

Prince George City Hall  
1100 Patricia Blvd.  
Prince George, BC  
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January 17, 2017

Dear Mayor and Council:

**Re: Response to Councillor Terri McConnachie and information for Council regarding the harmful effects of the proposed *Nuisance Abatement and Cost Recovery Bylaw***

On January 13, Councillor McConnachie expressed interest over Twitter in learning more about the research behind cost-recovery policies in the context of emergency response.<sup>1</sup> This letter is a summary of our findings and relevant research that would be applicable to the context at hand. We too agree that “#FactsMatter” and trust that Council will rely on such evidence in informing their approach to policy.

**The impacts of the *Nuisance Abatement and Cost Recovery Bylaw* (the “Bylaw”) risk harm to marginalized members of the Prince George community.** Despite assurances from Mayor and Council that this Bylaw will only be used in worst-case-scenarios, the Bylaw’s practical effects nonetheless have the potential to be highly negative, specifically by:

1. creating a chilling effect on people’s willingness to call 911 and inducing fear of having 911 called by others; and
2. incentivizing landlords to evict or not rent to people who may require repeated 911 services.

**I. The Bylaw will have a chilling effect on people’s willingness to call 911 and will induce fear of having 911 called by others**

*Policies adopted by Search and Rescue (SAR) organizations provide useful guidance on the ill-advised nature of imposing monetary fines when calling for help.*

Amongst our primary concerns are that this Bylaw will cause a chilling effect on people’s willingness to call 911. This is comparable to other emergency contexts, such as wilderness search and rescue. North Shore Rescue (NSR) is a mountain search-and-rescue team based in Metro Vancouver. NSR unequivocally states it does not support charging for assistance because “through over 50 years of Search and Rescue work on the North Shore, [they] have seen many calls where family have been under the impression that they would be charged, and delayed their calls for help.”<sup>2</sup> Charging for assistance not only puts those in need of assistance at risk, it can also put first responders’ safety at greater risk if calls are delayed until a situation becomes more dire.

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<sup>1</sup> [https://twitter.com/Terri\\_Mcconna/status/952321039056355329](https://twitter.com/Terri_Mcconna/status/952321039056355329)

<sup>2</sup> North Shore Rescue, “Not Charging for Rescues” <http://www.northshorerescue.com/services/charging-for-rescues/>

In addition, the BC Search and Rescue Association clearly states that it “believes that the perceived or actual belief that a lost or injured person or their loved ones will be charged for a search and rescue response could directly affect the decision as to if or when a call for professional help will be made. It is [their] position that any delay in the deployment of Search and Rescue (SAR) services can negatively impact the outcome of a SAR mission.”<sup>3</sup>

More notably, studies conducted in other jurisdictions indicate that fear of financial burden are amongst the major deterrents for low-incomes communities in calling 911 for assistance.<sup>4</sup> This deterrence manifests regardless of whether the financial burden actually accrues or whether it is merely reasonably perceived. Given that eviction due to noise complaints is a documented risk for women leaving a violent relationship<sup>56</sup>, it is also reasonable to believe that this Bylaw would create an increased risk, whether real or perceived, for this vulnerable group of women and put added pressure on victims of abuse to put aside their safety needs to prevent an abuser from causing a scene or engaging in behaviour that may lead to 911 calls.

*There is no rational connection between a Bylaw that punishes people for calling 911 and increased abstinence and sobriety.*

Where the Bylaw may intersect with people who use drugs or alcohol, the Bylaw will not lead to increased abstinence or sobriety, but it may lead people to avoid calling 911, which is potentially fatal.<sup>7</sup> The Bylaw fails to take into account the complex nature of addiction and presumes punitive approaches to substance use result in the cessation of drug and alcohol use, contrary to evidence-based research showing that enforcement efforts “often produce various physical, social, and behavioural effects that result in the exacerbation of health-related harms, and the emergence of problems in completely new areas.”<sup>8</sup> Addiction is a chronic and relapsing condition.<sup>9</sup> It has been recognized by the federal government and the Supreme Court of Canada as a disability for which the individual cannot be blamed.<sup>10</sup> Punitive measures like those proposed in the Bylaw, then, cannot logically be considered an appropriate means to address repeated calls to 911—whether made by the occupant of the premises or someone else on or near the premises—that result from an individual in the above situation requiring assistance or otherwise interacting with emergency or city services as a result of their addiction.

