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Premier Eby, Attorney General Sharma and Minister Kahlon:

Re: Bill 45's proposed definition of "reasonably available alternative shelter" for purposes of court injunctions against homeless encampments

We urge you to remove the harmful and, in our view, unconstitutional provisions dealing with "reasonably available alternative shelter" from Bill 45, the miscellaneous statute amendment bill introduced by Attorney General Sharma on November 6, 2023.[1]

Signatories to this letter are a diverse group of community workers, volunteers, activists, legal professionals, academic researchers and others who work with and for precariously housed people, including those living in tent cities, to advance their rights and dignity. We are united by a commitment to a human rights-based approach to tackling Canada's housing crisis.

Bill 45's provisions on "reasonably available alternative shelter" are inconsistent with the eight principles of rights-based treatment of tent city residents set out in the National Protocol for Homeless Encampments in Canada and identified as a policy standard by the Federal Housing Advocate:

1. Recognize residents of homeless encampments as rights holders;
2. Engage meaningfully with and ensure effective participation of encampment residents;
3. Prohibit forced evictions of encampments;
4. Explore all viable alternatives to eviction;
5. Ensure that any relocation is human rights compliant;
6. Ensure encampments meet basic needs of residents consistent with human rights;
7. Ensure human rights-based goals and outcomes, and the preservation of dignity for encampment residents; and
8. Respect, protect and fulfill the distinct rights of Indigenous peoples in all engagements with encampments.[2]

Instead of observing these principles, the bill does not recognize tent city residents as rights holders. It requires no consultation with or participation of tent city residents before injunctions are issued–and indeed appears to have been drafted without any such consultation or participation. It facilitates forced evictions of tent cities. It says nothing about how relocations are carried out. It does nothing to ensure that encampments meet residents' basic needs. It allows outcomes that infringe residents' rights and dignity. Finally, it ignores the distinct rights of Indigenous peoples.

The bill undermines the human rights of those made most vulnerable by the current model of housing and shelter provision. It reinforces the stigma-based, punitive approach that local and other governments have taken to tent cities.

Encampments: Intersecting Crises, Punitive Responses

Almost 6,500 individuals are living in homeless shelters, vehicles, encampments or on the streets of Greater Vancouver[3] and Victoria[4] alone. Vancouver’s numbers have risen a sickening 32% since 2020. These alarming numbers are the product of intersecting crises that tear at the fabric of our society, including housing, mental health, toxic drugs, colonialism, racism and gender-based violence, all of which were exacerbated by the COVID-19 public health emergency. Tent cities are among the most visible manifestations of these worsening crises.

Despite recognition of housing as a human right in Canadian and international law,[5] governments continue to respond to poverty and lack of shelter with brutality, forcibly removing many encampments.[6] Police, bylaw officers and government staff have seized personal belongings, penned in encampment residents with metal construction fencing, forcibly removed and arrested residents, and bulldozed and destroyed their homes and belongings – including family photos, government ID and loved ones’ ashes.[7]

The fact that encampment residents in Vancouver,[8] Edmonton,[9] Hamilton,[10] Toronto[11] and beyond have taken the extraordinary step of going to court to challenge governments’ harsh actions is testament to how traumatic and hurtful encampment removals have been in Canada. It also signals powerfully that human rights of precariously housed people are under attack.

The law has been clear for more than a decade: preventing unhoused people from sheltering overnight on public land in the absence of accessible shelter alternatives violates their constitutional rights to life and security of the person.[12] Yet, local governments continue to go to court again and again to obtain injunctions to evict unhoused people from public land in the absence of accessible shelter.[13]

Pushback against these municipal actions is growing clearer and stronger—from courts, human rights experts and social justice advocates. Courts across the country increasingly reject government claims that overcrowded and unsafe shelter systems are adequate alternatives for unhoused people.[14] And human rights bodies have repeatedly warned governments, including in BC, to respect the human rights of unhoused people when dealing with encampments.[15]

It is incumbent on your government to heed these warnings.

Bill 45 Lowers Human Rights Protections for Encampment Residents

Instead of taking a human rights approach to the most visible manifestation of the housing crisis, this bill would make it easier to evict unhoused people from government-owned land.

