

# PROJECT INCLUSION

CONFRONTING ANTI-HOMELESS  
& ANTI-SUBSTANCE USER STIGMA  
IN BRITISH COLUMBIA



**Pivot Legal Society is located on the unceded lands of the Coast Salish Peoples, including the territories of the xʷməθkʷəṽəm (Musqueam), Skwxwú7mesh (Squamish), and səílwətaʔt̓/Selilwitulh (Tsleil-Waututh) Nations. Over the course of this project, we visited the traditional territories of many other Nations we cannot name in order to respect our commitment to keep the communities we visited confidential.**

This project was made possible by the 76 people who stepped forward to share their experiences, their insights, and their wisdom. It was an honour to meet each and every one of them and to hear their stories firsthand. We would also like to thank all of the focus group participants and survey respondents who contributed to this project. We are also indebted to the many frontline service providers, health care workers, and advocates across the province who took time out of their busy schedules to share their expertise, answer our questions, connect us with participants, and host us while visiting their communities. While we cannot name you individually in order to protect participants' confidentiality, we are deeply grateful for your support.

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# Project Inclusion

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Confronting Anti-Homeless  
and Anti-Substance User Stigma  
in British Columbia

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# Executive Summary

## MAKING STIGMA VISIBLE

By centring and amplifying the voices and experiences of people most affected by BC's homelessness crisis and drug policy crisis, Project Inclusion identifies the legal, policy-related, and other structural barriers that must be addressed in order to meaningfully prevent opioid-related deaths and other health and safety harms, particularly among people who are experiencing homelessness and people in deep poverty who use substances.

Project Inclusion is the culmination of over a year of research by Pivot Legal Society lawyers and researchers, who travelled to ten communities across BC's five regional health authorities. Working from the perspective that people are experts in their own lives and hold powerful visions for change, the Pivot team interviewed people about their experiences of homelessness, with accessing harm reduction and health care services, with the criminal justice system, and with accessing services such as income assistance, shelters, and hospitals.

For many people who participated in Project Inclusion, the interviews marked a new experience. No matter where Pivot researchers travelled, people shared, again and again, that they had seldom been asked about their lives in a way that suggested

to them that their experiences and their visions for change held value. Many individuals shared that they had instead been shown, over the course of their lives and through ongoing interactions with police, other residents of their communities, and even some health care workers, that their homelessness and their substance use defined them and resulted in them being treated as unworthy of respect and dignity. These two markers seemed to be used by others to justify their daily experiences of violence, racism, theft, threats, and ostracism.

Project Inclusion study participants described a diversity of life experiences with researchers, yet the commonality of experiences that transcended geography and demographics was striking. In every community that researchers visited, stigma was the unifying thread that shaped people's lives.

Stigma disqualifies people and groups from social acceptance and social equity. Stigma is powerful because it is not always easy to quantify. By shedding light on the experiences and voices of people who are told that they don't matter because their lives and identities are stigmatized, Project Inclusion makes stigma visible. The project aims to address stigma's root causes by offering analysis of how laws and policies in BC are both shaped by stigma

and serve to perpetuate it. This report offers that analysis alongside actionable recommendations for change.

## HOW TO USE THIS REPORT

Project Inclusion consists of three parts that aim to:

- provide context for the experiences and perspectives of people experiencing homelessness and people who use substances while living in poverty;
- lay out the study's main findings, which connect policing, court- and police-imposed behavioural conditions, and the provision of essential services with the perpetuation of stigmatizing practices that make people vulnerable to opioid-related harms and other health and safety risks; and
- map out a new approach for addressing the ways in which stigma shapes legislative agendas and becomes embedded in law and policy, by offering an approach to operationalizing a stigma audit process for BC.

Each section may be read on its own. The three subsections on policing, court- and police-imposed behavioural conditions, and service provision conclude with a set of concrete recommendations for how

to practically address the concerns related to stigmatization, access barriers, and criminalization emerging from participants' contributions.

## REPORT SUMMARY

Part One of this report, *Lived Realities*, provides context about the everyday experiences of study participants, who are largely people experiencing homelessness and people who are criminalized as a result of substance use. The aim is to help readers understand the realities of homelessness and criminalization due to substance use in a grounded way that centres the voices of people with lived experience.

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Section One, *Homelessness in Context*, confronts pervasive, stigmatizing popular myths about homelessness that shape public policy and impact the everyday lives of people experiencing homelessness. This section sheds light on the constrained choices with which people live. Through the voices of study participants, it shows how BC's housing crisis plays out in small municipalities, suburban communities, and rural areas. While many residents of the urban centres on BC's south coast believe that housing is more affordable elsewhere in the province and therefore homelessness is less of a problem outside in smaller communities, Project Inclusion participants show that an ongoing struggle to find safe, affordable housing exists across BC. That struggle is made worse by law and policy that criminalizes, marginalizes, and stigmatizes people experiencing homelessness.

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Section Two, *Substance Use in Context*, considers substance use from an intersectional perspective that centres the aspirations, self-determination, and liberation of people who use substances and are experiencing poverty. This perspective amplifies the experiences of people who

use substances and challenges conventional approaches to substance use rooted in stigma, approaches that persist to the detriment of the health of people who use substances and public health at large. This Part focuses on contextual factors impacting substance use and homelessness. It sets the stage for Part Two of this report, which analyzes the criminal justice and social service systems impacting the health and human rights of people who use substances and people living in poverty.

Part Two of this report, *Change the System*, consists of three sections that lay out Project Inclusion's study findings. It focuses on systems that participants identified as those that most profoundly impact their health, safety, and sense of inclusion. It provides analysis of the laws, policies, and institutional practices that play out in people's everyday lives and offers a vision for change.

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The first section of Part Two, *Impacts of Police and Policing*, examines the impact of policing institutions, bodies, and practices on the lives of Project Inclusion study participants. The findings demonstrate how policing practices directly and indirectly lead to negative health outcomes, opioid-related harms, and safety issues for study participants. Across the province, participants shared their experiences with harassment, displacement, threats, racism, and violence at the hands of police and policing institutions. Participants explained how police disrupt harm reduction activities and basic survival activities in ways that undermine their health and safety. Across all policing jurisdictions, we found that participants share an extreme distrust of police, and are reluctant to call upon them when their safety is at risk or when they are a victim of a crime. This section also considers the shortcomings of current police oversight mechanisms and the concerns

participants share about the actions of quasi-policing bodies such as bylaw officers and private security guards.

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The second section of Part Two, *Everything Becomes Illegal: Behavioural Conditions and the Court System*, explores the impact of police- and court-imposed behavioural conditions on the lives of people who use substances and live in poverty. Behavioural conditions are police- or court-imposed rules that people involved with the criminal justice system are obliged to follow. Conditions are often imposed before a person has been convicted of a crime. They include geographic area restrictions (red zones), curfews, and rules that oblige people to abstain from using substances and prohibit them from carrying harm reduction supplies. Breaching a condition puts a person at risk of criminal sanction. Project Inclusion participants shared how behavioural conditions fail to acknowledge the realities and complexities of the lives of people experiencing homelessness and people who rely on substances. The result is that behavioural conditions—often justified as working in the interest of public safety—endanger the health, safety, and dignity of people already living with intersecting barriers, making them less safe and keeping them trapped in cycles of criminalization.

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The third section of Part Two, *No Access, No Support: Service Gaps and Barriers*, sheds light on how stigma is embedded in the fabric of health and social services in a way that undermines public health, perpetuates criminalization, and in some cases, leads to human rights violations. Decades of de-funding and the resulting privatization of services for people who live in poverty have created a patchwork system of service

delivery across BC. The number and types of services available, rules for clients, and oversight standards vary arbitrarily from location to location. Although there are many excellent service providers in the province, there are too few safe drop-in services, shelter spaces, health services, and advocacy services that meet the most basic needs of people living in poverty. The design of services often fails to reflect the realities and complexities of living in poverty and using substances. In this section, Project Inclusion study participants describe pronounced barriers to accessing income assistance and to accessing shelters. They also share experiences of racism and stigmatization when accessing hospitals, experiences that harm and hurt them while they are seeking safety and health supports. The section examines the critical role that peer-run services and peer advocates can play in improving inclusion and access to essential services, and the need for more such services across BC.

Part three, the final section of the report, is *Making Stigma Visible*. This closing section considers the path forward, which includes Project Inclusion's overarching recommendation to introduce a new tool to audit for stigma in BC's laws, policies, and provision of services. Stigma is the unifying phenomenon that underlies all of the issues raised in this report. Making stigma visible renders it possible to change the systemic processes that hold up and entrench it. This section brings forward an analysis of stigma that goes beyond confronting personal

beliefs and attitudes, and examines the systemic processes through which stigma can shape legislative agendas and become embedded in laws and policies. A case study in this section is designed to help readers identify stigma in the political process.

### **ABOUT PIVOT LEGAL SOCIETY**

Pivot Legal Society is a human rights organization headquartered in Vancouver's Downtown Eastside. Its mandate is to use the law to address the root causes of poverty and social exclusion. By making the most tangible violations of human rights the focal point of our efforts, we exert maximum pressure in order to shift society toward greater equality and inclusivity.

### **ABOUT PROJECT INCLUSION**

Project Inclusion looks at law and policy barriers to overdose, Human Immunodeficiency Virus (HIV), and Hepatitis C Virus (HCV) prevention among people across the province who are struggling with the impacts of poverty and homelessness. The work started in 2016, the same year that BC's Provincial Health Officer declared a public health emergency in response to a mounting opioid crisis. The next year, while interviews for this project were underway, BC's annual death toll from drug overdoses hit 1,450. At the time of writing, there had already been 878 drug overdose deaths in the first seven months of 2018.<sup>1</sup> These deaths illustrate the need for a new approach to policy and legal intervention led by the experiences of people impacted by the crisis. It requires the implementation of evidence-based solutions that will be made possible only by simultaneously addressing

the stigma that continues to endanger the lives of people who use substances. BC's opioid crisis and the stigma underpinning it highlight the urgency of Project Inclusion.

Pivot's team of researchers and lawyers travelled across BC between March and October 2017 to conduct interviews and gather data for Project Inclusion. The team conducted one-on-one interviews with 76 people living at the intersection of a province-wide housing crisis and public health emergency. They also convened six focus groups with people who use substances and live in poverty, in addition to conducting interviews and surveys with over 100 service providers working across BC.

Participants' stories brought the human toll of these crises to light and helped Pivot's team better understand where laws, policies, and collective belief systems are failing people experiencing homelessness and people who use substances. Participants also illuminated those rays of hope where a particular program, policy change, or service provider is making a tangible difference.

Most importantly, the people we heard from provided critical insight into how we might chart a path towards healthier, more inclusive communities, where a toxic drug supply is no longer claiming lives and where everyone has a place to call home.

Project Inclusion is the culmination of Pivot's research and, most importantly, an account of the insights and experiences of the people most affected by the laws and policies that need to change.

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<sup>1</sup> British Columbia Coroners Service, "Illicit Drug Overdose Deaths in BC January 1, 2008 - July 31, 2018", (22 August 2018), online: <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/illicit-drug.pdf>.



# Introduction and Methods

## WHAT SHAPED THIS WORK

In the spring of 2016, BC's Provincial Health Officer declared a public health emergency in response to a province-wide opioid crisis that killed 993 British Columbians that year.<sup>2,3</sup> That same year, Pivot Legal Society, a human rights organization located in Vancouver's Downtown Eastside, undertook a research project looking at law and policy barriers to overdose prevention and other harm reduction initiatives among people across the province who are struggling with the impacts of poverty and homelessness.

Between March and October 2017, Pivot lawyers and researchers travelled to ten communities across BC's five regional health authorities. We conducted one-on-one interviews with 76 people impacted by the intersection of BC's housing crisis<sup>4</sup> with the public health emergency. We also conducted six focus groups with people who use substances and live in poverty, as well as interviews and surveys with well over 100 service providers working in every corner of the province.



Participants' stories brought the human toll of these crises to light and helped us better understand where our laws, policies, and collective belief systems are failing us. Participants also illuminated rays of hope, where a particular program, policy change, or service provider is making a tangible difference.

Most importantly, the people we spoke to provided critical insights into how we might chart a path

towards healthier, more inclusive communities, where a toxic drug supply is no longer claiming lives, and where everyone has a place to call home.

Project Inclusion is the culmination of Pivot's research. While it does not do justice to all of the insights and experiences that participants shared with us, it does provide a glimpse of their vision for a more just and more inclusive province and offers concrete

2 Throughout this report we use the terms "opioid-related deaths" and "opioid crisis" recognizing that people who rely on illicit markets for stimulants are also at risk in this crisis due to a contaminated supply.

3 British Columbia Coroners Service, "Illicit Drug Overdose Deaths in BC January 1, 2008 - July 31, 2018", (22 August 2018), online: <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/illicit-drug.pdf>.

4 BC Non-Profit Housing Association and M. Thomson Consulting, "2017 Homeless Count in Metro Vancouver", (2017), online: <http://www.metrovancouver.org/services/regional-planning/homelessness/HomelessnessPublications/2017MetroVancouverHomelessCount.pdf>.

ways that law- and policymakers in BC can begin the hard but critical work required to bring that vision to life.

## **PIVOT'S RESEARCH APPROACH**

Pivot approaches all of its work from the perspective that poverty and social exclusion are not inevitable. Pivot is committed to building partnerships with marginalized people and grassroots organizations to challenge legislation, policies, and practices that undermine human rights, intensify poverty, and perpetuate stigma.

We believe that people are experts in their own lives and hold powerful visions for change. By placing the stories, experiences, and vision of people who have been marginalized and excluded in their communities at the centre of this research, we endeavour to amplify their voices and perspectives. We also have a second goal in centring these voices in this analysis: working from the perspective that all knowledge is socially situated, we take the position that marginalized groups are positioned in ways that allow them to see contradictions and raise questions that might not otherwise emerge.<sup>5</sup> Therefore, we believe that research aimed at developing law and policy reform recommendations to solve complex social and economic challenges must begin with the perspective of those most directly impacted.

The spectrum of laws and policies shaping a person's experience is not always fully visible from where they stand. For example, when a person experiencing homelessness describes a negative interaction with a private security guard who insists they move along with their belongings, that participant has important knowledge about the impact of security patrols on people's daily lives, and on potential alternatives to current practices. In some cases, however, that person may not know that a local

Business Improvement Association contracts the security guard or that the industry is regulated through the provincial *Security Services Act*.<sup>6</sup>

Our intention is to present an analysis that begins to bridge the gap between the experiences of individuals in their everyday lives and the broader legal and regulatory systems in which those experiences are embedded.

## **ETHICAL AND PRIVACY CONSIDERATIONS**

All individuals and focus-group members who took part in Project Inclusion were walked through an informed consent process. Participants were given the option of signing the consent form with a pseudonym and were also given the option of providing contact information if they were interested in getting updates on the project. Participants were all informed that signing the consent form did not obligate them to answer any particular questions and that they could withdraw their consent at any time prior to the report going to print.

### **Confidentiality**

As part of our data generation for this project, we asked people we were meeting for the first time to share highly personal and sensitive information with us. It was a priority for us to maintain their confidentiality through every step of Project Inclusion. All data collected for this project is stored separately from participant contact information. Raw data generated through this project is restricted to project staff, contractors, and volunteers who require access for project purposes and who are subject to a confidentiality agreement not to disclose information gathered in the course of their work on this project.

Throughout this report, quotes will be attributed using an interview number. We have also redacted any ancillary information that could

be used to identify an individual participant. The names of community service providers, police officers, and medical professionals have also been redacted. Since some participants come from communities of less than 10,000 people, we also decided to keep the names of the communities that we visited confidential and redacted place names and other information that could be used to identify communities.

### **Stipends**

At Pivot, we believe that people with lived experience are experts with valuable insight and knowledge to share. We, as researchers, were paid for our time. In most cases, the service providers and other professionals we met with for the project were also being paid. Therefore, we always compensate study participants for their time with a stipend. We make it very clear that the stipend is in no way contingent on answering specific questions or spending any specified amount of time with the interviewer. We also provide a snack and other comfort items, such as cigarettes and coffee.

### **Use of Data**

Participants were informed that data gathered would:

- form the basis of law and policy recommendations;
- be published in a report, and in policy briefings;
- be used in Pivot communications to the public and our supporters;
- possibly be published in academic literature;
- inform government advocacy initiatives;
- be used as the basis for community education resources; and
- inform Pivot's work planning.

Any future use of the data collected will be subject to the same confidentiality requirements outlined

5 See e.g., Dorothy Smith, *Institutional Ethnography: A Sociology for People* (Lanham: Rowman Altamira, 2005) for a full discussion.

6 SBC 2007, c 30.

above and will be used only for the purposes outlined in this document.

## STUDY POPULATION

In the broadest terms, we wanted to hear from people over the age of 18 who are marginalized based on “social condition,”<sup>7</sup> especially where social condition intersects with criminalized substance use. Beyond that, the question of who participated in our study was informed by our interest in understanding HIV, HCV, and overdose risk. It was also informed by our discussions with local service providers about the unique issues, dynamics, and demographics in their community.

A predetermined set of inclusion and exclusion criteria for study participants would have done this project a disservice. For example, during the study design phase, we might have created criteria that would have excluded people who do not use illicit substances. An important thing we learned from this study is that using a substance that is illicit is not the same thing as criminalized substance use. In some communities, people who drink alcohol and live in public space have experiences that closely mirror those of study participants who use illicit opiates and stimulants. This example illustrates that alcohol use can be criminalized as a result of intersecting barriers impacting the user’s life, even though alcohol itself is not an illicit substance. It was important for us to capture this nuance in our work because the criminalization of substance use very much informs the lived experiences of study participants.

## Connecting with Participants

We worked with local service providers to determine the best days and times to visit their municipality. Even so, given our limited amount

of time in each municipality and the reality that the people we hoped to speak with have busy, often unpredictable lives, we had to be flexible in our sampling process and adapt to the reality that presented in each community on the day we arrived in town. We also recognized that setting up interviews for a specific time slot would not work well for many of the potential participants in this study, nor would it allow for adequate flexibility in the length of interviews.

Our recruitment method varied across municipalities. In some municipalities, we arrived in town and there was a lineup of people ready to speak with us. In those cases, we worked with service providers well acquainted with their local community to do rough, purposive sampling, a qualitative research method that helped us researchers quickly assemble a targeted sample that reflected our research goals by intentionally selecting participants with the aim of reflecting local demographic diversity. In other communities, however, we had to seek people out in public space, which impacted our ability to ensure that there was a representative demographic mix in our sample.

## Demographic Picture

We conducted 76 one-on-one interviews<sup>8</sup> and collected basic demographic information as well as information about current housing status and substance use. Thirty-eight percent of participants self-identified as Indigenous. Fifty-one percent of participants self-identified as men, and forty-six percent self-identified as women (the remaining participants did not identify their gender). Participants were between 20 and 61 years of age at the time of the interview, with 63% of participants falling between

the ages of 30 and 49. Opioids and amphetamines were the most commonly used substances in the 30 days preceding the interview, and the majority of respondents had used more than one substance during that time period. Less than eight percent of participants had housing at the time of the interview.

## Limitations and Gaps in Study Demographics

We missed many groups of people who would likely have had specific and valuable information to share in this study.

By design, we did not speak to people whose mental health precluded them from giving fully informed consent on the days we were in town. However, we spoke to many people who identified as having mental health issues, either diagnosed or undiagnosed.

We set our minimum age for participation at 18 because of ethical concerns related to informed consent and confidentiality in light of the duty to report a child in need of protection under section 14 of the *Child, Family, and Community Service Act (CFCSA)*.<sup>9</sup> The majority of our participants were well over 18. We believe there is a need for further examination of specific experiences, perspectives, and needs of youth and young adults who are criminalized and marginalized based on social condition and substance use.

We did not offer interpretation for interviews. As a result, all interviews were conducted in English, with the exception of one that was conducted partially in French because the interviewer was able to accommodate that request. We did not attempt to recruit non-English speaking or deaf participants because we would have been unable to offer interpretation services. We know that

7 Social condition is defined in various ways in provincial and territorial human rights legislation throughout Canada. For the purpose of this study, we define social condition as: Inclusion in a socially identifiable group that suffers from social or economic disadvantage on the basis of poverty, source of income, occupation, housing status, level of education, or any other similar circumstance.

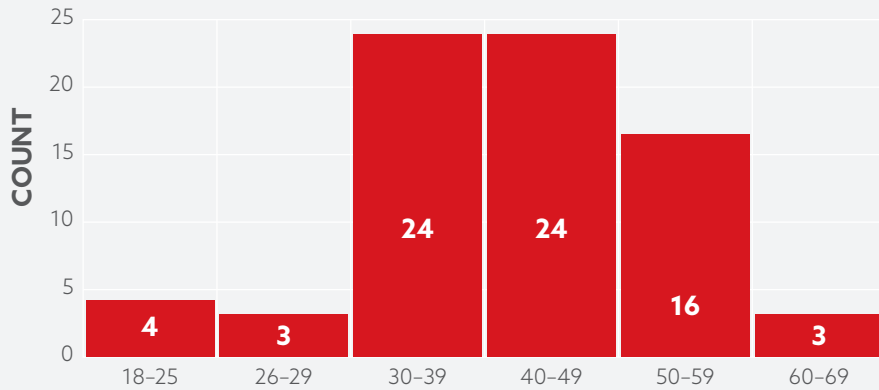
8 Three interviews were conducted with couples because they were more comfortable being interviewed together. The interviews were coded separately by speaker and are referenced as #a and #b throughout the text rather than simply by number.

9 RSBC 1996, c 46.

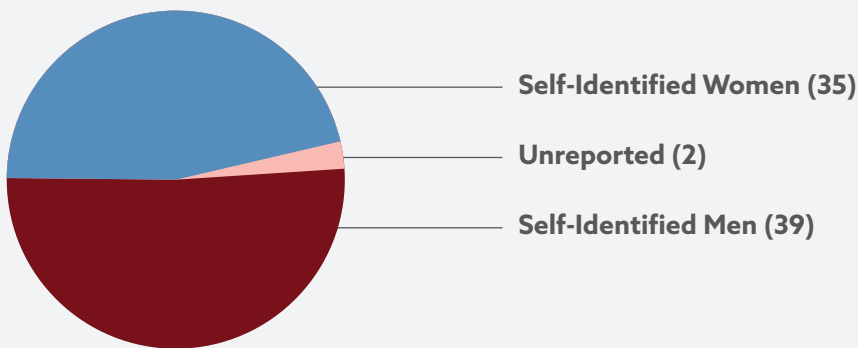
## DEMOGRAPHIC PICTURE

### AGE RANGE OF PARTICIPANTS

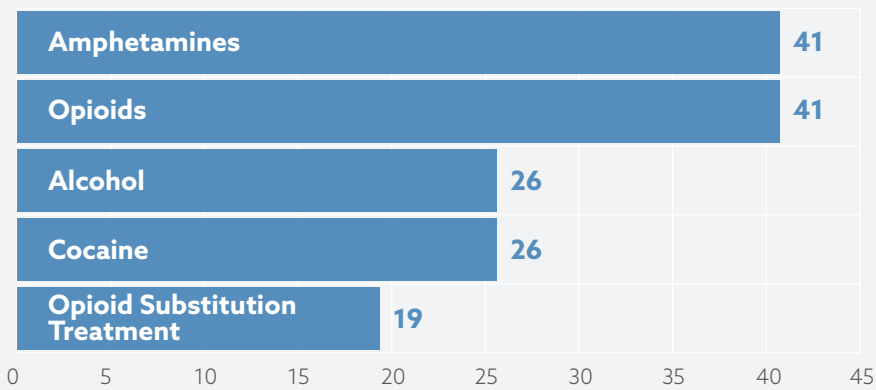
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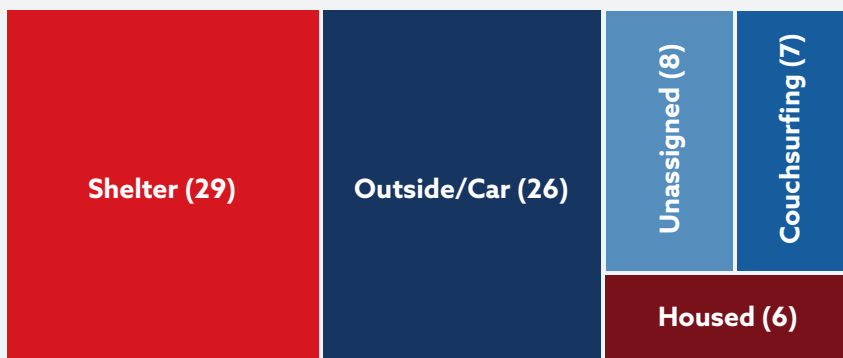
### PARTICIPANT GENDER



### SUBSTANCES USED IN PAST 30 DAYS



### HOUSING STATUS



we missed people as a result of lack of interpretation. One person who spoke very little English expressed a desire to participate, and we were unable to accommodate that request.

We also recognize that none of our participants identified as trans, non-binary, genderqueer, or Two-Spirit. This is a gap in our study sample and we believe that further specific research is required to explore the intersection between poverty, substance use, and gender identity.

### Study Locations

At Pivot, geography has always been core to our identity. Our organization was born and raised in Vancouver's Downtown Eastside (DTES) in the midst of the public health emergency that was ravaging the neighbourhood in the 1990s and early 2000s, when the widespread use of intravenous cocaine fueled a fatal HIV epidemic that swept the neighbourhood.<sup>10</sup> Over the years, we have increasingly received calls from communities outside of our home neighbourhoods, because while the DTES is linked with poverty, illicit substance use, and homelessness in BC's popular imagination, none of those issues are bound by geography.

However, geography does have a profound impact on how people experience those issues, and how they are integrated in the broader community in which they live.

Whenever Pivot has taken on work outside of Vancouver, we have seen these local particularities at play. However, until we embarked on this project, we had not had the opportunity to replicate the kind of structured deep listening that informed our DTES work in other communities around the province.

As we began this project, a crucial fact quickly emerged: BC is a large province. As a result, deciding which

<sup>10</sup> For an overview of the situation, see e.g., Travis Lupick, *Fighting for Space: How a Group of Drug Users Transformed One City's Struggle with Addiction* (Vancouver: Arsenal Pulp Press, 2018).

## **Our systems for securing the basic necessities of life—income, food, shelter, health care, psychological support—are not equitably distributed nor consistently administered across the province.**

municipalities to visit became one of the most important decisions we had to make early in the research design phase of the project.

Because we produced this report with a focus on public health—specifically HIV, HCV, and overdose risk—the province’s five regional health authorities offered a fitting framework for selecting municipalities to visit. However, choosing two municipalities in each health authority still meant that huge swaths of the province would inevitably be left uncovered. We had to set some criteria for determining which municipalities to visit.

We decided to choose a larger and smaller municipality in each region. From there, to begin to ground ourselves in local realities, we conducted an audit of HIV and HCV rates, overdose death rates, homelessness rates, and local bylaws. We also reached out to service providers through an online survey to determine where there were local service providers who would be willing and able to work with us on setting up a community visit.

**In most communities, people were eager to share their stories. Aside from a few exceptional local service providers, no one had ever really asked.**

That leads us to another limitation of this study: we didn’t get the opportunity to talk to people in some of the most under-resourced communities in the province. That

is a real shortcoming. As you read this report, you will see just how big a difference one innovative organization, dedicated service provider, or highly knowledgeable legal advocate can make in people’s lives.

It also drives home an important point: our systems for securing the basic necessities of life— income, food, shelter, health care, psychological support—are not equitably distributed nor consistently administered across the province.

### **DATA GENERATION**

Working across BC, we:

- sourced input from 119 service providers;
- reviewed bylaws and demographics in 62 municipalities;
- interviewed 76 study participants;
- convened six focus groups;
- conducted 12 municipal media scans;
- conducted nine Freedom of Information requests;
- gathered data from BC’s five regional health authorities; and
- travelled to ten communities across the province.

As noted above, this is an exploratory study. We began by collecting preliminary data from a variety of sources before we identified research sites and developed our interview template. Over the course of the preliminary research phase of the project, 119 service providers from across the province provided input by way of online survey. The online survey was distributed through provincial umbrella organizations, existing online networks, and our internal

contacts. The results of the survey helped us surface issues for further investigation, highlighted similarities and differences across regions and service provision contexts, and allowed us to develop a network of allies in municipalities around the province who were interested in the project. We also conducted reviews of bylaws and demographics in 62 BC municipalities. Those processes helped us identify thematic issues for inquiry, and to locate communities to visit to conduct one-on-one interviews and focus groups.

Once communities had been selected, we interviewed 76 individual participants. When we set off around the province for this project, we were apprehensive about asking people to tell their stories and to share intimate details of their lives with strangers who had just parachuted into their municipality.

People did have a lot of questions about who we were and what our business was. The vast majority of respondents had never heard of Pivot Legal Society. But in most communities, people were eager to share their stories. Aside from a few exceptional local service providers, no one had ever really asked. Some respondents told us that even though talking about the hardships in their lives was painful, it was also cathartic. More importantly, participants wanted their experiences and expertise to be heard and understood by people beyond their local setting.

Participants were free to spend as little or as much time with us as they wanted. As expected, there were a couple of rushed interviews, but most people sat with us for at least an hour and many spent several hours sharing their histories, their perspectives, and their expertise. We wish we had the time and space to share everything that we learned through those interviews, and we recognize that anonymized snippets on a page cannot fully capture the wisdom that participants in this project shared.

What we can do is ensure that we honour the generosity, openness, and vulnerability that participants brought to this project by privileging their firsthand accounts of their experiences living in public space, interacting with police and the criminal justice system, and attempting to access health care and other services in the limited space we have available. In this report, we privilege participants' firsthand accounts over in-depth legal and policy analysis.

**A key goal in producing this report is to share stories and unique expert knowledge that is often ignored, while connecting those stories to broader policy objectives.**

We also conducted six focus groups where the number of people wanting to participate, the desires of the participants, or specificity of an issue we wanted to learn more about warranted a group discussion. On top of that, we completed 12 municipal media scans looking at community narratives related to people who are homeless and people who use substances. We also conducted policy reviews, including an analysis of data collected through nine Freedom of Information requests.<sup>11</sup>

## **ANALYSIS AND RECOMMENDATIONS**

Our analysis aims to link people's everyday experiences to the laws and policies that shape them. Developing the findings and recommendations in this report involved several stages of structured analysis of interview, survey, and focus group data. Analysis of primary source data was supplemented with reviews of

relevant quantitative data sets, policy documents, social scientific literature, expert interviews, and legislation.

A key goal in producing this report is to share stories and unique expert knowledge that is often ignored, while connecting those stories to broader policy objectives. This analysis seeks to lay out a path to cross the chasm between our vision (preventing HIV and HCV infections, reducing stigma against people who use drugs and live in public space, and preventing overdose deaths) and the lived experiences of study participants.

Pivot will use the resulting road map to illuminate laws, policies, and practices that are structural drivers of HIV and HCV, opioid-related deaths, and stigma.

This report is not a complete account of everything we heard from participants; the sheer volume of data collected made that impossible. It is important to note that the issues and stories that have made it into this report are not necessarily the ones we found most shocking or sensational. The issues covered in this report are the ones that came up again and again, no matter where we went or who we spoke to. In some cases, local governments, policing bodies, or service providers have developed idiosyncratic responses to commonly perceived "social problems" that warrant mention. There are also cultural and demographic differences among the provincial health regions that informed the experiences and perspectives of participants.

We found an unprecedented level of commonality across participants' narratives, despite the fact that people often believed their experiences to be the result of something unique and intrinsic to their community. Often a single police officer, service provider, or local politician was held out as the source of the challenges people were facing in their lives. However, when

we got back to Vancouver and began to review aggregated data, we found so much overlap that we often could not tell which municipality a specific story came from, despite having been the ones who conducted the interviews in the first place.

**We found an unprecedented level of commonality across participants' narratives, despite the fact that people often believed their experiences to be the result of something unique and intrinsic to their community.**

Some of the issues that floated to the surface during the analysis phase of this project fell squarely within our collective areas of expertise at Pivot and dovetailed with our existing policy work. In those cases, it was reasonably simple for us to "trace up" to the laws, policies, and institutional practices that are leading to the negative outcomes people described and we were able to be quite specific and prescriptive in our recommendations.

Other issues took us into new territory, but, based on the preponderance of data, they were impossible to ignore. In those cases, we have done our best to draw on outside expertise. In some of those cases, our recommendations begin with a call for the responsible government body to undertake a review or an audit of their own so they can get a clearer picture of what is going on in the province and move toward positive change.

In crafting our recommendations, we operated from the perspective that the government actors and professional bodies we call upon to

11 FOIs were sent to several police forces, several municipalities, the College of Physicians and Surgeons, the College of Pharmacists, and BC Court Services.

take action share most, if not all, of our project goals:

- eradicating HIV and HCV in BC;
- preventing opioid-related deaths and eliminating the toxic drug supply;
- improving public safety for everyone in our communities;
- ensuring that everyone has equal access to police protection;
- ending the over-incarceration of Indigenous people, people aging out of the child welfare system, people who use substances, people living in poverty or homelessness, and people living with mental illnesses;
- ensuring that people who are currently living in public space are as safe as possible, while moving quickly to end homelessness;
- upholding *Charter*<sup>12</sup> values and BC's *Human Rights Code*; and
- ensuring that evidence—not stigma—is driving law and policy in BC.

We feel compelled to mention that we have no illusions that any report, on its own, will lead to social change. This report is a starting point for our work, not its culmination.

Pivot will use the resulting road map to continue to shine a light on laws, policies, and practices that are structural drivers of HIV and HCV infections, opioid-related deaths, and other harms. We will invite people across BC to listen to the voices of project participants in an effort to combat stigma. We will share our findings with the professionals and decision-makers who have power to make change. We invite everyone who reads the stories contained in this report to join us in this work.

## REPORT OVERVIEW

### Part One: Lived Realities

Part One of this report provides contextual information about the lived experiences of people who took part in this study. The first section, *Homelessness in Context*, explores the issue of homelessness. It sheds light on the everyday experiences of people sleeping in public space, in vehicles, or in emergency shelters in municipalities across BC.

The second section of Part One, *Substance Use in Context*, explores the daily experiences of people in poverty who use substances, with a particular focus on contextual factors that impact substance use.

Part One helps set the stage for Part Two, which explores the systems that impact the health and human rights of study participants.

### Part Two: Change the System

Part Two of this report analyzes some of the social service and criminal justice systems that are negatively impacting the health, safety, and human rights of project participants.

In some cases, our analysis allowed us to look at how systems played out on the ground in people's everyday lives and trace them up to the laws, policies, and institutional practices that are shaping those experiences and impacting people's health, safety, and human rights on a grand scale. Each section of Part Two includes a series of law and policy reform recommendations.

The first section of Part Two, *Impacts of Police and Policing*, explores police as an institution, as well as policing practices, including those carried out by quasi-policing bodies such as

bylaw officers and private security guards. This section examines the impact of policing institutions, bodies, and practices on the health, safety, and human rights of people who took part in this study. We also look at access to police protection and the shortcomings of current oversight mechanisms.

The second section, *Everything Becomes Illegal: Behavioural Conditions and the Court System*, examines the role of police- and court-imposed behavioural conditions on the health and safety of project participants. We pay particular attention to area restrictions (generally known as "red zones"), abstinence conditions, and conditions that prevent people from carrying harm reduction supplies.

The third section, *No Access, No Support: Service Gaps and Barriers*, examines some of the most pronounced service barriers experienced by people who took part in this study. While there were many places where people felt excluded from access to the basic necessities of life, three areas rose to the top: income assistance, shelters, and hospitals. We also look at the critical role that peer-run services and peer advocates can play in improving inclusion and access to essential services.

### Part Three: Making Stigma Visible

Part three of this report considers the path forward. We begin with a summary of the substantive recommendations coming out of each of the three focus areas from Part Two. Then, we provide a global recommendation: the development of a tool to audit for stigma in our laws and policies.

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12 Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c 11.

# Section One

## Homelessness in Context

**It's trial and error and a lot of lonely nights. I've slept in the dog kennel with a tarp over it, and had locked myself in with two dogs in a shitty little kennel with a garbage bag over it, because that's all I had. I didn't have a tent. I didn't have anywhere. – 362**

A couple of years ago, this participant—a Métis woman in her thirties—had a house, three jobs, custody of her children, and some pet fish. Now, save for a handful of essentials, “I have nothing,” she says. “Maybe a suitcase of clothing and a tent.” She is relatively new to life on the streets, and we learned a lot from her about what it means to be a woman without housing.

We all make choices to keep ourselves safe every day. Some of us do so with the privilege and advantages of money, family, a door to lock, and police who will believe us if we call for help. This woman makes her safety choices starting with completely different resources.

When our research team woke up the morning of our trip to meet her, we both rolled out of bed in our respective homes, petted a cat (or dog as the case may be), and went about the business of dressing in dry, clean clothes, making a coffee, and preparing for the day. Neither of us spared a thought for our personal safety, worried that our belongings were stolen while we slept, or feared

we might be arrested for leaving our laundry on the floor.

This woman spoke of a time she was released from jail into a driving winter rain with “no shoes, bare feet, a tank top, and jeans.” Cold and wet, her options were slim. She told us how she weighed her options in a sea of tough choices.

That is when you make an educated decision to break the lesser of two evils and go and change your clothes in the thrift store and leave your old ones behind. It's technically an exchange. And really if that's the only choice you have, I mean if there's one of those blue or red donation bins, we will all take that over going into a store. And I mean, like I said, I've slept in them [a clothing donation bin] with my dog. It's safe. – 362

“It's safe.” Crawling into a clothing donation bin meant her biggest worries were someone cutting open the bin with bolt cutters to access the clothing inside or, more often, someone donating books that will

fall on her head. To her, that's safer than worrying about being robbed or assaulted while sleeping somewhere more exposed. Some nights, that's what safety and a place to sleep look like for her, but all the while she worries about keeping herself and her dog quiet, afraid she'll be arrested. Jail is no treat either.

Even so, she admits sometimes she wonders if being in jail might be better than being on the streets some nights.

It starts to look actually good. At least when I was sitting in city cells, I could go to sleep. I know I'm going to have coffee and breakfast in the morning no matter how shitty it is. I know no one is coming to get me. I'm safe. – 362

This woman, like many others experiencing homelessness across BC, makes difficult choices every day to protect her safety. She does so in all kinds of weather, regardless of how she's feeling, and with few alternatives. She knows it can be hard



for people who've never been in her situation to know what that feels like.

Another day, in another town, stepping past a sandbag, one of us sat on a curb with an elderly man who told us how flooding had cleared some homeless camps close to the water and made it hard even to find a dry doorway to take refuge in. We had considered canceling our trip because of flooding. We did cancel one trip due to forest fires. The fact that we had the choice to opt out, while others lived through the fires and floods of 2017 with no housing and few options to find safety is haunting.

By placing the lived experiences of the people who participated in this study into the larger legal and social context that shapes their experiences, our goals for this chapter are to shed light on the daily life, struggles, and aspirations of people experiencing homelessness in BC. Their realities demonstrate the ways in which public policy, the law, and systemic discrimination rooted in harmful stigma and popular misconceptions about what it means to be homeless, degrade the humanity and dignity of some of BC's most vulnerable community members.

Through exploring the realities of people living homeless alongside an analysis of the way homelessness shows up in public conversation and public imagination, we challenge the ways in which our society has come to view homelessness and, in so doing, call for bolder action on solutions and policy interventions that meaningfully meet the needs of those who are most impacted by them.

## **PATHWAYS TO HOMELESSNESS AND THE STORIES WE TELL**

The pathways that lead to homelessness are simultaneously

simple and complex. They are simple because homelessness can be traced to a lack of housing options for people who need them. They are complex because we have built our cities and systems in ways that exclude housing for people who are homeless.<sup>13</sup> Additionally, and importantly, we as a society weave powerful narratives about who these people are and why they are homeless. Those stories are often rooted in stigma, shame, and moral judgements that do much to

ostracize people who are homeless while accomplishing little in working towards systemic changes necessary for producing solutions.

Blaming people who experience homelessness for their choices and circumstances is nothing new. Doing so, however, ignores the ways that the experience is systemically and societally driven. It reduces the experience of homelessness to a story of personal choices and circumstances rather than as the result of socio-economic forces



<sup>13</sup> There are many ways in which cities systemically exclude or marginalize housing for people experiencing homelessness. Examples include: an over-reliance on market-driven housing developments; failing to proactively zone for social and supportive housing and shelter; allowing not-in-my-backyard groups to delay or oppose shelter and housing developments through rezoning processes and public hearings.

and political decision-making.<sup>14</sup> This approach propagates stigmatizing myths that people who are homeless are incapable, unworthy, a drain on society, or embody the stereotype of a “tramp” or “hobo.”<sup>15</sup>

The socio-economic and political forces impacting the lives of people experiencing poverty and homelessness, including participants in Project Inclusion, are well documented. In Canada and many other wealthy countries, there has been a decades-long shift away from state-provided social services and benefits towards individualistic and market-driven initiatives. This phenomenon, often referred to as “Neoliberalism,” is defined as a movement prioritizing capitalist profitability and a return to market-based social structures and service provision.<sup>16</sup> Such policies significantly affect housing and homelessness: The creation of a cheaper labour force means many workers have less of a buffer in times of need,<sup>17</sup> less social housing has been built or sustained to advantage market-based and commodified housing,<sup>18</sup> and corporations exercise more control over publicly accessible spaces.<sup>19</sup> In

suburban and rural communities, additional pressures can lead to and perpetuate homelessness, including fewer services, insufficient critical mass to create social housing projects, a lack of other appropriate housing options,<sup>20</sup> lack of transportation options and, in some communities, trends towards greater levels of poverty than in urban areas.<sup>21</sup> Homelessness in smaller communities may be less visible and harder to ascertain than in larger urban centres because of people’s reliance on couch surfing or tendencies to live in natural areas as opposed to on city streets.<sup>22</sup> These findings, noted in various studies on homelessness and poverty, were also exemplified in the areas we traveled while conducting our research.