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<sup>3</sup> British Columbia Search and Rescue Association, “No Charge for Search and/or Rescue”, British Columbia Search and Rescue Association Official Position Statement (2014), online: <http://www.bcsara.com/about/faq/no-charge-for-search-and-rescue/>

<sup>4</sup> Comilla Sasson, MD, PhD, MS, et al, “Barriers to Calling 911 and Learning and Performing Cardiopulmonary Resuscitation for Residents of Primarily Latino, High-Risk Neighborhoods in Denver, Colorado” (2015) 65:5 *Annals of Emergency Medicine* 545-552, online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4866505/>

<sup>5</sup> David P Ball, “BC to review tenancy laws that may trap women in bad relationships”, *The Tyee* (24 April 2014), online: <https://thetyee.ca/Blogs/TheHook/2014/04/24/BC-Housing-Domestic-Violence/>

<sup>6</sup> Chris Hanrahan, Dorinda Wider & Christy Snow-Kaster (Volunteer Lawyers Network), “Helping Victims of Domestic Violence Escape Dangerous Rental Housing” (21 March 2012), online: <https://www.vlnmn.org/archives/125>

<sup>7</sup> Derek Chang, “The missing link between overdose crisis and drug policy” *The Vancouver Sun* (12 January 2018), online: <http://bit.ly/2rkwDj5>

<sup>8</sup> Thomas Kerr, Will Small, & Evan Wood, “The public health and social impacts of drug market enforcement: A review of the evidence,” (2005) 16:4 *International Journal of Drug Policy*, 210-220, online: <http://www.sciencedirect.com.ezproxy.library.ubc.ca/science/article/pii/S0955395905000563?via%3Dihub>

<sup>9</sup> Emmanuel Krebs et al, “Characterizing Long-Term Health Related Quality of Life Trajectories of Individuals With Opioid Use Disorder” (2016) 67 *Journal of Substance Abuse Treatment*, 30-37, online: <http://www.sciencedirect.com.ezproxy.library.ubc.ca/science/article/pii/S0740547215300416?via%3Dihub>

<sup>10</sup> *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at 101, online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7960/index.do>

Councillor Skakun’s suggestion that the Bylaw will encourage people to “clean up their act” is also a dangerous departure from the ethos of federal initiatives undertaken during the ongoing opioid crisis. Harm reduction initiatives—which encourage people who use drugs to do so in as safe an environment as possible—are increasingly replacing prohibition efforts because of their effectiveness at realistically addressing the complexity of addiction and ensuring that the negative effects of drug use are mitigated. Consider that in 2016, the federal government replaced its Anti-Drug Strategy with the Canadian Drugs and Substances Strategy, premised on the idea that drug use is a public health issue rather than a criminal one, with policies under the strategy being “based on a strong foundation of evidence, including data related to harm reduction policies, programs and interventions.”<sup>11</sup> This shift was made in recognition of the fact that the country faces an opioid crisis of unprecedented magnitude that prohibition oftentimes exacerbates rather than ameliorates.

*The Bylaw goes against current efforts made at all levels of government to encourage calls to 911 during overdoses.*

The Bylaw flies in the face of harm reduction efforts taken by federal and provincial levels of government during the opioid crisis, with effects that could foreseeably mean the difference between life and death. Escalated harm reduction measures have been imposed at every level of government to encourage people to use drugs as safely as possible. This includes the enactment of the *Good Samaritan Drug Overdose Act*, which aims to encourage individuals to call 911 in the event of an overdose by establishing legal protections for callers and individuals in need of emergency assistance.<sup>12</sup> As then-Minister of Health Jane Philpott explained, “during an overdose, a call to 911 can often be the difference between life and death. We hope that this new law, and the legal protection it offers, will help encourage those who experience or witness an overdose to make that important call, and save a life.”<sup>13</sup>

The Bylaw is anathema to these federal aims, insofar as it actually deters individuals from calling 911 due to fear of fines and the possible instability of their housing tenure flowing therefrom. Fear of prosecution is already a key contributor to individuals’ unwillingness to call 911 during an overdose.<sup>14</sup> Efforts made by the City of Prince George to impose additional fear of penalty on callers to 911 is particularly irresponsible and reckless at a time when higher levels of government are encouraging a scaling down of such barriers, and in the context of an opioid crisis, where 1,208 people died last year in B.C. alone (as of October).<sup>15</sup>

Notably, approximately 87.3% of those fatal overdoses occurred inside and primarily in private residences<sup>16</sup>—perhaps on the very properties that your Bylaw identifies as “nuisance properties.” In light of these findings, any disincentive to call 911 must be considered for its incredibly dangerous and potentially fatal consequences.