Premier Eby remarked recently that the government was “‘struggling with a moving target from the courts’ when it comes to the circumstances around which a municipality can remove an encampment and what alternative ‘adequate shelter’ means in that context.” He went on to say that a court’s refusal to issue an injunction evicting an encampment from Vancouver’s CRAB Park[16] was an example of this moving target, and that the province was working to set a standard “that we need to hit to get people inside.”[17]

Bill 45 does not supply that standard. It is a vague, poorly drafted effort that lowers the bar on human rights protection. A human rights-based approach would raise the current bar, not lower it.

Bill 45 provides that when a local government seeks an injunction to enforce its bylaws against a person who is "sheltering at an encampment while homeless, alternative shelter is reasonably available to the person and meets the basic needs of the person for shelter" if it meets four requirements: the person may stay there overnight; they have access to a bathroom and shower at or near the shelter; they are offered one free meal a day at or near the shelter; and the shelter is staffed when in use.

While the BC government claims that the Bill provides encampment residents with some protection against arbitrary eviction, this is far from the truth. The bill does not even require that the person have access to a bed or any reasonable opportunity to sleep. On its face, a 24-hour Tim Hortons would seem to qualify as “alternative shelter” under this bill—which is absurd.

Moreover, if the bill is intended to provide clarity, it falls short by leaving key terms undefined, including “homeless,” “encampment,” “may stay” and “near,” and by failing to say what should happen, legally, if alternative shelter is or is not “reasonably available.”

Setting aside these issues of absurdity and vagueness, we wish to highlight four key problems with the bill: (1) failure to take into account practical barriers to shelter accessibility; (2) failure to take into account the distinctive situation and rights of Indigenous people; (3) failure to recognize the need for daytime shelter; and (4) failure to consult affected parties about the draft bill.

1. Ignoring Shelter Barriers

Not only is there an overwhelming shortage of shelter spaces, the spaces on offer are practically inaccessible to many unhoused people. Yet the bill makes no mention of accessibility. It is likely unconstitutional on this ground alone.

Many unhoused people cannot stay in homeless shelters because of violence, insecurity, theft, mold, bedbugs, rodents, and lack of privacy. These barriers are elevated for people suffering from anxiety, claustrophobia, post-traumatic stress or other conditions. They are especially stark for women and non-binary folks.[18]

Strict limits on what people can bring into shelters present unhoused people with an impossible choice between sleeping indoors and safeguarding their belongings – including the belongings they need to shelter outside when their shelter stay expires or they are evicted for not following strict shelter rules. Bans on pets and couples make spaces inaccessible for some. Curfews and abstinence rules limit accessibility for people with substance use disorders.

Many unhoused people, including those with mental health challenges, are ejected from shelters enforcing “one strike you’re out” policies. Limits on length of shelter stays are another

barrier. On top of it all, it is well documented that BC Housing’s housing waitlist processes are confusing, bureaucratic and futile for many unhoused people.

These barriers are well known to everyone concerned with homelessness, including your government. Judges have ruled that such factors must be considered when deciding whether to issue injunctions against encampments.

By contrast, Bill 45 appears to tell judges that they must find that alternative shelter is reasonably available if it meets bare-bones and totally inadequate requirements, regardless of whether it is actually accessible to residents of tent cities.

The intent seems to be to overturn a series of court decisions that have held that shelter is adequate only if it is practically accessible to the individuals the government wants to evict, including Indigenous people. These court decisions were carefully reasoned and based on detailed evidence from unhoused people about why certain shelter options are inadequate. To roll back the minimal standards that have been judicially articulated, in the face of all of this evidence, would be shameful.

By ignoring the issue of accessibility, Bill 45 perpetuates a false stereotype of unhoused people as “choosy beggars” who deliberately refuse adequate shelter and need to be forced by court order to move indoors. This narrative is wrong, insulting, and paints the absurd portrait of unhoused people as choosing to live in freezing, uncomfortable conditions.

The bill also fails to recognize that people experiencing homelessness know what shelter is safe and adequate for them, and it denies them any role in determining this issue. Encampments, for all their problems, can provide benefits compared to both shelters and the streets. These include greater stability, better sleep, better access to services, less stress, a sense of community, somewhere to keep belongings, some protection against violence and theft, and lower risk of overdose death.[19] Encampment residents know this, and courts have weighed these considerations when determining the suitability and accessibility of shelter spaces.[20]

There is no excuse for your government to ignore these realities.