In BC, we see the outcomes of neoliberalism in the lack of meaningful government supports available for people in need, such as rates of income assistance and social housing stock that would otherwise prevent people from experiencing homelessness. These government policies and decisions comprise the true pathway to homelessness more than any individual’s choices.<sup>23</sup>

In combination with the commonly held fallacy that we all experience the same or similar risk of homelessness, our society has systematically perpetuated the lie that people need only to try hard enough or remedy that one wound in order to find themselves on equal footing with Canada’s predominantly white, cis, able-bodied, middle class. Our society fosters this belief systemically, through its policies, laws, and institutional practices. The results of a 2011 Salvation Army study called the “Dignity Project” exposes just how deep these prejudices run.

The “Dignity Project” found that many Canadians hold opinions that perpetuate the idea that “the poor are the problem” and that “their decisions and choices led them to a life of poverty.” Nearly half of all respondents agreed with the notion that if poor people really want to work, they can always find a job; 43% agreed that “a good work ethic is all you need to escape poverty”; 41% believed that the poor would “take advantage” of any assistance given and “do nothing”; 28% believed the poor have lower moral values than

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- 14 See Peter Marcuse, “Neutralizing the homeless” (1988) 18:1 *Socialist Review* 69; Tony Sparks “Neutralizing Homelessness, 2015: Tent cities and ten year plans.” 38: 3 *Urban Geography* 348; David J. Hulchanski et al, “Homelessness: What’s in a word?” in David Hulchanski et al, eds, *Finding Home: Policy Options for Addressing Homelessness in Canada* (Toronto: Cities Centre, University of Toronto, 2009).
- 15 V.J. Del Casino & C.L. Jocoy, “Neoliberal Subjectivities, the “New” Homelessness, and Struggles over Spaces of/in the City” (2008) 40 *Antipode* 192.
- 16 David Harvey, *A Brief History of Neoliberalism* (Oxford University Press, 2005); Jamie Peck, *Constructions of Neoliberal Reason* (Oxford University Press, 2012).
- 17 Todd Gordon, “Understanding the Role of Law-and-Order Policies in Canadian Cities” in Diane Crocker, Val Marie Johnson, eds, *Poverty, Regulation & Social Justice: Readings on the Criminalization of Poverty* (Black Point, Nova Scotia: Fernwood Publishing, 2010) at 34-35.
- 18 Hulchanski (2009).
- 19 See e.g. Marina Peterson, “Patrolling The Plaza: Privatized Public Space And The Neoliberal State In Downtown Los Angeles” (2006) 35:4 *Urban Anthropology and Studies of Cultural Systems and World Economic Development* 355.
- 20 See David Bruce, “Homelessness in rural and small town Canada” in Paul Cloke & Paul Milbourne (eds) *International Perspectives on Rural Homelessness* (London: Routledge, 2006); Jeanette Waegemakers Schiff & Alina Turner, “Housing First in Rural Canada: Rural Homelessness and Housing First Feasibility across 22 Canadian Communities” (University of Calgary, 2014) at 17. *Housing in much of rural and small-town Canada is predominantly owner-occupied, mortgage-free and single detached dwellings. The supply of rental housing is quite limited in rural communities (unincorporated places of less than 1,000 population), and mostly in the form of single detached homes (about 61 per cent of all rural rental supply). Most rural areas and small towns suffer from a lack of new rental housing construction. The result is very little rental housing choice, characterized by low vacancies, poorer conditions, and higher operating cost. We did not visit any locations with populations as small as 1,000, however, in the mid-sized and smaller communities we visited, we encountered similar housing stock issues.*
- 21 Researchers’ calculations, based on unemployment rates and proportions of population in low income, Statistics Canada, “Focus on Geography Series, 2011 Census” online: <https://www12.statcan.gc.ca/census-recensement/2011/as-sa/fogs-spg/Index-eng.cfm>.
- 22 Bruce; Paul Milbourne & Paul Cloke, “The hidden faces of rural homelessness” in Paul Milbourne & Paul Cloke (eds) *International perspectives on rural homelessness*. (London: Routledge, 2006) at 2; see also, for further analysis on statistical problems, Paul Cloke, Paul Milbourne & Rebekah Widdowfield, “The geographies of homelessness in rural England” (2001) 35:1 *Regional Studies* 23.
- 23 Stephen Gaetz, “The Struggle to End Homelessness in Canada: How we Created the Crisis, and How We Can End It” (2010) 3 *The Open Health Services and Policy Journal* 21.

average; and nearly a quarter believed that “people are poor because they are lazy.”<sup>24</sup>

These commonly held views disregard the thousands of people in our country who continuously exist on the precipice of homelessness. They arrive in their circumstances not by choice, but because of the scarcity of resources available to them and the discrimination that we as a society systemically tolerate and perpetuate against them.

In the subsections that follow, we unpack the conventional wisdom that shapes the stories we tell about how people become homeless. We examine popular narratives about homelessness alongside the lived experiences shared by Project Inclusion study participants.

### “One step away”

People talk about being one paycheque, decision, or tragedy away from homelessness. But few stop to examine how that one incident affects people differently based on the range of social and economic resources they have to draw from. Our identities—including race, ethnicity, ability, social status, gender, and family status—affect the resources we have and the ways in which we interact with the systems that affect us. One decision or crisis may have drastically different effects depending on the resources a person has to fall back on.

One woman explained it to us this way:

It’s hardcore on us here, hardcore and for the fucking money that they have here, they should lay the fuck off us and realize, hey, you know what, not everybody here has like backup plans and savings and accounts and school and work...shit has happened since day one. – 416

Despite this reality when trying to understand why someone is

homeless, many of us are reluctant to let go of the idea that anyone who is homeless must have made so-called “bad decisions.” As we sat with people during interviews, we thought about how we wouldn’t want anyone judging us for our actions as teenagers or judging our current actions through the memory of the worst moment in our lives. But as a privileged public, we often refuse to extend that understanding to people who are homeless; instead, we hold people frozen in time, in one of the worst moments of their lives. This kind of thinking allows our society to stand in judgment, holding dear to the notion that homelessness is the result of an egregious personal misstep for which the person must then repent for the rest of their life. Such thinking can foster bigotry.

For many of us, an illness in the family or losing a loved one would not result in homelessness, but it does for some, including people we heard from. For a person with fixed income left to pay rent on their own, losing a family member can mean losing housing. “Me and my husband always had a place before he passed. Now I’m on my own (40),” one woman told us. She is in her 50s, living in a hotel, and looking for affordable housing—a problem she says she never had before her husband died.

Another participant explained how she and her partner ended up homeless after her partner’s mother died and they could no longer secure financing for their trailer. “We were in recovery for 13 years (181),” she said. “I’ve been with him for 17. And his mom died so we had to sell our trailer.”

A woman struggling with cancer, who had always lived with her mother, found herself homeless “Since my mum passed away, actually (397).”

### “Just get a job”

For many, including those we spoke with, homelessness started

with losing a job, becoming ill, or getting injured on the job. Many participants told us of a lifetime of work that preceded them losing their homes. One man, who has experienced homelessness off and on, told us about his long history of manual labour, workplace injuries that have caused him brain damage and temporary paralysis, and, finally, illness that led him out of work and onto disability income.

I worked most of my life ‘til I got sick from the Human Immunodeficiency Virus (HIV) and Hepatitis C Virus (HCV). And it was weird; I didn’t even know why I was getting tired all the time and stuff and then I was missing work and stuff. And then I’d be on disability for a bit and then I feel better and I go back to work. – 63

Another man found himself homeless after a lifetime of work in the forestry industry.

I’m in a motorhome. My daughters helped me get it. I’m a retired forest industry worker. I had to retire early because I got anxiety and depression problems. But anyways, I’d taken, at 55, a reduced pension. So, I found myself homeless a number of times. What I get on my pension is minimal for the years of service because I took it early; well, I had to take it early—they encouraged me to. – 281

Once people are living on the streets, getting a job is not so simple. Being displaced daily by police, bylaws, or private security, or trying to keep oneself safe from people who might do you harm can mean only sleeping “probably three times a week (181).”

We heard from many participants that not having an alarm clock, a bed, clean clothing, or ready access to a shower or toilet also makes the experience of homelessness highly incompatible with regular employment.

24 Cited in Stephen Gaetz & Bill O’Grady “Why Don’t You Just Get a Job? Homeless Youth, Social Exclusion and Employment Training” in Stephen Gaetz et al, eds, *Youth Homelessness in Canada: Implications for Policy and Practice* (Canadian Observatory on Homelessness, 2013), online: <http://homelesshub.ca/sites/default/files/15GAETZOGRADYweb.pdf>.

People we spoke with expressed a keen desire to return to the workforce, to volunteer, or to access job training. But they experienced barriers every step of the way.

I would love to go volunteer, do whatever, but like nobody is going to let them volunteer when they have got no address to put on the application, you got no proper references. You have got no this or that, then it's a no-win situation.  
– 252

As one participant explained, the harrowing experience of seeking both housing and employment was like walking into a series of dead ends. "I fell into the old can't-get-a-job-without-an-address, can't-get-an-address-without-a-job (74)," he said.

Despite the obstacles they faced, many people told us of their determination to make what seemed like an impossible situation work.

They are like 'you really should not come to see us [for job training] until you have a stable accommodation' I was like 'Why? I will come, I won't miss my appointments.' I will be there, hell I will sleep like beside the place. – 278

Yet, again and again, they weren't given the chance.

### **Standing Ever on the Verge of Homelessness**

While some Project Inclusion participants shared their experiences with chronic homelessness, others told us of long stretches of precariousness, in which they lived on the verge of homelessness for years. They told us of unscrupulous landlords who took their rent even if they weren't living there, or took the rent, evicted them, and re-rented the unit—all in the same month.

Even when people can secure housing, the conditions can be worse than a tent. Whether it's a lack of proper plumbing, bedbugs, rodents,

dangerous neighbours, or lack of power, the fact that our governments do not enforce proper maintenance in much of our social and low-income housing is itself driving people to the streets.

There's bed bugs in the place. I can't stay there, there's a rash all over my neck, my body, and I stayed there for a week or two weeks and I was out of there. I was living at the shelter and then we moved to the tent when it was nicer. – 289a

Precarity shows up in many forms, including in close relationships. Those relationships are sometimes the only thing standing between a person being housed or living on the street, and relationship breakdown can mean the onset of homelessness. Additionally, in communities of people experiencing homelessness, when one member of a family or friend group gets housed, it can be common to let homeless friends and family stay in their new home. This can lead to complaints of overcrowding or breaches of a rental agreement.

The fact of getting housed doesn't change who you know and love. It can mean that, "Oh, I just had everybody and their mother coming in and staying with me because they were homeless, and I know what it's like, so I was like, ok you can stay here (256)."

For many participants, experiences with precarious housing and homelessness made a deep impact on how they were—or weren't—housed for subsequent years in their lives. Many continued to teeter on the verge of homelessness even if they were no longer living on the streets.

### **"Just get housing"**

The task of simply getting housing isn't as straightforward as it may seem. Whether due to the high cost of housing, limited options for

earning rent money, lack of housing stock, discrimination by landlords, unsafe neighbours or roommates, or lack of references, securing housing is a struggle for many people we spoke to.



In Vancouver, many local residents believe that housing is more affordable elsewhere in BC, outside the most expensive city in the province. Through the course of our research in communities well outside the Lower Mainland and South Vancouver Island, where we expected to hear from people about housing unaffordability, we heard over and over again that rents are often close to \$1,000 per month or more, and that tourists, students, and people who present as 'professionals' are preferred by landlords.<sup>25</sup>

The task of securing housing can also mean that people, in particular women (including women we heard from) and trans people, turn to sex work to earn enough income for rent, even when they don't want to or feel unsafe doing so.

25 Waegemakers Schiff & Turner (2014, *Housing First*) made similar findings in 22 rural communities where rental markets were very strained, rents were reported as comparable to large urban centres, and landlords could give preference to 'professional' and other privileged tenants.

We heard from women that affordable housing options may be unsafe due to unpredictable roommates, volatile neighbours or violent spouses. Many people reported being evicted for the actions of their roommates. And some people, especially women, reported feeling unsafe being housed with roommates they didn't know.

They [the landlord] stuck me in with this one guy and then I'm sleeping with my money in my underwear...the guy was trying to steal off me. Then I'm complaining to the landlord and the landlord didn't do nothing because he don't give a shit. Yeah. So, I'm stashing everything I can in my underwear, so that he doesn't steal it off me. – 312

Added to that are the challenges people face in re-entering the housing market once there is a gap in their housing history. They lack landlord references due to time on the street, they don't have a credit history, or their last address was the local shelter.<sup>26</sup>

It's like once you're—once you've become homeless, it's a [stigma] that you just can't get rid of...Once we're there, we're marked. And I mean, I'm very truthful about my past with people if they asked—really, okay, let's grab a coffee. It's going to take a bit. – 318

### **“Just go to the shelter”**

An often-heard complaint about people sleeping rough is that they should simply go to a shelter. The shelter system itself, however, is the reason some people must live on

## **The harms done to Indigenous Elders, were identified as a unique concern. For example, we heard:**

- There are elders living on the streets. “Yeah, yeah lots of them, lots of them... Some of them just sit on the street and fall asleep there. [What about in winter?] Double up on clothes, whatever, start stealing blankets or whatever to be warm or some shelter over them (13).”
- Shelters aren't always available. “Well how can you [access the shelter] when it's closed, some [people] are not allowed, or they're threatened...or they are banned from it...trying to speak up to help the others...they say 'mind your business take care of your own selves' (13).”
- Indigenous people who are homeless have to hide in the bushes or else they “get thrown in the drunk tank (108).”

the streets. In some communities, shelters and transitional housing have limits on the number of nights people can stay during a given time period until they must move on.<sup>27</sup>

Based on the number of beds available, getting into a homeless shelter is not always possible. For example, our recent assessment of shelter bed availability across BC found 2,144 year-round beds across the province, with many small communities having zero beds.<sup>28</sup> Yet at last count, there were more than 2,181 people living homeless in Vancouver alone.<sup>29</sup> The barriers to accessing shelter are also numerous and well documented, which is discussed in Part 2.3: *No Access, No Support: Service Gaps and Barriers*.

### **Elders on the Street**

This report cannot do justice to the racial and colonial drivers of homelessness, nor the unique experiences of homelessness amongst Indigenous people; nor do

we purport to. Among the 38% of participants who self-identified as Indigenous, however, the harms done to Indigenous Elders was identified as a unique concern.

There is no doubt that homelessness in Canada is driven in part by colonization and racism, and that the grossly disproportionate number of Indigenous people who experience homelessness is a significant barrier to reconciliation and decolonization.<sup>30</sup> The generational harms of colonization will remain ongoing and Indigenous justice will be impossible as long as Indigenous people, and in particular Indigenous Elders, continue to be disproportionately impacted by homelessness.

### **RATIONAL RESPONSES TO IRRATIONAL CIRCUMSTANCES: MOVING BEYOND THE STEREOTYPES**

Three false notions of what homelessness looks and feels like dominate the public imagination: A

26 See e.g. Ontario Human Rights Commission “Housing discrimination and the individual: 4.2 Tenant Screening Practices”, online at <http://www.ohrc.on.ca/en/right-home-report-consultation-human-rights-and-rental-housing-ontario/housing-discrimination-and-individual>.

27 Some shelters limit the number of days a person can stay overnight (we've heard between 5 and 30 days in some locations), then they must leave for a period of time even if they do not have housing or other options.

28 Researcher communication with Scott McApline March 1, 2017, based on BC Housing shelter data as of January 17, 2017, online: <https://www.bchousing.org/housing-assistance/homelessness-services>.

29 Prepared for the City of Vancouver by Urban Matters CCC & BC Non-Profit Housing Association, Vancouver Homeless Count 2018 (July 26, 2018), online: <https://vancouver.ca/files/cov/vancouver-homeless-count-2018-final-report.pdf>. The point-in-time methodology of these counts does not allow for all people experiencing homelessness at a given time to be counted and are widely recognized as an under-estimation of the extent of homelessness in a community.

30 See Jesse Thistle, *Definition of Indigenous Homelessness in Canada* (Canadian Observatory on Homelessness Press, 2017). See also: Homeless Hub, “Indigenous Peoples”, online: <http://homelesshub.ca/about-homelessness/population-specific/indigenous-peoples>.

person experiencing homelessness is often thought of as either a hapless victim of terrible circumstance to be pitied, a nuisance or danger to be avoided, or a “happy hobo” free of care to be judged.<sup>31</sup> None of those stereotypes ring true for people actually experiencing homelessness. The image of the wanderer or the “hobo,” for example is not without consequence. It has led to a legal and societal system that forcibly displaces people every day. It’s part of a state-driven attempt to erase visible poverty from our streets without grappling with the causes of that poverty.<sup>32</sup>

The harm of daily displacement is real; it causes physical and psychological harm. It pushes people away from the services they rely upon. It means people shelter in more remote, more dangerous locations that put them farther away from emergency assistance.<sup>33</sup> “For me, [tenting is] absolute hell (252),” one participant told us. “I don’t like camping. I don’t like the displacement.”

Having no safe space to shelter and rest erodes physical, mental, and spiritual health.

Bouncing around and not sleeping for days, not eating right, not looking after myself, that takes a toll. Then I got pneumonia and that turned into bronchopneumonia, where I just about died. I had a priest and everything—I was bedridden...was not doing well at all. And then I got released from hospital to go back on the street...there was nothing [shelter beds] available, they tried to get me in a motel and

everything—it was just no luck, nowhere to go but back to the street. So getting out from having bronchopneumonia to going right back out there and getting sick again. So it’s a losing battle. – 165

While every individual’s experiences of homelessness are unique, study participants across geography and demographics shared a similar set of challenges they faced from life on the street.

Those challenges include:

- violence;
- fear;
- lack of access to basics like food, health care, and sanitation;
- hopelessness; and
- fear for friends and family.

Despite pervasive popular assumptions that people are well-served by social services in Canada, particularly compared to the US, acquiring the bare essentials for daily survival when living homeless is no easy task. In some BC communities we heard that water is hard to come by, leaving people dehydrated in the summer heat. In others, we were told the food bank won’t hand out food to people without a home address and finding free food can be “ridiculously hard (25).”

One man described to us the situation facing him on weekends, when “we starve,” as he put it.

On Saturday only we have lunch. That’s it. One lunch on the weekend, yeah, the rest of the time we starve. And most of the time we don’t make it up the hill [to the meal on Saturday]. – 140

In almost every community, we heard about barriers to accessing health care. In particular, people living outside must risk losing all their belongings when going to see a doctor or to the hospital.

Whether it’s the risk of your camp flooding while you’re in hospital, getting ‘farmed,’<sup>34</sup> or having your belongings confiscated by city officials or police while you’re at a doctor’s appointment for a few hours, people are taking a calculated risk every time they leave their belongings to try to access services.

Even when people do access health services, many expressed experiencing stigma by care providers, which is addressed in Part 2.3: *No Access, No Support: Service Gaps and Barriers*.

It’s understandable that experiencing such pervasive barriers at every turn can drive people to utter hopelessness. When a man tells us he’s thinking of robbing a bank for rent money, or someone says, “It is like there is no light at the end of the tunnel (252),” the stereotype of the “happy hobo” falls away.

We found that daily anxiety, however, is often not self-directed based on the conversations we had. It’s often about caring for a loved one.

“Most of my anxiety comes from worrying about my common-law girlfriend (266),” one man told us. “I don’t care about me. I am more worried about her, trying to take care of her, just want to get us a place and get her off the street and then she can...help herself with her addiction. But I can’t really do much when we’re homeless.”

31 See e.g. V.J. Del Casino & C.L. Jocoy, “Neoliberal Subjectivities, the “New” Homelessness, and Struggles over Spaces of/in the City” (2008) 40 *Antipode* 192; Bill O’Grady, Stephen Gaetz, & Kristy Buccieri, *Can I See Your ID? The Policing of Youth Homelessness in Toronto*, (Toronto: Canadian Observatory on Homelessness, 2011).

32 Don Mitchell, “The Annihilation of Space by Law: The Roots and Implications of Anti-Homelessness Laws in the United States” (1997) 29:3 *Antipode* 303; Don Mitchell “Anti-homeless laws and public space: begging and the First Amendment” 19:1 *Urban Geography* 6; Nicholas Blomley, “How to Turn a Beggar into a Bus Stop: Law, Traffic and the ‘Function of the Place’” (2007) 44:9 *Urban Studies* 1697; Randall Amster, *Lost in Space: The Criminalization, Globalization, and Urban Ecology of Homelessness* (El Paso: LFB Scholarly Publishing LLC,, 2008); Nicholas Blomley, “The Right to Pass Freely: Circulation, Begging, and The Bounded Self” (2010) 19:3 *Social & Legal Studies* 331.

33 *Abbotsford (City) v Shantz*, 2015 BCSC 1909 at paras 209, 213, 219.

34 A verb used among people experiencing homelessness that describes the event of having one’s belongings stolen from an encampment, usually by another person experiencing homelessness. “We came back from our doctor’s appointment and our tent and stove were gone. We’d been farmed.”

**While some people experiencing homelessness do commit crimes—just as some housed people do—there is no clear indication that they pose a disproportionate risk to public safety, that they are necessarily more likely to be criminals than housed people, or that they are more likely to be prolific or violent offenders.**

This is but one example of the complex relationships of care and familial duty that people are navigating while living on the streets. The popular assumption that people experiencing homelessness have no family or loved ones is a major misconception that only serves to dehumanize people's experiences and create more cognitive distance between people who are homeless and people who are housed.

### **The Realities of Criminality and Victimization**

When housed community members imagine the archetype of a homeless person as a danger to them, their families, their property, or as a so-called "criminal," they do so without a full understanding of evidence relating to the interplay between homelessness and criminal acts.

While some people experiencing homelessness do commit crimes—just as some housed people do—there is no clear indication that they pose a disproportionate risk to public safety, that they are necessarily more likely to be criminals than housed people, or that they are more likely to be prolific or violent offenders.

A number of studies have found that people who are homeless are no more likely to commit violent crime, such as murder or sexual assault, than those who are housed.<sup>35</sup>

Some evidence suggests that the overall number of crimes committed by people who are homeless occur at the same rate as housed individuals, though people who are homeless are far more likely to be arrested when they do offend. This is often because people relying on public space and appearing poor are more likely to attract complaints and police attention for behaviours that go unnoticed or unreported except when they are conducted in public or in low-income communities where they may offend more privileged community members or garner heightened police suspicion.<sup>36</sup>

Regardless of whether the rates are exactly the same, studies show that involvement in the justice system for people experiencing homelessness is more likely to be for minor offences, such as intoxication or nuisance, or for poverty related crimes like burglary (mostly for breaking into warehouses and abandoned buildings as a means to secure a place to sleep), shoplifting small items to sell or pawn, or selling small quantities of drugs.<sup>37</sup>

There is good evidence, however, that people living homeless are far more likely to be victimized by violent crime. Numerous studies have found that anywhere from one-quarter to over half of individuals living homeless have been victimized since

35 David Snow, Susan Baker & Leon Anderson, "Criminality and Homeless Men: An Empirical Assessment" (1989) 36:5 *Social Problems* 532; Tammy S. Garland, Tara Richards & Mikaela Cooney, "Victims hidden in plain sight: the reality of victimization among the homeless" (2010) 23:4 *Criminal Justice Studies* 285; Kevin Fitzpatrick & Brad Myrystol, "The Jailing of America's Homeless: Evaluating the Rabble Management Thesis" (2011) 57:2 *Crime & Delinquency* 271. Jack Tsai & Robert Rosenheck, "Homeless veterans in supported housing: Exploring the impact of criminal history" (2013) 10 *Psychological Services* 445.

36 National Council on Welfare, Justice and the Poor (Ottawa: Minister of Public Works and Government Services Canada, 2000) at 13, 15, 16, 23.

37 See footnote 23, above. See also Stephen Metraux, Caterina Roman & Richard Cho, "Incarceration and Homelessness" (Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research, March 1-2, 2007), online: [https://www.huduser.gov/portal/publications/homeless/homeless\\_symp\\_07.html](https://www.huduser.gov/portal/publications/homeless/homeless_symp_07.html); Sahoo Saddichha et al, "Homeless and incarcerated: An epidemiological study from Canada" (2014) 60:8 *International Journal of Social Psychiatry* 795. Looking at youth in particular, hunger and the need to access shelter are key drivers of criminal justice involvement, leading young people into a system that can be difficult to exit. See Stephen Baron, "Why Street Youth Become Involved in Crime" in Stephen Gaetz et al, eds, *Youth Homelessness in Canada: Implications for Policy and Practice* (Toronto: Canadian Homelessness Research Network Press, 2013); Tessa Cheng et al, "High prevalence of risky income generation among street-involved youth in a Canadian setting" (2016) 28 *International Journal of Drug Policy* 91.

**A woman in her 40s told us about the anxiety she lives with because of the threats she has experienced at the hands of people who are housed.**

**“I get nervous sometimes if there is a group of people coming towards me, because I was in a bin one time and these two guys with their two dates decided to show how impressive they were and intimidate me out of the area, right? So they were banging on the bin and I was inside it and stuff and I didn’t know how many people were outside and it was kind of freaky.” – 439**

**When we asked if the people outside the bin were threatening her verbally, she remembers them saying, “Get the fuck out, we’ll beat your fucking head in!”**

becoming homeless.<sup>38</sup> A woman in her 40s told us about the anxiety she lives with because of the threats she has experienced at the hands of people who are housed.

“I get nervous sometimes if there is a group of people coming towards me, because I was in a bin one time and these two guys with their two dates decided to show how impressive they were and intimidate me out of the area, right? So they were banging on the bin and I was inside it and stuff and I didn’t know how many people were outside and it was kind of freaky,” she told us. When we asked if the people outside the bin were threatening her verbally, she remembers them saying, ‘Get the fuck out, we’ll beat your fucking head in (439)!’”

Rates of rape and robbery perpetrated against homeless people have been assessed as being 20 times higher than the general population.<sup>39</sup> Being homeless is in fact an independent risk factor for being victimized because people have to carry all their possessions with them or hide them in unsecured camps, leaving them vulnerable to theft.<sup>40</sup>

Between 2006 and 2014, people who were homeless in BC died at a median age of 40–49 years old, as compared to 76.4 years of age within the general population.<sup>41</sup> They are three times more likely to die an “accidental” death, and die by either homicide or suicide at approximately double the rate of housed people.<sup>42</sup> Another study out of Ontario found that homeless men are about nine

times more likely to be murdered than the general population.<sup>43</sup>

Criminality in popular imagination and public conversation continues to stigmatize people who experience poverty and homelessness as perpetrators of violence and crime. Our interviews with participants and a large body of existing research overwhelmingly suggest that people experiencing homelessness are too often the victims of violence, crime, and unnecessary, untimely death.

People experiencing homelessness do not need to be feared. The myths that we have created about them serve to perpetuate inequity and endanger lives.

38 Tammy S. Garland et al, “Victims hidden in plain sight: the reality of victimization among the homeless” (2010) 23:4 *Criminal Justice Studies* 285, reviewing D.G. Anderson “Homeless women’s perceptions about their families of origin” (1996) 18:1 *Western Journal of Nursing Research* 29; K.M. Fitzpatrick, et al. “Criminal victimization among the homeless” (1993) 10:3 *Justice Quarterly* 353; B.A. Lee and C.J. Schreck “Danger on the streets: Marginality and victimization among homeless people” (2005) 48:8 *American Behavior Scientist* 1055; R.L. Simons et al, “Life on the streets: Victimization and psychological distress among the adult homeless” (1994) 4:4 *Journal of Interpersonal Violence* 483.

39 Deborah Padgett & E.L. Struening, “Victimization and traumatic injuries among the homeless: Associations with alcohol, drug, and mental problems” (1992) 62:4 *American Journal of Orthopsychiatry* 525.

40 Tammy S. Garland, “Victims hidden in plain sight: the reality of victimization among the homeless” (2010) 23:4 *Criminal Justice Studies* 285.

41 Sean Condon, *Still Dying in the Streets: Homeless Deaths in British Columbia, 2006-2014*, 2nd ed (Vancouver: Street Corner Media Foundation, 2016) at 4-5, 8-9.

42 Condon at 4-5, 8-9.

43 Stephen Hwang, “Mortality among men using homeless shelters in Toronto, Ontario” (2000) 283 *The Journal of the American Medical Association* 2152.



## Gendered Violence on the Streets

The stereotype of the dangerous homeless person also erases the experience of homeless women, trans people, and Two-Spirit people who are at an elevated risk of physical and sexual violence. One woman told us about the safety issues she faces on the street.

I've been woken up to being raped, like more than half the time I fall asleep, which is why I don't sleep. My belongings being stolen—I've woken up probably more than half the time I fall asleep to nothing being there, or my clothes taken off my body and my shoes, my cell phone. So you just give up having a cell phone altogether because there's no point. I don't have anywhere to [go], I don't have four walls and a door. So basically I'm exposed to people coming up and taking whatever they want. So there's no point. So you just walk here around with nothing, basically. – 313

When asked who had assaulted her, she told us:

Sometimes I'm not even too sure who it was. You can just tell when you like wake up, when your, like, your pants, or if you're wearing jeans are unbuttoned and unzipped and like down around your ankles and there's like, yeah, you can tell. Because I think I was drugged or something...because you'd think you'd wake up. – 313

This woman is not alone in her experiences. A study conducted with people experiencing homelessness in Toronto in the 1990s found that, in the past year:

- 46% of homeless women and 39% of homeless men reported being assaulted;

- 43% of homeless women and 14% of homeless men reported being sexually assaulted; and
- 21% of women reported being raped.<sup>44</sup>

The idea that people experiencing homelessness are dangerous threats to society erases and silences the experience of sexual violence and gendered violence against people who are homeless. Our data from Project Inclusion captures experiences of women, but not members of the LGBTQ2S community—a community whose members who are experiencing homelessness are also facing the very worst effects of violent homophobia, transphobia, and systemic discrimination related to gender expression and sexual identity. There is significant literature reflecting the increased threat of violence and harassment experienced by people in the LGBTQ2S homeless community.<sup>45</sup> We were unable to capture that in this study, which we acknowledge as a shortcoming as it merits in-depth exploration, particularly in suburban and rural communities.

### **“Trying to kill that feeling”: Health, Humanity, and Homelessness**

The labels and assumptions we collectively apply to people experiencing homelessness cast them as “other,” rather than recognizing our commonalities of human experiences such as health issues, pain, normal bodily functions, and our need for protection from the elements.

Some of the people we heard from were young people already struggling with arthritis. Others were facing potentially fatal illnesses while homeless. “It's like, the harder we try to set up so that we can survive

this, the harder they try to keep us where we are (153),” one woman told us. She was describing a simple urgent need and attending to it felt impossible: “Just trying to get a roof over our [her and another person battling cancer] head before our next round of chemo.”

When you think of waking up on hard, cold pavement day after day, using drugs or alcohol to numb the pain that we would all feel in that situation seems a rational response to an irrational life circumstance. “When you are in a tent in the winter, well, you use [substances] to stay sometimes...to stay warm (239),” one person explained. “Just to kill, you know, kill the pain, kill the pain.”

Another person described it simply as “trying to kill that feeling—being outside (343).”

Quite a few people we heard from turn to substances to make life more bearable. A woman in her 30s, already living with arthritis, told us:

You're living outside in the cold and everything. And heroin or alcohol, like warms you up and keeps you alive so you don't freeze to death. And your arthritis, you get sore, exposed to the elements. A lot of people get arthritic, so it helps with the pain. Yeah, it's just really hard to function and go about your day and do what you have to do in the day, without something to help you get up and go because you're just worn down and sore all the time. – 313

We explore intersections between substance use and homelessness in greater detail in Part 1.2: *Substance Use in Context*.

People who are homeless in BC have approximately half the life expectancy

44 Eileen Ambrosio et al, *The Street Health Report: A study of the health status and barriers to health care of homeless women and men in the City of Toronto* (Toronto: Street Health, 1992) at 51.

45 See e.g. Ilona Alex Abromovich, “No Safe Place to Go: LGBTQ Youth Homelessness in Canada: Reviewing the literature” (2012) 4:1 *Canadian Journal of Family and Youth* 29; Bryan Cochran et al, “Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents With Their Heterosexual Counterparts” (2011) 92:5 *American Journal of Public Health* 773; Andrew Cray, Katie Miller & Laura E. Durso, *Seeking Shelter: the experiences and unmet needs to LGBT Homeless Youth*, (Washington, DC: Center for American Progress, 2013) at 16.

of housed people.<sup>46</sup> Mortality rates amongst people who are homeless are disproportionately high across Canada.<sup>47</sup> Accessing health care, however, especially through hospitals, can be a daunting task.

**“I had pneumonia this spring. And I’m worried I’m going to get it again. I don’t want to go back to the hospital. You know what I mean? Like, I don’t want to miss a day down here because I’m afraid they’re [city staff] going to take my stuff. So a week in hospital is not going to do.” – 49**

While the experience inside hospitals is covered in Part 2.3: *No Access, No Support: Service Gaps and Barriers*, we also heard that people are unwilling to even go to a hospital for fear of coming back to nothing:

I had pneumonia this spring. And I’m worried I’m going to get it again. I don’t want to go back to the hospital. You know what I mean? Like, I don’t want to miss a day down here because I’m afraid they’re [city staff] going to take my stuff. So a week in hospital is not going to do. – 49

Another woman explained that her hospital stay meant losing everything.

They [city staff] bulldozed that camp three days after I had done my last dose of chemotherapy. I couldn’t even walk...They called an ambulance for me and the ambulance attendants come and help me out of the tent and took me up the hospital, I spent the next three days up there while they destroyed our camp and everything we owned. I got out of the hospital to two changes of clothes. – 153

When it comes to treating illnesses, repeated displacement and having belongings taken can also mean losing prescription medication. For medications like antiretrovirals for HIV, this can negatively impact a person’s ability to control their viral load, putting both them and possibly those close to them at risk.

For some people with Hepatitis C (HCV), homelessness can mean not being treated at all.

They don’t want to give [medication] to you unless you are housed...You can’t, you are not stable to take your meds. And you got to be housed, you know in case you do get sick so you rest, you can’t rest when you are out there. Just going to make it worse, because your immune system is already down right? – 165<sup>48</sup>

Faced with grinding cold and rain, and managing chronic illnesses, people go to bed fearing that they might die. Homelessness can be a deadly prospect.

People are, you know, getting sick to the point where they are in the hospital to the point where they die, all because there is no housing and there is nothing for

people, where people can go. It is bullshit. – 165

One man explained that he couldn’t leave his tent out to dry because it would either be destroyed or law enforcement would take it.

I set up my tent...it was just getting into winter so it would rain, and once the tent and gear and whatnot absorbs water, you now have to, in the morning, pack that up...when you go to bed now, everything is already wet. So when I set up again, when all my stuff was [already] soaked through, I went to bed with everything wet and it was uncomfortable... Luckily, I woke up in the morning and I didn’t freeze that night, and when I woke up I was surrounded by water, like puddles. And so I packed up and biked to town, and I knew that day that, when I go home tonight I am going to die... not because I want to. And my only option was to leave my things set up, wasn’t an acceptable one either because if people see it, they’ll destroy it [or take it]. – 412

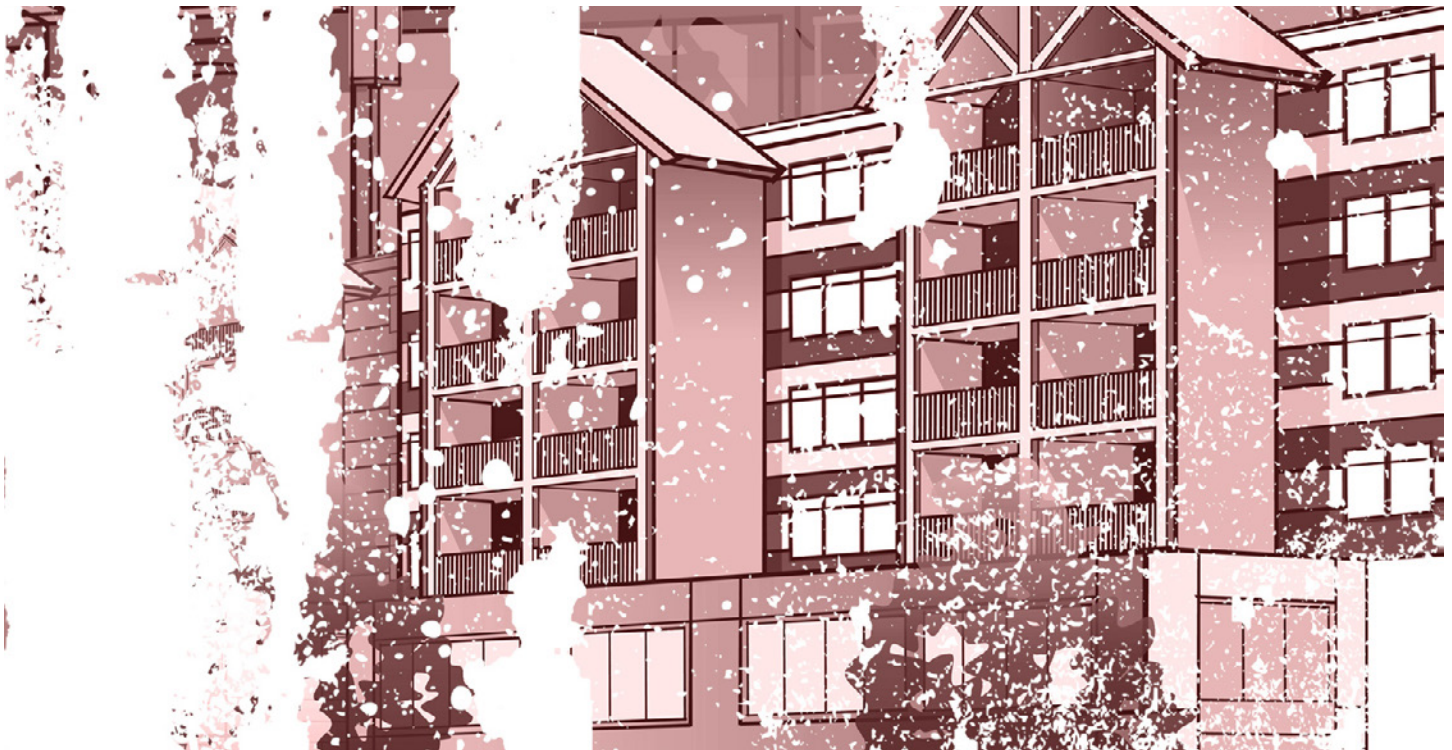
Fortunately, a friend helped him find a temporary bed that next night, he told us, “So I didn’t die that day.”

The life-threatening dimensions of homelessness are already too much to bear. But living homeless can also be humiliating. It can be impossible to attend to the facts of one’s biology with the dignity of privacy, space, and access. We are ever mindful of the importance of teaching our children that “everyone poops,” partially because it’s biologically true, but also because urinating and defecating are private matters that can feel embarrassing, and even shameful when we don’t have access to private

46 Condon at 9.

47 Stephen Hwang, “Mortality among men using homeless Shelter in Toronto, Ontario” (2000) 283 *Journal of the American Medical Association* 2152; Angela M. Cheung & Stephen W. Hwang, “Risk of death among homeless women: a cohort study and review of the literature” (2004) 170: 8 *Canadian Medical Association Journal* 1243; James C. Frankish, Stephen W. Hwang & Darryl Quantz, “Homelessness and health in Canada: research lessons and priorities” (2005) 96:2 *Canadian Journal of Public Health/Revue Canadienne de Sante’e Publique* S23; Stephen Hwang et al, “Mortality among residents of shelters, rooming houses, and hotels in Canada: 11 year follow-up study” (2009) 339 *BMJ* b4036.

48 It is in fact not the case that being homeless is necessarily a full barrier to accessing treatment for HCV (Hepatitis C Virus), but we certainly heard from people who were either turned away as “not treatment ready” or discouraged from accessing care due to their housing situation. For more information on HCV treatment access see: <http://www.hepctip.ca/home/>.



hygienic places to go.<sup>49</sup> How, then, do we remember this reality in relation to a two-year-old, but forget that fact when a 30-year-old asks to use the bathroom in a McDonald's, or when we see someone peeing in an alley?

We've all woken up with the flu. But few of us will ever wake up sick to our stomachs, having to pack up everything we own, and run across downtown to the nearest toilet.