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<sup>11</sup> Health Canada, “The New Canadian Drugs and Substances Strategy” (2016), online: <https://www.canada.ca/en/health-canada/news/2016/12/new-canadian-drugs-substances-strategy.html>

<sup>12</sup> *Good Samaritan Drug Overdose Act*, SC 2017, c 4, online: [http://lawslois.justice.gc.ca/eng/AnnualStatutes/2017\\_4/page-1.html](http://lawslois.justice.gc.ca/eng/AnnualStatutes/2017_4/page-1.html)

<sup>13</sup> Health Canada, “Good Samaritan Drug Overdose Act Becomes Law in Canada” (2016), online: [https://www.canada.ca/en/health-canada/news/2017/05/good\\_samaritan\\_drugoverdoseactbecomeslawincanada.html](https://www.canada.ca/en/health-canada/news/2017/05/good_samaritan_drugoverdoseactbecomeslawincanada.html)

<sup>14</sup> Graham Ambrose, Ashraf Amlani & Jane A Buxton, “Predictors of seeking emergency medical help during overdose events in provincial naloxone distribution programme: a retrospective analysis” (2016) 6:6 *BMJ Open*, online: <https://open.library.ubc.ca/cIRcle/collections/facultyresearchandpublications/52383/items/1.0315342>; Oluwajenyo Banjo MPHc et al, “A quantitative and qualitative evaluation of the British Columbia Take Home Naloxone program” (2014) 2:e *CMAJ Open* 153-61, online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4183165/>

<sup>15</sup> Coroners Service of British Columbia, “Illicit Drug Overdose Deaths in BC: January 1, 2007-October 31, 2017” (2017) at 5 [Coroners report], online: <https://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/death-investigation/statistical/illicit-drug.pdf>

<sup>16</sup> Coroners Report at I.

## 2. The Bylaw incentivizes landlords to evict or not rent to people who may require repeated 911 services

*BC tenancy law could allow a landlord to evict a tenant for incurring fees under the Bylaw.*

Under the *Residential Tenancy Act*, landlords can lawfully evict tenants for a variety of reasons, including where “a tenant or person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord’s property at significant risk.”<sup>17</sup> [Emphasis added]

This legislation is sufficiently broad to potentially allow a landlord to evict a person who has damaged their interest in a property by incurring fees upon it. Further detail as to how this has manifested in other jurisdictions is included below in relation to women experiencing violence.

As LandlordBC, an industry association representing both rental and housing owners and managers in BC, explained in a letter addressed to Mayor and Council, “[t]his proposed bylaw is wrought with unintended consequences including transferring increased costs to landlords that they will find difficult to recoup and, potentially forcing landlords to scrutinize prospective tenants much more aggressively thereby denying housing to a larger base of prospective renters and especially more vulnerable populations. Increased scrutiny will raise a landlord’s risk to accusations of discriminatory practices and the costly consequences therein. This is an untenable situation for a responsible landlord. The bottom line is that it will be more difficult for the citizens of Prince George to obtain secure rental housing.”

*The threat of eviction and ensuing homelessness stemming from the Bylaw put vulnerable populations at risk of adverse health impacts and even death.*

With the proposed penalties sanctioned by the Bylaw, it is foreseeable that tenants who require frequent emergency assistance could be put at risk of eviction. This instability of tenure cannot be justified, particularly not in the context of a housing crisis. For individuals with complex health conditions, including addiction, the health and social harms associated with homelessness, including overdose and death, is more extreme than for individuals with stable housing.

As a 2016 report by *Megaphone Magazine* points out, “[h]omelessness puts people in an extreme state of vulnerability and greatly increases their chance of dying through violent means.” Moreover, “[d]rug and alcohol deaths still account for the largest number of homeless deaths—30.4 per cent in 2014 and 29.9 per cent between 2007 and 2014.”<sup>18</sup> Threatening the housing security of people who use drugs could result in dire health consequences, and on this basis alone, the Bylaw must be reconsidered.

*The bylaw would disadvantage and adversely affect the health and safety of women in vulnerable situations or fleeing violence.*

Women who have experienced violence (especially single mothers, women receiving income assistance, and women in precarious work) are already seriously disadvantaged in the rental market and are vulnerable to eviction where landlords have discretion in selecting tenants. This Bylaw worsens these challenges by affording landlords one more reason to evict vulnerable women who for example are

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<sup>17</sup> *Residential Tenancy Act*, SBC 2002, c 78, s47(1)(d)

<sup>18</sup> *Megaphone Magazine*, “Still Dying on the Streets: Homeless Deaths in British Columbia, 2006-2014 (Second Edition, 2016)” (March 2016) Street Corner Media Foundation at 5, online: [https://d3n8a8pro7vhm.cloudfront.net/megaphone/pages/1159/attachments/original/1459202864/Still\\_Dying\\_on\\_the\\_Streets-1.pdf?1459202864](https://d3n8a8pro7vhm.cloudfront.net/megaphone/pages/1159/attachments/original/1459202864/Still_Dying_on_the_Streets-1.pdf?1459202864)

being harassed by an abuser, which will often result in more frequent calls to 911, whether made by the woman herself or by neighbours.<sup>19 20 21</sup> In such circumstances, it is the women experiencing abuse, who by virtue of being treated as “problem tenants,” are unjustly held accountable for their abusers’ behavior.