2. Ignoring Indigenous Rights and Consultation

Indigenous people are massively overrepresented in the unhoused population. For example, they comprise 2% of Greater Vancouver’s population, but 33% of its homeless population.[21] They are profoundly affected by ongoing traumas of residential schools, colonial dispossession and anti-Indigenous racism. Existing shelter options too often reproduce and exacerbate these traumas for Indigenous people.

The Chief Justice of the BC Supreme Court has ruled that courts, when deciding on injunctions against encampments, must take into account “the history of colonialism, displacement, and residential schools,” how that history continues to impact unhoused Indigenous people, and “the impacts of trauma from residential schools on the Indigenous homeless population.”[22]

Most of British Columbia, including Vancouver, is on unceded lands belonging to Indigenous Peoples. As such, this bill’s attempt to legalize further displacement and traumatization of a disproportionately Indigenous segment of society is deeply concerning; a mirror of colonial violence committed by Canadian governments.

Not only does the bill ignore this context, our initial inquiries failed to identify any Indigenous organizations that were consulted about the text of the legislation. This violates the province’s solemn commitments and legal obligations to support Indigenous self-determination, consult Indigenous peoples on decisions that affect them, and, in keeping with the *Declaration on the Rights of Indigenous Peoples Act,* ensure that provincial laws comply with the *UN Declaration on the Rights of Indigenous Peoples*.

In the *Supporting the DTES: Provincial Partnership Plan Working Document*, released in March 2023, the provincial government claimed to be drawing their plan from “community-based knowledge” such as Red Women Rising, but that knowledge is not reflected in this bill. For example, Red Women Rising called for the following:

> “Fund more 24/7 low-barrier emergency shelters, transition homes, and drop-ins for women with long-term funding and full wrap-around supports including culturally-centered and holistic victim services, healing supports, counselling, legal assistance, programming, and recreational activities for Indigenous survivors of violence.”[23]

Not only do the bill’s provisions fail to meet these standards, the province cannot rely on past consultation exercises or written reports to fulfill its consultation requirements for this specific bill.

3. Denying Daytime Shelter and Storage

Third, the bill’s assertion that having somewhere to spend the night “meets the basic needs of the person for shelter" is simply untrue. Having somewhere to shelter and store belongings during the day is also a basic need that courts have recognized for years,[24] and now acknowledge as a constitutional right.[25]

To deny unhoused folks the ability to shelter 24/7 is to condemn them, in one judge’s words, to “constant disruption and a perpetuation of a relentless series of daily moves to the streets, doorways, and parks” of Canadian cities.[26]

Packing up their homes every morning, lugging all their belongings – including survival items like tents, sleeping bags, clothing, toiletries and medicine – around all day, and lining up for somewhere to sleep every night is a hardship for all unhoused folk, and impossible for many.[27]

Meanwhile, loitering and “safe streets” laws criminalize people for performing basic life-sustaining activities in public.[28]

Like BC’s proposed ban on public consumption,[29] this bill is aimed at excluding poor people from public spaces. Why give municipalities and police another way to expel people from streets

and parks, when the real problems are an acute lack of accessible, affordable housing and income assistance that fails to cover basic needs?

4. Failing to Consult Affected Parties

We are not aware that the government, in drafting this bill, consulted any organizations that represent or work with precariously housed people, let alone precariously housed people themselves. Not even the Union of BC Municipalities, which represents the local governments that are the subject of the bill, was consulted.[30]

Encampments and homelessness are complex, difficult issues – as Premier Eby himself has said.[31] Legislation addressing them needs to be developed through an inclusive, consultative process that gives all affected parties, especially precariously housed folks who stand to be evicted, an effective voice and respects their rights.

Instead, without consulting the affected individuals and groups, the government has introduced legislation that is inconsistent with the *Canadian Charter of Rights and Freedoms*, Indigenous rights, the *Declaration on the Rights of Indigenous Peoples Act* and international human rights law.

Conclusion

Bill 45’s provisions on alternative shelter undermine *Charter* and Indigenous rights, and purport to limit courts’ discretion regarding injunctions against encampments. They will be deeply harmful to unhoused people.

