement, numbers of households and individuals, tenure status (including informal renters), means of livelihood, housing expenditure, service provision status and local governance structures.⁵⁷

82. The Shack Dwellers Federation of Namibia has gone door-to-door to profile the location and history of settlements and their access to services, demographics and organization structures.⁵⁸ United Cities and Local Governments, Slum Dwellers International and the Cities Alliance have launched a global campaign, called “Know Your City” whereby city residents themselves collect citywide information regarding informal settlements. To date it has profiled 7,714 settlements in 224 cities.⁵⁹

22. Ensure full inclusion of women in all aspects of upgrading programmes

83. Although women often assume leadership roles within informal communities in relation to housing and social needs, they are frequently excluded from formal engagement with governments and developers. And yet, it is their ability to share their specific experiences and insights that makes their participation vital to successful upgrading. Women and girls must be supported in assuming key leadership roles and equal participation.

84. In the Caracas Slum Upgrading Project, women were offered training on such issues as rights, leadership and domestic violence and took an active role in

⁵⁴ Ruth McLeod, “Building effective relationships with the urban poor and government”, Comic Relief Literature Review, People Living in Urban Slums International Grants Programme (June 2011).

⁵⁵ “Acuerdo por la urbanización de las villas” (see footnote 9).

⁵⁶ Promoting Legal Empowerment in Informal Settlements.

⁵⁷ National Upgrading Support Programme, “NUSP resource kit, part 1: understanding your informal settlement”.

⁵⁸ See <https://sdfn.weebly.com/background.html>.

⁵⁹ See <http://knowyourcity.info/explore-our-data/>.

consultations, construction work and supervising projects, including in paid roles as project staff.⁶⁰

C. Monitoring and access to justice

23. Establish an independent participatory body to monitor progress and hear complaints

85. Proper monitoring of progress and ensuring accountability with regard to goals and timelines is a critical component of rights compliant upgrading. A delegated body or individual, such as an upgrading ombudsperson or community oversight panel should be established to ensure independent, fair and impartial assessment of progress.

86. Complaints procedures should be established to hear directly from residents about problems, ensure respect for their rights and implement rights-based dispute resolution procedures.

87. Monitoring bodies must have access to relevant information and data, disaggregated based on group demographics. They should have resources and capacities to conduct community surveys, monitor activities, meet with residents, staff and managers, and convene public hearings. Reports, recommendations or decisions should be published publicly in accessible formats. All levels of government should be required to respond promptly to recommendations or concerns of monitoring bodies.

24. Guarantee access to justice for human rights claims through community-based adjudication

88. In order to ensure that upgrading plans are implemented in a rights-compliant manner, residents need to be aware of their rights and have avenues through which they are able to claim and enforce them. In many settlements, alternative modalities of justice, including traditional and indigenous practices and community-based mechanisms, are more accessible than formal courts — often operating directly within the communities they serve and adjudicated by local people who hold the trust of residents. Certain issues such as unit allocation or accommodation of disability may be more effectively adjudicated through local procedures.

89. It is essential that informal justice processes are in place to review project design, implementation and outcomes and ensure that all actors — public and private — are held accountable to standards of rights-compliant decision-making.

90. Community-based adjudication of land and housing issues has been used effectively in informal settlements in Ghana and other countries.⁶¹ In Thailand, respected monks have played a role in adjudicating disputes. Justice and Empowerment Initiatives in Nigeria trains and provides resources to community-based paralegals to work directly in their own informal settlements, teaching other residents about their legal rights, assisting in the preparation of legal claims and establishing mediation and negotiation to resolve disputes.⁶²

⁶⁰ United Nations Human Settlements Programme, *State of Women in Cities 2012–2013: Gender and the Prosperity of Cities*.

⁶¹ Anthony Arko-Adjei, *Adapting land administration to the institutional framework of customary tenure: the case of peri-urban Ghana* (Amsterdam, Delft University Press, 2011).

⁶² Moyosore Arewa, Janelle Deniset and Nicole Gladstone, “Final Capstone report: global experience promoting access to justice, voice and livelihoods in informal urban settlements” (International Development Research Centre, 2017).

25. Take necessary measures to ensure that the judicial system protects the rights of informal settlements

91. Major initiatives are required in all countries to enhance the capacity and commitment of courts, tribunals, human rights institutions, ombudspersons and other bodies to protect and enforce the right to housing of informal settlement residents. Judges, tribunal members and administrative decision-makers should be trained in the right to housing under international and comparative human rights law as it applies to upgrading of informal settlements.

92. Courts and tribunals must rigorously apply the prohibition of forced eviction and uphold the requirement of meaningful engagement with residents. They must hold governments accountable to all components of the obligation to progressively realize the right to housing in informal settlements. They should encourage and hear systemic claims related to, among other things: inadequate budgetary allocations; failure to comply with timelines or to meet agreed upon goals; inadequate engagement or collaboration with communities; and failure to consider the needs of marginalized groups within settlements. Courts and tribunals should be authorized to remain seized of matters and to require regular reports on progress and outcomes until the desired outcome is reached. Alternatively, courts may consider delegating oversight to an independent body such as an ombudsperson or a human rights institution with respect to the implementation of remedial orders.

93. States must make concerted efforts to address barriers to access to justice experienced by informal settlement residents. Measures should include: (a) enabling courts to convene public hearings in locations close to residents so as to reach remote communities;⁶³ (b) training judges, law clerks and lawyers to work more effectively with informal residents; (c) allocating special funds to law schools to offer courses on legal advocacy in informal settlements; (d) supporting legal advocacy organizations to work with residents; (e) ensuring legal aid is available; (f) establishing procedures for amicus and public interest litigation to address systemic issues; (g) ensuring that national human rights institutions have a mandate and resources to work with residents of informal settlements in claiming and enforcing their right to housing; and (h) providing for early intervention, interim orders and injunctive relief to address urgent circumstances, particularly when forced evictions may occur.

94. In the Philippines, the Alternative Law Group represents a large network of organizations working at the community level to identify barriers in the justice system faced by residents of informal settlements. The Group advocates for systemic change to the justice system by working with law schools, the Supreme Court, the Department of Justice, the Commission on Human Rights, the police and the legal and judicial community.⁶⁴

D. Informal settlements and the environment

26. Assess and respond to environmental risks posed to informal settlements

95. People are frequently driven to live in informal settlements by environmental factors such as natural disasters, climate change and environmental degradation, but the settlements to which they migrate also place them at increased environmental

⁶³ Jane Weru, Waikwa Wanyoike and Adrian di Giovanni, "Confronting complexity: using action-research to build voice, accountability, and justice in Nairobi's Makuru informal settlements" in J. Wouters and others (eds.), *Improving Delivery in Development: The Role of Voice, Social Contract, and Accountability* (World Bank Legal Review, Vol. 6, 2015).

⁶⁴ See <http://www.alternativelawgroups.ph/index.php/about-us/partnerships-and-linkages>.

risks. Land that is vulnerable to flooding, storm surges, mudslides, earthquakes or other natural disasters, or contaminated with industrial waste, is more likely to be vacant and its use is less likely to be contested by development interests.⁶⁵ Without adequate economic, material and technical resources, residents of informal settlements are unable to construct homes that are capable of withstanding harsh weather conditions and disasters.⁶⁶ When natural disasters strike, death tolls are vastly higher in informal settlements than they are in formal areas and the health consequences of environmental degradation and pollutants in informal settlements are severe.⁶⁷

96. It is essential that the full scope of all the environmental risks faced by informal settlements be assessed, drawing on the knowledge of inhabitants or experts hired on their behalf, since they are more familiar with the environment in which they live and have often adopted risk management practices.⁶⁸

97. Where settlements exist in areas at risk from natural disasters, States should designate these areas for immediate and effective disaster risk management measures, tailoring approaches to suit the specific needs of the community.⁶⁹ States should not, however, use risk management as an excuse for unnecessary displacement. Where relocation and resettlement to a nearby site is necessary for the protection and safety of residents, this should be accomplished through collaboration and agreement, as described above.

98. The Bang Bua settlement in Thailand was prone to flooding from a canal. Officials coordinated with residents to prevent construction in the worst affected areas, improve the structural safety of buildings and provide increased access to the community in times of high water. In 2011 the defences proved able to withstand the widespread flooding following Typhoon Nock-ten and Bang Bua was the least affected settlement in Bangkok.⁷⁰

E. International cooperation and development assistance

27. Ensure that all upgrading projects supported by international financial institutions and development cooperation agencies adhere to human rights standards

99. International financial institutions and development banks, such as the World Bank and the Asian Infrastructure Investment Bank, play a significant financial and policy role in housing improvement schemes for residents of informal settlements. These actors have gradually shifted away from a slum clearance approach to one that generally supports in situ solutions and participation of affected communities in the design and implementation of urban renewal projects. They do not, however, sufficiently reference the right to adequate housing and its application to upgrading projects.

⁶⁵ Matthew Abunyawah, Thayaparan Gajendran and Kim Maund, “Profiling informal settlements for disaster risks”, 7th International Conference on Building Resilience, 2017.

⁶⁶ Submission of Socio-Economic Rights Institute of South Africa for the present report.

⁶⁷ See United Nations Office for Disaster Risk Reduction, *Global Assessment Report on Disaster Risk Reduction*, chap. 4 (United Nations, Geneva, 2009).

⁶⁸ David Satterthwaite and others, “Responding to climate change in cities and in their informal settlements and economies”, International Institute for Environment and Development, March 2018.

⁶⁹ Abunyawaha and others, “Profiling informal settlements for disaster risks”.

⁷⁰ Asian Disaster Preparedness Center, *Integrating Disaster Risk Management into Urban Management* (Bangkok, Disaster Risk Management Practitioners Handbook Series, 2013).

100. International financial institutions have in recent years also moved away from direct assistance to the poorest households and instead supported mortgage financing for homeownership. This approach has been shown to deny benefits to the residents of informal settlements who most need assistance.⁷¹

101. The Special Rapporteur continues to hear that residents are not meaningfully engaged in upgrading and that safeguards provided by international financial institutions and development banks are ignored in favour of weak domestic processes. Complaint mechanisms rarely require or ensure compliance with the right to housing, vary in terms of accessibility and independence and have generally produced disappointing results as far as ensuring effective remedies for complainants.⁷²

102. Many development cooperation agencies have failed to adopt human rights compliant safeguards and approaches and few explicitly reference the right to housing. The result has been that resettlement and compensation schemes are often insufficient or not adhered to by implementing partners.⁷³

103. Development agencies should only fund and implement informal settlement improvement projects if they are undertaken in strict compliance with international human rights law and principles, as elucidated in these recommendations. Funding to governments must be made contingent on compliance with these human rights standards and procedures should be in place ensure immediate responses from governments when human rights are threatened.

104. International financial institutions and development agencies should review programmes to ensure that a focus on mortgage financing does not deny benefits to those most in need. A robust and timely complaints mechanism for any upgrading project must be accessible to all residents for a review of any decision taken that may be contrary to their human rights.

F. Violence and crime

28. Recognize informal settlement residents engaged in claiming the right to housing as human rights defenders

105. It is unfortunately common for police, security forces and other hired personnel to use force and violence, including with weapons, when informal settlement residents resist forced eviction or are otherwise claiming their right to housing through protest.⁷⁴

106. Those who resist forced eviction and claim their right to housing must be treated as human rights defenders by government authorities and security forces and the international community should respond accordingly when their rights are violated. If police or security personnel are required to use force for other reasons, the principles of necessity and proportionality need to be respected and they must conduct their operations in line with human rights standards, respecting and protecting the

⁷¹ Clegg, “The World Bank and the globalisation of housing finance”.

⁷² C. Daniel and others (eds.) *Glass Half Full? The State of Accountability in Development Finance* (Amsterdam, Centre for Research on Multinational Corporations, January 2016). Available at www.glass-half-full.org.

⁷³ See World Bank/Organization for Economic Cooperation and Development, *Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges*, 2nd ed. (Washington, D.C., 2013).

⁷⁴ Nation Nyoka and Dennis Webster, “Metro police fire rubber bullets at residents in Ekurhuleni’s Good Hope settlement”, *Daily Maverick*, 18 May 2018; Amnesty International, “‘Just move them’: forced evictions in Port Harcourt, Nigeria”, 28 October 2010; Dom Phillips and Júlio Carvalho, “Police operation in Rio favela leaves at least eight people dead”, *The Guardian*, 25 March 2018.

rights of informal settlement residents and their property.⁷⁵ Where excessive force is used against informal settlement residents, the situation must be referred to an independent and impartial panel for investigation and remedy.⁷⁶

29. Investigate and prevent violence against women and girls

107. Women and girls living in informal settlements are at much greater risk of experiencing gender-based violence than the general female population.⁷⁷ Toilets, water and other services are often located at some distance from homes, and insecure houses and lack of electricity and resultant dark walkways put women and girls at increased risk of violence and sexual assault.⁷⁸ Extreme poverty, destitution, overcrowding and long-term unemployment are contributing factors to violence against women. Women rarely have access to emergency shelters for protection from domestic violence in informal settlements.

108. Women should be involved in identifying and immediately implementing priority measures to address violence and to ensure that all upgrading addresses their safety and security risks.

109. Procedures must also be implemented to provide support for women reporting violence and sexual assault, so as to ensure their safety, including the provision of emergency shelters.

30. Ensure adequate protection of informal settlement inhabitants from hate-based crime

110. People living in informal settlements are often subjected to terrible acts of violence on the basis of their perceived membership in a particular racial, social, cultural or religious group. Hate-based attacks have led to the destruction of homes and property, physical injuries and death.⁷⁹ Police and security forces often fail to adequately protect residents and may serve to perpetuate hatred as a result of their own discriminatory stereotypes.⁸⁰

111. Police and security forces must receive human rights training and education to address discriminatory stereotypes and authorities must work in conjunction with residents to implement effective responses to hate-based crime.

G. Business and human rights

31. Redirect private investment in housing and real estate to support upgrading and create affordable housing

112. It is clear that the Sustainable Development Goals cannot be met by Governments alone and that private investment will play a significant role. It has been

⁷⁵ Guidelines on development-based evictions, paras. 47–51.

⁷⁶ See Stuart Casey-Maslen, *Use of Force in Law Enforcement and the Right to Life: the Role of the Human Rights Committee*, Academy In-brief No. 6 (Academy of International Humanitarian Law and Human Rights, Geneva, November 2016).

⁷⁷ Elizabeth Swart, “Gender-based violence in a Kenyan slum: creating local, woman-centered interventions”, vol. 38, No. 4, *Journal of Social Service Research* (April 2012).

⁷⁸ Submission of Socio-Economic Rights Institute of South Africa for the present report.

⁷⁹ Office of the United Nations High Commissioner for Human Rights, “Ukraine: Act now to stop systematic persecution of Roma minority in ‘alarming’ attacks, say UN experts”, 28 July 2018; “Ukraine’s Roma under attack in wave of hate crimes, *The Express Tribune*, 1 July 2018; submission of Associazione 21 Luglio Onlus for the present report.

⁸⁰ Report of the “Dialogue on human rights and policing”, hosted by the African Policing Civilian Oversight Forum in cooperation with the South African Human Rights Commission, 28 and 29 April 2016.

estimated that to build all of the needed housing over the next decade would cost up to \$16 trillion in spending on land and construction, of which only \$3 trillion would be expected to come from public funding.⁸¹

113. In her previous report on the financialization of housing, the Special Rapporteur noted that current financial regimes and investment patterns in housing have created unaccountable markets that fail to address housing need, increasingly driving lower income households in cities into homelessness and informality (A/HRC/34/51, paras. 3 and 29). She has called for a radical shift to redesign housing markets and investment centred on the recognition of housing as a human right and a social good rather than a commodity.⁸²

114. It is essential, therefore, that private investment be better directed to meeting the needs of the quarter of the population of cities living in informal settlements. This means adopting a new commitment to human rights responsibilities within the residential housing and construction sectors. The Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, requiring that investors avoid any activity that results in displacement of communities or the destruction of habitat, must be applied to ensure that a reasonable component of any private development and investment in land or housing is directed towards the housing needs in informal settlements. A global initiative, led by States and international financial institutions, is required to provide reliable mechanisms for capital investment in upgrading, directed by communities themselves.

III. The way forward

115. **The numbers of people living in informal settlements, the resources required for upgrading and the level of deprivation of rights experienced among the residents make the goal of upgrading all settlements by 2030 daunting. The tables of indicators and statistics compiled for monitoring progress towards 2030 are somewhat overwhelming. But more is required than a commitment to improved numbers and statistical trends.**

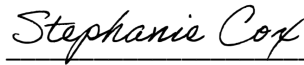
116. **The recommendations above are oriented around two key themes that are the pillars of human rights-based approaches to upgrading. First, that upgrading must build on, rather than undermine, the capacities of communities to claim and realize their rights, with adequate support and resources from States, international organizations and redirected private sector investment. And second, that the obligation to address the systemic violations of the right to housing in informal settlements must be recognized as a human rights imperative of States around the world for which there must be accountability.**

117. **Underlying these two key themes is one simple truth — something that is clear to the Special Rapporteur every time she visits residents living in appalling conditions in informal settlements in the midst of or on the margins of thriving cities where commercial and luxury residential developments abound. That truth is that by any measure — moral, political or legal — it is unacceptable for people to be forced to live this way. Refusing to accept the unacceptable is where we must begin. All actors must mobilize within a shared human rights paradigm around the imperative of upgrading all informal settlements by 2030.**

⁸¹ Jonathan Woetzel and others, “A blueprint for addressing the global affordable housing challenge” (McKinsey Global Institute, October 2014).

⁸² See <http://www.unhousingrapp.org/the-shift/>.

THIS IS EXHIBIT "E" TO THE
AFFIDAVIT OF LEILANI FARHA
AFFIRMED REMOTELY BEFORE ME AT THE
CITY OF OTTAWA DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG.431/20,
ADMINISTERNG OATH OR DECLARATION REMOTELY
THIS 15TH DAY OF JUNE, 2022



STEPHANIE COX

LSO NO. 65464F

Commissioner for Taking Affidavits, etc



General Assembly

Distr.: General
15 January 2019

Original: English

Human Rights Council

Fortieth session

25 February–22 March 2019

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Access to justice for the right to housing

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non- discrimination in this context*

Summary

In her report, prepared pursuant to Human Rights Council resolution 34/9, the Special Rapporteur examines the critical issue of access to justice for the right to housing. She suggests that the global housing crisis is rooted in a crisis in access to justice because without access to justice, housing is not properly recognized, understood or addressed as a human right. Millions who live in homelessness or unacceptable living conditions have no place where they can claim their right to housing when States have failed to progressively realize the right, imposed forced evictions, or criminalized those who live in homelessness or in informal housing. She argues that the outdated division of the right to housing into justiciable and non-justiciable components, negative and positive rights, must be firmly rejected. Ten key normative principles are identified which States must satisfy to ensure that all components of the right to housing are subject to effective remedies. The Special Rapporteur outlines how compliance with the obligation to progressively realize the right to housing is adjudicated; how forced evictions and criminalization must be prevented through access to justice and participation in decision-making; how national human rights institutions and informal justice systems should complement the role of courts; and how private actors are required to ensure access to justice for the realization of the right to housing.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



Contents

	<i>Page</i>
I. Introduction: the housing crisis as a crisis in access to justice	3
II. Access to justice for the right to housing: the normative framework	4
A. The right to housing made whole.....	4
B. Key principles of access to justice for the right to housing	5
III. Access to justice for the progressive realization of the right to housing	7
A. The standard of reasonableness	7
B. Application in domestic law	9
IV. Access to justice in the context of evictions and displacement	10
A. Affirming the rule of law and halting forced evictions	10
B. Reconceiving justice in the context of evictions, displacement and relocation	11
V. Access to justice to end criminalization and discrimination based on housing status	12
VI. Ensuring equality in access to justice	13
VII. Access to justice beyond courts.....	15
A. National human rights institutions	15
B. Business and human rights and the right to a remedy	16
C. Informal and customary justice.....	18
VIII. Conclusion and the way forward.....	18

I. Introduction: the housing crisis as a crisis in access to justice

1. An estimated 1.8 billion people lack adequate housing. Twenty-five per cent of the world's urban population live in informal settlements. Homelessness and forced evictions are on the rise in virtually every country. In the United States of America, over 2 million households are evicted from their homes every year – 4 per minute.¹ These numbers reflect the global crisis in access to adequate housing, but they also reveal a global crisis in access to justice for the right to housing. When the capacity exists to eliminate widespread homelessness and inadequate housing, the only explanation for their persistence at current levels is that States and other actors have failed to recognize housing as a human right. The denial of access to justice is the embodiment of that failure. The right to access to justice is “fundamental to the very notion of human rights”.² To be a rights holder, and for housing to be treated as a fundamental human right, one must be able to claim rights, to give voice and context to the deprivation of dignity and rights experienced.

2. Violations of the right to housing are as much failures in the administration of justice as they are failures of housing programmes. If those living in inadequate housing and in homelessness have no access to justice, they are deprived of agency to bring violations to light, to address root causes or ensure appropriate responses. They are unable to challenge the policy choices and decisions that created the conditions in which they live.

3. Housing is the aspect of peoples' lives that is most likely to engage the need for access to justice. Yet access to justice for the right to housing is commonly ignored. In a survey of 45 countries by the World Justice Project, the most common issues identified by respondents in which access to justice was needed were overwhelmingly related to housing.³ When the same project assesses States' performance in providing access to justice for fundamental human rights, however, the right to housing is not among the human rights considered.⁴ In the 2030 Agenda for Sustainable Development, the targets and indicators for access to justice under Goal 16 do not consider any aspect of access to justice for the right to housing. The Guiding Principles on Business and Human Rights have been applied to the responsibilities of businesses to ensure access to effective remedies, but residential housing – the world's largest business – has been almost entirely ignored.

4. Ensuring access to justice for the right to housing must therefore challenge dominant notions of what access to justice entails. The inquiry must begin by asking what kind of justice is needed for the right to housing to be vindicated. The procedural and practical barriers facing potential rights claimants seeking access to courts and tribunals must be addressed, and so too must substantive barriers stemming from inadequate protection of the right to housing afforded by existing laws and by the prevailing interpretation and application of those laws within courts. Courts and tribunals are more often experienced by those who are living in informal settlements or homelessness as places where evictions are ordered or criminalizing sanctions imposed, rather than as venues where the right to housing can be claimed.

5. There have, however, been historic advances in access to justice for the right to housing in recent years that provide the foundations for a new and transformative approach. At the international level, the right to housing has been the subject of precedent-setting adjudication by the Committee on Economic, Social and Cultural Rights. At the national level, the right to housing has been at the centre of emerging socioeconomic rights jurisprudence. And at the local level, advocacy for meaningful accountability for the right

¹ See <https://evictionlab.org/national-estimates/>. These estimates represent only rental evictions ordered by courts and mortgage foreclosures.

² A/HRC/25/31, para. 2; see also A/63/275 paras. 48–67.

³ World Justice Project, *Global Insights on Access to Justice: Findings from the World Justice Project General Population Poll in 45 Countries* (Washington, D.C., 2018). The dominance of housing issues is clear if issues of housing title and access to water and sanitation are combined in the responses.

⁴ See <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018/factors-rule-law/fundamental-rights-factor>.

to housing has become a central focus of social movements and city declarations of human rights.⁵

6. The Special Rapporteur has found that in all countries, the right to housing is understood by rights holders essentially as it is defined under international human rights law: “the right to live somewhere in security, peace and dignity”.⁶ The question that follows, and is invariably put to the Special Rapporteur, is: “Where do we go to claim our right to housing?” The first and most important step to realizing the right to housing is for States to answer that question, to ensure that the right to housing is afforded fair hearings and effective remedies, “by all appropriate means”, through courts, tribunals, rights-based strategies, human rights institutions, and community-based and informal justice systems.⁷

II. Access to justice for the right to housing: the normative framework

A. The right to housing made whole

7. Article 8 of the Universal Declaration of Human Rights affirms that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him [or her] by the constitution or by law. This applies to all rights in the Universal Declaration without distinction, including the right to housing under article 25.

8. The division of the rights in the Universal Declaration of Human Rights into two separate covenants and the provision of an optional complaints procedure only for civil and political rights when the two covenants were first adopted led to debates and confusion regarding the obligation to ensure access to justice and effective remedies for economic, social and cultural rights. This differential treatment of the two categories of rights translated into restrictions on access to justice for the right to housing. Usually, only those components of the right to housing that conform with a civil and political rights model of protection from State interference, such as freedom from cruel and inhuman treatment or from interference with privacy and home, were provided with access to justice.

9. As the Secretary-General noted in a 2013 report, the initial confusion regarding access to justice for economic, social and cultural rights has “since been largely overcome”. In the last two decades, “the United Nations human rights system has consistently recognized the right to an effective remedy for violations of economic, social and cultural rights”.⁸ These advances, with significant support from civil society, culminated in the adoption by the General Assembly, by resolution 63/117, of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, heralded as “human rights made whole” by the United Nations High Commissioner for Human Rights and putting an end to the differential treatment of the two categories of rights.⁹

10. These historic advances at the international level grew out of national- and regional-level struggles for the right to housing, led by human rights defenders. Behind the famous case names are women such as Olga Tellis in India, Irene Grootboom in South Africa and Felisa Alicia Saavedra in Argentina and street children such as Villagran Milagra in

⁵ See information on the new global movement The Shift, available at www.unhousingrapp.org/the-shift.

⁶ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 7.

⁷ The Special Rapporteur thanks States, national human rights institutes and civil society organizations for their submissions for the present report. They are available at www.ohchr.org/EN/Issues/Housing/Pages/AccessToJustice.aspx. The Special Rapporteur also thanks Bruce Porter for his assistance in preparing the report.

⁸ A/HRC/25/31, para. 2.

⁹ Louise Arbour, “Human rights made whole”, Project Syndicate, 26 June 2008.

Guatemala, whose experiences brought to light the inherent connection between the right to housing and central human rights values linked to the right to a dignified life.¹⁰

11. A growing number of States included the right to housing as a justiciable right in their constitutions, and in jurisdictions that did not recognize the right to housing explicitly courts began to provide effective remedies for the right to housing by recognizing its indivisibility with the right to life.¹¹ Ensuring access to justice for the right to housing is less a question of the specific constitutional protections in place and more a question of whether courts and Governments are willing to recognize that the right to housing is central to the core human rights values that courts must safeguard and to which Governments must be held accountable.

B. Key principles of access to justice for the right to housing

12. The central question, “Where do I go to claim my right to housing?”, must be answered in the context of a State’s particular legal order. States are permitted to determine how best, but not whether, to ensure access to justice for various components of the right to housing. International human rights law imposes a number of overarching obligations on Governments and courts with respect to access to justice for the right to housing, based on the following 10 key principles.

Principle 1 – Access to justice must be ensured by all appropriate means and address the needs of diverse groups.

13. States must ensure access to justice for the right to housing by all appropriate means, including legislation, to the maximum of available resources, and without discrimination.¹² Access to justice for the right to housing must be conceived inclusively, addressing the diverse circumstances of different groups. It relies on a wide range of approaches, venues and institutions, including rights-based housing strategies, courts, landlord-tenant tribunals, human rights institutions and informal and customary justice systems.

Principle 2 – States must implement the right to housing within the domestic legal system so as to provide at least the same level of protection as is afforded under international human rights law.

14. Access to justice must be ensured for all components and dimensions of the right to housing that are guaranteed under international human rights law, ensuring accountability for the State’s obligations to respect, protect and fulfil the right to housing. Access to justice must be provided not only for a right to physical shelter, but to a safe and secure home in which to live in security, peace and dignity. Effective remedies must be available to ensure legal security of tenure, affordability, habitability, availability of services, accessibility, location and cultural adequacy.¹³

Principle 3 – Individuals and groups, households and communities must have standing to advance claims and to participate throughout legal processes and the implementation of remedies.

15. Violations of the right to housing may affect both individuals and groups. Entire communities are often affected by development plans or evictions. Access to justice must therefore extend to both individuals and groups. Support should be available for them to participate in all stages of rights claims and in the implementation of remedies. Groups with

¹⁰ Supreme Court of India, *Olga Tellis and Others v. Bombay Municipal Council*, Judgment of 10 July 1985; Constitutional Court of South Africa, *Government of the Republic of South Africa and Others v. Grootboom and Others*, Judgment of 4 October 2000; and Supreme Court of the City of Buenos Aires, *Comisión Municipal de la Vivienda v. Saavedra, Felisa Alicia y otros*, Judgment of 7 October 2002.

¹¹ See A/71/310.

¹² Committee on Economic, Social and Cultural Rights, *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015) para. 13.4.

¹³ General comment No. 4, para. 8.

interest and expertise in systemic issues being addressed should be provided with amicus or public interest standing in hearings and be permitted to participate in the implementation of remedies.

Principle 4 – Denying access to justice cannot be justified on the basis that the right to housing is not considered justiciable within the State’s domestic legal order.

16. Denying access to justice for the right to housing places the State in non-compliance with its obligations to ensure effective remedies for all fundamental human rights. This cannot be justified on the basis that the right to housing or any of its components is not considered justiciable within the domestic legal order, as this would be contrary to article 27 of the Vienna Convention on the Law of Treaties.¹⁴ Domestic courts must therefore reject any submissions that a claim to the right to housing should not be heard by courts if no alternative independent body is available to hear the claim. Governments should desist from making these arguments before courts or international human rights bodies.

Principle 5 – Access to justice must apply to both negative and positive State obligations, including obligations to progressively realize the right to housing.

17. There must be access to justice for positive rights claims engaging resource allocation, such as for rental assistance or “housing first” programmes, as well as negative rights claims challenging State action resulting in deprivation of the right to housing, such as forced eviction or home demolition. Any distinction between the two categories of rights with respect to access to justice “is incompatible with the principle that the two sets of human rights are indivisible and interdependent”. Moreover, it would “drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society”.¹⁵

Principle 6 – States may delegate components of access to justice for the right to housing to administrative bodies, but judicial remedies must be available when needed.

18. The right to an effective remedy does not always require a judicial remedy. Administrative and other forms of remedies that ensure compliance with the right to housing may be adequate as long as they are “accessible, affordable, timely and effective”.¹⁶ Many States rely on administrative tribunals for remedies for protections of tenants’ rights, health and safety or land title. Alternative forms of remedy, however, should generally be reinforced and complemented by judicial remedies. Whenever the right to housing “cannot be made fully effective without some role for the judiciary, judicial remedies are necessary”.¹⁷

Principle 7 – Courts must interpret and apply domestic law in accordance with the State’s obligations to respect, protect and fulfil the right to housing.

19. The role played by courts and administrative decision makers is one of the most important factors determining State compliance with the right to housing. Courts are not simply neutral arbiters of rights claims; they are also the guardians of rights.¹⁸ Jointly with other branches of Government, they are bound by the State’s obligations to respect, protect and fulfil the right to housing.¹⁹ The judiciary must, therefore, exercise its authority to interpret and apply domestic law in a manner that promotes the realization of the right to housing and ensures effective remedies for this right.²⁰ “Neglect by the courts of this

¹⁴ “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

¹⁵ Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998) on the domestic application of the Covenant, para. 10.

¹⁶ Ibid., para. 9.

¹⁷ Ibid.

¹⁸ See Human Rights Council resolutions 29/6 and 31/2.

¹⁹ Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 4.

²⁰ General comment No. 9, para. 15.

responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations.”²¹ When courts approve evictions without ensuring alternative accommodation or fail to provide remedies for violations of the right to life caused by homelessness, they violate international human rights and the rule of law and, in so doing, place the State in non-compliance with its international human rights obligations.

Principle 8 – States must promote decision-making that is consistent with the right to housing.

20. Governments and courts must ensure that all exercises of statutory authority, administrative decisions and policies accord with a State’s obligations to ensure the right to housing. In litigation, Governments should promote and adopt interpretations of domestic law that are consistent with the obligation to ensure effective remedies, including when defending against alleged violations.²² Decision makers with discretionary authority should exercise that authority consistently with the right to housing, for example by dismissing an eviction application which may result in homelessness or an application for zoning approval for a development which fails to further the realization of the right to housing.

Principle 9 – Remedies must address both individual and systemic violations.

21. Individual remedies should include, where appropriate, compensation and reparation for any violation of the right to housing, including the right to return to a home after an illegal eviction. Remedies must also address the structural causes and policies that gave rise to the violation and ensure non-repetition. Where appropriate, Governments should be required to adopt or amend legislation, allocate necessary resources or regulate private actors in the housing market to address structural causes of violations of the right to housing.

Principle 10 – Remedies must be implemented by Governments and enforced by courts with participation by rights holders.

22. Remedies ordered by courts with respect to the right to housing, whether to prevent threatened evictions or to implement effective housing strategies to address systemic violations, are too often ignored by Governments. It is fundamental to the rule of law that Governments respect the decisions of courts and human rights bodies by implementing required remedies. Where Governments or others require time to implement structural remedies, such as developing programmes to address the housing needs of particular groups, remedies should provide for independent supervision by the court or another authority, enforceable timelines, monitoring and reporting, and provision for participation and consultation with those affected.

III. Access to justice for the progressive realization of the right to housing

A. The standard of reasonableness

23. The majority of violations of the right to housing derive from the failure of States to progressively realize the right to housing by adopting appropriate measures to address the unacceptable circumstances in which people are living. Whether it is a failure to implement participatory upgrading plans in informal settlements or to implement plans to reduce and eliminate homelessness within a reasonable time, States’ failures to take positive measures to ensure the realization of the right to housing must be addressed as human rights violations affecting individuals and communities. Those affected must have access to justice to hold States accountable to the obligations described in article 2 (1) of the

²¹ Ibid., para. 14.

²² E/C.12/CAN/CO/4-E/C.12/CAN/CO/5, paras. 11 (b) and 36.

International Covenant on Economic, Social and Cultural Rights: to take steps “to the maximum of its available resources, with a view to achieving progressively the full realization of the [right to housing] by all appropriate means, including particularly the adoption of legislative measures”.

24. The adoption of the Optional Protocol resolved two critical issues that were debated during the drafting process. The adopted text established that claims submitted by individuals who have been affected by States’ failures to progressively realize Covenant rights are justiciable.²³ And it also established that while there may be a range of policies or approaches through which States may comply with article 2 (1), the means chosen must comply with a standard of “reasonableness”.²⁴

25. The Committee on Economic, Social and Cultural Rights has identified a number of factors to consider in assessing reasonableness. Measures must be deliberate, concrete and targeted towards the fulfilment of the right; implemented within a reasonable time frame; allocate resources in accordance with international human rights standards; address the precarious situation of disadvantaged and marginalized individuals or groups; and ensure that decision-making is transparent and participatory.²⁵

26. The assessment of reasonableness relies on hearing from rights holders. It is a contextual analysis that takes as its starting point the dignity interests brought to light through access to justice. The text of article 8 (4) of the Optional Protocol drew directly from the decision of the Constitutional Court of South Africa in the *Grootboom* case, in which the reasonableness of housing policies was assessed in the context of the circumstances of Irene Grootboom and others living with their children under plastic sheets on a sports field, without water or sanitation. The Court emphasized that progressive realization is not simply about statistical progress. Adequate housing is recognized as a fundamental human right “because we value human beings ... [E]veryone must be treated with care and concern. If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test.”²⁶

27. The standard for access to justice for the right to housing under international law, therefore, requires an assessment of measures taken to realize the right to housing, in the context of both the capacity of the State and of lived realities brought forward through the claiming of rights. It is a standard that accords flexibility as to the precise policy measures chosen but is firmly grounded in the obligation to fully realize the right to housing in the shortest possible time. Sandra Liebenberg explains that applying the reasonableness standard does not mean simply deferring to Government to make policy choices, but rather provides a critical space for rights claimants to participate in designing and implementing strategies and programmes.²⁷

28. Access to justice must also be ensured when States reduce the enjoyment of the right to housing through retrogressive measures.²⁸ Courts and other adjudicative bodies must require the State to prove that any such measures are fully justified on the basis of very strict criteria, and taking into account the maximum available resources and any alternatives available. Measures must be necessary and proportionate, remain in place only insofar as they are necessary, not result in discrimination and ensure that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected, and that the

²³ Catarina de Albuquerque and Malcolm Langford, “The origins of the Optional Protocol” in *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary*, Malcom Langford and others, eds. (Cape Town, Pretoria University Law Press, 2016).

²⁴ Article 8 (4) of the Optional Protocol.

²⁵ General comment No. 3 (1990) on the nature of States parties’ obligations, para. 2.

²⁶ *Government of the Republic of South Africa and Others v. Grootboom and Others*, para. 44.

²⁷ Sandra Liebenberg, “Participatory justice in social rights adjudication”, *Human Rights Law Review*, vol. 18, Issue 4 (December 2018), pp. 623–649.

²⁸ See Aoife Nolan, Nicholas J. Lusiani and Christian Courtis, “Two steps forward, no steps back? Evolving criteria on the prohibition of retrogression in economic and social rights”, in *Economic and Social Rights After the Global Financial Crisis*, Aoife Nolan, ed. (Cambridge University Press, 2014), pp. 128–129.

affected groups have been afforded genuine participation. All legal protections of the right to housing, and access to justice to ensure compliance, must remain in place.²⁹

29. The critical link between individual claims and progressive realization of the right to housing has been elucidated in the jurisprudence of the Committee on Economic, Social and Cultural Rights under the Optional Protocol. In the case of *Ben Djazia and Bellili v. Spain*, the Committee assessed measures taken by the State party in light of the circumstances of a family who became homeless after an eviction. The reasonableness standard was formulated as requiring the State to make “all possible effort, using all available resources, to realize, as a matter of urgency, the right to housing of persons who, like the authors, are in a situation of dire need”.³⁰ This necessitated attention to both individual circumstances and structural factors.³¹ As remedy, the State party was required to engage in genuine consultation with the family to ensure that they were afforded adequate accommodation and to develop a comprehensive plan with the necessary resources, indicators, time frames and evaluation criteria for the progressive realization of the right to housing for low-income persons.³²

B. Application in domestic law

30. The right to housing should be implemented in domestic law so as to include obligations of progressive realization. The 2010 Constitution of Kenya provides a helpful model, requiring the State to take “legislative, policy and other measures” for progressive realization of the right to housing, and setting out principles for the assessment of whether resource allocation and policy choices are in line with article 8 (4) of the Optional Protocol.³³

31. In many Latin American countries, the *amparo* procedure can provide remedies for the right to housing, including for violations linked to progressive realization.³⁴ For example, in a case brought by a woman and her son living in homelessness, a court in Argentina required the Government to implement a plan to eliminate homelessness, with a timetable for the implementation, the participation of those affected and the allocation of the maximum available resource.³⁵

32. Indian courts have recognized that a constitutional obligation of progressive realization of the right to housing may be inferred from the guarantee of the right to life.³⁶ This interpretive approach is consistent with the Human Rights Committee’s recently adopted general comment on the right to life, which recognized that the right to life requires “appropriate measures” to address “general conditions in society [such as] homelessness” in order to ensure the conditions necessary for a dignified life.³⁷

²⁹ E/C.12/2016/1, para. 4.

³⁰ E/C.12/61/D/5/2015, para. 17.5.

³¹ *Ibid.*, para. 17.2.

³² *Ibid.*, para. 21 (d).

³³ Constitution of Kenya, art. 21 (2); see, however, Court of Appeal, *Kenya Airports Authority v. Mitu-Bell Welfare Society and others*, civil appeal No. 218, Judgment of 11 April 2013, in which the Court invokes the “political questions” doctrine to limit the protection of the right to alternative housing for an evicted community.

³⁴ Supreme Court of Argentina, *Q.C., S.Y. c. Gobierno de la Ciudad de Buenos Aires*, petition for *amparo*, Judgment of 24 April 2012; Constitutional Court of Ecuador, case No. 1207-10-EP, Judgment of 17 April 2012; and Colombian Constitutional Court, decision No. T-025/04, 17 June 2004.

³⁵ Cámara de Apelaciones en lo Contencioso Administrativo y Tributario de la Ciudad Autónoma de Buenos Aires, *Ramallo, Beatriz y otros c. Gobierno de la Ciudad de Buenos Aires*, Judgment of 12 March 2002.