This is super embarrassing, but like years ago, sleeping in that doorway I was talking about over there, and I just woke up and I guess I had stomach issues. I didn't realize it, and I'm like oh, whoa, grab all my stuff, run...I just made it in the stall and I'm like that did not just happen. Oh my God!... Luckily I had like lots of clean clothes and stuff so I discarded the clothing, cleaned myself up but I was so embarrassed and there is this guy in the stall next to me just coming out who I kind of knew... he's like 'Don't worry, it's happened to me too.' I got so embarrassed man. That's awfully gross. – 278

And that's a situation in which someone has access to a public

toilet. Many people rely on businesses where patrons are expected to purchase something in order to use the bathroom. "You got to have money (278)," one person explained. "You have to buy something to use the washroom."

All of this forces people to plan ahead before every bodily function, hoping to be allowed to use the facilities somewhere like a Tim Horton's or McDonald's. Other times, it means having no choice but to go to the bathroom outside in an alley or park.

Showering, especially in municipalities lacking drop-in resources, means relying on friends and waiting for opportunities. As one woman explained it to us, taking a shower is always a matter of advance planning. "When I'm at my friend's house, I try to get in there and sometimes it's a week before we can [shower again] (343)," she told us. "But whatever, at least we do it."

We blame people who are homeless for the way they look, for that smell in the alley, and for how they might arrive in a moment of desperation at the door of a fast-food restaurant without having the capacity to make

a purchase. Societal stigma leads us to judge homeless people for the conditions they are forced to live in.

But these are simply the result of living without the resources we all need in order to take care of ourselves.

## **STRATEGIC THINKING, STAYING SAFE**

While we heard much about the complex, grinding nature of homelessness, we also heard about strategies for surviving life on the streets that are equally complex and cunning.

There are a lot of really intelligent people, I don't know anybody more hard-working and ambitious than, like, a homeless person. I definitely don't think these people are lazy because they have to take down their house and carry it on your back and walk miles and set it up again. And, like, every little thing that people take for granted, like jumping in their shower or cooking—making something to eat is, like, such a process...when you don't have access to...proper housing. – 313

49 Taro Gomi, *Everyone Poops* (Kane Miller, 1993).

Proper housing makes life's simple acts—the pieces that make it bearable, and that mark the difference between surviving and thriving—infinately more feasible and manageable than when one is living homeless. “The simple things are just a chore, right (313),” a participant explained. “If you were in a house, and had an alarm clock to wake you up get out of bed—these little things you take for granted—you jump in the shower and go to work.”

The interviews we conducted for this study demonstrate the multi-faceted, complex, and deeply human nature of living homeless in BC. The real-life experiences people shared with us dismantle the popular archetypes of the homeless person as a “happy hobo,” a scary monster, or a hapless victim to be pitied. The complex array of systems and tactics that people employ to stay safe, warm, fed, and cared for is at once necessary and relatively effective, but also time consuming and often at odds with local laws that stand in the way of survival and safety. Everyone we heard from is simply someone making decisions that are best for them, in circumstances that are unimaginable to most people.

We asked a participant—an outwardly strong, typically abled man—about what he did to feel comfortable and safe. His response shows us just how naïve a question that is given the baseline that people are working from as they navigate daily life.

I don't know what you're really asking. What do you mean, comfortable and safe? I'm in the bush. I mean like I'm vulnerable in every direction. So I don't really feel comfortable and safe. That's why I don't sleep that much. – 102

### Staying Warm

We are sitting in a northern community; it's late August, but a chill is already in the air. We asked

a participant how she stays warm. “We cuddle up (343),” she told us. That's simple, but challenging. Laws prohibiting structures can make it hard to find a place where two people can set up a tent without getting caught. Going to an emergency shelter where there may only be room for one person is untenable because it means leaving a loved one to freeze. In some communities, we heard about people piling into trailers or vans to shelter overnight because “too many people were freezing to death outside (312).”

The alternative can be to use candles or heaters. Without support from officials such as BC Housing staff or fire officials to provide safe heating devices, fire safety training, fire extinguishers, safer tarps, or warming centres, this can create a risk of fires. In most cases, instead of providing necessary supports, officials confiscate tarps, heaters, and candles, leaving people at risk of hypothermia, frostbite, and other cold-related harms.

Some people build makeshift structures to better protect themselves from the elements.<sup>50</sup> However, we heard that can land you in the crosshairs for displacement and attention from law enforcement. “Solid structure will get you into shit (318),” one participant told us. “If you can keep it to a tent and tarp, you can stay hidden.”

From the comfort of a house, it can be hard to remember the bitter cold of a northern BC winter, or to realize that even relatively mild temperatures can be deadly for people who have no way to get warm or dry.

I almost died this year from the elements. [name] got it [died] the next day, from the elements there...It was really cold where I was. And it got colder and colder and your body just goes beyond cold, to numb, to just it can barely

even move. I remember I can barely even lift my arms...But I'm telling you, the next day [name] died from the elements. – 49

What is clear from our findings is that people need warmth. They will find a way to obtain it, even if it means taking a risk. Using law and policy to limit access to safe heating increases people's risk of frostbite, hypothermia, fire-related injury, or death.

### Seeking Shelter, Seeking Safety

The deep stigma against people experiencing homelessness gives rise to a system of laws and policies that cause harm to their livelihood, health, and personal safety; but it can also give rise to direct violence and assaults against people who are homeless, which we detailed earlier in this chapter. Given that daily life presents a minefield of threats to personal safety for people experiencing homelessness, their decisions on where and how to shelter are often rooted in attempts to stay safe.

For some, especially women, staying close to services in the downtown core and not being alone are important safety measures. “I stayed close to the shelter so that... if I had any trouble, because I was by myself. I stayed close to where I could scream if I needed help [chuckle] (312),” one woman told us. “Or get up fast and move and emergency press their button.”

Likewise, avoiding isolated locations can be essential for personal safety. When asked about why she doesn't stay in any of the camps in the woods, another woman told us, “Girls getting raped, guy getting raped, guy getting murdered, people getting overdosed, people—college kids go in there and like hurting you and shit (416).”

50 For example, a homeless camp in Maple Ridge, “Anita Place,” was established in May 2017 and is still in place as of the writing of this report. Because they have not been displaced, several people have been able to construct makeshift shelters to better protect themselves from wind, rain, snow, and sun. Outside of the encampment context, we have observed that establishing this level of protection from the elements is rarely possible.

For others, it means finding creative places to hide, like in clothing bins (362). Still, others do what they can to secure a roof overnight. "I'm always packing a pack because you never know if the shelters are too full or if I have nowhere to stay (96)," one woman told us. "And usually if I don't have anywhere to stay, I'll see if someone will pick me up and I will do a date and I'll make some money to get some beer, maybe get a room."<sup>51</sup>

Despite the risks, many people told us about hiding and trying to avoid detection. Being publicly, visibly homeless can so often lead to displacement and losing property due to ubiquitous local and provincial laws that prohibit people from safely sheltering on public lands.<sup>52</sup>

For some, this can mean heading into the wilderness, "because they're so afraid of having their stuff torn apart and thrown in the dumpster, that they are making sure that there's no damn way anybody can get any way near them (358)."

Being found can mean losing everything you own, including your makeshift home.

It [a camp] got destroyed because people would hike up to the top and saw [the] camp and just totally destroyed it, cutting a lot of tarps up and with knives and stuff like that. We've been vandalized camping. – 269

For others, usually men we heard from, the risks posed by being caught by people and harassed by police meant that braving the wilderness could be the safer option, despite

being far from services, hard to find, and disconnected from both outreach and medical care.

"Personally I feel safer where the bears and the cougars are than I do where the people are (304)," one man told us. "I wouldn't [sleep downtown] because I wouldn't feel safe (294)," another told us. "I know that I'm going to be harassed by cops."

The threat of police harassment kept many participants in isolation. "Got to be isolated (318)," one person said, "or else then they [cops] will start come in, start harassing."

For some people experiencing homelessness, there's no good solution. There's often no way to safely avoid being hassled by law enforcement or housed members of the community, "not unless you're way out in the bush, but then the bears will get you, right (343)?" one woman said. She described it as being trapped with bad options on all sides. "So it's pretty scary either way you go, right?"

In a great number of cities, there are bylaws prohibiting sheltering on sidewalks and in parks, leading some to find shelter on privately owned land, which comes with its own fears and risks. "People might kill you (412)," one participant said simply. "Or have dogs or whatever, right?" Exceptions to such prohibitions are both rare and far too limited. Some municipalities such as Victoria, Kamloops, Mission, Chilliwack and Abbotsford, for example, allow sheltering on a temporary, and strictly limited, overnight basis. Such exceptions are inadequate to meet

the needs of people experiencing homelessness because they perpetuate daily displacement, leave people open to the elements during the day, do nothing to protect people's belongings, and prohibit people from establishing safer structures and communities. They have, however, thus far been the only move towards recognizing people's right to shelter in public spaces.

Choosing between proximity to downtown amenities and evading detection can also mean going without necessary income that may get stolen or confiscated by authorities.

I usually try to stay close to the downtown area because that's where I take my empties and my scrap metal. I always try to find a place to hide everything, but then other people would find it and steal it or the city would come and [take] it. – 63

Some BC municipalities are actively working to criminalize income generation, robbing homeless people of their livelihoods and driving people further into hiding. For example, in March 2018, Kelowna City Council proposed a bylaw amendment prohibiting people from donating recyclables to people within the vicinity of a recycling depot. This city already places a \$150 fine on people "scavenging" for recyclables.<sup>53</sup> Many municipalities across the province strictly control other forms of income generation like panhandling.<sup>54</sup> Some go so far as to prohibit shopping carts on public sidewalks.<sup>55</sup> Cities across BC use apparently neutral bylaws to confiscate people's belongings

51 "Date" is a noun used in the sex worker community to describe clients paying for services. The phrase "do a date" refers to engaging in sex work to generate income.

52 These include prohibitions on setting up shelter in parks or on other public lands, bans on sitting or lying down in public, overnight park closures, prohibitions on sleeping in cars, restrictions on placing belongings on sidewalks or other public places, trespassing laws, etc.

53 City of Kelowna, Revised By-law No. 10475, Bylaw Enforcement Notice Bylaw (27 August 2018), Schedule A. See also Megan Trudeau, "Changes to the Good Neighbour bylaw on the table at city council" Kelowna Now (26 March 2018), online: [https://www.kelownanow.com/watercooler/news/news/Kelowna/Changes\\_to\\_the\\_Good\\_Neighbour\\_bylaw\\_on\\_the\\_table\\_at\\_city\\_council/](https://www.kelownanow.com/watercooler/news/news/Kelowna/Changes_to_the_Good_Neighbour_bylaw_on_the_table_at_city_council/).

54 See e.g. Colwood, Coquitlam, Langford, Mission, Nanaimo, New Westminster, City of North Vancouver, Penticton, Pitt Meadows, Quesnel, Sidney, Vancouver, Vernon, Victoria, West Kelowna, Williams Lake.

55 For e.g. Corporation of The District Of Maple Ridge Bylaw No. 6704 – 2009, Highway and traffic Bylaw (26 January 2010) section 20.1 states that "No person shall place shopping carts in any manner upon a highway or upon any structure on a highway", online: <https://www.mapleridge.ca/DocumentCenter/View/540/Highway-and-Traffic>. See also district of North Vancouver. At the time of writing the City of Vernon is considering similarly banning shopping carts in public spaces.

**“I’m at the mercy of whenever my friends are done work, whenever somebody could possibly squeeze it in to drag me to where, I don’t know anymore, because the campsite wouldn’t accept my money, because there was no insurance. I had the money to pay the site fee, but he wouldn’t accept it because there was no insurance on the trailer and I couldn’t get insurance without [an additional] \$300.” – 362**

from parks and sidewalks. Laws like these mean that merely being visibly homeless, or having a shopping cart—a necessity for many people facing daily displacement—can make one a target for enforcement of other laws.

### **No Safe Haven in Mobile Homes**

Many people spoke to us about alternatives they’ve tried to sleeping in tents, and the risks of trying to create or find a safer shelter. For some, vehicles are safer options than tents or makeshift shelters. “I’m working on getting a van again (294),” one person told us. “I feel a lot safer sleeping in a van right rather in a tent...you lock it, secure.”

We heard repeatedly about people trying to make relatively safe homes for themselves in trailers and vehicles, often with little success due to local laws prohibiting parking, lack of access to affordable insurance, or displacement from mobile home parks.

The widespread use of mobile homes in trailer parks in and around many small communities and outlying areas throughout Canada began in the 1970s. Many have become long-term dwellings even though they were not intended for that purpose and, coupled with lack of maintenance, are now falling into disrepair. Many of these units are at high risk for becoming uninhabitable in the next five years.<sup>56</sup> There is no mechanism—loans, mortgages, government programs—to help these owners and renters repair or replace their homes. We heard about how some people have trailers but cannot

find land to put them on because they are too old. “All’s I need is just like a—a spot— but there is no spots. And then all the spots are all taken up and then I did have one spot, they [trailer park manager] kind of said well, my trailer was one year too old (82),” one man in his sixties told us. “Yeah, they said they could be only from 1990, my trailer’s 1989.”

Where trailer owners are able to secure a plot of land for their trailer, they are often renting that land. In communities near cities or elsewhere with rising land values, gentrification has led to these trailer parks being sold and trailer owners being forced to leave.<sup>57</sup> In addition, a trailer parked on public land is not considered housing and so people cannot access the shelter portion of income assistance to pay for insurance, upkeep, or gas.<sup>58</sup>

Instead of supporting people who find relatively safe and comfortable housing alternatives, we heard how people are chased out of their towns or homes due to prohibitions on parking or being ticketed, towed, or impounded multiple times.

Well, it is illegal to stay in [the vehicle]. I’ve heard now a friend of mine that’s doing the same thing as me. He said, ‘[name], basically it’s illegal to sleep in your motorhome.’ And I said, ‘How can that be?’ Because, you know, if you own it, how can it be illegal to sleep in your home? Well, it is, because you’re on city streets, or you’re on city property, or everything. I mean, unless you know for sure that the city has no jurisdiction over it, you’re

56 Jeanette Waegemakers Schiff & Alina Turner, *Rural Alberta Homelessness* (Calgary: University of Calgary & Alberta Centre for Child, Family & Community Research, 2014) at 27, online: <http://homelesshub.ca/resource/rural-alberta-homelessness>.

57 Waegemakers Schiff & Turner (2014, *Rural Homelessness*) at 27.

58 See e.g. *The Vancouver Homeless Count includes vehicles in the definition of “homeless.”* See Urban Matters CCC & BC Non-Profit Housing Association, *Vancouver Homeless Count 2018* (July 26, 2018), online: <https://vancouver.ca/files/cov/vancouver-homeless-count-2018-final-report.pdf>. Further, the Ministry of Social Development and Poverty Reduction policy on Income Assistance shelter Rates (Effective 24 April, 2018) specifies that only rent for a family unit and associated costs like fuel for cooking and heating are eligible for shelter allowance. Vehicles and related costs are not included, online: Ministry of Social Development and Poverty Reduction <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/support-and-shelter/support-shelter-and-special-care-facilities>.

taking a huge chance of being there overnight because they can just pull the hook on you any time. They don't have to ask any questions. They just come and take it. – 281

Low incomes and repeated fines leave people without money for insurance, meaning they can't avail themselves of off-season parking at campsites where vehicle insurance is mandatory.

I'm at the mercy of whenever my friends are done work, whenever somebody could possibly squeeze it in to drag me to where, I don't know anymore, because the campsite wouldn't accept my money, because there was no insurance. I had the money to pay the site fee, but he wouldn't accept it because there was no insurance on the trailer and I couldn't get insurance without [an additional] \$300. – 362

Several people talked about saving up what money they could or relying on family to help finance the purchase of a trailer, or sometimes having one donated to them, only to find themselves being "chased" from place to place by law enforcement.

A senior citizen with no criminal involvement told us this was the last thing he expected when he set out to live out his days independently in the form of housing he was able to afford. The catch-22 was that bylaw enforcement would tell him he couldn't park his vehicle in town because it had no insurance, but they would also report him to the police if he moved the vehicle without insurance. He knows he needs insurance, but he can't afford it.

I can't even afford to be in it, really. That's what it boils down to. And I'm in the community. I

know guys in my position. They're forest workers, whatever, and they're about my age, doing the same thing, just trying to stay out of shelters and out of the hair of cities. I don't want to be a cause. I don't want to be in a shelter. No, it's not [my scene]. I was a family man. I was divorced and I retired and I got sick and there're all sorts of things that went on. – 281

Having a vehicle—one's home—impounded can also mean losing access to all belongings, and with that, losing the ability to sell belongings in order to pay insurance, fines, or impound fees to get back one's home.

Maybe if I hadn't had to drag my motor home that got impounded with all of my stuff that could have potentially been sold, like my paintings, or clothing, or pawned, or whatever. All of my resources are sitting locked in a motorhome that I don't know where it is or I probably would have taken bolt cutters and broken in and taken my stuff back. Because I had been left with no choice but to resort to some form of criminal activity to live. I don't want to live like this and I don't want to sell my body, but I'm kind of rammed in the corner with nothing left. What am I supposed to do? – 362

While we heard about trailer living mostly in smaller communities, one Project Inclusion researcher participated in the 2018 Vancouver Homeless Count in March. Through that, we were privy to a first-hand glimpse at the staggering number of people who appeared to be living in vehicles throughout Vancouver alone.

Trailers seem to be an important option for people in smaller communities where there is a greater

focus on home ownership, a lack of rental housing stock, greater distances to access food and health services, lack of local capacity to meet housing need, and unreliable or non-existent public transportation.<sup>59</sup>

People in smaller communities also face the risk of being recognized and "black listed" by the limited number of landlords providing affordable housing, or are squeezed out to accommodate seasonal workers or tourists.<sup>60</sup> For example, during our research, we stayed in motels without much thought as to how we might be impacting local housing supply, only to learn that in some communities motels are rented on a monthly basis to low-income people during tourist off-seasons. Long-term tenants are then evicted during summer months to accommodate tourists and other higher-paying guests—including us.

This is how we are treating people who find safe, relatively affordable alternatives within the context of a grinding housing crisis.

## OUR LAWS MAKE IT WORSE

**If homeless people can only live in public, and if the things one must do to live are not allowed in public space, then homelessness is not just criminalized; life for homeless people is made impossible.<sup>61</sup>**

– Don Mitchell

## Laws

As noted above, cities across BC (and across North America) employ public space bylaws that control the lives, bodies, and movements of people experiencing homelessness.<sup>62</sup>

Hearing from a couple that has been repeatedly moved along for

59 Bruce; Waegemakers Schiff & Turner (2014 *Housing First*) at 17; Julia Christensen, "They want a different life": Rural northern settlement dynamics and pathways to homelessness in Yellowknife and Inuvik, Northwest Territories" (2012) 56:4 *The Canadian Geographer/Le Géographe canadien* at 419.

60 Authors' personal observations. See also Waegemakers Schiff & Turner (2014 *Rural Homelessness*).

61 Don Mitchell, "Anti-homeless laws and public space: begging and the First Amendment" (1998) 1:19 *Urban Geography* at 6-10.

62 See extensive review in Catherine T. Chesnay et al, "Taming disorderly people one ticket at a time: The penalization of homelessness in Ontario and British Columbia" (2013) 55:2 *Canadian Journal of Criminology and Criminal Justice* at 161.



breaching public space bylaws and who can't access the shelter because it is often full and doesn't accept couples, one can see how these laws wipe out all spaces that could be open to them. "You can't be anywhere around here (343)," they told us, echoing what they've heard said to them from just about everyone. "You guys have to go to the shelter if you don't have a place to live."

Annihilating spaces accessed by people experiencing homelessness effectively seeks to annihilate them as people.<sup>63</sup> For as long as a person continues to be alive, they will do so in a human body, and will continue—in every moment—to need access to a physical space in which to be. These laws, as we explore in Part 3: *Why a Stigma-Auditing Process Matters for BC*, are based in stigma.

They are fundamentally rooted in ideological concerns about who is "deviant," "uncivilized," or a "menace" (homeless people) and who is "deserving" (people with land and money).<sup>64</sup> They seek to extinguish the existence of homeless people without providing alternatives and without consideration of the impact they have on those lives.

For one couple, it meant coming back to their camp to find "our tent was all slashed up and stuff was in the river, just thrown there. We could see it, it was not gone but all soaking wet." For others, having no claim to space which is theirs means a state of constant, grinding placelessness. "You can't stay in one spot, you know, they will be kicking you wherever you go (165)," he told us. "So you got no choice but to walk around all day long."

### Complex Problems, Simple Solutions—but We Need Political Will

Most people creating the policies that both cause homelessness and render it more dangerous and grueling will never know the feeling of waking up wet in a doorway with a police officer standing over them—something which was not lost on the people we heard from. "I would love, like, the higher-ups to have to live the way we do, for even a weekend (362)," one woman said.

For many people we heard from, the solutions to homelessness are frustratingly simple:

- No bells and whistles, just a low-income housing section

for people. I'm not only saying this just for me, I'm saying for everybody, because it does need to happen here...because that's a big struggle, really big, and if we didn't have—if we had low income housing, we wouldn't have [homelessness]. Simple, but they don't put that little dot together. – 269

- A place where you can camp all day, you could leave your house, and be dressed nice and look like and feel like a normal citizen, walking around throughout the day, instead of having to lug your carts and bags, and everybody is looking at you, and they are already pre-judging you, and you feel like 'what is the point.' – 252
- Basically, if I had housing and a home to go to, I know I can do my best to try [and] keep myself busy in the sense of staying away from the drugs, it's just not having a fucking home to go to is what's really stopping me. – 427
- There should be a hotel opened up...That is what I was thinking about doing. – 165

When a person who has been homeless is finally housed the benefits are obvious. "So a lot of things have changed (165)," one person said, of his recent experience with securing housing. "My health, I just got done doing Hep C treatment and now I don't have no Hep C. So that is awesome, right. That is big. That is really big. My health is really good now, so when I'm tired I can go sleep."

All of us crave sleep when we are tired, rest when we are sick, comfort when we are down, and warmth when we are cold.

Laws, policy, and stigma are leaving people out in the cold.

63 Don Mitchell, *The Annihilation of Space by Law: The Roots and Implications of Anti-homelessness Laws in the United States* (1997) 29:3 *Antipode* at 303; see also Don Mitchell, *The Right to the City – Social Justice and Fight for Public Space* (New York: Guilford Press, 2003).

64 Nicholas Fyfe et al, "(In) civility and the city" (2006) 43: 5 *Urban Studies* at 853; Celine Bellot et al, *Judicialisation et criminalisation des populations itinérantes à Montréal* (Montréal : Rapport de recherche pour le Secrétariat National des Sans-abri rédigé, 2005); Marie-Eve Sylvestre, "Disorder and Public Spaces in Montreal: Repression (And Resistance) Through Law, Politics, and Police Discretion" (2010) 31:6 *Urban Geography* at 803.



# Section Two

## Substance Use in Context



Substance use is a complex issue and there are myriad facets of drug policy that deserve attention. This section does not offer a comprehensive analysis of drug policy frameworks or treatment models. It does offer a brief introduction to the perspectives and lived experiences of participants in this study who use substances. It is complemented by other chapters including Part 2.1: *The Impacts of Police and Policing* and Part 2.3: *No Access, No Support: Service Gap and Barriers*, which provide more detailed

analyses of peer-driven initiatives such as Overdose Prevention Sites (OPSs) and drug-user led groups centring the aspirations, self-determination, and liberation of people who use drugs.

The goal of this chapter is to provide some context, based on the experiences of people living in poverty while using substances, to ground the analysis and recommendations related to service barriers, policing, and court conditions.

### APPROACHES TO UNDERSTANDING SUBSTANCE USE—AND WHY WE NEED ALTERNATIVES

Over the past century, theories about substance use have been polarized between a model of “addiction as a moral failing” and a model of “addiction as brain disease.”<sup>65</sup> As we continue to learn more about the nature of substance use and addiction, it is easy to see why the “moral failing” theory, equipped with its absolute and punitive responses, is both untenable and harmful.

The medical model, which holds that people who use substances are suffering from a disease, has been endorsed by the federal and provincial governments. However, the over-medicalization (sometimes accompanied by institutionalization) of people who use drugs can be just as stigmatizing and disempowering as moralization and criminalization: The notion that people who use drugs are physically and cognitively deficient and are therefore incapable—or unworthy—of self-determination can underpin both views.

While physical phenomena such as dope sickness are real, it is important to understand that many of the harms associated with substance

65 Hanna Pickard, Serge H Ahamed & Bennett Foddy, “Alternative Models of Addiction” (2015) 6:20 *Front Psychiatry*, online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4327176/>.

**A public health approach to addressing the health and safety harms associated with substance use must promote self-determination for people who use drugs and look at the role of stigma and prohibition in creating those harms. This lies at the heart of a growing drug user liberation movement.**

use have to do with the legal context in which substance use occurs and social factors such as income inequality, lack of housing, and stigma, rather than anything intrinsic to the substance.

A public health approach to addressing the health and safety harms associated with substance use must promote self-determination for people who use drugs<sup>66</sup> and look at the role of stigma and prohibition in creating those harms. This approach lies at the heart of a growing drug user liberation movement.

A 2013 survey of 10 peer-run organizations for people who use drugs across Canada surfaced core issues that impact the health and safety of drug users. The primary issues were all related to stigma, economic inequality, and the impacts of criminal law:

- lack of access to affordable housing;
- stigma and discrimination when accessing housing and health care services;
- police harassment, criminalization, and the need for drug policy reform; and
- lack of harm reduction services, particularly in rural areas.<sup>67</sup>

In the current regulatory context, acquiring substances is a constant struggle that can come to dominate people's lives in a way that it would not if alternative avenues were available.

Several people explained that the constant hustle to acquire the substances they need to stay well has a detrimental effect on every aspect of their lives, including housing, employment, education, mental and physical health, and interpersonal relationships. One participant described it this way:

The addiction thing is so prominent. My reason for living is to get more dope. And it doesn't leave a lot of extra time. Like, I don't get my shelter portion of my money unless I have an address... it's very difficult for me to go to an interview or to seek out a place to go and rent it...I'm always waiting for dope...It's hard to understand that, but, it's stupid, but my life is about dope right now—my addiction. – 208

The prohibition model, informed by the notion that drugs are inherently bad, is inextricably linked to stigma against people who use drugs. The social context of substance use under prohibition means that people who use substances, particularly those who are marginalized based on their housing status, income, and other factors, are disproportionately subject to a range of harms such as criminal sanctions, fines and tickets, and loss of employment opportunities. The threat of these consequences drives drug use further underground, exacerbating illness and overdose amid a toxic drug supply.

**DOPE SICKNESS KEEPS PEOPLE DOWN**

In one of the larger municipalities we visited, people had so much to share that we were forced to set limits on the number of people we could speak to while we were in town. Service providers and people in the community kept making a point of telling us we needed to hear from one man in particular, who we'll refer to as Participant 74. He had a lot of relevant information, they explained. He was also well-spoken, knowledgeable, and insightful. He was the person they trusted to effectively communicate their collective experience.

When we sat down with Participant 74 on our second day in town, it was clear that his reputation was well-earned. Up to date on local and federal politics, he had well-informed opinions on a variety of models for harm reduction, addiction treatment, and low-income housing provision, including peer-driven models that empower people who use substances to determine what types of services or interventions they need to make autonomous, informed decisions about their own health and safety. He also explained that on that particular morning, he was extremely dope sick, the colloquial term for Opioid Withdrawal Syndrome. Although he answered all of our questions thoughtfully, it was clear he was in a great deal of pain and discomfort.

66 Canadian Association of People Who use Drugs, *Collective Voices, Effecting Change: Final Report of National Meeting of Peer-Run Organizations of People Who Use Drugs*, (Victoria, BC: Centre for Addictions Research of British Columbia, 2014).

67 Canadian Association of People Who use Drugs.

From a purely clinical standpoint, the symptoms of opioid withdrawal are considered to be among the most powerful factors driving opioid dependence and addictive behaviors, causing symptoms like extreme muscle cramps and diarrhea in people who have developed tolerance.<sup>68</sup> While such medical accounts help to explain the physiological processes underway during opioid withdrawal, it was in sitting with people as they described dope sickness or experienced it in front of us that brought the physical and social reality of the experience to life.

**The prohibition model, informed by the notion that drugs are inherently bad, is inextricably linked to stigma against people who use drugs.**

One man who desperately wanted to have a healthy and successful relationship with his wife and stepson explained how the withdrawal symptoms he experienced affected his relationship.

It feels like there is electricity running just like very much under my skin, so whenever she touches it makes me cringe, and she is loving and so it's hard on her, it's hard on everybody. She's about ready to give up...She said, "It [heroin] is more important to you than me." I said right now, no it's not. But when I'm dope sick, I'm in the throes of it, and it's the worst, I said yeah, unfortunately, it is the most important thing in my world.  
- 239

Imagine living through the most terrible stomach flu: the cold sweat that comes right before you throw up; the pain of dry heaving after

every bit of liquid has already been forced out of your body; the dull ache as you wait for the next wave of nausea to wash over you. Even lying in a comfortable bed, most people would do anything to get well in that moment and this, we are told, is only a fraction of what many people experience when going through withdrawal.

In addition to the biological characteristics of withdrawal, study participants explained its social component, which is all too often omitted from clinical descriptions of the experience. Being homeless and having no access to privacy means experiencing your symptoms in public and facing a constant threat of law enforcement simply because you are visible. The extent to which stigma, law enforcement, and lack of services for people who use drugs create and exacerbate symptoms of withdrawal cannot be overlooked.

I just have a hard time being dope sick out there on the streets...I mean seven o'clock in the morning when you're being booted awake, dope sick, in pain, and having to deal with their faces, their uniform...I don't like it, you know?  
- 74

While it may be difficult for members of law enforcement to relate to that kind of illness while living outside—lying on a damp sidewalk without access to water or a bathroom—this gap in experience cannot justify routine enforcement and displacement of homeless people by police officers and private security.

For those enforcing laws against those without homes, and for those providing services to the same demographic, a more compassionate and comprehensive understanding of the cross-section between addiction and homelessness is critical.

## GETTING TO NORMAL

As he sat in agony, it was clear Participant 74 had more to say, but we couldn't continue peppering him with questions for another hour. We cut our interview with him shorter than we would have liked, but have to admit that we considered asking him to come back to talk some more after he got well. The idea that injecting some combination of illicit heroin and fentanyl would result in a person being more engaged and attentive may seem counterintuitive, but a number of participants spoke about using drugs or alcohol just to maintain baseline functioning. "I hardly do drugs actually to tell you the truth now, I just do very little bit (416)," one person told us, "just to maintain."

Another person explained it this way: "I just use once a day. I just maintain, I'm not getting high. Like when you see me, I've used today...Yeah, I'm just purely maintaining (239)."

Over years of working alongside people who use drugs and alcohol, we appreciate that substances can play a critical role in people's wellbeing. Whether it's conducting an interview while driving someone to the liquor store so they don't get sick or hearing from someone while they inject drugs, using substances can be the way people stay well and participate socially and politically. This is an important counterpoint to popular but misguided perceptions of drug use and its motivations.

Participants' descriptions of using powerful drugs just to maintain or "get to normal" has a basis in neuroscience. As people continue to use opioids in larger dosages, scientists believe the brain is altered so that function is impaired when drugs are not present, rather than the other way around.<sup>69</sup> That is the reality for many of the people who took part in this study.

68 Thomas R Kosten & Tony P. George, "The Neurobiology of Opioid Dependence: Implications for Treatment" (2002) 1:1 Science & Practice Perspectives at 13.

69 Kosten & George.

## PATHWAYS TO SUBSTANCE USE

Study participants are aware of the problematic and harmful public narrative about substance use, which dictates that people who use drugs face challenges because they made so-called “bad choices.”

I think they think it's their own fault or it's our own choice and if we wanted help we would do something about it, so they think we did it ourselves, which initially, I guess is true in a way. We made our choice to use, but like, at the same time, it's a complicated issue, and I don't think somebody should be punished for their whole life because of a substance. – 313

There was no single path to substance use among participants, but some common themes emerged.

In a few cases, participants talked about very extreme and deliberate abuse in early childhood. One man (349) recalled his father shooting him up with heroin when he was six years old, after severely beating both him and his mother. However, most participants who spoke about early childhood trauma recognized that the people raising them were themselves dealing with the effects of poverty, violence, and the intergenerational impacts of colonization.

Several participants explained that they were exposed to substances in utero, and that they are now living with the impact. “When I was younger, I was born an alcoholic baby, so, started drinking when I was six (165),” one person said. “Yeah, it started young.”

Another person put it this way: “When I was born my mom was drinking, and so I got this alcohol addiction (12).”

When one Indigenous man was asked whether he felt that people understood the context of his alcohol use, he explained that he doesn't think they do. He believes that for

his whole life, people in authority have blamed him for his alcohol use and punished him as though he was being deliberately defiant.

Many others who talked about early initiation into drug use have since suffered additional trauma, the cumulative effects of which may lead people to increase their substance use. A participant who was introduced to alcohol as a pre-teen and who was using substances regularly by the age of 13 is just one example.

I haven't seen my kids for years and I suffered a lot of pain from that. And I don't feel that I get sensitivity relative to, you know, what is the underlying problem with me. You know, I'm not doing dope because I think it's fun because it's not. It kills the pain, you know, and occupies my mind, so I'm not wondering about my kids. – 208

Another woman currently experiencing homelessness shared her story of increased substance use after the apprehension of her children:<sup>70</sup> “I'm trying to deal with the loss of having my two kids taken and just want to drink more, and then when you try to quit, there are just lots of stuff that sets you off again (96).”

For many people who shared stories with us, mental health challenges played a major role in their substance use. Anxiety and depression, both diagnosed and undiagnosed, were common features in many participant narratives.

I wanted to go on medication because maybe that's why I do drugs and stuff because maybe I need medication...when I was younger I was already diagnosed with depression and ADHD (Attention Deficit Hyperactivity Disorder). And now I know I have anxiety and stuff like that. – 226

Many participants cited trauma, anxiety, or depression as the reason they began or continue to use substances. For others, illicit drug use began following a critical illness or injury; drug use is a way of dealing with physical pain. For example, Participant 74 explained that his opioid addiction began with prescription hydromorphone. “It's the classic story,” he said. “Your doctor gets you hooked on the prescription opiates, then they label you as a junkie and cut you off.”

When asked if he has physical pain, he replied, “Uh-huh. All the time, I'm treating pain, it's my addiction...Yeah, I think I'm labeled as an addict. Any time I go to the hospital it's 'drug-seeking behavior,' even if I haven't gone in two years.” He is only one of several participants who either began or significantly increased illicit drug use when they were cut off of prescription pain medication.

One man we interviewed who had seen his life fall apart in the months leading up to his interview explained that he was first prescribed painkillers in 2001, after a debilitating car accident left him in chronic pain. He explained his trajectory from patient to criminal: “My wife was stealing my painkillers and the pharmacy called my doctor and said I was abusing my pain meds and they cut me off...a week later I was shooting heroin (396).”

He reflected on his health care provider's decision to cut him off of this pain medication.

Like they say it's just because I was on too many painkillers and stuff and that my tolerance is too high, so they need me to, I don't know—they are worried about my long-term health. But it's like, fuck, I don't want to live in all that kind of pain and not be able to be around my kids and enjoy them and stuff and just be stuck there on a couch like a fucking vegetable. You know, like, yeah, I'd much rather

70 This story mirrors Pivot's 2008 study “Broken Promises: Parents Speak about BC's Child Welfare System” which found that child apprehension was often a catalyst to increased substance use or return to substance use after a sustained period of abstinence, online: [http://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/legacy\\_url/310/BrokenPromises.pdf?1345765642](http://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/legacy_url/310/BrokenPromises.pdf?1345765642).

be on opioids and have my pain managed, so I can enjoy activities and stuff like that. – 396

This man started using illicit substances nine months before he took part in this study. Now, he is using street opioids daily to manage his pain and stave off withdrawal symptoms. Before turning to the illicit drug market, he had not been in trouble with the law for 16 years. Now, after less than a year, he has picked up four possession charges and nine breaches. He was first charged with possession after being found injecting in a public park. It was not lost on him that if his community had a supervised consumption site, not only would he and other people using the park have been safer, he would never have been arrested.

When asked if his doctor has anything to say about the fact that he is now using illicit drugs and involved with the criminal justice system, he replied, “Not much...That I’m a junkie now, and I can’t take opioids (396).”

The patient-to-criminal trajectory is a common one, shining a light on the desperate need for improved access to prescription-grade opiates and substitution therapies for people managing complex pain that will not dissipate upon being cut off prescriptions. We asked one man whether he would try prescription heroin if it were made available. He had been working for years while taking prescription opiates, and explained, “I would prefer that because it would be covered under medical or something hopefully...you

would know the dose you’re getting... have a job again.”

Participant 74 only became reliant on street opioids after he was prescribed pain medication. However, he recognizes that substance use has been a chronic issue in his life. Even before he got sick, he describes himself as dealing with alcoholism. He is, however, extremely frustrated that as a result of his combined substance use issues and chronic illness, he has suffered approximately a dozen near-fatal overdoses, continues to live in constant pain, and cannot access appropriate medical care, disability benefits, or housing.

## Cutting People off Prescriptions is Causing Harm

While the goal of preventing people from becoming addicted to prescribed opioids is understandable, cutting people off prescriptions is causing immense harm. Many study participants were unable to access appropriate pain management despite struggling with very serious medical concerns. This in turn led to the use of illicit opioids.

A woman who was living with advanced cancer and other secondary health issues was one example:

**Interviewee:** I had a doctor but he moved to Vancouver, so, but to find another one after that was really hard, that would write a triple script<sup>71</sup> or whatever. No one wants to do that.

**Interviewer:** Did they tell you why they didn’t want to do it?

**Interviewee:** Just because they don’t have the means to doing it. Like they don’t have the triple script or whatever.

**Interviewer:** And was it painkillers that they’re not wanting to give?

**Interviewee:** Yeah, I’m on oxycodone because of cancer, right? It’s a pretty strong drug they consider.

**Interviewer:** So, the triple script, that’s?

**Interviewee:** That’s a painkiller. So, they can’t write it. Most walk-in clinics don’t have the rights to do it or whatever. They give you Advil or whatever, but good luck with that.

**Interviewer:** So what do you do when you can’t get it?

**Interviewee:** Use fentanyl. – 397

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71 This respondent is referring to BC’s Controlled Prescription Program whereby prescriptions for specific controlled medications must be written on the duplicate prescription pad specially developed for this purpose.

## Freedom of Information Request to the College of Physicians and Surgeons

Because the inter-related issues of opioid prescriptions and pain management were top of mind for so many participants in this study, Pivot submitted a Freedom of Information request to the College of Physicians and Surgeons (“the College”) in October 2017 to try to get a better understanding of the policies governing opioid prescriptions.

We requested the following for the date range January 2016 to October 2017.

1. All policies (e.g. guidelines, memos, handbooks) and training materials (e.g. seminar resources, PowerPoint presentations) relating to opioid prescriptions.
2. All correspondence (whether in email, letter, memo or text message format) discussing potential or actual changes to opioid prescription policy.

3. All policies (e.g. guidelines, memos, handbooks) and training materials (e.g. seminar resources, PowerPoint presentations) relating to pain management alternatives to opioid prescriptions.
4. All correspondence (whether in email, letter, memo or text message format) discussing potential or actual changes to pain management policy.

It was clear from the volume of information we received—despite the short time window captured by the request—that the College is grappling with these issues. In June of 2016 the College released new Professional Standards and Guidelines for Safe Prescribing of Drugs with Potential for Misuse/Diversion (“the Standards and Guidelines”) and updated the standards twice later in 2016.

In 2017, the College emailed members to solicit feedback on the Standards and Guidelines through an online survey which closed in December 4, 2017.

It is beyond the scope of this analysis and of Pivot’s expertise to comment on the appropriateness of the Standards and Guidelines. However, it is clear that the unique pain management needs of people dealing with the intersection of opioid dependence, chronic pain or illness, trauma, and homelessness require special consideration from the College, particularly in the context of a toxic drug supply upon which people with addictions will necessarily rely if denied appropriate alternatives and supports.

**In the course of our interviews, it became clear that inadequate access to health care for people who use substances runs much deeper than access to overdose prevention and response.**

### HARM REDUCTION: WE NEED TO WALK THE TALK

Despite the BC Ministry of Health’s longstanding commitment to evidence-based harm reduction and leadership in declaring a public health emergency in April 2016, illicit drug overdoses claimed 1,450 lives in BC in 2017.<sup>72</sup> A toxic drug supply is of course a key determinant of these fatalities, but so too is the social context in which this supply exists.

Many of these deaths are preventable, for instance, stemming from a lack of appropriate health services for people who use drugs. While BC—and Vancouver’s Downtown Eastside, especially—has received international acclaim for embracing a harm reduction approach to substance use, an approach that prioritizes the agency, humanity, and health of a person using drugs over their perceived criminality, our research shows that people who use drugs continue to face barriers to accessing harm

reduction supplies, such as clean syringes.

In the course of our interviews, it became clear that inadequate access to health care for people who use substances runs much deeper than access to overdose prevention and response. In some communities, something as simple as a clean syringe is not accessible.

One man in a northern community explained it this way:

**Interviewer:**

Are you always able to get needles and things if you need them?