We ask you to withdraw this harmful proposal, stop trying to justify the punishment, stigmatization and eviction of precariously housed people and start to work seriously—with precariously housed people themselves—to protect the rights of the most vulnerable British Columbians to shelter, survival, health, and dignity.

We will continue collecting signatures on this letter after you receive it. Please visit https://bccla.org/policy-submission/bill-45-alternative-shelter-open-letter/ periodically for an up-to-date list of signatories.

Sincerely,

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Anna Cooper, Staff Lawyer, Pivot Legal Society

Alexandra Flynn, Associate Professor, Allard School of Law, University of British Columbia

Ga Grant, Staff Litigation Counsel, BC Civil Liberties Association

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Alexander Kirby, Associate, Arvay Finlay LLP

Raji Mangat, Executive Director, West Coast LEAF Association

Niki Ottosen, Backpack Project, Victoria BC

Beck Park, Associate, Arvay Finlay LLP

Julia Riddle, Lawyer, Arvay Finlay LLP

Estair Van Wagner, Associate Professor, Osgoode Hall Law School, York University

Stepan Wood, Professor and Canada Research Chair in Law, Society & Sustainability, Allard School of Law, University of British Columbia

Fiona York, CRAB Park advocate

Margot Young, Professor, Allard School of Law, University of British Columbia

Notes

1. Bill 45, Miscellaneous Statutes Amendment Act (No. 4), 2023, ss 1-2, https://www.leg.bc.ca/content/data%20-%20ldp/Pages/42nd4th/1st_read/PDF/gov45-1.pdf. We express no view on the other clauses of the bill, which deal with different matters.
2. See Leilani Farha & Kaitlin Schwan, *A National Protocol for Homeless Encampments in Canada* (UN Special Rapporteur on the Right to Adequate Housing, 2020), https://www.make-the-shift.org/wp-content/uploads/2020/04/A-National-Protocol-for-Homeless-Encampments-in-Canada.pdf (Farha & Schwan, “National Protocol”). The protocol is identified as a policy standard in Office of the Federal Housing Advocate, *Upholding Dignity and Human Rights: The Federal Housing Advocate’s Review of Homeless Encampments – Interim Report* (Ottawa: Office of the Federal Housing Advocate, Canadian Human Rights Commission, 2023), p 30, https://www.housingchrc.ca/sites/housing/files/2023-10/ofha_-_interim_report_on_encampments_-_en_-_october_2023.pdf (“FHA Homeless Encampments Interim Report”).
3. Homelessness Service Association of BC, *2023 Homeless Count in Greater Vancouver: Final Data Report* (Oct. 2023), https://hsa-bc.ca/_Library/2023_HC/2023_Homeless_Count_for_Greater_Vancouver.pdf (“Greater Vancouver Homeless Count 2023”).
4. Community Social Planning Council of Greater Victoria, *2023 Greater Victoria Point-In-Time Homeless Count and Housing Needs Survey* (Jul. 2023), https://www.crd.bc.ca/docs/default-source/housing-pdf/housing-planning-and-programs/2023-point-in-time-count-report.pdf.
5. Alexandra Flynn and others, *Overview of Encampments Across Canada: A Right to Housing Approach* (Ottawa: Office of the Federal Housing Advocate, Canadian Human Rights Commission, 2022), https://www.homelesshub.ca/resource/overview-encampments-across-canada-right-housing-approach.
6. For example, FHA Homeless Encampments Interim Report.
7. Andrew Kurjata, “Ashes of deceased loved ones lost in demolition of Prince George homeless camp, B.C. court hears,” CBC News (Dec. 18, 2021), https://www.cbc.ca/news/canada/british-columbia/prince-george-homeless-camp-destroyed-court-case-1.6291135.
8. *Bamberger v Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49, https://canlii.ca/t/jlqf6.
9. Stephen Cook, “Human rights group sues City of Edmonton over encampment clearing,” CBC News (Aug. 31, 2023), https://www.cbc.ca/news/canada/edmonton/edmonton-lawsuit-encampments-1.6952065.
10. Teviah Moro, “City loses battle over witnesses in Hamilton encampment legal challenge,” Hamilton Spectator (Oct. 30, 2023), https://www.thespec.com/news/hamilton-region/city-loses-battle-over-witnesses-in-hamilton-encampment-legal-challenge/article_f7818c13-c049-5021-97c1-765f7b034051.html.