³⁶ Supreme Court of India, *People’s Union for Civil Liberties v. Union of India and Others*, No. 196 of 2001, Judgment of 30 November 2001; and Bombay High Court, *Shivaji Krishna Zunjare v. State of Maharashtra and Others*, Judgment of 23 July 2004, para. 6.

³⁷ General comment No. 36 (2018) on the right to life, para. 26.

33. The Revised European Social Charter has provided an important context for advancing claims related to the progressive realization of the right to housing. Article 31 of the Revised Charter requires States to undertake positive measures to promote access to adequate housing in order to prevent and reduce homelessness and to ensure affordable housing for low-income households. In *FEANTSA v. France* the European Committee on Social Rights clarified the obligation on States to “take steps within a reasonable time, with measurable progress and making maximum use of available resources”.³⁸ More recent cases have addressed the right to housing of the Traveller and Roma communities, families and unaccompanied children.³⁹

34. Despite the emerging regional and domestic jurisprudence, the extent to which claimants are securing access to justice for the progressive realization of the right to housing remains extremely limited. Ensuring access to justice in this context is an immediate and urgent obligation. All States must adopt housing strategies that include claiming mechanisms for accountability to the obligations of eliminating homelessness and realizing the right to adequate housing for all in the shortest possible time.⁴⁰ As noted in the Special Rapporteur’s previous report, these legal obligations should be aligned with the commitments made in the 2030 Agenda for Sustainable Development to ensure adequate housing for all by 2030.⁴¹

IV. Access to justice in the context of evictions and displacement

A. Affirming the rule of law and halting forced evictions

35. The definition of forced evictions under international human rights law centres on the denial of access to justice, and access to justice is critical for their prevention. Forced evictions are defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the home and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.⁴² This definition also applies to any removal of homeless people from where they are living. Forced evictions constitute a gross violation of international human rights and must be strictly prohibited in domestic law, properly enforced by courts. Court orders must be fully respected and implemented by State authorities.⁴³

36. Access to justice must ensure that eviction is only carried out as a last resort, in accordance with all legal requirements and with prior genuine consultation with those affected, that all viable alternatives to the eviction are explored, and that no one will be rendered homeless as a result of the eviction. Courts must require all appropriate measures to be taken to ensure, where possible, that adequate alternative land and housing are available.⁴⁴ Victims of forced evictions must receive fair and just compensation for any losses, both personal and real, including the loss of other property or goods.⁴⁵ Where

³⁸ European Committee on Social Rights, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France* (complaint No. 39/2006), Merits, decision of 5 December 2007, para. 58.

³⁹ European Committee on Social Rights, *European Roma and Travelers v. Czech Republic* (complaint No. 104/2014), Merits, decision of 17 May 2016; *International Federation for Human Rights (FIDH) v. Ireland* (complaint No. 110/2014), Merits, decision of 12 May 2017; and *European Committee for Home Based Priority Action for the Child and the Family v. France* (complaint No. 114/2015), Merits, decision of 24 January 2018.

⁴⁰ See general comment No. 4. See also OL CAN 2/2018, available from the communications database of special procedures (www.ohchr.org/en/hrbodies/sp/pages/communicationsreportssp.aspx).

⁴¹ See A/HRC/37/53.

⁴² Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on forced evictions, para. 4.

⁴³ Commission on Human Rights resolutions 1993/77 and 2004/28.

⁴⁴ See general comment No. 7; and E/C.12/61/D/5/2015, paras. 13.4 and 15.1–15.2.

⁴⁵ General comment No. 7, para. 13.

possible, they must be granted a right of return with any destroyed housing reconstructed or replaced with adequate housing.⁴⁶

37. Forced evictions and violations of these clear legal standards are rampant worldwide. Usually there is no access to courts. At other times, courts order evictions in violation of international human rights law and in some circumstances, authorities act in blatant defiance of court injunctions. The Housing and Land Rights Network documented the demolition of over 53,000 homes in forced evictions in 2017 in India. Court orders were responsible for 17 per cent of them.⁴⁷ In recent communications the Special Rapporteur has been informed that tens of thousands of migrants on the outskirts of Beijing⁴⁸ and 26,000 households in Italy⁴⁹ were evicted in 2017 with no provision of alternative housing. Recent changes to legislation in Hungary require the forced eviction of homeless people from where they are residing, with mandatory incarceration after two warnings.⁵⁰ Some 30,000 residents of the Otodo Gbame community were forcibly evicted from their ancestral fishing settlement in Nigeria and their homes demolished in violation of a court injunction.⁵¹ In Kenya, authorities similarly ignored a court order and forcibly evicted the Sengwer indigenous people from the Embobut, burning 1,800 homes to the ground.⁵²

B. Reconceiving justice in the context of evictions, displacement and relocation

38. Access to justice in the context of displacement cannot be restricted to responding to threatened evictions or to seeking remedies after irreparable damage has been done to peoples' lives and communities. Applications to evict communities are usually symptoms of States' failures to meaningfully engage with communities to develop alternatives that respect their rights and that can be implemented cooperatively, without the use of force. Access to justice must be reconceived both in legislation and in practice to ensure rights-compliant decision-making from the earliest stages of any relocation or development plan. Engagement must go beyond mere consultation and ensure rights-based negotiation, with recourse to courts where necessary to ensure human rights compliance.⁵³ A facilitator from a human rights institution or ombudsperson's office may be appointed to oversee this process.

39. Human rights impact assessments must be conducted prior to the approval of any development plan.⁵⁴ These assessments must provide for hearings and meaningful engagement through which residents can affirm and secure their right to housing. Commitments made by international financial institutions and development banks to integrating human rights in development should similarly require rights-based engagement with affected communities and ensure access to justice through complaints procedures.⁵⁵

40. Access to justice must also be provided to address the underlying causes of displacement and evictions. Where increased numbers of households are unable to afford rent or mortgage payments, courts should require Governments to provide financial assistance and to adopt other measures to allow people to remain in their homes. Effective

⁴⁶ A/73/310/Rev.1, para. 34. See also A/HRC/4/18, annex I; and High Court of Kenya at Embu, *Ibrahim Sangor Osman v. Minister of State for Provincial Administration and Internal Security*, Judgment of 16 November 2011.

⁴⁷ Housing and Land Rights Network, *Forced Evictions in India in 2017: An Alarming National Crisis*, fact sheet, February 2018.

⁴⁸ JAL CHN 8/2018.

⁴⁹ JAL ITA 3/2018.

⁵⁰ See www.ohchr.org/Documents/Issues/Housing/AmicusConstitutionalCourtHungary_1.pdf.

⁵¹ UA NGA 4/2016.

⁵² See submission by Amnesty International for the present report, pp. 6–7.

⁵³ Lucy Williams, "The right to housing in South Africa: an evolving jurisprudence", *Columbia Human Rights Law Review*, vol. 45, No. 3 (Spring 2014), pp. 827–834.

⁵⁴ See A/HRC/4/18, annex I, paras. 28–36.

⁵⁵ C. Daniel and others, eds., *Glass Half Full? The State of Accountability in Development Finance* (Amsterdam, Centre for Research on Multinational Corporations, 2016).

mechanisms must also be in place to ensure hearings of challenges to development plans that would result in displacement of lower-income communities.

V. Access to justice to end criminalization and discrimination based on housing status

41. Laws and their interpretation and application by courts frequently perpetuate systemic discrimination and stigmatization against those who are homeless or living in informal settlements.⁵⁶ Rather than being treated as rights holders entitled to remedies for serious violations of the right to housing, these groups are treated as violators of laws and “encroachers” on the land.

42. In keeping with international human rights law, access to justice must be reconceived to focus on protecting and ensuring the right to housing for those who are homeless and inadequately housed and must not be used to criminalize them. The Human Rights Council has called upon States to take all measures necessary to eliminate legislation that criminalizes homelessness and to ensure an effective remedy and the right to access to justice.⁵⁷ United Nations treaty bodies have established that discrimination on the grounds of socioeconomic status, including homelessness, is a prohibited ground under international human rights law and must be recognized within domestic justice systems.⁵⁸ The Committee on the Elimination of Racial Discrimination has recognized the criminalization of homelessness as intersectional discrimination, linked to systemic racism and colonization of indigenous peoples.⁵⁹

43. The Human Rights Committee has found that the criminalization of homelessness may violate the right to freedom from cruel, inhuman or degrading treatment, the right to liberty and security of the person and protection from arbitrary arrest or detention.⁶⁰ Domestic courts have reached similar findings. Courts in the United States have invoked constitutional protection from cruel and unusual punishment to strike down local ordinances that ban sleeping in public spaces and prohibited vehicles serving as homes from being towed away for parking infractions.⁶¹ Canadian courts have struck down city bylaws preventing homeless people from sheltering themselves overnight in parks under makeshift homes of tarps or cardboard boxes as violating the right to life, liberty and security of the person.⁶²

44. Ensuring access to justice to challenge forced eviction and criminalization in these cases is important, but it is alarming that courts have not gone further to recognize the need for positive measures for access to adequate housing. Ensuring only a right to live in a cardboard box or under plastic in the most affluent countries in the world does not remotely satisfy the standard of reasonable measures required under international human rights law. Courts must interpret the rights relied upon in these cases – to life, security of the person and equality or freedom from cruel and inhuman treatment – consistently with States’ obligations to take positive measures to address homelessness itself as an egregious violation of human rights.⁶³ Initiatives like the Homeless Bill of Rights in Europe and the Housing Not Handcuffs movement in the United States advocate strongly against

⁵⁶ See A/HRC/31/54 and A/73/310/Rev.1.

⁵⁷ Resolution 31/9. See also A/HRC/13/20.

⁵⁸ Human Rights Committee, *Whelan v. Ireland* (CCPR/C/119/D/2425/2014); and general comment No. 36, para. 26.

⁵⁹ See, for example, CERD/C/USA/CO/7-9.

⁶⁰ CCPR/C/USA/CO/4.

⁶¹ United States Court of Appeals for the Ninth Circuit, *Martin and others v. City of Boise*, Opinion of 4 September 2018; and Superior Court of Washington for King County, *Seattle v. Steven Gregory Long*, ruling of 2 March 2018.

⁶² Supreme Court of British Columbia, *Abbotsford (City) v. Shantz*, Judgment of 21 October 2015.

⁶³ For an analysis of cases in the United States in this light, see Eric Tars and others, “Can I get some remedy? Criminalization of homelessness and the obligation to provide an effective remedy”, *Columbia Human Rights Law Review*, vol. 45, Issue 3, pp. 738–771.

criminalization while properly emphasizing that “the most important right a homeless person has is to exit homelessness”.⁶⁴

VI. Ensuring equality in access to justice

45. Victims of violations of the right to adequate housing are among the most marginalized groups in society. They face a range of barriers to accessing justice, including challenges related to literacy, education, poverty, discrimination, access to legal representation and ability to navigate complex legal and administrative systems.⁶⁵ Where legal aid is available, it is often unavailable for housing cases and rarely available to advance substantive claims to the right to housing. Lengthy delays in cases being heard and decided means that access to justice may be too late to be effective for those in the most dire circumstances. Linguistic, cultural and religious barriers are particularly acute for indigenous peoples, ethnic minorities and migrants.⁶⁶ States must take all reasonable measures to overcome these barriers and ensure the widest possible enjoyment of access to justice for the right to housing. Mobile courts can provide access to justice in remote areas and legal assistance should be provided through community outreach, combined with community legal education about the right to housing and how to claim it. The right of access to justice for the right to housing requires distinctive approaches for different groups.

46. **Access to justice for indigenous peoples** must be implemented in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.⁶⁷ The Declaration affirms that indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to housing and other programmes through their own institutions where possible. No relocation or development affecting indigenous communities may occur without their free, prior and informed consent.⁶⁸ States must establish, in conjunction with indigenous peoples, “a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources” (art. 27). The Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization similarly guarantees free and informed consultations, and due regard to indigenous custom where compatible with international human rights. Thus, indigenous peoples have the right to the adjudication of their claims to the right to land and housing in a manner which respects their own laws and traditions.

47. Indigenous justice systems should be fully supported by States so that they may develop distinctive approaches to ensuring the right to housing. Particular efforts are required to ensure that the rights of urban indigenous peoples living outside of traditional territories, often in homelessness or inadequate housing, are equally protected. A number of States have incorporated these international norms into domestic law, either through legislation or through judicial interpretations.⁶⁹ Article 57 of the Constitution of Ecuador is exemplary in this regard, though its implementation has been lacking.

48. Some indigenous claims to the right to land and housing that have been denied within national systems have been addressed within regional systems. Considering the eviction of the Ogiek community from ancestral lands in the Mau Forest of Kenya, the African Court on Human and Peoples’ Rights drew on the United Nations Declaration to recognize the obligations of the State to take positive measures to support the rights of

⁶⁴ See www.housingrightswatch.org/sites/default/files/Template%20Homeless%20Bill%20of%20Rights%20EN_0.pdf; see also <http://housingnohandcuffs.org>.

⁶⁵ A/67/278, paras. 5–6; see also submission by Défenseur des droits, France, for the present report.

⁶⁶ Julinda Beqiraj and Lawrence McNamara, *International Access to Justice: Barriers and Solutions* (International Bar Association, 2014).

⁶⁷ For an elaboration of access to justice for indigenous peoples based on the Declaration, see A/HRC/27/65.

⁶⁸ Articles 10, 11, 19, 28 and 32.

⁶⁹ Inter-American Court of Human Rights, *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment of 27 June 2012, para. 164.

indigenous peoples to development and culture and to remain on their traditional territories.⁷⁰ The Inter-American Court of Human Rights has affirmed that the distinctive relationship with land, property and housing among indigenous peoples must be incorporated into the interpretation and application of the right to property under the American Convention on Human Rights and has developed extensive jurisprudence on the rights of indigenous peoples.⁷¹ In the recent case of *Kaliña and Lokono Peoples v. Suriname*, the Court found that the laws of Suriname failed to provide legal remedies for the protection of the collective land rights of indigenous peoples, depriving the Kaliña and Lokono peoples of land and access to a river that was essential to both their cultural life and their survival.⁷² The Court ordered the adoption of legislative and other measures to recognize the rights of all indigenous and tribal peoples subject to State jurisdiction.

49. **Women** experience multiple systemic barriers to access to justice. As noted by the Committee on the Elimination of Discrimination against Women, obstacles include “gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women”.⁷³ Access to justice for the right to housing for women – as described in thematic reports of previous mandate holders – means women must be able to challenge systemic discrimination with respect to land, housing and property⁷⁴ in a range of areas, including inheritance, marriage, divorce, succession and title registration.

50. Where access to justice in housing and land relies on customary laws and traditional practices, women must have recourse to formal justice systems to challenge systemic discrimination.⁷⁵ On the other hand, when customary ownership and tenure arrangements are replaced by formal title, property rights, financing and new tenure arrangements, women also face systemic discrimination within formal justice systems. Women are often denied equal access to title, rental agreements or credit to finance housing.⁷⁶ Concerted efforts are required to provide spaces and support for women to make substantive equality claims in all areas related to housing and through which women-led transformative remedies can be designed and implemented. Support should be provided for legal empowerment strategies and community-based human rights education for women.⁷⁷

51. **Access to justice for persons with disabilities** requires States to take positive measures in accordance with article 13 of the Convention on the Rights of Persons with Disabilities to ensure effective participation in all stages of legal processes. Justice systems must recognize both the barriers faced in developing and taking forward disability-related claims and the distinctive nature of the right to housing claims advanced. Adjudication of such claims must operate within the “disability human rights paradigm” affirmed in the Convention and described in the Special Rapporteur’s report on the right to housing of

⁷⁰ African Court on Human and Peoples’ Rights, *African Commission on Human and Peoples’ Rights v. Republic of Kenya* (application No. 006/2012), Judgment of 26 May 2017, para. 126.

⁷¹ For a summary, see Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname*, Judgment of 25 November 2015, paras. 129–132.

⁷² *Ibid.*, paras. 152–160.

⁷³ General Recommendation No. 33 (2015) on women’s access to justice, para. 3; see also Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, paras. 21 and 38.

⁷⁴ See E/CN.4/2006/118 and A/HRC/19/53.

⁷⁵ See International Network for Economic, Social and Cultural Rights Women and ESCR Working Group, “Mapping study on women’s rights related to land, housing and natural resources”, July 2016.

⁷⁶ Ben Cousins and Espen Sjaastad, “Formalisation of land rights in the South: an overview” in *Land Use Policy*, vol. 26, No. 1 (January 2009).

⁷⁷ United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and others, *A Practitioners’ Toolkit on Women’s Access to Justice Programming: Introduction* (United Nations, 2018). See, for example, the mobile courts initiative in the Democratic Republic of the Congo, available at <http://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Case-Study-DRC-Mobile-Gender-Courts.pdf>; and the women’s initiative in Bangladesh, available at www.angoc.org/wp-content/uploads/2016/01/Women-issue-brief1.pdf.

persons with disabilities, focused on dignity, substantive equality, accessibility and participation and ensuring the right to live independently in the community.⁷⁸

52. **Children's access to justice** for the right to housing must be founded on the principle of the best interests of the child and require the legal empowerment of children through access to information and support, provided in an age-appropriate manner, and ensure effective means to claim their rights.⁷⁹ Special measures must be taken to provide access to justice for children in street situations. According to the Committee on the Rights of the Child, this includes, "access to individual complaints mechanisms, by children themselves and/or represented by adults, and to judicial and non-judicial redress mechanisms at the local and national levels, including independent human rights institutions".⁸⁰

53. **Access to justice for racial and ethnic minorities** must address the intersection of systemic racism and violations of the right to housing. The International Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination in housing based on race, colour, or national or ethnic origin and ensures equality in the enjoyment of the right to housing. Discrimination and evictions facing Roma communities in Europe and the disproportionate number of African Americans among the homeless in the United States are examples of grossly unequal enjoyment of the right to housing that require enhanced access to justice for structural remedies. Remedies must include positive measures to address systemic inequality in housing conditions as well as preventing racial discrimination in access to land, mortgages, rental housing and services. Discrimination on the grounds of race and ethnicity intersecting with other grounds, including socioeconomic status and gender, must be recognized.

54. **Access to justice for migrants** must ensure effective remedies for widespread systemic discrimination in access to shelters and public and private housing.⁸¹ Migrants must be empowered to challenge laws that exclude them from accessing social housing or that forbid private landlords from renting to them. Where migrants themselves are not in a position to advance claims on their own behalf, claims should be heard from representative organizations. Migrants must have access to legal assistance without requiring disclosure of their immigration status to public authorities and, where necessary, access to complaints procedures that preserve anonymity. Violations of the right to housing of migrants cannot be justified as measures to discourage irregular migration.

VII. Access to justice beyond courts

A. National human rights institutions

55. National human rights institutions have a clear responsibility and a critical role to play in promoting and ensuring access to justice for the right to housing. To qualify as such under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), human rights commissions, ombudspersons or public defenders are required to identify and address areas of State non-compliance with obligations to ensure access to justice for violations of all human rights. They should therefore examine legislative and administrative provisions relating to the right to housing to ensure compliance with the normative framework for access to justice as described above. While many national human rights institutions have failed to devote equal resources to economic, social and cultural rights, and to the right to housing in particular,

⁷⁸ A/72/128, paras. 1–7 and 17–19.

⁷⁹ A/HRC/25/35.

⁸⁰ General comment No. 21 (2017) on children in street situations, para. 22.

⁸¹ Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 (2004) on discrimination against non-citizens.

most have authority to address human rights in housing and are well positioned to play a critical role in this regard.⁸²

56. National human rights institutions should monitor the progressive realization of the right to housing, hold hearings to ensure that the circumstances of marginalized groups are fully addressed and recommend appropriate remedial actions or policy responses by Governments or private actors.⁸³ In their engagement with the Sustainable Development Goals, they should ensure access to justice and accountability for progressive realization, including goals and timelines consistent with target 11.1 to ensure access to safe, secure and affordable housing for all by 2030.

57. National human rights institutions should provide public legal education and assistance to rights claimants to access justice for the right to housing through all available mechanisms. They may assist rights holders to bring cases to courts or tribunals by initiating claims jointly with rights holders, by participating as third parties or amicus, by providing necessary evidence on systemic issues or by supervising the implementation of remedies. The Defensoría del Pueblo in Colombia has conducted site visits in order to hear directly from communities, forwarded information about systemic violations of the right to housing to municipal or national authorities and followed up with strategic litigation on the right to housing when necessary.⁸⁴ The Scottish Human Rights Commission is playing a leading role in developing models for ensuring effective remedies for the right to housing and other socioeconomic rights.⁸⁵

B. Business and human rights and the right to a remedy

58. With widespread deregulation and privatization of housing and unprecedented investment by private equity firms, pension funds and other financial actors in housing markets, ensuring access to justice to hold private actors accountable to the right to housing is more important than ever. This is an obligation of States, not something that can be left up to private actors to implement on a voluntary basis. Whatever role is accorded private actors and investors in the housing system, States cannot contract out of their obligations to provide access to justice for the right to housing. They must adopt “legislative, administrative, educational and other appropriate measures” requiring that the actions of private actors be consistent with, and do not undermine, the realization of the right to housing.⁸⁶

59. States must ensure access to effective remedies not simply when private actors create “harms” or “human rights abuses” as they are traditionally understood, but also to ensure the progressive realization of the right to housing “by all appropriate means”. Access to justice must be available not only when corporations have actively deprived people of the right to housing through evictions, land grabbing or other “abuses”, but also when their actions undermine the realization of the right to housing, such as when private equity and asset management firms purchase affordable housing to replace it with luxury developments. Whether local, national or transnational, businesses involved in developing, renting, selling, managing or investing in housing, as well as those providing credit for housing, must be held accountable through access to justice for those affected by their actions.

⁸² Committee on Economic, Social and Cultural Rights, general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights; see also submissions for the present report by Azerbaijan, Colombia, France, Georgia, Germany, Guatemala, Nicaragua, the South African Human Rights Commission, the Ombudsman Institution of Turkey and Housing and Land Rights Network.

⁸³ See submission by the South African Human Rights Commission for the present report, p. 8.

⁸⁴ See submission by the Defensoría del Pueblo of Colombia for the present report.

⁸⁵ Katie Boyle, *Models of Incorporation and Justiciability for Economic, Social and Cultural Rights* (Edinburgh, Scottish Human Rights Commission, 2018).

⁸⁶ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 14.

60. A wide range of options are available to States to ensure such accountability. In some constitutions, the right to housing applies directly to private actors, allowing access to effective remedies where actions of landlords, banks and financial actors undermine this right.⁸⁷ In others, where constitutional obligations are restricted to Governments, constitutional litigation may require Governments to impose necessary regulations. Privatization should also be subject to judicial review when it is contrary to the progressive realization of the right to housing.⁸⁸

61. The barriers facing claimants seeking to hold corporate actors accountable, however, are often insurmountable. Complex corporate structures and veils are prevalent among investors in housing and are difficult to pierce. There is no “equality of arms” between low-income communities and massive private equity firms. The Special Rapporteur has heard directly from tenants in multiple countries dealing with the same transnational private equity firms acting as remote landlords. All have common complaints but nowhere to go for hearings.

62. Where private investors have been provided with development assistance, access to justice may be provided by way of complaints procedures through the relevant international financial institutions. The Compliance Advisor/Ombudsman for private sector lending through the World Bank has investigated several complaints related to housing, including when an investor failed to consider the rights of current residents in a development project.⁸⁹ By and large, however, international financial institutions have failed to implement meaningful accountability or access to justice for the right to housing.⁹⁰

63. Under the “third pillar” of the United Nations Guiding Principles on Business and Human Rights – the responsibility to ensure access to effective remedies – it is proposed that effective remedies be put in place for human rights violations through a combination of judicial and non-judicial mechanisms, all of which must comply with standards of independence, fairness, transparency and legitimacy.⁹¹ Stakeholders should be able to raise concerns related to accountability to human rights and “remediation of adverse human rights impacts”. Mechanisms must be developed collaboratively and must be trusted by stakeholder groups and must be procedurally fair, provide adequate assistance to enable full participation, and include clear time frames and monitoring of remedies. They must ensure access to information, independent advice and expertise, and facilitate engagement and dialogue. Most importantly, they must ensure that outcomes and remedies accord with the right to housing and other internationally recognized human rights.

64. If such mechanisms are properly focused on ensuring compliance with the right to housing, they may play an important role in ensuring access to justice in the context of private housing development and management. However, it is important that human rights obligations of States not be confused with corporate responsibility: it is the obligation of States to regulate private actors and to ensure access to justice when the actions of private actors result in a violation of the right to housing. Compliance with the right to housing cannot rely on voluntary commitments or mediated settlements. Where necessary, States should impose obligations on private actors to facilitate access to justice. Just as housing developers may be required to adopt measures to protect the environment or to accommodate disability, they may also be required, through legislation, to provide for independent adjudication of human rights complaints, legal assistance for residents, and independent monitoring and oversight of implementation of remedies.

⁸⁷ See Aoife Nolan, “Holding non-state actors to account for constitutional economic and social rights violations: experiences and lessons from South Africa and Ireland”, *International Journal of Constitutional Law*, vol. 12, Issue 1 (January 2014), pp. 61–93.

⁸⁸ See https://www.eldiario.es/madrid/Ana-Botella-Gobierno-condenados-millones-venta-vivienda-fondos-buitre_0_851114898.html.

⁸⁹ See Compliance Advisor Ombudsman, *Belarus/Strominvest II-01/Minsk*, case filed on 24 March 2016; see also *South Africa/Lonmin-02/Marikana*, case filed on 16 June 2015; and *Guinea/Nedbank-01/Kintinian*, case filed on 27 April 2017.

⁹⁰ A/73/310/Rev.1, paras. 101–102.

⁹¹ Principles 25–31.

C. Informal and customary justice

65. As housing issues are usually resolved outside of courts, often at the local level, it is important to ensure that informal and customary justice systems also provide access to justice for the right to housing. Such systems may include customary or religious courts, local or administrative authorities, community-based paralegals, tenants' unions or collaborative dispute resolution procedures. Compared to formal courts, informal justice systems can be culturally and socially less threatening, more timely and more cost-effective, and they can enjoy greater social legitimacy and trust among rights claimants. They can also be more participatory, with stakeholder representation on adjudicative bodies, and can integrate rights-empowerment strategies and human rights education at the local level. They often have distinctive competencies to address local housing issues such as informal tenancies and land use. When properly guided by human rights norms, with particular attention to gender equality, informal justice systems are capable of "delivering accessible justice to individuals and communities where the formal justice system does not have the capacity or geographical reach".⁹²

66. In many states in the Global South, customary tenure covers the vast majority of land transactions. In such circumstances, States should integrate informal processes through which housing issues are resolved at the community level with formal justice systems that are capable of ensuring compliance with international or constitutional human rights law. This combined approach is likely to achieve better results in terms of human rights.

67. The Special Rapporteur, during her missions, has experienced first-hand the benefits of informal justice systems for the right to housing. In the Republic of Korea, for example, the municipal government of Seoul has established a committee against human rights violations to enable communities and individuals to raise human rights complaints before a diverse panel of experts that includes city officials, human rights lawyers, people with lived experience and social workers. The committee investigates and makes recommendations on human rights violations at the city level. It works in tandem with a city ombudsperson who, once a violation has been established, can make an official complaint and trigger formal proceedings.⁹³

68. In Spain, a country with a staggering number of evictions each month due to mortgage and rental arrears, a grass-roots movement called Plataforma de Afectados por la Hipoteca (PAH) works with tenants to delay evictions and ensure access to alternative housing. Since 2013, the organization has stopped at least 4,065 evictions; almost all of the residents have been rehoused.⁹⁴

VIII. Conclusion and the way forward

69. **Access to justice for the right to housing is inseparable from the right itself. All States, therefore, must have an answer to the question so often put to the Special Rapporteur: "Where can I go to claim the right to housing?"**

70. **States cannot hold themselves up as leaders in human rights while leaving increasing numbers of residents to live and die on their streets, with no means to hold their Governments accountable and with no access to effective remedies. The time for excuses, justifications and looking the other way when access to justice is denied for the right to housing has long passed. Rights must have remedies, and Governments must be held accountable to rights holders.**

71. **Rampant evictions of those living in informal settlements, disregard of court orders and the rule of law and criminalization of those who are homeless suggest one**

⁹² *Informal Justice Systems: Charting a Course for Human-Rights Based Engagement* (New York, United Nations Development Programme, United Nations Children's Fund and UN-Women), p. 11.

⁹³ Introduction to the human rights governance handbook issued by the municipality of Seoul, given to the Special Rapporteur during her visit.

⁹⁴ See <https://afectadosporlahipoteca.com/asesoria-y-recursos/asesoria-colectiva/>.

thing: those whose right to housing has been violated have not been recognized and treated as equal members of the human family. As long as States deny access to justice for the right to housing, they perpetuate a hierarchy of human rights, exposing the discriminatory position that some rights (and thus some rights holders) matter more than others.

72. Access to justice is not about demanding a State-provided house. It is about recognizing the inherent dignity of, and equal and inalienable rights for, those whose right to housing has been violated. It is about providing a human rights space in which the claim to a right to live in dignity and security is clearly heard, valued and responded to.

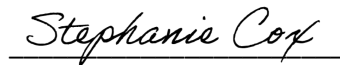
73. There is growing worldwide support for creating spaces where the right to housing can be claimed. Social movements, city mayors, and an increasing number of Governments, human rights institutions and courts are recommitting to the right to housing and to empowering rights holders to claim their rights and hold all levels of government, transnational corporations and other financial actors accountable.

74. Access to justice for the right to housing can be provided in all States. It just takes a commitment to do so. In States that have accorded constitutional recognition of the right to housing, courts must breathe life into these provisions so that all components of the right to housing can be claimed, adjudicated and ensured effective remedies. Where States lack explicit constitutional recognition of the right to housing, access to justice can be achieved through the recognition of its interdependence and indivisibility with the right to life and other rights.

75. A wide range of actors must abandon the marginalization of the right to housing and its claimants from mainstream human rights practice. National human rights institutions, judicial councils, legal communities and international human rights organizations should be at the forefront of collaborative initiatives to ensure access to justice for the right to housing. It is, however, ultimately the State's responsibility to provide all necessary supports and institutional mechanisms in this regard.

76. Achieving access to justice for the right to housing remains a work in progress. It is built from the ground up. It begins with individuals, groups and communities recognizing their circumstances as a violation of the right to housing and articulating a human rights claim. Claimants must be supported by their communities, legal advocates, human rights organizations and others to advance the claim. They must be provided a space in which the claim can be heard and adjudicated. And finally, they must be assured of effective remedies, fully implemented.

THIS IS EXHIBIT "F" TO THE
AFFIDAVIT OF LEILANI FARHA
AFFIRMED REMOTELY BEFORE ME AT THE
CITY OF OTTAWA DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG.431/20,
ADMINISTERNG OATH OR DECLARATION REMOTELY
THIS 15TH DAY OF JUNE, 2022



STEPHANIE COX

LSO NO. 65464F

Commissioner for Taking Affidavits, etc



General Assembly

Distr.: General
26 December 2019

Original: English

Human Rights Council

Forty-third session

24 February–20 March 2020

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Guidelines for the Implementation of the Right to Adequate Housing

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Summary

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, submits the present report pursuant to Human Rights Council resolutions 15/8 and 34/9. The report contains Guidelines for the Implementation of the Right to Adequate Housing, focusing on the key requirements of effective rights-based responses to emerging challenges.

The current global crisis in housing is unlike any previous crisis. It is linked to growing socioeconomic inequality, large-scale financialization of housing and land and unsustainable housing systems that treat housing as a commodity. In the Special Rapporteur's experience, States are not always aware of how human rights obligations apply in the context of housing and, more importantly, of how those obligations can be translated into concrete actions to address the crisis.

The Guidelines provide States with a set of implementation measures in key areas of concern, including homelessness and the unaffordability of housing, migration, evictions, climate change, the upgrading of informal settlements, inequality and the regulation of businesses. All of the implementation measures are informed by the urgent need to reclaim housing as a fundamental human right. Implementation of the Guidelines will substantially alter how States treat housing, creating a new landscape where housing can be secured as a human right for all.



Contents

	<i>Page</i>
I. Introduction	3
II. Guidelines for the Implementation of the Right to Adequate Housing	4
Guideline No. 1. Guarantee the right to housing as a fundamental human right linked to dignity and the right to life	4
Guideline No. 2. Take immediate steps to ensure the progressive realization of the right to adequate housing in compliance with the standard of reasonableness.	5
Guideline No. 3. Ensure meaningful participation in the design, implementation and monitoring of housing policies and decisions	6
Guideline No. 4. Implement comprehensive strategies for the realization of the right to housing	7
Guideline No. 5. Eliminate homelessness in the shortest possible time and stop the criminalization of persons living in homelessness	7
Guideline No. 6. Prohibit forced evictions and prevent evictions whenever possible	8
Guideline No. 7. Upgrade informal settlements incorporating a human rights-based approach	9
Guideline No. 8. Address discrimination and ensure equality	10
Guideline No. 9. Ensure gender equality in housing and land	12
Guideline No. 10. Ensure the right to adequate housing for migrants and internally displaced persons	13
Guideline No. 11. Ensure the capacity and accountability of local and regional governments for the realization of the right to adequate housing	15
Guideline No. 12. Ensure the regulation of businesses in a manner consistent with State obligations and address the financialization of housing	16
Guideline No. 13. Ensure that the right to housing informs and is responsive to climate change and address the effects of the climate crisis on the right to housing	18
Guideline No. 14. Engage in international cooperation to ensure the realization of the right to adequate housing	19
Guideline No. 15. Ensure effective monitoring and accountability mechanisms	20
Guideline No. 16. Ensure access to justice for all aspects of the right to housing	21

I. Introduction

1. This is the final report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha. Based on her experiences during her mandate and responding to global housing conditions, the Special Rapporteur is presenting the Guidelines for the Implementation of the Right to Adequate Housing.¹
2. More than 1.8 billion people worldwide lack adequate housing, and the number of people living in informal settlements has now surpassed 1 billion.² It is estimated that 15 million people are forcibly evicted every year and that approximately 150 million people are homeless.³
3. Private developers and investors are dominating housing systems in an unprecedented fashion, often divorcing housing from its social function by treating it as a commodity for speculation. The land on which informal settlements are located and affordable housing have become prime targets for private equity firms and pension funds looking for undervalued assets in which to park, grow and leverage capital, making housing and land increasingly unaffordable.
4. The present global housing crisis is not like any previous crisis of its kind. It is not caused by a decline in resources or an economic downturn but rather by economic growth, expansion and growing inequality. Housing has become a key driver of growing socioeconomic inequality, increasing wealth for those who own housing and driving those who do not into greater debt and poverty.
5. This situation raises unique challenges for the implementation of the right to housing. Tinkering around the edges of an unsustainable model of economic development will not work. The right to housing must be implemented in a manner that changes the way housing is currently conceived, valued, produced and regulated.
6. There is reason to believe change is possible. Both civil society and governments are increasingly recognizing the housing crisis as a human rights crisis requiring a human rights response. Neighbourhoods and communities around the world are organizing against detrimental development, “touristification” and speculation and are gaining the support of a growing number of local governments in affirming their right to adequate housing.
7. There remains, however, a lack of clarity among many in government and in civil society about what it actually means to implement the right to housing in a comprehensive and effective manner so as to meet these unprecedented challenges.
8. Fortunately, there is a well-established framework in international human rights law from which States and rights holders can draw. The content of the right to adequate housing has been the subject of extensive commentary and jurisprudence within the international human rights system and has been a central focus of human rights advocacy globally.⁴
9. The Guidelines set out below build on the normative standards that have emerged from this jurisprudence, as well as from the recommendations and experiences of the

¹ The Special Rapporteur thanks all the researchers and students who assisted in this and other reports, including Stefania Errico, Sam Freeman and Julieta Perucca. A special thanks is extended to Bruce Porter for his extensive work on the present report and throughout the duration of the mandate. Sincere thanks also go to the staff of the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR), in particular Juana Sotomayor, Gunnar Theissen, Madoka Saji, Jon Izagirre and Natacha Foucard, for their support for the mandate.

² See <https://unstats.un.org/sdgs/report/2019/goal-11>.

³ See <https://fe.witness.org> and <https://yaleglobal.yale.edu/content/cities-grow-so-do-numbers-homeless>.

⁴ See, e.g., the Committee on Economic, Social and Cultural Rights’ general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions. See also the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I), the guiding principles on security of tenure for the urban poor (A/HRC/25/54) and the Views of the Committee in *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015) and *I.D.G. v. Spain* (E/C.12/55/D/2/2014).

Special Rapporteur. They have been developed in consultation with States and other stakeholders throughout the length of the mandate.⁵ They do not attempt to cover all State obligations related to the right to housing. Rather, they describe the key elements needed for the effective implementation of the right to housing as it has been elaborated under international human rights law.

II. Guidelines for the Implementation of the Right to Adequate Housing

Preamble

10. The present Guidelines focus on the obligations of States as the primary duty bearers under international human rights law. The term “State” refers to all public authorities and all levels and branches of government, from the local to the national, including legislative, judicial and quasi-judicial bodies. “States’ obligations” are understood to include all aspects of the relationship of States with businesses, financial institutions, investors and other private actors that play important roles in the realization of the right to housing. In the present Guidelines, the “right to housing” refers to “the right to adequate housing” as guaranteed under international human rights law.

11. The present Guidelines shall not be interpreted as limiting, altering or otherwise prejudicing any rights recognized under international human rights or humanitarian law and should, where applicable, be read together with other human rights standards and guidelines related to displacement, evictions, security of tenure, public participation, business and human rights and with the jurisprudence and comments of United Nations human rights treaty-monitoring bodies and special procedures. The Guidelines themselves should be read as interrelated and interdependent.

Guideline No. 1. Guarantee the right to housing as a fundamental human right linked to dignity and the right to life

12. The right to adequate housing has been recognized as a fundamental human right because it is integral to core human rights values such as dignity, equality, inclusion, well-being, security of the person and public participation.

13. Every year, millions of lives are lost and many more damaged by homelessness and inadequate housing. Yet these massive violations of human rights, in particular of the rights to housing and the right to life, as well as other rights, such as the rights to health, physical integrity, privacy and water and sanitation, are rarely addressed as such by Governments, human rights institutions or justice systems.⁶

14. States often misunderstand the right to housing as merely a commitment to housing programmes, a matter of socioeconomic policy insulated from human rights values and imperatives and without meaningful accountability or access to justice.⁷

15. As clarified by the Committee on Economic, Social and Cultural Rights, the right to adequate housing should not be interpreted narrowly, as a right to mere physical shelter or to housing conceived as a commodity. Rather, the right to housing must be understood in relation to the inherent dignity of the human person.

⁵ In addition, consultations on an earlier draft of the guidelines were held in Geneva, Kampala and Durban with representatives of States, civil society and local governments. Written comments received are available from www.ohchr.org/EN/Issues/Housing/Pages/GuidelinesImplementation.aspx.

⁶ A/71/310, para. 31.

⁷ A/69/274, para.18, and A/71/310, para. 5.

16. Implementation measures:

(a) States, including their judiciaries, must ensure that the right to adequate housing is recognized and enforceable as a fundamental human right through applicable constitutional and legislative provisions or through interpretations of interdependent rights such as the right to life. It should be integrated into policy and programme design and included in the training of lawyers and judges;⁸

(b) The right to housing should be defined as the right to live in a home in peace, security and dignity, and include security of tenure, availability of services, affordability, habitability, accessibility, appropriate location and cultural adequacy;⁹

(c) Courts should adopt interpretations of domestic law that are consistent with the right to housing when exercising judicial review and Governments should promote such interpretations, including in pleadings in court cases;¹⁰

(d) The right to housing must be recognized and affirmed as indivisible and interdependent with other rights, including the rights to life, security of the person and equality, and these rights should be interpreted to the greatest extent possible in such a way as to facilitate the full protection of the right to housing.¹¹

Guideline No. 2. Take immediate steps to ensure the progressive realization of the right to adequate housing in compliance with the standard of reasonableness

17. Although violations of the right to housing, such as forced evictions, are often caused by State action, many of the most egregious violations derive from failures of States to take positive measures to address the unacceptable housing conditions in which so many people are compelled to live.