**Interviewee:**

Yeah, except for after 7 pm, like they got a van goes around when but if it’s on a weekend, there is nowhere to get needles or anything unless we stock up for the weekend, Sunday. Yeah, it’s a little bit messed up that way.

**Interviewer:**

So, do you know a lot of people

<sup>72</sup> British Columbia Coroners Service, “Illicit Drug Overdose Deaths in BC January 1, 2008 – July 31, 2018”, (22 August 2018), online: <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/illicit-drug.pdf>.

who end up sharing or using used needles?

**Interviewee:**

Oh yeah, absolutely. I have seen people picking up needles and using wherever they go in the street, fucked up, when I try to explain, you know, drug addicts don't have holidays and you know, we don't close our doors and go home, kind of the same thing fucking 24/7 all the time. They should be easier to get. – 266

Another participant explained that he had witnessed his girlfriend picking up used syringes because the inconsistency of harm reduction services in her community left her no other option.

I've seen [her] pick syringes up off the ground and use them because we couldn't find nothing. If it's after 11 o'clock, you cannot get a hold of them. So, you either know somebody that's got some or you don't use it. So, people with all this—they'll just walk downtown and looking in the flower things and they'll see one sticking out of the dirt—they'll grab it and they'll use it...The percentage of people that have endocarditis stuff up at the hospital here are big. – 90

Despite the fact that distributing sterile needles to people who use drugs without requiring the return of used needles is the established best practice,<sup>73</sup> in his community, needle distribution operates on an outdated one-for-one exchange model. He explained that this leads his girlfriend to disengage from the service provider and forces her to engage in unsafe practices, such as reusing injection equipment.

In addition, Part 2.1 shows that police are interfering with access to harm reduction equipment by seizing or destroying injection equipment. In Part 2.2, courts are limiting access to harm reduction supplies by giving people on bail "no carry paraphernalia" conditions, which



mean that they can be sent to jail for carrying new or used harm reduction supplies.

In other communities, people's access to harm reduction is limited because services are not open often enough. One woman in her 50s told us of how the weekday operating hours of harm reduction services in her community do not meet her needs.

I would like the [local overdose prevention site] to be open more, you know, like Saturday, Sunday instead of just Monday to Friday...

But you know, I know they need funding for that, and you know, volunteers and stuff, right. – 256

For her, access to a seven-day-a-week OPS is actually a matter of life and death. When asked where she goes when the site isn't open, she explained that she goes to the railway tracks to use, where she has already experienced an overdose (256).

Several study participants reported that they had suffered overdoses while smoking illicit substances (including stimulants), and many more non-injection drug users

73 Carol Strike and Tara Marie Watson, "New best practice guidelines for harm reduction programs promote needle distribution", CATIE (2014), online: <http://www.catie.ca/en/pif/spring-2014/new-best-practice-guidelines-harm-reduction-programs-promote-needle-distribution>.

reported that they are afraid of overdosing. However, there are few OPSs available for people who smoke illicit drugs.

Overall, participants who did not have access to supervised consumption services stated that they would use them if there were available. "Everybody probably would, instead of hiding somewhere in the bush (266)," one person told us, capturing the sentiment of many participants.

While these sites play an important role in reducing harms, you will see in Part 2.1: *The Impacts of Police and Policing* that policing practices, including surveillance around OPS, continue to undermine access in some BC communities.

### **Ending the Street Hustle: Alternatives to an Illicit Drug Supply**

Participants who use opiates were interested in alternatives to the illicit toxic drug supply and reported that they would welcome the possibility of accessing prescription hydromorphone or diacetylmorphine (heroin) in their community.

One man explained that a program that provided prescription-grade heroin would be a good thing because "at least you know what's in it (175)." Another man said he would participate if such a program were available, and saw it as an opportunity to get his life back and "have a job again (396)."

Heroin-assisted treatment is a well-tested, life-saving intervention. Research trials carried out both locally (at Vancouver's Crosstown Clinic) and internationally (in Switzerland, Germany, the Netherlands, Spain, and Denmark) have proven its significant health and safety benefits for long-term opioid users. Vancouver's studies demonstrated

substantial health improvements for participants as well as remarkably high retention rates in the program. Participants' involvement in illegal activities were cut by nearly half. Rates of illegal heroin use dropped dramatically, as did the amount of money spent on illicit drugs.<sup>74</sup>

Despite the overwhelming success of such programs, prescription-grade heroin has not yet been made readily available for those who need it across Canada. As the drug is not approved for sale domestically, doctors have been forced to apply for permission to prescribe it under the "Special Access Program"—a costly and burdensome process that must be carried out every three months on a patient-by-patient basis.

The current federal government has been chipping away at regulatory barriers to the drug. In April of 2017, Health Canada announced regulatory amendments to allow for the importation and sale of heroin through the Importation of Drugs for an Urgent Public Health Need process. Federal, provincial, or territorial public health officials can notify the federal Minister of Health of an urgent need to access diacetylmorphine. Access is then permitted by notifying jurisdictions (which, at the time of writing, only includes BC) for a period of one year, subject to a renewed request. In March of 2018, the Federal Health Minister announced further regulatory changes, making it possible for physicians and nurse practitioners to prescribe and administer prescription-grade heroin outside of a hospital setting at other treatment facilities, such as substance use disorder clinics.<sup>75</sup> BC also issued new guidelines in the fall of 2017 on injectable therapies for opioid use disorder, with a focus on making injectable hydromorphone,

an opioid currently used to treat moderate to severe pain, more widely available as a form of addiction treatment.<sup>76</sup>

Evidently, the regulation of access to prescription-grade heroin has significantly improved in recent years, particularly in BC, where the drug can now theoretically be prescribed and administered in much the same manner as other narcotics. Despite these legal improvements, access is still extremely limited, and only a pocket of individuals in North America (patients of Vancouver's Crosstown Clinic) currently access the drug by prescription. While this is in part owing to the fact that there are no manufacturers of the drug in Canada (thus limiting its distribution to the above-mentioned avenues in exceptional circumstances), the problem lies primarily at the level of prescription and dispensation. It appears that medical practitioners are still highly reticent to prescribe diacetylmorphine, even where a failure to do so means that a patient will rely on street heroin. The number of pharmacies or locations that stock the drug is also minimal.

While it is beyond the scope of this report to discuss prescription guidelines and stigma within the medical profession as they relate to heroin, the success of heroin-assisted treatment in Vancouver and internationally point to a desperate need to integrate the drug within the existing spectrum of prescription narcotics. The toxicity of street heroin and the extent to which it is relied upon by people who use drugs make clear that there is also intense urgency at a provincial level to scale up access to prescription-grade heroin for those who need it through both funding and education.

74 "Results of North America's First Heroin Study (NAOMI)", Providence Health Care, online: <http://www.providencehealthcare.org/salome/naomi-study.html>.

75 "The Honourable Ginette Petitpas Taylor, Minister of Health announces new measures to reduce barriers to treatment and \$231 M to address the opioid crisis", Health Canada, Government of Canada (2018 March 26), online: <https://www.canada.ca/en/health-canada/news/2018/03/the-honourable-ginette-petitpas-taylor-minister-of-health-announces-new-measures-to-reduce-barriers-to-treatment-and-231-m-to-address-the-o.html>.

76 "Guidance for Injectable Opioid Agonist Treatment for Opioid Use Disorder", BC Centre on Substance Use (2017), online: <http://www.bccsu.ca/wp-content/uploads/2017/10/BC-iOAT-Guidelines-10.2017.pdf>.



## Substance Use and Social Condition

In examining public narratives about substance use, we saw that there is a prevalent belief that people should be abstinent before they are offered housing. The reality is that in some cases, substance use can contribute to homelessness but in many cases, drug use starts, resumes, or escalates as a by-product of homelessness.

Most respondents we spoke to were clear that being homeless meant they used more substances. One man explains the dynamics at play.

[I use drugs] to stay warm. Just to you know, kill the pain...Thankfully I didn't have to go through last winter but you know, there has been several winters where I had slept outside and I just put blankets over top of a dome tent just try to keep as much heat as I can. – 239

**In some cases, substance use can contribute to homelessness but in many cases, drug use starts, resumes, or escalates as a by-product of homelessness.**

For many people who shared their stories with us, using drugs, particularly methamphetamine,<sup>77</sup> is an adaptive strategy in response to crippling poverty, homelessness, and the dangers of living in public space.

If I didn't do speed I'd actually be hungry and I would be starving. I have nowhere to sleep, so why would I sleep? I have nothing to eat, so why would I bother eating when I can survive off of \$10 a day? – 362

While opiate addiction currently gets the most public attention, stimulant use is a real and growing issue. This is particularly true in the case of methamphetamine, whether on its own or in combination with other substances. Methamphetamine has become easier to obtain (and at a lower cost) than some opioids.<sup>78</sup>

Since 2005, there has been a 600% increase in the use of methamphetamine at Insite, one of Vancouver's supervised consumption sites. Some addiction experts report feeling challenged to treat methamphetamine users because of the lack of proven pharmacological treatments for stimulant addiction.<sup>79</sup>

Expanding the range of medical interventions to help people address methamphetamine use would be positive, but it is equally as important to address the reality that living outside in deep poverty makes stimulants attractive.

Regardless of the particular substances they use, a number of people we spoke to explained that getting or staying abstinent while homeless is next to impossible. As one woman explained, "I know I can't kick it until I get housed. That is my main thing. There is no fucking way I can kick it without having my own housing, because you just you need your own place to run to (427)," she said.

Another woman shared a similar view.

Housing...that's the biggest thing...you can't do anything without housing. You can't get clean. You can't go to work. You can't do anything, you're fighting off...the cops, bylaw, the elements, the fact that it's raining ten months out of the year and you can't even keep dry, they are taking your tents and your tarps and your clothes and you're soaked...I know friends of

mine that have died—like girls my age. Not even due to overdoses, but due to...the cold. – 313

**"If I didn't do speed I'd actually be hungry and I would be starving. I have nowhere to sleep, so why would I sleep? I have nothing to eat, so why would I bother eating when I can survive off of \$10 a day?" – 362**

For people who are experiencing over-policing as a result of their homelessness, contemplating treatment can be out of reach and even the most basic harm reduction services, such as syringe distribution, can be obstructed.

There's the needle exchange and the doctors. It's just hard to access because you've got to find someone to watch your stuff. I've got to find someone to watch my cat too because I don't [want] anyone to get my tent and take my cat too, right. You know what I mean. I'll be devastated if they took my cat. – 49

Many of the harms that are generally associated with specific substances could be alleviated through small improvements in the standard of living of people who use substances. Not only would this make people's current level of substance use safer, in many cases it would likely lead to reduced substance use.

On a financial level, many of the changes that would help improve the lives of people who use substances are relatively cost-effective to implement in the short term, and

77 Participants use a variety of terms, such as meth, crystal, and speed to describe methamphetamine and similar stimulants.

78 Andrew Lupton, "Here's a list of the drugs clients are using at London's overdose prevention site", CBC News (12 July 2018), online: <https://www.cbc.ca/news/canada/london/drug-use-list-overdose-1.4743222>.

79 Ferrah Merali, "Crystal methamphetamine: the 'elephant in the room' on Vancouver's Downtown Eastside", CBC News (21 November 2017), online: <http://www.cbc.ca/news/canada/british-columbia/crystal-meth-increase-seven-fold-1.4404492>.

One of the most effective ways to address some of the harms associated with prohibition and stigma is resourcing people who use substances to organize themselves. In the cities we visited where drug users had access to peer support and self-determination through collective organizing, participants were more keenly aware of the roles played by society and stigma in marginalizing people who use drugs. They were quick to point out the importance of community and peer support in combatting stigma, supporting one another, and upholding harm reduction principles.

It is a critical tenet of our analysis that the financial and principled support of drug users to collectively organize is key to challenging the stigma that is at the core of their current marginalization.

likely to save money in the long term.<sup>80</sup> However, another factor stands in the way of evidence-based policies to improve the social condition of people who use substances: stigma.

### Public Stigma, Enacted Stigma, and Self Stigma

No matter where we went in the province, or what substances an individual was using, a clear theme that emerged was widespread stigma—from police, health services, and the public—which in turn leads to the internalized feelings of shame and self-blame. Based on our conversations, the internalized feelings of shame that substance users experience seemed to be directly tied to the high level of public stigma directed toward them. Where public stigma is present, members of the broader society generally ignore or actively support discrimination against a particular group.<sup>81</sup> People who use substances may also experience enacted stigma in the form of direct discrimination

and rejection, particularly where substance use intersects with other stigmatized identities such as homelessness, reliance on income assistance, or Indigeneity.<sup>82</sup> Those external experiences of stigma can lead to the type of internalized self-stigma<sup>83</sup> that is evidenced in the narratives of some participants in this project.

Deep-seated feelings of shame can impact people's ability to move forward even after getting help to reduce or stop drug use. One young man who began using crack when he was 17 and who had recently completed a treatment program talked about the shame with which he continues to live.

I was out of control with my crack addiction, right...actually stole off everybody, especially my dad. I stole everything that I could, right...I stole so much from my family, again, like so many different items that I have stolen, I still feel like a piece of shit to

this day, right. I still carry that shit around too, right? – 59

Those internalized feelings of shame, which can hamper both harm reduction and recovery efforts, are often preceded and reinforced by stigmatizing behavior and language in the community, in the media, and when seeking health services.

One of the times I was in there overdosed, one of my friends started getting up and yelling at them because the nurses were reading my medical chart in front of a bunch of people and citizens and stuff and laughing about it and stuff...overdoses and mental health issues, anxiety, and depressions. – 396

The impact of ongoing experiences of diffuse public stigma and discrimination drive people away from services, exacerbating the harms associated with substance use and increasing social exclusion. At the same time, stigma underpins

80 "Cost Analysis of Homelessness", Homeless Hub (2013), online: <http://homelesshub.ca/about-homelessness/homelessness-101/cost-analysis-homelessness>.

81 Kulesza Magdalena, Mary E. Larimer & Deepa Rao, "Substance Use Related Stigma: What we know and the Way Forward", (2013) 2:2 J Addict Behav Ther Rehabil, online: 10.4172/2324-9005.1000106.

82 Magdalena, Larimer & Rao.

83 Magdalena, Larimer & Rao.

our punitive drug laws, which create further harms.

One of the most effective ways to address some of the harms associated with prohibition and stigma is resourcing people who use substances to organize themselves. In the cities we visited where people who use drugs had access to peer support and self-determination through collective organizing, participants were more keenly aware of the roles played by society and stigma in marginalizing people who use drugs. They were quick to point out the importance of community and peer support in combatting stigma, supporting one another, and upholding harm reduction principles.

It is a critical tenet of our analysis that the financial and principled support of people who use drugs to collectively organize is key to challenging the stigma that is at the core of their current marginalization.

### Managing the Risks in an Unregulated Market

Study participants generally understand the inherent risks associated with the drugs they use. However, they also recognize that many of the harms they face have much more to do with stigma- and prohibition-based laws and policies than with the pharmacological properties of a given substance.

Everywhere we went, participants talked about the dangers of relying on an increasingly toxic, illicit drug supply.

I'm using right now fentanyl... well, I wish it was heroin, but unfortunately it is not...I was on methadone and then I transferred to Suboxone about a year or two ago and was doing quite well, until this just little slip-up and like I just wasn't. I wasn't ready for—I wasn't prepared for how strong the fentanyl was. And I'm going through all this stress too, you know all of this new stress too...

which is making it very much harder to quit. – 239

While many participants took steps to minimize the risks they faced when using illicit drugs, there are limits to what they can do to protect themselves amid an increasingly toxic street supply. One man, who does not purposely use opioids, described his experience with an opioid overdose while using what he thought was a stimulant.

They give me a smash, they mixed it all up everything, I stuck out my arm. And I said this: it's got opioids in it or something...seven Narcan shots in the hospital and I threw up for like two or three days afterwards. It's awful, man. So it can happen, you know, even when you're vigilant. – 208

### Alcohol Use: Modern-Day Colonization and Criminalization

Prohibited substances under the *Controlled Drugs and Substances Act*<sup>84</sup> are affiliated with particular harms flowing from forced reliance on an unregulated supply and the constant threat of criminal sanctions. As we travelled through the province, however, it became very clear that using an illicit substance is not the only determinant of criminalization. In some communities, homeless people who drink alcohol are heavily policed, suggesting that the criminalization of addiction has as much to do with social condition, and in many cases Indigeneity, as it does with the legal status of the substance a person ingests.

In one community where illicit drug use appeared to be relatively rare but alcohol use was very prevalent, one Indigenous participant explained that he, his friends, and his family were constantly targeted by the police while drinking in public spaces. He shared a recent story of losing his alcohol to police. "We had two bottles of unopened wine...haven't cracked it. The cops just roll up and then they're like, 'oh, let me see that

wine.' They just dumped both on us (102)."

He explained that having their liquor poured out has no impact on the amount that he and other people who are homeless in his community drink. Instead, police pouring out their liquor just means they have to "hustle" harder—or spend what minimal money they have—in order to replace what was confiscated and to stave off alcohol withdrawal. This can have serious consequences for people's health.

**Using an illicit substance is not the only determinant of criminalization. In some communities, homeless people who drink alcohol are heavily policed, suggesting that the criminalization of addiction has as much to do with social condition, and in many cases Indigeneity, as it does with the legal status of the substance a person ingests.**

The fact that he is homeless, and therefore drinks in public—combined with the fact that the courts frequently impose sobriety conditions on people charged or convicted of crimes—means that as well as having spent countless nights locked up in the drunk tank, he now has a 13-page criminal record, mostly as a result of having breached his sobriety conditions.

If I was sober, I would never have a record. That's what everybody tells me. That's what all the RCMP (Royal Canadian Mounted Police) tell me and the lawyers and the

judge and everything because I'm a well-educated and smart and respectful person, but yeah, just the alcohol, that gets me. I'm trying to get treatment. I want to try to get better. I want to better my circumstances because I'm tired of sleeping in a bush. – 102

The harms described by this man after police confiscated his alcohol can be contrasted with the benefits described by participants in one of our focus groups who were able to access potable alcohol without fear of police intervention through groups

such as managed alcohol programs and so-called “drinker’s lounges.” These groups, which foster harm reduction and safer consumption practices, are also a critical source of support and community. In the communities we visited where such groups exist, participants were able to identify social and legal barriers to their well-being and oftentimes played an essential role in law and policy reforms to ensure the protection of their rights. They were also able to point to various improvements in their quality of

life stemming from the program, including health improvements, social connections, and a decrease in interaction with law enforcement.

Addiction may have underlying biochemical roots, but many of the negative impacts of substance use are socially and legally constructed. Prohibition—combined with stigma, criminalization of homelessness, racism, and economic policies that keep people trapped in extreme poverty—intensify substance use and amplify harm to individual users and the communities in which they live.

## MethaDose Treatment: Widely Available, Riddled with Barriers to Access

Currently, MethaDose<sup>85</sup> (more commonly referred to by its former name “methadone”) is one of the most widely available opioid treatments in BC. However, there are still major barriers to accessing it. Stigma underpins every point of the treatment delivery process. And in many communities, people who need it still struggle with unavailability and barriers to access.

Many participants felt that their methadone doctor was disregarding their rights and arbitrarily restricting their access to the drug. One woman from a small community who was on methadone for 13 years, stopped using it because of how her doctor was treating her, and then resumed taking it after learning about her rights as a patient and a methadone user. “I’m back on it because I don’t want to be sick every morning (181),” she said. Even though she is technically in treatment as a methadone user, her circumstances are far from ideal. She explained that her dose was cut after she missed an appointment, meaning that her dose was not high enough to stave off withdrawal symptoms.

It is beyond the scope of this study and Pivot’s expertise to comment on appropriate methadone dosages. However, this woman was not the only participant to mention challenges to being prescribed a dose high enough to stave off withdrawal symptoms, especially at the beginning stages of treatment.

Another woman noted that for people who consume fentanyl on a regular basis, getting a high enough dose of methadone is particularly important.

The addiction is really high and if it’s fentanyl and they are doing a lot of it, most people aren’t going to make it, past their first week. They’re going to use again if they are not on a high enough dose of methadone. So it’s getting the methadone prescription at the right dose, just so someone stands a chance at getting off of the shit. – 313

One of several participants who had to access methadone at a major retail drugstore explained being subjected to special agreements with the pharmacy rather than being treated like other patrons.

I’ve had to sign something from my drugstore saying that I wasn’t allowed to be in the drugstore like, I could come in there and get my methadone, but I had to immediately leave after I took it...Because they think you’re a thief if you’re on it, I guess. – 262b

She explained that this had nothing to do with past arrests or any history with the store. “No, I think it’s...to do with the drug scene (262b),” she said. “If you’re on methadone, then there’s a lot of drug stores that say you cannot be in the drugstore.”

Like many participants in this study, she was eventually kicked out of the methadone program completely because she missed appointments with her prescribing doctor. As far as she is aware, there is only one doctor who prescribes methadone in her community. She spoke to the doctor because she was being threatened by a male patron at the clinic and asked that her appointments be scheduled at a different time. However, her requests were ignored.

And it was a combination of my fault and my doctor’s fault and my doctor’s office because [name] was threatening to kill me. And I told my doctor’s office...So I’d show up there and he’d be there and he was like threatening to break my neck and so I had to leave the doctor’s office...So I ended up getting kicked off and I was on it for like seven years...I just never went back on it. – 262b

For people who are homeless, methadone treatment is particularly difficult to maintain because of strict rules around its administration. One woman explained the situation: “It’s hard to get my methadone if I have to camp and I have to go and get it (439),” she said. When asked what happens if she misses methadone appointments, she replied, “If I miss two of them, then they cut my dose down.”

These barriers frustrate access for the very people methadone programs are meant to serve.

85 BC replaced Methadone with MethaDose in 2014, but many participants continue to refer to the treatment as Methadone. According to the BC College of Pharmacists, MethaDose was developed to reduce activities such as injecting it versus ingesting it orally. Many patients who were switched from Methadone to MethaDose find it less effective. For a full discussion of the impacts of the change see: <http://www.cbc.ca/news/canada/british-columbia/drug-users-say-methadone-formula-switch-contributed-to-b-c-s-opioid-crisis-1.4274180>.

## Treatment Myths and Misconceptions

When we discuss the need for more low-barrier services, harm reduction programs, and shifts in how police approach substance use, we are often met with the refrain, “they just need treatment” or “force them into treatment.” The reality is much more complex.

For people who make the decision to stop using substances, immediate detoxification services are often required. However, these services are not readily available. One participant experiencing homelessness had attempted to access detox and eventually gave up; she explained that she was told there would be an approximately six-week wait. “That’s the thing: when an addict wants to get clean, they want to get [in] right then (181),” she said. “Then, there was no places to go.”

A lack of detoxification beds is only one of the shortcomings of BC’s patchwork of addictions services. As discussed earlier, there is also a lack of access to injectable opiate replacement therapies.

## For Treatment to Be a Success, People Need Wraparound Supports

Several participants talked about how the lack of access to essential supports like housing following treatment programs makes ongoing success almost impossible. One participant who had actually quit opioids cold turkey in the past explained how the lack of housing and other support meant she went back to injecting illicit opioids.

It was a 15-day struggle of excruciating pain that I went through, but I did it and I did it on my own and had to give myself a pat on the back when I was fucking done because it’s not often you get it successful. I did it on my own, unfortunately, I didn’t know what to do with

myself after. I had nowhere to go, nowhere to turn, there is a waitlist for everything else that I needed to do to be able to stay clean and there just wasn’t anything out there for me...No one to turn to, no resources, no place to stay, it was, it’s really, really fucking hard you know. Like it fucking killed me, when I fucking did that first shot. After that, I started bawling because I knew that’s all I knew. All I knew what to do was go back to doing drugs, because I knew no one was going to help. – 427

The concern about what happens after treatment was relatively universal among participants of this study, regardless of their housing stability or instability upon entry. The fact is that treatment programs can disrupt and destabilize regular routines and schedules, and participants require adequate supports both during and after treatment in order to maximize its effect. This idea was captured by one man in his late 50s.

I decided to deal with my alcohol problem in the springtime of this year. I spent 10 weeks at a place called [treatment centre]. And, to go there I had to leave my job at [store], which is also where my wife works. I went to treatment and since springtime I’ve been doing quite well not drinking. I wrote an apologetic letter to the manager, but I was unable to get my job back though because of a principle she had to uphold. Due to only one income between my wife and I, we were repeatedly late with our rent, which eventually caused the eviction from that place...I had to take time off to recover from addiction. I couldn’t get work right away. – 148

This man now lives on a mat on the floor of the local homeless shelter and is about to begin treatment for cancer, with which he was diagnosed

after he completed treatment for alcohol use.

## THE SOLUTIONS EXIST, BUT STIGMA STALLS PROGRESS

Notably, research on stigma as it relates to substance use is less robust than research exploring stigma related to HIV or mental health issues. Some researchers have posited that the paucity of research on stigma and substance use is due to widespread acceptance that stigmatizing attitudes toward people who use drugs are justified.<sup>86</sup> In order to address public health issues related to substance use and to protect the health, safety, and human rights of people who use drugs, that needs to change.

**Some researchers have posited that the paucity of research on stigma and substance use is due to widespread acceptance that stigmatizing attitudes toward people who use drugs are justified.**

An analysis of 28 studies looking at the relationship between substance use and stigma identified one consistent finding in all of the available literature: stigma has a detrimental effect on psychological well-being.<sup>87</sup> Stigma is a barrier to seeking treatment where it is desired and available. It also prevents people from disclosing information related to substance use that may be valuable for health care providers or other service providers.<sup>88</sup> Stigma related to substance use also keeps lawmakers trapped in a prohibition mindset, and people who use substances trapped in a cycle of criminalization and poverty. All of this contributes to social exclusion and other harms.

86 Magdalena, Larimer & Rao.

87 Magdalena, Larimer & Rao.

88 Magdalena, Larimer & Rao.

# Section One

## The Impacts of Police and Policing

**On the whole, study participants' reactions to engagement with police ranged from exhaustion at constant experiences of displacement, to anger as a result of a lifetime of harassment, to absolute fear.**

As we made our way around the province, it became clear that regardless of demographics or regions, both the police, as an institution, and policing, as a set of practices, were top of mind for study participants. In every community we visited, we learned that there were very high rates of interaction between police and people who lived in public space, with many people reporting that police approached them more than once a day. For the people we talked to, these interactions were only experienced as helpful in a small minority of circumstances. On the whole, study participants' reactions to engagement with police ranged from exhaustion at constant experiences of displacement, to anger as a result of a lifetime of harassment, to absolute fear.

As they attempted to survive with minimal access to resources, people who took part in this study found it difficult to make sense of how the level of police attention directed

toward them was connected to public safety.

A participant experiencing homelessness summed it up when she recounted a recent interaction between her boyfriend and a local Royal Canadian Mounted Police (RCMP) officer: "Just about five days ago, they came to our camp and they called [name] a worthy target (181)," she said. "And he was like, 'How am I a worthy target? I live in a fucking tent.'"

Despite the concerns people had with police behaviour, few had ever made a formal complaint. Many participants expressed that they are resigned to the fact that they are not considered credible when they speak out against police due to their homelessness, reliance on government assistance, use of illicit substances, involvement in sex work, and criminal histories.

Most of the time they don't even ask, they just tell you to get up against the car. And I mean, yeah,

they're breaking your rights, but it's your word against theirs, so good luck. You're better off to just let them do what they're going to do, otherwise they just kick the shit out of you and then do it anyway. – 175

It is important to note that particularly in smaller communities, where people are known to one another and the police, a single officer can have a profound impact on the lives of the individuals with whom they interact. In some communities, there were officers whose names became familiar to us within hours of arriving because participants and service providers alike felt targeted and harassed by these officers. However, we need to place those individualized experiences in the context of a set of institutional policing practices in BC. The striking similarity and continuity of stories we heard across the province attests to this idea.



In BC, “the police” comprise several institutions. Eleven municipalities are policed by their own municipal police forces; the rest of the province is policed by the RCMP, the largest police body operating in BC. The Metro Vancouver Transit Police also provide cross-jurisdictional policing services on transit property throughout the Lower Mainland. As part of this project, we visited two municipalities policed by municipal police forces and eight municipalities policed by the RCMP.

Our sample size does not allow for a full, structured comparison of policing experiences in different jurisdictions within BC, and it is beyond the scope of this study to offer a point-by-point comparison of differences in practices between the various police forces that operate in BC. However, some key issues seem to be more prevalent in RCMP jurisdictions, which are detailed in this chapter.

### FINDINGS RELATED TO POLICE

Current policing practices are not creating safety for people experiencing homelessness, people who use substances, people scraping by in the grey economy (the informal economy in which labour standards do not apply and which serves as a crucial form of income generation for many people experiencing homelessness or using substances, this includes things like collecting recyclables and panhandling), or the broader communities in which they live. Specifically:

- in the context of longstanding public health efforts to reduce rates of Human Immunodeficiency Virus (HIV) and Hepatitis C Virus (HCV) among people who use drugs and an unprecedented opioid crisis, police are routinely disrupting harm reduction activities and contributing to less safe substance use practices;
- for participants living in public space, municipal police and

RCMP officers are only one element of an all-encompassing and oppressive network of policing that also includes bylaw officers and private security guards;

- Indigenous people living in deep poverty, particularly those who live in public space or consume alcohol in public, are especially over-policed and routinely subjected to arbitrary punishment and detention, especially in northern communities;
- people affected by over-policing, discrimination, harassment, destruction or seizure of belongings, detention without charge, or use of force by police do not feel that there is recourse available to them; and
- across BC, regardless of jurisdiction, people who took part in this study are extremely distrustful of police and most would be reluctant to call the

police if they were in danger or had been a victim of a crime.

### **POLICE INTERFERE WITH HARM REDUCTION ACTIVITIES**

Despite a strong commitment to harm reduction at the provincial level,<sup>89</sup> police in communities across BC continue to disrupt harm reduction activities. In many cases, policing practices misalign with local health authority initiatives aimed at reducing new HIV and HCV infections and preventing overdose deaths.

We learned that in several communities, harm reduction supplies provided by health authorities and local service providers are being seized or destroyed by police. One man told us:

Police take all my supplies all the time. I was doing what I thought I had to do and just because I had supplies doesn't necessarily mean that I had drugs on me all the time, either, because I didn't. Once in a while I had drugs on me, but that is [neither] here [nor] there. That is irrelevant. – 165

Police seizure of harm reduction supplies points to a clear disconnect between provincial health policy and policing practices. On the one hand, people who use substances are actively encouraged to access clean harm reduction supplies and on the other hand, carrying those supplies is resulting in punitive responses from police.

One focus group participant explained that police seizure of harm reduction supplies makes it difficult for people who use substances to engage in peer outreach. He explained that local health nurses must educate people who use drugs not only about effective harm reduction practices but also how to avoid having supplies taken by police.

The cops were going to [take my harm reduction supplies] and I said that I work with these guys [the street nurses], making sure that people have this shit, and then they left me alone after that. The street nurses tell folks to say that they're working for them so they are harassed less by police and bylaw. – 105 (focus group)

One woman explained that because police search suspected substance users for harm reduction supplies, people often hide or discard supplies less safely. This leads to harms for the individuals who are forced to use less safely. It also means harm reduction supplies are more likely to be left outdoors or improperly disposed of. Plus, health authorities have to purchase more supplies than would otherwise be necessary. "That is a hell of a lot of money to put out harm reduction supplies just to have the cops take them (221)," she said. "It's stupid because health gives them out."

In some cases, participants reported that the police in their community are inconsistent in how they handle harm reduction supplies.

There are times where I've had a pocket full of dope, and crack pipes, and speed pipes, and shit on me. And they ask me if I have any pipes on me and I tell them yes. And you know, sometimes they smash them, sometimes they just put them on the ground and walk away and say, 'When I'm gone around the corner, you pick it up.' – 28

What is clear is that despite participants' commitment to using substances more safely, seizing harm reduction supplies does not deter substance use.

However, as one man explains, seizing these health care supplies does cause measurable harm,

**“That is a hell of a lot of money to put out harm reduction supplies just to have the cops take them, it's stupid because health gives them out.”**  
– 221

<sup>89</sup> The province supported Insite, North America's first supervised consumption site, was the first province to declare a public health emergency in April 2016 in response to the mounting death toll from opioid overdoses, supported overdose prevention sites operating without S. 56.1 exemptions from the federal government, created a new Ministry of Mental Health and Addiction in 2017, and supported the introduction of a new Overdose Emergency Response Centre.



regardless of the lengths that most participants will go to secure safe supplies. One participant revealed to us that he contracted HCV because he was forced to share harm reduction supplies with his partner. “[The police] pulled us over, ran our names, searched us, and taken stuff like that before (459a),” he told us about police checks that resulted in having their harm reduction supplies confiscated. When asked about whether he had to reuse or share equipment because of such police seizures, he replied, “Yeah. I ended up contracting Hep C because of—we’ve had to share equipment and she had it and didn’t know.” Despite their efforts to find and purchase more supplies from local drug stores, they were unable to secure sufficient supplies to meet their needs.

Distribution of harm reduction supplies is one of the most widely accepted measures that public health officials can take to prevent blood borne infections.<sup>90</sup> Choosing to carry and use clean supplies is an important step that most people who use drugs are eager to take to protect their health and that of other people.

Police officers across BC should be actively promoting the use of harm reduction supplies and encouraging drug users to hold on to used supplies until they can dispose of them safely. If we are to achieve the goal of minimizing harms, the types of police actions described by participants, including actively obstructing the delivery, use, and proper disposal of harm reduction equipment, cannot continue. These practices must be recognized as a clear threat to public health and to the health and safety of people who use drugs.

## **Police Presence and Access to Safe Consumption Services**

In some communities, people who use drugs now have access to Overdose Prevention Sites (OPSs) where they are able to consume illicit substances in the presence of someone trained to provide rapid overdose intervention without fear of arrest. Not only does this mean that a person can get immediate medical intervention in the event of an overdose, it also means that they can take steps to prevent overdose in the first place, including using more slowly, and in some cases, receiving assistance from peers as needed.

The success of the OPS model in saving lives is undeniable. For instance, between December 2016 and March 2017, OPSs across the province saw approximately 66,600 visits, 481 overdoses, and zero fatalities.<sup>91</sup> Even more striking, between December 25, 2016 and October 9, 2017, the grassroots, largely peer-run Overdose Prevention Society running in Vancouver’s Downtown Eastside alone had 108,803 visits, 255 overdoses, and zero fatalities.<sup>92</sup> Despite the life-saving feats carried out in OPSs throughout BC, heavy police presence in the vicinity of these sites can and does make people reluctant to use these life-saving services.

One woman described the police presence around the OPS in her community: “There is a safe injection site downtown and the cops are not allowed to arrest you on that site whatsoever...outside of there...the cops are still harassing people...they just drive in the parking lot and harass people (100).” An officer known to community members “likes to hang out there,” she added. She told us she has used the safe injection site—designed to serve as a safe space and point of community support for people who use drugs—only once.

In one RCMP jurisdiction, we had the opportunity to witness the impact of over-policing outside the OPS firsthand. The site in this community is only open a few hours each day. One weekday afternoon, we were having a conversation with a service provider who was explaining that the police often patrolled the area around the nearby OPS, when a client chimed in and told us that the police were out front arresting someone right at that moment. We walked over to the site expecting things to be wrapping up by the time we got there. Instead, we arrived on the scene to find a police car, lights on, parked directly outside the OPS in the middle of the two-lane street. There was an old car parked directly in front of the door to the site with all four doors and the trunk open. Two uniformed officers were searching the vehicle.

By the time we arrived the search was well underway. Based on its contents, it seemed likely that someone lived in the car. The officers worked slowly, removing item after item, placing it on the street and sidewalk directly outside of the OPS. We watched the events unfold for nearly an hour. During that time, we saw several people come around the corner toward the site, see the police, and turn and walk away. We also watched one woman leave the site in a state of extreme distress because she saw the police outside and was fearful that they were there for her.

The negative impacts of heavy police presence around OPSs and other places where people access harm reduction equipment and support are compounded for the significant number of study participants who have red zones imposed by either police or the courts. Red zones are geographic areas that people are prohibited from visiting by court or police order. People do not have to

90 “Harm Reduction Guidelines”, BC Centre for Disease Control (2018), online: <http://www.bccdc.ca/health-professionals/clinical-resources/harm-reduction/canadian-best-practices>.

91 “The BC Public Health Opioid Overdose Emergency: March 2017 Update”, BC Centre for Disease Control (17 March 2017) at 14, online: [http://www.bccdc.ca/resource-gallery/Documents/Educational%20Materials/Epid/Other/Public%20Surveillance%20Report\\_2017\\_03\\_17.pdf](http://www.bccdc.ca/resource-gallery/Documents/Educational%20Materials/Epid/Other/Public%20Surveillance%20Report_2017_03_17.pdf).

92 Heather Mann et al, “Findings and Analysis for Overdose Prevention Society”, Data For Good (2018) at 12-13, online: <https://vancouver.datafor-good.ca/wp-content/uploads/sites/4/2018/06/OPS-Report-Small.pdf>.

**“You’re avoiding them [the police] all the time, so it pushes you further into like—into hiding, basically, and you’re going to unsafe spaces or wherever, really.” – 313**

have been convicted of a crime to be subject to a red zone. If a harm reduction hub falls inside a person’s red zone, they could be charged with a breach of a court order for being in the vicinity of these services.<sup>93</sup> See Part 2.2 for a more complete discussion of the application of red zones and their impact on health and safety.

One participant explained his ongoing difficulty with accessing his local OPS because of how police enforce red zones in his community, despite describing a notably positive working relationship with his Probation Officer (PO).

I had to get special permission from my PO if I want to go to the [local overdose prevention site and harm reduction hub] there. So, between certain times Monday through Friday...I had to carry that piece of paper on me. So, if I did get stopped while in my red zone I had my papers saying this was signed by my PO, saying it was okay. But a lot of times that didn’t matter. They arrested me, took me in...then it would take me to get a hold of my PO for them to release me out. Oh my God there were times when I went all the way back to jail, all the way down here to [location of cells] and then they would release me from [location of cells] to fucking nothing. – 165

Many communities do not have an OPS at all, and several are only open limited hours each week. As a result, many people experiencing homelessness are still using illicit substances in public space.

One woman experiencing homelessness described being disrupted by police while using.

I...actually hadn’t had anything in two days because I was sleeping. So I woke up and I went to go get some—I need to get myself unsick. I was so disgustingly sick, like could barely move. And I was actually shooting up at that time and I had the rig and I had flagged it, I was just about to push it in. And it was like, ‘You are under arrest’ and I looked over my shoulder and there’s two white cops that came on to me. Two guys...just like tackled me with the rig in my arm. I was like, ‘I’ll go in, I’ll go in— just like to get myself better first,’ and they’re like, ‘No.’ And so, I had my hand on the rig, right. But then they—it was already in my vein. And then they bent it. And then pulled it out. So it kind of turned into like a fish hook and ripped it out. And it was disgusting. And I grabbed it back and pulled the plunger out and drank it. And then they’re like ‘You’re resisting arrest.’ – 313

That experience affects how she uses now:

Keep it really hidden, definitely for sure—like go somewhere where there’s nobody around...you don’t want to do it in public, right. You’re avoiding them [the police] all the time, so it pushes you further into like—into hiding, basically, and you’re going to unsafe spaces or wherever, really. – 313

This woman’s experience supports the evidence put before the Supreme Court of Canada in its 2011 decision

to reinstate an exemption for Insite, North America’s first supervised injection site. Recognizing the circumstances of people who use drugs while entrenched in poverty, the Court affirmed that fear of police can override everyday safety habits. This can lead to needle-sharing, hurried injections in clandestine locations such as back alleys, and the use of unsanitary injection equipment. All of this, the Court acknowledged, can result in severe



health and safety risks including infection, mismeasurement of substances to be consumed, and fatal overdose away from medical aid.<sup>94</sup>

The relationship between policing and harm reduction is a matter of life or death. It is therefore critical that police consider the circumstances of people who are using drugs and who

93 Marie-Eve Sylvestre et al, “Red Zones and other Spatial Conditions of Release Imposed on Marginalized People in Vancouver”, (2017), online: [https://observatoireprofilages.files.wordpress.com/2017/10/vancouver-red-zones-report\\_2017-10-30.pdf](https://observatoireprofilages.files.wordpress.com/2017/10/vancouver-red-zones-report_2017-10-30.pdf).

94 Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44 at para 10.

do not have access to privacy before reactively responding.

As one participant living in a municipal police force jurisdiction explained, police sometimes use their discretion in ways that build rapport with people who use substances and promote public health and safety:

It was like 6 o'clock in the morning...I just woke up basically in the bush, and I had my sleeping bag and my dog with me and all that...I woke up one morning and fixed my morning shot and the cops rolled up right as I was fighting to get it into me. And he came over and he's like, 'Stop.' He was like, 'Pull it out of your arm.' Normally I would have just fired it anyway but for whatever reason I stopped, and I have my dope out and still I had about half a gram of powder sitting right there. And they rolled up and I said, 'Listen, if you take that, I'm going to have to go do something fucked up to get it because I'm going to be sick. Like I'm going to have to go steal or rob or just do something to get my fix for the day, right?' And he understood that kind of, I guess, and just he said, 'Okay, I'll give you 10 minutes to clear out of here, we're going to be back here again and whatever and don't leave a mess, take your shit with you.' So, that was kind of cool actually, that he didn't take my dope or charge me. – 342

This type of discretion is the bare minimum of what police can do to promote trust and rapport with people who use substances while concurrently protecting public health and safety.