11. *Black v City of Toronto*, 2020 ONSC 6398, https://canlii.ca/t/jb937; Joe Friesen, “City of Toronto, police face lawsuit over removal of homeless camps,” Globe & Mail (Oct. 25, 2021), https://www.theglobeandmail.com/canada/article-city-of-toronto-police-face-lawsuit-over-removal-of-homeless-camps/.
12. *Victoria (City) v Adams*, 2009 BCCA 563, https://canlii.ca/t/26zww; *Abbotsford (City) v Shantz*, 2015 BCSC 1909, https://canlii.ca/t/glps4.
13. Stepan Wood, *Rush to Judgment: A Critical Survey of Court Injunctions Against Homeless Encampments in BC, 2000-2022* (Vancouver: UBC Centre for Law & the Environment, 2023), https://allard.ubc.ca/sites/default/files/2023-10/Rush%20to%20Judgment%20Report%20Oct%202023.pdf; Canadian Encampment Database, “Court Case Tracking,” https://sites.google.com/view/canadianencampmentdatabase/court-orders.
14. For example, *Prince George v Stewart*, 2021 BCSC 2089, https://canlii.ca/t/jjzl4; *Regional Municipality of Waterloo v Persons Unknown*, 2023 ONSC 670, https://canlii.ca/t/jv6dc.
15. For example, Office of the Human Rights Commissioner, “Human rights of the unhoused must be respected when removing tent city encampment,” (Aug. 9, 2022), https://bchumanrights.ca/news/human-rights-of-the-unhoused-must-be-respected-when-removing-tent-city-encampment/.
16. *Bamberger v Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49, https://canlii.ca/t/jlqf6.
17. Elizabeth McSheffrey and Kristen Robinson, “Analysis finds ‘alarming’ issues with some injunctions against B.C. homeless encampments,” Global News (Oct. 26, 2023), https://globalnews.ca/news/10051733/ubc-study-injunctions-bc-homeless/.
18. For example, Kaitlin Schwan and others, *The State of Women’s Housing Need & Homelessness in Canada* (Toronto: Canadian Observatory on Homelessness, 2020), https://www.homelesshub.ca/StateofWomenHomelessness.
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20. For example, *Prince George v Stewart*, 2021 BCSC 2089, https://canlii.ca/t/jjzl4.
21. Greater Vancouver Homeless Count 2023.
22. *Prince George v Stewart*, 2021 BCSC 2089, https://canlii.ca/t/jjzl4, paragraphs 70-71.
23. BC Ministry of Housing, *Supporting the Downtown Eastside: Provincial Partnership Plan Working Document* (Mar. 2023), https://news.gov.bc.ca/files/Strategy_DTES_provincial_response_plan.pdf.
24. *Abbotsford (City) v Shantz*, 2015 BCSC 1909, https://canlii.ca/t/glps4.
25. *Regional Municipality of Waterloo v Persons Unknown*, 2023 ONSC 670, https://canlii.ca/t/jv6dc.
26. *British Columbia v Adamson*, 2016 BCSC 584, https://canlii.ca/t/gp40g, at paragraph 183.
27. Belongings Matter: Possessions of Precariously Housed People, https://belongingsmatter.ca/.
28. Policing Homelessness in the Pandemic: Mapping Neo-Vagrancy Laws in Canada, https://policinghomelessness.ca/mapOne.html.
29. Mathew Fleury, Erica McAdam and Tyson Singh Kelsall, “B.C. ban on public consumption of some drugs would harm the vulnerable,” Policy Options (Oct. 30, 2023), https://policyoptions.irpp.org/magazines/october-2023/b-c-ban-public-consumption/.
30. Union of BC Municipalities, “Province introduces legislation on homeless encampments” (Nov. 8, 2023), https://www.ubcm.ca/about-ubcm/latest-news/province-introduces-legislation-homeless-encampments.
31. Canadian Press, “Incoming B.C. premier Eby vows to transform Vancouver’s Downtown Eastside,” CityNews Vancouver (Nov. 17, 2022), https://vancouver.citynews.ca/2022/11/17/bc-premier-vancouver-downtown-eastside/.