18. States have an obligation to take steps to the maximum of their available resources with a view to achieving progressively the full realization of the right to adequate housing, by all appropriate means, including particularly the adoption of legislative measures.¹² The Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights clarifies that compliance with that obligation should be assessed based on the reasonableness of the steps taken.¹³

19. Implementation measures:

(a) States must recognize the progressive realization of the right to housing as a legal obligation under domestic law, employing the reasonableness standard developed by the Committee on Economic, Social and Cultural Rights, which means that States have an obligation to fulfil the right to housing for all as swiftly and efficiently as possible;¹⁴

(b) Measures taken must be deliberate, concrete and targeted towards the fulfilment of the right to housing within a reasonable time frame. States must allocate sufficient resources and prioritize the needs of disadvantaged and marginalized individuals or groups living in precarious housing conditions and ensure transparent and participatory decision-making;¹⁵

⁸ A/71/310, para. 73.

⁹ Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 8.

¹⁰ Ibid., general comment No. 9 (1998) on the domestic application of the Covenant, paras. 14–15; E/C.12/1993/5, paras. 21–24.

¹¹ Committee on Economic, Social and Cultural Rights, general comment No. 9, para. 15.

¹² International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

¹³ Optional Protocol to the Covenant, art. 8.4. See also *Ben Djazia and Bellili v. Spain*, para. 15.1.

¹⁴ *Ben Djazia and Bellili v. Spain*, para. 15.3.

¹⁵ Committee on Economic, Social and Cultural Rights, general comments No. 3 (1990) on the nature of States parties' obligations and No. 4. See also the Committee's statement on an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant (E/C.12/2007/1, para. 3) and *Ben Djazia and Bellili v. Spain*, paras. 15.3 and 21 (c).

(c) Measures taken must be reasonable and proportionate in relation to the interests at stake and the circumstances of rights holders;¹⁶

(d) States must be able to demonstrate that they have utilized the maximum of available resources and all appropriate means to uphold the rights of the person or group concerned;

(e) States must ensure that all relevant authorities and decision makers, including the courts, are familiar with the reasonableness standard and are able to apply it to hold public institutions accountable to the right to housing.

Guideline No. 3. Ensure meaningful participation in the design, implementation and monitoring of housing policies and decisions

20. The right to meaningful and effective participation is a core element of the right to housing and critical to dignity, the exercise of agency, autonomy and self-determination.

21. Those in need of housing or related social benefits should be treated as rights holders and as experts in what is required for a dignified life, not recipients of charity. They are entitled to participate actively, freely and meaningfully in the design and implementation of programmes and policies affecting them.¹⁷

22. Housing programmes, however, tend to be developed and implemented through inefficient top-down decision-making that reinforces patterns of social exclusion and creates housing that is ill-suited to peoples' needs, commonly in remote locations and often left abandoned.

23. Rights-based participation supported by all levels of government transforms residents into active citizens and engaged community members, making housing programmes more affordable and effective and creating vibrant, more sustainable communities.

24. Implementation measures:

(a) The right to free and meaningful participation in housing policies must be guaranteed in law and include the provision of necessary institutional and other supports;

(b) Affected individuals must be able to influence the outcome of decision-making processes based on knowledge of their rights and have access to relevant information and sufficient time to consult; socioeconomic, linguistic, literacy and other barriers to participation must be addressed;¹⁸

(c) Participation in the design, construction and administration of housing should reflect the diversity of communities and ensure that the needs of all residents are represented. Equal participation must be ensured for women, informal and homeless residents, persons with disabilities and other groups experiencing discrimination or marginalization;¹⁹

(d) Indigenous peoples have the right to be actively involved in developing and determining housing programmes that affect them. States must consult with indigenous peoples to obtain their free, prior and informed consent before adopting or implementing administrative and legislative measures that may affect them.²⁰

¹⁶ See *Ben Djazia and Bellili v. Spain*, paras. 15.3 and 15.5.

¹⁷ Ibid. See also the Committee on the Rights of the Child's general comment No. 21 (2017) on children in street situations.

¹⁸ Committee on Economic, Social and Cultural Rights' general comment No. 4, para. 12, and the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I, para. 39).

¹⁹ Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life, in particular paras. 16 ff.

²⁰ Declaration on the Rights of Indigenous Peoples, in particular arts. 10, 19 and 23.

Guideline No. 4. Implement comprehensive strategies for the realization of the right to housing

25. The major structural issues giving rise to homelessness, informality and other systemic violations of the right to housing are multidimensional, involving many different areas of policy and programmes and requiring comprehensive plans to effect meaningful change over time.

26. The Committee on Economic, Social and Cultural Rights has emphasized that the obligation to progressively realize the right to housing will almost invariably require the adoption of a national housing strategy.²¹ Strategies should be developed in consultation with affected groups, include clearly defined goals, identify the resources to be allocated and clarify responsibilities and a time frame for implementation.²²

27. Most States have not implemented effective strategies to realize the right to housing. Where timelines and goals for outcomes have been identified, often there has been insufficient commitment to meeting them and no meaningful accountability.

28. Implementation measures:

(a) Housing strategies must identify the State's obligations to be realized progressively, based on clear goals and timelines for achieving specific outcomes and the right to adequate housing for all in the shortest possible time;

(b) Strategies should provide coherence and coordination in all relevant policy areas, particularly urban planning, land regulation, taxation and finance, social benefits and services;

(c) States should establish specific strategies to address obstacles to the right to housing such as discrimination, financialization, speculation, predatory lending, land-grabbing, conflict, forced evictions, environmental degradation and vulnerability to disasters. Strategies adopted should be responsive to persistent and emerging challenges in urban and rural areas, such as spatial injustice and climate change;

(d) States should provide for independent monitoring of progress in meeting goals and timelines, establish procedures through which affected communities can identify systemic issues affecting the realization of the right to housing and ensure effective responses.²³

Guideline No. 5. Eliminate homelessness in the shortest possible time and stop the criminalization of persons living in homelessness

29. Homelessness is experienced in a number of ways: living on streets or sidewalks, or in makeshift encampments in rural or urban areas, doubling or tripling up with others, or living in overcrowded improvised shelter, unprotected from the elements or without access to water, sanitation or electricity.

30. Homelessness is a profound assault on dignity, social inclusion and the right to life. It is a *prima facie* violation of the right to housing and violates a number of other human rights in addition to the right to life, including non-discrimination, health, water and sanitation, security of the person and freedom from cruel, degrading and inhuman treatment.²⁴

31. Homeless persons and persons living in informal housing are frequently subject to criminalization, harassment and discriminatory treatment because of their housing status. They are denied access to sanitation facilities, rounded up and driven from communities and subjected to extreme forms of violence.

²¹ Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 12.

²² *Ibid.*

²³ See also A/HRC/37/53.

²⁴ A/HRC/31/54, para. 4.

32. The Committee on Economic, Social and Cultural Rights and the Human Rights Committee have recognized distinctions based on socioeconomic status, including homelessness, as a form of discrimination that must be prohibited in domestic law.²⁵ States have an immediate obligation to respond urgently to the needs of persons who are currently homeless as well as to implement plans to prevent and eliminate systemic homelessness as swiftly as possible.

33. Implementation measures:

(a) States should provide access to safe, secure and dignified emergency accommodation, with necessary supports and without discrimination on any grounds, including migration status, nationality, gender, family status, sexual identity, age, ethnic origin, disability, dependence on alcohol or drugs, criminal record, outstanding fines or health.²⁶ States should take special measures to protect the rights of children in street situations;²⁷

(b) Individuals and families should be provided access to adequate permanent housing so as not to be compelled to rely on emergency accommodation for extended periods. “Housing first” approaches that centre on quickly moving people experiencing homelessness into permanent housing should provide all necessary supports for as long as required for sustaining housing and living in the community;

(c) States should prohibit and address discrimination on the ground of homelessness or other housing status and repeal all laws and measures that criminalize or penalize homeless people or behaviour associated with being homeless, such as sleeping or eating in public spaces. The forced eviction of homeless persons from public spaces and the destruction of their personal belongings must be prohibited. Homeless persons should be equally protected from interference with privacy and the home, wherever they are living;

(d) States should provide, within their justice system, alternative procedures for dealing with minor offences of homeless people to help them break the cycle of criminalization, incarceration and homelessness and secure the right to housing. Police should be trained to interact with homeless persons in a manner that respects and promotes their dignity and rights.

Guideline No. 6. Prohibit forced evictions and prevent evictions whenever possible

34. Forced evictions are defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection that are compliant with international human rights law.²⁸ Forced evictions have long been recognized as a gross violation of human rights.

35. In order for any eviction to comply with international human rights law, a number of criteria must be met, including meaningful engagement with those affected, exploration of all viable alternatives, relocation to adequate housing agreed upon by the affected households so that no one is rendered homeless, access to justice to ensure procedural fairness, and compliance with all human rights. Where these criteria are not met, evictions are deemed to have been forced and to constitute a violation of the right to housing.

36. Forced evictions are widespread and devastating in their consequences. They are frequently carried out to make way for large-scale development projects, natural resource extraction and agribusiness projects, to clear informal settlements or homeless

²⁵ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 35, and Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 61.

²⁶ A/HRC/31/54. For indigenous peoples’ experience of homelessness, see A/74/183.

²⁷ See in particular the Committee on the Rights of the Child’s general comment No. 21.

²⁸ Committee on Economic, Social and Cultural Rights, general comment No. 7, para. 3.

encampments, to replace existing lower-cost housing with luxury housing or commercial developments or ostensibly for public order, safety and city beautification. In some contexts, they involve brutal violence, including gender-based violence and deaths. Evictions have also become a more frequent response to rent or mortgage arrears in the context of rising housing costs, and in many cases national law governing such evictions is not compliant with international human rights.

37. States must prohibit forced evictions and ensure that any evictions under domestic law are fully compliant with international law. Meaningful engagement with communities should ensure the development of plans that respect the rights of residents and can be implemented cooperatively, without the need for eviction procedures or police enforcement.²⁹

38. Implementation measures:

(a) Forced evictions as defined under international human rights law must be prohibited in all circumstances, regardless of ownership or tenure status of those affected. Victims of forced evictions must receive adequate compensation, reparation and access to housing or productive land as appropriate;³⁰

(b) National laws governing evictions must be compliant with human rights norms, including the principle of respect for human dignity and the general principles of reasonableness, proportionality and due process, and should equally apply to those living in homeless encampments. Access to justice must be ensured throughout the process and not just when eviction is imminent. All feasible alternatives to eviction must be explored, in consultation with affected persons. If, after meaningful engagement with those affected, relocation is deemed necessary and/or desired by the community, adequate alternative housing of similar size, quality and cost must be provided in close proximity to the original place of residence and source of livelihood.³¹ Evictions must not render people homeless.³² Access to justice must be ensured throughout the process and not just when eviction is imminent;

(c) In instances of mortgage foreclosure or rent arrears, evictions should only occur as a last resort and after a full exploration of alternative means to resolve outstanding debt, such as through emergency housing benefits, debt rescheduling or, if required, relocation to more affordable housing units meeting adequacy standards;

(d) States should implement programmes to prevent evictions through measures such as rent stabilization and controls, rental assistance, land reform and other initiatives to promote land and tenure security in urban and rural settings. Preventive measures should also be adopted to eliminate the underlying causes of eviction and displacement, such as speculation in land, real estate and housing. No relocation of indigenous peoples is permitted without their free, prior and informed consent.³³

Guideline No. 7. Upgrade informal settlements incorporating a human rights-based approach

39. Nearly one quarter of the world's urban population live in informal settlements, which means they are often denied basic services and compelled to live in disaster-prone areas and on the worst lands, often subject to forced eviction.³⁴ Grossly inadequate housing in informal settlements is one of the most pervasive violations of the human right to

²⁹ A/HRC/40/61, para. 38.

³⁰ See the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I, paras. 23–27) and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, arts. 17 and 24.

³¹ Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I, para. 60).

³² Committee on Economic, Social and Cultural Rights, general comment No. 7, paras. 10 and 13.

³³ United Nations Declaration on the Rights of Indigenous Peoples, art. 10.

³⁴ See also A/73/310/Rev.1.

housing worldwide.³⁵ At the same time, informal settlements are significant accomplishments by residents who have created vibrant, self-sufficient communities in the most adverse circumstances.

40. Residents of informal settlements often face discrimination and stigmatization, and are frequently treated as violators of laws and “encroachers” rather than being recognized as rights holders who require support to improve their housing status.³⁶ Upgrading schemes too often result in the relocation of residents to alternative housing that is inadequate, distant from their original homes, isolated from employment opportunities or community life and without access to adequate transportation.

41. Under the 2030 Agenda for Sustainable Development, States have committed themselves to ensuring access for all to adequate, safe and affordable housing and to upgrading informal settlements (target 11.1 of the Sustainable Development Goals).³⁷ To meet this goal, States should engage with residents of informal settlements to build on their capacities, improve conditions and keep communities intact.

42. Implementation measures:

(a) Efforts to upgrade housing should be community-led, inclusive, enabling and provide for rights-based participation and accountability in terms of design and implementation. Upgrading efforts should ensure that residents have continued access to their livelihoods and support the economic development of the community, integrating residents’ skills and labour whenever possible.³⁸ Measures must be in place to ensure that upgraded housing remains affordable;

(b) States should uphold the right to remain in situ whenever possible and desired by residents. Relocation should only occur if agreed to by residents and after all other options have been explored through meaningful consultation with and the participation of residents;³⁹

(c) Governments should be held accountable, through human rights institutions and courts, for upgrading informal settlements in conformity with international human rights standards. Upgrading plans should also be reviewed and overseen by an independent authority able to receive complaints and hold hearings and information sessions within the community. Residents must be able to challenge any decision, to present alternative proposals and to articulate their demands and development priorities;⁴⁰

(d) In order to provide alternatives to informal settlements, serviced land should be set aside for the social production of housing with legal security of tenure. If the State is unable to provide built housing or if the residents prefer, building materials and technical support should be made available for self-construction.

Guideline No. 8. Address discrimination and ensure equality

43. Discrimination, exclusion and inequality are at the heart of almost all violations of the right to housing. Housing systems have intensified social, economic, political and spatial inequalities.

44. Refugees, asylum seekers, migrants, especially those who are undocumented, internally displaced persons, stateless persons, persons with disabilities, children and youth, indigenous peoples, women, lesbian, gay, bisexual, transgender and intersex persons, older persons and members of racial, ethnic and religious minorities are disproportionately represented among those living in homelessness, in informal accommodation and

³⁵ Ibid., para. 12.

³⁶ Ibid., para. 44, and A/HRC/40/61, para. 41.

³⁷ See also the New Urban Agenda.

³⁸ A/73/310/Rev.1, paras. 72 ff. See also *Ben Djazia and Bellili v. Spain*, para. 15.1.

³⁹ Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I, para. 38).

⁴⁰ Ibid., paras. 37–38.

inadequate housing, and are often relegated to the most marginal and unsafe areas.⁴¹ These groups often experience intersectional discrimination as a result of their housing status.⁴²

45. Discriminatory exclusion from housing greatly exacerbates and reinforces socioeconomic inequality for members of these groups, depriving them of access to employment or productive land and forcing them to pay higher costs for services. In many States, the ability to buy and own housing or land has become the dominant factor in perpetuating inequality.

46. While many States have adopted equality or non-discrimination legislation that applies to housing, generally the laws have yet to be applied effectively to address entrenched systemic discrimination in housing or to require significant reform in housing and land policies that exacerbate inequality.

47. The Committee on Economic, Social and Cultural Rights has emphasized that guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways that facilitate the full protection of the right to adequate housing.⁴³

48. Implementation measures:

(a) States must prohibit all forms of discrimination in housing by public or private actors and guarantee not only formal but also substantive equality, which requires taking positive measures to address housing disadvantages and ensure equal enjoyment of the right to housing;⁴⁴

(b) The right to equality requires that housing and related social programmes be non-discriminatory in their effect. It also requires that such programmes be adequate to alleviate the effects of discrimination against marginalized groups and address their unique circumstances.⁴⁵ Courts, tribunals and human rights bodies should provide both individual and programmatic remedies to discrimination, including measures to address the structural causes of inequality in housing;

(c) The right to equality in housing should be rigorously applied to eliminate any adverse effect on disadvantaged groups. Development or redevelopment plans should include housing for disadvantaged groups and provide for the right of return if relocation is required and for meaningful engagement throughout the process;

(d) States should incorporate into their laws, policies and administrative practices distinctive standards and approaches to equality that have been developed by and for particular groups. For example:

(i) States must ensure children's right to adequate housing, inter alia by applying the principle of the best interests of the child and, where appropriate, including children in relevant decision-making. Where a lack of housing threatens the ability of parents to remain with their children, appropriate housing and related support must be provided to avoid family separation.⁴⁶ Particular attention should also be given to young adults exiting child welfare institutions to ensure they have access to affordable and adequate housing and to prevent homelessness;

(ii) States must ensure the right to housing of indigenous peoples in accordance with the United Nations Declaration on the Rights of Indigenous Peoples. This means guaranteeing the right of indigenous peoples to be actively involved in developing and determining housing and other social and economic programmes and, as far as possible, to administer such programmes through their own

⁴¹ A/70/270, para. 38.

⁴² A/69/274, para. 46.

⁴³ E/C.12/2019/1, para. 9.

⁴⁴ Committee on Economic, Social and Cultural Rights, general comment No. 20, para. 37.

⁴⁵ Committee on the Elimination of Racial Discrimination, general recommendations No. 27 and No. 34.

⁴⁶ See, e.g., Convention on the Rights of the Child, art. 27, and Committee on the Rights of the Child, general comment No. 21.

institutions.⁴⁷ States must also fully comply with relevant domestic treaties and agreements concluded with indigenous peoples;⁴⁸

(iii) States must recognize that the right to adequate housing has a particular meaning for persons with disabilities and that the Convention on the Rights of Persons with Disabilities imposes distinct obligations on them, such as the rights to reasonable accommodation, living independently and being included in the community. The disproportionate number of persons with disabilities living in homelessness constitutes a violation of the substantive right to equality and must be addressed as such;

(iv) States must recognize that housing systems are often based on and reinforce racial segregation and inequality. As guaranteed in the International Convention on the Elimination of All Forms of Racial Discrimination, the right to equality should be interpreted substantively to include the equal enjoyment of the right to adequate housing without discrimination on grounds of race, colour or national or ethnic origin and requires positive measures to address ongoing legacies of colonization, apartheid, occupation and racism;⁴⁹

(v) States must recognize lesbian, gay, bisexual, transgender and intersex persons as belonging to groups that often suffer stigmatization, discrimination and criminalization with respect to housing and experience widespread homelessness. They must be included in legal protections from discrimination in housing and protected from being forcibly evicted from their homes.

Guideline No. 9. Ensure gender equality in housing and land

49. As a result of discrimination and inequality in housing, many women and girls live in insecure, undignified and unsafe conditions, at increased risk of homelessness and violence.⁵⁰ Women often lack security of tenure and equal rights to land and property as a result of inheritance laws, customs and traditions that discriminate directly or indirectly against them. Their access to housing, land and property, including through access to credit, is frequently dependent on a relationship with a male family member and is often jeopardized upon the dissolution of their marriage or the death of their spouse.

50. Inadequate housing has particularly adverse impacts for women and girls. For example, harassment, physical attacks, rape and even death are not uncommon when women and girls have to walk to fetch safe drinking water or access sanitation facilities. Lack of access to latrines and to privacy affects women and girls adversely, particularly during menstruation. Evictions too have a disproportionate impact on women, who are often on the front lines defending their homes and dealing with the aftermath of eviction.

51. Domestic violence is one of the leading causes of women's homelessness. It is often the case that the woman experiencing violence, rather than the male perpetrator, must leave the home. Because women avoid living on the streets, particularly if they are caring for children, they are more likely to be found among the "hidden homeless" and denied the benefit of programmes directed at persons in more visible forms of homelessness. The lack of alternative housing options for women experiencing violence in the home places their security and lives at risk.⁵¹

52. The right to housing must be recognized as a central component of women's right to substantive equality, which requires that laws, policies and practices be altered so that they

⁴⁷ United Nations Declaration on the Rights of Indigenous Peoples, art. 23. See also A/74/183.

⁴⁸ United Nations Declaration on the Rights of Indigenous Peoples, art. 37.

⁴⁹ Art. 5 (e) (iii).

⁵⁰ A/HRC/19/53, para. 3. See also OHCHR, *Women and the Right to Adequate Housing* (New York, 2012), A/74/183, paras. 45–47, A/HRC/31/54, paras. 34 ff. and A/73/310/Rev.1, paras. 83 ff.

⁵¹ OHCHR, *Women and the Right to Adequate Housing*, p. 76. See also A/71/310, para. 24, and A/HRC/35/30, para. 73.

do not maintain, but rather alleviate, the systemic disadvantages that women experience.⁵² Women must be empowered to articulate and claim the right to housing in a manner that addresses their experience of housing disadvantage in all of its dimensions.

53. Implementation measures:

(a) The independent right of women to security of tenure, irrespective of their family or relationship status, should be recognized in national housing laws, policies and programmes.⁵³ In that regard, States should amend or repeal, as appropriate, provisions in family, inheritance and other relevant laws that restrict women's access to housing and land title. Customary law provisions that discriminate against women and contravene international human rights norms should not be recognized or applied;⁵⁴

(b) Women should be guaranteed equal access to credit, mortgages, home ownership and rental housing, including through subsidies, to ensure that their lower incomes do not exclude them from housing.⁵⁵ Women's economic activities, which often take place in the home, must be supported and protected, particularly during upgrading efforts or relocation;

(c) In situations of household violence, legislation should ensure that, regardless of whether a woman has title, formal ownership or tenancy rights, she is able to remain in her own home where appropriate and have the perpetrator removed.⁵⁶ States should provide immediate access to emergency shelters and prompt access to front-line crisis services. Long-term housing programmes, including those for the allocation of permanent public or social housing, should prioritize women and families escaping violence;⁵⁷

(d) Women should have a guaranteed right to participate in all aspects of housing-related policymaking, including housing design and construction, community development and planning, and transportation and infrastructure. This applies as well to women living in informal housing or in camps.

Guideline No. 10. Ensure the right to adequate housing for migrants and internally displaced persons⁵⁸

54. In recent years migrants have become particularly vulnerable to violations of the right to housing. Migrants in transit have been compelled to live in very precarious conditions, such as in informal camps, in forests, fields, abandoned houses, train stations or other public spaces, with no sanitary facilities, limited access to safe food and water sources, and often exposed to forced evictions. Once settled, migrants often live in grossly inadequate housing conditions in geographically segregated areas with poor access to

⁵² *S.C. and G.P. v. Italy* (E/C.12/65/D/22/2017), para. 8.2.

⁵³ See the Committee on Economic, Social and Cultural Rights' general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, para. 28, the Convention on the Elimination of All Forms of Discrimination against Women, arts. 2 (f), 15 and 16, the Committee on the Elimination of Discrimination against Women's general recommendations No. 21 (1994) on equality in marriage and family relations, No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution and No. 34 (2016) on the rights of rural women, the Human Rights Committee's general comment No. 28 (2000) on the equality of rights between men and women, para. 19, and A/HRC/19/53, para. 68.

⁵⁴ See the Committee on the Elimination of Discrimination against Women's general recommendations No. 21, paras. 28 and 33, and No. 34, paras. 58 and 77.

⁵⁵ Convention on the Elimination of All Forms of Discrimination against Women, art. 13.

⁵⁶ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, art. 52. See also A/HRC/19/53, para. 36, and A/HRC/35/30.

⁵⁷ Committee on the Elimination of Discrimination against Women, general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, paras. 24 ff. See also A/HRC/35/30.

⁵⁸ The term "migrant" is used here without prejudice to the protection regimes that exist under international law for specific legal categories of non-nationals, including refugees, asylum seekers, stateless persons, trafficked persons and migrant workers.

services and facilities, with no security of tenure, facing discrimination, poverty and economic marginalization.⁵⁹

55. Around the world, camps for refugees and internally displaced persons are often overcrowded and provide inadequate shelter and services. Sometimes they provide no basic services at all. Often, they act as an inappropriate substitute for long-term housing.

56. Migrant workers are often housed by employers in substandard conditions, for example in transport containers or makeshift accommodation devoid of basic facilities.⁶⁰ Domestic workers residing in households have been forced to sleep in kitchens or on bathroom floors, deprived of privacy and vulnerable to abuse and violence.

57. Such conditions are made worse by anti-migrant rhetoric that is increasingly translated into laws and policies. Access to homeless shelters is sometimes restricted to nationals or to documented migrants; in some jurisdictions, it is a criminal offence to rent accommodation to undocumented migrants.

58. Implementation measures:

(a) States must ensure the equal enjoyment of the right to housing without discrimination for all internally displaced persons and all migrants, regardless of documentation, in conformity with international human rights and humanitarian law.⁶¹ States must ensure coordination between migration, internal displacement and housing programmes to ensure the right to adequate housing in all contexts. Reception and other centres for migrants must meet standards of dignity, adequacy and protection of the family and other requirements of international human rights law and international humanitarian law.⁶² Migrant children should never be separated from their parents or guardians, and families that have been separated by displacement should be reunited as quickly as possible;⁶³

(b) Any differential treatment in qualifying for different types of housing based on immigration status must be reasonable and proportional, and not compromise the protection of the right to housing for all people within the State's territory or jurisdiction.⁶⁴ There should be no discrimination on the basis of immigration status in access to emergency shelters and States should ensure that housing providers are neither permitted nor required to convey information to authorities that would discourage undocumented migrants from seeking shelter for themselves and their families. Housing providers, civil society organizations and individuals should not be penalized for assisting migrants to secure shelter or housing.⁶⁵ Access to longer-term housing must be provided, where needed, as soon as possible;

(c) Effective protective mechanisms must be in place for migrants to secure effective remedies for violations of the right to housing and non-discrimination. Specific protective measures and remedies are required for migrant workers living in housing

⁵⁹ E/C.12/2017/1, A/HRC/14/30, paras. 14 ff., and OHCHR, *The Economic, Social and Cultural Rights of Migrants in an Irregular Situation*.

⁶⁰ See, e.g., A/HRC/14/30, para. 49, and A/HRC/40/61/Add.1, para. 81.

⁶¹ See the Committee on Economic, Social and Cultural Rights' general comment No. 20, the Committee on the Elimination of Racial Discrimination's general recommendation No. 30 (2004) on discrimination against non-citizens, para. 32, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 43 (1) (d). See also the Global Compact for Safe, Orderly and Regular Migration, objective 15, and the global compact on refugees (A/73/12 (Part II), paras. 78–79).

⁶² See, e.g., OHCHR and the Global Migration Group, *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations* (Geneva), principle 11.

⁶³ See the Guiding Principles on Internal Displacement, principle 17 ff.

⁶⁴ Committee on the Elimination of Racial Discrimination, general recommendation No. 30, para. 32.

⁶⁵ *Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations*, principle 13, para. 4.

provided by employers suffering grossly inadequate conditions or abuse, allowing them to be relocated to adequate accommodation and to re-employment without prejudice;⁶⁶

(d) Refugees and internally displaced persons who have been unlawfully or arbitrarily deprived of their former homes, lands, properties or places of habitual residence must be ensured a right to return consistent with the principles on housing and property restitution for refugees and displaced persons.⁶⁷

Guideline No. 11. Ensure the capacity and accountability of local and regional governments for the realization of the right to adequate housing

59. Local and regional governments have been assigned crucial responsibilities related to the right to adequate housing in most States. These may include: producing and managing social housing and infrastructure, land-use planning, upgrading informal settlements and regulating investor-driven markets. Local governments can therefore play an essential role in the realization of the right to housing. They are closest to affected communities and better able to ensure participatory decision-making and to develop innovative solutions adapted to local circumstances.

60. However, local and regional governments are often inattentive to or unaware of their obligations with respect to the right to adequate housing under international human rights law. They are often allocated responsibilities without a commensurate allocation of resources, knowledge, capacity and accountability mechanisms for the realization of the right to housing.⁶⁸

61. In fact, forced evictions, discriminatory denials of services to informal settlements, homeless “sweeps” and the loss of affordable housing through speculation and financialization, are frequently perpetrated or facilitated by local governments.

62. The allocation of responsibilities for implementing the right to housing within a State is a matter of internal decision-making but must be consistent with the State’s obligation to realize the right to housing. It must be clear which government can be held accountable, and how, and there must be coordination among national, regional and local authorities for the realization of the right to housing.⁶⁹

63. Implementation measures:

(a) The obligations of local and regional governments to implement the right to housing within clearly delineated areas of responsibilities must be established in legislation.⁷⁰ Housing policies and programmes at all levels of government should be coordinated through national-level leadership and oversight as well as by intergovernmental bodies with an explicit mandate to promote and ensure compliance with the right to housing.⁷¹ Provision should be made for promptly resolving questions of jurisdiction on the basis of the principle that human rights should never be compromised by jurisdictional disputes;

(b) Local and regional governments should implement human rights-based housing strategies, as described in guideline No. 4 above, consistent with those implemented at the national level and establish their own monitoring and accountability

⁶⁶ See the Domestic Workers Recommendation, 2011 (No. 201), para. 7, of the International Labour Organization.

⁶⁷ E/CN.4/Sub.2/2005/17, annex. See also the Guiding Principles on Internal Displacement, A/64/255, para. 55, the *Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations*, principle 8, the Global Compact for Safe, Orderly and Regular Migration, objective 13, and the global compact on refugees, para. 60.

⁶⁸ A/HRC/28/62, para. 5, and A/HRC/42/22.

⁶⁹ Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 12.

⁷⁰ A/HRC/27/59, para. 31.

⁷¹ A/HRC/37/53, para. 51.

mechanisms. States must ensure that local or regional housing strategies are adequately resourced and that local governments have the capacity to implement them;

(c) The right to housing should be incorporated into relevant municipal laws, plans and programmes. Local governments should consider adopting human rights charters that protect the right to housing and provide access to justice or establish an ombuds office to address housing rights complaints and monitor the implementation of the right to housing;

(d) Indigenous governments have the right to develop and determine housing programmes that are consistent with international human rights law through their institutions of self-governance and in conformity with the United Nations Declaration on the Rights of Indigenous Peoples.⁷² States must ensure they have adequate resources to implement the right to housing.⁷³

Guideline No. 12. Ensure the regulation of businesses in a manner consistent with State obligations and address the financialization of housing

64. The private sector plays a significant role in most housing systems and in the realization of the right to housing. Investors, businesses and individuals develop, build, sell and rent housing. Financial institutions provide access to credit. Private households purchase, build or improve their own housing, and may rent it to others. The particular role played by various private actors in housing systems varies, but the State must ensure that all aspects of their involvement are consistent with States' obligations to realize the right to housing for all.

65. The role of private investment in housing has changed in recent years. Housing has become the commodity of choice for corporate financial institutions, a security for financial instruments that are traded remotely on global markets.⁷⁴ Institutional investors buy massive amounts of affordable and social housing (sometimes entire neighbourhoods), displacing lower-income families and communities. Wealthy individuals and corporations use residential real estate to park capital, avoid taxes or hide ill-gotten gains. This has resulted in inflated land and housing costs and, often, in significant proportions of housing stock being left vacant.⁷⁵ In rural areas, large-scale land acquisitions and speculation over farmland by private investors are displacing residents.⁷⁶

66. States have facilitated and encouraged the change in the role of the private sector in housing. They have provided tax breaks to real estate speculators, tax advantages for homeowners and "golden visas" to foreign investors. They have deregulated rental markets and encouraged development that primarily produces housing for the wealthy. Through legislative measures, policies and programmes, many States have treated housing as a commodity for trading and speculation, rather than as a social good and a human right.

67. A change in direction is urgently needed, and a new relationship between governments and the investors currently dominating the housing landscape must be forged. The Committee on Economic, Social and Cultural Rights has clarified that States violate their obligations with respect to the right to housing by failing to regulate the real estate market and the financial actors operating on that market so as to ensure access to affordable and adequate housing for all.⁷⁷

68. The obligations that States must impose on businesses directly involved in the development or ownership of housing are different in kind from those that apply to other

⁷² Arts. 4 and 23.

⁷³ United Nations Declaration on the Rights of Indigenous Peoples, art. 4. See also A/73/176, para. 5.

⁷⁴ A/HRC/34/51.

⁷⁵ Housing Europe, *The State of Housing in the EU 2019* (Brussels, September 2019).

⁷⁶ A/HRC/13/33/Add.2.

⁷⁷ General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 18.

businesses that are not involved in providing for a good that is also a human right. States must regulate businesses in a manner that is consistent with all dimensions of States' obligations, including to fulfil the right to adequate housing. Ensuring that businesses refrain from activities that have a negative impact on human rights in housing through common approaches to due diligence is necessary but often not be sufficient. States may need to ensure, for example, not only that developers do not displace residents from affordable housing, but also that they produce needed affordable housing, that housing is not left vacant and that some of the profits from housing or other economic activities are redirected to ensure the availability of adequate housing for low-income households.⁷⁸

69. Implementation measures:

(a) States must regulate business in order to prevent investments having any negative impacts on the right to housing, including by:

- (i) Preventing any privatization of public or social housing that would reduce the capacity of the State to ensure the right to adequate housing;
- (ii) Maintaining a rental regulatory framework that preserves security of tenure and affordable housing for tenants, including through rent caps, controls or rent freezes where needed;
- (iii) Requiring full and public disclosure of all investments in residential housing to help prevent corruption, money-laundering, tax evasion and tax avoidance;
- (iv) Establishing independent monitoring bodies to oversee developments, business plans or private investor activity that may have a significant impact on the right to housing;
- (v) Imposing taxes on residential real estate and land speculation to curb the short-term resale of properties and on residential real estate left vacant;
- (vi) Removing preferential tax breaks on homeowners and on real estate investment trusts;
- (vii) Removing incentives for foreign residential real estate investment such as preferential visa and citizenship awards;

(b) States must regulate business to comply with States' obligation to realize the right to housing by all appropriate means, including by:

- (i) Adopting planning and development approval criteria to ensure that any proposed housing development responds to the actual needs of residents, including affordable housing for low-income households and employment opportunities;
- (ii) Adjusting taxation measures to incentivize affordable housing and discourage speculation or ownership of housing or land left vacant;
- (iii) Enabling innovative financing models for affordable housing or upgrading projects;
- (iv) Requiring the negotiation of binding, human rights-compliant social benefits agreements with local authorities, residents and civil society organizations before any development is approved;
- (v) Requiring pension funds and other investors to facilitate independent human rights impact assessments prior to investments being approved to ensure investments do not contribute to violations of the right to housing;

(c) States should support the important role that households play in producing and upgrading their own housing (through the social production of housing) by ensuring access to land, including through collective or cooperative ownership, commons and other alternative forms of tenure and affordable and sustainable materials;

⁷⁸ Ibid.

(d) All laws and policies related to rent and mortgage arrears and foreclosures should be reviewed to ensure consistency with the right to adequate housing, including the obligation to prevent any eviction resulting in homelessness.⁷⁹ States should require banks and other lenders to remove barriers to access to credit for women, young families, residents of informal settlements and others in need of housing finance.

Guideline No. 13. Ensure that the right to housing informs and is responsive to climate change and address the effects of the climate crisis on the right to housing

70. Natural disasters and the climate crisis have enormous impacts on the enjoyment of the right to housing, with exponential increases in these effects anticipated in decades to come. Climate-fuelled disasters were the primary driver of internal displacement during the past decade, forcing an estimated 20 million people a year from their homes.⁸⁰ Those living in homelessness or lacking access to resilient or secure housing are the most adversely affected, as they often live in areas that are vulnerable to floods, hurricanes and cyclones, storm surges, mudslides, earthquakes and tsunamis. Moreover, States taking disaster risk management measures often fail to consider their effects on vulnerable communities and their right to housing.

71. The manner in which the right to housing is to be realized also has implications for climate change. It has been estimated that the building and construction sector accounts for 39 per cent of global energy-related carbon dioxide emissions, most of which is concentrated in middle- and high-income countries.⁸¹ It is in low-income countries, however, that the greatest amount of construction will be required if target 11.1 of the Sustainable Development Goals are to be achieved. States individually and the international community as a whole must respond urgently to the climate crisis while also ensuring access to sustainable housing, prioritizing those most in need.

72. Implementation measures:

(a) The right to adequate housing should be integrated into strategies for the adaptation to and mitigation of climate change, as well as in planning, preparing and implementing strategies for addressing climate change displacement.⁸² States should ensure that these strategies do not undermine or impede the realization of the right to adequate housing;

(b) In situations where communities are particularly vulnerable to the effects of climate change and climate change-related disasters, such as those living on or near waterways and shorelines, priority should be given to adaptation measures to preserve existing communities. In that regard, States must consult with residents to identify the measures needed for their protection. Such measures may include ensuring that communities are able to retain technical experts, installing protective infrastructure, moving some households to safer sites within the community and ensuring that adequate resources are available for the implementation of such measures;⁸³

(c) While making every effort to mitigate climate change, States should conduct thorough analyses of anticipated climate displacement, determine likely time frames and identify communities at risk and possible relocation sites. Where relocation is deemed necessary or chosen by the community, it should be implemented in a manner consistent with the basic principles and guidelines on development-based evictions and displacement and with guidelines No. 6 and No. 7 above;

⁷⁹ Committee on Economic, Social and Cultural Rights, general comment No. 7, para. 16.

⁸⁰ Oxfam, "Forced from home: climate-fuelled displacement", Oxfam Media Briefing (2 December 2019).

⁸¹ United Nations Environment Programme and International Energy Agency, *Towards a Zero-emission, Efficient and Resilient Buildings and Construction Sector: Global Status Report 2017* (2017), p. 6.

⁸² A/HRC/16/42.

⁸³ A/64/255, para. 74.

(d) States must work with affected communities to develop and promote environmentally sound housing construction and maintenance to address the effects of climate change while ensuring the right to housing. The particular vulnerability of indigenous peoples to climate change must be recognized and all necessary support should be provided to enable indigenous peoples to develop their own responses. Forests and conservation areas must be protected in a manner that fully respects the rights of indigenous peoples to their lands and resources and to their traditional and environmentally sustainable practices in housing.

Guideline No. 14. Engage in international cooperation to ensure the realization of the right to adequate housing

73. The current human rights crisis in housing is global in nature and cannot be effectively addressed without international cooperation and assistance. Many actors involved in housing operate at the transnational level and deal with complex corporate structures that pose considerable obstacles to accountability. Regulating global capital flows and preventing the parking of resources into residential real estate to avoid taxation and for money-laundering purposes all require international cooperation.

74. International financial institutions and development banks have applied approaches that are detrimental to the realization of the right to housing. For example, they have imposed deregulation, the liberalization of housing markets and austerity measures, including the selling of social housing, and required mortgage finance programmes that do not assist the lowest-income households.⁸⁴

75. Articles 2 (1) and 11 of the International Covenant on Economic, Social and Cultural Rights refer to international cooperation and assistance as means to achieve the full realization of the right to housing, recognizing its essential importance. Moreover, States parties to the Covenant are obliged to ensure the realization of the right to housing by all appropriate means, which includes international cooperation.⁸⁵

76. Implementation measures:

(a) States should recognize international cooperation as a firm legal obligation where it is necessary for the realization of the right to housing. This includes controlling global capital flows into residential real estate markets and preventing and combating transborder tax evasion and avoidance, which significantly limits the resources of States to realize the right to adequate housing;⁸⁶

(b) States should avoid conduct that would create a foreseeable risk of impairing the enjoyment of the right to housing in other States, should adopt legislation to prevent violations of the right to housing abroad by corporations or other investors that are domiciled in their territory and/or jurisdiction and should ensure access to justice for such violations within domestic courts;⁸⁷

(c) States should assess the impact on the right to adequate housing of trade and investment agreements prior to entering into them, and should include in such agreements a provision explicitly referring to their human rights obligations in respect of housing. Existing agreements should be interpreted in ways that do not impair States' ability to realize the right to housing;⁸⁸

(d) The role of international financial institutions and of development, humanitarian and other international organizations should be aligned with the promotion of the realization of the right to housing. Development banks and financial institutions should establish safeguard policies covering all aspects of the right to adequate housing.