### Police and Overdose Response

In cases where a person does overdose, especially outside of an OPS or supervised consumption site where immediate medical help is on hand, it is imperative that people feel that they can call 911 to get help. The

federal government has recognized that overdoses are medical emergencies warranting unrestricted access to emergency services and in May 2017, the *Good Samaritan Drug Overdose Act (GSDOA)* became law.<sup>95</sup>

The GSDOA has been characterized as a mechanism to “encourage and protect people who are witnessing an overdose so they can seek help, and ultimately, save lives.” The law offers some legal protection for people who find themselves at the scene of an overdose when emergency help arrives, including the caller, the person who overdosed, and any other bystanders. However, these protections are not absolute. Whereas the GSDOA provides immunity against charges of simple possession and breaches of conditions where the underlying offense is simple possession, it does not protect against outstanding warrants or against charges and breaches related to other offenses.<sup>96</sup>

### The relationship between policing and harm reduction is a matter of life or death.

Given that Project Inclusion interviews began two months before the GSDOA became law and concluded five months after it was enacted, it is too soon to determine the full impact of this legislative change. However, there is evidence to suggest that the GSDOA is misunderstood—both by police and individuals seeking protection under the Act—or that police are deliberately applying it in a way that undermines its intended public health purpose.

There are three interrelated issues to police attendance at overdoses that should be monitored:

- in some communities, the police are often the first responders at an overdose and do not always intervene medically when they arrive on scene;
- at times, police interfere with people trying to administer naloxone; and
- police are perceived to be using overdose calls to monitor and investigate drug users.

One man described his experience with police attending an overdose incident at his building:

My neighbour OD'd [overdosed] about a year ago. She is now dead, she actually had OD'd, not this time, but another time she OD'd. I ran down the hallway, this was like three in the morning, I heard the police kicking her door in and I ran down the hallway once they got the door open, I said 'You got it open, is she in there?' and they are like, 'Yes and she's OD'd,' so I ran and grabbed my Narcan kit and I ran down there. I tried to hand it to the officer and she almost like took a jump back and said, 'I can't take that.' And she's like, 'No, no, no, no, you can't administer that.' I said 'She is on opiate overdose. I can see she is on opioid overdose. She is not breathing. She needs this.' And they are like, 'We have to wait for the ambulance.' – 239

A respondent in another RCMP jurisdiction also stated that, in her experience, police actively prevent other people on scene from intervening in the event of an overdose. “If cops are there, if anything, they'll interfere (313),” she explained, describing how she and her friends now take it upon themselves to carry and administer naloxone (also known by its brand name Narcan), which reverse the effects of an opioid overdose. “We don't even call the ambulance anymore, or cops, or anything like that...we'll do the Narcan ourselves

95 SC 2017 c 4.

96 Melanie Webb, “Drug overdose act weakened by limited immunity from prosecution”, *The Lawyer's Daily* (12 October 2017), online: <https://www.thelawyersdaily.ca/articles/4827/drug-overdose-act-weakened-by-limited-immunity-from-prosecution>.

and help each other and bring each other back.”

They do this, she said, because police have “stood in the way and even cuffed people trying to administer Narcan (313).” Asked why they don’t call ambulances anymore, she replied, “It takes a while to get there. A couple of minutes, like usually you can just do it yourself right away. And...usually the cops get there first...there’s cops [in the area]...the cops will be there before the ambulance arrives...it’s...never helpful.”

With the introduction of the *GSDOA*, the government recognized that police interference at the scene of an overdose, whether actual or perceived, can deter people from seeking help.

Across the province, police need to embrace the spirit of the *GSDOA* so that fear of arrest no longer has a chilling effect on calls to 911. This means treating overdoses as medical emergencies. In the event that police are the first emergency responders on scene, they should be intervening in a medical capacity only (such as administering naloxone) and not using the call as an opportunity to investigate or interrogate individuals who have called for help.

In addition, police need to recognize the experience and expertise of drug users who medically intervene during overdoses. All police departments should also be encouraged to adopt policies of non-attendance in the event that overdoses occur, intervening only at the explicit request of Emergency Medical Services (such as in the event of violence or a fatality).

### **Prohibition and Harm Reduction: A Fundamental Conflict**

As a province, we have invested in evidence-based programs that approach substance use from a public health perspective, including the provision of harm reduction supplies, grassroots OPSs, and supporting

federally-sanctioned supervised consumption sites. Yet many policing agencies in BC appear to be working in misalignment with public health agencies. One fundamental reason is that, despite widespread recognition of substance use as a public health issue, the possession of illicit substances remains criminalized. So does trafficking those substances, despite the fact that for most users there is no legal way to obtain them.

This sets up a paradox for people who use drugs. A person can use a substance safely and without fear of arrest once they are inside a supervised consumption facility, but it is impossible to secure those substances and transport them to the site without fear of criminal sanctions. As described in participants’ stories earlier in this chapter, this situation is made even more precarious by the fact that police appear to be lingering outside of OPSs and monitoring their clientele.

This contradiction is most obvious in relation to simple possession, but also points to the broader issue of criminalizing supply while attempting to mitigate harms related to use.

One woman who was chastised for asking if anyone had cocaine for sale inside the local OPS summed up the disconnect.

I’m talked down to...at the needle exchange down there. I said, what the fuck [are] you [service providers]...doing here...[letting] people come in here and do needles and I’m not allowed to ask for something, I said what the fuck [is] this place open for, then? – 13

In the popular conversation and public imagination about substance use, our tendency to categorize people in binaries produces a false conceptual distinction between people who use drugs and people who deal drugs. Even among people who believe that addiction is a public health issue, conventional thinking goes that a person who

uses drugs is living with an addiction and is therefore in need of support. A person who deals drugs, on the other hand, is a person who needs to be criminally sanctioned. As is the case with how we conceptualize what it means to be homeless in the popular imagination, the way we conceptualize people who use and deal drugs does not hold up in the real-world, as the real-world experiences of study participants made clear. Several people who took part in this study sell, trade, or share small amounts of the drugs they use. Procuring drugs is a way of helping out friends, of benefiting from economies of scale, and of financing one’s own substance use.

In some cases, this informal economy is exploited by police, resulting in the deliberate criminalization of the very people the public health response to the opioid overdose crisis is meant to protect. While conducting research for this project, we were contacted by a service provider who let us know that several residents of the low-barrier shelter where he worked had been charged with trafficking fentanyl. All of the residents identified as being addicted to fentanyl and were living in abject poverty in a homeless shelter. They had each been approached, over a period of months, by undercover RCMP officers who asked them to find them fentanyl. As a result of their own need to finance their substance use and/or willingness to help out another drug user in need, these people are now facing trafficking charges including newly increased jail time for fentanyl trafficking.<sup>97</sup>

While conducting interviews, we heard similar stories, including this one from another RCMP jurisdiction:

The trafficking charge was, a girl come up to me just like you, and she said ‘can you help get some speed’...So I get the dope, I give it to her, get the money, give it to him, that’s it. If she had asked me to fix her bike, if she asked me to find her puppy, if she asked me

97 “BC Courts’ response to fentanyl”, *Provincial Court of BC* (15 August 2017), online: <http://www.provincialcourt.bc.ca/enews/enews-15-08-2017>.

to paint her garage door I'd have done it for her and that's what she asked me to do and I did. Two weeks later they come up with a warrant and charged me with a trafficking. I fucking put up such a fuss all the way to the cop shop, I'm not a drug dealer...So I made a big mistake about it and the cops know I'm not a drug dealer and yet I'm still charged with it because there's one indiscretion. – 208

**Policing organizations and individual officers need to approach interactions with people in possession of illicit substances in a way that recognizes the chronic and relapsing nature of addiction, and which does not have negative consequences, intended or not, for drug users and the community at large.**

Ultimately, criminalization and harm reduction are incompatible approaches to addressing a complex issue. As long as the possession of certain substances is illegal and there are no legal avenues for securing the substances on which they are dependent, people who took part in this study will continue to face unnecessary risks to their health as a result of a toxic, unregulated supply, and the threat of criminal sanctions. Criminalization then puts people at risk of incarceration, which is a risk

factor for HIV and HCV infection,<sup>98</sup> increases the risk of overdose upon release,<sup>99</sup> and increases their risk of sustained homelessness.<sup>100</sup>

In some jurisdictions, police regularly confiscate illicit drugs and release people without charge. On the surface, this appears to be a gentler approach to drug law enforcement because people do not end up facing criminal charges. The lack of documentation also means that official rates of drug-related enforcement can appear relatively low despite high levels of interaction between police and people who use drugs.

Along with putting people into a desperate situation if they are in withdrawal, the confiscation of substances creates drug debts and can increase danger and violence on the streets.

I've gotten into debt, and I've been beat up because police have taken drugs that I had taken from one person and was bringing to another person. And I've even told the cops, 'You guys are going to get me killed for this. And then it's—I mean you're not even going to do any paperwork, you're going to throw it on the ground and stomp it into dust and it's going to get me killed.' And they just laugh, they don't care. I mean, I shouldn't say 'they,' because some of them are good. – 175

While the move toward not charging people with possession is positive, policing organizations and individual officers need to approach interactions with people in possession of illicit substances in a way that recognizes the chronic and relapsing nature of addiction,

and which does not have negative consequences, intended or not, for drug users and the community at large.

**Alcohol and Harm Reduction**

Many of the ways in which policing undermines harm reduction flow from the legal status of those substances. However, in some communities we visited, alcohol was the most frequently used substance among people who live in public space.

Alcohol is a legal substance, but alcohol addiction is a serious medical issue and alcohol withdrawal can be life-threatening. In some cases, people whose alcohol is confiscated end up in withdrawal while living outdoors. Alcohol withdrawal is a medical condition that can have serious negative consequences when entered into without adequate supports, including medical intervention if necessary.<sup>101</sup> When police restrict consumption based on the fact that it is occurring in public, they risk interfering with measures people may be required to take in order to stay well. The most severe type of alcohol withdrawal, known as *delirium tremens* (DTs), is a medical emergency. Symptoms for a person experiencing DTs include heart disturbances, seizures, extreme agitation and confusion, and hallucinations—all of which are dangerous in any context, and even more so when living in public space, without supports.<sup>102</sup>

The over-policing of people who live in public space and use alcohol is having devastating effects on people's well-being and their relationships with police. One person we interviewed told us that the

98 Canadian HIV/AIDS Legal Network, "HIV and Hepatitis C in Prisons", (2008), online: <http://librarypdf.catie.ca/PDF/P48/HIVandhepatitisCinprisons.pdf>.

99 Fiona G. Kouyoumdjian et al, "Mortality over 12 years of follow-up in people admitted to provincial custody in Ontario: a retrospective cohort study" (2016) 4:2 CMAJ Open at 153, online: [10.9778/cmajo.20150098](https://doi.org/10.9778/cmajo.20150098).

100 Stephen Gaetz & Bill O'Grady, "The Missing Link: Discharge Planning, Incarceration and Homelessness", The John Howard Society of Ontario (2006), online: [http://homelesshub.ca/sites/default/files/The\\_Missing\\_Link\\_-\\_Final\\_Report\\_June\\_2007.pdf](http://homelesshub.ca/sites/default/files/The_Missing_Link_-_Final_Report_June_2007.pdf).

101 The National Clinical Guideline Centre, "Alcohol Use Disorders: Diagnosis and Clinical Management of Alcohol-Related Physical Complications", The Royal College of Physicians (2010) at 15, online: [https://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0047849/pdf/PubMedHealth\\_PMH0047849.pdf](https://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0047849/pdf/PubMedHealth_PMH0047849.pdf).

102 The National Clinical Guideline Centre.

police frequently dump their liquor. “We want to cry when they do that (108),” she said, particularly in cases when the police are disposing of the only bottle they have to stave off the debilitating effects of alcohol withdrawal.<sup>103</sup> When we asked the interviewee if she felt the police understood her circumstances, “I doubt it,” she replied.

While it is illegal to drink in public, it is important to recognize that there are harm reduction implications when alcohol is seized from very marginalized and dependent drinkers who don’t have the option of drinking inside a private home or licensed establishment. Some participants reported that even unopened alcohol is seized by police.

An Indigenous participant with a history of alcoholism going back to early childhood described a recent occurrence in his life.

We had two bottles of unopened wine, we are waiting for somebody...Yeah, haven’t cracked it. The cops just roll up and then they’re like ‘Oh, let me see that wine.’ They just dumped both on us. I was like ‘What, it’s not even open.’ We’re not doing nothing. We’re just waiting and they just dumped the booze on us. – 102

He explained that losing alcohol has serious effects on his life and his relationships in the community. People complain about panhandling, he told us. But the police “are the reason...we are doing the cycle all over again,” he said, describing the tough hustle of asking for change after police confiscate his alcohol:

I try to be polite and courteous and stuff. And when people complain about [panhandling], the police—the reason why—like you know, they dumped our shit. And now we’ve got to go back out there, get caught stealing, or you know—why am I doing this? Oh,

because you dumped my shit...it’s a vicious cycle. – 102

Given the level of alcohol dependence that an individual may be experiencing, the confiscation of alcohol may also lead to a situation where that person has no choice but to resort to non-potable alcohol such as hand sanitizer or rubbing alcohol.

Two of our focus groups included participants in alcohol harm reduction programs. Some belong to a drinker’s co-op, wherein members pay a monthly deposit in exchange for a quantity of homebrewed alcohol. Participants reported that this program had very positive impacts on their lives. Others participated in Managed Alcohol Programs (MAPs), where participants receive a certain amount of safe alcohol at regular intervals. These programs have proven harm reduction benefits including increased access to housing, decreased non-beverage alcohol (NBA) use, reductions in hospital admissions, and reduced rates of police contacts.<sup>104</sup>

### QUALITY OF LIFE POLICING AND TARGETING PEOPLE WHO LIVE IN PUBLIC SPACE

A consistent theme among study participants who live in public space and rely on low-barrier services, like soup kitchens, is that every element of their lives is monitored. Meeting even their most basic needs such as sleeping and eating is complicated by police presence.

In one RCMP jurisdiction, the majority of people who took part in this study talked about a specific bicycle officer they felt was targeting them. The officer was even disrupting access to food services, doing patrols in the soup kitchen (294).

While specific officers came up repeatedly as the source of harassment in some communities, the issue is larger than any one “bad apple.” If problem officers

are seemingly without meaningful oversight or management, that is a departmental issue. In RCMP jurisdictions the issue is bigger than any one detachment. Officers are sometimes moved from community to community, leading to a belief, justified or not, on the part of participants in this study, that when an officer develops too adversarial a relationship with the local population or engages in misconduct, they are simply moved to another town, where the cycle begins again.

In a number of cases, people report that they are often searched during frequent stops by police. They do not feel that they can say no.

**Interviewer:**  
They search you?

**Interviewee:**  
They ask me to empty my pockets, if they can look in my backpack. If you say no, you’re obstructing justice.

**Interviewer:**  
Do they ever threaten you with that?

**Interviewee:**  
Oh, yes. Yes. And I think if you ask that question you find that’s a normal answer, or at least for a certain percentage of us. – 318

Part of Pivot’s legal programming includes rights education. Our organization produces wallet-sized “know your rights” cards that include a written statement for police and are intended to be used during an arrest. When we arrived in one small town, we were excited to see that a local service provider was handing out the card. That excitement faded when we learned that the cards are not changing police practice in this RCMP jurisdiction.

**Interviewee:**  
Like I had that little paper thing, But...

103 The National Clinical Guideline Centre.

104 “The Canadian Managed Alcohol Program Study (CMAPS)”, Canadian Institute for Substance Use Research, University of Victoria, online: <https://www.uvic.ca/research/centres/cisur/projects/map/index.php>.

**Interviewer:**

Your conditions paper?

**Interviewee:**

No.

**Interviewer:**

The statement for police?

**Interviewee:**

Yeah...The [service provider] is giving them out. Nope, they took that too. – 102

In January 2017, Ontario released new rules restricting the practice of arbitrary police street checks, known as carding, in part due to the disproportionate negative impact on the Black community and other communities of colour in that province.<sup>105</sup>

Among participants in this study, the use of arbitrary stops was perceived as less formalized than “carding” operations in Ontario but no less damaging. Many participants in smaller communities explained that there was no need for the police to ask them for ID during a stop because all of the local officers already knew their names, offering them no privacy. For the people who took part in this study, the reality of living in public space means that the challenge of needing to find places to sleep, store belongings, and simply spend time is compounded by having to constantly avoid police.

Several participants described the effects of having nowhere to go that is free from police engagement. “There’s no place that I can sleep during the day (74),” one person said. “Cops wake you up, people call the cops when they see somebody sleeping. It’s just crazy.”

Another participant explained the police presence in her community this way: “You see them riding up and down by the boulevards, harassing the same people, ‘Take down your tarp (252),’” she said. “It seems like



“Know your rights” card

there is no winning, there is no place for them to go.”

**Interviewer:**

And have you ever been able to use a tent or anything?

**Interviewee:**

No.

**Interviewer:**

No? Is there anywhere you feel you could set up a tent if you want to?

**Interviewee:**

Not here, no.

**Interviewer:**

No, they would just...?

**Interviewee:**

Destroy it.

**Interviewer:**

Yeah. So, nobody here sleeps in a tent?

**Interviewee:**

No. – 395

In some communities with a larger, more organized homeless population, policing of people living in public space is recognized as being more systematized.

It’s ridiculous. They were on us this morning at 6 o’clock this morning. They were on us in camp this morning. Dead asleep, not bugging anybody and they come and harassed us and told me that it was because somebody was causing a disturbance. Everybody in the whole camp is asleep. The only one causing a disturbance was that cop. They say they don’t have protocol...they don’t have to make a quota but you watch it in this town and you can tell that’s not true because come the end of the month, they’re writing everybody up for nothing, absolutely nothing. – 135

Participants described the process as an unending chase that completely wears them down without resulting in any real change in their lives or in the community at large.

It’s horrible, I mean people are off on a trail, where you would never even see them, they are certainly not bothering anybody, why are you using all those resources for police to go through the bush, search for them, find them, ‘Okay you are two hours past the deadline,<sup>106</sup> your tent should be

105 Akwasi Owusu-Bempah, “Ontario’s ‘ban’ on carding isn’t really a ban at all”, CBC News (18 January 2017), online: <http://www.cbc.ca/news/opinion/ontario-carding-ban-1.3939558>.

106 Many municipalities have bylaws that allow for camping during particular hours in some places.

taken down.' Really? I don't get it, it's like a cat and mouse game and it doesn't seem right. – 252

One participant explained how constant displacement feels as a person who is experiencing homelessness:

Like you don't belong here, like you're a second-class citizen that there's no room for you even in a spot where there's bugs and birds and thorns and it smells bad and nobody wants to come near the spot except I'm not allowed to be there. You know, like there's a parking lot and you could park your car there and it could leak oil and antifreeze, drunk people can come there and piss or throw up, but I'm such a piece of garbage I am not allowed to sit there and that's how it feels. – 208

The BC Supreme Court has recognized that the constant movement and displacement of people who are homeless exacerbates their already vulnerable positions and has a serious negative effect on their psychological and/or physical integrity.<sup>107</sup>

The Court noted that routine displacement also undermines the ability of service providers to locate and provide aid to their clients who are homeless. In light of these findings, the Court ruled that bylaws prohibiting the overnight camping of homeless people in public spaces are unconstitutional, while concluding that there is a legitimate need for people to shelter and rest during the day.

Despite this, police continue to displace people on a daily, or even hourly, basis in municipalities across the province, with participants consistently confirming the harms identified in the aforementioned case.

### Seizure of Belongings

Along with the challenge of being awoken, moved along, and not



allowed to spend time anywhere, most participants in this study described the regularity with which all of their belongings were taken and destroyed by police and bylaw officers.

Routine confiscations contribute to the frustration and sheer exhaustion that people face when they do not have access to a home or consistent space in which they and their belongings are welcome.

My space was limited where I could go so I always interacted with them. It was a gong show. They are always searching me and

everything. Every time they see me, ripping all my shit apart. Back then I had a little bit more than a backpack. I had a suitcase and a duffle bag and shit. I had some stuff and they would go through it all the time and take my meds... You get everything back and as soon as you do that, they are taking everything again and you are back to square one and then you got to fight to get everything back so it is like a losing battle. I was constantly angry and no wonder I had a fucking attitude against the cops, I wonder why

<sup>107</sup> *Abbotsford (City) v. Shantz*, 2015 BCSC 1909 at paras 209 and 276.



that is. They didn't treat me very nicely. – 472

One couple we met in an RCMP jurisdiction described the devastating loss of their camp and all of their belongings earlier that week. The woman, who is HIV-positive and identifies as having a significant intellectual disability, told the story from her perspective.

The next day we moved it up there, and then we weren't on his land anymore, and then [the property owner] seen our tent go up and he shook his head and he got the cops again that day. The cops came again that day and said no, you can't be here, you can't be anywhere around here, you guys have to go to the shelter if you don't have a place to live. And he said you got to get out of here, so we started packing our stuff up slowly and bringing it up the hill. It's hard to move all that stuff, your house.

And so, we were getting half of it up there and then we came back, we were bringing our stuff to our friends, and we came back, our tent was all slashed up and stuff was in the river, just thrown there. We could see it, it was not gone but all soaking wet.

So, we had some of our stuff anyway, so we went even further down the river, hoping that they couldn't see us, right, and that our cat would. We didn't have a tent or anything, we just made something with a tarp and then they came again that day. We were out getting our medicine and we had groceries and we saw it all over the riverbank. They took whatever else we had and got rid of it in the garbage or whatever. They threw out our cat food too...they threw it out, he had to get food from somewhere, and they got rid of all that. – 343

Her partner explained that on past occasions, they had kept prescriptions at their camp, but after they were lost in the process of police

disposing of all their belongings, they began carrying medication with them at all times. She told us that they now carry their weekend methadone prescription with them at all times because police officers have previously confiscated it. When the prescription is taken from them, they go into withdrawal. Asked what she does in that situation, she replied, "I will sit at emergency and hopefully they'll help you (343)."

Other participants in this study raised the loss of prescription medication due to police searches and confiscation as well.

They went through everything all the time. Like they had no right doing that either but what are you going to do? Me fight the law? They took all my meds all the time...Then I would have to wait a month because I wouldn't get it replaced like I just got them taken by the cops. I come here and try to get a...like refill and they tell me I have to wait until my prescription ran out. – 472

**"I probably have \$4,000 or \$5,000 dollars in fines just for panhandling...I haven't even made that much in panhandling."**  
– 58

People who took part in this study are living with a host of medical conditions including addiction, chronic pain, mental health issues, HIV, HCV, heart disease, and cancer. The confiscation or loss of prescription medication has serious health and safety implications. It may seem obvious to point out that police must be cognizant of the effect that confiscations have on people who are both ill and without access to storage facilities or a home, but as many of our participants affirmed, it bears repeating.

## Disrupting Income Generation

People engage in a variety of income generating activities to get by, sometimes without access to even meager rates of government assistance. Participants reported that they are often heavily policed while attempting to generate income, including activities such as collecting recyclables. "Every time you open your eyes you got to worry about the police, right (28)," one person told us of his experiences collecting bottles for cash.

Panhandlers also report being heavily policed in some communities:

I've probably got like 300 or 400 fines that I will never pay. Basically, I'm just waiting for the warrant to go out and fucking put me in jail for these unpaid fines, right? I probably have \$4,000 or \$5,000 dollars in fines just for panhandling...I haven't even made that much in panhandling. – 58

The effects of police presence and harassment can be especially profound for people who make money by engaging in sex work, even though selling sex is not against the law.

**Interviewer:**

Well, do the cops ever stop you from working in this area?

**Interviewee:**

Yeah, they try.

**Interviewer:**

They try, what do they do?

**Interviewee:**

Well, they come and they tell you to get the fuck out or they say we know what you are doing, here is a warning, we won't be so nice next time, or they just straight out grab you, put you in the back of the car and then basically they've been watching you or they have someone who ratted out on you or they just know, because they know what you are doing, it's a small town, right, it is what it is. – 416

When asked if she continues to work even when she is harassed by police, she simply said “I have to.”

We also asked whether police presence affects her safety because she has to get into cars more quickly; she said “Always.”

In a larger RCMP jurisdiction with a well-known stroll, a woman explained how police use their presence to disperse women who are working by scaring away their clients, who are criminalized under Canada’s prostitution laws.<sup>108</sup>

Two nights ago, this is where all the working girls go...the cops, they’re just parked right here—like right where we are in this street. And they just put their cherries [red emergency lights] on—like not pulling anybody over, but just leave their cherries on just to kind of disperse anything. – 313

This does not mean that women stop working. Instead, they are dispersed to more isolated and less familiar areas. One woman explained how police harassment forces her to go back out to work in a more desperate state. “They’ve taken my purse and dug through it you know, taking my rigs and...they just take it. No charges. They take my drugs, my money (395),” she explains. “It’s hard because I’ve worked all day for that and I worked the streets.”

In the end, this approach is at odds with the goals of keeping sex workers safe by ensuring they can take precautions while working and reach out to police if they need help or to report suspicious activity.

In 2013, the Supreme Court of Canada found that laws prohibiting sex workers from communicating with clients in public are unconstitutional because they unjustifiably violate sex workers’

rights to security of the person under s. 7 of the *Charter*. The Court recognized that the ability to communicate is an essential tool for sex workers that can decrease risks to their health and safety.<sup>109</sup>

Communication allows sex workers to negotiate wages and terms (including the use of condoms or safe houses) and screen clients who might be intoxicated or prone to violence. Police across the province must honour the spirit of that decision and refrain from impeding the tools that sex workers rely on for their own health and safety.

### **Bylaw Officers and Private Security**

Participants noted that displacement, disruption of income generation, and seizure of belongings by police is amplified by local bylaw officers and private security.

For years I slept outside one of the churches in town and a lot of other people that were homeless would come sleep outside there alongside me. They put up signs saying no sleeping outside; bylaw [officers] would come and go through people’s tents. They would destroy the tents, destroy the property. They could confiscate everything. They could chase people away. RCMP, the same as the bylaw, they would do the same thing, they would destroy people’s property. They would harass anybody for whatever reason. – 332 (focus group)

In some communities, bylaw officers target and ticket people who live in public space on a regular basis:

If I go into [Name] Park to use the outhouse after 11 and I get seen by bylaw, most of them have no problem writing a ticket. If you’re sleeping—they don’t

care if it’s day or night—you will get ticketed. I’ve seen them walk past a guy that was just napping in the park, obviously he had a house and parked his car there and was napping on his lunch break, and hassle and chase away the homeless that are sitting there. I get chased away, I get fined, I get harassed. – 332 (focus group)

Another participant from the same community explained that holding onto possessions is almost impossible because of bylaw enforcement activity:

Sometimes they’ll just come up, and if you are like, just over there, they’ll grab your shit and once it’s in the van, you’re done. Yeah, if you’re getting coffee or going to the bathroom or anything it doesn’t matter... Anything and everything, like bikes, work clothes, like my ex actually works at a day job, he is a construction guy and they threw away his boots, and his helmet and everything. I couldn’t believe it. – 416

A third participant in the same municipality explained that along with tickets, people are also forced to pay to get their belongings returned if they are seized by bylaw officers. “If we want to go somewhere and keep warm, they are on us like flies... and they’ll confiscate your shit. Each belonging or thing is \$40 [to get back] (100).”<sup>110</sup>

This same participant described being ticketed under the municipality’s anti-paraphernalia bylaw less than a year before:

One time in the park, get this: bylaw and the cops, they go around together on their bikes and I am in the bathroom changing and I have two black sharps containers and she makes

108 For a full analysis of Canada’s prostitution laws and the impacts on sex workers, see Brenda Belak & Darcie Bennett, “Evaluating Canada’s Sex Work Laws: The Case For Repeal”, Pivot Legal Society (2016), online: [http://www.pivotlegal.org/evaluating\\_canada\\_s\\_sex\\_work\\_laws\\_the\\_case\\_for\\_repeal](http://www.pivotlegal.org/evaluating_canada_s_sex_work_laws_the_case_for_repeal).

109 *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras 158-159.

110 Authors were able to verify that local bylaws allow for this charge to be levied. We are not, however, able to cite to the specific bylaw in question in order to protect participant confidentiality.

me open the fucking sharps box and charges me for fucking paraphernalia...It was in my purse and I was literally changing. I wasn't shooting up. – 100

A fourth participant in the same community explained that despite provisions for getting seized items back, financial barriers can make reclamation impossible:

I have got very poor success in actually getting my stuff back. And they want money before they—they want money first before they even look into the matter..Yeah, like I paid \$40 and I didn't get any of my stuff back. There was no recourse for that. – 208

In other communities, people did not talk about fines or fees when dealing with bylaw officers. Instead, they simply never see their belongings again.

Not very nice to the homeless. They take their stuff and throw it in the garbage and everything else. And it's like, people work hard to get the shit that they have and it's like all that they have. To have someone take it away, it's not right...They are supposed to store it, but they don't. They wreck it. They'll wreck it right in front of you. – 397

In some communities, the activities of police officers and bylaw officers are supplemented by private security officers.

[Local security company] fucking waking me up when I'm sleeping... anywhere, all over the town... wake up and then if you don't get up and move they call the cops... make you go somewhere else, and then when you get there and get comfy, they make you move again. – 396

In BC, security businesses and the guards they employ are governed by the *Security Service Act (SSA)*<sup>111</sup> and regulated through the Provincial Registrar of Security Services. Private

security guards are employed by private companies and contracted by private citizens, corporations, and public entities to provide security services on both public and private property, as well as on property that most people experience as public, like shopping malls and libraries.

Private security guards are not police officers, but as evidenced by the stories above, in many municipalities across BC, they often engage in work that closely resembles that of public police. They wear uniforms and drive marked cars, which provide an air of presumed authority not afforded to other citizens.

Some guards seem to restrict their activities to private property. In other communities, it seems that private security guards are also operating on public sidewalks, greenways, and parks:

They come to the park and say like you're not allowed to have a blanket down and sitting in the park and we were just having lunch...he said, 'well, look at you. Look at the way you look'...They'll literally follow you around. – 262a

In some cases, private security guards are interrupting legal income-generating activity. One woman explained that most of her interactions with private security happen when she is trying to find clothes or earn money by collecting items from recycling bins and dumpsters. "Usually in a bin somewhere...they will find me and tell me I can't be there, I got to get out," she said. "Anywhere...you are settling in for a few minutes, they want you out of there (439)."

## **RACISM**

People who took part in this study were selected mainly on the basis of experiences living in public space and with substance use. However, 38% of participants who engaged in one-on-one interviews—also identified as Indigenous.

**“They come to the park and say like you’re not allowed to have a blanket down and sitting in the park and we were just having lunch...he said, well, look at you. Look at the way you look...They’ll literally follow you around.” – 262a**

111 *Security Services Act, SBC 2007, c. 30.*

**Individual actions are embedded within a larger organizational culture where racism has been allowed to persist.**

Many participants saw or experienced racism either by police departments as whole, or by individual officers in their communities.

[RCMP officer] was transferred six months after he got there for harassing the citizens, mostly Natives. Since he is targeting race, it's most of us Natives that have the worst problem with him. And I think he just has a problem with Natives...And the thing is, he never even pulls out his book when he does it. He is not writing shit down. – 318

One non-Indigenous participant from the same community, who is marginalized and uses drugs, explained that despite his own criminalization, he perceives a difference in how he is treated by the same RCMP officer:

I am not First Nations myself. But, well...I do see that I get treated differently, my privilege. Yes, I do have white privilege. Even me... just from my take of things, it seems to me that he treats Native people a little differently than he treats white people. – 239

The same week we were reviewing this interview data, the Aboriginal Peoples Television Network (APTN) reported on racist comments on a private Facebook group used by police officers across Canada.

One post by an RCMP officer claiming to police a First Nations community on the Prairies responded to the acquittal of Gerald Stanley in the killing of 22-year-old Colten Boushie in Saskatchewan:

This should never have been allowed to be about race...crimes were committed and a jury found the man not guilty in protecting his home and family. Too bad the kid died but he got what he

deserved. How many of us work on or near reserves and are getting fed up with the race card being used every time someone gets caught breaking the law? The CC [Criminal Code] is there to protect the criminals and there's a growing wave of hard working people who are sick of being victims of crime without real justice.<sup>112</sup>

These incidents are more than examples of "a few bad apples." Individual actions are embedded within a larger organizational culture where racism has been allowed to persist. RCMP Commissioner Bob Paulson, speaking at an Assembly of First Nations Meeting in 2016, recognized that anti-Indigenous racism is a problem within his organization.

I understand that there are racists in my police force. I don't want them to be in my police force. I would encourage you all, though, to have confidence in the processes that exist, up to and including calling me, if you are having a problem with a racist in your jurisdiction, or any other problem.<sup>113</sup>

Despite Paulson's formal acknowledgement that individual police officers can be racist and his invitation to bring concerns forward, participants in this study felt that police are always treated as more credible than low-income Indigenous people.

One woman described how police racism plays out against people like her, Indigenous people experiencing homelessness in her community:

There are some cops out there [who are] really racist. There are some of them that just do not like street people. They treat them mean and nasty, say some nasty

112 Kathleen Martens & Trina Roache, "RCMP Facebook group claims Colten Boushie 'got what he deserved'", APTN News (15 February 2018), online: <http://aptnnews.ca/2018/02/15/rcmp-facebook-group-claims-colten-boushie-got-deserved/>.

113 "Racism within RCMP stirs debate over bad apples or systemic problems", CBC Radio (5 January 2016), online: <http://www.cbc.ca/radio/thecurrent/the-current-for-january-5-2016-1.3389695/racism-within-rcmp-stirs-debate-over-bad-apples-or-systemic-problems-1.3389736>.

stuff to them. And they say that we try to resist arrest, which we don't, where they rough us up a little bit more. And then when it comes to court, they have more power than we do. – 71

Another participant also expressed the view that some officers may not even understand the biases and stereotypes that are shaping their interactions with Indigenous people.

I think they target mostly the Native because if it was a white person, they wouldn't stop them the way they do with us...They need to take classes on racism because they think they are being nice but they are racist. – 96

When we asked one participant whether there were any signs that things were changing between the local Indigenous community and the RCMP, she responded with a story:

Nope...About three months ago an old guy, he was brown just like us, [police] pepper sprayed him and they whipped out their batons, lot of people got that on recording. Like, they can't do that to people. – 170

In order for our police forces to uphold their responsibilities under the *Charter* and human rights law, and before Canada can even begin to uphold its commitment to reconciliation, that has to change.

## CITY CELLS AND THE DRUNK TANK

Acts of overt racism by law enforcement are often treated as isolated, attitudinal issues. However, even with our limited sample size, some clear systemic trends related to the treatment of Indigenous people emerged over the course of this study.

In every community we visited, participants told stories of harm reduction activities being disrupted,

of being moved along, and of personal items being seized. In a few communities, an additional issue was top of mind among participants: the frequency with which Indigenous people are taken to the "drunk tank" and their treatment once inside city cells.<sup>114</sup>

"This has got to stop...especially for First Nations...It's been happening for years and I've seen it all (170)," one participant told us of how police treat Indigenous people in the drunk tank. He expressed understanding for why police may be motivated to take a person who is intoxicated in a public space to the drunk tank, but he takes issue with what police do to people in the drunk tank once they're there. "They treat them like we're fucking animals," he said. "We're human beings. Just because we have a different colour doesn't mean we're fucking dogs...This has got to stop."

In law, a state of intoxication occurs when a person is "stupefied from the consumption of alcohol or drugs to such a marked degree that a person is a danger to himself or others or is causing a disturbance."<sup>115</sup> The police can arrest a person without charge if they are intoxicated in public.<sup>116</sup> This phenomenon was most prevalent in, but not exclusive to, the communities we visited in the northern region, where nearly all the participants in this study identified as Indigenous. Some people in these communities, like this Indigenous woman, talked matter-of-factly about the frequency with which they, their friends, and family members were taken into cells:

**Interviewer:**

So what happens if people are sleeping inside the sort of city limit, not out in the bush?

**Interviewee:**

Get thrown in a drunk tank.

**Interviewer:**

Just for sleeping? Do people get

thrown in the drunk tank a lot here?

**Interviewee:** Yes.

**Interviewer:**

Yeah? Do you mind me asking is it the mainly Indigenous people who get put in the drunk tank or is it that anybody who is...?

**Interviewee:**

First Nations.

**Interviewer:**

First Nations people?

**Interviewee:**

Mm hmm [yes]. – 108

She explained the severity of the situation in her town and her recent experience spending 11 days in city cells, during which time she was denied medical assistance:

**Interviewee:**

Every other day there was somebody from town here that was drunk and got thrown in.

**Interviewer:**

So, they just sort of patrol around and if they see people, they think are drunk, they bring them in?

**Interviewee:**

Mm hmm [yes].

**Interviewer:**

Do you, did you get to see a doctor when they are in there, do you know?

**Interviewee:**

No. Even if you are on meds. Like for example, I have high blood pressure and I am supposed to take my pills every day. And even if I have them on me, they won't.

**Interviewer:**

Okay, that's really so—RCMP picks you up?

**Interviewee:**

Mm hmm [yes]...

114 "Cells" refers to a jail cell in a police detachment. The cell may be a designated sobering cell, or a regular jail cell. The RCMP have an internal and national cell policy, and each municipal police department has an internal cell policy regarding duration, medical care and release.

115 *Besse v. Thom* (1979) D.L.R. (3d) 657 (BC Co. Ct).

116 See *Criminal Code* s. 175(1)(a)(ii), *Liquor Control and Licensing Act* RSBC 1996 c. 267 s. 74(1)(2), or *Offence Act* RSBC 1996 c. 338 s. 91(1).

**“He dropped it onto the floor and crushed it with his boot and they were shoving chalk down my throat until I puked and it still never came up. And then yeah—that was a pretty good beating.” – 90**

**Interviewer:**

So, when you were in cells for those 11 days, you didn't get your pills?

**Interviewee:**

No. – 108

Participants told us that there were few safe spaces for them to go where they could be free of police encounters. Even when they travelled outside of town to sleep in the bush, the police would arrive at their encampment to take them to the drunk tank.

One man who, like many project participants, is homeless and lives with alcoholism, shared with us his experiences with police. He told us of instances of trying to sleep in his tent in the bush, only to have police “open it right up and they're like, okay, you're coming with us (12),” as he described it. They arrived at his tent, opened it, and took him directly to the drunk tank. While detained in city cells, the police didn't let him exercise, “didn't let me out for a smoke, they let me shower once.” He stayed in city cells for 10 days.

The experience of being held in city cells while detoxing from alcohol was particularly harrowing. “I got hallucinations (12),” he said. When asked if he was given anything to help him, he replied, “No...I know they don't understand what we're going through, right, because they're not alcoholics themselves.”

He went on to describe the frequency with which he is taken into the drunk tank and the public shaming he received in the community:

**Interviewer:**

How many times have you had to spend the night in the drunk tank?

**Interviewee:** I actually made a record in the newspaper: 286 times.

**Interviewer:**

Okay can you explain “in the newspaper” to me?

**Interviewee:**

Yeah, they wrote it in the newspaper...and I was like, oh, they shouldn't have even put my name in there.

**Interviewer:**

And they just wrote that they'd picked you up 200 and whatever times and put you in the drunk tank?

**Interviewee:**

Yeah, I know, I know I'm an alcoholic and got no place to stay. – 12

Another woman explained that drunk tanks are largely an issue for people struggling with alcoholism and that it can be dangerous both because of the risk of withdrawal and because people aren't receiving care for other health conditions while there.

They do that to mostly alcoholics...And when they see them, they take their booze and they dump it, and then they just have a...bad attitude towards them. And then if they don't listen, that's when they [the RCMP] start roughing them up...and then some of these people [living with alcoholism], they're just so—they get so sick [from alcohol withdrawal]. At times, they get seizures. They don't understand that, them RCMP...

My friend, her boyfriend. They threw him in the drunk tank...and he needed his medication. Then they found him dead the next morning. They didn't do nothing; 'It's just another Native, they're just drunk.' When they say they need medication, they should do something about that. That just happened, not even a year ago or last year, this time of year I think... he had real bad seizures. I guess he had a massive stroke too when he had his seizure. So, he passed away of that...

They don't check on people enough—especially when people have alcoholic seizures and stuff like that, they can—one of my

friends already passed away from that. They should be charged for things like that if they don't check on...because they already know that they get seizures and everything...They should have a doctor or something there at the RCMP office 24/7. – 40

One woman told a story about being in withdrawal from opiates while in city cells. She asked to go to the hospital, but the guard only threatened her with violence. "One guard says to me, 'You fucking bitch, you better clean up that mess or I'm going to put some girls up to beat the shit out of you.' I was dope sick, I was puking. I had my mattress right by the toilet (289a)," she remembers. "I said, 'I need a hospital.' He [the guard] said, 'You don't need no hospital, I'm going to put a couple of girls to beat the shit out of you if you don't shut the fuck up.'"