More troubling still, this Bylaw empowers abusers, including abusers who have conditions preventing them from contacting a woman but which are only enforced if the woman calls police. Abusers (whether living in the home or not) are empowered to create a disturbance as a form of threat. This puts women in the untenable circumstance of calling 911 and risking eviction for being a nuisance tenant, or avoiding calling 911 and not having the benefit of law enforcement protection when facing threats of violence.

Women who use substances and women with disabilities face disproportionate levels of violence<sup>22 23</sup>. The ways these issues intersect in some women’s lives may mean they require more support from emergency services on the whole. In this way, the most vulnerable tenants are most likely to be harmed by this Bylaw.

### **Conclusions regarding the constitutionality of the Bylaw**

It is based on the above concerns that we believe the Bylaw to be constitutionally suspect. Laws that may interfere with “the right to make fundamental personal choices free from state interference”<sup>24</sup> we say including the right to call 911 without fear of financial penalty or eviction, and are therefore open to constitutional challenge.

We further recognize that certain members of Council have expressed that the intent of the Bylaw is to benefit the larger community, not to cause the potential harms we have identified; however, assessment of the constitutionality of the Bylaw “does not consider how well the law achieves its objective or how much of the population benefits; there is no consideration of ancillary benefits to the general population...”<sup>25</sup> Those broader potential benefits are only relevant where a government seeks to justify a law that has been found unconstitutional. Therefore, the other possible benefits of the Bylaw are not relevant to whether or not it is constitutional. The Bylaw need only have an arbitrary, overbroad or grossly disproportionate impact on the life, liberty, or security of one person to establish a constitutional breach.

Also, the Bylaw’s purposes must be precisely defined.<sup>26</sup> Encouraging people to “clean up their act” is overly vague and beyond the jurisdiction of a municipality.

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<sup>19</sup> Annamarya Scaccia, “When Domestic Violence Victims Call Police for Help—and Get Evicted Instead” *Broadly*. (13 April 2017), online: [https://broadly.vice.com/en\\_us/article/mbqvpn/when-domestic-violence-victims-call-police-for-helpand-get-evicted-instead](https://broadly.vice.com/en_us/article/mbqvpn/when-domestic-violence-victims-call-police-for-helpand-get-evicted-instead)

<sup>20</sup> Julian Spector, “Get Abused, Call 911, Get Evicted” *CityLab* (13 November 2015), online: <https://www.citylab.com/equity/2015/11/get-abused-call-911-get-evicted/402709/>

<sup>21</sup> Lakisha Briggs, “I was a domestic violence victim. My town wanted me evicted for calling 911” *The Guardian* (11 September 2015), online: <https://www.theguardian.com/commentisfree/2015/sep/11/domestic-violence-victim-town-wanted-me-evicted-calling-911>

<sup>22</sup> Disabled Women’s Network of Canada, “Factsheet: Women with Disabilities and Violence” (2014), online: <http://www.dawncanada.net/main/wp-content/uploads/2014/03/English-Violence-January-2014.pdf>

<sup>23</sup> Harm Reduction International, “Violence against Women who use Drugs and Access to Domestic Violence Shelters” (Briefing Paper), (March 2013), online: [https://www.hri.global/files/2013/03/19/Briefing\\_Paper\\_-\\_Access\\_to\\_Shelters\\_-\\_with\\_correct\\_fonts\\_07.03\\_.13\\_.pdf](https://www.hri.global/files/2013/03/19/Briefing_Paper_-_Access_to_Shelters_-_with_correct_fonts_07.03_.13_.pdf)

<sup>24</sup> *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 64 [*Carter*]

<sup>25</sup> *Abbotsford (City) v Shantz*, 2015 BCSC 1909 at para 191

<sup>26</sup> *Carter* at para 78

Assertions that the City will employ its discretion to implement the Bylaw in the fashion that it believes will meet constitutional standards will not save an otherwise unconstitutional law. Where a law is unconstitutional, as we believe this Bylaw may be, it cannot be saved by relying on the discretion of well-intentioned people to not apply the Bylaw in circumstances where they believe doing so would be a constitutional violation.<sup>27</sup>

In ending, we trust this will sufficiently provide enough evidence for Council to reconsider its move to enact the *Nuisance Abatement and Cost Recovery Bylaw*. Such a proposed scheme runs afoul of both research and policy of senior levels of government, which are working to encourage individuals to call 911 in an emergency, not discourage it, especially in the context of overdose and housing crises.

Sincerely,



**DJ Larkin**  
Legal Director  
Pivot Legal Society



**Caitlin Shane**  
Community Engagement Lawyer  
Pivot Legal Society

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<sup>27</sup> *R v Nur*, 2015 SCC 773 at para 88