⁸⁴ A/HRC/37/53, para. 134, and A/73/310/Rev.1, paras. 99 ff.

⁸⁵ See also the Declaration on the Right to Development, art. 3.

⁸⁶ Committee on Economic, Social and Cultural Rights, general comment No. 24, para. 37.

⁸⁷ *Ibid.*, para. 26.

⁸⁸ Guiding principles on human rights impact assessments of trade and investment agreements.

Independent complaints mechanisms must be available where activities or projects of international or regional financial institutions or development banks fail to support the realization of the right to housing of those most in need.

Guideline No. 15. Ensure effective monitoring and accountability mechanisms

77. Independent monitoring of the implementation of the right to housing is a central component of the obligation to progressively realize the right.⁸⁹ States tend to misunderstand the obligation to monitor progress as being merely a matter of collecting and disseminating data about housing programs, homelessness, expenditures and aggregate demographics. Evidence considered is often restricted to statistical information, without qualitative evidence based on experiences of rights holders. In many countries disaggregated data based on gender, race, disability, age, family status and income are not collected due to either the lack of technical capacity or absence of legislation allowing it. Monitoring is often conducted by governments themselves, rather than by independent institutions.

78. As noted by the Committee on Economic, Social and Cultural Rights, human rights institutions (or similar bodies mandated to focus specifically on the right to housing) can play an important role in identifying appropriate goals and benchmarks, providing research, monitoring compliance and examining complaints.⁹⁰ If States are to take seriously their commitment under target 11.1 of the Sustainable Development Goals, they must institute rigorous independent monitoring of progress, based on realistic goals and timelines and with the means to hold Governments and others accountable.

79. Implementation measures:

(a) Independent monitoring bodies should be mandated and properly resourced to monitor the realization of the right to housing in a transparent and participatory manner. They should have the capacity to hear complaints from concerned people or groups, undertake visits, conduct investigations, commission surveys and convene public hearings to gather information. Public authorities should be required to provide a response to reports from monitoring bodies and to take follow-up action within a reasonable period of time. Parliamentary hearings should be utilized to provide periodic public review of progress and effective government responses;

(b) Monitoring progress on the implementation of the right to housing should be focused on assessing compliance with the obligation to progressively realize the right. It should include the collection of qualitative and quantitative data related to dignity and the experience of rights holders with respect to all aspects of the right to housing, including security of tenure, availability of services, affordability, habitability, accessibility, location, cultural adequacy, homelessness and evictions. Statistical and qualitative information with appropriate safeguards should also be collected on the housing circumstances of groups facing systemic discrimination, on structural barriers to housing and on the outcomes of measures taken to address such barriers. Major trends and emerging challenges should also be identified;

(c) Progress should be assessed in relation to capacity and available resources, and whether Governments have made reasonable efforts to meet established targets and timelines in accordance with housing strategies and the Sustainable Development Goals;

(d) Monitoring should extend to all sectors of housing systems, including private business enterprises and real estate markets.⁹¹

⁸⁹ International Covenant on Economic, Social and Cultural Rights, art. 16, and Committee on Economic, Social and Cultural Rights, general comments No. 3, para. 11, and No. 4, para. 13.

⁹⁰ Committee on Economic, Social and Cultural Rights, general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights.

⁹¹ Guiding Principles on Business and Human Rights, principle No. 5.

Guideline No. 16. Ensure access to justice for all aspects of the right to housing

80. The provision of legal remedies for the violation of the right to housing is a core component of States' obligation to ensure the realization of this right.⁹² As stated by the Committee on Economic, Social and Cultural Rights, many component elements of the right to adequate housing are closely bound up with the provision of domestic legal remedies to ensure the effective enjoyment of the right.⁹³ Yet courts and tribunals are often experienced by those who are living in informal settlements or homelessness as places where evictions are ordered or criminalizing sanctions imposed, rather than as venues where the right to housing can be claimed.⁹⁴

81. As noted by the Special Rapporteur in her report on access to justice, violations of the right to housing are as much failures in the administration of justice to ensure meaningful accountability and access to effective remedies as they are failures of housing programmes.⁹⁵

82. States have an immediate obligation to ensure access to justice for those whose right to housing has been violated, including through failures to adopt reasonable measures for its progressive realization.⁹⁶ In discharging their obligation, States should follow the 10 key principles identified by the Special Rapporteur.⁹⁷

83. Implementation measures:

(a) Access to justice for the right to housing should be ensured by all appropriate means, through courts, administrative tribunals, human rights institutions and informal or customary community-based justice systems. Hearings and other procedures should be timely, accessible, procedurally fair, enable full participation of affected individuals and groups and ensure effective remedies within a reasonable time frame. Where effective remedies rely on administrative or quasi-judicial procedures, recourse to courts should also be available;⁹⁸

(b) Access to justice should be ensured for all components and dimensions of the right to housing that are guaranteed under international human rights law, covering not just the right to a physical shelter, but to a home in which to live in security, peace and dignity; not just protection from eviction or other State action, but also from State neglect and inaction and failure to take reasonable measures to progressively realize the right to housing. States should revoke legal provisions suggesting that the right to adequate housing is not justiciable under domestic law and should desist from making this argument before courts. Where the right to housing is not enshrined in national or constitutional law, access to effective judicial remedies can and should be ensured by recognizing the interdependence and indivisibility of the right to housing with other rights, such as the rights to life, health and non-discrimination;

(c) Individuals and organizations representing them should have access to legal aid or other necessary assistance to enable them to participate in legal processes. Institutions, equality promotion bodies and civil society organizations should have legal standing to pursue claims to the right to housing on behalf of individuals and groups. Remedies should address both individual and systemic violations of the right to housing;

(d) States should ensure access to justice for violations of the right to housing by transnational corporations, including by establishing parent company or group liability

⁹² Committee on Economic, Social and Cultural Rights, general comments No. 3, para. 5, and No. 4, para. 17.

⁹³ *I.D.G. v. Spain*, para. 11.1.

⁹⁴ *Ibid.*, para. 4.

⁹⁵ A/HRC/40/61, para. 2.

⁹⁶ Committee on Economic, Social and Cultural Rights, general comments No. 3 and No. 9 (1998) on the domestic application of the Covenant. See also *I.D.G. v. Spain*, para. 11.3.

⁹⁷ A/HRC/40/61.

⁹⁸ Committee on Economic, Social and Cultural Rights, general comment No. 9.

regimes, enabling human rights-related class actions and public interest litigation, facilitating access to relevant information and the collection of evidence abroad and enacting domestic legislation that holds investors and corporations domiciled in the State accountable for actions affecting the right to housing in other countries.⁹⁹

⁹⁹ See the Committee's general comment No. 24, para. 44.

THIS IS EXHIBIT "G" TO THE
AFFIDAVIT OF LEILANI FARHA
AFFIRMED REMOTELY BEFORE ME AT THE
CITY OF OTTAWA DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG.431/20,
ADMINISTERNG OATH OR DECLARATION REMOTELY
THIS 15TH DAY OF JUNE, 2022

Stephanie Cox

STEPHANIE COX
LSO NO. 65464F
Commissioner for Taking Affidavits, etc



A National Protocol for Homeless Encampments in Canada

Leilani Farha

UN Special Rapporteur on the right to adequate housing

Kaitlin Schwan

Lead Researcher for UN Special Rapporteur on the right to adequate housing

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
I. INTRODUCTION	5
II. PURPOSE OF THE NATIONAL PROTOCOL ON HOMELESS ENCAMPMENTS	6
III. ENCAMPMENTS IN CANADA IN THE CONTEXT OF THE HUMAN RIGHT TO ADEQUATE HOUSING	7
IV. RELEVANT AUTHORITY	10
1. INTERNATIONAL HUMAN RIGHTS TREATIES	10
1. CANADIAN HOUSING POLICY AND LEGISLATION	11
2. THE CANADIAN CHARTER AND PROVINCIAL/TERRITORIAL HUMAN RIGHTS LEGISLATION	12
3. UN 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT	14
V. KEY PRINCIPLES	15
PRINCIPLE 1: RECOGNIZE RESIDENTS OF HOMELESS ENCAMPMENTS AS RIGHTS HOLDERS	15
PRINCIPLE 2: MEANINGFUL ENGAGEMENT AND EFFECTIVE PARTICIPATION OF ENCAMPMENT RESIDENTS	16
PRINCIPLE 3: PROHIBITION OF FORCED EVICTIONS OF ENCAMPMENTS	19
PRINCIPLE 4: EXPLORE ALL VIABLE ALTERNATIVES TO EVICTION	20
PRINCIPLE 5: ENSURE THAT ANY RELOCATION IS HUMAN RIGHTS COMPLIANT	21
PRINCIPLE 6: ENSURE ENCAMPMENTS MEET BASIC NEEDS OF RESIDENTS CONSISTENT WITH HUMAN RIGHTS	24
PRINCIPLE 7: ENSURE HUMAN RIGHTS-BASED GOALS AND OUTCOMES, AND THE PRESERVATION OF DIGNITY FOR ENCAMPMENT RESIDENTS	27
PRINCIPLE 8: RESPECT, PROTECT, AND FULFILL THE DISTINCT RIGHTS OF INDIGENOUS PEOPLES IN ALL ENGAGEMENTS WITH ENCAMPMENTS	28
SCHEDULE A: SELECT CASE LAW ON HOMELESS ENCAMPMENTS IN CANADA	32
SCHEDULE B: AN ELABORATION ON PRINCIPLE 6	35

EXECUTIVE SUMMARY

A National Protocol for Homeless Encampments in Canada: A Human Rights Approach

Homeless encampments threaten many human rights, including most directly the right to housing. People living in encampments face profound challenges with respect to their health, security, and wellbeing, and encampment conditions typically fall far below international human rights standards. Residents are frequently subject to criminalization, harassment, violence, and discriminatory treatment. Encampments are thus instances of both human rights *violations* of those who are forced to rely on them for their homes, as well as human rights *claims*, advanced in response to violations of the right to housing.

Ultimately, encampments are a reflection of Canadian governments' failure to successfully implement the right to adequate housing.

As encampments increasingly emerge across Canada, there is an urgent need for governments to interact with them in a manner that upholds human rights. This Protocol, developed by the UN Special Rapporteur on the Right to Housing and her lead researcher, Kaitlin Schwan, with the input of many experts, outlines eight Principles to guide governments and other stakeholders in adopting a rights-based response to encampments. While encampments are not a solution to homelessness, it is critical that governments uphold the basic human rights and dignity of encampment residents while they wait for adequate, affordable housing solutions that meet their needs. The Principles outlined in this Protocol are based in international human rights law, and the recognition that encampment residents are rights holders and experts in their own lives. The Protocol is intended to assist governments in realizing the right to adequate housing for this group.

PRINCIPLES

Principle 1: Recognize residents of homeless encampments as rights holders

All government action with respect to homeless encampments must be guided by a commitment to upholding the human rights and human dignity of their residents. This means a shift away from criminalizing, penalizing, or obstructing homeless encampments, to an approach rooted in rights-based participation and accountability.

Principle 2: Meaningful engagement and effective participation of homeless encampment residents

Residents are entitled to meaningful participation in the design and implementation of policies, programs, and practices that affect them. Ensuring meaningful participation is central to respecting residents' autonomy, dignity, agency, and self-determination. Engagement should begin early, be ongoing, and proceed under the principle that residents are experts in their own lives. The views expressed by residents of homeless encampments

must be afforded adequate and due consideration in all decision-making processes. The right to participate requires that all residents be provided with information, resources, and opportunities to directly influence decisions that affect them.

Principle 3: Prohibit forced evictions of homeless encampments

International human rights law does not permit governments to destroy peoples' homes, even if those homes are made of improvised materials and established without legal authority. Governments may not remove residents from encampments without meaningfully engaging with them and identifying alternative places to live that are acceptable to them. Any such removal from their homes or from the land which they occupy, without the provision of appropriate forms of legal protection, is defined as a 'forced eviction' and is considered a gross violation of human rights. The removal of residents' private property without their knowledge and consent is also strictly prohibited.

Common reasons used to justify evictions of encampments, such as 'public interest,' 'city beautification', development or re-development, or at the behest of private actors (e.g., real estate firms), do not justify forced evictions.¹

Principle 4: Explore all viable alternatives to eviction

Governments must explore all viable alternatives to eviction, ensuring the meaningful and effective participation of residents in discussions regarding the future of the encampment. Meaningful consultation should seek to maximize participation and should be supported by access to free and independent legal advice. Where personal needs differ amongst residents of encampments such that a singular best alternative is not unanimous, governments will have to develop several solutions each of which is consistent with the principles outlined in this Protocol.

Principle 5: Ensure that relocation is human rights compliant

Considerations regarding relocation must be grounded in the principle that "the right to remain in one's home and community is central to the right to housing."² Meaningful, robust, and ongoing engagement with residents is required for any decisions regarding relocation. Governments must adhere to the right to housing and other human rights standards when relocation is necessary or preferred by residents. In such cases, adequate alternative housing, with all necessary amenities, must be provided to all residents prior to any eviction. Relocation must not result in the continuation or exacerbation of homelessness, or require the fracturing of families or partnerships.

Principle 6: Ensure encampments meet basic needs of residents consistent with human rights

Canadian governments must ensure, at a minimum, that basic adequacy standards are ensured in homeless encampments while adequate housing options are negotiated and

¹ A/HRC/43/43, para 36.

² A/73/310/Rev.1, para 26.

secured. Governments' compliance with international human rights law requires: (1) access to safe and clean drinking water, (2) access to hygiene and sanitation facilities, (3) resources and support to ensure fire safety, (4) waste management systems, (4) social supports and services, and guarantee of personal safety of residents, (5) facilities and resources that support food safety, (6) resources to support harm reduction, and (7) rodent and pest prevention.

Principle 7: Ensure human rights-based goals and outcomes, and the preservation of dignity for homeless encampment residents

Governments have an obligation to bring about positive human rights outcomes in all of their activities and decisions concerning homeless encampments. This means that Canadian governments must move, on a priority basis, towards the full enjoyment of the right to housing for encampment residents. Any decision that does not lead to the furthering of inhabitants' human rights, that does not ensure their dignity, or that represents a backwards step in terms of their enjoyment of human rights, is contrary to human rights law.

Principle 8: Respect, protect, and fulfill the distinct rights of Indigenous Peoples in all engagements with homeless encampments

Governments' engagement with Indigenous Peoples in homeless encampments must be guided by the obligation to respect, protect, and fulfil their distinct rights. This begins with recognition of the distinct relationship that Indigenous Peoples have to their lands and territories, and their right to construct shelter in ways that are culturally, historically, and spiritually significant. Governments must meaningfully consult with Indigenous encampment residents concerning any decisions that affects them, recognizing their right to self-determination and self-governance. International human rights law strictly forbids the forced eviction, displacement, and relocation of Indigenous Peoples in the absence of free, prior, and informed consent.

Given the disproportionate violence faced by Indigenous women, girls, and gender diverse peoples, governments have an urgent obligation to protect these groups against all forms of violence and discrimination within homeless encampments, in a manner that is consistent with Indigenous self-determination and self-governance.

A National Protocol for Homeless Encampments in Canada: A Human Rights Approach

I. Introduction

1 In the face of escalating homelessness and housing affordability crises, many cities across Canada have seen a rise in homeless encampments. In various Canadian communities, people experiencing homelessness have turned to living in s, vehicles, or other forms of rudimentary or informal shelter as a means to survive.³ While they vary in size and structure, the term '*encampment*' is used to refer to any area wherein an individual or a group of people live in homelessness together, often in tents or other temporary structures (also referred to as *homeless camps*, *tent cities*, *homeless settlements* or *informal settlements*).

2 Homeless encampments in Canada must be understood in relation to the global housing crisis and the deepening of housing unaffordability across the country. Encampments must also be understood in the context of historical and ongoing structural racism and colonization in Canada, whereby Indigenous peoples have been systemically discriminated against and dispossessed of their lands, properties, and legal systems. Other groups have also endured systemic and historical disadvantage that has created barriers to accessing housing and shelters, including 2SLGBTQ+, Black and other racialized communities, people living with disabilities, and people who are criminalized. While encampments are often framed and discussed as matters of individual poverty or deficiency, they are the result of structural conditions and the failure of governments to implement the right to housing or to engage with reconciliation and decolonization materially and in good faith.

3 Homeless encampments threaten many human rights, including most specifically the right to housing. In international human rights law, homelessness - which includes those residing in encampments - is a *prima facie* violation of the right to adequate housing.⁴ This means that governments have a positive obligation to implement an urgent housing-focused response, ensuring that residents have access to adequate housing in the shortest possible time and, in the interim, that their human rights are fully respected.

4 Government responses to homeless encampments often fail to employ a rights-based approach. Residents of encampments are frequently the victims of abuse, harassment, violence, and forced evictions or 'sweeps.' In many cases, the issues

³ Encampments have arisen in cities across the country, including: Abbotsford, Vancouver, Victoria, Edmonton, Toronto, Ottawa, Gatineau, Peterborough, Winnipeg, Montreal, Nanaimo, Calgary, Saskatoon, Fredericton, Moncton, Oshawa, Halifax, and Maple Ridge.

⁴ A/HRC/31/54, para. 4.

associated with encampments are within the jurisdiction and responsibility of municipal authorities, including through bylaws specific to policing, fire and safety, sanitation, and social services. This has led to a pattern whereby municipal governments deploy bylaws, local police, and zoning policies that displace people in encampments, in turn compromising the physical and psychological health of people who have no place else to go and who rely on encampments to survive, absent accessible alternatives.⁵

5 Provincial, territorial, and federal governments have historically left engagement with encampments to city officials, who receive little (if any) guidance and support. Municipal authorities are often unaware of their legal obligations under international human rights law, including with respect to the duty to ensure the dignity and security of encampment residents.⁶ Further, accountability mechanisms with respect to the right to housing remain weak in Canada, meaning that people living in encampments have limited avenues through which to claim this right.

6 Ensuring a human rights-based response to homeless encampments should be a key concern for every Canadian city, and all governments should employ a human rights-based framework to guide their engagement with encampment residents.

II. Purpose of the National Protocol on Homeless Encampments

7 The purpose of this document is to provide all levels of government with an understanding of their human rights obligations with respect to homeless encampments, highlighting what is and is not permissible under international human rights law. This Protocol outlines 8 broad human rights-based Principles that must guide state⁷ action in response to homeless encampments of all kinds.

8 This Protocol does not attempt to foresee every possible context or challenge that may arise within encampments. Governments and relevant stakeholders must apply human rights principles as described in the Protocol to each case as it arises, endeavouring at all times to recognize and respect the inherent rights, dignity, and inclusion of encampment residents.

9 This Protocol has been developed by the UN Special Rapporteur on the right to housing in consultation with a range of experts from across Canada, including those

⁵ *Abbotsford (City) v. Shantz* (2016 BCSC 2437). Online, <https://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc2437/2016bcsc2437.html?resultIndex=1>

⁶ A/HRC/43/43, para 7.

⁷ 'State' refers to all levels and branches of government and anyone exercising government authority.

with lived expertise of homelessness, urban Indigenous leaders, community advocates, researchers, lawyers, and experts in human rights law.⁸

III. Encampments in Canada in the context of the Human Right to Adequate Housing

10 Under international human rights law, everyone has the right to adequate housing as an element of the right to an adequate standard of living.⁹ This requires States to ensure that housing is accessible, affordable, habitable, in a suitable location, culturally adequate, offers security of tenure, and is proximate to essential services such as health care and education.¹⁰ The right to adequate housing includes the right to be protected from: arbitrary or unlawful interference with an individual's privacy, family, and home; any forced eviction (regardless of legal title or tenure status); and from discrimination of any kind.¹¹

11 Homelessness constitutes a *prima facie* violation of the right to housing. It is a profound assault on a person's dignity, security, and social inclusion. Homelessness violates not only the right to housing, but often, depending on circumstances, violates a number of other human rights, including: non-discrimination; health; water and sanitation; freedom from cruel, degrading, and inhuman treatment; and the rights to life, liberty, and security of the person.¹²

12 Encampments constitute a form of homelessness, and thus are a reflection of the violation of residents' right to adequate housing. People living in encampments typically face a range of human rights violations and profound challenges with respect to their health, security, and wellbeing. Encampment conditions typically fall far below international human rights standards on a variety of fronts, often lacking even the most

⁸ This Protocol was prepared by: Leilani Farha and Kaitlin Schwan with the assistance of Bruce Porter, Vanessa Poirier, and Sam Freeman. Reviewers include, among others: Margaret Pfoh (Aboriginal Housing Management Association), Cathy Crowe (Shelter and Housing Justice Network), Greg Cook (Sanctuary Toronto), Tim Richter (Canadian Alliance to End Homelessness), Anna Cooper (Pivot Legal Society), Caitlin Shane (Pivot Legal Society), Emily Paradis (University of Toronto), Emma Stromberg (Ontario Federation of Indigenous Friendship Centres), and Erin Dej (Wilfred Laurier University).

⁹ United Nations Committee on Economic, Social and Cultural Rights Committee's General Comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions.

¹⁰ United Nations Committee on Economic, Social and Cultural Rights Committee's General Comment No. 4 (1991) on the right to adequate housing. At the domestic level, adequate housing and core housing need is defined in relation to three housing standards: adequacy, affordability, and suitability. The Canadian Mortgage and Housing Corporation [defines](#) these housing standards in the following ways: "(1) [Adequate](#) housing are reported by their residents as not requiring any major repairs; (2) [Affordable](#) dwellings cost less than 30% of total before-tax household income; and (3) [Suitable](#) housing has enough bedrooms for the size and make-up of resident households, according to National Occupancy Standard (NOS) requirements."

¹¹ A/HRC/43/43.

¹² A/HRC/31/54; A/HRC/40/61, para 43.

basic services like toilets.¹³ Residents of encampments are also frequently subject to criminalization, harassment, violence, and discriminatory treatment.¹⁴

13 In the face of poverty and deep marginalization, people without homes face many untenable choices. For example, they may be forced to choose between ‘sleeping rough’ on their own (putting themselves at risk of violence and criminalization), entering an emergency homeless shelter (which may be inaccessible or inappropriate for their needs, or in which their autonomy, dignity, self-reliance, and/or independence may be undermined), or residing in a homeless encampment (in which they may lack access to basic services and face threats to their health). These choices are further narrowed for those living in communities that lack any emergency shelters, or where existing shelters are at (or over) capacity.

14 For people without access to adequate housing, the availability, accessibility, appropriateness, and adequacy of shelters plays a significant role in determining whether or not a person chooses to reside in a homeless encampment. In some cities, emergency shelters operate at 95-100% capacity,¹⁵ necessitating that some individuals sleep rough or reside in an encampment. Existing shelters may also not be low-barrier, wheelchair accessible, trans-inclusive, or safe for people experiencing complex trauma or other challenges. Homeless persons with mental health challenges, drug or alcohol dependencies, or pets may find themselves barred from shelters. Under such conditions, some individuals may prefer, or feel they have little choice but to, reside in an encampment. Encampments thus may become a necessity or the best option available for some of those the most marginalized people in Canadian society.

15 For Indigenous peoples, a desire to avoid state surveillance and a mistrust of institutional settings, including shelters, may be a factor in turning to or living in an encampment. Negative or harmful interactions with colonial institutions, such as residential schools, the child welfare system, corrections, hospitals, asylums or sanatoriums, and shelters, may be intergenerational in nature and highly traumatic. For these reasons and others, Indigenous peoples are overrepresented in homeless populations across Canada, and further to this, are more likely to be part of “outdoor” or “unsheltered” populations – including homeless encampments.¹⁶

¹³ See Cooper, A. (2020). *Why People Without Housing Still Need Heat*. Pivot Legal Society. Available from: http://www.pivotlegal.org/why_people_without_housing_still_need_heat

¹⁴ A/HRC/43/43, para 31; see also *Homelessness, Victimization and Crime: Knowledge and Actionable Recommendations*. Available from: <https://www.publicsafety.gc.ca/lbrr/archives/cnmcs-plcng/cn35305-eng.pdf>

¹⁵ Employment and Social Development Canada. (2018). *Shelter Capacity Report 2018*. Ottawa. Available from <https://www.canada.ca/en/employment-social-development/programs/homelessness/publications-bulletins/shelter-capacity-2018.html>

¹⁶ See Ontario Federation of Indigenous Friendship Centres. (2020). *Indigenous Homelessness in the 20 Largest Cities in Canada*. Submission to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, Canada.

16 Regardless of the reasons why a person resides in a homeless encampment, homeless encampments *do not* constitute adequate housing, and do not discharge governments of their positive obligation to ensure the realization of the right to adequate housing for all people. Under international human rights law, “States have an obligation to take steps to the maximum of their available resources with a view to achieving progressively the full realization of the right to adequate housing, by all appropriate means, including particularly the adoption of legislative measures.”¹⁷ As part of these obligations, States must prioritize marginalized individuals or groups living in precarious housing conditions - including residents of homeless encampments.¹⁸

17 Governments have an urgent, positive obligation to provide or otherwise ensure access to adequate housing - for residents of encampments as they do for all people experiencing homelessness. Governments must act to immediately pursue deliberate, concrete, and targeted efforts to end homelessness by ensuring access to adequate housing. In the interim, governments must ensure the availability of sufficient shelter spaces - accessible and appropriate for diverse needs - where dignity, autonomy, and self-determination are upheld.

18 The fact that encampments violate the right to housing does not in any way absolve governments of their obligations to uphold the basic human rights and dignity of encampment residents while they wait for adequate, affordable housing solutions that meet their needs. The Principles outlined in this Protocol seek to support governments and other stakeholders to ensure that their engagements with encampments are rights-based and recognize residents as rights holders, with a view to realizing the right to adequate housing for these groups while respecting their dignity, autonomy, individual circumstances, and personal choices.

19 International human rights law does not permit government to use force to destroy peoples’ homes, even if they are made of canvas or improvised from available materials and constructed without legal authority or title. States may not remove residents from encampments without meaningfully engaging them to identify alternative places to live that are acceptable to them. Any such removal from their homes or from the land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection, consistent with international human rights law is defined as a ‘forced eviction’ and is considered a gross violation of human rights.

20 Unfortunately, such forced evictions or sweeps have become common in Canada. Evictions have contravened international law by being carried out without meaningful consultation with communities and without measures to ensure that those affected have access to alternative housing. They have been justified on the basis that the

¹⁷ International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

¹⁸ A/HRC/43/4.

residents are there illegally, are at risk to themselves, are on land that is slated for development, or are obstructing the enjoyment of the community by others. Declining conditions at encampments and public health and safety concerns are also frequently the grounds on which local governments and provinces seek injunctions for removal. The impact of municipalities' failure to proactively provide resources and services to mitigate or improve those conditions and concerns is most often ignored. Some communities have engaged bylaw officers or local police to tear down encampments at first sight.¹⁹

21 None of these reasons, however, justify forced evictions under international law. Forced evictions often have harmful or disastrous consequences for encampment residents.²⁰ Victims may face life-threatening situations that compromise their health and security, or result in the loss of access to food, social supports, social and medical services, and other resources.²¹

22 Few governments have recognized encampments as a response to violations of fundamental human rights and a response to the isolation and indignity of homelessness. They have failed to treat those living in such encampments as legally entitled to the protection of their homes and their dignity.

IV. Relevant Authority

23 Canadian governments' responsibilities and relevant authority to ensure the right to adequate housing, including for people residing in encampments, is found in: (1) international human rights treaties, (2) the *National Right to Housing Act*, (3) the *Canadian Charter of Rights and Freedoms* and human rights legislation, and (4) the UN *2030 Agenda for Sustainable Development (The Sustainable Development Goals)*.

1. International Human Rights Treaties

24 Canada has ratified multiple international human rights treaties that articulate the right to adequate housing. In 1976, Canada ratified the *International Covenant on Economic, Social and Cultural Rights*, which contains the chief articulation of the right to housing under Article 11.1 "the right of everyone to an adequate standard of living for [themselves] and [their] family, including adequate food, clothing and housing, and to

¹⁹ Ball, V. (2019). *Encampment residents fear eviction*. The Expositor. Available from: <https://www.brantfordexpositor.ca/news/local-news/encampment-residents-fear-eviction>

²⁰ A/HRC/43/43, para 36.

²¹ UN Office of the High Commissioner. (2014). *Forced Evictions: Fact Sheet No. 25/Rev.1*. Available from: <https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>; Collinson, R. & Reed, D. (2018). *The Effects of Eviction on Low-Income Households*. Available from: https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf

the continuous improvement of living conditions.”²² The right to housing and the prohibition against forced evictions has been interpreted in General Comments No. 4 and 7²³ by the UN Committee on Economic, Social and Cultural Rights. In addition, Canada has ratified other treaties that codify the right to adequate housing, including:

- *Convention on the Rights of Persons with Disabilities*
- *Convention on the Rights of the Child*
- *Convention on the Elimination of Racial Discrimination*
- *Convention on the Elimination of Discrimination against Women*

25 Human rights ratified by Canada “extend to all parts of federal States without any limitations or exceptions,” thus federal, provincial/territorial, and municipal governments are equally bound by these obligations.²⁴ In interpreting the right to adequate housing, the Committee on Economic, Social and Cultural Rights has emphasized that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.”²⁵

26 Canada has also formally recognized the *UN Declaration on the Rights of Indigenous Peoples*, which also codifies the right to adequate housing and affirms that Indigenous Peoples have the right to be actively involved in developing and determining housing programmes and policies that affect them.²⁶ Further, Indigenous Peoples’ right to land and self-determination is indivisible from the right to housing under international human rights law, meaning that they “shall not be forcibly removed from their lands or territories and that no relocation shall take place without their free, prior and informed consent.”²⁷ All encampments are located on the traditional territories of Indigenous nations, including in cities, towns, and rural areas. On these territories, Indigenous Peoples’ right to land and self-determination is in effect, whether or not those lands are subject to land claims or treaty.

1. Canadian Housing Policy and Legislation

27 The right to housing has also recently been recognized in Canadian legislation. In June 2019, the *National Housing Strategy Act* (the *Act*) received royal assent in Canada. The *Act* affirms Canada’s recognition of the right to housing as a fundamental human

²² ICESCR, Article 11, masculine pronouns corrected.

²³ General Comment 4 (1991), UN Doc. E/1992/23; General Comment 7 (1997), UN Doc. E/1998/22.

²⁴ A/69/274.

²⁵ General Comment 4 (1991), para 7.

²⁶ A/74/183.

²⁷ A/74/183.

right and commits to further its progressive realization as defined under the *International Covenant on Economic, Social and Cultural Rights*.

28 The Preamble and Section 4 of the *Act* underscore the interdependence of the right to housing with other fundamental rights, such as the right to life and an adequate standard of health and socio-economic wellbeing. Specifically, Section 4 states:

It is declared to be 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;
- (b) recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities;
- (c) support improved housing outcomes for the people of Canada; and
- (d) further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.

2. The Canadian Charter and Provincial/Territorial Human Rights Legislation

29 The government of Canada's international human rights obligations must be considered by courts in Canada when determining the rights of residents of encampments under domestic law,²⁸ particularly the *Canadian Charter of Rights and Freedoms*.²⁹ The Supreme Court has recognized that the right to "life, liberty and security of the person" in section 7 of the *Charter* may be interpreted to include the right to housing under international law.³⁰ Canada has told the UN that it accepts that section 7 at least ensures access to basic necessities of life and personal security.³¹

²⁸ It should be noted that a human rights-based approach under domestic law should entail mindfulness about core human rights and equality principles, such as substantive equality and non-discrimination, which recognizes that state interventions be particularly attuned to the specific needs of particular groups, including those impacted by systemic and historical disadvantage. In this regard, a 'one size fits all' approach may not fully capture the distinct needs of groups residing within encampments.

²⁹ *R. v. Hape*, [2007] 2 S.C.R. 292, 2007 SCC 26, para 56: "In interpreting the scope of application of the Charter, the courts should seek to ensure compliance with Canada's binding obligations under international law where the express words are capable of supporting such a construction."

³⁰ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927; See Martha Jackman and Bruce Porter, "[Social and Economic Rights](#)", in Peter Oliver, Patrick Maklem & Nathalie DesRosiers, eds, *The Oxford Handbook of the Canadian Constitution* (New York: Oxford University Press, 2017), 843-861.

³¹ Canada's commitments are described in *Victoria (City) v. Adams*, 2008 BCSC 1363 (CanLII), paras 98-99. Online, <http://canlii.ca/t/215hs>

30 In Canada, courts have considered the human rights implications of encampments, and have emphasized that Section 7 life and security of the person interests are engaged where state action poses significant harm to the health and wellbeing of persons enduring homelessness and housing insecurity. For example, Canadian courts have recognized that the daily displacement of people experiencing homelessness causes physical and psychological harm. The Court accepted in the case of *Abbotsford (City) v. Shantz*, that "the result of repeated displacement often leads to the migration of homeless individuals towards more remote, isolated locations as a means to avoid detection. This not only makes supporting people more challenging, but also results in adverse health and safety risks." The court recognized that these health and safety risks include "impaired sleep and serious psychological pain and stress."³²

31 In the case of *Victoria v. Adams*,³³ residents of an encampment challenged a bylaw that prevented them from constructing temporary shelter in a park, on the basis of which city officials had secured an injunction to evict them. The British Columbia Supreme Court agreed that while the *Charter* does not explicitly recognize the right to housing, international law is a persuasive source for *Charter* interpretation and found that the bylaw violated the residents' right to security of the person. The BC Court of Appeal upheld the decision of the BC Supreme Court and other decisions in British Columbia have followed.³⁴ In *British Columbia v. Adamson* 2016,³⁵ for example, the court found that in the absence of alternative shelter or housing for all people experiencing homelessness, encampment residents must not be evicted from their encampment. In *Abbotsford v. Shantz* 2015³⁶ the Court found that denying encampment residents space to erect temporary shelters on public property was "grossly disproportionate to any benefit that the City might derive from furthering its objectives and breaches the s. 7 *Charter* rights of the City's homeless."³⁷

32 The right to equality is also protected under the Canadian Charter as well as under federal, provincial, and territorial human rights legislation. Not all levels of government interpret or administer human rights codes in the same manner, with each province and territory administering its own human rights codes.³⁸ Regardless of jurisdiction, the UN Committee on Economic, Social and Cultural Rights has stated that the right to

³² *Abbotsford (City) v. Shantz*, 2015 BCSC 1909, paras 213 and 219.

³³ *Victoria (City) v. Adams*, 2008 BCSC 1363 (CanLII), paras 85-100. Online, <http://canlii.ca/t/215hs>

³⁴ Key examples of case law includes: *Victoria v. Adams* 2008/ 2009, *Abbotsford v. Shantz* 2015, *BC v. Adamson* 2016, and *Vancouver (City) v. Wallstam* 2017.

³⁵ *British Columbia v. Adamson* (2016 BCSC 1245). Online, <https://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc1245/2016bcsc1245.html?resultIndex=1>

³⁶ *Abbotsford (City) v. Shantz* (2016 BCSC 2437). Online, <https://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc2437/2016bcsc2437.html?resultIndex=1>

³⁷ *Abbotsford (City) v. Shantz* (2016 BCSC 2437), para 224. Online, <https://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc2437/2016bcsc2437.html?resultIndex=1>

³⁸ For an overview of provincial and territorial human rights codes, see: <https://ccdi.ca/media/1414/20171102-publications-overview-of-hr-codes-by-province-final-en.pdf>

equality should be interpreted to provide the widest possible protection of the right to housing and has urged Canadian courts and governments to adopt such interpretations.³⁹

33 While it is clear that the *Charter* provides some protection from forced evictions and sweeps of encampment residents, the extent to which it requires governments to address the crisis of homelessness that has led to reliance on encampments remains unresolved. The Supreme Court of Canada has yet to agree to hear an appeal in a case that would clarify the obligations of governments to address homelessness as a human rights violation. The Supreme Court has, however, been clear that the *Charter* should, where possible, be interpreted to provide protection of rights that are guaranteed under international human rights law ratified by Canada.

34 Governments should not use uncertainty about what courts might rule as an excuse for violating the human rights of those who are homeless. Canadian governments have an obligation, under international human rights law, to promote and adopt interpretations of domestic law consistent with the right to adequate housing. The UN Committee on Economic, Social and Cultural Rights has expressed concern that governments in Canada continue to argue in court against interpretations of the *Canadian Charter* that would protect the rights of homeless persons and residents of homeless encampments.

35 Therefore, it is critically important that, as part of a Protocol based on respect for human rights, municipal, provincial/territorial, and federal governments instruct their lawyers not to undermine international human rights or oppose reasonable interpretations of the *Charter* based on international human rights. They should never seek to undermine the equal rights of residents of homeless encampments to a dignified life, to liberty, and security of the person.

3. UN 2030 Agenda for Sustainable Development

36 In September 2015, member states of the United Nations, including Canada, adopted the *2030 Agenda for Sustainable Development (2030 Agenda)*. Target 11.1 of the SDGs specifically identifies that by 2030, all States must “ensure access for all to adequate, safe and affordable housing and basic services and to upgrade informal settlements.” This means governments must take steps to eliminate homelessness and make cities inclusive, safe, resilient and sustainable. Upgrading informal settlements

³⁹ CESCR, General Comment No. 9, para 15; E/C.12/1993/5, paras 4, 5, and 30.

includes the upgrading of homeless encampments.⁴⁰ States have affirmed that a rights-based approach to the SDG's is critical if they are to be achieved.⁴¹

V. Key Principles

37 It is critical that all levels of government in Canada employ an integrated human rights-based approach when engaging with encampments. The Principles outlined here aim to support the right to housing for all encampment residents as part of Canada's commitment to the right to housing under international human rights treaties and domestic law.

PRINCIPLE 1: Recognize residents of homeless encampments as rights holders

38 All government action with respect to homeless encampments must be guided by a commitment to upholding the human rights and human dignity of their residents. For many governments and those exercising governmental authority, this will mean a shift away from criminalizing, penalizing, or obstructing encampments, to an approach rooted in rights-based participation and accountability.⁴²

39 This will mean understanding encampments as instances of both human rights *violations* of those who are forced to rely on them for their homes, as well as human rights *claims* advanced in response to violations of the right to housing. While encampments arise as a result of governments failing to effectively implement the right to housing, they can also be an expression of individuals and communities claiming their legitimate place within cities, finding homes within communities of people without housing, asserting claims to lands and territories, and refusing to be made invisible. They are a form of grassroots human rights practice critical to a democracy such as Canada's.⁴³ For Indigenous peoples, the occupation of lands and traditional territories vis-à-vis encampments may also be an assertion of land rights, claimed in conjunction with the right to housing.

40 In recognition of encampments as rights violations and rights claims, governments must rectify the policy failures that underpin the emergence of homeless encampments, while simultaneously recognizing residents as rights holders who are advancing a legitimate human rights claim. Their efforts to claim their rights to home

⁴⁰ A/73/310/Rev.1.

⁴¹ The *National Housing Strategy* of Canada mirrors many of the commitments made in the *2030 Agenda*. However, the *Strategy* only commits Canada to reducing chronic homelessness by 50%, despite the *2030 Agenda's* imperative to eliminate homelessness and provide access to adequate housing for all.

⁴² A/73/310/Rev.1, para 15.

⁴³ A/73/310/Rev.1.

and community must be supported, not thwarted, criminalized, or dismissed as illegitimate or gratuitous protest.⁴⁴

PRINCIPLE 2: Meaningful engagement and effective participation of encampment residents

41 Ensuring encampment residents are able to participate in decisions that directly affect them is “critical to dignity, the exercise of agency, autonomy and self-determination.”⁴⁵ As rights holders, encampment residents are entitled to “participate actively, freely and meaningfully in the design and implementation of programmes and policies affecting them.”⁴⁶ Meaningful engagement must be grounded in recognition of the inherent dignity of encampment residents and their human rights, with the views expressed by residents of homeless encampments being afforded adequate and due consideration in all decision-making processes.