It is important to note that being released from cells after a period of withdrawal can leave people at elevated risk of overdose.<sup>117</sup> Another participant spoke to us about an experience he had in cells after he swallowed a small amount of an illicit substance he was carrying.

I swallowed a little bit of drugs in cells and they gave me a beating and the sergeant came down there they had me pinned down there, punching me in the gut, trying to get me to, to get sick...So I couldn't—I wouldn't get sick and I said look, man it's just a couple joints. I just didn't want the charge. And he goes, you know, well puke it up. And I said, I can't puke it up. So they hit me more until they knocked me out. And then I woke up and the sergeant was holding a piece of chalk like a chunk of chalk that you write on a board. And he dropped it onto the floor and crushed it with his boot and they were shoving chalk down my throat until I puked and it still never came up. And then yeah—that was a pretty good beating. – 90

The troubling responses of police to matters of addiction and substance use are paralleled by a similar disregard for the needs of people in moments of crisis and distress.

One woman described the circumstances of a recent detention, ostensibly because police believed she was suicidal.

**Interviewee:**

[Service provider] called the cops on me once because I was talking crazy and she just cared about me, because she was worried about me because I was like really drunk...The cop was real rude and I was like I'm going to just sit here and wait till they close and then I'm gonna walk to [the shelter] but I ended up saying it out loud. I'm just going to take off when they go and they arrested me. And they had my arms up like this and he kept pulling my arms up and hurting me and they only held me for four hours till I sobered up and they were asking me why I was talking about killing myself, hoping to die and stuff...They just called because I was like, suicidal. They said I was.

**Interviewer:**

But then the police didn't take you to the hospital, they took you to cells?

**Interviewee:**

Yeah. And the second time they took me to cells, I wasn't even bothering, and I don't even know how I got to town. I was just real intoxicated and they are real rough with me then too...And they kept me in. It was, yeah, it was the same cop...So, I try not to get in trouble anymore because I don't want that same cop to bother me. – 96

She explained that she did not see health care staff while she was in cells. She described helping out another woman who was released without proper clothing. "One girl was screaming her head off...They let

us out like 7:30 in the morning. She had no shoes, no jacket, anything (96)," she remembers. "I had some clothes in my stuff. I gave her a pair of my clothes...I'm always packing a pack because you never know if the shelters are too full or if I have nowhere to stay."

This story is similar to another story we were told by a woman who had woken up, in the drunk tank, in her underwear. She told us:

I woke up with my clothes off in [small nearby town]...And I came to, and my clothes, I just had my shirt on and my underwear. So, I try not to end up in the city cells here now because I don't know if that would happen [again] down here. – 96

These stories were not exceptional in the lives of participants from some communities. They were daily or weekly occurrences. Some of the stories we heard were happening in real time while we were in town.

In one community, an Indigenous participant arrived for his interview with a big swollen bump and a big cut on his face. He explained that he had sustained the injuries the evening before, when the police took him to the drunk tank. He said there was blood on the floor when he woke up that morning. He was released at 8 am, about two hours before his interview started. "Yesterday, I was trying to stop a fight, and then somebody called the cops (102)," he told us, describing what happened. After one of the people in the fight bled away, he had a drink with his mother in a public space. "Then the cops just swarmed us," he said. He said they made the assumption that he had been violent: "They just assume stuff like that. And then I was like, 'I wasn't doing nothing. I'm just going to the shelter.' And I was just walking towards the shelter, they're like, 'Quit resisting.'" From there, he said the cops threw him down, put him into the police car, arrested him, took him to the police station, and

117 Fiona G. Kouyoumdjian et al, "Mortality over 12 years of follow-up in people admitted to provincial custody in Ontario: a retrospective cohort study" (2016) 4:2 CMAJ Open at 153, online: 10.9778/cmajo.20150098.

**“One of the officers, I don’t know, I can’t remember everything, how everything went down, but had somehow cut me by slamming me...palm in the ground or something, he cut me, and another officer started saying, ‘Oh, watch out for that, he is a fag, you know you’ll get AIDS from him,’ and words to that effect.”**  
– 239

then carried him into the drunk tank. “They dragged me into the drunk tank and then they slammed my head on the ground, put their knees on my neck.”

While there, he told us the police did not allow him to wear more than one layer of clothing to stay warm. When he asked them if he could wear his own sweater instead of the t-shirt he had on, they denied his request. When we asked if he saw a health professional about his injuries, he answered no and described how he feels when interacting with police: “They don’t even care. If I like— if I died in there, they wouldn’t even care. They would just like— oh, so— you know, just assume—just assume because my history, because of my alcoholism, they’re just going to— they’d just let me die. They won’t care (102).”

Concerns about the overuse of drunk tanks and the treatment of Indigenous people in city cells have been documented by other researchers. In 2012, Human Rights Watch visited 10 communities in northern BC to investigate this

issue. They interviewed Indigenous women and girls, as well as service providers, who reported that the police appeared to target Indigenous people for public intoxication arrests and even abused their discretion by detaining people who were not intoxicated.<sup>118</sup>

Participants in the Human Rights Watch study raised a number of issues that directly mirror what we heard in the course of research for Project Inclusion, such as being held for extended periods without food, being kept in cold temperatures without blankets, and being released with inadequate clothing, in grave danger of hypothermia and frostbite.<sup>119</sup>

One victim services worker told Human Rights Watch that this issue disproportionately affects young Indigenous girls:

Police routinely incarcerate Indigenous girls for intoxication if they are found to have consumed alcohol and are in need of transportation home (a particular challenge in northern

communities with almost no public transportation), while white girls in the same situation are likely to be driven home by the police.<sup>120</sup>

We did not talk to youth as part of this project and therefore, we likely missed this important area for inquiry. Human Rights Watch recommended that BC expand non-incarceration options for publicly intoxicated individuals, including sobering centres where medical personnel can provide appropriate care.<sup>121</sup> A sobering unit is a short-term facility where intoxicated people are cared for until they become sober, typically within 4-24 hours. This is a recommendation that has been heard before in BC, including in the recommendations of the Davies Commission Inquiry into the death of Frank Paul in Vancouver<sup>122</sup> and multiple BC Coroner Inquests.<sup>123</sup> There are six sobering units in BC: Vancouver, Surrey, Victoria, Duncan, Nanaimo, and Port Alberni.<sup>124</sup> In the remainder of the province, the police may bring an intoxicated person to a jail cell or a hospital emergency unit.<sup>125</sup> Expanding non-incarceration options for publicly intoxicated

118 Meghan Rhoad, “Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada”, Human Rights Watch (13 February 2013), online: <https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women>.

119 Rhoad.

120 Rhoad.

121 Rhoad.

122 “Alone and Cold: Davies Commission – Inquiry into the Death of Paul Frank”, Davies Commission (12 February 2009), online: [https://iibc.ca/wp-content/uploads/2016/03/davies\\_commission\\_report.pdf](https://iibc.ca/wp-content/uploads/2016/03/davies_commission_report.pdf).

123 See for example BC Coroner files #2007-159-0012, 2008-0228-0303, 2008-0217-0158.

124 Vancouver (Vancouver Detox), Surrey (Quibble Creek Sober and Assessment Centre), Victoria (Island Health Withdrawal Management Services), Duncan (Canadian Mental Health Association Sober Assessment Centre), Nanaimo (Island Crisis Care Society Crescent House), Port Alberni (Alberni Valley Sobering Centre).

125 “Alone and Cold: Davies Commission – Inquiry into the Death of Paul Frank” (2009) at 176.



individuals should be addressed immediately in communities across BC.

## ABUSES OF AUTHORITY AND EXPERIENCES OF VIOLENCE

Beyond day-to-day harassment and problematic treatment in cells, people who participated in this study also told specific stories of verbal abuse, humiliation, and violence by police.

### Humiliation

We heard several stories of humiliation at the hands of police, but the story of one Indigenous woman's regular humiliation during interactions with the RCMP had a profound impact on us.

**Interviewee:**

Well, they just run me in and the next thing is—I don't like this—When they run me in, they say I'm HIV positive over the radio and it goes everywhere and everybody hears it and I want that to stop. It is so embarrassing. You know, 'Watch it, she's HIV positive.'

**Interviewer:**

Sorry, I just need to understand that. They are talking to you on the side of the road?

**Interviewee:**

Yes.

**Interviewer:**

Then they go into the car and say over the radio that 'you've got to watch her'?

**Interviewee:**

Yeah, 'She's HIV positive.' And everybody that has one of those things can hear my name and I'm HIV positive. And I want that to stop. It's so...It's very embarrassing. I don't know how to make that stop.

**Interviewer:**

And that's happened to you on multiple occasions?

**Interviewee:**

Yes, every time they stop me, it goes like that.

**Interviewer:**

And different RCMP officers?

**Interviewee:**

Yes, I don't know how they can get away with that. – 395

HIV/AIDS related stigma was raised by another person living in an RCMP jurisdiction, in a different region of the province.

One of the officers, I don't know, I can't remember everything, how everything went down, but had somehow cut me by slamming me...palm in the ground or something, he cut me, and another officer started saying, 'Oh, watch out for that, he is a fag, you know you'll get AIDS from him,' and words to that effect. – 239

Humiliation can also take a more physical form, as one participant in a jurisdiction policed by a municipal force described.

Just last week I was sleeping...I felt the nudging of the foot and then a good hard boot in my leg. Then, all of the sudden, I was getting wet. A cop was pissing on me. He pissed on me to get me up. He fucking pissed on me. I wish I had his name. – 74

The practice of police habitually waking people who are sleeping on the street in the morning is so commonplace that it's known as "the seven o'clock wake-up call (74)," as one participant describes it. "They come around to boot people out of the doorways and clean out the streets. That's what they say. That's the words they use," he said. "They clean up the streets of the human filth, I guess, I don't know, the human garbage."

This type of humiliating behaviour, when directed at very marginalized people, does not make news headlines. But it has a profound effect on the psychological well-being of individuals and entire communities' relationships with police. It fractures their willingness to reach out for help after a serious crime or when in the midst of an emergency.

## Police Violence

The prevalence of police violence that participants described to us was extremely concerning. Use of force appears to be targeted along racial and other lines of marginalization, including class, disability (including addiction), and social condition. Several participants in this study described routine and repeated episodes of violence being carried out by police in their communities.

One woman shared a story from the evening before we spoke with her.

We had a young man show up in camp last night that was so beaten. I've known this kid his whole life. I used to babysit him when he was a kid. He was so badly beaten up. I didn't even recognize him until he started to talk to me...He was walking home from the bar and he was cutting through the park and they [the police] come from behind him, right over here at the skate park, and he tried to brush him off and keep going. They didn't take that well. And he got handcuffed and a dirty beating and they released him right there. – 153

She explained that, for people experiencing homelessness in her community, an incident like this was not isolated.

My husband has been beaten up many times by the police, many times. He was sleeping here in the park...a cop kicked him in the head, he was dead asleep sitting there. Kicked him in the, square kicked him in the head. I was coming across the park with [name], she was our street nurse at the time. We were coming looking for him because he was sick and he had an abscess. Looking for him and she's seen it happened. She watched that cop kick him in the head and she just freaked. – 153

Despite the severity of police violence, she found no recourse for the violence her husband endured. "And again, nothing came of it.

Nothing ever happened just because we're drug addicts (153)," she said. "They didn't do anything."

### "No Way to Treat Somebody"

The sense of injustice and the striking power imbalance between citizens and police are widely felt among the people we interviewed for this study. Participants clearly felt that police should be working to a higher standard than they are in the community.

Another participant, in the same RCMP jurisdiction as the woman whose husband was badly beaten by police, told us about an incident in which she tried to come to the aid of her friend's son while police were beating him up. But she was met with even more violence.

This guy is smaller...they got him, and they beat his skull on the cement everywhere. They knocked him out. So I jumped. I went underneath and I put my knees underneath his head, my hands were going through his back, the cop caught my hands twice, then he stopped, and then there was a bunch of other cops and around and then they pepper sprayed me. – 289a

The violence that the officers used on her friend seemed excessive. "I didn't know what he did, but that is no way to treat somebody," she said. "No matter what they've done, you're a cop; you're supposed to protect them."

### Made to Feel like Liars

Many participants in other regions shared stories of being injured by police.

Last week one of my buddies was trying to get back to the camp... from what I heard the RCMP went in there. I guess they heard somebody screaming around in there and it was dark and he was trying to go back to the tent, he actually broke his leg and the cops were literally dragging him out by the collar and they thought he

was lying, so they dragged him right out and were like, 'Quit your bullshit,' and now he's in a cast. Now they probably look at him and they can see he wasn't [lying]. – 170

Sustaining injuries as a result of a police encounter is so common for some participants that they grow to expect it. "I knew I had warrants and I was going to get arrested anyway (313)," one participant told us, describing an incident in a McDonald's restaurant where police burst through the bathroom door that she was in and demanded her name. "They jumped on me outside there and basically kicked the shit out of me," she said.

It wasn't the first time something like this has happened.

The time in the [location] over there, they did too. Like, my face was all fucked up. In my pictures even, you can see like there's like a big welt on my face, like on my skin was like taken down—like taken—like hammer grinded off my face. – 313

She was worried that she would lose three of her teeth as a result of the injury. "When I was in jail, I went to go see a dentist because I thought they were going to fall out. And she's like, 'Whatever you do, just resist the urge to wiggle them if they go black, then they're dead, they're going to fall out.' But I listened to her and didn't wiggle them. And about a year later now, they're all, like, actually reset."

### Indigenous Elders Endure Mistreatment

Several Indigenous participants shared stories of mistreatment of Elders by police.

I actually videotaped some elderly guy getting dragged around by one of the RCMPs here and I showed it to [service provider]. There is actually another woman too, this woman doesn't even drink. She was shopping in No Frills. She got accused of stealing or something and she got roughed

up too by the cops. It's because they thought that she was stealing and then she didn't have anything and she got pretty banged up... she uses a walker. – 84

Despite these incidents, "most of them are good," this participant said of local RCMP officers, "But there's a few of them that are, like, racist."

Another participant told us about how elders are particularly vulnerable to injury.

Because they are elders they have old injuries...they have to watch how they do that. Sometimes they don't know, so they [might]... rip their ligament or whatever when they pull them back or when they put them in the car they are hold[ing] you up this way and they are trying to pull this way...it's like you are hurting their ligaments... their old injuries. They make it look like he is resisting [arrest] or whatever when they are not, and they put resisting on their paperwork...when the person isn't...they still beat us anyways they will say, 'No, that's not how it went.' – 13

These instances of police violence cause harm in their own right and create an antagonistic relationship between police and entire communities of people.

### INACCESSIBLE, INEFFECTIVE COMPLAINT PROCESSES

Despite the high level of negative interaction with police, most participants in this study had never reported harassment or abuse. Most did not feel like a formal complaint was an avenue that was open to them.

#### Interviewer:

Have you or anyone you know ever made a complaint about the police officer?

#### Interviewee:

I did a couple of times, few years back.

**Interviewer:**

Did anything happen?

**Interviewee:**

No. Who would they believe: them or me? – 170

In communities policed by a municipal police force, complaints can be made to the Office of the Police Complaint Commissioner (OPCC). The OPCC is an independent office of the BC Legislature and retains jurisdiction over complaints against municipal police officers in accordance with the *BC Police Act*.<sup>126</sup>

In RCMP jurisdictions, police complaints are not covered by the OPCC. Instead, pursuant to the *Royal Canadian Mounted Police Act*, complaints related to the RCMP are handled by the Civilian Review and Complaints Commission for the RCMP (CRCC).<sup>127</sup> The CRCC is an independent government agency and, similar to the OPCC, it is limited in its legislative authority to review complaint decisions made by the RCMP when the complainant is not satisfied with the handling of their complaint.

In both cases, in order to initiate a complaint against the police, the claimant must submit a complaint in-person at the police station or by email, fax, or mail. This poses difficulties for those who do not own a cellular phone, computer, or printer, or do not have access to the internet. It is unrealistic to expect people to be comfortable walking into a police station to submit a complaint given their lived experiences of negative interaction with police and fears of retaliation. People require active support and a mechanism that does

not require them to report directly to police.

The CRCC and OPCC complaint processes are difficult to navigate, both practically and legally, and there are few resources available to assist a complainant with the complaint process.<sup>128</sup> Depending on the police jurisdiction, each complaint process is governed by different legislation and requires different submission criteria, investigative, and review processes. The nuances of what police actions constitute misconduct, which agencies are involved, avenues for submitting a complaint, and the admission and investigative processes that proceed are unlikely to be clear or accessible to any complainant, let alone people who are criminalized and struggling with challenges such as homelessness.

The CRCC and OPCC present several analogous technical and logistical barriers for marginalized complainants. However, there are some added challenges in RCMP jurisdictions, which constitute the majority of municipalities in BC.

As outsiders looking in on the RCMP complaints process, it appears that the RCMP has a lot of latitude to investigate themselves, and that they act as gatekeepers in complaints brought against them. This creates barriers to people trying to access the complaints process. When a complaint is submitted to the CRCC, the RCMP determines admissibility and whether the complaint will be investigated. The RCMP provides a report to the complainant. Only after that process is complete can the complainant make a request



<sup>126</sup> RSBC 1996, c. 367.

<sup>127</sup> *Royal Canadian Mounted Police Act (R.S.C., 1985, c. R-10) Part 6; Royal Canadian Mounted Police Public Complaints Commission Rules of Practice (SOR/93-17); Royal Canadian Mounted Police Regulations, 2014 (SOR/2014-281) Part 3 (the RCMP Act in subsequent footnote).*

<sup>128</sup> In 1992, Commissioner Wally Oppal was appointed by the Attorney General of BC to conduct an inquiry into policing that included inquiries into public complaints and accountability. In 2002, the BC Legislative Assembly Special Committee reviewed the Police Complaints Process. In 2007, the Ministry of Public Safety and Solicitor General instructed the Director of Police Services to conduct a review of the Police Complaints Process. Each final report called to harmonize complaint processes between municipal police and RCMP.

for a review by the CRCC.<sup>129</sup> If the CRCC is satisfied with the RCMP finding (whether the claim was substantiated, or if misconduct was found and discipline determined), the file is closed. If the CRCC is not satisfied with the RCMP finding, the CRCC may send an interim report with findings and recommendations to the RCMP Commissioner.<sup>130</sup> However, the recommendations are not binding on the RCMP, and the CRCC has no legislative authority to determine or enforce discipline.

This process, and the role of the RCMP in investigating themselves, may help to explain why people felt like there were no mechanisms available to make a complaint in RCMP jurisdictions.

**Interviewer:** Has anybody, any of the people that have been assaulted ever, tried to make a formal complaint?

**Interviewee:**

They don't let you. They just—they don't, the watch commander doesn't let you do that. He hangs up on you, he walks away, he doesn't take, when you go to the police station trying to talk to him, he won't come out and talk to you. He just doesn't let it happen. I've gone to it under community and tried to file complaints in another community and they say I have to bring it up with the watch commander here. Well, how do you do that when he won't talk to you? – 153

Other participants, expressed fear of retaliation if they spoke out against police. One Indigenous woman we spoke with has experienced violence at the hands of police, but when we asked if she felt she could ever complain to anyone about it, she replied, "No. And if we do, we get even more harassed (71)."

Women we spoke to in one RCMP jurisdiction were so tired of the lack of accountability that they tried to take matters into their own hands by gathering evidence. But they found that process only led to more hostile interactions with police.

The cops just creep up on you, like sneak up. The cops do whatever they want basically. They don't follow the book or code of conduct. And that's why some people have been trying to videotape things. But then they basically assault you and break your phone if they see it or they'll harass you, just make life really hard on you if you try to expose them for what's going on. You feel like they're kind of more of a gang themselves. They're more like—they're just like they're bullies, basically. – 313

**Given the high rates of violence against Indigenous women, women who engage in sex work, people who are likely to experience or witness an overdose, and people experiencing homelessness, we are concerned that people who took part in this study do not believe that the police are there to protect them or their communities.**

These findings mirror Human Rights Watch's 2013 findings from northern BC, where researchers described levels of fear they would expect to see in post-conflict countries such as Iraq. They went on to note that

fear of the police was paired with "a notable matter of fact manner when mentioning mistreatment by police, reflecting a normalized expectation that if one was an Indigenous woman or girl police mistreatment is to be anticipated."<sup>131</sup>

In this context, the lack of an accessible, fully civilianized complaints process leaves marginalized victims of police abuse and harassment without recourse.

## **NO ACCESS TO POLICE PROTECTION**

Most participants in this study stated emphatically that they would never call the police if they were in trouble, with only a small minority stating that if the situation was dire enough they may consider placing a call.

Given the high rates of violence against Indigenous women, women who engage in sex work, people who are likely to experience or witness an overdose, and people experiencing homelessness, we are concerned that people who took part in this study do not believe that the police are there to protect them or their communities.

One participant, a woman in her 40s, stood out because when we met her she was in the midst of her first bout of homelessness and had no criminal record. She expressed surprise at what she perceived as the lack of protection from law enforcement when she called for help because she was afraid of her boyfriend while living on the streets. "When I asked the police, I wanted help, like I wanted to go away for the evening (252)," she said. She was looking to stay in a protected women's shelter or a place where she could go without fear of her partner finding her.

They phoned, 'Everything's full,...I thought, what do you mean, like I did not understand, so you mean

129 "Civilian Review and Complaints Commission for the RCMP", Government of Canada (11 Aug 2016), online: <https://www.crcc-ccecp.gc.ca/en/complaint-and-review-process-flowchart>.

130 "Civilian Review and Complaints Commission for the RCMP", Government of Canada (11 Aug 2016), online: <https://www.crcc-ccecp.gc.ca/en/complaint-and-review-process-flowchart>.

131 Rhoad.

like, if I am scared for my life, there is nowhere you can take me? Like isn't that like a basic human prevention thing? They say no and the security guard that called them, he just sat in his vehicle the whole [time], he didn't come out to see if I was okay. – 252

Most participants seemed resigned to the fact that their local police force was not there to protect them. "A lot of women around here, they have a lot of problems. Even the RCMP, they don't help or nothing when they call them because they know they're Native and they know that they're always alcoholics and drug addicts and stuff like that (40)," one participant said, noting what they perceived as a disparity between how people in northern communities are treated and the access to accountability mechanisms as compared to people on BC's south coast. "They don't help up here as much as they do down south."

Many participants were speaking from firsthand experience when they told us that the police would not protect them:

**Interviewer:**

Do you feel that the police will protect you if you call them for yourself?

**Interviewee:**

I don't know, depends how I, I am not going to do that, no, that's just the few times I have felt I am the victim but then the police come in and so I am the culprit. – 58

The experience of being punished for attempting to access police protection is especially pronounced for people who are have court-imposed conditions such as abstinence requirements, which are largely understood to be untenable for people who are dependent on substances including alcohol:

**Interviewer:**

Do you feel like the police would protect you if you called them for help?

**Interviewee:**

No, I don't think so, never, they're mean, like when my ex beat me they arrest me, not him, put me in jail and I'm bleeding from my head, I'm bleeding, my fingers are bleeding, they believed his story that I got hurt outside.

**Interviewer:**

What did they arrest you for?

**Interviewee:**

Causing a scene, I don't know, having a couple of drinks.

**Interviewer:**

Because you had a couple of drinks?

**Interviewee:**

Yeah, I got put in the drunk tank, even though I wasn't drunk...I got jail time for five days, I got charged, I got two because they picked me up and I didn't know I wasn't allowed to drink, at the time I was drinking lots. I had just lost my kids, and my ex and I were separating, I drank every day for two years straight.

**Interviewer:**

What you are saying is that you didn't know you weren't allowed to drink? Why weren't you allowed to drink, was it a condition?

**Interviewee:**

Yes.

**Interviewer:**

Bail condition?

**Interviewee:**

Yes, I guess they have it in there, but they never gave me the paperwork when I asked for it. – 289a

This story parallels a Human Rights Watch finding related to Indigenous women's experiences with police in northern British Columbia:

The RCMP has instituted progressive policies addressing violence in domestic relationships, but it appears the police do not apply those policies consistently

when policing in Indigenous communities. According to survivors of domestic violence and the community service providers who work with them, Indigenous women and girls often do not get the protection afforded by these policies. Women who call the police for help may find themselves blamed for the abuse, are at times shamed for alcohol or substance use, and risk arrest for actions taken in self-defense.<sup>132</sup>

Some respondents made it clear that there are differences among officers and that some officers are supportive, but they cannot choose who responds if they call for help:

**Interviewer:**

Do you feel like the police would protect you if you call them because you were being victimized by somebody else?

**Interviewee:**

That's hard to say. I don't—it's up, sometimes I do and then there are some police that absolutely, not. They look at me like I'm the bad person.

**Interviewer:**

Okay. Does it depend on the officer or the—

**Interviewee:**

Yeah. Yeah. – 135

People living with a mental illness are also disproportionately likely to require emergency assistance. While we did not specifically ask about mental health in the context of policing, a few participants raised concerns about reaching out for any kind of help during a mental health crisis because police are generally first responders. "They're not sensitive and then the whole process is so terrible. It's just like being arrested for committing a robbery (358)," said one participant, describing the actions of police during a mental health crisis

Why don't they just send a couple of orderlies in an ambulance with

132 Rhoad.

**British Columbia is a province where at least 2,443 people died of overdoses in 2016 and 2017. It is where Indigenous women have gone missing and been murdered at alarming rates. BC is the site of a continuing epidemic of physical, sexual, and colonial violence against sex workers, trans, Two-Spirit and genderqueer people, youth in the foster care system, and Indigenous people—people who face intersecting barriers in all facets of their lives, some of whom participated in the Project Inclusion study. The experiences they shared overwhelmingly point to an indisputable problem with how police and policing practices interact with vulnerable people. This must be resolved through swift and determined leadership by federal, provincial, and municipal governments working in partnership with affected communities.**



an ambulance attendant? And phone you and say 'Well, your doctor wants to see you.' 'Oh, okay, I'll come right out.' Instead of boot the door, come in, and four big giant guns...There's usually four of them. One with a Taser, one with pepper spray, one with handcuffs and the other one with a club or a gun. – 358

British Columbia is a province where at least 2,443 people died of overdoses in 2016 and 2017.<sup>133</sup> It is where Indigenous women have gone missing and been murdered at alarming rates. BC is the site of a continuing epidemic of physical, sexual, and colonial violence against sex workers, trans, Two-Spirit and genderqueer people, youth in the foster care system, and Indigenous people—people who face intersecting barriers in all facets of their lives, some of whom participated in the Project Inclusion study. The experiences they shared overwhelmingly point to an indisputable problem with how police and policing practices interact with vulnerable people. This must be resolved through

swift and determined leadership by federal, provincial, and municipal governments working in partnership with affected communities.

#### **A LEGACY OF MISCONDUCT, A LACK OF ACCOUNTABILITY**

Commissioner Wally Oppal, QC found that “the initiation and conduct of the missing and murdered women investigations were a blatant failure.”<sup>134</sup> That failure is rooted in racism, misogyny, and contempt for people who are homeless, people who use drugs, and people who do sex work that appears to persist in policing institutions across BC. In the context of Project Inclusion, a complex array of serious allegations arose against police. But when we discussed what people wanted from a police force, their answers were fairly straightforward.

I just want them to know even though my circumstances are messed up at this moment and I'm an Aboriginal, I may be alcoholic, I may be homeless, like I have rights. I need like—I need them to know that. But they don't care. – 102

We can learn a lot about what genuine community-based policing could look like in BC from stories about individual officers who have built trusting relationships with the participants in this study.

Now [Indigenous officer] walks with another white cop...And he doesn't throw his weight around like the other cops do...he talks to them. And when we see [him], we wave at him...you know, communication...He deals with a lot of the Natives downtown and I'm glad he does because I have known him back in my reserve. – 13

Another participant told us about an extraordinary offer she received from a police officer one freezing night.

She noticed that I had dropped a blanket behind when I was picking cans and bottles. And she had asked very sincerely, 'Do you have some place to go? Are you going to be warm enough? We can give you a place at the RCMP station, not that you would be under arrest or anything like that.' But it was really cold that night. She actually

133 British Columbia Coroners Service, “Illicit Drug Overdose Deaths in BC January 1, 2008 – July 31, 2018”, (22 August 2018), online: <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/illicit-drug.pdf>.

134 Wally T Oppal, “Forsaken: The Report of the Missing Women Commission of Inquiry Executive Summary”, Missing Women Commission of Inquiry (19 November 2012) at 26, online: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>.

offered that, which is for me very humane. – 120

This was a memorable moment that made an impression on this person, but when we asked if the participant took the officer up on her offer, they replied, “No.” Enduring freezing temperatures, fatal as they may be, is still more appealing than spending time inside a policing institution because it has become such a site of trauma for so many. “Because generally I don’t like being in a cell. I’d rather be outside 100% of the time than being in a jail cell, even though there is a mat there or whatever (120).”

These are examples of the ways in which small changes in how officers relate to the communities they engage with most can lead to greater health, safety, and inclusion. However, it is not enough to change the system one officer at a time; there is ample evidence that there are systemic problems with how the police are operating in BC. No police force is exempt from criticism, but the RCMP’s internal culture and lack of accountability has come under particular scrutiny in recent years. Given that the RCMP polices most communities in BC, we need to be paying close attention.

### **Abuse of Authority by the RCMP**

For people who have not experienced the intersection of extreme poverty, substance use, homelessness, and racism, some of the stories shared by participants in this study may be hard to imagine or accept. As a result, it is useful to evaluate these accounts through the lens of official reports on the internal culture of the RCMP.

Even a cursory look at recent reports into allegations of harassment, abuse, and retaliation against officers and civilian staff by RCMP officers

suggest that marginalized people’s fear of police is justified.

According to a study in “E” Division (British Columbia), for example, “frequent tales of retaliation against those who bring forward harassment complaints can also leave victims and bystanders feeling helpless to try to address the problem [of harassment].”<sup>135</sup> Indeed, a number of RCMP members and employees who spoke to the Commission were preoccupied about being targeted as a result of raising concerns about the workplace. In some cases, members reported incidents of reprisal that threatened both the safety of the member and the integrity of the investigation.

Two highly publicized lawsuits launched by former RCMP officers highlight longstanding internal practices and cultural issues within the RCMP that have come under public scrutiny in recent years. In 2012, after speaking publicly about gender-based harassment in the RCMP, Janet Merlo became the representative plaintiff in a class action lawsuit, launched in BC, against the RCMP and the Solicitor General of Canada. The lawsuit alleges that “female regular members, civilian members, and public service employees were subject to systemic discrimination, harassment, and bullying on the basis of gender and/or sexual orientation, and that the RCMP failed to protect the women from this treatment.”<sup>136</sup> Linda Gillis Davidson launched a similar class action in Ontario on behalf of all regular members, civilian members, and public service employees. Davidson and Merlo’s lawsuits were consolidated into a single claim before the Federal Court for the purpose of approving a settlement of the claims. The group of current and retired police officers

who requested to join the class continued to grow before the lawsuit settled in 2017.<sup>137</sup>

The RCMP has not been able to create meaningful change within its organization in response to these allegations. The *Gender and Respect Action Plan* was launched in 2013 to respond to widespread allegations of workplace sexual harassment. It set out 37 “actions” to effect change, as well as measures and milestones to monitor progress.

In 2017, the CRCC for the RCMP wrote that:

The RCMP Commissioner committed to report internally on the progress of these actions every 180 days to ensure transparency and accountability. However, to the Commission’s knowledge, only one such update appears to have occurred, in the spring of 2014. Furthermore, while the Commission was informed that the *Gender and Respect Action Plan* remains active, no one at the RCMP’s National Headquarters appears to hold responsibility for this initiative. There appears, therefore, to be no one in a position of senior leadership who is accountable for ensuring either that the 37 actions have been implemented, or that they are achieving the desired goals.<sup>138</sup>

Despite all the publicity sexual harassment within the RCMP has received, there is evidence to suggest that a culture of sexual harassment continues to exist within the organization to this day. In February 2018, while we were writing this report, the CBC reported on a Facebook group purportedly created by and restricted to rank-and-file men within the RCMP. It contains sexually

135 “Report into Workplace Harassment in the RCMP”, *Civilian Review and Complaints Commission for the RCMP, Government of Canada* (25 April 2018), online: <https://www.crcc-ccetp.gc.ca/en/report-workplace-harassment-rcmp#toc.1>.

136 “RCMP Sexual/Gender Harassment Class Action Settlement Website – FAQ”, *Kim Spencer McFee Barristers P.C.*, online: <http://www.rcmpclass-actionsettlement.ca/faqs.htm>.

137 Colin Perkel, “Landmark deal in RCMP sexual-harassment class action wins court approval”, *CBC News* (31 May 2017), online: <http://www.cbc.ca/news/canada/british-columbia/rcmp-sexual-harassment-class-action-1.4140138>.

138 *Report into Workplace Harassment in the RCMP*.

**Many of the stories we heard from people about their interactions with police on the street closely mirror the stories of discrimination, harassment, abuse of authority, and lack of transparency and accountability that have been identified as endemic within the RCMP.**

suggestive material, including a fictional frontier scene with an RCMP officer in uniform with a burlesque dancer in costume performing what appears to be oral sex on him. The secret men-only Facebook group was apparently set up by RCMP employees in BC, but has members from across the country. The CBC was unclear how many of the 700 members of the group were current RCMP officers, but was able to confirm that administrators for the group request regimental numbers before adding people to it.<sup>139</sup>

There is reason to believe that sexual harassment is not limited to women working inside of the RCMP. We did not ask questions about sexual misconduct, but a few women who took part in this study reported sexual harassment by police.

**Interviewee:**

You know in 2005, I was supposed to be on house arrest, right, for 18 months. And a cop phoned me and asked if I wanted to go to the movies.

**Interviewer:**

Really?

**Interviewee:**

And I told my probation officer about it and he got shipped out of town.

**Interviewer:**

He got shipped out of town but you don't know where to?

**Interviewee:**

No. – 84

The Human Rights Watch report, "Those Who Take Us Away,"<sup>140</sup> is based entirely on conversations with Indigenous women and girls about their relationships with police in northern British Columbia. That report details that in five of the ten towns they visited, they heard allegations of rape or sexual assault by police officers.<sup>141</sup>

There is also reason to believe that the RCMP will not change of its own accord. On February 4, 2016, with the lawsuits ongoing, newly appointed Federal Minister of Public Safety Ralph Goodale requested that the CRCC for the RCMP undertake a review of the RCMP's policies and procedures on workplace harassment. The resultant report lays out a series of ongoing concerns about the organization's ability to protect its workers and offer a workplace free from abuse of authority and harassment.

Over the last several decades, the reputation of the Royal Canadian Mounted Police has been tarnished by a seemingly endless stream of reports of workplace harassment, sexual harassment, bullying and intimidation. These problems have been well documented by external reviews, surveys, media reports, and lawsuits. Indeed, the most senior leaders in the organization have themselves acknowledged that bullying and harassment are endemic and that RCMP organizational culture must change. This review, conducted by the Commission at the request

of the Minister of Public Safety, confirms that such problems continue to persist in the RCMP. Despite the known problems, the RCMP has been slow to change. While senior leaders have developed a host of "action plans" and "initiatives," there has been little real change in the day-to-day experiences of many RCMP members and employees; rather, their trust in the organization has only eroded further.<sup>142</sup>

The Commission's report only looks into RCMP harassment in the context of the workplace. However, the report states that:

Increasingly, such problems are also eroding the trust of the Canadian public, who are asking whether the RCMP's internal problems have "filtered outside" and affected the treatment of members of the public.

The people who came forward and shared their experiences as part of this project are members of the public, and among some of the most marginalized and stigmatized residents of BC. In many of the towns we visited, we were forced to put limits on the number of participants we could speak to and the amount of time we could spend on each interview. It became apparent very quickly in the course of our conversations that no one had ever come to their community to ask about their experiences with police, nor did people feel they could access an appropriate channel for

139 Manjula Dufresne, "Men-only RCMP Facebook group crosses line of conduct, say female RCMP members", CBC News (14 February 2018), online: <https://www.cbc.ca/news/canada/british-columbia/men-only-rcmp-facebook-group-crosses-line-of-conduct-say-female-rcmp-members-1.4533910>.

140 Rhoad.

141 Rhoad.

142 Report into Workplace Harassment in the RCMP.



communicating this information, such as through formal complaint processes.

As a result, we were inundated with stories of serious misconduct and of blatant targeting handed down by police, which we can only infer would otherwise go unheard. Many of the stories we heard from people about their interactions with police on the

street closely mirror the stories of discrimination, harassment, abuse of authority, and lack of transparency and accountability that have been identified as endemic within the RCMP.

For the people who took part in this study, there is no alternative to the daily harassment that they experience while living in public

space. The stress and fear that they experience are no less real or worthy of attention than that facing officers who have been harassed. In fact, abuse by police and the resulting feeling of powerlessness impacts everything from substance use, to access to health services, to decisions about whether to call for help during a crisis. As a province, we must demand better from our police.

## Recommendations

1. The Ministry of Public Safety and Solicitor General and the Attorney General, working in full partnership with historically marginalized communities and communities with high levels of police interactions, must develop a set of guiding values and principles for policing in British Columbia that are grounded in human rights.
2. The Attorney General must take immediate action to increase access to justice for people who believe they have been the victims of excessive force, discrimination, or harassment by police by:
  - a. dedicating legal aid funding for:
    - i. a clinic to support people to make police complaints through summary advice, short service, or full representation based on the needs of the individual and the nature of the complaint;
    - ii. public legal education workshops and materials to help people navigate the process of bringing a lawsuit against a police officer or police force; and
    - iii. legal representation for families and/or victims in instances of police-involved serious injury or death to facilitate full participation in a Coroner's Inquests and civil actions.
  - b. amending the *Police Act* to expand the mandate of the Office of the Police Complaint Commissioner (OPCC) in order to:
    - i. ensure that all police officers and forces operating in BC fall under the mandate of the OPCC;
    - ii. ensure that civilian investigators and civilian staff members are responsible for the entirety of the complaint resolution process; and
    - iii. allow the OPCC to audit police complaints each year, particularly where they involve discrimination based on race, gender, poverty, or health status, and publicly report on areas of concern for further investigation or reform.
3. The Director of Police Services must develop the following Provincial Policies for all policing agencies in British Columbia:
  - a. a Provincial Policy governing police interactions with intoxicated persons, in partnership with people who use drugs and people living with alcoholism, and fund the implementation of the Policy. This Policy should make it clear that:
    - i. police interventions with a person who is intoxicated must be minimally impairing on liberty and officers must make the security of the person (health) the paramount consideration in determining whether to apprehend an individual;
    - ii. city cells are not the appropriate place to bring an intoxicated person for their own safety or other therapeutic reasons. Alternatives to detention including, but not limited to, sobering centres, hospitals, and other community-based options must be made available; and
    - iii. where an intoxicated person must be brought into cells, their health care needs shall be paramount and health care visits will be mandatory.

- b. a Provincial Policy on harm reduction which should include:
    - i. a directive to deprioritize simple possession of controlled substances and an overview of the harms of confiscating substances (including alcohol) from people with addictions and limited resources;
    - ii. a directive to never confiscate new or used syringes, naloxone, and other harm reduction and overdose prevention supplies;
    - iii. a statement that harm reduction supplies, whether new or used, are not a basis for search or investigation; and
    - iv. a directive that local police forces work with service providers to develop bubble zones around safe consumption sites, overdose prevention sites, and other harm reduction sites, taking into consideration policing practices that may deter access including visible presence, arrests in close proximity, undercover operations in and near, and surveillance of people using the service.
  - c. a Provincial Policy on police attendance at overdoses which includes:
    - i. a directive not to attend at drug overdose calls, except where requested by Emergency Health Services—usually in the event of a fatality or threats to public safety; and
    - ii. a clear statement that the role of law enforcement at the scene of a drug overdose is to deliver first aid if they are the only responders available, or to protect the safety of Emergency Health Services and members of the public, not to investigate the individuals or circumstances at the scene unless police determine that there is an urgent public safety concern, for example, if violence is occurring at the scene.
  - d. a Provincial Policy on confiscation of belongings by police which includes:
    - i. a strong statement that explains to all police forces the harm caused by the confiscation of homeless people’s belongings;
    - ii. deprioritize confiscating homeless people’s belongings, especially necessities of life such as shelter, clothing, medication, and important personal items; and
    - iii. a directive to issue receipts for belongings and cash where they must be taken, with instructions for how to get them back.
  - e. a Provincial Policy detailing people’s right to privacy in tents and informal living structures akin to the right to privacy in private residences.
4. The Director of Police Services must work with the Independent Investigations Office and the Coroners Service to audit deaths and serious injuries in city cells in BC over the past 10 years, including an analysis of race, disability, housing status, and gender, and make the findings and recommendations for reform publicly available.
  5. The Ministry of Housing and Municipal Affairs (MHMA) must make a province-wide commitment to supporting homeless people to maintain their belongings and to ensuring that homeless people have access to services without fear of losing their possessions. The MHMA must partner with local governments in collaboration with groups of people with lived experience, to train local bylaw officers:
    - a. to recognize and respect the belongings of homeless people; and
    - b. to work effectively with people experiencing homelessness to clean up or discard belongings where there is a pressing public safety, access, or environmental need to do so.
  6. The Ministry of Public Safety and Solicitor General, in partnership with the MHMA, should issue a directive stating that no public funds may be used for private security patrols on public property, including in public parks.