42 Governments and other actors must engage encampment residents in the early stages of discussion without using the threat of eviction procedures or police enforcement to coerce, intimidate, or harass.⁴⁷ Engagement should proceed under the principle that residents are experts in their own lives and what is required for a dignified life.⁴⁸ Indigenous residents of encampments should also be engaged in decision-making processes in a manner that is culturally-safe and trauma informed.

43 In the context of homeless encampments, the right to participate requires that all residents be provided with information, resources, and opportunities to directly influence decisions that affect them. All meetings with government officials or their representatives regarding the encampment should be documented and made available to encampment residents upon request.

44 Participation processes must comply with all human rights principles, including non-discrimination. Compliance with international human rights law requires:

- i. **Provision of necessary institutional, financial, and other resources to support residents’ right to participate**
In order to participate in decisions that affect them, encampment residents should be provided with financial and institutional resources (e.g., wifi/internet access, meeting spaces) that support their active participation in decision-making. Such supports should include, but are not

⁴⁴ A/73/310/Rev.1.

⁴⁵ A/HRC/43/43, para 20.

⁴⁶ Ibid. See also the Committee on the Rights of the Child’s General Comment No. 21 (2017) on children in street situations.

⁴⁷ A/HRC/40/61, para 38.

⁴⁸ A/HRC/43/43, para 21.

limited to: legal advice, social service supports, Indigenous cultural supports, literacy supports, translation, mobility supports, and transportation costs to attend consultations or meetings.⁴⁹ These resources should support democratic processes within the encampment, including community meetings, the appointment of community leaders, and the sharing of information.⁵⁰ Residents must be granted a reasonable and sufficient amount of time to consult on decisions that affect them.

ii. **Provision of relevant information about the right to housing**

Encampment residents must be provided with information about their right to housing, including information about procedures through which they can hold governments and other actors accountable, as well as specific information about the rights of Indigenous Peoples.⁵¹

iii. **Provision of relevant information concerning decisions that affect residents, ensuring sufficient time to consult**

Encampment residents must be provided with all relevant information in order to make decisions in matters that affect them.⁵²

iv. **Establishment of community engagement agreement between homeless encampment residents, government actors, and other stakeholders**

In order to facilitate respectful, cooperative, and non-coercive communication between residents, government, and other stakeholders, government may seek to collaborate with residents to create a formal community engagement agreement (when appropriate and requested by residents).⁵³ This agreement should outline when and how encampment residents will be engaged,⁵⁴ and should be ongoing and responsive to the needs of the encampment residents.⁵⁵ It should allow the residents of homeless encampments to play an active role in all aspects of relevant proposals and policy, from commencement to conclusion. Residents should be able to challenge any decision made by government or other actors, to propose alternatives, and to articulate their own demands and priorities. Third party mediators should be available to protect against power imbalances that may lead to breakdown in negotiations or create

⁴⁹ Committee on Economic, Social and Cultural Rights' General Comment No. 4, para. 12, and the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I, para. 39).

⁵⁰ A/73/310/Rev.1.

⁵¹ A/73/310/Rev.1, para 19.

⁵² A/73/310/Rev.1.

⁵³ A/73/310/Rev.1.

⁵⁴ A/73/310/Rev.1.

⁵⁵ United Nations. *Guiding Principles on Extreme Poverty and Human Rights*, foundational principles, para 38.

unfair results.⁵⁶ Relevant government authorities and professionals should also be provided with “training in community engagement and accountability.”⁵⁷

v. **Provision of equitable opportunities for the meaningful participation of all encampment residents**

As a matter of human rights law, particular efforts must be taken to ensure equitable participation by women, persons with disabilities, Indigenous Peoples, migrants, and other groups who experience discrimination or marginalization.⁵⁸ Where possible, members of these groups should be afforded central roles in the process.⁵⁹

Principle 2 in Action – The “People’s Process” in Kabul, Afghanistan

The upgrading of informal settlements was identified as a key goal in the *2030 Agenda for Sustainable Development*, committing States to “upgrade slums” by 2030 (target 11.1). As identified by the UN Special Rapporteur on the right to adequate housing, “Participation in upgrading requires democratic processes through which the community can make collective decisions.” Under international human rights law, the democratic processes required to upgrade slums mirrors encampment residents’ right to participate in plans to resolve their housing needs. As such, democratic processes implemented to upgrade informal settlements in cities around the world can provide helpful examples for Canadian homeless encampments.

One such example is the “people’s process” in Kabul, Afghanistan. This process delineates community leadership and control over the upgrading process, and includes an organizational structure that enables the community to engage different levels of government. As part of this process, “local residents elect community development councils responsible for the selection, design, implementation and maintenance of the projects.” City staff are trained to work alongside informal settlement residents to implement and complete upgrading.

⁵⁶ A/HRC/43/4, para 42.

⁵⁷ A/73/310/Rev.1, para 20.

⁵⁸ A/HRC/43/4.

⁵⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 21 (2009) on the right of everyone to take part in cultural life, in particular para 16.

PRINCIPLE 3: Prohibition of forced evictions of encampments

45 Under international human rights law, forced evictions constitute a gross violation of human rights and are prohibited in all circumstances, including in the context of encampments.⁶⁰

46 Forced evictions are defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection ... in conformity with the provisions of the International Covenants on Human Rights.”⁶¹

47 Forced evictions are impermissible irrespective of the tenure status of those affected. This means that the forced eviction of encampments is prohibited if appropriate forms of protection are not provided – including all of the requirements described in this Protocol.⁶² It may also be considered a forced eviction when governments’ and those acting on their behalf harass, intimidate, or threaten encampment residents, causing residents to vacate the property.⁶³

48 Common reasons used to justify evictions of encampments, such as ‘public interest,’ ‘city beautification,’ development or re-development, or at the behest of private actors (e.g., real estate firms), do not justify forced evictions.⁶⁴ Evictions (as opposed to “forced evictions”) may be justified in rare circumstances, but they may only be carried out after exploring all viable alternatives with residents, in accordance with law and consistent with the right to housing, as described in this Protocol.

49 Governments must repeal any laws or policies that sanction forced evictions and must refrain from adopting any such laws, including for example anti-camping laws, move-along laws, laws prohibiting tents being erected overnight, laws prohibiting personal belongings on the street, and other laws that penalize and punish people experiencing homelessness and residing in encampments.⁶⁵

⁶⁰ A/HRC/43/43, para 34; CESCR General Comment No.7.

⁶¹ CESCR General Comment No.7.

⁶² A/HRC/43/43, para 34; also see: “Security of tenure under domestic law should not, consequently, be restricted to those with formal title or contractual rights to their land or housing. The UN guiding principles on security of tenure (A/HRC/25/54, para. 5), states that security of tenure should be understood broadly as “a set of relationships with respect to housing and land, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one’s home in security, peace and dignity.”

⁶³ UN Office of the High Commissioner. (2014). *Forced Evictions: Fact Sheet No. 25/Rev.1*. Available from: <https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>

⁶⁴ A/HRC/43/43, para 36.

⁶⁵ See, for example, Ontario’s *Safe Street’s Act* (1999).

Principle 3 in Action: Forced Eviction & Harassment of Homeless Encampment Residents

In cities around the world, people experiencing homelessness are frequently subject to discriminatory treatment, harassment, and extreme forms of violence because of their housing status. People residing in homeless encampments are exposed to similar or worse treatment, particularly when faced with pressure to relocate or disperse.

In some cases, local laws, policies, or practices can provide the mechanisms for this harassment. For example, in British Columbia local authorities enforced a bylaw prohibiting overnight shelters in parks by using tactics that included spreading chicken manure and fish fertilizer on a homeless encampment. Residents and allies of the homeless encampment subsequently filed a human rights complaint with regard to these practices (*Abbotsford (City) v. Shantz*), and the BC Supreme Court found that certain bylaws violated encampment residents' constitutional rights to life, liberty and security of the person.

Under international human rights law, such activities are strictly prohibited and constitute instances of forced eviction, even if they align with local laws or policies. Given this, it is critical that Canadian governments review local and national policies and laws to ensure they do not violate the prohibition against the forced eviction of homeless encampments.

PRINCIPLE 4: Explore all viable alternatives to eviction

50 Government authorities must explore all viable alternatives to eviction, in consultation with encampment residents.⁶⁶ This means ensuring their meaningful and effective participation in discussions regarding the future of the encampment.

51 Free and independent legal advice should be made available to all residents to help them understand the options, processes, and their rights. Consultations should be conducted at times and locations that are appropriate and accessible for residents to ensure their participation is maximised. Financial and other support should be available to residents so that they can fully participate in all discussions regarding the future of the encampment and so that residents can retain outside consultants (e.g., environmental engineers, architects) where needed to assist them in developing alternative options to eviction.

52 Discussions regarding viable alternatives to eviction must include meaningfully engagement with Indigenous Peoples and be grounded in principles of self-determination, free, prior and informed consent. In urban contexts, for example, urban Indigenous organisations should be engaged early in the planning process to establish service delivery roles and to ensure the availability of culturally appropriate services.

⁶⁶ A/HRC/43/4.

53 Where personal needs differ amongst residents of encampments such that a singular best alternative is not unanimous, governments will have to develop several solutions each of which is consistent with the principles outlined in this Protocol.

PRINCIPLE 5: Ensure that any relocation is human rights compliant

54 Homeless encampments are not a solution to homelessness, nor are they a form of adequate housing. Governments have an urgent, positive obligation to ensure encampment residents have access to long-term, adequate housing that meets their needs, accompanied by necessary supports. Rather than eviction, governments must engage with homeless encampments with a view to ensuring residents are able to access such housing.

55 Despite this obligation, many governments respond to encampments by simply moving residents from one bad site to another through the use of law enforcement, physical barriers, or other means, and without meaningfully engaging residents. This in no way addresses the underlying violations of the right to housing experienced by residents of encampments, is often costly, and can contribute to increased marginalization. If relocation is deemed necessary and/or desired by encampment residents, it is critical that it is conducted in a human rights compliant manner.

56 As a starting point, meaningful, robust, and ongoing engagement with residents (as defined in Principle 2) is required for the development of any relocation of homeless encampments or of their residents. Meaningful engagement with communities should ensure the development of plans that respect the rights of residents and can be implemented cooperatively, without police enforcement.⁶⁷ Considerations regarding relocation must be grounded in the principle that “the right to remain in one’s home and community is central to the right to housing.”⁶⁸ If relocation is consistent with the human rights of residents, it will almost always be achievable without the use of force.

57 If government authorities propose the relocation of residents of homeless encampments, and the residents desire to remain in situ, the burden of proof is on the government to demonstrate why in situ upgrading is unfeasible.⁶⁹

58 If, after meaningful engagement with those affected, relocation is deemed necessary and/or desired by encampment residents, adequate alternative housing must be provided in close proximity to the original place of residence and source of livelihood.⁷⁰ If governments have failed to provide residents with housing options that

⁶⁷ A/HRC/40/61, para 38.

⁶⁸ A/73/310/Rev.1, para 26.

⁶⁹ A/73/310/Rev.1, para 32.

⁷⁰ A/HRC/4/18, annex I, para. 60.

they find acceptable, residents must be permitted to remain or be provided with a satisfactory alternative location, while adequate permanent housing options are negotiated and put in place.

59 If, in the exceptional case there is no viable alternative to eviction by authorities, eviction must be compliant with all aspects of international human rights law.⁷¹ Compliance with international human rights law requires:

i. **Prohibition against the removal of residents' private property without their knowledge and consent**

The removal of residents' private property by governments and those acting on their behalf, including the police, without their knowledge and consent, is strictly prohibited.⁷² Such actions are contrary to the rights of residents and may contribute to the deepening of residents' marginalization, exclusion, and homelessness.⁷³ Governments and police must also seek to actively prevent the removal of homeless residents' private property by private actors or any other form of harassment.

ii. **Adherence to the right to housing and other human rights standards when relocation is necessary or preferred**

Adequate alternative housing, with all necessary amenities (particularly water, sanitation and electricity), must be in place for all residents prior to their eviction.⁷⁴ Alternative housing arrangements should be in close proximity to the original place of residence and to services, community support, and livelihood.⁷⁵ It is critical that all encampment residents be allowed to participate in decisions regarding relocation, including the timing and site of relocation.⁷⁶ A full hearing of the residents' concerns with the proposed relocation should be held, and alternatives explored.

⁷² A/HRC/4/18, *Basic Guidelines on Development Based Evictions*, see para 50: "States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use."

⁷³ National Law Centre on Homelessness & Poverty. (2017). *Violations of the Right to Privacy for Persons Experiencing Homelessness in the United States*. Available from: <https://nlchp.org/wp-content/uploads/2018/10/Special-Rapporteur-Right-to-Privacy.pdf>. See para 7: "For them, whatever shelter they are able to construct, whether legally or illegally, is their home, and their right to privacy should inhere to that home the same as it would for any regularly housed person. To deny them that right is to further marginalize and dehumanize this already highly marginalized and dehumanized population."

⁷⁴ A/73/310/Rev.1, para 34.

⁷⁵ Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I, para. 60) and A/HRC/4/18, annex I, para. 60.

⁷⁶ A/73/310/Rev.1, para 31.

iii. **Relocation must not result in the continuation or exacerbation of homelessness, or require the fracturing of families or partnerships**

Relocation must not result in the continuation or deepening of homelessness for residents.⁷⁷ Relocation must not require the separation of families or partners, as defined by rights-holders themselves, including chosen family and other kinship networks.⁷⁸ Governments should engage encampments with a view to keeping the community intact, if this is desired by the residents.⁷⁹ Governments should also ensure that relevant housing policies are supportive of the ways in which rights-holders define their own families, partnerships, communities and extended Indigenous kinship structures, and accommodate these whenever possible in public or social housing.

iv. **Access to justice to ensure procedural fairness and compliance with all human rights**

Access to justice must be ensured at all stages of government engagement with encampment residents, not just when eviction is imminent.⁸⁰ Access to justice and legal protection must meet international human rights law standards,⁸¹ including the provision of due process, access to legal aid, access to fair and impartial legal advice, and the ability to file complaints in a relevant forums (including Indigenous forums) that are geographically proximate.⁸²

⁷⁷ A/73/310/Rev.1.

⁷⁸ UN Office of the High Commissioner. (2014). *Forced Evictions: Fact Sheet No. 25/Rev.1*. Available from: <https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>. See para 52: “States should also ensure that members of the same extended family or community are not separated as a result of evictions.”; also, UNHR Summary Conclusions on the Family Unit, Available at <https://www.unhcr.org/protection/globalconsult/3c3d556b4/summary-conclusions-family-unity.html>, see para 8: “International human rights law has not explicitly defined ‘family’ although there is an emerging body of international jurisprudence on this issue which serves as a useful guide to interpretation. The question of the existence or non-existence of a family is essentially a question of fact, which must be determined on a case-by-case basis, requiring a flexible approach which takes account of cultural variations, and economic and emotional dependency factors. For the purposes of family reunification, ‘family’ includes, at the very minimum, members of the nuclear family (spouses and minor children).”

⁷⁹ A/HRC/43/43, para 42.

⁸⁰ A/HRC/43/43.

⁸¹ Committee on Economic, Social and Cultural Rights, General Comment No. 7, para 3.

⁸² It should be noted that broad and inclusive participatory-based processes can potentially foster access to justice for equity-seeking groups, and such processes should be responsive to the unique barriers to justice these groups face.

Principle 5 in Action - *Melani v. City of Johannesburg*

Globally, there are many compelling examples of courts upholding the rights of informal settlements or homeless encampments right to remain in place (“in situ”) in their community. One such example is *Melani v. City of Johannesburg* in South Africa. In this case, the Slovo Park informal settlement challenged the City of Johannesburg’s decision to relocate the community to an alternative location 11 km away. The court held that the Government’s upgrading policy, as required by the constitutional right to housing, envisages “a holistic development approach with minimum disruption or distortion of existing fragile community networks and support structures and encourages engagement between local authorities and residents living within informal settlements.” The Court concluded that relocation must be “the exception and not the rule” and any relocation must be to a location “as close as possible to the existing settlement.” The Court ordered the City of Johannesburg to reverse the decision to relocate the community, and mandated the city to apply for funding for in situ upgrading.

The South African approach is an example of how some national courts are making the shift to adopt a human rights-based approach to encampments. This is a shift that moves in the right direction and should be applied by all courts in Canada.

PRINCIPLE 6: Ensure encampments meet basic needs of residents consistent with human rights⁸³

60 Much of the stigma attached to residents of encampments is a result of governments failing to ensure access to basic services, including access to clean water, sanitation facilities, electricity, and heat, as well as support services.⁸⁴ These conditions violate a range of human rights, including rights to housing, health, physical integrity, privacy, and water and sanitation.⁸⁵ In these conditions, residents face profound threats to dignity, safety, security, health, and wellbeing.⁸⁶ The denial of access to water and sanitation by governments constitutes cruel and inhumane treatment, and is prohibited under international human rights law.⁸⁷

⁸³ Details regarding securing basic needs consistent with human rights can be found in Schedule B.

⁸⁴ A/73/310/Rev.1.

⁸⁵ A/HRC/43/4.

⁸⁶ UN Water. *Human Rights to Water and Sanitation*. Available from: <https://www.unwater.org/water-facts/human-rights/>

⁸⁷ A/73/310/Rev.1, para 46: “Attempting to discourage residents from remaining in informal settlements or encampments by denying access to water, sanitation and health services and other basic necessities, as has been witnessed by the Special Rapporteur in San Francisco and Oakland, California, United States of

61 Canadian governments must ensure, at a minimum, that rudimentary adequacy standards are ensured in homeless encampments on an urgent and priority basis, while adequate housing options are negotiated and secured. Government's compliance with international human rights law requires:

i. **Access to safe and clean drinking water**

Water and sanitation are critical to health for all people. Through *Resolution 64/292*, the United Nations explicitly recognized the right to safe and clean drinking water and sanitation as a "human right that is essential for the full enjoyment of life and all human rights."⁸⁸ The *Resolution* calls upon States and international organizations "to provide safe, clean, accessible and affordable drinking water and sanitation for all." This obligation extends to those residing in homeless encampments.⁸⁹

ii. **Access to hygiene and sanitation facilities**

Homeless encampments must be provided with sufficient resources and supports to ensure access to hygiene and sanitation facilities – toilets, showers, hand-washing stations, for example – within the encampment, or within very close proximity. Using existing facilities that remain open to the general public will not be appropriate. Facilities should ensure the hygiene and dignity of all residents irrespective of needs or identity. Peer-led hygiene and sanitation facilities have worked well in some contexts.

iii. **Resources and support to ensure fire safety**

General safety precautions should be implemented in an encampment environment to ensure residents are safe from fire and chemical exposure. Fire Departments should assist residents in developing a harm reduction approach to fire safety.

iv. **Waste management systems**

The lack of waste management systems in encampments has serious health and safety implications. Encampments necessarily create garbage during the course of daily activities. Garbage piles can become combustible fire hazards and can increase the risk of exposure to chemical waste. Human and animal biological waste also poses a particular danger. Without sanitary facilities, accumulated fecal waste can contaminate the

America, 29 constitutes cruel and inhuman treatment and is a violation of multiple human rights, including the rights to life, housing, health and water and sanitation."

⁸⁸ A/RES/64/292, para 2. Available at: https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/292.

⁸⁹ A/RES/64/292, para 3. Available at: https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/292.

ground and transmit diseases.⁹⁰ The improper disposal of needles can also transmit diseases through puncture wounds or re-use of needles. It is the responsibility of governments to ensure that homeless encampments have sufficient resources for the establishment of waste management systems.

v. **Social Supports and Services**

Residents of homeless encampments should be ensured access to health, mental health, addiction, and broader social services in a manner equitable to other community residents and consistent with human rights. All supports should be culturally appropriate and anti-oppressive. Governments should consult encampment residents on how best to provide access to these services, including through approaches such as outreach and/or on-site service provision. The provision of social services should not be linked to data gathering of any kind.

vi. **Guarantee Personal Safety of Residents**

Although research indicates that unsheltered people in Canada are disproportionately targets of violence, rather than perpetrators,⁹¹ interpersonal violence and exploitation can occur within encampments. Interpersonal violence is often exacerbated when people do not have their basic needs met,⁹² thus the provision of meaningful resources and supports will likely help ameliorate issues of safety.

It is the State's duty to protect the safety of all residents, particularly those who may be particularly vulnerable to abuse, harm, trafficking, or exploitation. Responses to violence must be guided by principles of transformative justice, rather than reproduce punitive outcomes and must be based in community-developed safety protocols. Governments must recognize that engaging police or other state authorities as a response to violence in encampments may put people at increased risk of harm, including due to risks of being criminalized or incarcerated.

vii. **Facilities and resources that support food safety**

Consuming contaminated food or water can cause a variety of foodborne

⁹⁰ CalRecycle. *Homeless Encampment Reference Guide*. Available at:

<https://www.calrecycle.ca.gov/illegalDump/homelessCamp#SolidWaste>

⁹¹ Sylvia, N., Hermer, J., Paradis, E., & Kellen, A. (2009). "More Sinned Against than Sinning? Homeless People as Victims of Crime and Harassment." In: Hulchanski, J. David; Campsie, Philippa; Chau, Shirley; Hwang, Stephen; Paradis, Emily (Eds.), *Finding Home: Policy Options for Addressing Homelessness in Canada* (e-book), Chapter 7.2. Toronto: Cities Centre, University of Toronto.

www.homelesshub.ca/FindingHome

⁹² Slabbert, I. (2017). Domestic violence and poverty: Some women's experiences. *Research on social work practice*, 27(2), 223-230.

illnesses. Encampments are often more susceptible to foodborne illnesses due to a lack of storage, cooling appliances, improperly cooked foods, and limited or no access to clean water. Diseases can spread quickly in an encampment setting.

One of the best ways to prevent the spread of illness is to for governments to provide resources that enable the encampment to implement food safety measurements such as refrigeration facilities, which are also important for storing medicines.

viii. **Resources to support harm reduction**

Governments must provide encampments with the resources to implement effective harm reduction measures. Appropriate professionals should support residents to establish emergency protocols for responding to overdoses and other health emergencies.

ix. **Rodent and pest prevention**

The presence of rodents and pests can pose a significant threat to the health of residents. Appropriate prevention and treatment options should be available for pest management that are safe for use in human environments. Encampment residents should be provided with the resources to prevent and address the presence of rodents and pests.

62 In implementing these standards, it must be recognized that residents of encampments are experts with respect to their living spaces — they often know what resources are needed and how best to mobilize them. As a matter of human rights, residents must be engaged in planning and carrying out any measures developed to improve access to basic services. Practices, systems, and agreements residents have already put in place should be respected by government officials and should inform any further improvements.

PRINCIPLE 7: Ensure human rights-based goals and outcomes, and the preservation of dignity for encampment residents

63 As a matter of international human rights law, the rights and dignity of residents must be at the heart of all government engagement with homeless encampments.⁹³ Dignity is an inherent human rights value that is reflected in the *Universal Declaration of Human Rights*. As such, Canadian governments have an obligation to bring about positive human rights outcomes in all of their activities and decisions concerning homeless encampments.

⁹³ ICESCR.

64 Where Canadian governments at any level make decisions with regards to encampments, it is essential that they do so taking into account the full spectrum of human rights of residents and ensure that their enjoyment of those rights is enhanced by all decisions. Any decision that does not lead to the furthering of human rights, fails to ensure their dignity, or represents a backwards step in terms of their enjoyment of human rights, is contrary to human rights law.

65 More broadly, the Canadian government has an obligation to the progressive realization of the right to housing, alongside all other human rights.⁹⁴ A central component of that obligation is to address on an urgent basis the needs of those in the greatest need. This means that Canadian governments must move, as a matter of priority, towards the full enjoyment of the right to housing for encampment residents.⁹⁵ When governments fail to bring about positive human rights outcomes for encampment residents, they fail their obligation to progressively realize the right to housing.⁹⁶

PRINCIPLE 8: Respect, protect, and fulfill the distinct rights of Indigenous Peoples in all engagements with encampments

66 Indigenous Peoples in Canada experience some of the most severe and egregious forms of housing need, and are dramatically overrepresented in homeless populations across the country, including specifically amongst those who are sleeping rough.⁹⁷ Under these conditions, many Indigenous Peoples experience profound violations of the right to housing and the right to self-determination, as well as violations of the right to freely pursue their economic, social, and cultural development.⁹⁸

67 For Indigenous Peoples in Canada, encampments and political occupation may occur simultaneously as a means of survival and a means of asserting rights to lands and

⁹⁴ ICESCR, in General Comment No.3 on the nature of states parties' obligations under Art 2(1) of the ICESCR.

⁹⁵ ICESCR, Article 2(1).

⁹⁶ Further, if governments failed to ensure human rights outcomes were obtained for encampment residents, and residents suffered some detriment to their enjoyment of their rights (e.g., loss of dignity or ended up street homeless without any shelter at all), this might be classed as retrogression and a breach of obligations.

⁹⁷ See ESDC (Employment and Social Development Canada). (2019). *Everyone counts highlights: Preliminary results from the second nationally coordinated point-in-time count of homelessness in Canadian communities*. Retrieved from <https://www.canada.ca/en/employment-social-development/programs/homelessness/reports/highlights-2018-point-in-time-count.html#3.5>. Similarly, the [2018 Toronto Street Needs Assessment](#) documented that 16% of those enumerated were Indigenous, and 38% of those sleeping rough were Indigenous. See also Patrick, C. (2014). *Aboriginal Homelessness in Canada: A Literature Review*. Toronto: Canadian Homelessness Research Network Press. Retrieved from <https://www.homelesshub.ca/sites/default/files/AboriginalLiteratureReview.pdf>.

⁹⁸ Article 3 of the *Declaration* and article 1 of the *Covenant*.

territories within cities and elsewhere. Whatever the impetus, any government engagement with Indigenous Peoples in encampments must be guided by the obligation to respect, protect, and fulfil their distinct rights. These rights are outlined in the United Nations Declaration on the Rights of Indigenous Peoples, as well as many other international human rights treaties.

68 Under international human rights laws, the enjoyment of the right to housing for Indigenous Peoples is “deeply interconnected with their distinct relationship to their right to lands, territories and resources, their cultural integrity and their ability to determine and develop their own priorities and strategies for development.”⁹⁹ Recognition of the indivisible nature of Indigenous Peoples’ human rights, and the obligation to uphold these rights, must shape all government engagement with Indigenous encampment residents, as well as the Indigenous Peoples who own or occupy the land or territories upon which the encampment is located.

69 Compliance with international human rights law requires:

i. **Recognition of the distinct relationship that Indigenous Peoples have to their lands and territories**

In order to ensure adequate housing for Indigenous Peoples, States, Indigenous authorities, and other actors must recognize the distinct spiritual and cultural relationships that Indigenous Peoples have with their lands and territories.¹⁰⁰ This recognition includes protection for Indigenous residents of encampments, who have the right to utilize their lands and territories in line with their own economic, social, political, spiritual, cultural, and traditional practices (as defined and assessed by the Peoples themselves).¹⁰¹

Under international human rights law, governments “should respect those housing structures which an Indigenous community deems to be adequate in the light of their own culture and traditions.”¹⁰² In the context of encampments, governments must respect Indigenous Peoples’ right to construct shelter and housing in ways that incorporate their lived histories, cultures, and experiences.¹⁰³

ii. **Guarantee of self-determination, free, prior and informed consent and**

⁹⁹ A/74/183, particularly para 6: “The right to adequate housing can be enjoyed by Indigenous Peoples only if its articulation under article 11 (1) of the International Covenant on Economic, Social and Cultural Rights is understood as interdependent with and indivisible from the rights and legal principles set out in the United Nations Declaration on the Rights of Indigenous Peoples.”

¹⁰⁰ A/74/183.

¹⁰¹ A/74/183.

¹⁰² A/74/183, para 62.

¹⁰³ A/74/183.

meaningful consultation of Indigenous Peoples

Governments must ensure the participation of Indigenous Peoples in all decision-making processes that affect them.¹⁰⁴ Governments must consult with Indigenous encampment residents in order to obtain their free, prior, and informed consent before taking any action that may affect them.¹⁰⁵

Engagement with Indigenous communities should involve genuine dialogue and should be guided by “mutual respect, good faith and the sincere desire to reach agreement.”¹⁰⁶ This consultation process must engage representatives chosen by Indigenous Peoples themselves, in accordance with their own procedures and practices.¹⁰⁷ As outlined in Principle 2, governments must provide Indigenous residents with necessary institutional, financial, and other resources in order to support their right to participate.¹⁰⁸ Indigenous women and girls must be consulted on a priority basis.¹⁰⁹

iii. Prohibition against the forced eviction, displacement, and relocation of Indigenous Peoples

Indigenous Peoples’ access to and control over their lands, territories and resources constitute a fundamental element of the realization of their right to adequate housing.¹¹⁰ As such, international human rights law strictly prohibits the relocation of Indigenous Peoples in the absence of free, prior, and informed consent.¹¹¹

iv. Protection and guarantees against all forms of violence and discrimination for Indigenous women, girls, and gender diverse peoples

Indigenous women, girls, gender diverse, and Two-Spirit peoples experience particular forms of violence – including sexual violence and

¹⁰⁴ United Nations Declaration on the Rights of Indigenous Peoples.

¹⁰⁵ United Nations Declaration on the Rights of Indigenous Peoples, in particular arts. 10, 19, and 23.

¹⁰⁶ A/74/183, para 56.

¹⁰⁷ United Nations Declaration on the Rights of Indigenous Peoples, art. 18. See also Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 6(1)(b); American Declaration on the Rights of Indigenous Peoples, arts. XXI (2) and XXIII (1); and A/HRC/18/42, annex (Expert Mechanism advice No. 2 (2011)). See also Human Rights Committee, General Comment No. 23 (1994) on the rights of minorities, para 7.

¹⁰⁸ Committee on Economic, Social and Cultural Rights’ General Comment No. 4, para 12, and the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I, para 39).

¹⁰⁹ A/74/183, para 59.

¹¹⁰ A/74/183, para 51. See also A/HRC/7/16, paras 45–48; The United Nations Declaration of the Rights of Indigenous Art. 26.2: “Indigenous Peoples have the right to own, use, develop, and control the lands, territories and resources that they possess by reason of traditional occupation or use, as well as those which they have otherwise acquired.”

¹¹¹ United Nations Declaration on the Rights of Indigenous Peoples, Art. 10: “Indigenous Peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous Peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

homicide – in relation to the intersection of their indigeneity, gender identity, socioeconomic and cultural status, and their housing status.¹¹² Canadian law recognizes the concept of multiple and intersecting forms of discrimination, and under international human rights law all Indigenous women, girls, and those who are gender diverse or Two-Spirited “must enjoy full protection and guarantees against all forms of violence and discrimination, whether inside or outside their communities.”¹¹³

It is incumbent upon governments to provide Indigenous women and girls protection and guarantee against all forms of violence and discrimination within encampments, including from state authorities, in a manner that is consistent with Indigenous self-determination and self-governance.

¹¹² A/74/183, para 59.

¹¹³ A/74/183, para. 59.

SCHEDULE A: Select Case Law on Homeless Encampments in Canada

Victoria (City) v. Adams, [2009 BCCA 563](#)¹¹⁴

The City of Victoria made an application for an injunction to remove a "tent city" at Cridge Park. The City relied on its *Streets and Traffic Bylaw* and *Parks Regulation Bylaw*, which prohibits loitering and taking up an overnight temporary residence in public places. On appeal, the Court of Appeal established that the Victoria City bylaws violated section 7 of the *Canadian Charter* "in that they deprive homeless people of life, liberty and security of the person in a manner not in accordance with the principles of fundamental justice," and the provisions were not saved by section 1 of the *Charter* (para. 42). The Court of Appeal confirmed that the bylaw was overbroad "because it is in effect at all times, in all public places in the City."¹¹⁵

Abbotsford (City) v. Shantz, 2015¹¹⁶

The City of Abbotsford applied for an interim injunction requiring the defendants to remove themselves and their encampment from a city park. The Court concluded that the bylaws were "grossly disproportionate" because:

"the effect of denying the City's homeless access to public spaces without permits and not permitting them to erect temporary shelters without permits is grossly disproportionate to any benefit that the City might derive from furthering its objectives and breaches the s. 7 *Charter* rights of the City's homeless."¹¹⁷

The Court concluded that allowing the City's homeless to set up their shelters overnight and taking them down during the day would "reasonably balance the needs of the homeless and the rights of other residents of the City."¹¹⁸

¹¹⁴ *Victoria(City) v. Adams* (2009, BCCA 563). Online, <https://www.canlii.org/en/bc/bcca/doc/2009/2009bccca563/2009bccca563.html?resultIndex=1>

¹¹⁵ The Court of Appeal stated at para. 116 that: "The prohibition on shelter contained in the Bylaws is overbroad because it is in effect at all times, in all public places in the City. There are a number of less restrictive alternatives that would further the City's concerns regarding the preservation of urban parks. The City could require the overhead protection to be taken down every morning, as well as prohibit sleeping in sensitive park regions." This case is perhaps one of the most notable successes in homeless litigation in Canada.

¹¹⁶ *Abbotsford (City) v. Shantz* (2016 BCSC 2437). Online, <https://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc2437/2016bcsc2437.html?resultIndex=1>

¹¹⁷ Para 224

¹¹⁸ The Court stated, "The evidence shows, however, that there is a legitimate need for people to shelter and rest during the day and no indoor shelter in which to do so. A minimally impairing response to balancing that need with the interests of other users of developed parks would be to allow overnight shelters to be erected in public spaces between 7:00 p.m. and 9:00 a.m. the following day." [para 276]

British Columbia v. Adamson, [2016 BCSC 584](#) [Adamson #1] and [2016 BCSC 1245](#) [Adamson #2]¹¹⁹

The Province of BC applied for an interlocutory injunction to restrain the defendant encampment residents from trespassing on the Victoria courthouse green space. On the first application, the court concluded that the balance of convenience did not favour the granting of the injunction, stating

“the balance of convenience is overwhelmingly in favour of the defendants, who simply have nowhere to move to, if the injunction were to issue, other than shelters that are incapable of meeting the needs of some of them, or will result in their constant disruption and a perpetuation of a relentless series of daily moves to the streets, doorways, and parks of the City of Victoria.”¹²⁰

Following this, a second injunction was filed based on new evidence of the encampment deterioration conditions, as well as supporting evidence that the Province would make housing available to encampment residents. The court made an order requiring the encampment to be cleared, but granting residents to stay until alternate housing options were made available to them.¹²¹

Vancouver (City) v. Wallstam, [2017 BCSC 937](#)¹²²

The City of Vancouver applied for an interlocutory injunction requiring encampment residents to vacate and remove all tents and other structures from a vacant city lot. The Court relied on the injunction test set out in *RJR-MacDonald*.¹²³ The court noted that:

“The test requires that the *applicant* prove it will suffer irreparable harm if the injunction is not granted...When I asked counsel what harm the *City* would suffer if the injunction was not granted, he answered that not granting the injunction would mean that a ‘vital social housing project won't go ahead’ and that interferes with the public good. He also points out the timeline for development of the project requires the injunction urgently ... While everyone can agree that more social housing is an important goal, I must balance that general concern against the position of the occupants that the tent city, as it currently exists, is now providing shelter and safe living space for the occupants.”¹²⁴

¹¹⁹ *British Columbia v. Adamson* (2016 BCSC 1245). Online, <https://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc1245/2016bcsc1245.html?resultIndex=1>

¹²⁰ Para 183.

¹²¹ Paras 85-86,

¹²² *Vancouver (City) v. Wallstam* 2017 BCSC 937 at para 60. Online, <https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc937/2017bcsc937.html?resultIndex=1>

¹²³ In *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311

¹²⁴ Para 46-47.

The court concluded that the City failed to meet the *RJR-MacDonald* test and dismissed the City's application, but without prejudice to bring it forward again on a more complete factual record.¹²⁵

¹²⁵ Para 64.

SCHEDULE B: An Elaboration on Principle 6

Ensure encampments meet basic needs of residents consistent with human rights

Canadian governments must ensure, at a minimum, that rudimentary adequacy standards are ensured in homeless encampments on an urgent and priority basis, while adequate housing options are negotiated and secured. Government's compliance with international human rights law requires:

i. **Access to safe and clean drinking water**

Water and sanitation are critical to health for all people. Through *Resolution 64/292*, the United Nations explicitly recognized the right to safe and clean drinking water and sanitation as a "human right that is essential for the full enjoyment of life and all human rights."¹²⁶ The *Resolution* calls upon States and international organizations "to provide safe, clean, accessible and affordable drinking water and sanitation for all." This obligation extends to those residing in homeless encampments.¹²⁷

To ensure access to safe and clean drinking water, governments should provide homeless encampments with resources for:

- On site/close-proximity clean and safe drinking/potable water, ensuring a sufficient number of access points for water relative to the number of residents
- Dishwashing Station(s) with clean water, sufficient in number for the number of residents

ii. **Access to hygiene and sanitation facilities**

Homeless encampments must be provided with sufficient resources and supports to ensure access to hygiene and sanitation facilities – toilets, showers, hand-washing stations, for example – within the encampment, or within very close proximity. Using existing facilities that remain open to the general public will not be appropriate. Facilities should ensure the hygiene and dignity of all residents irrespective of needs or identity. Peer-led hygiene and sanitation facilities have worked well in some contexts.

Hygiene and sanitation facilities should include:

- Washing stations, including showers with privacy and safety for women and gender diverse peoples, stocked with soap, water, paper towels

¹²⁶ A/RES/64/292, para 2. Available at:

https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/292.

¹²⁷ A/RES/64/292, para 3. Available at:

https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/292.

- Adequate numbers of toilets based on the encampment population which must be accessible for residents with disabilities. Every toilet station must also have a hand-washing station
- Access to cleaning and bathing supplies
- Access to free laundry facilities
- Free feminine hygiene products
- Access to clean bedding

iii. **Resources and support to ensure fire safety**

General safety precautions should be implemented in an encampment environment to ensure residents are safe from fire and chemical exposure. Fire Departments should assist residents in developing a harm reduction approach to fire safety. Residents should be provided with resources to support best safety practices, including:

- Fire-safety approved sources of heat (e.g., safe metal vessels for heat)
- Warming tents
- In-tent heat sources
- Fire-proof tents
- Fire evacuation plan
- Signage indicating evacuation plans
- Accessible information on fire safety tips and how to handle and store flammable materials (e.g., gasoline, butane, propane)
- Fire extinguishers appropriately spaced and training for residents on how to operate them
- Electricity/charging stations for phones and laptops
- On-site ashtrays or cigarette disposal posts

iv. **Waste management systems**

The lack of waste management systems in homeless encampments has serious health and safety implications. Encampments necessarily create garbage during the course of daily activities, including during food preparation or shelter building. Unwanted materials can pile up quickly when there is no waste system in place to remove garbage from the area. Garbage piles can become combustible fire hazards and can increase the risk of exposure to chemical waste.

Human and animal biological waste also poses a particular danger. Without sanitary facilities, accumulated fecal waste can contaminate the ground and transmit diseases.¹²⁸ The improper disposal of needles can also transmit diseases through puncture wounds or re-use of needles.

¹²⁸ CalRecycle. *Homeless Encampment Reference Guide*. Online at <https://www.calrecycle.ca.gov/illegaldump/homelesscamp#SolidWaste>

It is the responsibility of governments to ensure that homeless encampments have sufficient resources for the establishment of waste management systems, which should include:

- Weekly garbage and recycling (more frequent if needed)
- Regular service for waste water and portable toilets
- Independent waste bins for flammable/hazardous waste (e.g., fuel, motor oil, batteries, light bulbs)
- Large rodent-proof waste bins with tight fitting lids
- Garbage bags, cleaning supplies, hand soap, hand sanitizer
- Waste water holding tanks (if there are no sewers near encampment)

v. **Social Supports and Services**

Residents of homeless encampments should be ensured access to health, mental health, addiction, and broader social services in a manner equitable to other community residents and consistent with human rights. All supports should be culturally appropriate and anti-oppressive. Governments should consult encampment residents on how best to provide access to these services, including through approaches such as outreach and/or on-site service provision. The provision of social services should not be linked to data gathering of any kind.

i. **Guarantee Personal Safety of Residents**

Although research indicates that unsheltered people in Canada are disproportionately targets of violence, rather than perpetrators,¹²⁹ interpersonal violence and exploitation can occur within encampments. Interpersonal violence is often exacerbated when people do not have their basic needs met,¹³⁰ thus the provision of meaningful resources and supports will likely help ameliorate issues of safety.

It is the State's duty to protect the safety of all residents, particularly those who may be particularly vulnerable to abuse, harm, trafficking, or exploitation. Responses to violence must be guided by principles of transformative justice, rather than reproduce punitive outcomes and must be based in community-developed safety protocols. Governments must recognize that engaging police or other state authorities as a response to violence in encampments may put people at increased risk of harm, including due to risks of being criminalized or incarcerated.

¹²⁹ Sylvia, N., Hermer, J., Paradis, E., & Kellen, A. (2009). "More Sinned Against than Sinning? Homeless People as Victims of Crime and Harassment." In: Hulchanski, J. David; Campsie, Philippa; Chau, Shirley; Hwang, Stephen; Paradis, Emily (Eds.), *Finding Home: Policy Options for Addressing Homelessness in Canada* (e-book), Chapter 7.2. Toronto: Cities Centre, University of Toronto.
www.homelesshub.ca/FindingHome

¹³⁰ Slabbert, I. (2017). Domestic violence and poverty: Some women's experiences. *Research on social work practice*, 27(2), 223-230.

Any approach to addressing interpersonal safety within encampments must:

- Center on the most vulnerable members of the encampment, namely: BIPOC, women, trans-people and other LGBTQ2S+ persons, persons with disabilities, and other groups who experience discrimination or marginalization.
- Provide resources and supports to allow for Indigenous and other non-colonial approaches to conflict resolution.
- Provide safe, confidential, accessible, and non-coercive mechanisms through which individuals experiencing violence can report these experiences and receive trauma-informed supports and services, ensuring that these individuals are able to access alternative safe housing (as desired).

vi. **Facilities and resources that support food safety**

Consuming contaminated food or water can cause a variety of foodborne illnesses. Encampments are often more susceptible to foodborne illnesses due to a lack of storage, cooling appliances, improperly cooked foods, and limited or no access to clean water. Diseases can spread quickly in an encampment setting.

One of the best ways to prevent the spread of illness is to for governments to provide resources that enable the encampment to implement food safety measurements. This includes:

- Rodent-proof storage containers, with lids that can be sealed
- Shelving units to ensure food is stored off the ground
- Soap and sanitizer to clean food preparation surfaces
- Cooling appliance(s) to prevent spoilage
- Cooking appliance(s) to ensure food is thoroughly cooked

vii. **Resources to support harm reduction**

Governments must provide homeless encampments with the resources to implement effective harm reduction measures within homeless encampments. Appropriate professionals should support residents to establish emergency protocols for responding to overdoses and other health emergencies. Encampment residents should be provided with:

- Overdose prevention training (e.g., CPR training)
- Overdose prevention supplies (e.g., Naloxone)
- Overdose Prevention Sites, where possible
- Puncture-proof containers for needle disposal
- Harm reduction outreach supports
- Regular servicing of puncture-proof containers by a certified waste-management company

- Information about available emergency services in the event of overdoses or other health-related crises

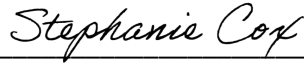
viii. **Rodent and pest prevention**

The presence of rodents and pests can pose a significant threat to the health of residents. Appropriate prevention and treatment options should be available for pest management that are safe for use in human environments (e.g., diatomaceous earth). Encampment residents should be provided with the resources to prevent and address the presence of rodents and pests, including:

- Resources and information on rodent and pest prevention
- A bait-station to detract rodents from sleeping tents, regularly serviced and monitored
- Cleaning materials and gloves to dispose of rodents

In implementing these standards, it must be recognized that residents of encampments are the experts of their living spaces — they often know what resources are needed and how best to mobilize them. As a matter of human rights, encampment residents must be engaged in planning and carrying out any measures developed to improve access to basic services for the encampment. Practices, systems, and agreements residents already have in place should be recognized by government officials and should inform any further improvements.

THIS IS EXHIBIT "H" TO THE
AFFIDAVIT OF LEILANI FARHA
AFFIRMED REMOTELY BEFORE ME AT THE
CITY OF OTTAWA DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG.431/20,
ADMINISTERNG OATH OR DECLARATION REMOTELY
THIS 15TH DAY OF JUNE, 2022



STEPHANIE COX

LSO NO. 65464F

Commissioner for Taking Affidavits, etc

International Covenant on Economic, Social and Cultural Rights

**Adopted and opened for signature, ratification and accession by General Assembly
resolution 2200A (XXI)
of 16 December 1966**

entry into force 3 January 1976, in accordance with article 27

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts thereof, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts thereof, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V**Article 26**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

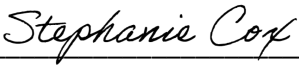
(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

THIS IS EXHIBIT "I" TO THE
AFFIDAVIT OF LEILANI FARHA
AFFIRMED REMOTELY BEFORE ME AT THE
CITY OF OTTAWA DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG.431/20,
ADMINISTERNG OATH OR DECLARATION REMOTELY
THIS 15TH DAY OF JUNE, 2022



STEPHANIE COX

LSO NO. 65464F

Commissioner for Taking Affidavits, etc

/ STATEMENT /

HOMELESS ENCAMPMENTS IN HAMILTON (ON) & RISK OF EVICTIONS

The Shift is concerned as protections for residents of homeless encampments are rolled back in the City of Hamilton, threatening the human rights of encampment residents. The City has announced its intent to revoke its Bylaw Enforcement Protocol¹ relating to homeless encampments as of 30th August 2021, leaving hundreds of people at immediate risk of eviction from their homes within encampments. This Protocol – arrived at in an agreement between the City and encampment residents, advocates, and community partners – provided protections against such an eviction, particularly for those with high acuity needs. Such a revocation, in absence of ensuring access to adequate housing for encampment residents, is inconsistent with human rights, and will likely result in deepening marginalization, trauma, health inequities, and safety risks for these community members.

The decision to now end the Protocol has seemingly been made without meaningful consultation with encampment residents and community advocates and fails to recognise the continuing housing and shelter crisis in Hamilton. Access to adequate, affordable housing continues to be out of reach for many people in Hamilton, including those residing in encampments. Shelters and hotels have confirmed that there is not enough space available to accommodate the minimum 135 people who may, from 30th August 2021, be evicted from homeless encampments across the city. Furthermore, many shelters remain inaccessible or unsafe for some people experiencing homelessness, particularly in the midst of the global pandemic.

Should the City revoke the Protocol, evict encampments, and fail to ensure access to adequate housing for encampment residents, the City of Hamilton will be in breach of their human rights obligations as outlined by the UN Special Rapporteur on the Right to Adequate Housing in [A National Protocol on Homeless Encampments in Canada – A Human Rights Approach \(2020\)](#).

Homelessness is itself a prima facie violation of the human right to housing, which has been codified in federal legislation through the National Housing Strategy Act of 21 June 2019. Under human rights law, evicting residents from encampments without their consent and without providing adequate alternative housing constitutes a forced eviction and is a gross violation of the right to housing. Such an eviction is never permissible under any circumstances.

¹ The Bylaw Enforcement Protocol arose from an agreement, in the Fall of 2020, between the City and encampment residents, advocates, and community partners. Taking into account the lack of adequate housing options in Hamilton, the Protocol required the City to assess the individual needs of all people living in homeless encampments and draw up personalised housing plans for them, seeking to enact a people-centred approach. Under the Protocol, those who were regarded as having high acuity needs would only be required to leave their encampment shelter if there was no suitable alternative accommodation available for them to move into. Those with lower acuity could remain in their encampments for 14 days, before being forced to leave.

THE SHIFT

#RIGHT2HOUSING

/ @make_theshift / info@make-the-shift.org / www.make-the-shift.org /

/ STATEMENT /

The City of Hamilton – like all governments in Canada – has an obligation to urgently address encampments in a human rights compliant manner and to ensure that all those living in encampments are recognized as rights holders, on a path towards secure, permanent housing. In order to be consistent with international human rights law and federal government housing policy under the National Housing Strategy Act, the City of Hamilton must:

- Abstain from evicting encampments in the absence of consent from encampment residents and without providing adequate,² alternative housing, with necessary supports, to encampment residents.
- Ensure any plans, policies, decisions, and actions made by the City in relation to encampments are only made following meaningful consultation with encampment residents, ensuring these residents opportunities to meaningfully influence the policies that affect them.
- Recognize that relying on temporary accommodation such as shelters and hotels to accommodate people evicted from encampments is wholly inconsistent with the human right to adequate housing. Shelters and hotels do not provide the long-term, secure housing that people who have experienced homelessness have a right to.
- Urgently take continual steps toward providing adequate, affordable, and secure housing for those living in homelessness, using all means and resources available.
- Adopt a policy approach to encampments that aligns with the obligations outlined in [A National Protocol on Homeless Encampments in Canada – A Human Rights Approach](#).

The lives and rights of human beings are at stake. It is imperative that the City of Hamilton take immediate action to recognise its obligations under international human rights law and take concerted measures to ensure its compliance with these. If it remains on its current trajectory, the City will breach the right to adequate housing of hundreds of people and exacerbate an already acute housing crisis.

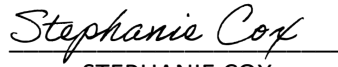
² Adequate housing is defined as housing which provides residents with dignity, safety, and security. To be regarded as adequate housing must be affordable, habitable, be located near to infrastructure and employment and education opportunities, be sensitive to cultural needs, contain necessary services such as water, sanitation and heating, be accessible, and provide its inhabitants with security of tenure.

THE SH/FT

#RIGHT2HOUSING

/ @make_theshift / info@make-the-shift.org / www.make-the-shift.org /

THIS IS EXHIBIT "J" TO THE
AFFIDAVIT OF LEILANI FARHA
AFFIRMED REMOTELY BEFORE ME AT THE
CITY OF OTTAWA DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG.431/20,
ADMINISTERNG OATH OR DECLARATION REMOTELY
THIS 15TH DAY OF JUNE, 2022



STEPHANIE COX

LSO NO. 65464F

Commissioner for Taking Affidavits, etc



INFORMATION REPORT

TO:	Chair and Members Emergency and Community Services Committee
COMMITTEE DATE:	September 9, 2021
SUBJECT/REPORT NO:	Encampment Response Update (PED21188/HSC20038(c)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Monica Ciriello (905) 546-2424 Ext. 5809 Edward John (905) 546-2424 Ext. 4860
SUBMITTED BY: SIGNATURE:	Jason Thorne General Manager Planning and Economic Development Department
SUBMITTED BY: SIGNATURE:	Grace Mater General Manger Healthy and Safe Communities Department

COUNCIL DIRECTION

At its August 9, 2021 meeting, Council approved the repealing of the By-law Enforcement Protocol that permitted some individuals to camp in public spaces for up to 14 days. Further to that decision and the three-week winddown associated with it, as of August 30, 2021, the City returned to pre-protocol enforcement of City by-laws that prohibit camping on City property, including park areas.

INFORMATION

The COVID-19 pandemic highlighted and exacerbated ongoing systemic challenges and inequities across Canada as it relates to housing and homelessness. This has been demonstrated by the rise in, and visibility of, unsheltered homelessness and encampments throughout many Canadian cities. Person-centred strategies and approaches are required to address urgent issues associated with supporting residents

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Encampment Response Update (PED21188/HSC20038(c)) (City Wide) -
Page 2 of 8**

experiencing homelessness and living in encampments, while supporting long-term adequate housing solutions and broader community needs.

Encampment Process

With the repealing of the By-law Enforcement Protocol, staff will proceed with the following Encampment Process:

Step one

Complaints are received by Municipal Law Enforcement (MLE) regarding structures/tents in parks, road allowance and private property.

Step two

MLE attends, determines if there is a violation of a City By-law including the Parks Bylaw, seeks voluntary compliance and notifies Housing Outreach.

Step three

Housing Focused Street Outreach attends site and carries out the following:

- Work from Housing Focused Street Outreach framework and within the context of Hamilton's Homeless Coordinated Access System
- Support individuals, families and groups, in order to promote connection to shelter, housing and the achievement of their optimal health and well-being
- Collaborative development of housing and service plans
- Assist individuals with obtaining necessary documents needed to obtain housing, including the completion of supportive and subsidized housing applications
- Collaborate and co-ordinate services with appropriate community and health agencies
- Crisis intervention
- Provide a summary of these actions (omitting any privileged and confidential information) in the form of an encampment assessment checklist to MLE pursuant to their request

Step four

MLE re-attends and issues a verbal trespass notice and notifies Hamilton Police Service (HPS).

Step five

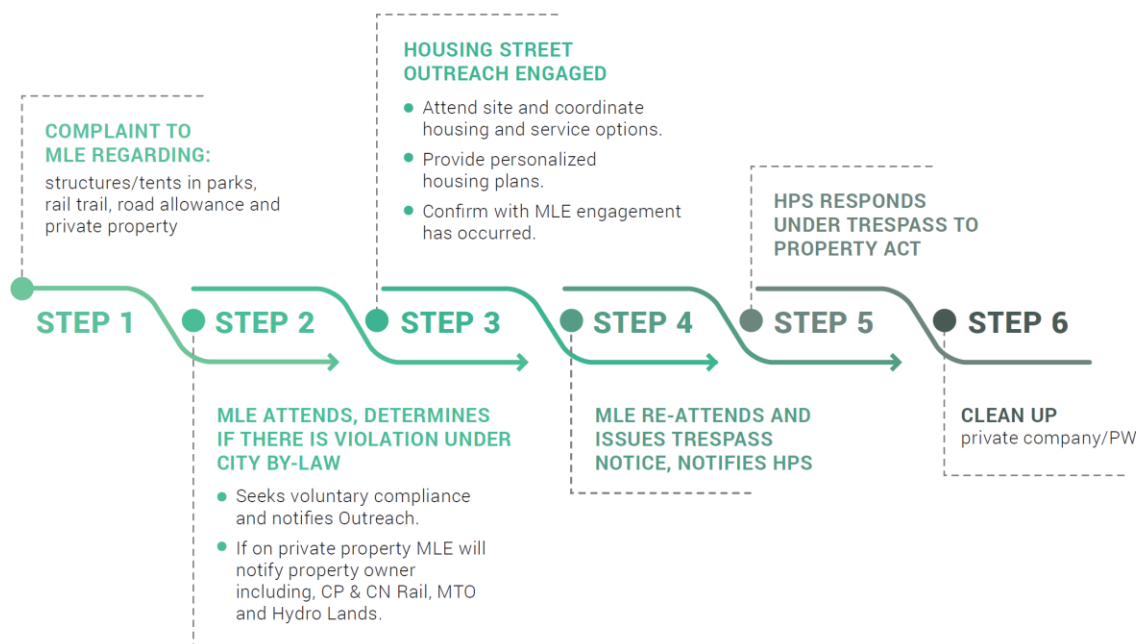
Hamilton Police Service responds under the *Trespass to Property Act*, R.S.O. 1990, c. T.21

Step six

Park and Waste Divisions are contacted to coordinate a clean up.

Table 1

Encampment PROCESS MAP



Encampment Response

The City of Hamilton's Licensing and Bylaw Services Division will be the first point of contact for complaints regarding structures and tents in parks, road allowances and private property. MLE Officers will attend to determine if there is a City Bylaw, including the Parks By-law 01-291 violation, which prohibits camping on City property, including park areas. MLE Officers will be responding to complaints proactively Monday to Friday and reactively on weekends along with other COVID-19 By-law and Provincial Regulation priorities. MLE Officers will attend, provide education and seek voluntary compliance under the City Bylaw, ticketing those who are unsheltered will not be a course of action. If determined to be private property, MLE Officers will notify the property owner, including CP & CN Rail and MTO. If voluntary compliance is not achieved, MLE Officers will reach out to the Street Outreach team within the Housing Services Division and the Social Navigator Program.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Encampment Response Update (PED21188/HSC20038(c)) (City Wide) -
Page 4 of 8**

The Housing Focused Street Outreach team will, if not already, attend the site and engage with those individuals currently unsheltered. Outreach will endeavor to provide an update summary of the site including identifying potential opportunities for connection to services and housing for those individuals, assess their needs and update MLE of the actions that have occurred.

MLE Officers will re-attend the location and, a verbal trespass notice would be issued to those contravening the bylaw. MLE will contact the Hamilton Police Service as the *Trespass to Property Act*, R.S.O. 1990, c. T.21 is a Provincial Act enforced by HPS. The City will continue to collaborate with HPS and the Social Navigator with regard to the service pathway. The last step will be to contact the Public Works Department (Parks, Streets, Waste Management) to coordinate a clean up.

Following the Council decision to repeal the By-law Enforcement Protocol, the City of Hamilton's Housing Services Division remains focused on supporting individuals experiencing homelessness in securing safe and affordable housing, by continuing to take an individualized approach to connect them to available supports.

Housing Services' Housing Focused Street Outreach Team connects with unsheltered individuals, regardless of their circumstances, to assess their immediate needs and housing preferences. The team completes common consent and intake forms for individuals not yet on the City's By-Name List (BNL), supports with benefit applications, unit viewings, harm reduction supplies, connections and referrals. As part of the City's homeless-servicing system, Outreach uses a shared system-wide database to stay connected to residents in encampments and outside of encampments in areas such as alleys, vacant lands, etc. Outreach services are provided to unsheltered residents across the geographic area of Hamilton Monday to Friday from 8:00 a.m. to 8:00 p.m. and Saturday and Sunday from 8:00 a.m. to 4:00 p.m. On a daily basis, the team undertakes progressive engagement to offer shelter or other available (and appropriate) space, works with individuals to find safe and supportive housing options, and works to address any barriers including a referral to our health partners.

During the COVID-19 pandemic, emergency shelter capacity has been expanded; however, occupancy pressures exist, particularly for women. Challenges remain in the access to available beds and in a number of instances capacity is not available. For example, length of stay in shelters has increased significantly during the pandemic and, with factors such as unaffordable costs of rent, housing availability has not kept pace with demand. Longer stays impact shelter bed turnover frequency, thus reducing the capacity of shelters to serve a higher volume of individuals. Outbreak status, availability of appropriate supports, staff turnover, shortages and burnout further impact the responsiveness of the system. When a move from encampment to emergency shelter occurs, the City of Hamilton recognizes that this remains a temporary measure of accommodation until safe, secure and adequate housing is secured.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Encampment Response Update (PED21188/HSC20038(c)) (City Wide) -
Page 5 of 8**

For individuals for whom emergency shelters are not an option, Housing Services' Outreach Team supports connection to health partners, works to address issues related to service restrictions, and continues progressive engagement towards accepting housing assistance. The City of Hamilton funds numerous agencies to assist in the housing of homeless individuals through funding streams such as the Federal Reaching Home program. City staff monitor, advise and assist these agencies in meeting predetermined targets through the homeless-serving sector's coordinated access system. From January 2020 to present, approximately 440 individuals and families have been housed by agencies funded by the City. Of the approximately 440 households housed, this includes people who have been unsheltered at one point during that time period. Since March 2020, more than 70 individuals were housed directly from encampments.

Outreach staff engage with every individual from a rights-based approach, ensuring dignity and confidentiality is maintained. On an ongoing basis, both Housing Services and agency staff work from a person-centred approach to engage with individuals in order to refer and make connections to appropriate support and resources. Referrals may include Intensive Case Management, Rapid Rehousing, Transitional or permanent supportive housing programs, in addition to housing affordability benefits, depending on individuals' needs, preferences and available resources. Increased engagement for the direct purpose of assessing effectiveness of approaches and appropriateness of available resources will continue to inform potential changes or adaptations to service and supports over time.

Coming Together to End Homelessness: Hamilton's Systems Planning Framework outlines a strategic local approach to preventing and ending homelessness, which must account for the systemic over-representation of Indigenous persons experiencing homelessness. The City is committed to ongoing coordination with Hamilton's Urban Indigenous Community to ensure that approaches to service coordination and provision are culturally appropriate, safe and built on principles of relationship, trust and informed consent. This includes ongoing discussion to achieve equitable access to resources including, for example, housing affordability benefits as they become available to support unsheltered individuals who identify as Indigenous. Through ongoing dialogue with the Indigenous community, the City aims to ensure appropriate referrals are consistently made from mainstream supports to Indigenous agencies, including at intake by City outreach staff.

The City continues to commit to permanent housing solutions by implementing increased prioritization of those in encampments for permanent housing and intensive case management support programs while continuing multi-sectoral discussions to enhance permanent housing with supports options. From September to December 2021, Housing Services Division, together with partner agencies, will undertake a

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Encampment Response Update (PED21188/HSC20038(c)) (City Wide) -
Page 6 of 8**

housing campaign to maximize resources and collaboration to house 250 households experiencing homelessness.

Health and Safety Concerns

Due to the vulnerability and transience of encampment populations, health and safety concerns are present for both residents and City staff. COVID-19 exposure, verbal and sometimes physical aggressions have been noted at various sites. MLE Officers are not trained in outreach or mental health engagement techniques and therefore cannot offer support to address health and safety for encampment residents. This fact extends to include staff themselves, who navigate a challenging array of health and safety concerns when carrying out their duties. For example, Waste management staff have received numerous negative comments, which may be perceived as threats from residents, activists, advocates and the general public. Staff have been videotaped with postings on social media platforms such as Twitter and Facebook. Staff have been called repeatedly at all hours on their cell phone. In one instance a staff member was assaulted during clean up, resulting in injuries to the worker and charges being laid by Hamilton Police Service. As a result, the injured employee has yet to return to work.

There is a steady increase of incidents involving the Hamilton Fire Department and the Hamilton Police Service. Where emergency service response is needed, the City will respond swiftly with staff health and safety supports. Healthy and Safe Communities Department staff are better able to flag resident health and safety concerns to the appropriate support services for timely resolution.

The professional skillset required of Housing Service's Outreach staff facilitates mitigation of challenging behaviours, circumstances and establishment of positive rapport. Staff have been trained in non-violent crisis intervention, work only in pairs and are in constant communication with each other.

Budgetary Implications

Costs vary site to site; while staff time is not itemized by site, typical contractor costs for waste management average \$15 K. Across all encampments, average monthly security costs have been approximately \$23 K from October 2020 to July 2021.

Licensing and By-law Services

Council may direct Licensing and Bylaw Services (LBS) to enforce 7 days a week, inclusive of evenings and weekends. To oversee and coordinate the MLE officer response for encampments 7 days a week LBS requires 1 temporary FTE By-law Clerk at a cost of \$26, 162 and 1 temporary FTE MLE Officer at a cost of \$30, 795 from the date of Council approval to December 31, 2021. These staff will assist in the collection of

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Encampment Response Update (PED21188/HSC20038(c)) (City Wide) -
Page 7 of 8**

weekly stats on complaints received, locations of encampments, determine priority locations in collaboration with others on the Encampment Response Team, provide status updates as to the step each encampment site is in throughout the City. MLE Officers will be attending encampment sites in pairs, and one additional temporary FTE MLE Officer will allow for a timely proactive and reactive response to each encampment site 7 days a week. The Bylaw Clerk will provide administrative support to the MLE Officers and will ensure all tracking, scheduling, monitoring, entering areas of concern, preparation of orders, and dispatch to this team 7 days a week. The total cost would be \$56,958.

Emergency Services Responses

The Hamilton Fire Department has attended to an increasing number of incidents involving encampments and individuals experiencing homelessness over the last three years (54 incidents in 2019, 82 incidents in 2020, and 101 incidents to date in 2021). The majority of incidents in 2021 to date have involved burning (controlled) and property fires/explosion.

Hamilton Paramedic Service responded to 55 encampment related calls in four parks from October 1, 2020 to August 31, 2021. There has been a steady increase in paramedic service response to encampments in City parks in 2021, ranging from two in January to 15 in August.

The Hamilton Police Service indicated there were 502 events from October 1, 2020 to August 31, 2021 related to six known encampment locations, but not necessarily due to the presence of an encampment. These incidents include events related to trespassing, assist (ambulance & fire), and other events requiring police service response (i.e. assault, harassment, protests, etc.)

Government Outreach

There remains an ongoing need to align provincial health and housing and homelessness investments to enable service managers to provide permanent housing with supports for high acuity chronically homeless individuals living in shelters and encampments. Strategic investment and partnership between Ontario Health West and City of Hamilton can demonstrably reduce chronic homelessness in Hamilton and the reliance on emergency hospital resources for those with the most complex, co-occurring needs.

Staff are actively pursuing funding opportunities from higher levels of government to address these needs. Specifically, the Ministry of Health (Ontario), Associate Minister of Mental Health and Addictions and the Ministry of Municipal Affairs and Housing (Ontario) in addition to the equivalent Ministries federally such as Health, Housing,

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Encampment Response Update (PED21188/HSC20038(c)) (City Wide) -
Page 8 of 8**

Infrastructure and Communities, and Families, Children and Social Development. Staff have proposed a pilot project to the Government of Ontario in order to address the needs of high-acuity individuals in Hamilton, this pilot outlines the resources required to take immediate action.

The proposed pilot would include 40 new units of supportive housing to address the needs of higher acuity individuals and continuing existing outreach activities will address needs in a new and improved way. The total funding necessary to undertake this development is \$2,440,000. The request for on-going provincial operational funding is \$1,940,000.

Staff have been using forums like the Association of Municipalities of Ontario (AMO), Federation of Canadian Municipalities (FCM) and Ontario Big City Mayors, of which Hamilton is a member, to further advocacy and align objectives in voicing our concerns about the lack of funding from higher levels of government to address these immediate needs. AMO, FCM and Ontario Big City Mayors are focused on improving supports for mental health. Ontario Big City Mayors has provided recommendations to support and complement the Province's Road to Wellness plan which seeks to improve mental health and addictions services across Ontario. The proposed recommendations and desire to collaborate demonstrate the need for municipalities to work with other levels of government and local service providers to ensure residents can access the help they need, where and when they need it.

APPENDICES AND SCHEDULES ATTACHED

None

TAB 94

Court File No. CV-21-00077817-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN
ARNOLD, ET AL.**

Applicants

-and-

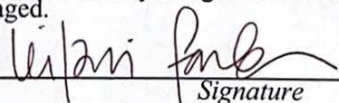
CITY OF HAMILTON

Respondent

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Leilani Farha. I live in Ottawa, in the Province of Ontario.
2. I have been engaged by or on behalf of the Hamilton Community Legal Clinic to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise;
and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date June 15, 2022



Signature

TAB 95

LEILANI FARHA

67 Sunnymede Ave. Ottawa, ON K1Y 2L5 CANADA
 +1.613.302.7769
 leilani@maketheshift.org

HIGHLIGHTS

- University Health Network, Gattuso Social Medicine Clinic, Fellow (2024 – 2025)
- Open Society Foundation – Fellow (June 2020- June 2021).
- Co-Host of PUSHBACK Talks – podcast about cities, housing, finance and human rights. Listeners in over 160 countries.
- UN Special Rapporteur on adequate housing (May 2014 – April 2020).
- World Premiere of documentary film PUSH, CPH:Dox Festival, Copenhagen, Denmark. (March 2019, lead character).
- Jack Layton Award for Progressive Leadership (March 2019).

EDUCATION AND QUALIFICATIONS

2015	Honorary Doctor of Humane Letters (DHumL) Mount Saint Vincent University, Halifax, Nova Scotia.
1997	Admitted to the Bar of Ontario
1991 - 95	Bachelor of Law (LLB), University of Toronto Master of Social Work (MSW), University of Toronto
1986 - 90	Bachelor of Arts, English Literature (B.A.), Honours University of Toronto, Victoria College

WORK EXPERIENCE

2020 – Present	The Shift <i>Global Director</i>
2014 – 2020	<i>UN Special Rapporteur on the right to adequate housing and to non-discrimination in that context</i>
2012 – 2020	Canada Without Poverty <i>Executive Director</i>

2002 – 2012

Centre for Equality Rights in Accommodation
Executive Director

1997 – 2001

Centre on Housing Rights and Evictions (COHRE),
Women's Programme Coordinator/Legal Officer

RECENT SPEECHES + PRESENTATIONS

Urban Future Conference, “Is a just transition for housing possible?” (Rotterdam, 5 June 2024)

University of Nebraska – Lincoln, E.N. Thompson Forum on World Issues 2023-2024, Keynote Speech, “Back Home: Returning Housing to Human Rights” (Lincoln, 9 April 2024).

Hispanic Federation, Keynote Speaker, ¡Nos quedamos! We stay! Just alternatives to regulate short-term rentals in Puerto Rico, Keynote Speech, “Human Rights and Short-Term Rental Platforms”, (Puerto Rico, 7 March 2024).

University of Toronto, John H. Daniels, School of Architecture, Keynote Speech, “Architecture and the Right to Housing” (Toronto, 21 March 2024).

UCLA, Town Hall, Panelist, “The Right to Housing in California’s Constitution” (Los Angeles, 11 April 2024, virtual).

Government of Brazil, International Housing First Seminar, Keynote Speaker, “Human Rights and International Norms for the Operationalization of Housing First” (Brasilia, 28-29 November 2023).

Green Social Summit, Keynote Speaker, “Affordable housing is a human right” (Madrid, 29 September 2023).

Association of Municipalities in Ontario, AMO Annual Conference, Panelist, “Root Causes and Systemic Solutions for Ending Homelessness” (London, ON, 23 August 2023).

International Social Housing Festival, Keynote Speaker, “Human Rights and Housing Systems in Southern Europe” (Barcelona, 7-9 June 2023).

Human Rights Cities Leadership Summit, Panelist, “Housing and the Right to the City” (Atlanta, 19 May 2023).

Cities Summit of the Americas, Panelist, “Building on the Experience of the Cities for Adequate Housing Movement”, (Denver, 27 April 2023).

The Canadian Museum for Human Rights, Keynote Speaker, “3,2,1... Liftoff! A Mission Approach to the Right to Housing” (Winnipeg, 20 April 2023).

SHARE Investor Summit, Panelist, Investors For Affordable Cities. “Exploring Principles For Responsible Investment In Residential Real Estate” (Vancouver, 15 February 2023).

Ontario Non-Profit Housing Association, Keynote Speech, “Vultures, Parasites, and Zombies - Cleaning House with Human Rights” (Toronto, 5 November 2022).

Home for 10 | Scotland's Annual Homelessness Conference, Keynote, “Making the Shift” (Glasgow, 4 October 2022).

SELECTED OPINION PIECES

“[National Housing Council’s Missed Opportunity](#)”, co-authored with Julieta Perucca, The Hill Times (10 June, 2024).

“[Israel lied about UNRWA. US and UK must end their dehumanising defunding of Palestinian aid](#)”, The New Arab (1 May 2024).

“[On Israel-Gaza, Canada must rise to the humanity of the moment](#)”, co-authored with Alex Neve, Sen. Kim Pate, The Hill Times (15 November, 2023)

“[Here is what cities should do about encampments](#)”, The Toronto Star (9 November, 2023).

“[Student housing used to be affordable. Why has it become an ‘asset class’ to enrich the already wealthy?](#)”, The Guardian (30 August, 2023).

“[An Ontario ruling defending those living in encampments is only a partial victory](#)”, co-authored with Diana Chan McNally, The Globe and Mail (1 February, 2023).

“[Time to hear from the Ottawa residents who endured the trucker convoy](#)” co-authored with Alex Neve and Debbie Owusu-Akyeeah (The Ottawa Citizen (11 July, 2022).

“[Here’s how rocketing rents and unaffordable house prices can be fixed](#)”, The Guardian (2 June, 2022).

“[Profit mongers should have no home in Canada’s housing market](#)”, co-authored with Julieta Perucca, The Globe and Mail (16 June, 2021)

“[Homelessness is rising but is neither inevitable nor unstoppable](#)” co-authored with Juha Kaakinen, The Guardian (10 December 2020)

“[States have to ensure adequate housing amid the pandemic](#)”, Al-Jazeera Opinion, (August 19, 2020).

“[How can billions of people ‘stay home’ to beat Covid-19 without a safe place to live](#)”, The Guardian (April 29, 2020).

“[When Governments sell out to developers, housing is no longer a human right](#)”, The Guardian (February 29, 2020).

“[Grenfell Tower is a terrible betrayal of human rights](#)” *The Guardian*, (June 21st, 2017).

“[Housing is a human right, not a commodity](#)” *The Globe and Mail*, (March 30, 2017).

“[Homeless people are not cockroaches or vermin – they are human and have rights](#)” *The Guardian* (21 December, 2015).

SPECIAL RAPPORTEUR SELECTED THEMATIC REPORTS

2020

Guidelines for the Implementation of the Right to Housing
A National Protocol for Homeless Encampments in Canada

2019

The Right to Housing of Indigenous Peoples
The Right to Housing and Access to Justice

2018

Upgrading Informal Settlements and Encampments
Human Rights Based Housing Strategies

2017

The Financialization of Housing and Human Rights
The Right to Housing of Persons With Disabilities

2016

Homelessness and the Right to Housing

2015

The International Human Rights Obligations of Sub-National Governments

RECENT SELECTED PUBLICATIONS

[*The right to housing: A mission-oriented and human rights-based approach*](#), co-authored with Mariana Mazzucato, (30 May, 2023). Written as part of a series by the Council on Urban Initiatives.

[*Area C is Everything: Planning for the Future of Palestine*](#) (March, 2023). Written as a consultant to the Norwegian Refugee Council.

Homelessness, Housing and Human Rights Accountability in [*Displacement City: Fighting for Health and Homes in a Pandemic*](#) ed. Cathy Crowe (University of Toronto Press, 2022)

The Human Right to Housing in the Age of Financialization in [*Research Handbook on Human Rights and Poverty*](#), co-authored with Kaitlin Schwan, ed. Martha Davis and Morton Kjaerum (2021).

[*Model Emergency Housing Legislation*](#): Protecting the Right to Housing during Covid-19, co-authored with Open Society et al. (December 2020).

[*The Frontline Defence: Housing and Human Rights in the time of COVID-19*](#), in [*Vulnerable: The Law, Policy and Ethics of Covid-19*](#), eds. Coleen Flood, Jane Philpott et. al (2020).

Housing Shock: The Irish Housing Crisis and How to Solve It, Rory Hearne, Foreword (2020).

[*A National Protocol for Homeless Encampments in Canada*](#). Co-authored with Kaitlin Schwan (April 2020).

SELECTED STRATEGIC LITIGATION

Intervenor Application, High Court of the Northern Territory, Australia in the Santa Theresa Case involving Indigenous peoples and the “habitability” of housing (forthcoming).

Amicus Curiae brief submitted to the Constitutional Court of Hungary in Case [No. III/01628/2018](#),

initiated by Kaposvár District Court (Kaposvári Járásbíróság) regarding the constitutionality of amendments to section 178/B of the Act II of 2012 on Misdemeanors, in relation to persons residing in public spaces as habitual dwelling. (Submission: December 2018).

Canada Without Poverty vs. *Canada* – Charter of Rights and Freedoms, Freedom of Expression challenge to income tax act provisions governing charities. (Decision: July 2018).

Amicus Curiae brief submitted to the Constitutional Court of the Republic of Guatemala, Ref. File No. 2698-2017 regarding the [*Community of Laguna Larga*](#).

[*MDB et al. v. Spain*](#) - Third Party Intervention to the Committee on Economic, Social and Cultural Rights with respect to Communication 5/2015. (Decision: January 2017).

SELECTED HUMAN RIGHTS RESEARCH MISSIONS

2015 - 2020

Countries: Cabo Verde, Chile, Egypt, France, India, New Zealand, Nigeria, Portugal, Serbia and Kosovo, South Korea,

Cities: Barcelona, Berlin, Detroit, Dublin, Jakarta, Lausanne, London, Los Angeles, Manila, Mexico City, Oakland, San Diego, San Francisco, Toronto, Vancouver, Vienna.