# Section Two

## Everything Becomes Illegal: How Court-Imposed Conditions Set People up to Fail

“Conditions” are the everyday term for a set of court- or police-imposed rules that people who are involved with the criminal justice system, but not incarcerated, are obliged to follow. Conditions prohibit or make mandatory certain behaviours like abstinence from alcohol or drugs, carrying harm reduction equipment, setting foot in a specific geographic area, or being out of one’s place of residence past specified hours. Failure to adhere to conditions can put a person at risk of criminal conviction.

Being charged or convicted of failing to adhere to one’s conditions is often referred to as a “breach” or “breaching.” For many living in poverty and homelessness, especially people who rely on drugs and alcohol, court- and police-imposed conditions play a ubiquitous role in shaping their lives.

During research for Project Inclusion, we asked people if they were subject to conditions and, if so, how those conditions were impacting their daily lives.

We learned:

- conditions are setting some people up to fail, leading them into a cycle of criminalization and incarceration for relatively innocuous behaviours;

- short-term jail stays for breaching conditions can have long-term, serious, or life-threatening consequences;
- people living homeless experience uniquely negative impacts of various conditions;
- conditions can create homelessness or housing precarity; and
- some conditions cause more harm than others:
  - abstinence conditions criminalize people with addictions;
  - prohibitions on carrying so-called “drug paraphernalia” criminalize health care and put people’s health at risk; and
  - area restrictions (better known as “red zones”) prohibit people from accessing the services, spaces, and communities that they rely on.

Conditions are intended to address the specific circumstances of an accused or convicted person in light of the particular offence at issue. While they vary from person to person, they are not uniquely customized to each person. Conditions are often chosen from a set number of common options including: curfews, abstinence from drugs or alcohol, prohibitions



on carrying weapons or phones, reporting to a corrections or bail official, or not changing residential address without giving notice.

The conditions we address here are not those designed to stop a convicted sex offender from loitering in parks, nor are they about restricting a violent offender’s access to a weapon. The conditions we examine in Project Inclusion are what we call “behavioural conditions” – conditions that control the everyday activities of people who are working in the grey economy, experiencing

**Behavioural conditions often do not properly reflect how the intersections of poverty, substance use, addiction, mental health, disability, and racism shape people's lives and daily activities. Our research found that while adhering to behavioural conditions is impossible for many of the people we interviewed, breaching them puts them at risk for criminal sanction.**

homelessness, and/or using substances.<sup>143</sup> Behavioural conditions often do not properly reflect how the intersections of poverty, substance use, mental health, disability, and racism shape people's lives and daily activities. Our research found that while adhering to behavioural conditions is impossible for many of the people we interviewed, breaching them puts them at risk for criminal sanction.

We will review how conditions are imposed on people and the philosophy behind reliance on conditions, by discussing each of these issues in turn.

In the course of writing this report, the federal government released *Bill C-75, An Act to amend the Criminal Code, the Youth Justice Act and other Acts and to make consequential amendments to other Acts (C-75)*.<sup>144</sup> Critique of C-75 has rolled in from many corners of the legal profession. While many aspects of C-75 will impact the lives of participants in Project Inclusion, we are focused here solely on the impact of behavioural conditions on participants.

In this section, we focus on sharing the stories of how various types of conditions are harming people. We will also touch briefly on how C-75,

which is not yet law, may or may not improve their circumstances.

### **WHERE DID ALL THE REAL CRIMINALS GO?**

It's easy to vilify someone labelled a criminal. We can all conjure the image of a criminal mastermind or a violent predator. Yet once we scratch the surface of the "criminal" label, we find something more complex and often more benign than villainous pop culture representations suggest. We find people making the best choices available to them while navigating a life impacted by poverty, trauma, racism, colonization, homelessness, ill health, and substance use.<sup>145</sup>

### **Pre-trial detention is now outpacing the rate of people in sentenced custody.**

During the course of our work, we spoke with a defence counsel, a lawyer who represents accused people and ensures they have a fair trial. She told us that after decades of this work, she rarely sees actual crime in these courts anymore. She just sees poverty. Her experience is

reflected in what Pivot sees every day. The other thing we saw is how behavioural conditions actually make certain behaviours criminal that otherwise wouldn't be in absence of a court order or police-imposed condition. For example, by making drinking alcohol or staying out late illegal through the imposition of conditions, the criminal justice machine is actually producing criminalization that otherwise would not exist. In one Senate report, these offences were described in part as ones that "rarely involve harm to a victim" and "do not involve behavior that is popularly considered 'criminal.'"<sup>146</sup>

Over the last decade, our justice system has made a "significant transition to the 'front end' of the justice process,"<sup>147</sup> meaning that police and courts are focusing more on how people are controlled and policed while they are on bail—before they are convicted of a crime. This has resulted in both an increased reliance on behavioural conditions and proactive enforcement of those conditions by police. As these behavioural control tactics have increased, so too have criminal charges for breaching behavioural conditions, which have become the most common criminal offence cycling through our courts. As a result, the rate of pre-trial detention is now outpacing the rate of people in sentenced custody.<sup>148</sup>

Research for Project Inclusion included extensive interviews with people whose bail and probation conditions have negatively impacted their lives. While bail and probation conditions are often justified by the courts as measures that maintain

143 Marie-Eve Sylvestre et al, *Red Zones and other Spatial Conditions of Release Imposed on Marginalized People in Vancouver* (University of Ottawa, Simon Fraser University, Université de Montréal: 2017) at 13 and 55.

144 1st Sess, 42nd Parl, 2018 (C-75).

145 Catherine Chesnay et al, "Taming Disorderly People One Ticket at a Time: The Penalization of Homelessness" (2013) 55:2 *Canadian Journal of Criminology and Criminal Justice* at 161 and Marianne Quirouette et al, "Conflict with the Law: Regulation & Homeless Youth Trajectories toward Stability" (2016) 31:3 *Canadian Journal of Law and Society* at 383.

146 Standing Senate Committee on Legal and Constitutional Affairs, *Delaying justice is denying justice: an urgent need to address lengthy court delays in Canada (Final Report)*, June 2017 at 139.

147 William Damon, *Spatial Tactics in Vancouver's Judicial System* (M.A. Geography, Simon Fraser University, Burnaby, 2014) [unpublished] at 22, online: <http://summit.sfu.ca/item/14152>.

148 Damon at 2, 22-26.

public safety, interviewees showed us how their conditions actively put them in harm's way.

Many Indigenous participants had been jailed for breaching a condition. One man explained the long criminal record he lives with because he has breached conditions. "It all started when I was 12 years old...I got like 52 breaches, a bunch of theft-unders [shoplifting] (102)," he said. He told us he accumulated this large quantity of breaches because of "no-drinking stipulations on me," in other words, behavioural conditions. Such conditions failed to recognize the lifetime of alcoholism he has struggled with, and how untenable a no-drinking condition is for this man. "I was alcoholic since I was, like, eight (102)," he told us. "Because my parents are." To impose a no-drinking condition on a person living with severe alcohol addiction is to ignore the complexities of substance use disorder, to ignore the life-threatening aspects of alcohol withdrawal when experienced with no supports, and, ultimately, to set a person up for failure.

People like this man, and so many others we heard from, are treated by the criminal justice system as prolific offenders. Their records expand year over year, breach after breach—often starting with things like petty theft for stealing food when they were hungry, or using drugs to dull the pain of homelessness, injury, or illness. These are the so-called "criminals" who now crowd our prisons.<sup>149</sup>

## WHEN EVERYDAY ACTIVITY BECOMES ILLEGAL

As a result of such conditions and an increasing focus on enforcement by police,<sup>150</sup> our local cells, courts, and provincial institutions are filled with people guilty of crimes that equate to "late for an appointment," "late for bed,"<sup>151</sup> "being there," and "forgetting their homework."<sup>152</sup> One report notes that up to 20% of all charges within the BC Provincial Court concern breach offences.<sup>153</sup>

**Our local cells, courts, and provincial institutions are filled with people guilty of crimes that equate to "late for an appointment," "late for bed," "being there," and "forgetting their homework."**

In Canada between 2001–2012, charges for failure to comply with a court order (often breaching a bail condition) increased by 58.3%.<sup>154</sup> Charges for breach of probation conditions increased 47.4%. During the same period, overall charges for all criminal offences increased only 4.1%.<sup>155</sup>

In BC the data "shows an even more important increase. While there has been an overall decrease of 19% in

the number of completed [criminal] cases between 2005–2006 and 2013–2014 in BC, the number of completed cases including at least one Administration of Justice Offence [breach] increased by 10.8% during the same period (from 13,010 cases in 2005–2006 to 14,413 cases in 2013–2014), representing now over 40% of all the cases."<sup>156</sup>

This increased focus on imposing and enforcing behavioral conditions coincides with a 17% decrease in the number of adults in the corrections system (in correctional institutions or under community supervision, for example on probation) between 2012–2013 and 2016/2017.<sup>157</sup> What this means is that we are seeing a drastic increase in the number of people charged with crimes for engaging in everyday behaviours such as going downtown, drinking, or coming home late during a time period where cases for substantive crimes actually legislated in the *Criminal Code* are decreasing. There are, to put it plainly, "fewer crimes being committed, and those that are committed are less violent than they were in the past."<sup>158</sup>

The increase in people arrested and convicted for breaching conditions may be linked to the "substantial increase in police resources and the general decline in crime levels" over the last many years, freeing police to engage in proactive enforcement using conditions as a means to control the behavior of people involved in the justice system.<sup>159</sup>

149 Marie-Eve Sylvestre et al. "Spatial Tactics in Criminal Courts and the Politics of Legal Technicalities" (2015) 47:5 *Antipode* at 1346.

150 Abby Dushman & Nicole Myers, *Set up to Fail: Bail and the Revolving Door of Pre-trial Detention* (Canadian Civil Liberties Association, 2014) at 62-63.

151 See example Sylvestre (2017) at 67.

152 D. Geoffrey Cowper, QC, *A Criminal Justice System for the 21st Century: Final Report to the Minister of Justice and Attorney General Honourable Shirley Bond* (BC Justice Reform Initiative, 2012) at 148.

153 D. Geoffrey Cowper, QC, *A Criminal Justice System for the 21st Century: Fourth Anniversary Update to the Minister of Justice and Attorney General Suzanne Anton*, QC (2016) at 8.

154 These figures are not adjusted for population growth.

155 Damon at 23-24.

156 Sylvestre (2017) at 30.

157 *Juristat, Adult and youth correctional statistics in Canada, 2016/2017* (Canadian Centre for Justice Statistics, 2018) Catalogue no 85-002-X at 3.

158 Dushman & Myers at 7.

159 Cowper (2012) at 279.

## How Conditions Work

Conditions can be imposed at different stages in the criminal justice process;

1. People who have not been found guilty of an offence and are not kept in custody pending trial may encounter one of two scenarios: they will either be released by a police officer or they will be brought into the court system to resolve the terms of their release (better known as "bail"):

- a. Release by a police officer

Police officers have legislated obligations regarding the release of persons they arrest with and without a warrant. Where there is no warrant for the arrest, and absent extenuating circumstances necessitating detention,<sup>160</sup> officers are to release people without arresting them or as soon as practicable after arrest. In doing so, officers<sup>161</sup> are required to release people with the least restrictions possible placed on their liberty. Officers may, however, in some circumstances impose conditions listed in the *Criminal Code* including: remain within the jurisdiction, abstain from communicating with the victim, deposit one's passport, inform police of a change in address, abstain from drugs or alcohol, and any other condition that the officer in charge considers necessary to ensure the safety and security of any victim or witness to the offence. Officers do not, however, have unfettered discretion to impose other conditions.<sup>162</sup> Police officer-imposed conditions are immediately enforceable, even though they have not been endorsed by the court or reviewed by a prosecutor, and even before a decision has been made as to whether or not any charges will be laid against the individual. People must either wait until their first court appearance, which can be months away, to request changes to these conditions or they have to make a request to the court to appear at an earlier date to vary their conditions.

- b. Interim release or "bail"

People who are not released by police will not be brought before the court to resolve the terms of their release or will negotiate their release by consent with a prosecutor (Crown). Both are forms of judicial interim release (bail). In most circumstances, the court is required to release people unconditionally unless the Crown can demonstrate that detention is justified or that imposing conditions on release is reasonable.<sup>163</sup> Courts have broader discretion than police to impose conditions including: remain within the jurisdiction, do

not communicate with the victim or witness, deposit passport, inform police of a change in address, refrain from going to any specified place, report at a specified time. Courts may furthermore impose conditions necessary to ensure the safety and security of any victim or witness or other reasonable conditions specified in the order as the justice considers desirable. Despite the discretion given to courts, they are required to release people on the least restrictive conditions available and Crown must demonstrate the need for each restriction. These safeguards are intended to ensure that people are released on the least restrictive conditions reasonable in the circumstance<sup>164</sup> and reflect fundamental *Charter* rights to reasonable bail and the presumption of innocence.<sup>165</sup>

There are three purposes to imposing pre-trial conditions: to ensure attendance at trial; to protect public safety; or, to maintain confidence in the administration of justice.

People subject to conditions upon release by police or on bail have not been convicted of any offence and conditions are not intended to be imposed in order to rehabilitate or punish people.<sup>166</sup>

For ease of understanding, we will refer to both police-imposed conditions and court-imposed conditions as "bail" and will differentiate between police-imposed and court-imposed conditions only where necessary.

2. People who have been found guilty of an offence may have conditions imposed on them where they are sentenced to probation or conditional sentence orders, or when exiting prison on parole.

- a. Probation

Probation is a criminal sentence that is served in the community and is rehabilitative in nature. Conditions imposed, in addition to legislatively required conditions,<sup>167</sup> must "be reasonable and aim at protecting the society and facilitating the offender's reintegration. They cannot be primarily punitive."<sup>168</sup> Further, there must be "a nexus between the offender, the protection of the community, and his reintegration into the community."<sup>169</sup>

- b. Conditional sentence orders and parole

A conditional sentence order (CSO) is a sentence of imprisonment that a person is ordered to carry out in

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<sup>160</sup> People who are not released by police will not be brought

<sup>161</sup> *Criminal Code*, ss 496, 497, 498, 503.

<sup>162</sup> See also *Deshman & Myers* at 15.

<sup>163</sup> *Criminal Code*, s 515, *R. v. Antic*, 2017 SCC 27, at paras 19, 67 [*Antic*]. See also *R v Omeasoo*, 2013 ABPC 328, at para 30 [*Omeasoo*].

<sup>164</sup> *Criminal Code*, s 503 and *Antic* at para 67.

<sup>165</sup> *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 1, ss 11(d) and 11(e)* [*Charter*].

<sup>166</sup> See *Omeasoo* at para 31.

<sup>167</sup> These include "keep the peace and be of good behaviour," do not communicate with victims or witnesses or go to any specific place except with consent of the individual or order of the court, appear before the court as required, notify the court of changes in name, address or employment. See example *Criminal Code* s 732.1.

<sup>168</sup> *Sylvestre* (2017) at 21.

<sup>169</sup> *Sylvestre* (2017) at 21.

the community, commonly referred to as “house arrest.” Because this is imprisonment within the community CSOs do include the imposition of terms that are punitive and limit the liberty of the person.<sup>170</sup> Parole is the process by which people can be released from imprisonment prior to the completion of their sentence.

*\*Project Inclusion participants did not talk about CSOs or parole. Our analysis of the impact of conditions generally does not relate to CSOs or parole.*

3. There are also conditions to protect against the commission of serious crimes, such as personal injuries to family members or sexual offences.<sup>171</sup> These were not the types of conditions that Project Inclusion participants talked about and our analysis of the impact of conditions does not

relate to those imposed in order to protect family members from violence or to protect the public from people likely to commit sexual offences, etc.

The conditions that Project Inclusion participants talked about were almost exclusively bail and probation conditions.

Regardless of the mechanism by which conditions are imposed on an individual, our analysis is limited to conditions that are harmful or ill-advised on the basis of addiction, limit access to necessary health services, are incongruous to someone’s social or housing status, or are incompatible with the real needs and circumstances of the individual, resulting in criminalization for behaviours that are necessary, inevitable, or reasonable in the circumstance.

170 Sylvestre (2017) at 21.

171 See Criminal Code ss 810-810.2.

### Book Law Versus Street Justice

Bail conditions are to be imposed only where necessary and, where necessary, only to address concerns related to releasing a person on bail, such as ensuring attendance in court, public safety, and confidence in the administration of justice.<sup>172</sup> Probation conditions are imposed to influence the future behaviour of an individual and probation is intended to be “a rehabilitative sentencing tool...It is not considered punitive in nature.”<sup>173</sup>

In relation to court bail, the Supreme Court of Canada (SCC) has recently reiterated in *R v Antic* the requirement that people be released unconditionally, absent justification for every condition to be imposed. Since the judgement in 2017, there remains uncertainty as to the effect

this is having on day-to-day judicial practice. Regarding consent-based court bail,<sup>174</sup> the SCC has dictated that these same principles should guide the actions of Crown in cases where conditions are imposed by consent. Due to difficulties in tracking trends in consent-based court bail over time, there has been little opportunity to systemically assess whether this has had an impact on the actions of Crown in seeking bail with conditions by consent.<sup>175</sup>

Despite these legislated and common law limitations on the purposes and use of conditions under both bail and probation, the imposition of conditions on some community members remains a prevalent issue, for a variety of reasons discussed below. For example, between 2005 and 2012

in the Vancouver Provincial Court alone, 96.9% of all court-imposed bail orders included conditions and 78.6% had between two and eight conditions.<sup>176</sup> Across BC in 2016/2017, red zones and abstinence conditions were amongst the top ten conditions imposed on people released on bail. Red zones were imposed in 58% of bail orders (25,118 orders) and abstinence conditions were imposed in 38% of bail orders (16,246).<sup>177</sup>

The heavy use and reported punitive effects and harms associated with these conditions have led to multiple recent efforts by academics and civil liberties advocates to bring these issues to light.<sup>178</sup> Conditions have also been the subject of analysis by various entities of government.<sup>179</sup> Despite these critiques and in the face of the significant impacts on

172 *Antic* at para 67 (j) and Sylvestre (2017) at 17. See also Criminal Code subsection 515(10).

173 *R v Rawn*, 2012 ONCA 487 at para 35. See also *R v Goeujon*, 2006 BCCA 261 (CanLII) at para 49 and *R v Shoker*, 2006 SCC 44 at para 10.

174 These are conditions that both parties agree to; however, little consideration is given to the power dynamics between Crown or police and a person facing arrest or detention. Those conditions make true consent illusory in many cases.

175 *Antic* at para 44.

176 Sylvestre (2017) at 43. This includes both Drug Treatment Court and Downtown Community Court projects.

177 *Juristat* at 10.

178 See Sylvestre (2017); Damon; Deshman & Myers; and John Howard Society, *Reasonable Bail?* (Toronto: John Howard Society, 2013). Note that the Sylvestre (2017) report situates their analysis geographically, providing considerable social context for the Downtown Eastside of Vancouver. While this analysis is accurate, the issues of poverty, addiction, homelessness, vulnerability to HIV and Hepatitis C are not geographic issues – they are social issues. Participants in Project Inclusion face the same societally imposed social context as people in the Downtown Eastside; however, many do so in smaller communities where they are less visible to policy makers due to their numbers and often have even less access to services and face stricter, more oppressive police- and court-imposed conditions.

179 See Cheryl Marie Webster, “Broken Bail” in *Canada: How We Might Go About Fixing It* (Research and Statistics Division, Department of Justice Canada, 2015); Cowper (2012); Cowper (2016); and Standing Senate Committee on Legal and Constitutional Affairs at 134, 138-140.

**For some participants, agreeing to unnecessary and unmanageable conditions has been the only way to avoid jail.**

liberty and health, little seems to have changed.

There remains considerable indication that conditions are, at times, being imposed for improper purposes (or purposes beyond their lawful scope), or are resulting in consequences that are contrary to their stated purpose. For example, some bail conditions have been assessed as being geared towards so-called “character modification or improvement”<sup>180</sup> rather than public safety or attendance in court. This motivation goes beyond the purposes of bail.

Additionally, as we see clearly in our data, conditions can send people into a cycle of arrests for breaches of their conditions, even where they have not been, and may never be, convicted of an underlying offence. Further, probation conditions are increasingly placing people back into the criminal justice system rather than serving their intended purpose, which is to support people’s reintegration into our communities.

Outside of the strictures of court-imposed conditions, it seems clear that police continue to leverage their ability to arrest as a means of imposing conditions on people that are not always necessary, transparent, or warranted. For some participants, agreeing to unnecessary and unmanageable conditions has been the only way to avoid jail.

They automatically red-zoned me from the area when they arrested me. They basically said it was my choice whether I was going to walk or be jailed...this is the RCMP—and that’s how the red-zoning came about, whether I signed that paper to be red-zoned or not. If I didn’t sign it I would go to jail. – 427

The law requires that anyone who refuses to sign such police-imposed conditions and is arrested must be brought before the court within 24

hours of their arrest to determine if they will be further detained or released. Based on what we heard from participants, however, many people will sign conditions that are unreasonable to avoid even 24 hours in custody, due to fears of withdrawal, losing belongings on the street, or losing income, amongst many others. Other people may sign because they fear that they will be detained much longer once brought into custody. Either way, participants told us that they did not feel they had a choice when presented with police-imposed conditions.

Their experience is supported by other literature that analyses the bail system<sup>181</sup> and by local defence counsel in the Lower Mainland, who reported to us that some police officers release people on highly onerous conditions that a judge would be very unlikely to impose and then schedule an accused person’s first court appearance months in the future. This means people are subject to overly harsh conditions for a significant period of time before even attending court where a judge may vary their conditions or before requesting a review by a prosecutor—an onerous mechanism that we did not hear was an effective tool for people affected. Moreover, if Crown later decides not to approve charges, people will have spent months subject to those conditions without charges ever being laid against them.

Further, sometimes these police-imposed conditions are written down as part of an appearance notice, as described above. Sometimes they are only verbal warnings. These verbal warnings are not legally enforceable, but we heard that people often feel bound by them in order to avoid harassment by police, or that they were unsure whether they had received a warning or an enforceable condition.

All of this results in uncertainty and fear for people who do not know

<sup>180</sup> *Deshman & Myers at 50. See also Sylvestre (2017) at 32; Cowper (2012) at 149; and R v Reid, 1999 BCPC 12 at para 58.*

<sup>181</sup> *See Deshman & Myers at 24.*





what conditions have been imposed on them. Indeed, many Project Inclusion participants shared that, due to the fear and stress they were experiencing while interacting with the police, they could not keep track of the conditions imposed upon them.

The conditions process can be likened to contract law. Think about the last time you signed a contract without reading it in full because you were in a rush, or desperately needed the service that was being offered. Now, consider: what would you be

willing to sign if you were taken into jail cells, and signing an agreement was the only way out?

In both police-bail and consent-based court-bail, both police and Crown hold institutional authority that fundamentally alters the nature of "consent" or "voluntary agreements." As a result, they are able, whether intentionally or unintentionally, to impose unreasonable and unjustifiable conditions on people who will agree to nearly anything in order to secure their release,

regardless of what the legislation or case law dictates.

These so-called "consent" arrangements and police bail conditions are rarely subject to in-depth scrutiny by courts. They are not tracked in ways that would allow for a quantitative assessment. The experiences of people subject to these decisions, however, make clear that people are being set up to fail.

During the interview process for this study, we sat with people as they described substance use withdrawal—the sweating, shaking, insomnia, diarrhea, and debilitating pain. Some described it as feeling sicker than the worst flu imaginable. The experience is torturous; the drive to feel better is overwhelming. That is the context in which many people are asked to consent to many of these conditions.

One man we spoke with described signing his name on a set of bail conditions. As he signed, he knew he'd been set up for failure. But it was his only choice in the moment because of the pain and suffering he was experiencing due to opioid withdrawal and because he knew this was his opportunity to avoid another night in custody. He, like many others, signed whatever was put in front of him; in other words, he made a perfunctory agreement to the conditions, all while knowing that he was making promises he couldn't keep. When asked if he meant it when he promised to stay abstinent or go to treatment, he responded, "No. I just wanted out to go get better (63)."

The complex set of harmful outcomes, which we explore further below, mandates that Crown and police must be held to an impeccable standard in determining what, if any, conditions to offer someone as a consent release or to impose instead of arresting someone.

Crown and police need to be "wary of the detainee's *pro forma* [perfunctory] agreement to abide by an abstinence clause (whether

**Of 1,854 reported overdose deaths in BC between January 2016 and July 2017, based on Coroner data publicly available as of April 2018, 18% of people died while under community corrections supervision (for example, they were on probation in the community) or within 30 days of release from a correctional facility.**

realistic or wholly unrealistic) simply to secure his or her immediate release from custody.<sup>182</sup> This is equally true of other conditions.

The fact that people give perfunctory agreements is not evidence of personal shortcomings such as dishonesty or a lack of trustworthiness. These widely accepted stereotypes about people involved with the criminal justice system prevent us, as a society, from taking a closer look at the systemic barriers that colour their lives. In the moment of signing one's name on a set of conditions that they cannot follow, perfunctory agreements are less about the signer actively disobeying the law and more about a human thrust to make choices to best protect one's health and safety while managing chronic substance use.

For police and the Crown, imposing stricter conditions than necessary or failing to acknowledge an individual's social circumstances at this stage means making someone choose between jail or conditions that set

them up to fail—which is, in reality, often no real choice at all.

### **Even Short-Term Detention Can Have Lasting Negative Consequences**

Spending just a few days in jail for breaching a condition means losing your liberty. It can also mean being subjected to other harms associated with incarceration. The fact that detention related to assessing bail or breaching conditions may be short-term, anywhere from a day to a few months, does not alleviate the harms of such detentions nor does it justify the over-use or over-policing of conditions.

### **Overdose Risk and Lack of Harm Reduction**

Short-term jail stays can mean going through viciously painful withdrawal and increasing one's risk of overdosing upon release. Rates and timing of withdrawal range according to the kind of substance being used and the circumstances of the individual. For fast-acting opiates (heroin), onset of withdrawal can

range from 8-24 hours after last use; for long-acting opioids (methadone), 12-48 hours after last use.<sup>183</sup> Thus even a day or a few days in custody can send a person into painful, sometimes debilitating withdrawal or death.<sup>184</sup> For pregnant women, opioid withdrawal can cause miscarriage or premature delivery.<sup>185</sup>

Also, the correlation between incarceration and risk of overdose is distressingly strong. This is particularly clear in the weeks following discharge.<sup>186</sup> Of 1,854 reported overdose deaths in BC between January 2016 and July 2017, based on Coroner data publicly available as of April 2018, 18% of people died while under community corrections supervision (for example, they were on probation in the community) or within 30 days of release from a correctional facility.<sup>187</sup>

One 2016 Toronto-based study found that people are at almost 12 times greater risk of a fatal overdose after they are released from custody compared to the rest of the Ontario population.

182 Omeasoo at para 40. See also Webster at 7.

183 World Health Organization, *Clinical Guidelines for withdrawal management and treatment of drug dependence in closed settings*. (Geneva: World Health Organization; 2009) at 34, online: [http://www.wpro.who.int/publications/docs/ClinicalGuidelines\\_forweb.pdf?ua=1](http://www.wpro.who.int/publications/docs/ClinicalGuidelines_forweb.pdf?ua=1).

184 Shane Darke, Sarah Larney, & Michael Farrell, "Yes, people can die from opiate withdrawal" (2017) 112:2 *Addiction* at 199. Notably, while we've focused largely on opioid withdrawal, alcohol withdrawal is also common and can be very dangerous, even deadly. For a person with alcohol dependence, symptoms of withdrawal can peak at 24-36 hours, and later symptoms include seizures and delirium tremens, which can be deadly. See United States Federal Bureau of Prisons, *Detoxification of Chemically Dependent Inmates, Federal Bureau of Prisons Clinical Guidance* (Washington DC: Federal Bureau of Prisons, 2014) at 5, online: <https://www.bop.gov/resources/pdfs/detoxification.pdf>.

185 World Health Organization, at 34.

186 Elizabeth Merrall et al, "Meta-analysis of drug-related deaths soon after release from prison" (2010) 105:9 *Addiction* at 1545; Ingrid Binswanger, "Release from Prison – A high risk of death for former inmates" (2007) 356:2 *N Engl J Med* at 157; Farrell M., Marsden J., "Acute risk of drug-related death among newly released prisoners in England and Wales" (2008) 103:2 *Addiction* at 251; Kariminia, A. et al, "Extreme cause-specific mortality in a cohort of adult prisoners—1988 to 2002: a data linkage study" (2007) 36:2 *Int J Epidemiol* at 310.

187 Report to the Chief Coroner of British Columbia, BC Coroners Services Death Review Panel: *A Review of Illicit Drug Overdoses (April 5, 2018)* at 19, online: <https://bit.ly/2xE3LTK>.

Being in a correctional institution is also an independent driver of both HIV and HCV. For example, the HCV infection rate inside federal institutions<sup>188</sup> is between 20 and 50 times higher than in the general population.<sup>189</sup> This is no coincidence. One study focused on Vancouver's Downtown Eastside showed that incarceration doubled the probability that a person would engage in needle sharing.<sup>190</sup> This risk disproportionately impacts women<sup>191</sup> and impacts Indigenous women more than any other group of people.<sup>192</sup>

Available data on HIV and HCV risks in correctional institutions often focuses on federal facilities, where people spend two years or more. Data on this issue is less available for provincial correctional institutions. This may be due in part to the short length of time that people are usually detained, ranging from a few days to a few months. Provincial institutions and local jails, however, are where people who rely on injection drugs are more frequently detained. For example, in 2017, Diane Rothon, Medical Director for British Columbia Corrections, told the *National Observer* that about one-third of prisoners in provincial institutions are now on some kind of opioid treatment program and that there is still "a big unmet need for drug treatment in jails."<sup>193</sup> There is a need for further focus on the experiences of people cycling in and out of provincial institutions and local cells, and on their relative risk of contracting HIV and HCV infection

as a result of their short-term incarceration.

### **Any Incarceration Leads to Stigma**

Beyond the significant harm to the health and security of people cycling in and out of our correctional institutions, these short-term bouts of incarceration and criminalization drive stigma against people, decreasing their resources to reintegrate into communities.

Of a sample of employers canvassed in Ontario in 2014, close to half of the respondents reported negative and stigmatizing characterizations of people with criminal records, regardless of the contents. Employers described people with criminal records as "less reliable" and posing a "greater risk/liability" compared to other workers. The majority, 61%, stated that they had never knowingly hired an individual with a police record.<sup>194</sup>

For people experiencing poverty, homelessness, or unemployment, the stigma associated with having a police record can create a vicious cycle that further ensnares them in poverty.

### **Short-Term Jail and Homelessness**

Short-term incarceration can mean losing income, housing, or employment.<sup>195</sup> For people we heard from who are already experiencing homelessness, time in jail can often mean having all of their possessions confiscated, stolen, or destroyed. It

can also mean leaving a loved one alone on the street. People who live on the streets rarely have access to secure spaces in which to store their belongings. They rely heavily on their own ability to protect their possessions, ranging from tents and clothing to irreplaceable personal items to medications. This requires them to be near their belongings at all times or to rely on friends and family to watch over them. These survival tactics are stymied when people are incarcerated even for a day or two, which can result in losing all of their possessions, including their shelter.

### **Why We Over-Rely on Conditions**

Here we provide a cursory review of the philosophy behind reliance on conditions in BC and Canada more broadly. In doing so, we have focused primarily on area restrictions, better known as red zones. Much of the existing literature on conditions relates to red zone conditions and how they control people's access to space. Other conditions, like prohibitions on drug paraphernalia, remain largely unstudied.

### **Stigma**

The overuse of conditions can be traced to stigma against people who use substances, people living in poverty and homelessness, and people engaging in sex work.

In 1979, the BC Supreme Court upheld red zoning sex workers out of Vancouver's West End due

188 *Federal correctional institutions are used to imprison people sentenced to a jail term of two years or more. Provincial institutions detain people prior to being convicted or sentenced, and people sentenced to less than two years in jail.*

189 *Correctional Service of Canada Needle Exchange Program Working Group, Needle Exchange Programs (Correctional Service of Canada, 1999), at 3.*

190 *M-J Milloy et al, "Incarceration is Associated with used Syringe Lending Among Active Injection Drug Users with Detectable Plasma HIV-1 RNA: a longitudinal analysis" (2013) 13 BMC Infectious Diseases at 565-575.*

191 *Peter M Ford et al, "Voluntary Anonymous Linked Study of the Prevalence of HIV Infection and Hepatitis C Among Inmates in a Canadian Federal Penitentiary for Women" (1995) 153 CMAJ at 1605-1608.*

192 *Correctional Service of Canada, Summary of Emerging Findings from the 2007 National Inmate Infectious Diseases and Risk-Behaviour Survey (Correctional Service of Canada, 2010) at 51.*

193 *Paul Webster, "Saving lives by giving drugs to opioid-addicted prisoners" (National Observer June 23, 2017), online: <http://paulcwebster.com/drug-politics/saving-lives-by-giving-drugs-to-oid-addicted-prisoners/>.*

194 *John Howard Society, Help Wanted: Reducing the Barriers to Youth With Criminal Records, (Toronto: John Howard Society, 2014), online: <http://johnhoward.on.ca/wp-content/uploads/2014/07/johnhoward-ontario-help-wanted.pdf>.*

195 See e.g. *Deshman & Myers at 10, 59; Sylvestre (2017) at 59; Damon at 27; Standing Senate Committee on Legal and Constitutional Affairs at 147.*

to stigmatizing fear that allowing them to stay in the neighbourhood would mean they would “accost any and all males.”<sup>196</sup> Very little has changed over the past 40 years. In a 2017 report on the use of red zones, perspectives of various legal actors (judges, crown, police—the very group of people empowered to impose conditions) reflected ongoing societal stigma facing people who rely on public space and people who use substances.

For example, one justice system official referred to a local community park as a place where “no pro-social activities...happen.” Characterizing the park as a site of “drug use and drug dealing”<sup>197</sup> seemed to justify routinely red zoning people from it. Likewise, people talked about the need to keep people out of a neighbouring geographic area because “there are schools, daycares...like, it is a community.”<sup>198</sup> These stereotypes devalue low-income community members and dismiss the importance of public spaces as places of community, harm reduction, and social inclusion. This line of thinking promotes a false, divisive dichotomy between low-income people and the broader community, as though they cannot both be valid groups sharing the same space.

These perceptions, held by those empowered to impose conditions, are stark examples of the depth of misunderstanding underlying

the overuse and non-discerning application of conditions such as red zones, which will be discussed in detail below.

We know that displacing people who are homeless, use substances, and engage in sex work puts their lives at risk. When people who are homeless are displaced from their communities, they are put at increased risk of assault and have decreased access to the services they rely upon.<sup>199</sup> When people who use drugs fear criminal sanction, they risk overdosing “alone and far from medical help.”<sup>200</sup> When sex workers are displaced, their lives are put in danger because their displacement means moving their work to more dangerous environments, farther from support networks and ready help.<sup>201</sup>

We have seen the chilling consequences of such displacement for sex workers play out in Vancouver’s Downtown Eastside. After sex workers were displaced from the rapidly gentrifying West End of Vancouver between 1975 and 1985, partially through the imposition of red zones on individuals engaged in sex work, they were left with few options but to work in poorly lit industrial zones in the Downtown Eastside.<sup>202</sup> There, 67 women engaged in sex work disappeared from the area and were murdered by convicted serial killer Robert Pickton.<sup>203</sup> These are just some of the myriad ways in which stigma against

people living vulnerably becomes more harmful than benign dislike; it becomes a mechanism of law that puts lives and safety in danger.

Stigma also drives historical and contemporary attempts to control or render those labelled as “homeless,” “prostitute,” “addict,” or “drunkard” invisible. Laws that attempt to control the location, behaviour, and visibility of people who lack what is conventionally understood as legitimate employment or housing have a long and complex history. Despite significant changes in the language and nature of these laws, there are common threads that can be followed through to today’s laws, including the use of conditions. Between the 16th and 18th centuries, criminalizing so-called “vagrants” was common and extensive. In 16th century England, for example, the most common punishments for vagrants included repatriation to one’s parish;<sup>204</sup> essentially being displaced and banished, or, in current terms, red-zoned. Such laws proved ineffective, merely resulting in the passing of “vagrants” from parish to parish. Despite this, we continue to see the reproduction of these very practices and harms in our contemporary justice system.<sup>205</sup>

One need only look at Canada’s history with alcohol and drug prohibition to see how stigma, colonization, and racism continue to impact how our laws treat people who use substances. For example,

196 *R v Deuffoure*, 1979 CanLII 402 (BCSC) at para 5.

197 *Sylvestre* (2017) at 55.

198 *Sylvestre* (2017) at 55.

199 *Abbotsford (City) v Shantz*, 2015 BCSC 1909 at paras 69, 71, 213, 219 [Shantz].

200 *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 10 [PHS]. See also Ryan McNeil et al, “Area restrictions, risk, harm and health care access among people who use drugs in Vancouver, Canada: A spatially oriented qualitative study” (2015) 35 *Health Place* at 70.

201 *Canada (Attorney General) v Beford*, 2013 SCC 72 at paras 70, 155 [Bedford]. See also K. Shannon et al, “Structural and environmental barriers to condom use negotiation with clients among female sex workers: implications for HIV-prevention strategies and policy” (2009) 99:4 *American Journal of Public Health* at 659; BDL Marshall et al., “Pathways to HIV risk and vulnerability among lesbian, gay, bisexual, and transgendered methamphetamine users: a multi-cohort gender-based analysis” (2011) 11:1 *BMC Public Health* at 20.

202 Becki Ross, “Sex and (Evacuation from) the City: The Moral and Legal Regulation of Sex Workers in Vancouver’s West End, 1975-1985” (2010) 13:2 *Sexualities* at 197-211.

203 Wally T Oppal, CQ, “Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary” at 9-11 & “Forsaken: The Report of the Missing Women Commission of Inquiry, Volume 1” *Missing Women Commission of Inquiry* (19 November 2012) at 36-73.

204 *Poor Relief Act 1662*, 14 Car 2 c 12, better known as the 1662 Settlement and Removal Act.

205 See e.g. Reid at para 83 on “banishment” from community.

alcohol prohibition against anyone labelled a “Status Indian” began in 1868, almost 40 years before alcohol prohibition was imposed on others in BC.<sup>206</sup>

**Even as we’ve moved away from alcohol prohibition, we continue to see how Indigenous people who use alcohol are over-policed and over-incarcerated. We also maintain, to this day, prohibitions on other substances, leading to the heavy-handed management and control of the bodies of people who use substances, especially where substance use intersects with poverty and race.**

Drug prohibition began in Canada in 1908 with the passage of the *Opium Act*, which was deeply informed by anti-Chinese racism. It developed into a fulsome scheme of prohibition in relation to many substances and activities throughout the 20th century.<sup>207</sup>

Even as we have moved away from alcohol prohibition, we continue to see how Indigenous people who use alcohol are over-policed and over-incarcerated. We also maintain, to this day, prohibitions

on other substances, leading to the heavy-handed management and control of the bodies of people who use substances, especially where substance use intersects with poverty and racialization. This includes the imposition and policing of conditions such as abstinence from alcohol or drugs and prohibitions on carrying drug paraphernalia.

### **Bail Reform and the Move to Rabble-Management Policing**

Tracing stigma against people who have long been labelled as societal outsiders and policed throughout history reveals how the bodies of certain people continue to be policed and criminalized. In 1972, Canada passed the *Bail Reform Act*, SC 1970-71-72, c 37, with the goal of curtailing the “vast numbers of people [who] were being unnecessarily detained prior to trial.”<sup>208</sup>

What has been observed since then, however, is a failure to adequately account for people’s experiences of poverty, racism, colonization, disability, homelessness, and trauma in making determinations as to who will get bail and on what terms. This failure increases barriers to being released on bail for people with mental health concerns or people who use substances, people living in poverty or with homelessness, and Indigenous people. When members of these groups are released, many are disproportionately burdened with court-imposed behavioral conditions.<sup>209</sup>

Since bail reform in the 1970s, the criminal justice system has gradually moved towards a “rabble-management” model of policing,

bail, and sentencing. These decisions rely heavily on assessment of the risk posed by a given individual. How we define risk, however, can itself be rooted in stigma, meaning that benign activities like sleeping in a doorway, personal activities like taking substances, or poverty-related income generation, like street-based sex work, become seen as inherently risky or dangerous. The people engaged in such “risky” activities are then labelled as “rabble,” and policing is directed towards the management of even their everyday behaviours.<sup>210</sup>

Rabble-management policing has led to equating minor offences, like breaches of conditions, with an actual risk or danger to public safety; studies of court-imposed conditions and breaches suggests this is often a false equivalency.<sup>211</sup>

A 2012 review of BC’s criminal justice system posited that many conditions may be “unrealistic,” yet police aggressively enforce them nonetheless.<sup>212</sup> A 2016 update to that analysis found that increases in breach offences continue, pointing to the need for a “system-wide response” to this trend.<sup>213</sup>

The increase in rabble-management policing is reflected in the experiences of Project Inclusion participants. Many interviewees reported leniency and understanding on the part of the probation officers or bail supervisors, while noting aggressive enforcement, surveillance, and harassment by police.