TAB 96

1 Court File No. CV-21-77187 2 ONTARIO 3 SUPERIOR COURT OF JUSTICE 4 B E T W E E N: 5 6 KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH, 7 MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, 8 CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER, 9 CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, 10 ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL, 11 SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and 12 PATRICK WARD 13 Applicants 14 - and - 15 16 CITY OF HAMILTON 17 Respondent 18 19 20 --- This is the Cross-Examination of LEILANI FARHA 21 on her Affidavit sworn June 15, 2022, herein, taken 22 via videoconference hosted by Nimigan Mihailovich 23 Reporting Inc. on the 27th day of August 2024. 24 25 NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	1 TABLE OF CONTENTS 2 INDEX OF EXAMINATIONS: PAGE NO. 3 LEILANI FAHRA; Affirmed 4 CROSS-EXAMINATION BY MR. DIACUR.....5 5 6 The following list of undertakings, advisements and 7 refusals is meant as a guide only for the 8 assistance of counsel and for no other purpose. 9 10 INDEX OF UNDERTAKINGS 11 The questions/requests undertaken are noted by U/T 12 and appear on the following page/line numbers: 13 10:24 14 15 INDEX OF ADVISEMENTS 16 The questions/requests taken under advisement are 17 noted by U/A and appear on the following page/line 18 numbers: None noted 19 20 INDEX OF REFUSALS 21 The questions/requests refused are noted by R/F and 22 appear on the following page/line numbers: 34:15 23 24 25 NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
1 APPEARANCES: 2 3 Sujit Choudhry For the Applicants 4 5 Jordan Diacur For the Respondent 6 7 8 IN ATTENDANCE: 9 10 Curtis Sell - CLCYR 11 Liz Marr 12 Michelle Sutherland - CLCYR 13 Sharon Crowe - HCLC 14 15 16 17 18 19 20 21 22 23 24 25 NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	1 TABLE OF CONTENTS (Continued) 2 INDEX OF EXHIBITS. 3 EXHIBIT NO./DESCRIPTION PAGE NO. 4 NO. 1 (for identification): NOW 16 5 Magazine article - the case for a 6 human rights response to homelessness 7 encampments 8 NO. 2: Main web page from The Shift 38 9 website 10 NO. 3: Subpage from The Shift 43 11 "Homeless Encampments" 12 13 14 15 16 17 18 19 20 21 22 23 24 25 NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

5 1 ---Upon Commencing at 1:30 p.m. 2 LEILANI FARHA; Affirmed. 3 CROSS-EXAMINATION BY MR. DIACUR: 4 1 Q. So, ma'am, where are you 5 participating from today? 6 A. I am participating from Ottawa, 7 the un-ceded territory of the Anishinabe. 8 2 Q. I see you're in a living space, 9 are you alone? 10 A. Yes, I am. It's my home 11 office. 12 3 Q. Understood. I just wanted to 13 make sure. 14 A. Yeah. 15 4 Q. And you understand that you are 16 to receive no assistance in giving your answers 17 today? 18 A. Yes, I do understand that. 19 5 Q. But you can certainly refer to 20 your affidavit, which is dated June 15th, 2022, 21 but aren't to refer to any other documents unless 22 you state on the record what you're referring to 23 and we can make it an exhibit. You'd also need to 24 explain how it informs your evidence and opinion, 25 understood? NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	347⁷ 1 12 Q. Understood, yes, I'm familiar 2 with that. Other than that, no experience as a 3 witness previously? 4 A. Correct. 5 13 Q. And your affidavit sworn June 6 15th, 2022, do you have a copy of that? 7 A. Yes, I do. 8 14 Q. I'm also going to share my 9 screen. I'll put a copy of it up on the screen. 10 So as we go through it I'll put the pieces of it 11 that I'm referring to on the screen. You're 12 perfectly free to refer to the electronic version 13 or to the hard copy. 14 A. One second, it's saying that I 15 am unable to -- 16 15 Q. You can't see -- 17 A. I can't see, no, because it was 18 outside -- sorry, there was a pop up and it's 19 disappeared now. It said it was outside the 20 parameters of my viewing, so I'm just trying to -- 21 MR. DIACUR: I'll stop sharing. 22 MR. CHOUDHRY: Can we go off the 23 record for a second. 24 MR. DIACUR: Sure. 25 -- OFF RECORD -- NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
6 1 A. Yes, I do understand that. 2 6 Q. And you've just been affirmed 3 to tell the truth? 4 A. Yes, I have. 5 7 Q. Okay. So, ma'am, what do you 6 understand your role to be in this litigation? 7 A. I understand that I am to 8 provide expert testimony on international human 9 rights law as it pertains to encampments in 10 particular. 11 8 Q. So to provide opinion evidence 12 that is fair, objective and nonpartisan? 13 A. Yes, sorry, indeed. 14 9 Q. To provide opinion evidence 15 that's related only to matters that are within 16 your area of expertise? 17 A. Absolutely. 18 10 Q. Have you ever been qualified to 19 give evidence as an expert witness in a court in 20 Ontario before? 21 A. Not as an expert witness. 22 11 Q. But you have given fact 23 evidence before? 24 A. I was the principal affiant in 25 a Charter case related to charity laws in Canada. NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	8 1 MR. DIACUR: Just off the record we 2 had a conversation about technical matters in 3 terms of sharing screen and documents. It looks 4 like the witness can now see the shared screen, so 5 I'm content to proceed on that basis. Counsel, is 6 that all right? 7 MR. CHOUDHRY: Yes, it's fine with 8 me. And, Ms. Farha, if at any point you have a 9 problem, put your hand up, please, even if, you 10 know, the question is still being posed because 11 you're not going to be able to do much if you 12 can't see what's being referenced, okay? So just 13 give us the feedback, okay? 14 THE DEPONENT: Yes, I'll make you 15 aware. 16 BY MR. DIACUR: 17 16 Q. Thank you. I'm more than happy 18 to see what we can do to accommodate any technical 19 issues. 20 MR. CHOUDHRY: Yes. 21 BY MR. DIACUR: 22 17 Q. So the affidavit sworn June 23 15th, 2022 is on the screen. I would like to 24 start with paragraph 3 of that affidavit. So it 25 comes under a subheading Professional Background NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

9 1 and Expertise, and the paragraph begins: "I am a 2 lawyer by training". Do you see that? 3 A. Yes, I can see it. 4 18 Q. Okay. And you also say in this 5 paragraph that you have worked on the 6 implementation of the right to adequate housing. 7 That phrase, "implementation of the right to 8 adequate housing", what does that mean? 9 A. To me the implementation of the 10 right to housing means working with governments, 11 in particular, so that they understand what the 12 international human right to housing actually 13 means and what their obligations are in that 14 regard. 15 19 Q. Okay. And what has been done 16 to implement that? 17 A. Oh, you want -- would you like 18 me to cover my 20 years of experience or...? 19 20 Q. Well, I do have your CV, so I 20 suppose the question is ultimately, does the CV 21 capture all of the work that you have done to 22 implement what you refer to as the right to 23 adequate housing? 24 A. Well, we would have to go 25 through the CV item by item to determine which NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	348¹¹ 1 MR. DIACUR: Okay. 2 BY MR. DIACUR: 3 23 Q. So paragraph 4 of your 4 affidavit indicates that you're the Global 5 Director of The Shift, an international movement 6 to secure the right to housing. Do you remain the 7 Global Director of The Shift today? 8 A. I am the Global Director of The 9 Shift. We now refer to it as an organization and 10 not an international movement. 11 24 Q. Understood. But it still 12 exists and that still is your job title? 13 A. Correct. 14 25 Q. And you indicate in this 15 paragraph that you've worked with several 16 municipalities in Canada. What municipalities are 17 those? 18 A. So going from the west across 19 the country, we worked with Victoria, Vancouver to 20 some degree, Edmonton, Saskatoon to some degree - 21 I'm just getting my geography right here - 22 Toronto, Kitchener, sort of the Kitchener- Waterloo 23 Region, Halifax, and we have had some contact with 24 a Peel Region, if I recall. Those are the main 25 ones. NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
10 1 items go to that particular aspect of my work 2 life. So, you know, I'm happy to do that, if 3 that's what you wanted to do. 4 21 Q. Well, the follow-up question 5 was always going to be, does the CV capture 6 everything that you have done in this regard, or 7 is there anything outside the four corners of the 8 CV that you would like to add? 9 A. Well, the CV would only be 10 relevant up to a certain date, the date at which 11 point it was submitted. Obviously I continued to 12 work since that date. So, no, it wouldn't be up 13 to date. 14 I do have a more current CV that I 15 could provide you with. I can't imagine that a CV 16 could cover every aspect of the work I've done on 17 implementation because it's a documentation of 18 very particular things, obviously. 19 22 Q. Understood. So that is where 20 I'm going with this. 21 So, counsel, I would ask for an 22 undertaking that the current version of Ms. 23 Farha's CV be provided. 24 U/T MR. CHOUDHRY: Yes, we'll get that to 25 you. NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	12 1 26 Q. Have you ever worked with the 2 City of Hamilton, Ontario? 3 A. Worked with? No, I wouldn't 4 say that I've worked with the City of Hamilton. 5 27 Q. And so The Shift has not 6 either? 7 A. No, correct. The Shift has not 8 worked with the City of Hamilton. 9 28 Q. Have you ever been to the City 10 of Hamilton? 11 A. In my capacity as Global 12 Director of The Shift or during my tenure as 13 Global Director of The Shift, no, I have not. 14 29 Q. Have you ever been to the City 15 of Hamilton at all? 16 A. Yes, I believe I was there for 17 a homelessness conference many years ago. The 18 Canadian Alliance to End Homelessness held a 19 global, not global, sorry, a national conference 20 there, and I think I went to that. 21 30 Q. Okay. 22 A. Sorry, that's right, that's 23 right. I think I've been to Hamilton one other 24 time when I was the Executive Director of Canada 25 Without Poverty, but, I'm sorry, I can't remember NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

13 1 the date of that. It would have pre-dated the 2 conference I mentioned. 3 31 Q. Okay. Thank you, I appreciate 4 that. 5 So if I scroll down to paragraph 7 6 of your affidavit you indicate that you've 7 researched and published widely on issues relating 8 to housing rights. You have provided in your CV a 9 list of publications. There's one in particular 10 in that list provided in your CV that I would like 11 to take you to and I have a few questions for you 12 about it. 13 Again, I'm going to stop sharing 14 your affidavit and start sharing that document so 15 you'll be able to see it, at least that's the 16 hope. I'm going to put it up on the screen now. 17 It will take a moment to pop up. 18 So can you see this document? At 19 the top it says: "The case for a human rights 20 response to homelessness encampments - NOW 21 Toronto". 22 A. Yes. 23 32 Q. And there's a date February 24 11th, 2020; is that right? 25 A. Yes. Was that co-authored with NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	349¹⁵ 1 actual publication of it, but you recall it being 2 prepared? 3 A. That's correct. 4 37 Q. Okay. All right. 5 Then, counsel, I would like to mark 6 this document Exhibit "A" for identification given 7 that the witness has identified she hasn't seen 8 this publication before but recalls writing it. I 9 have a couple of questions for you about the 10 content. 11 MR. CHOUDHRY: Mr. Diacur, this is a 12 small thing, but we've been numbering some of the 13 exhibits in the crosses because the exhibits to 14 the affidavits are lettered, that helps to keep 15 things -- it's up to you, but just a suggestion. 16 MR. DIACUR: It's my normal 17 practice, and I don't have a problem with doing 18 that if that's the choice. But my normal practice 19 is where an exhibit is identified by a witness and 20 it's going into the record for that purpose I 21 would give it a number. If it's being marked for 22 identification only, a letter. But I'm happy to 23 mark this as Exhibit 1 and it will just be 24 indicated it's for identification. I have no 25 problem with that. NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
14 1 someone? 2 33 Q. Yes, that is actually my next 3 question. So there is, at the end, a statement of 4 who this was written with. So it states: 5 "Leilani Farha is the UN Special 6 Rapporteur on the Right to Housing. Haseena Manek 7 is director of communications for The Shift." 8 So in terms of its co-authorship, 9 Haseena Manek co-wrote this with you; is that 10 right? 11 A. Yes, that's correct. 12 34 Q. And I'll scroll back up to the 13 top. It is the case that this was something that 14 was co-written by you and published in February of 15 2020; is that right? 16 A. It appears so, in NOW magazine. 17 35 Q. Yes. Well, that's the 18 reference to the NOW Magazine publication and 19 that's what's referenced in your CV. So I just 20 want to confirm that this is the article that's 21 mentioned? 22 A. To be honest, I have not seen 23 the article. But I'm assuming based on what I'm 24 seeing before me that this is the article. 25 36 Q. So you're not familiar with the NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	16 1 MR. CHOUDHRY: Okay. 2 <u>EXHIBIT NO. 1 (for identification):</u> 3 NOW Magazine article - the case for a human rights 4 response to homelessness encampments 5 BY MR. DIACUR: 6 38 Q. If I scroll down through this 7 article, it's just at the top of the second page, 8 there's a pair of sentences here. So it starts: 9 "What's happening in Toronto is 10 mirrored across the country, with tent cities 11 dotting the Canadian landscape in Edmonton, 12 Winnipeg, London, Peterborough, North Bay and 13 Fredericton." 14 The second sentence: 15 "Regardless of where they spring up, 16 the experience is disturbingly similar – 17 deplorable conditions and, eventually, evictions." 18 19 A. Eviction. 20 39 Q. Eviction, that's the word used, 21 yes. So you co-wrote that, correct? It is 22 correct you wrote it? 23 A. Yeah, we would have looked up 24 each of those cities to -- and so would the 25 editors at NOW Magazine to make sure that it was a NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

17 1 factual statement for the media. 2 40 Q. I understand that in terms of 3 the list of cities affected. And specifically in 4 terms of: 5 "...the experience is disturbingly 6 similar - deplorable conditions and, eventually, 7 eviction." 8 That remains correct? 9 A. It was correct at the time of 10 writing. 11 41 Q. Does it remain correct? 12 A. Does what remain correct? 13 42 Q. Specifically this statement 14 that the experience is disturbingly similar 15 wherever they spring up. They are deplorable 16 conditions and, eventually, eviction. 17 A. I would say that that's not 18 actually always the case. For example, I was 19 visiting an encampment in Berkley, California 20 where the conditions were incredible. There were, 21 for example, proper water and sanitation 22 provisions made. There was a tent that had been 23 set up for -- 24 43 Q. I don't mean to cut you off, 25 but we're not talking about the United States, NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	350¹⁹ 1 You're familiar with the caselaw that has 2 developed in Canada on the subject of encampments, 3 is that true, as a lawyer? 4 A. I know of, I know of the line 5 of cases, yes. I don't know how familiar I am 6 with them. I'm not sure I've read them all, for 7 example. 8 45 Q. As a lawyer are you aware of 9 what's being asserted by governments in those 10 cases where encampments are erected and then 11 challenged? 12 A. Only the cases that I've read. 13 I read the Kitchener- Waterloo case, for example. 14 But my expertise is on international human rights 15 law, so I don't always read every case that comes 16 out of the various jurisdictions. I run a global 17 organization, so I can't read every case. So I 18 can't say that I'm really familiar what all 19 governments are arguing in these various cases 20 across Canada. 21 46 Q. Is it fair to say that the 22 response of government in terms of asserting 23 property rights or enforcement, by-laws, or for 24 example where encampments are established in 25 public parks, the obligation on the part of the NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
18 1 correct, we're talking about the country being the 2 Canadian landscape. 3 A. The point, actually, that I was 4 making is that it's possible that there is an 5 encampment out there, I haven't been to every 6 encampment in Canada, it is possible to have an 7 encampment that doesn't have deplorable 8 conditions. So I can't say that every encampment 9 in Canada has deplorable conditions, no, I cannot 10 say that. 11 I can say at the time of writing 12 Winnipeg, London, Peterborough, North Bay and 13 Fredericton most likely did. We would have 14 researched that. I can say that I visited some in 15 Canada that have had deplorable conditions. But I 16 cannot say that every encampment has deplorable 17 conditions. 18 44 Q. Thank you, that's helpful. 19 And also here on page 2 there is a 20 statement that I'll scroll down to. You indicate 21 that: 22 "What's mystifying is the response 23 to encampments by all levels of government." 24 And so the next question I want to 25 ask you is specifically about that statement. NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	20 1 municipality to ensure all members of the public 2 are able to use the park are being asserted in 3 these cases? 4 A. I'm sorry, I don't know what 5 your question is. You asked me about this 6 sentence: "What's mystifying is the response to 7 encampments by all levels of government", and the 8 next paragraph explains what I meant. I'm an 9 international human rights lawyer and it mystifies 10 me that governments wouldn't rely on international 11 human rights law in addressing encampments, like 12 they're obliged to do. That's what mystifies me. 13 47 Q. Thank you, that's also helpful. 14 If we go to the bottom of page 2 and over on to 15 page 3, you state: 16 "Governments need to recognize that 17 tent encampments are of their own making. It's 18 time to develop a national protocol on tent 19 encampments based on human rights. 20 What does that mean? Here are the 21 fundamentals:" 22 That's what I mean in terms of going 23 over on to the third page, there's then a set of 24 subheadings in bold and these are the fundamentals 25 that you're referencing, as I understand it; is NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

21 1 that right? 2 A. Yes. It said fundamentals 3 colon and then it went on to the next page and 4 there are those highlighted things. 5 48 Q. One of the first, actually, the 6 first thing on the list is under the subheading "A 7 ban on forced evictions". It goes on to say: 8 "Forced eviction, the permanent or 9 temporary removal of a person from their lands or 10 home – whether an apartment, a house, a tent or a 11 car – constitutes a gross violation of 12 international human rights law, particularly when 13 shelters are at capacity. Laws permitting forced 14 evictions should be repealed. And all viable 15 alternatives to eviction must be explored in 16 consultation with residents." 17 So if I understand that, encamped 18 individuals are rights holders in your opinion? 19 A. That's not what that's saying. 20 So was that your interpretation of a ban on forced 21 evictions? 22 49 Q. Well, I'm trying to determine 23 what this means. So it's a gross violation of 24 international human rights law to evict anyone 25 from, for example, a tent, particularly -- NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	351²³ 1 holder. Every human being, so, yes, encampment 2 residents would be considered human rights 3 holders. 4 52 Q. The statement that I just read 5 under this subheading "A ban on forced evictions", 6 doesn't make a distinction between private and 7 public properties. Are encampments on private 8 property required to be permitted in your opinion? 9 A. Sorry, can you repeat the 10 question? Are encampments on private property? 11 53 Q. Yes. So the statement that I 12 just read doesn't make a distinction between 13 private and public property. Are encampments on 14 private property required to be permitted, in your 15 opinion? 16 A. That's a much more complicated 17 question than are they -- what the legal 18 regulations are on public property. So on private 19 property you have -- it will depend. 20 The residents, let's say the 21 homeless residents, might have been there for a 22 day or two, and that's quite a different situation 23 than if they'd been there on an abandoned piece of 24 private property for ten years. So it's a more 25 complicated process and thought piece in terms of NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
22 1 A. To forcibly, to forcibly evict. 2 This is about forced evictions, involuntary. 3 50 Q. Well, my understanding is that 4 eviction is, by nature, forced. Nobody is evicted 5 voluntarily. 6 A. Well, in international human 7 rights law we use the term "forced evictions" to 8 mean something very particular, which is the 9 involuntary removal of a person from their homes 10 or lands. And the reason that this is important 11 in terms of encampments is it could be that 12 governments could meaningfully engage people 13 living in encampments, and the encampment 14 residents could agree to leave based on that 15 meaningful engagement. And that might be 16 perceived by some as an eviction of sorts, but it 17 wouldn't be a forced eviction. International law 18 deals with forced evictions, and that's what that 19 paragraph, "A ban on forced evictions" is 20 referring to, the gross violation of international 21 human rights law. 22 51 Q. Just so I understand, it is, in 23 your opinion, the case that encamped individuals 24 are rights holders? 25 A. Everyone is a human rights NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	24 1 what should happen. 2 But human rights are considered 3 absolutely fundamental. The idea of forcibly 4 evicting people from where they are living is, 5 under international human rights law, a gross 6 violation. That language, we don't use that 7 language in international law very often, this 8 gross violation language. It means it has to be 9 taken with the utmost seriousness because of the 10 human dignity interest at stake because human life 11 is at stake if you remove someone from where they 12 are living. 13 So to talk about this in the private 14 property area requires a lot of nuancing and 15 discussion around what are the facts on the 16 ground, you know. An abandoned piece of property 17 is very different than my backyard, for example, 18 right? And so that's the best answer I can give 19 you. 20 54 Q. But there are certain 21 circumstances where, in your opinion, an 22 encampment would be required to remain on a 23 private property? 24 A. Under international human 25 rights law we would expect the process to be run NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

25 1 through, as is contained in my affidavit. And I 2 think it's run through in my affidavit in a number 3 of places, what's required. But it normally 4 begins with meaningful engagement, so discussing 5 what's going on with the people who are on the 6 property. Asking them what their needs are. 7 Trying to figure out what their needs are, et 8 cetera. And then there's a long process from 9 there. 10 So I would expect, regardless of the 11 nature of the property, that that human rights 12 process be implemented. It's based on 13 international law. 14 55 Q. I think I may be able to assist 15 in terms of examining that issue. So I understand 16 you did, in fact, prepare a national protocol for 17 homeless encampments in Canada, as you referenced 18 in this document; is that right? 19 A. That's correct. 20 56 Q. And that it's attached to your 21 affidavit, so I'm going to put that up on the 22 screen. 23 A. Sure. 24 57 Q. Jump back to that now. This is 25 Exhibit "G" to your affidavit, which I'll have to NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	352²⁷ 1 and discussion. 2 There were a lot of people involved. 3 There were frontline workers, I think City 4 officials were very engaged in this because it was 5 through City resources that they ended up being 6 rehoused. That's the kind of thing that has to 7 happen. 8 So it's not a sort of simple, well, 9 it's private property therefore, you know, private 10 property rights trump human rights. That's not 11 how this stuff goes. We're talking about human 12 lives and human rights is very much about 13 preserving human life, preserving human dignity 14 and the process for getting there. 15 58 Q. I understand that private 16 property owners can take steps to assist others. 17 What I'm trying to get at is your opinion on this 18 subject. 19 So Ms. Schwan is listed as a 20 co-author of "A National Protocol for Encampments 21 in Canada. You're aware that she's also a witness 22 in this matter? 23 A. Yes, I am aware of that. 24 59 Q. What is the nature of your 25 relationship with Ms. Schwan? NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
26 1 scroll to or flip through to, so just give me one 2 moment. 3 So Exhibit "G" to your affidavit you 4 have what's called "A Human Rights Approach A 5 National Protocol for Homeless Encampments in 6 Canada", and the authors are listed as Leilani 7 Farha and Kaitlin Schwan. Can you see that okay? 8 A. I can see it perfectly. 9 If I might, and I don't mean to 10 interrupt, Mr. Diacur, but on the private property 11 issue, I don't know your vintage so I don't know 12 if you will remember and I don't know if you 13 followed whatever went on in Toronto in the 14 nineties. If I recall, and this is before I 15 became an expert on these issues, there were 16 homeless people living on a parking lot or the 17 property of a Home Depot and it was understood, in 18 fact even by -- I think it was a Home Depot, 19 something like that, one of those kinds of 20 do-it-yourself kind of stores. It was understood 21 by the owner of that store that they couldn't just 22 evict the folks that were living there. They 23 engaged in a really meaningful process and they 24 ended up housing all of the people who were living 25 there. That's the kind of process and negotiation NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	28 1 A. I would say I was a mentor of 2 Ms. Schwan's. Maybe I still play that role, to 3 some degree. She, of course, has moved to the 4 United States and is practicing social medicine or 5 something, research or in a social medicine 6 practice of some sort. We maintain contact, 7 collegial contact. 8 60 Q. Have you spoken with Ms. Schwan 9 about your evidence or her evidence? 10 A. No, I have not. 11 61 Q. So if I go to, actually I can 12 jump directly to the page, but it's in the same 13 document, A National Protocol for Homeless 14 Encampments in Canada, it is principle number 3 15 under the heading, "Prohibition of forced 16 evictions of encampments". 17 A. Sorry, if you just give me a 18 moment, I would like to look at hard copy, sorry, 19 old school. Yeah, I'm there. 20 62 Q. So there are a number of 21 principles listed in this document, we're at the 22 third principle. At paragraph 47 the first 23 sentence is: 24 "Forced evictions are impermissible 25 irrespective of the tenure status of those NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

29 1 affected." 2 So in terms of "tenure status", 3 you're referring to their status in terms of 4 tenure on the property they are encamping on; is 5 that right? 6 A. Yes, that's correct. 7 63 Q. Tenure is a property lot 8 concept and that's what you're referencing? 9 A. Well, we're referencing whether 10 someone has title to the land, for example, 11 whether someone is in a lease arrangement. There 12 can be all manner of, yeah. 13 64 Q. No, understood. But you're 14 saying irrespective of that -- 15 A. Yes. 16 65 Q. -- forced evictions are 17 impermissible? 18 A. Forced evictions, yes. 19 66 Q. I just want to understand, as a 20 lawyer your opinion is that an individual can 21 unilaterally claim a right to private property, 22 correct? 23 A. Well, those are two different 24 things. So what you're saying is that someone can 25 unilaterally claim a right to a piece of property. NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	353³¹ 1 you agree with that? 2 A. Sorry, I'm here to talk about 3 international human rights law. I don't know of 4 that principle in international human rights law, 5 so I can't agree with that. 6 69 Q. You're here as a lawyer who is 7 giving opinion -- 8 MR. CHOUDHRY: Actually, Mr. Diacur, 9 if I may, sir, on this topic, this came up with 10 another witness from the City side, also a lawyer, 11 and we determined that the scope of her evidence 12 was limited to her role as a City official. And I 13 think, -- 14 MR. DIACUR: As you know, it is 15 quite different, counsel, when it's a lawyer who's 16 being -- 17 MR. CHOUDHRY: Mr. Diacur, could you 18 please not interrupt me, I would like to finish my 19 sentence, sir. 20 So the situation, as you know expert 21 evidence on legal questions of Canadian law is not 22 admissible in Canadian courts. Expert evidence on 23 foreign law, international human rights law is. 24 And so -- 25 MR. DIACUR: I do not -- NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
30 1 What this says is that a person cannot be forcibly 2 evicted from where they're living regardless of 3 whether they have title. Those are two 4 different -- I would distinguish those claims. 5 67 Q. On what basis can we 6 distinguish between a person saying that they have 7 a right to private property unilaterally and -- 8 A. That's not what they're saying. 9 They're saying -- no, they're saying that they 10 have a human right to housing, to dignity, to 11 life, to survival, which is true under 12 international law they do. That's what they're 13 claim is. 14 Someone else might look at that, the 15 property owner might say, well, you're trying to 16 claim my property. But that is not the claim that 17 people living in homelessness are making, at least 18 not in my expert opinion and expertise. I met 19 with hundreds of people living in homelessness and 20 living in encampments and what they say is that 21 they just want the right to survive, to dignity, 22 to life itself, to a home. 23 68 Q. As a lawyer you would agree 24 that one of the incidents of property is the 25 ability to exclude others from that property; do NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	32 1 MR. CHOUDHRY: -- Ms. Farha's 2 affidavit -- 3 MR. DIACUR: That's not the case and 4 I object to that being -- 5 MR. CHOUDHRY: Excuse me, sir. 6 MR. DIACUR: -- [overtalk] as a 7 fact. 8 MR. CHOUDHRY: So, Mr. Diacur, I 9 think when you're posing questions to this witness 10 it should be in relation to her, what she is 11 qualified to give expert evidence on in principle 12 in the Canadian court, which is either 13 international law or foreign law. There is 14 evidence on Canadian law it's not admissible in 15 the Canadian court in their expert report to give 16 that kind of evidence. 17 MR. DIACUR: The situation with the 18 City witness, who is also a lawyer, is quite 19 different. She's a fact witness in the case. 20 This witness is being put forward as an expert and 21 capable of giving opinion evidence. So I would 22 disagree with the presentation of the idea that 23 there's a similarity between the two situations. 24 One is being put forward as an expert capable of 25 giving opinion and the other is not, that's the NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

33 1 fundamental difference. 2 I also disagree that it is 3 permission to provide expert evidence on foreign 4 law or on international law as a matter of course. 5 That's a dispute we'll have in the fullness of 6 time. It is a question that this witness can 7 answer. 8 BY MR. DIACUR: 9 70 Q. As a lawyer, one of the 10 incidents of property is the ability to exclude 11 others, yes or no? 12 MR. CHOUDHRY: Mr. Diacur, I'll have 13 to ask you to be more precise in the questions. 14 As a matter of international law you can pose the 15 question. But if there's any questions about law 16 generally, I'm going to instruct the witness to 17 refuse to answer the question. You can ask the 18 question about international law. 19 MR. DIACUR: The question isn't 20 based on international law, it's based on the 21 common law. If there's a refusal, then I'll 22 accept the refusal and we can deal with it. 23 MR. CHOUDHRY: So I'm just going to 24 clarify, by the common law you mean the Canadian 25 common law, correct? NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	354³⁵ 1 72 Q. You agree that you are an 2 advocate for allowing encampments to continue 3 wherever they spring up, as you put it, and 4 against what you refer to as forced evictions? 5 A. No, I don't think I could agree 6 with that. For example, an encampment could 7 spring up in an area that is known to be very 8 extremely dangerous, for example. I've seen an 9 encampment in Chile that was on a fault line. 10 Chile is known as an earthquake country and the 11 encampment was on a fault line. So that would 12 obviously -- I couldn't advocate under 13 international law that that encampment remain 14 there. 15 I would advocate, however, that the 16 encampment not be forcibly evicted. So those are 17 two very distinct positions, just to be clear. 18 And then it depends on what you mean 19 by advocate. Maybe you can tell me what you mean 20 by advocate. 21 73 Q. We can divide the question up. 22 I understand you're disagreeing with the first 23 part of the question. You'd agree that you are an 24 advocate against what you call forced evictions? 25 A. I am an international human NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
34 1 MR. DIACUR: Well, the common law of 2 all common law nations. 3 MR. CHOUDHRY: There is no such 4 thing, Mr. Diacur. At any rate, if you think so, 5 that's fine. I want you to be specific, when you 6 refer to legal concepts or legal rights, please 7 refer to the source. 8 MR. DIACUR: No, I'm not going to 9 adapt my questions so that they are satisfactory 10 to opposing counsel. Either answer the question 11 or refuse. 12 MR. CHOUDHRY: Well, Mr. Diacur -- 13 MR. DIACUR: Let me know if there's 14 a refusal or not. 15 R/F MR. CHOUDHRY: There's a refusal on 16 that, yes, because you've posed about common law, 17 that's a domestic law question, we refuse to answer 18 questions on domestic law. 19 BY MR. DIACUR: 20 71 Q. You would agree that you are an 21 advocate for allowing encampments to continue 22 wherever they spring up, as you put it, and 23 against what you call forced evictions? 24 A. I'm sorry, can you repeat that 25 question? NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	36 1 rights lawyer and I use international human rights 2 law to dispute forced evictions. 3 74 Q. You advocate against them? 4 A. As I said, I'm an international 5 human rights lawyer and I would dispute a forced 6 eviction except in the most exceptional 7 circumstances where if it's on a fault line, 8 obviously, as the example I gave. I still would 9 not advocate for a forced eviction because that is 10 a gross violation of international law. So I 11 could never advocate for a forced eviction. 12 75 Q. So I'm going to stop sharing 13 this document for a moment. There's another 14 document I would like to show you, just a part of 15 the web page for The Shift. 16 So this, I'll go up to the top, it's 17 a pdf, but a printout of the web page The Shift 18 and it does say at the top, "The Shift is a 19 worldwide movement to reclaim and realize the 20 fundamental human right to housing", which was 21 referenced earlier. And it references 22 make-the-shift.org, is that the URL for The Shift 23 website? 24 A. I guess so, yeah. 25 76 Q. Okay. If I scroll down, this NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

37 1 is from the main page, it indicates global 2 homelessness and action and there's further URL 3 references. 4 If I scroll down further there's an 5 advertisement for what's called PUSH BACK TALKS, 6 which I understand is a podcast from the 7 subheading underneath it, and it references, "The 8 Filmmaker & The Advocate". You're the advocate 9 that's referenced and pictured in that 10 advertisement? 11 A. Yes, I am. 12 77 Q. And the filmmaker is the other 13 individual that's Fredrik Gertten? 14 A. Yes, it is. Yes, he is. 15 78 Q. So when you refer to yourself 16 as "the advocate", what are you advocating for? 17 A. The implementation of 18 international human rights law by all orders of 19 government. 20 79 Q. And in terms of homeless 21 encampments, what do you advocate against? 22 A. Well, I advocate toward the 23 implementation of the human right to housing for 24 people living in encampments. 25 80 Q. And against forced evictions? NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	355³⁹ 1 resources to help ensure the rights of encampment 2 residents are upheld. Download them and use them 3 in your community!" 4 Is that accurate, that is something 5 that The Shift has done? 6 A. The Shift, absolutely, provides 7 international human rights standards and 8 information to encampment residents so that they 9 can know what international human rights law does 10 and doesn't say. There's a lot of myths around 11 what the right to housing means and it's ambit and 12 we like people to actually know what the law 13 really does say, the international human rights 14 law, what it actually does say. 15 So we try to -- in all of our work 16 we are advising and providing our international 17 human rights law expertise to a variety of 18 stakeholders. It's particularly important that we 19 do so in an evenhanded way. That we reach as many 20 stakeholders as we can. So we are constantly 21 talking with some national governments, national 22 government, all with -- as well as we have engaged 23 with residents of encampments to ensure that they 24 understand and know what international human 25 rights law says. That's the value add of The NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
38 1 A. Well, I would argue with a 2 government, no matter what level of government, 3 because in some cases it's provincial government 4 that has jurisdiction in this country. I would 5 argue for the implementation of international 6 human rights law which says that forced evictions 7 are a gross violation and strictly prohibited, 8 especially where they result in homelessness. 9 81 Q. So I'm going to stop sharing 10 that. There's one other part of The Shift's web 11 page that I would like to share with you and ask 12 you a couple of questions about. Just for the 13 record that previous document I would intend to 14 mark it as Exhibit 2 as identified by this witness 15 from the main web page of The Shift website. 16 <u>EXHIBIT NO. 2</u>: Main web page from 17 The Shift website 18 BY MR. DIACUR: 19 82 Q. This is, again, from the 20 make-the-shift website and it's a subpage entitled 21 Homelessness Encampments; do you see that? 22 A. I can, yes. 23 83 Q. Under that heading Homeless 24 Encampments there's a paragraph that says: 25 "The Shift has developed several NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	40 1 Shift. That's the role we tend to play. 2 84 Q. And these resources include 3 things like handouts? 4 A. I think there have been some 5 handouts. We're not in a position -- we don't 6 hand anything out at the moment. 7 85 Q. I understand. It says that, 8 download them and use them. What's encouraged is 9 the use of these in communities? 10 A. If they're offered, yes. 11 86 Q. Have you participated in the 12 creation of these resources? 13 A. It would depend on the 14 resource, you would have to take me to each one. 15 87 Q. The resources that are 16 referenced in this paragraph? 17 A. Well, I'm not sure which ones 18 are there for download at the moment. For 19 example, the protocol I co-authored with Dr. 20 Schwan. I have co-authored a municipal guidance 21 on homeless encampments, which is also on the 22 website. I'm not sure if it's located there. I 23 don't maintain our website, so I'm not exactly 24 sure. I think at some point there was a one-pager 25 on the right to housing, maybe, for encampment NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

41 1 residents. That might be there, I'm not sure. 2 88 Q. Let's go with that, the 3 one-pager. Did you participate in the creation of 4 it? 5 A. It depends. I have to see it 6 to be able to answer that question. So if you 7 would like to take me there, I'm happy to look at 8 it. 9 89 Q. The document that you just 10 referenced -- 11 A. I said -- we have produced more 12 than one one-pager. It depends on whether it's 13 about homelessness encampments. It depends on 14 whether it's the one I'm thinking of, so you'd 15 have to take me to it. I'm happy for you to do so 16 and I'm -- 17 90 Q. The one-pager that you were 18 just referencing, the one-pager that you just 19 referenced, what was it about? 20 A. The one-pager that I recall -- 21 I actually can't even recall what's on it. I 22 would have to see it to remember. I'm sorry, we 23 produce a lot of things. This would have been way 24 back in 2021, I think, which for me is a lifetime 25 ago. So I would have to look at the document and NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	356⁴³ 1 subpage of The Shift, I would intend to mark as 2 the third exhibit to this examination. 3 EXHIBIT NO. 3: Subpage from The 4 Shift "Homeless Encampments" 5 BY MR. DIACUR: 6 94 Q. Back to paragraph 8 of your 7 affidavit. 8 A. Sorry, did you say 8? 9 95 Q. Yes. 10 A. Yes, I'm there. 11 96 Q. I'll just scroll through it and 12 then share my screen again. 13 Under the subheading, International 14 human rights law and evictions, paragraph 8, can 15 you see that? 16 A. I can. 17 97 Q. And you list a number of 18 documents in this paragraph, there's several 19 subparagraphs all lettered. For example, letter 20 a. is the United Nations Committee on Economic, 21 Social and Cultural Rights, General Comment No. 4: 22 The Right to Adequate Housing (Art. 11 (1) of the 23 Covenant), and it's December 13, 1991. You 24 attached a copy of General Comment No. 4 as 25 Exhibit "B" to your affidavit. There are, again, NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
42 1 then I would be more than willing to tell you 2 whether I reviewed it. 3 Generally speaking, if a document is 4 made public I have reviewed it or at least laid 5 eyes on it at some point. That much I can tell 6 you. But you would have to take me to the 7 specific document that you would like me to 8 indicate whether I had a hand in drafting it. 9 91 Q. In terms of encouraging the 10 download and use of resources created by The 11 Shift, that is part of The Shift's purpose, 12 advocating for the use of such things? 13 A. I'm sorry, what's the question? 14 92 Q. In terms of the statement here, 15 "Download them and use these resources in your 16 community!", that is part of The Shift's purpose, 17 advocating for such things? 18 A. We are offering resources to 19 people living in encampments so that they can 20 understand what their rights are under 21 international human rights law. 22 93 Q. I'd like to go back to your 23 affidavit now. So I'm going to stop sharing and 24 I'll put the affidavit back up. 25 Just before I leave that, that NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	44 1 a number of other documents all listed at 2 paragraph 8. 3 My question for you is, some of 4 these documents that are listed and attached to 5 your affidavit, you wrote them but not all of 6 them, correct? 7 A. Let me look at the one. That's 8 correct, I wrote some but not all. 9 98 Q. And some of the documents, as 10 we've just seen, are committee commentary on a UN 11 Covenant, correct? 12 A. Yes, A and B, Exhibit, sorry, 13 Exhibit "B" and Exhibit "C", I'm sorry, yes. 14 99 Q. That's all I was going to do, 15 is clarify that. Thank you for that. 16 And as we see in paragraph a. it 17 references commentary on a particular article of 18 that UN Covenant? 19 A. The article that contains the 20 right to adequate housing, correct? 21 100 Q. And that would be the 22 International Covenant on Economic, Social and 23 Cultural Rights? 24 A. Yes. 25 101 Q. And a copy of that is attached NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

45 1 as Exhibit "H" to your affidavit; is that correct? 2 A. I believe so. "H", yes, that's 3 correct. 4 102 Q. And the committee that's 5 referenced there, that's the, as you say, the 6 CESCR, Committee on Economic, Social and Cultural 7 Rights. That committee is not comprised of UN 8 member states or diplomats appointed by UN member 9 states, but nominated individuals who are 10 considered knowledgeable on human rights concepts; 11 is that right? 12 A. Independent experts, yes. It's 13 made up of independent experts. 14 103 Q. And those individuals can work 15 together and release comments? 16 A. Yeah, they work together and 17 they draft general comments. The interpretations 18 of the ICESCR. 19 104 Q. Those comments reflect the 20 opinions of the committee members; is that right? 21 A. Yeah, they're considered 22 quasi-judicial in terms of their import. 23 105 Q. Have you ever been a member of 24 that committee? 25 A. I have not. NIMIGAN MIHAIOLOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	357⁴⁷ 1 something like that, there's a process. 2 109 Q. That's what happened, you went 3 through that process and were appointed? 4 A. That's correct. 5 110 Q. I have a question for you about 6 the International Covenant on Economic, Social and 7 Cultural Rights and, again, that's Exhibit "H" to 8 your affidavit. I'm going to jump to a specific 9 page, it's simpler than scrolling through. My 10 question has to do with Article 25 of the 11 Covenant. Do you see that on the screen? 12 A. Yes. 13 111 Q. So Article 25 of International 14 Covenant on Economic, Social and Cultural Rights 15 states that: 16 "Nothing in the present Covenant 17 shall be interpreted as impairing the inherent 18 right of all peoples to enjoy and utilize fully 19 and freely their natural wealth and resources." 20 That's correct? 21 A. Correct. 22 112 Q. The International Covenant on 23 Economic, Social and Cultural Rights explicitly 24 states that the right of all people is to make 25 decisions about how to allocate their wealth and NIMIGAN MIHAIOLOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
46 1 106 Q. And you say quasi-judicial, the 2 commentary of the committee members doesn't carry 3 any force of law; is that right? 4 A. Oh, I wouldn't say that. I 5 don't know what you mean by force of law. They 6 are interpretations and they are the only 7 interpretations that those committees do. That's 8 not quite true, actually, I take that back because 9 they review state parties and they'll use their 10 interpretation of the Covenant, which is their 11 job, to review state parties. 12 So what I would say is they are 13 interpretations of the Covenant. And in this case 14 General Comment 4 is an interpretation of Article 15 11, part of Article 11 (1). 16 107 Q. Were you appointed as a UN 17 special rapporteur by that committee? 18 A. No, I was not. 19 108 Q. Are you appointed special 20 rapporteur by the General Assembly? How does it 21 work? 22 A. The US Human Rights Council 23 appoints special rapporteurs through a lesser part 24 of what's the special procedures. So the -- I 25 forget how many member states there are, 48 or NIMIGAN MIHAIOLOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	48 1 resources is not impaired by any other rights that 2 it references, correct? 3 A. Well, that's not how I would 4 read that article. Is that your interpretation? 5 I'm not sure where you're getting that from. 6 113 Q. I'm asking you a question. The 7 International Covenant on Economic, Social and 8 Cultural Rights explicitly stipulates that the 9 right of all peoples to make decisions about how 10 to allocate their wealth and resources is in no 11 way impaired by any other rights that it 12 references; isn't that right? 13 A. No, I wouldn't put it that way. 14 It's not uncommon in international human rights 15 law to have competing rights. So you can have, 16 you know, Article 25 sitting side by side with 17 Article 11 (1). I mean, as international lawyers 18 what we do is try to figure out how to reconcile 19 these two things. It's not an uncommon situation. 20 You can have, for example, a person 21 with a disability may have certain rights under 22 international law that could conflict with someone 23 else's rights. I mean, this is a common thing. 24 So as international human rights lawyer, we 25 grapple with this. NIMIGAN MIHAIOLOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

49 1 I would note Article 25 has not been 2 the subject of a general comment. And so there is 3 no guidance in terms of the ambit of this, what it 4 means, et cetera. Whereas, there have been 5 general comments on Article 11 (1), in particular 6 on right to housing, General Comment 4 and General 7 Comment 7. So we have a very fulsome 8 understanding of what Article 11 (1) requires. 9 114 Q. That's exactly what I'm getting 10 at. There's no comment on Article 25 in your 11 affidavit, correct? 12 A. No, that would be correct. 13 Can I ask a question? Could I see 14 the earlier part of, like this is part -- it's 15 right at the end of part 4. I would like to see 16 the beginning of part. Actually, if you could 17 give me the page number, I'd be happy to pull it 18 up on my own pdf. I would like a moment just to 19 review this. 20 115 Q. I can just scroll there. 21 A. Just give me the page number on 22 the pdf. 23 116 Q. This is a compilation of all 24 the affidavits, so the page number is not going to 25 assist you. NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	358⁵¹ 1 MR. CHOUDHRY: Let her -- 2 MR. DIACUR: The answer was, yes, 3 there's nothing in her affidavit about Article 25. 4 MR. CHOUDHRY: But, counsel, to be 5 fair, I think when you take the witness to an 6 exhibit in their affidavit, any witness, I think 7 they're entitled to review the exhibit before they 8 answer. 9 MR. DIACUR: The question is, in the 10 affidavit there's no reference to article 25. 11 That's what I asked. 12 MR. CHOUDHRY: She's asked -- but 13 you took her to Article 25 itself, and she wants 14 to answer the question about Article 25 by 15 reference to the Covenant. Just give her a moment 16 to look at the Covenant, sure. 17 THE DEPONENT: Is it harming 18 anything? I'm sorry, I'm just -- 19 BY MR. DIACUR: 20 119 Q. The purpose of this examination 21 is for you to answer my questions. If it informs 22 your answer to my question -- 23 A. It was a question. 24 120 Q. -- in order to review the 25 entire document, this is a waste of time. NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
50 1 A. Can I ask my counsel if he can 2 point me to -- 3 MR. CHOUDHRY: It's Exhibit "H" to 4 your affidavit. 5 THE DEPONENT: I'll scroll down. If 6 you give me minute, I'd like to do that. The 7 Covenant is not something I read on a daily basis, 8 so I would like to go back. 9 BY MR. DIACUR: 10 117 Q. I just want to be clear, this 11 is informing your answer to my last question? 12 A. Yes. Sorry, I'm using an old 13 computer and the search function doesn't work. 14 118 Q. To be clear, the last question 15 was that there's no reference to Article 25 in 16 your affidavit. 17 A. The question before that. I 18 would just like -- I don't think it's -- am I not 19 allowed to -- 20 MR. CHOUDHRY: Counsel, I think she 21 just wants to look at the Covenant before she 22 finishes answering your question. Why don't we 23 give her a moment to do that. 24 MR. DIACUR: I'm not following your 25 reasoning. The purpose is to answer the question. NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	52 1 A. I'm sorry, Mr. Diacur, you 2 asked me two questions back to back and I would 3 just like to look at the document as a whole to 4 try to make sure I answered your first question 5 about this Covenant and Article 25 correctly. I 6 haven't looked at the Covenant in some time. It's 7 not something that I'm constantly reading in my 8 work and I would just like to look at it. 9 I'm sorry it's taking me so long to 10 scroll to it. The protocol is quite long, so I'm 11 trying -- here we go. I'm on "H" now, and if you 12 don't mind I would just like to read where we're 13 at in the document just so I can make sure that I 14 answer you to the best of my ability. 15 Right, so you see, the way the 16 Covenant is structured is that you have operative 17 paragraphs and then you have procedural 18 paragraphs. So the operative paragraphs are the 19 rights, the human rights, and so those take you up 20 to up to Article 15. 21 Then you'll see Part IV is like 22 procedural, so say: "Parties to the present 23 Covenant [this is page 6] undertake to submit in 24 conformity with this part of the Covenant 25 reports." Right? NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

53 1 And this is precisely why I wanted 2 to look at this document because I thought this 3 was the case, but I just wanted to make sure. 4 Then you get to -- so, again, you'll see Article 5 19, it's procedural The Economic and Social 6 Council may transmit to the Commission on Human 7 Rights, this is old because the Commission doesn't 8 exist anymore, for studies, blah, blah, blah. 9 And then you have Article 25 10 "Nothing in the present Covenant". 24, "shall be 11 interpreted as impairing the provisions of the 12 Charter". These are not considered rights within 13 the Covenant in the same way that those first, 14 those first 15 Articles are. 15 So it comes at a different place in 16 the structure. We could probably look at a 17 history of the Covenant and how it was structured 18 and fashioned. But that would be why the 19 Committee on Economic, Social and Cultural Rights 20 has not issued a General Comment on Article 25. 21 They only issue, or they tend to only issue 22 General Comments on the substantive rights 23 contained in the Covenant, of which Article 25 is 24 not. 25 So I think that is helpful. I NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	359⁵⁵ 1 by anything in Covenant, correct? 2 A. Right. Including, then, for an 3 encampment resident whose only natural wealth 4 might be a few photos, their identify pictures, 5 their sleeping bag, et cetera, so nothing should 6 impair their rights to use those as well, correct? 7 You know, this is an interpretive -- this is open 8 for interpretation. As I said, as an 9 international lawyer I rely on the committee and 10 its interpretations of the Covenant. They have 11 not issued an interpretation of Article 25. I 12 guess that's all I can say here. 13 123 Q. Well, it seems like a pretty 14 important caveat to anything the Covenant says 15 about housing rights; isn't that right? 16 A. Well, it has never, in my 17 experience as an international human rights 18 lawyer, it has never been used by the committee to 19 curtail the right to Article 11 (1), and the right 20 to housing is where my expertise lies, within 21 Article 11 (1). So it has not been used, to my 22 knowledge, to infringe, curtail the right to 23 housing as it is defined and understood under 24 international human rights law. 25 124 Q. If people made a decision not NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
54 1 appreciate your patience with me in allowing me to 2 look at the structure of the Covenant one more 3 time. 4 121 Q. You'd agree that Article 25 5 conflicts with Article 11 in the sense that 6 Article 11 cannot be interpreted in the same way 7 with Article 25 as without Article 25? 8 A. I would argue that there isn't 9 a conflict because Articles 1 through 15 are 10 substantive rights, and Article 25, I don't know 11 what they would call that, I have to admit I don't 12 know what -- there must be a name for this. We 13 normally would have a name for it, but I don't 14 know what that is. Maybe we could look that up, 15 but I don't know. But it's not a substantive 16 right. It's not considered one of the rights 17 enumerated in the Covenant on Economic, Social and 18 Cultural Rights. 19 122 Q. I would agree with that, it's 20 not enumerating, you're right, it's an interpreted 21 clause. It says that nothing in the present 22 Covenant shall be interpreted as meaning something 23 or as impairing something. The right of all 24 peoples to enjoy and utilize fully and freely 25 their natural wealth and resources is not impaired NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	56 1 to abide by Article 11 for reasons relating to the 2 natural wealth and resources of that people, 3 international human rights law would have nothing 4 to say about that, it wouldn't be offside 5 international human rights law at all, would it? 6 A. I think international human 7 rights law would have a lot to say. The life and 8 death matter at hand when you're dealing with 9 people living in homeless encampments and the 10 sanctity of the right to life, it is a 11 foundational right found in the Covenant on civil 12 and political rights, found in the convention on 13 the rights of persons with disabilities, for 14 example, it is absolutely core and fundamental, as 15 is the right to live in peace, security and 16 dignity. 17 The right to housing is viewed as, 18 how do you say, like a parallel right with the 19 right to life. So I think international law would 20 have a lot to say about impairing the right to 21 housing for homeless encampments residents trying 22 to use Article 25 which is not an enumerated 23 right. 24 Let's remember what international 25 human rights law is about. It's an attempt to NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

57 1 protect the most vulnerable, the people who are 2 most likely to be on the receiving end of 3 violations. Those are people who come from a 4 whole diverse range of groups that are enumerated 5 in the Covenant and have been enumerated by the 6 Committee on Economic, Social and Cultural Rights 7 and include people living in homelessness. 8 125 Q. You referenced a number of 9 other international human rights, I don't know if 10 they're Covenants, -- 11 A. Two. 12 126 Q. -- but certainly other 13 provisions in other areas of international law. 14 You're not relying on anything in those areas in 15 your affidavit, correct? 16 A. Well, in my affidavit we refer 17 to a number of reports that I've written. But the 18 international legal treaties that I reference, the 19 Covenant on Civil and Political Rights, as well as 20 the Convention on the Rights of Persons With 21 Disabilities would be referenced in those 22 documents. So if we're relying on documents that 23 I've written and documents that the Committee has 24 produced, some of those would be referenced in 25 those documents -- sorry, the two treaties I NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	360⁵⁹ 1 131 Q. And your commentary doesn't 2 carry any force of law, correct? 3 A. Well, a special rapporteur is 4 expected to enunciate on standards. And so while 5 we can't invent law and create law, that already 6 exists, the Covenant exists, it is our role to 7 breathe life into the existing law. So we are 8 expected to develop standards, that's one of our 9 roles as special rapporteur. 10 Sorry, let me, if I can just 11 clarify. So, for example, the report at Exhibit 12 "D" on informal settlements, that report is an 13 enunciation of what is required under Article 11 14 in the very specific context of informal 15 settlements. 16 132 Q. Your commentary doesn't carry 17 any force of law, correct? 18 A. Well, again, I don't know what 19 that means, force of law. 20 133 Q. Is it binding upon you and 21 member states? 22 A. Well, international human 23 rights law is binding on -- 24 134 Q. Is your commentary binding upon 25 the UN member states? NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
58 1 referenced would definitely be referenced in 2 those -- in the exhibits. 3 127 Q. But in terms of what you've 4 referred to as the international human right to 5 housing, you're referring to Article 11 and the 6 international Covenant on Economic, Social and 7 Cultural Rights, correct? 8 A. 11 (1), yes. 9 128 Q. Okay. I would like to return 10 to some paragraphs in your affidavit now. I'm 11 going to do that by going through the index again. 12 We come to paragraph 20 in your 13 affidavit. This is under the subheading Informal 14 Settlements Report and Exhibit "D" to your 15 affidavit. 16 A. Yes. 17 129 Q. You provide here a number of 18 excerpts from a report that you wrote and 19 delivered to the UN; is that correct? 20 A. That's correct. 21 130 Q. And this is your commentary for 22 the consideration of the UN General Assembly, 23 correct? 24 A. Was it the General Assembly? 25 Yes, it was. NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	60 1 A. Well, as I said, international 2 human rights law is binding on states. And in 3 order for -- 4 135 Q. That's not an answer to my 5 question. 6 A. I'm trying to answer your 7 question. 8 136 Q. I've given you three attempts 9 to answer it. It's a very simple question. 10 Your -- 11 A. It might be simple to you, but 12 as an international human rights lawyer -- 13 137 Q. Does it carry any force of law? 14 A. -- it's not simple. You may 15 think it's simple, with due respect, but I am an 16 expert in international human rights law. 17 138 Q. I understand that. You're not 18 answering my question. Does your commentary bind 19 anyone for any purpose anywhere? 20 A. Oh my God, bind anyone for any 21 purpose anywhere? All I can say to you is 22 international human rights law is binding on 23 states. The Covenant on Economic, Social and 24 Cultural Rights is binding -- 25 139 Q. I take that as a refusal. NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

61 1 That's four times. 2 A. It's not a refusal, I would 3 like to finish answering. 4 140 Q. I'm not going to let you just 5 say the same thing again. 6 A. No, I was about to say 7 something -- 8 141 Q. I'm not talking about 9 international human rights law, I'm talking about 10 your commentary. 11 A. I was about to say something 12 different. 13 142 Q. Let me finish my question. 14 A. How are states supposed to know 15 what their obligations are if they can't resort to 16 things like General Comments 4 and 7, things like 17 reports by special rapporteurs who are experts, 18 how are they -- how are states supposed to know 19 what their obligations are? So all I'm saying is 20 that what is binding is the Covenant and in order 21 for a state to understand -- 22 143 Q. Not your commentary? 23 A. -- what their obligations are 24 it has to resort to reports and General Comments. 25 MR. CHOUDHRY: Mr. Diacur, I think, NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	361⁶³ 1 subject, access to justice for the right to 2 housing, this is commentary that you're providing 3 to the UN General Assembly? 4 A. Sorry, let me just make sure. 5 No, that was -- 6 MR. CHOUDHRY: Mr. Diacur, if I can 7 interject, I think the paragraph numbering got 8 thrown off in this affidavit and I apologize for 9 that. 10 MR. DIACUR: It's no problem, I just 11 wanted it clear on the record what paragraph we're 12 talking about. 13 MR. CHOUDHRY: Because there's two 14 paragraphs 17, I think that's the problem. 15 MR. DIACUR: I agree. We're on 16 page, we're talking about that paragraph 17, just 17 for the record. 18 MR. CHOUDHRY: Yes, that's a typo on 19 our part, Ms. Farha. It's the second paragraph 17 20 that Mr. Diacur is referring to. 21 THE DEPONENT: Yes, I think I 22 understand. Where it says Exhibit "E", I see it 23 on the screen. Access to justice for the right to 24 housing. 25 So, Mr. Diacur, just so you know, NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
62 1 sir, just if I may, I think this has reached an 2 impasse. I think she's given the answer she can 3 give you. 4 MR. DIACUR: No, I think she -- it's 5 the Covenant that's binding not her commentary, 6 but she won't say that. She's refusing to 7 actually say that. She wants to say something 8 else entirely that isn't an answer to my question, 9 so I'm happy to move on. 10 MR. CHOUDHRY: Okay, thank you, Mr. 11 Diacur. 12 BY MR. DIACUR: 13 144 Q. If you go to page 10 of your 14 affidavit, you'll see that the numbering in your 15 affidavit restarts or jumps back down to paragraph 16 17. You see it goes from 27 to paragraph 17. So 17 just for the record I want to ensure we're being 18 consistent. On page 10 the numbering is at, the 19 paragraph numbering is at 17 under the heading 20 Access to justice for the right to housing. 21 A. Oh, I see, yes. 22 145 Q. And it points to Exhibit "E" in 23 your affidavit. 24 A. Yes. 25 146 Q. And, again, Exhibit "E" on this NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	64 1 when you're a UN rapporteur you report to two 2 different bodies within the UN. So you report to 3 the Human Rights Council, which is a distinct and 4 separate body from the General Assembly. This 5 report at Exhibit "E" on Access to justice for the 6 right to housing was presented to the Human Rights 7 Council. The council, I think, does deposit the 8 report with the General Assembly, but it gets 9 presented, it's hard to explain, but it gets 10 presented to council, just to be very clear. 11 BY MR. DIACUR: 12 147 Q. I've jumped down to Exhibit "E" 13 just to clarify. It does say on the heading 14 United Nations General Assembly, and then 15 underneath that Human Rights Council. So that's 16 the distinction you're drawing, is that it's 17 provided to the Human Rights Council, which is 18 part of the United Nations General Assembly or 19 related to? 20 A. No, they're separate bodies. 21 But, in any event -- 22 148 Q. Well, it's on the heading of 23 the UN General Assembly. 24 A. Yeah, that's fine for your 25 purposes, I suppose. NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

65 1 149 Q. And the commentary in this 2 document, again, does not bind any UN member 3 states, the Covenant is what's binding? 4 A. I think we will reach a similar 5 impasse, so I would refer you to my previous 6 answer to your question about the binding or lack 7 of binding nature of special rapporteur reports. 8 150 Q. I believe ultimately what you 9 said is the Covenant is binding and then there's 10 commentary provided, is that still true? 11 A. That's not what I said. I 12 think that would be a mischaracterization of what 13 I said. 14 151 Q. I need to have this explained. 15 A. Would you like me to reiterate 16 what I said? 17 152 Q. Well, I need an answer to that 18 question. 19 A. Well, I'm trying to answer, but 20 you don't like my answer. 21 MR. CHOUDHRY: Ms. Farha, I'm sorry, 22 I think everyone's talking over everybody, I would 23 like you to wait for Mr. Diacur to finish 24 speaking, please, and then Mr. Diacur will do the 25 same. Let's at least have that, okay? NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	362⁶⁷ 1 Rights. 2 155 Q. You've used the phrase "breathe 3 life into" a number of times, what does that mean? 4 A. Provide states with the 5 guidance they need to meet their international 6 human rights obligations, standards and guidance. 7 156 Q. I'm going to jump back to page 8 10 of your affidavit. Still on page 10, we're at 9 paragraphs 19 and 20 of your affidavit. This is 10 under the subheading Right to Housing Guidelines 11 and it points to Exhibit "F" to your affidavit. 12 A. Yes. 13 157 Q. I understand that the report, 14 its full title is "Guidelines for the 15 Implementation of the Right to Adequate Housing". 16 Again, this is commentary that was provided to 17 either the UN General Assembly or the Human Rights 18 Council; is that right? 19 A. That's correct, to the Human 20 Rights Council. 21 158 Q. In the sense that these are 22 guidelines, you would agree that they don't carry 23 any force of law and they're not binding upon 24 anyone anywhere. 25 A. These guidelines were produced NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
66 1 THE DEPONENT: Yes. 2 BY MR. DIACUR: 3 153 Q. This document, Exhibit "E" to 4 your affidavit, is it binding on any United 5 Nations member state or anybody anywhere? 6 A. Exhibit "E" is a report on 7 access to justice for the right to housing. It is 8 an interpretation of what is required under 9 international human rights law, Article 11 (1) and 10 the right to adequate housing, which is binding. 11 It provides states with the guidance they need to 12 understand what their binding obligations are 13 under international human rights law. 14 154 Q. So I believe that that answer 15 may come across as ambiguous. So what is binding? 16 It is the Covenant that is being discussed in this 17 document or this document? 18 A. As I said, states are bound by 19 Article 11 (1) of the Covenant on Economical, 20 Social and Cultural Rights if they have ratified 21 that instrument. And to breathe life into what 22 that means, what their obligations are, there are 23 reports available to them, such as this one, 24 Exhibit "E", as was General Comments generated by 25 the Committee on Economic, Social and Cultural NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	68 1 to assist states in meeting their international 2 human rights obligations under Article 11 (1) and 3 the right to housing. 4 159 Q. Do they carry any force of law? 5 Are they binding upon anyone anywhere, the 6 guidelines that you've created here? 7 A. Well, they do because they're 8 an interpretation of their international human 9 rights obligations, so that's my answer. 10 160 Q. Okay. Starting on page 13 of 11 your affidavit, which I'll scroll through now, 12 again, there's an issue with the paragraph 13 numbering. As you saw we were at the second 14 version of paragraphs 19 and 20, page 13, we're 15 back to -- from the new paragraphs, new paragraph 16 numbering, we are going to jump back down to the 17 new paragraph numbering. 18 On page 13, right here, we have 19 under Encampments National Protocol a number of 20 paragraphs from 21 to 27, in fact, and the new 21 numbering started on page 10. There's an extended 22 set of extracts from the document we looked at 23 earlier entitled "A Human Rights Approach A 24 National Protocol for Homeless Encampments in 25 Canada". As we saw, that was written by you and NIMIGAN MIHAILOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

69 1 Kaitlin Schwan. It was written or published in 2 April of 2020; is that right? 3 A. Yes, that's correct. 4 161 Q. And by whom was that document 5 commissioned? 6 A. No one. It was not 7 com missioned. 8 162 Q. Was it delivered to anybody? 9 A. No, it was not. 10 163 Q. How was it published? 11 A. It was put on The Shift 12 website. That was the beginning of COVID, so that 13 was the extent to which we could do anything with 14 it. 15 164 Q. We saw in the document that 16 you're identified as UN special rapporteur on the 17 right to housing, but this wasn't prepared in your 18 role as UN special rapporteur or for the UN; is 19 that right? 20 A. That's correct. It's not 21 considered one of my thematic reports. 22 165 Q. And it effectively is a set of 23 comments and suggestions for a protocol that could 24 be implemented nationally in Canada? 25 A. Based on international human NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	363⁷¹ 1 paragraph, under The Shift Positions on City of 2 Hamilton Encampment Policies subheading, through 3 paragraph 23 which is on page, the last page of 4 your affidavit, page 24, you provide your position 5 on what The Shift's outlook is on certain things, 6 including the City of Hamilton encampment 7 policies; is that correct? 8 A. In paragraph 23 it says I have 9 reviewed, yes. 10 171 Q. Okay. So paragraph 23 is your 11 own review and opinion. But before that we have 12 The Shift's position; is that correct? 13 A. Where? Sorry, I just want to 14 make sure. 15 172 Q. Let's say paragraph 20, it says 16 The Shift issued a statement stating certain 17 things. 18 A. That was issued by The Shift, 19 that's correct, yes. But in paragraph 23 I 20 reviewed, personally, the six step encampment 21 response. I didn't do that with my staff. I 22 didn't have a staff meeting about it. I reviewed 23 it, yes. 24 173 Q. That's helpful clarification, 25 given that that was the subheading, The Shift's NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
70 1 rights law. 2 166 Q. To your knowledge, has it been 3 adopted by any level of government in Canada? 4 A. Adopted in whole? Is that the 5 question or parts of it adopted or...? 6 167 Q. Well, let's start with the 7 first. Has this entire document been implemented 8 or adopted by any government in Canada? 9 A. Not to my knowledge. 10 168 Q. To the extent that governments 11 have implemented any of it, do you have any 12 knowledge that they were doing it because of your 13 suggestions and commentary? 14 A. I mean, one hopes when you 15 produce something of this nature, practical 16 standards, that it that has an impact. But it's 17 difficult for me to know what impact it has had. 18 169 Q. Let's scroll down to page 22 of 19 your affidavit. As I said, there's a paragraph 20 numbering that I'll put on the record. So you can 21 see here we're on page 22 of your affidavit, and 22 the paragraph numbering on this page is paragraph 23 20 and 21. Can you see that all right? 24 A. I can, thank you. 25 170 Q. And, actually, from that new NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	72 1 position, so I understand now 23 is separate. 2 So in terms of Exhibit "I" to your 3 affidavit, which is The Shift's statement entitled 4 "Homeless Encampments in Hamilton and Risk of 5 Evictions", where did the information in that 6 statement come from? 7 A. I believe we were contacted and 8 provided with the -- contacted by people in 9 Hamilton and they provided us with the 10 information. 11 174 Q. And do you recall who you were 12 contacted by? 13 A. I think it was a Legal Aid 14 clinic. 15 175 Q. So the content of that 16 statement is based on what you were told by the 17 Legal Aid clinic? 18 A. Yes. 19 176 Q. Let's just jump down to Exhibit 20 "I". 21 A. Just to be clear, the 22 information may also have come from other sources 23 as well. I was not part of the fact finding for 24 this two-page statement. So I do know that we 25 received information from the legal clinic, but I NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

73 1 don't know where else we might have received 2 information. I just want to be very clear. 3 177 Q. Well, that is the question, 4 where the information came from. If there may be 5 other sources and you're just not familiar with 6 them, then I understand the answer. 7 A. That's correct. 8 178 Q. Just in particular on the 9 screen now, it's at the second paragraph of The 10 Shift's statement, it says: 11 "The decision to now end the 12 Protocol has seemingly been made without 13 meaningful consultation with encampment residents 14 and community advocates and fails to recognise the 15 continuing housing and shelter crisis in 16 Hamilton." 17 That, in particular, was information 18 provided to you by the law clinic? 19 A. I guess so. I'm sorry, I'd 20 have to look at what the law clinic, if there's 21 records of that, but I would assume so. The 22 meaningful consultation piece. 23 179 Q. I would like to jump back - 24 we're nearly done - to paragraph 23 of your 25 affidavit, so that's the last paragraph of your NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	364⁷⁵ 1 protocol comply with your commentary? 2 A. The current encampment 3 protocol, I don't know what the current encampment 4 protocol is, to be honest. The reason I know 5 about the August 2023 protocol, and I don't know 6 what happened to that, is that I co-convene a 7 group of cities from across the country, 8 municipalities, it's called the Right to Home 9 Working Group. It started in 2020, a few months 10 into the pandemic. A variety of cities attend, it 11 changes all the time. It's co-convened with the 12 Canada Urban Institute. 13 In one session in June we had a 14 thematic focus on homelessness and homeless 15 encampments. Two people from the City of Hamilton 16 attended and presented on what I believe ended up 17 being the August 2023 protocol. So Councillor 18 Nann, and if I recall it was the head of the 19 housing department, Michelle, whose last name I 20 can't -- Baird, and they presented what at the 21 time was their process for developing a protocol. 22 And I'm not sure if they presented the whole 23 protocol or just parts of it, I can't remember. I 24 apologize, it's all done by Zoom. 25 So we had a -- they have a NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca
74 1 affidavit. So this is page 24 of your affidavit, 2 it's that new paragraph numbering, paragraph 23. 3 A. Sorry, the last page? 4 180 Q. Yes, the very last page, just 5 above -- 6 A. Last paragraph, yeah. 7 181 Q. Just above the signatures. You 8 said: 9 "I have reviewed the City of 10 Hamilton 'Six Step Encampment Response' provided 11 in Encampment Response Update dated September 9, 12 2021." 13 That's attached as Exhibit "J" to 14 your affidavit. You state that the encampment 15 process that was established by the City of 16 Hamilton in 2021 does not comply with your 17 commentary, for example in your National Protocol 18 for Homeless Encampments in Canada. 19 Now, are you aware that the City of 20 Hamilton subsequently in August 2023 enacted a 21 protocol that permits encamping, definitely in 22 public parks, subject to certain rules about 23 distances and space? 24 A. Yes, I am aware of that. 25 182 Q. Does the current encampment NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca	76 1 presentation and Q&A after, other cities could ask 2 questions. It was an opportunity to kind of 3 provide, again, information to other cities of 4 different approaches to encampments. 5 I do recall querying. I think there 6 was a mention of sanctioned sites, five sanctioned 7 sites or six, I can't really remember, but 8 something like that, and I do recall weighing in 9 and saying, you know, under international human 10 rights law sanctioned sites can be problematic if 11 they weren't agreed to through a meaningfully 12 engaged process. 13 So, yeah, that was in June of 2023. 14 And then the protocol came out August 2023. But I 15 don't know what happened. I didn't follow it, so 16 I don't know what's happened since. 17 183 Q. You weren't provided with any 18 information about it? 19 A. I'm sorry, what was that? 20 184 Q. You have not been provided with 21 any information about it? 22 A. I have not, actually. 23 185 Q. So you're not able to 24 meaningfully speak about the current protocols in 25 force? NIMIGAN MIHAIOVICH REPORTING INC. 1.905.522.1653 info@nmreporting.ca

1 A. I don't know what protocols are
2 in force, no.
3 186 Q. Thank you, those are all my
4 questions.
5 MR. CHOUDHRY: Okay, thank you.
6 Ms. Farha, you're still under oath.
7 I would like to take five minutes to review my
8 notes. While you're under oath please continue to
9 not communicate with anyone. I think Mr. Diacur
10 would agree, if you need a health break or get a
11 glass of water, that's fine. But you're still in,
12 you're still in solitary, okay? Then I'll come
13 back in five minutes and let you know if I have
14 any questions, okay?
15 -- Recessed at 2:58 p.m.
16 -- Reconvened at 3:04 p.m.
17 MR. CHOUDHRY: Ms. Farha, thank you
18 for your time. I have no questions.
19 THE DEPONENT: Thank you.
20 MR. CHOUDHRY: Mr. Diacur, I think
21 that wraps up this cross-examination.
22 MR. DIACUR: Yes, we are concluded.
23 Thank you very much for attending and answering.
24 You are free to go.
25 ---Whereupon the examination adjourned at 3:04 p.m.
NIMIGAN MIHAILOVICH REPORTING INC.
1.905.522.1653 | info@nmreporting.ca

REPORTER'S CERTIFICATE

I, SHEILA M. FINLAY, CSR, Certified
Shorthand Reporter and Commissioner of Oaths within
and for the Province of Ontario, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness and
all objections made at the time of the examination
were recorded stenographically by me and were
thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 30th day of August 2024

Sheila Finlay

[Signed Electronically]

SHEILA M. FINLAY, CSR /ACT

CERTIFIED SHORTHAND REPORTER/

AUTHORIZED COURT TRANSCRIPTIONIST

Commission Expires September 1, 2024

NIMIGAN MIHAILOVICH REPORTING INC.
1.905.522.1653 | info@nmreporting.ca

NEWS

The case for a human rights response to homeless encampments

FEBRUARY 11, 2020



A pattern is emerging. For two years running, the month of January has triggered the forced eviction of homeless people living in encampments in Toronto.

This was the fate of those [living in the Rosedale ravine](#) a few weeks ago. They were evacuated ostensibly to preserve the ecology of the area, though it's just as likely that their removal had to do with pressure from neighbours.

Similarly, almost exactly a year ago, homeless folks living under the Gardiner Expressway had their encampment torn down for [fire safety reasons](#). A few weeks later, a cluster of transparent domes – infrastructure for a luxury pop-up dining concept dubbed Dinner With A View – appeared nearby in a twisted metaphor for gentrification, with a heavy dose of irony.

Ex # 1 m/d/y 08/27/2024 Pg 1 of 4
Exam of LEILANI FAHRA
Heegsma et al v City of Hamilton
Nimigan Mihailovich Reporting Inc.



Peter Biesterfeld

Homeless people living in the Rosedale ravine were cleared out a few weeks ago.

What's happening in Toronto is mirrored across the country, with tent cities dotting the Canadian landscape in Edmonton, Winnipeg, London, Peterborough, North Bay and Fredericton. Regardless of where they spring up, the experience is disturbingly similar – deplorable conditions and, eventually, eviction.

Last fall, those living in a tent city in downtown Moncton were forcibly evicted amid reports the city wants to adopt a zero-tolerance policy regarding tents in public spaces. Meanwhile, residents of a tent encampment in Vancouver's Oppenheimer Park are fighting to remain on-site during the winter, arguing with the city for heaters to stave off hypothermia in the face of unusually low temperatures.

In Ottawa, a group rendered homeless after a [rooming house fire last April](#) established a tent city after having only been provided with a few days' accommodation in motel rooms. After living on public lands for months, they were evicted with very little notice.

There is one common denominator connecting all of these situations: the failure of governments to successfully implement the right to adequate housing.

With nowhere to go due to lack of adequate shelter spaces, unaffordable rents and necessary social supports, people who are homeless form their own communities. They provide one another with what they need – [support and safety](#) – attempting to live with some form of dignity within a system and society that has failed them.

What's mystifying is the response to encampments by all levels of government.

Instead of trying to address the situations through robust human rights-based strategies, they respond by committing yet another human rights violation: forcibly evicting people from their homes. For those experiencing homelessness, it's double jeopardy.

Governments need to recognize that tent encampments are of their own making. It's time to develop a national protocol on tent encampments based on human rights.

What does that mean? Here are the fundamentals:



Samuel Engelking

The rise of tent cities across Canada belies the country's wealth as well as its international standing as a human rights leader.

A ban on forced evictions

Forced eviction, the permanent or temporary removal of a person from their lands or home – whether an apartment, a house, a tent or a car – constitutes a gross violation of international human rights law, particularly when shelters are at capacity. Laws permitting forced evictions should be repealed. And all viable alternatives to eviction must be explored in consultation with residents.

Meaningful engagement

Residents of informal settlements are not recipients of charity nor are they trespassers, criminals or deviants. They are rights-holders, and they are experts in their own lives. Any policies, programs or decisions that affect them should include their active and meaningful participation. Residents should be provided with the necessary resources and support to engage in discussions with government officials regarding their living conditions and arrangements.

Access to basic services

Conditions in encampments are often deplorable. Governments fail to provide basic services required for human dignity such as toilets, showers, garbage collection and electricity. Denial of these services not only infringes the right to adequate housing but also serves to entrench public stereotypes about those living in poverty and homelessness. The provision of these services should be mandatory.

Housing over evictions

Where there is no viable alternative and eviction is required, it must be carried out in a manner consistent with international human rights law, which includes relocating residents to adequate, long-term housing with supports in the approximate location to the encampment or to another agreed-upon location.

A human rights foundation

Implementing the right to housing and securing human dignity must be the foundation of any response to tent encampments.

The rise of tent cities across Canada belies the country's wealth as well as its international standing as a human rights leader. How governments in Canada respond to encampments is a test of their respect for human rights. Let's hope they pass.

Leilani Farha is the UN Special Rapporteur on the Right to Housing. Haseena Manek is director of communications for The Shift.

@nowtoronto



Ex # 2 m/d/y 08/27/2024 Pg 1 of 4

Exam of LEILANI FAHRA

Heegsma et al v City of Hamilton

Nimigan Mihailovich Reporting Inc.

Global Homelessness Action

< As of today, 150 million people around the world are living in homelessness. The Shift has collaborated with more than 30 organizations from 20 countries around the world to amplify the voices of people living in homelessness through the Global Homelessness Action. Help hold governments accountable by signing the petition today. >

LEARN MORE / ([HTTPS://MAKE-THE-SHIFT.ORG/HOMELESSNESSACTION/](https://make-the-shift.org/homelessnessaction/))

RIGHT TO HOUSING

FINANCIALIZATION

HOMELESSNESS

CLIMATE

THE SHIFT IN ACTION



(<https://www.make-the-shift.org/pushback/>)

PUSHBACK Talks
Listen to our podcast



(<https://make-the-shift.org/in-the-news/>)

The Shift in the Media
Op-eds, press releases, podcasts, and more – follow along with what we've been up to

“The financialization of housing is...contributing to the degradation of the planet, driving the unsustainable construction of housing, sometimes just to be used as an instrument of investment, and eating into the global carbon budget...It is fueling the housing crisis by... driving unaffordability, evictions, and homelessness in cities across the world.” – Julieta Perucca, The True Cost of Financialization

OUR RESOURCES

(<https://www.make-the-shift.org/wp-content/uploads/2021/06/BS-letters.pdf>)
Blackstone

(https://www.make-the-shift.org/wp-content/uploads/2020/04/A_HRC_43_43_E-2.pdf)

(<https://www.make-the-shift.org/wp-content/uploads/2020/08/A-Na>)

Protocol-for-Homeless-Encampments-in-Canada.pdf)

1-Human-Rights-Based-National-Housing-Strategies2.pdf)

The Right to Housing for residents of informal set

A National Protocol for Homeless Encampments in Canada
A Human Rights Approach

Human Rights Based Housing Strategies

GET ACTIVE

If you want to help make the shift, you can follow us on social media and use the hashtag **#maketheshift** when promoting your right to housing events and statements.

FOLLOW US /
(HTTPS://TWITTER.COM/MAKE_THESHIFT)



JOIN OUR MAILING LIST

Join our mailing list to stay updated.

Enter your email address to subscribe*

Provide your email address to subscribe. For e.g. abc@xyz.com

☐ I agree to receive your newsletters and accept the data privacy statement.

You may unsubscribe at any time using the link in our newsletter.



We use Brevo as our marketing platform. By Clicking below to submit this form, you acknowledge that the information you provided will be transferred to Brevo for processing in accordance with their terms of use (<https://www.sendinblue.com/legal/termsofuse/>)

☐ I'm not a robot

reCAPTCHA
Privacy - Terms

JOIN NOW

Keep us close through all of our channels

(http
s://
ww
(http
s://
ww
stag
er.c
han
@am
com
/ma
e_th
XKo
ke_t
eshi
Ex8h
hesh
ft) g
Qtu
Ple
dpy
...)

© 2024 THE SHIFT | info@maketheshift.org

HOMELESS ENCAMPMENTS

FOLLOW US /
(HTTPS://TWITTER.COM/MAKE_THESHIFT)

Ex # 3 m/d/y 08/27/2024 Pg 1 of 5
Exam of LEILANI FAHRA
Heegsma et al v City of Hamilton
Nimigan Mihailovich Reporting Inc.

As access to affordable housing becomes more difficult, the number of homeless encampments across Canada has increased. While encampments do not satisfy the right to housing, the rights of encampment residents must be protected. The Shift has developed several resources to help ensure the rights of encampment residents are upheld. Download them and use them in your community!

Campements de sans-abri: des orientations pour l'implication des municipalités



Campements de sans-abri: des orientations pour l'implication des municipalités

The National Working Group on Homeless Encampments (NWG-HE) – convened by The Shift since January 2023 – presents a Municipal Engagement Guidance. This Guidance is intended to support municipalities in engaging homeless encampments in a constructive and peaceful manner. The Guidance is not a road map to solving homelessness. It is an effort to establish national standards, based in human rights, for municipal government engagement with encampments across the country of Canada. It is intended to help ensure the best outcomes for those living in encampments and their communities in the short term, while establishing a foundation for longer-term solutions.

(HTTPS://MAKE-THE-SHIFT.ORG/WP-

CONTENT/UPLOADS/2023/11/NWG-HE-
GUIDANCE-FRENCH-W-LIST-1.PDF)

DOWNLOAD

Homeless Encampments: Municipal Engagement Guidance



Homeless Encampments: Municipal Engagement Guidance

The National Working Group on Homeless Encampments (NWG-HE) – convened by The Shift since January 2023 – presents a Municipal Engagement Guidance. This Guidance is intended to support municipalities in engaging homeless encampments in a constructive and peaceful manner. The Guidance is not a road map to solving homelessness. It is an effort to establish national standards, based in human rights, for municipal government engagement with encampments across the country of Canada. It is intended to help ensure the best outcomes for those living in encampments and their communities in the short term, while establishing a foundation for longer-term solutions.

([HTTPS://MAKE-THE-SHIFT.ORG/WP-
CONTENT/UPLOADS/2023/11/NWG-HE-
GUIDANCE-W-LIST.PDF](https://make-the-shift.org/wp-content/uploads/2023/11/NWG-HE-GUIDANCE-W-LIST.PDF))

DOWNLOAD

A National Protocol on Homeless Encampments: A Human Rights Approach

In April 2020, former UN Special Rapporteur on the Right to Adequate Housing Leilani Farha and Dr. Kaitlin Schwan released *A National Protocol on Homeless Encampments: A Human Rights Approach* (<https://www.make-the-shift.org/wp-content/uploads/2020/04/A-National-Protocol-for-Homeless-Encampments-in-Canada.pdf>). The Protocol, based in international and domestic human rights law, outlines eight Principles to guide governments in their responses to homeless encampments.

([HTTPS://MAKE-THE-SHIFT.ORG/WP-CONTENT/UPLOADS/2020/08/A-NATIONAL-PROTOCOL-FOR-HOMELESS-ENCAMPMENTS-IN-CANADA.PDF](https://www.make-the-shift.org/wp-content/uploads/2020/08/A-National-Protocol-for-Homeless-Encampments-in-Canada.pdf))

DOWNLOAD

Homeless Encampments & Your Human Rights Handout

This Handout, *Homeless Encampments & Your Human Rights* (<https://www.make-the-shift.org/wp-content/uploads/2020/12/THESHIFT-Tent-Encampment-Protocol-Handout.pdf>), is for people living in encampments in Canada. It outlines residents' human rights and how governments are obliged to respect them. Download and freely distribute!

([HTTPS://MAKE-THE-SHIFT.ORG/WP-CONTENT/UPLOADS/2020/12/21-11-12-THESHIFT-TENT-ENCAMPMENT-PROTOCOL-HANDOUT.PDF](https://www.make-the-shift.org/wp-content/uploads/2020/12/21-11-12-THESHIFT-TENT-ENCAMPMENT-PROTOCOL-HANDOUT.PDF))

DOWNLOAD

JOIN OUR MAILING LIST

Join our mailing list to stay updated.

Enter your email address to subscribe*

Provide your email address to subscribe. For e.g abc@xyz.com

☐ I agree to receive your newsletters and accept the data privacy statement.

You may unsubscribe at any time using the link in our newsletter.



We use Brevo as our marketing platform. By Clicking below to submit this form, you acknowledge that the information you provided will be transferred to Brevo for processing in accordance with their terms of use (<https://www.sendinblue.com/legal/termsfuse/>)



I'm not a robot

reCAPTCHA
Privacy - Terms

JOIN NOW

Keep us close through all of our channels

(http
s://
ww
(http w.yo
s:// (htt utub
ww ps:// e.co
w.in twitt m/c
stag er.c han
@iamshel/
com mak UCD
/ma e_th XKo
ke_t eshi Ex8h
hesh ft) gQtu
hry) Phe
dpy

Heegsma et al
Appellants (Applicants)

-and-

CITY of HAMILTON
Respondent (Respondent)

Court File No.COA-25-CV-0166

Ontario
Court of Appeal

APPEAL BOOK - VOLUME 7

CIRCLE BARRISTERS

319 Sunnyside Avenue
Toronto, ON M6R 2R3
Sujit Choudhry (LSO# 45011E)
sujit.choudhry@circlebarristers.com

MISSISSAUGA COMMUNITY LEGAL SERVICES

130 Dundas St. E Suite 504
Mississauga ON
L5A 3V8
Sharon Crowe (LSO# 47108R)
sharon.crowe@mcls.clcj.ca

ROSS & MCBRIDE LLP

1 King Street West, 10th Floor, Hamilton, ON L8P 1A4
Wade Poziomka (LSO# 59696T)
wpoziomka@rossmcbride.com

Counsel to the Appellants