206 Susan Boyd, Connie Carter & Donald MacPherson, *More Harm than Good: Drug Policy in Canada* (Fernwood Publishing, 2016) at 17.

207 Boyd at chapter 3.

208 Dushman & Myers at 4.

209 See Dushman & Myers at 72-79.

210 For more on policing as a means of controlling marginalized populations, see Kevin Fitzpatrick, & Brad Myrystol, “The Jailing of America’s Homeless: Evaluating the Rabble Management Thesis” (2011) 57:2 *Crime & Delinquency* at 271 and Chesnay (2013).

211 Sylvestre (2017) at 61.

212 Cowper (2012) at 27.

213 Cowper (2012) at 27.

## Service Providers Speak Out

As part of Project Inclusion research, we conducted an online survey and heard from over 100 service providers who work with people experiencing homelessness, poverty, and violence across BC. Some of the people they work with use substances and some have significant health issues.

Service providers had much to tell us about behavioural conditions. The following are excerpts from some of the online survey responses we received.

### ON RED ZONE CONDITIONS

- “Red zoning is a common event in our community. Many clients are unable to access health and social services in the downtown core.”
- “Red zoning has a huge impact on our client base—often cutting off our participants from community supports they have come to rely on.”
- “Red zones can prohibit people from accessing health and social services.”
- “I do not find red zoning to be beneficial. While I understand the logic in throttling access to certain community areas, I see my clients either thwarting the order and ending up in more trouble, or...suddenly...caught in a spiral of risk behaviours due to a disconnect from the services they depend on.”

### ON ABSTINENCE CONDITIONS

- “Clients being incarcerated for breach of probation when the breach is alcohol—in such cases incarceration further stigmatizes the client and adds to the instability in many areas of their lives.”

- “Conditions on release are a huge problem: ‘abstain from drugs and alcohol, et cetera.’ This is an impossible task and results in long periods of incarceration for people with substance use problems.”
- “People with addictions have been put on sobriety conditions, which is a setup for failure and has resulted as such. These clients would have been jailed if it weren’t for [the] tireless advocacy work of staff.”
- “The sobriety conditions are a huge stumbling block... Indigenous men and women are the most frequently profiled.”
- “Sobriety conditions seem ridiculous as people are addicted and can’t just stop because the RCMP tell them to...there is trauma and all sorts of reasons people use and having these conditions does not help people!”
- “Sobriety conditions may result in women not calling for help when it is needed. There have been many circumstances of a lack of understanding by law enforcement regarding the cycle of violence and/or victim blaming language when women report abuse or violence—including sexualized violence.”

### ON NO-CARRY DRUG PARAPHERNALIA CONDITIONS

- “Participants who are forbidden from carrying paraphernalia have often not curbed use, but instead are resistant to accepting harm reduction supplies on the chance they’ll be randomly stopped.”
- “Prohibitions on carrying drug paraphernalia has led to situations where clients we are aware are involved in active addiction refuse harm reduction supplies.”

## WHAT RESULTS FROM BEHAVIOURAL CONDITIONS: AN ONGOING CYCLE OF CRIMINALIZATION

Sitting on the side of the road, watching the police roll by and request someone’s ID, we waited for a bylaw officers to leave so we could continue interviewing people for Project Inclusion. Watching this unfold, we reflected upon how an individual’s spiral into criminalization can happen over many years, or sometimes, just a matter of months. One man in his thirties told us he had been living outside for just over a year, but before that, he owned his own house. Things changed drastically when, as he described it, “I got into heroin. My wife was stealing my painkillers and the pharmacy

called my doctor and said I was abusing my pain meds and they cut me off. A week later I was shooting heroin (396).”

We chatted for almost two hours as he talked about his job, his family, his home, his workplace injury, and the car accident that almost killed him many years ago. He was in a coma for a month. Today, he still struggles with “memory concentration, cognition, comprehension—all sorts of things,” he said. He was on a pain management plan until his doctor cut him off his medications just over a year ago, sending him to the streets to find the opioids he relies on. Since then, he had lost his home, spent his first Christmas without his children,

and overdosed six times in just one day.

Over the last year he had become known in his community as a “helper,” a “babysitter,” and as “Narcen Man” for his dedication to carrying harm reduction supplies and administering naloxone to those who are overdosing. Then he picked up his first criminal charge. He was arrested for drug possession while he was using in a park; it was the first time he’d been in trouble with the law in over a decade and a half.

With that first charge came a host of conditions that, within just a year, sent him into a cycle of criminal charges. As he traced the red zone out on a map, he said because he was picked up on a drug charge he

**The red zone, he said, is “where all your services are. That’s where your food is, that’s where your doctors are, that’s where mental health is, that’s where the library is, that’s where your harm reduction is.” In other words, “That’s where basically any kind of service for street people or homeless or low income [people], that’s where it is.” – 396**

was “automatically red-zoned” from the entire downtown, a massive geographic area. From one drug charge, the red zone summarily cut him off from connections that were, and are, essential to his wellness. The red zone, he said, is “where all your services are. That’s where your food is, that’s where your doctors are, that’s where mental health is, that’s where the library is, that’s where your harm reduction is.” In other words, “That’s where basically any kind of service for street people or homeless or low income [people], that’s where it is.”

This red zone, like many others we encountered through Project Inclusion participants, is not tied to a specific safety concern or the needs of the victim of any crime. It is a general area restriction imposed on an individual because he uses drugs and he doesn’t have a home in which to use them in privacy.

On top of his red zone, the drug charge meant that he was ordered not to carry drug paraphernalia—clean syringes and other harm reduction equipment—a condition that he ignored entirely because of how important it is to him to make sure people have clean gear. He was also ordered to abstain from using drugs, an impossible task for a man managing a complex pain condition and addiction without proper medical care.

When asked if he told the judge it would be impossible for him to abstain from using drugs because of his pain and his addiction, he replied, “Yeah, they don’t care.”

In just one year, he’s gone from homeowner to spending 62 days in jail after picking up over a dozen charges. A few of those charges are for possessing the drugs he uses to manage his pain. Notably, however, most of the charges are for breaching his red zone. He continues to enter this red zone to get the services he needs and because “the only people I know [are] down here.”

For this man, being isolated from his community of friends triggers anxiety, which negatively impacts all aspects of his life. “I got bad anxiety, social anxiety now from the accident, from being isolated for so long,” he said.

Despite the red zone, he kept going to the place he knew best, where he could access help and find friends during one of the worst years of his life. As a result, he’s now caught in a web of criminal convictions that risk dragging him further away from his family and the life he wants to return to.

**In just one year, he’s gone from homeowner to spending 62 days in jail after picking up over a dozen charges. A few of those charges are for possessing the drugs he uses to manage his pain. Notably, however, most of the charges are for breaching his red zone. He continues to enter this red zone to get the services he needs and because “the only people I know [are] down here.” – 396**

His experience exemplifies how conditions have “exclusionary and criminalizing effects, expanding the boundaries of the criminal law to criminalize mundane behaviours and regulate public space primarily in areas of entrenched poverty.”<sup>214</sup>

Many other people told us about the never-ending cycle of breaches. One participant succinctly described the end result as “spending more time in jail for breaches than anything to do with the charge to begin with (304).”

<sup>214</sup> Damon at 22.

Other participants expressed exasperation at the impact of behavioural conditions prior to even finding out if they were being prosecuted for an alleged offence. They could, after all, end up having the charges dropped for their original offence “by the time I get to court (208),” as one participant described it.

Some people had trouble remembering back to their last actual offence, having spent the last two or more years accruing 12 or even 18 breaches. This cycle can go on for years. As one Indigenous participant explained, “I’ve been on probation for nine years of my life...because I just been nothing but breaching...drinking yeah, I gotta pull it off [have the condition lifted] so they can’t breach me anymore (12).”

Conditions are sometimes held out as a way of minimizing the use of incarceration, but this is far from the reality. In fact, conditions are onerous sanctions, often imposed on people who have not actually been convicted of a crime. It is important to remember that the starting point for these individuals is not incarceration; it is release into the community.

For this reason, it is most accurate to view each condition added to a person’s release as an additional burden, rather than a reprieve from jail. It is not a better alternative to incarceration, as some people coming before the courts are led to believe. The bail system, except in very specific circumstances, presumes that people will be released unless their detention can be justified. Justification is also required for every condition imposed. That, however, is not how it is experienced by many of the people we heard from. Participants expressed feeling forced to consent to harsh conditions for fear that the alternative would be to remain in jail—rather than be released on more reasonable conditions. Even in cases where a person has been found guilty and sentenced to probation, the imposition of these conditions

can create impossibilities for some people that lead them into the criminal justice system so frequently that some have come to refer to it as “life on the installment plan.”

Conditions create impossible situations for people already living vulnerably. Many participants told us about the futility of signing their names on a set of conditions, alongside the frustration that there are no alternatives to agreeing to a contract that sets them up for failure. As one person put it, “I just know that when I’m signing that paper I’ll be back (28).”

### **Conditions have Harmful, Well-Hidden Daily Impacts**

The impacts of these conditions are often only considered once someone appears in court. For many people, that comes far too late because the harmful impacts are felt from the moment the conditions are imposed and every day of a person’s life while subject to them. “My whole life has been organized around trying to appease these people (304),” one participant said.

In another recent study, even lawyers have expressed frustration at the impossible burdens conditions place on people’s lives.

I look at some of those orders and think if I were told to do as many things as these guys were told to do, and I got arrested every time I was late, I’d be in jail all the time too. It becomes overwhelming the numbers of requirements...and you are dealing with a person who probably has a drug or alcohol addiction, who often has a mental illness, who doesn’t have a solid living environment and being told to keep more appointments than I could handle keeping in a week. And they probably don’t have an alarm clock either. So how in the world do we expect them to comply with those kinds of things?...It would be difficult for the people that are imposing those orders to live by some

of those orders.<sup>215</sup> – Defence counsel, Vancouver

It is true that some people manage to avoid conviction where the Crown or the court determines their breach is acceptable or justifiable. That does not, however, mean that people don’t still end up spending days in jail.

As one woman explained to us, “I spent five days in jail waiting for the judge to come back. I went to the 7-Eleven. I know. I needed tampons and my boyfriend wasn’t home. So, I went to get tampons and that’s what my lawyer had to say in court. It was embarrassing as hell (439),” she said. “Yeah, but they found it an acceptable breach. So, they let me go, but I did five days.” Another woman told us that she spent 18 days in cells for trying to get to the hospital with a broken foot (409).

We explore how conditions intersect with participants’ daily realities in detail below.

### **How Conditions Intersect with Homelessness**

The anxiety in people’s voices is palpable as they describe the challenges of navigating an already complicated set of life circumstances while additional court-mandated expectations pile up on them.

It’s the freaking distress that builds up when you got to worry about shit like that, like it’s crazy...Oh it makes me just want to almost just want to die basically—like give up, right. Yeah it’s fucked up. – 59

We heard from many people experiencing homelessness about how hard it was to abide by their conditions and how often they were charged with breaching them. We were not, however, able to access quantitative data that might demonstrate the negative intersection of having multiple bail or probation conditions and being homeless because police and courts simply do not track that data. What we do know is that almost everyone

215 Sylvestre at 60.



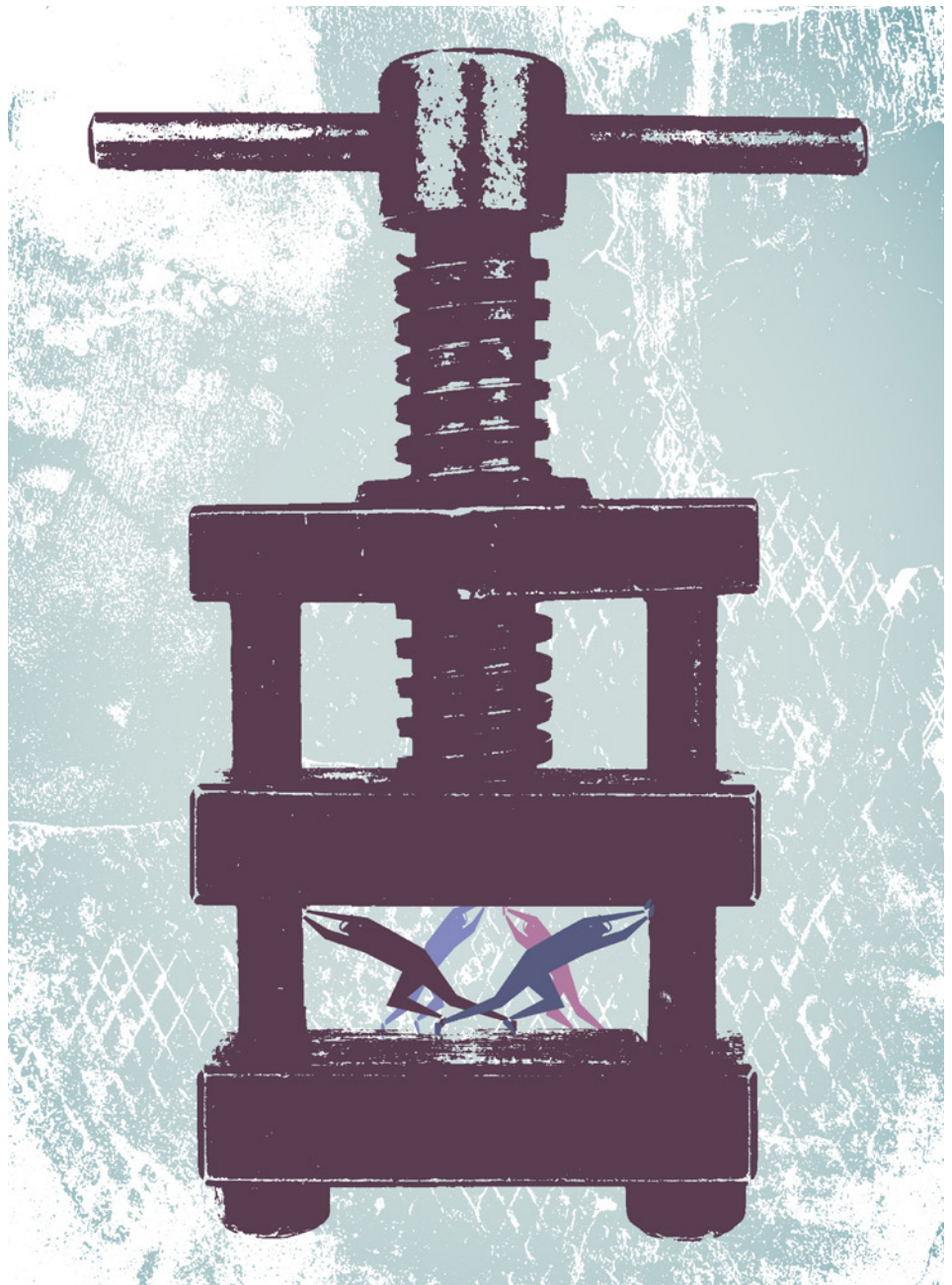
we talked to had experienced homelessness and many participants were trying to manage multiple conditions while living on the streets. This is an impossible task, according to participants. "How can you follow [conditions] if you have no place to stay (96)?" asked one participant.

Another woman shared the circumstances that shape repeated breaches of conditions and missed court appearances.

Because I'm homeless and it makes it really hard to get ready and be up on time to go to probation meetings. Like, I'm on the street. I don't have an electrical outlet to plug in an alarm clock to get up and be ready at a certain time. Like if I sleep, I'll sleep right through probably till the next day then realize, oh shit— like fuck—I guess I have warrants again. I'm already late. So basically like— yeah, like a constant breaching.  
- 313

We heard from people experiencing homelessness how days blend together, hours are lost, and sleep can be a rare but coveted reprieve. The result is that many people are late for court or to mandated appointments with a bail or corrections supervisor or they miss those appointments entirely—the system is not designed for them. The result is that they are repeatedly subject to criminal sanction for being late or failing to appear at an appointment or court date.

We were surprised to hear how often people who were homeless or very marginally housed were subject to either curfews or residency requirements. Curfews require people to be in their residence or another designated place during certain hours, usually overnight. Ostensibly, these are used to mitigate risk of an accused person reoffending. We heard from many participants, however, that they were given curfews, even when they had no direct relation to the accusations they were facing.



Curfews, in particular, can perpetuate homelessness or leave people in dangerous living conditions. One woman described her untenable living situation while living with a curfew that stipulated she had to stay in her place of residence alone overnight, even though her place of residence was "terrifying" to her.

I was living in rat-infested, shitty, disgusting, no running water, no plumbing trailer...And I was terrified there. I locked myself off from the other people living in the house, because one of the men there...tried to kick down

my door and beat me up...But I couldn't leave there, because I had a curfew. So, I was terrified to be at home, but I had to be there. They would turn the power off on me. So, I would be sitting in the pitch-black dark by myself from 8:30 pm until 6 am and I won't lie. I left many times well before it was 6 am. I think one night I didn't even come home. I just took a chance. I couldn't do it. - 362

This woman had few alternatives. Living in a small community means having limited housing options, particularly on a fixed income and

especially if you're looking for housing after having been homeless for any period of time.

For her, the curfew made her only housing option, the one place she could have lived "no questions asked," nearly impossible. Her fear of bringing police attention to her neighbours was so significant that she worried her "neighbours are going to probably kill me and set my house on fire (362)."

Curfews may also fail to take into consideration the survival strategies of women on the streets who rely on a network of friends and boyfriends to keep them safe, and who will risk jail not to lose those connections. "I was always out with my so-called boyfriend, he wouldn't let me go back [to the shelter], he'd say we're done if you go back to that place (289a)," one woman told us. "So I would stay out for him."

Courts need to be alive to the realities people are living in and turn their minds to the harms they may be causing by either isolating women or putting them in conflict with their social safety networks through the imposition of behavioural conditions.

Several participants shared that they struggled to find housing because of a curfew condition. As one man explained, the already arduous challenge of finding housing while homeless is compounded when one also risks being falsely reported to police by a roommate for breaching curfew. "I don't really want to rent a room because maybe the people that don't like me and answer the door and [say] 'he is not here'. I have had that happen twice (59)."

Knowing that the police may come by to check someone's curfew can make people undesirable as roommates. "I can't go and find a room to rent because I feel like I have to tell the people that the cops could be showing up (59)," he told us. "And it's like, who is going to want to rent to someone where the cops could be showing up anywhere before 12 at

night because 12 o'clock is going to be my curfew."

Staying in a homeless shelter can become a risky or impossible proposition if you have a curfew condition. Keeping one's bed at a shelter is a constant challenge given that shelters generally provide only temporary beds or mats as accommodation and it would be challenging for a person to secure a shelter bed over the entire period of time they are subject to a curfew.

Curfew conditions further endanger people who are already facing barriers to meeting their essential needs such as shelter and income. One study participant was ordered to stay at a shelter from which he'd been banned. We also heard from a person about the shelter calling the police on people who were late for their curfew. "They called [police] for a girl that wasn't in on time. They called the cops and I was there, the cops were waiting and she was only 10 minutes late. Like nine o'clock (289b)," one person said. "She had a curfew."

When people are camping out, abiding by a curfew is even more challenging. The same man who was struggling to find housing because of his curfew also described to us how he navigated his conditions while being homeless in the streets.

I went to jail for three months and I got out, a year of curfew, right, and I was homeless. I told my probation officer this. I was phoning the police station every day to say this is where I am staying and I had so much anxiety, right, and it was getting bad. I was having seizures at the time too, right, because of all the stress. And so I am like freaking out all day, like I don't want to go back to jail, so then it's like curfew and the crimes weren't even committed in the nighttime, right. - 59

For other participants, a curfew condition meant either going without income or putting themselves at greater risk of harassment from other

community members while trying to earn income during the day.

"I had a curfew from 6 at night 'til 9 in the morning...it was hell (439)," one woman told us. "I couldn't go anywhere. I couldn't go bottling. We tend to bottle at night, because people don't bug you so much." Instead of binning at night, when she is safe from harassment and threats of violence from members of the public, she was left with the choice to bin during the day—an unsafe proposition for her—or to go without that necessary source of income.

Our interviews revealed that some people, particularly those impacted by poverty, homelessness, and disability, are ordered to always carry a paper copy of their court conditions as a reminder of their obligations. In principle, it sounds reasonable to ask that someone carry a reminder of their conditions, especially when people struggle with memory loss, cognitive impairment, and brain injury. But mandating a person to have their papers with them at all times becomes impossible when living homeless. We detail the frequency with which people experiencing homelessness lose their personal possessions due to theft, or have their belongings discarded by city staff, police, or members of the public in Part 1.1

It's worth noting that police do not rely on people's papers to monitor their conditions. Police in BC share a common database used by every policing agency in the province called the Police Records Information Management Environment (PRIME-BC). Police can use that database to access a person's list of conditions anytime they're at work. While we discuss some of the problems related to a lack of timely updates to the database below, the fact that such a database is readily available to any police officer working in BC underscores the redundancy of expecting people navigating homelessness to hold onto the pieces of paper listing their conditions. That they also risk criminal sanction for losing them,

especially when they and police are aware their behavioural conditions are accessible through PRIME-BC, seems to run contrary to serving the interests of justice.

One woman we spoke with told us about spending a week in jail because she failed to produce the papers listing her conditions. "Seven days, and I had no methadone (416)," she told us. "I didn't have my down [heroin] on me, it was torture." She was aware, like other study participants, that her conditions were in the police database, which made her incarceration seem even more ludicrous and unnecessary, particularly since she knows she struggles with memory loss due to health issues.

"What the hell is with this 'carrying your papers' business? You're in the computer," she said. When she failed to produce her papers to the police, the officer immediately used PRIME-BC to look up her conditions. "That's what he did right away," she said. "He told me what my conditions were... and I'm like, 'Okay, that's good that you know, then I don't have to worry about it,' and he's like 'No, you don't have your papers, that means you're going to jail.' And I'm like 'Oh my goodness.'"

### **PARAPHERNALIA PROHIBITIONS: ALL HARM, NO GOOD**

You must not possess drug paraphernalia including but not limited to pipes, rolling papers and syringes. – Provincial Court of British Columbia, "Bail Picklist," May 1, 2017.<sup>216</sup>

In BC, we have shown a strong commitment to public health by

building a reasonably robust system to connect the people who use drugs with harm reduction supplies and other harm reduction services. Yet on a daily basis, our criminal justice system is explicitly prohibiting the people who need them most from carrying harm reduction supplies and accessing harm reduction services. As a result, those who make the choice to follow public health advice and to protect themselves and others from infection or overdose risk criminal sanctions.

Millions of dollars are spent by our ministries of health on harm reduction supplies (namely syringes, clean water, and pipes) to reduce risk and spread of HIV and HCV, to improve health outcomes, and to reduce overall risks to public health. We've known for decades that these are some of the most effective and cost-efficient ways to provide basic health care and to improve public health for entire communities.<sup>217</sup> And yet courts can make accessing health care illegal.

In 2012, BC's Ministry of Health created a vision that "the next generation of British Columbians will grow up AIDS free."<sup>218</sup> Updates on progress, contained in *From Hope to Health* progress reports, continue to support the vision of a future AIDS-free generation.<sup>219</sup> This aspirational vision, however, will surely fail if BC's justice system continues to criminalize some of the most effective health care interventions available to people at risk of contracting or spreading HIV.

People brought into the court system know that courts are asking them to sacrifice their health in order to follow these conditions. Almost everyone

we heard from said they breached their paraphernalia conditions, preferring to protect themselves against infections such as HIV or HCV, even at the risk of going to jail for breaching.

One man laid bare the inherent conflict in these types of conditions.

I've had conditions like 'no paraphernalia' and things like that, where harm reduction becomes an issue. I actually worked my way around that last one because when they said, 'no paraphernalia,' I looked at the judge in the courtroom and said, 'What about harm reduction supplies?' He said, 'Well, you got me there.' He put something down on paper. It was 'No paraphernalia other than harm reduction supplies.' Which, what is paraphernalia but harm reduction supplies, right? I found a loophole, I guess. – 74

We can't rely on people like him to fight the system alone, especially when the human and societal costs are so high.

The people subject to these conditions know what they need to do to keep themselves and their friends safe. Despite the risk of criminal sanction, they engage in harm reduction every day. "I have [a] 'no paraphernalia' clause and I don't think that it matters. I would rather help my friends be safe (362)," one participant told us.

Another person passionately shared their commitment to reducing the harms of using substances, even if they risk criminal sanction. "If I'm going to fucking use drugs, I'm not just going to ignore fucking using

216 *Picklists are lists of standardized terms used to craft court-imposed conditions. Provincial Court of British Columbia, "Bail Orders Picklist", May 1, 2017, online: <http://www.provincialcourt.bc.ca/types-of-cases/criminal-and-youth/links#Q7>.*

217 See Abu S Abdul-Quader et al, "Effectiveness of Structural-Level Needle/Syringe Programs to Reduce HCV and HIV Infection Among People Who Inject Drugs: A Systematic Review" (2013) 17:9 *Aids and Behavior* 2878; N. Palmateer, et al, "Evidence for the effectiveness of sterile injecting equipment provision in preventing hepatitis C and human immunodeficiency virus transmission among injecting drug users: A review of reviews" (2010) 105:5 *Addiction* 844; A. Wodak & A. Cooney, "Effectiveness of sterile needle and syringe programs" (2005) 16:1 *International Journal of Drug Policy* at 31; World Health Organization, WHO, UNODC, UNAIDS Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug user (World Health Organization, 2009).

218 British Columbia Ministry of Health, *From Hope to Health: Towards an AIDS-free Generation*, (British Columbia Ministry of Health, 2012) at 2.

219 See e.g. British Columbia Ministry of Health, *From Hope to Health: Towards an AIDS-free Generation, 2015-2016 Progress Report*, (British Columbia Ministry of Health, 2016).

**Between October 1, 2014 and September 30, 2017 alone, BC courts imposed prohibitions on carrying paraphernalia (in bail and probation) 3,868 times on 2,505 different people—meaning some individuals faced this condition multiple times over that time period.**

clean shit, just sneaking around and using whatever I can to get away with...I'm going to fucking get clean shit and have it on me all the time (349)," they said. "Whether the cops like it or not, I don't care. I mean it's stupid; like, fucking, they breached me for having a needle on me that's clean...I'm an addict, I'm going to use, I'm going to relapse, I'm going to have slips, you know, whether I'm trying or not, it's going to happen, so I'd rather do it where it's safe."

One of the primary stated goals of imposing conditions on people is for the protection of public safety. Prohibiting people from carrying harm reduction supplies does the opposite. It is clear that people who regularly use substances are not compelled or reasonably able to stop using a substance simply because of a court condition. Asking them to do so in a dangerous way does nothing to promote their safety or that of the public.

**No one wants to find improperly discarded syringes, including the people who use syringes themselves. People do not set out to transmit disease or to harm another person. Court conditions that increase the risk of finding improperly discarded harm reduction equipment fail to benefit anyone.**

Anti-paraphernalia conditions create an atmosphere of fear that causes people to make decisions that have negative consequences for public health and safety beyond the risk of sharing or reusing a syringe.

Rather than not accessing clean supplies, some people told us, regretfully, that they found themselves disposing of their syringes less safely out of fear that they'd get stopped, searched, and charged. One participant told us how he hastily disposed of their harm reduction supplies to avoid charges for carrying them. "Pop them in the bush whatever right, was that a cop? Chuck. Keep walking, just leave it there (59)," he said. "I have probably done that a few times, I am sorry to say."

No one wants to find improperly discarded syringes, including the people who use syringes themselves. People do not set out to transmit disease or to harm another person. Court conditions that increase the risk of finding improperly discarded harm reduction equipment fail to benefit anyone.

Anti-paraphernalia conditions remain so common that they are included in a 2017 Provincial Court document standardizing conditions, making it easier for judges to impose them by picking them off a set list.<sup>220</sup> Based on data accessed through a Freedom of Information request, between October 1, 2014 and September 30, 2017 alone, BC courts imposed prohibitions on carrying paraphernalia (in bail and probation) 3,868 times on 2,505 different people—meaning some individuals faced this condition multiple times over that time period.

Courts do not, however, track the specific details of the breach charges laid against people. Therefore, it was impossible for us to assess how many of those people were actually charged and convicted for possessing life-saving health supplies. As we learned from the people we interviewed, much of the harm is already done even if people are not arrested for breaching their condition.

<sup>220</sup> Provincial Court of British Columbia, "Bail Orders Picklist" May 1, 2017 & Provincial Court of British Columbia, "Probation Orders Picklist" May 1, 2017, online: <http://www.provinciacourt.bc.ca/types-of-cases/criminal-and-youth/links#Q7>.

## ABSTINENCE CONDITIONS SET PEOPLE UP FOR FAILURE

You must not possess or consume alcohol, drugs or any other intoxicating substance, except in accordance with a medical prescription. – Provincial Court of British Columbia, “Bail Picklist,” May 1, 2017.<sup>221</sup>

Not all people who use substances have addictions. Not all people who meet the medical criteria for having an addiction identify as “addicts” or people with disabilities. Medicalizing all substance users as people with addictions is itself stigmatizing. However, there are people, including people we heard from, who repeatedly find themselves tangled in the criminal justice system because addiction, a legally recognized disability, is criminalized.<sup>222</sup> Behavioural conditions are a routine means through which people with addictions are penalized, stigmatized, and tethered to the criminal justice system.

In medical terms, addiction is a chronic, relapsing, remitting disease.<sup>223</sup> A cornerstone of addiction is the fact that a person will continue to use the substance to which they are addicted in spite of a host of negative consequences.<sup>224</sup> Indeed, people with addictions who lack access to safe substances are at an unprecedented risk of dying of an overdose. Yet the pull of substance use remains strong enough that even the fear of death does not necessarily stop someone from using. This is contextualized by the social factors that drive or exacerbate use: Inadequacy of income assistance,

housing, and other supports, as well as histories of systemically-driven trauma, contribute to the reasons why people rely on substances. Addiction is not a question of willpower or moral conviction. It is a health and social issue, and one that is regularly criminalized. One way in which addiction is criminalized through the justice system is the imposition of abstinence conditions on people living with addictions.

People we heard from are regularly unable to abide by abstinence conditions. Their failure to abide is not a question of disrespect for the court system; it is a reality of living with a serious health condition, often while living without housing or necessary health care.

Almost everyone we asked told us that abstinence conditions do not help to discourage substance use. “How can you make conditions based off of a disease? I don’t get that. That’s not fathomable (45 focus group),” one participant said. “It doesn’t make any sense. You have a disease, but [the courts are] going to make it so that if you have a disease, you’re fucked.”

In part, abstinence conditions do not curtail use because they fail to address the underlying reasons for use in the first place. As one person told us, “They can’t stop me from... can’t stop me from being who I am. They don’t understand the circumstances behind the reason that I am who I am, and I do what I do (155).”

Many participants told us about the added stress that abstinence conditions place on their lives when they’re already struggling. “It doesn’t cure me...it’s hindering me (208).”

To many people we spoke with, abstinence conditions felt like an exercise in futility in their failure to recognize the realities of their lives and the role that drugs or alcohol play in them. “I’m not perfect (349),” one participant said, explaining the relapsing nature of her addiction, which has shaped her life for almost 20 years. “I’m not just going to walk away out of my life and fucking never look back at it...I’ve had drugs in my system for the last 18 years.”

Abstinence conditions are at odds with the medical science relating to relapse. They fail to properly consider not only the dangers and hardship associated with withdrawal from drugs and alcohol,<sup>225</sup> but also the legitimate reasons why people use and rely on substances in their daily lives. People who have used substances most of their lives know that using drugs or alcohol is no longer about being “drunk” or “high”; it is a way to feel normal, not sick, and to be able to get through the day. It’s not about partying, but about functioning. As one participant put it, “I’m an addict; I’m sober even when I’m high (74).”

For people living with addictions, abstinence conditions ask them to do the impossible. Even where conditions are not technically impossible to follow, they may be functionally impossible. The Provincial Court of Alberta explained

221 Provincial Court of British Columbia, “Bail Orders Picklist” May 1, 2017, online: <http://www.provincialcourt.bc.ca/types-of-cases/criminal-and-youth/links#Q7>.

222 This cycle has been identified by officials within the law enforcement sphere. For example, in 2007 a member of the Canadian Association of Chiefs of Police is noted in the Standing Senate Committee on Legal and Constitutional Affairs report stating that “requiring that alcoholic individuals abstain from alcohol as a condition of release from detention is likely to result in a breach of that condition and further interaction with the criminal justice system.” See Standing Senate Committee on Legal and Constitutional Affairs at 140.

223 Zhiling Zou et al, “Definition of Substance and Non-substance Addiction” In: Zhang X., Shi J., Tao R. (eds) *Substance and Non-substance Addiction. Advances in Experimental Medicine and Biology*, vol 1010. (Singapore: Springer, 2017). See also American Psychiatric Association, *Diagnostic and statistical manual of mental disorders*, 5th edn. (Washington, DC: The American Psychiatric Association, 2013).

224 Terry Robinson & Kent Berridge, “Addiction” (2003) *54 Annual Review Of Psychology* at 25.

225 Thomas R Kosten & Tony P. George, “The Neurobiology of Opioid Dependence: Implications for Treatment” (2002) *1:1 Science & Practice Perspectives at 13 and World Health Organization, Clinical Guidelines for withdrawal management and treatment of drug dependence in closed settings*. (Geneva: World Health Organization; 2009) at 34, online: [http://www.wpro.who.int/publications/docs/ClinicalGuidelines\\_forweb.pdf?ua](http://www.wpro.who.int/publications/docs/ClinicalGuidelines_forweb.pdf?ua).

such conditions in *Omeasso*, comparing abstinence conditions being imposed on a person living with alcoholism to impossible financial obligations: "An example of that would be to release the impecunious accused on \$1 million cash bail on the basis that he could buy a lottery ticket and potentially win enough money to post that cash bail."<sup>226</sup>

Alcohol or drug-related abstinence conditions drove extensive involvement in the criminal justice system for Indigenous study participants. It was not possible, based on data obtained from Court Services BC through a freedom of information request, to determine whether or not Indigenous people are overwhelmingly impacted by abstinence conditions; however, nearly half of the Indigenous people we heard from reported having been given an abstinence condition at some point.<sup>227</sup> Based on what we heard, abstinence conditions were often imposed even where the offence for which they'd been charged was not alcohol- or drug-related.

What is clear from our interviews is that abstinence conditions do not properly account for the generational impacts of trauma, colonization, poverty, and addiction. They appear to be at odds with efforts towards reconciliation and remedying the overrepresentation of Indigenous people in our jails and courts. In Section 718.2(e) of the

*Criminal Code*, judges are required to take "the circumstances of aboriginal offenders" into account in sentencing, especially to look at "all available sanctions other than imprisonment that are reasonable in the circumstances". In *R. v. Gladue*, [1999], the Supreme Court of Canada (SCC) laid out principles for courts to employ in considering alternative sentencing options, known as the 'Gladue Factors' and directed the courts to consider broad systemic and background factors that affect Indigenous people generally and the offender in particular. Despite these instructions, in 2012, the SCC in *Ipeelee*, Lebel J. noted that the "cautious optimism [in *Gladue*] has not been borne out. In fact, statistics indicate that the overrepresentation and alienation of Aboriginal peoples in the criminal justice system has only worsened."<sup>228</sup> In *Ipeelee*, the SCC reaffirmed the importance of *Gladue*, and confirmed that it applies in all contexts.

Within the scope of the participants in this report, the imposition of abstinence conditions on Indigenous participants and the negative impact of such conditions on those participants was notable, despite existing legal requirements that courts consider the unique circumstances of Indigenous people coming before the Court.<sup>229</sup>

Despite these concerns, data from Court Services BC, obtained through a Freedom of Information request, reflects the ongoing and rampant use

of such conditions. Between October 1, 2014 and September 30, 2017, 31,914 abstinence conditions were imposed across BC in the context of bail and probation, on 21,413 different people, meaning some people were subject to that condition more than once during that time frame.<sup>230</sup>

Far from assisting people to stop using drugs or alcohol, some people noted that the pressure of conditions, abstinence in particular, increased their need for a coping mechanism. "The pressure makes you want to drink, drink, drink (278)," one person told us.

Regarding alcohol in particular, expecting someone who drinks heavily to become abstinent can be life-threatening, causing severe (grand mal) seizures, high blood pressure, delusions, and hallucinations.<sup>231</sup> The "kindling phenomenon" is particularly relevant, and refers to the fact that that repeated withdrawal for those who are alcohol dependent, can not only intensify the symptoms, but can also contribute to alcohol-related long-term brain damage and cognitive impairment.<sup>232</sup>

Further, omitting an abstinence condition from a court order where the individual is not able to comply with it "does not place the community in any greater danger," because the person will use substances regardless.<sup>233</sup> Imposing such conditions, however, puts the

226 *Omeasso* at para 33.

227 This is also reflected in data from other jurisdictions in Canada, see *Deshman & Myers* at 75-76.

228 *R v Ipeelee*, 2012 SCC 13 at para 62 [*Ipeelee*].

229 *R v Gladue*, [1999] 1 S.C.R. 688 [*Gladue*], and *Ipeelee*.

230 A percentage of conditions reflected in this quantitative data are imposed on people who are casual substance users – such as the young person drinking too much and fighting outside a bar on Friday night. Further, some may be reasonable and necessary where a person is in a position to stop using substances and where their substance use is integral to their offence – such as a person who drinks occasionally to excess and is violent towards their partner when intoxicated. It is impossible to determine the circumstances of all people subject to these conditions based on the data available from Court Services BC. We can however see that these conditions are in common usage and we know from our interview data that they are imposed on people with addictions, many people are subject to more than one abstinence condition, and some of those people are subject to criminal sanction for breaching such conditions.

231 Norman Miller, M.D. & Steven Kipnis, M.D., *Detoxification and Substance Abuse Treatment: A treatment improvement protocol TIP 45* (Rockville: Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment, 2006) at 52-53.

232 World Health Organization, *Clinical Guidelines for withdrawal management and treatment of drug dependence in closed settings*. (Geneva: World Health Organization; 2009) at 34, online: [http://www.wpro.who.int/publications/docs/ClinicalGuidelines\\_forweb.pdf?ua=1](http://www.wpro.who.int/publications/docs/ClinicalGuidelines_forweb.pdf?ua=1).

233 *Omeasoo* at para 39.

person at risk of criminal sanction if they take a drink or a hit.<sup>234</sup> It can also have the effect of driving substance use further underground for fear of penal sanction or police detection, a particularly dangerous prospect given

the ongoing opioid crisis and the dangers of using street drugs alone.

The courts are not a place of treatment. We will always hear the occasional success story resulting from bail or probation conditions; however, there is no way to know

whether abstinence conditions actually lead to rehabilitation, and clear and compelling evidence exists that, for some people, they perpetuate a cycle of harm and criminalization that can last years or even decades.

234 See *Deshman & Myers at 58*.

## In Focus: How Abstinence Conditions Impact Lives

When we met for our interview, the day was new; it was only 9am. But for the man we interviewed, the past number of hours had already been an ordeal. His face is swollen, and a prominent bruise on his cheekbone was fresh and raw. The injuries were from last night's trip to the drunk tank. He told us he sustained his injuries when police dropped him on his face while his hands were cuffed behind his back.

He's an easy target for police. He was homeless and living in the bush at the time of our interview, relying on public space for his basic needs. That means police surveil him daily, regularly pick him up, and put him in the drunk tank. His history with abstinence conditions has shaped his everyday life, leaving him with an extensive criminal record and landing him in custody more often than he could have ever imagined.

Like others who have used substances most of their lives, using alcohol is a means by which this man can feel functional throughout the day. "I had to have a couple of drinks before I came in here (102)," he explained, "to just feel better."

He's frustrated at how his abstinence conditions are at odds with the realities of his life as a person living with an alcohol addiction that he's had since he was a child.

"The only reason I got all those breaches is because I was put [on] no-drinking stipulations...and I was alcoholic since—I was alcoholic since I was like eight because my parents are, and I used to steal their beer," he explains. He reports

he has been convicted of breaching his conditions 52 times.

His abstinence conditions have put him in daily contact with the criminal justice system. He is frustratingly aware that the criminalization of his substance use is the primary reason for that.

"If I was sober, I would never have a record," he says. "That's what everybody tells me. That's what all the RCMP tell me, and the lawyers, and the judge and everything, because I'm a well-educated and smart and respectful person. But yeah, just the alcohol, that gets me."

Even when he was a teenager, he knew that an abstinence condition was as good as a one-way ticket back to jail. It was only after he'd been repeatedly criminalized for years due to his alcohol use that the court would consider alternatives.<sup>235</sup>

I told the judge—when I was like a teenager and right now, and that's why they don't put those conditions on me no more. When I was a teenager I was like, I can't—I told him I can't comply with an abstain-from-alcohol condition. And they go like, 'Oh, we're putting it on you anyway!' You know what—it's just setting me up for failure. And then like two days later, I'm back in. And that's why I've got such a long record. It's all mostly breaches. I got a couple of assaults and stuff in there.

Now, with a lengthy criminal record, he is well known to the court and local judges who have decided to stop imposing abstinence conditions on him. This, at least, is some reprieve from facing further criminal convictions for breaching

an abstinence condition. It has not, however, stopped police from regularly detaining him overnight in the drunk tank. These criminal justice responses to his alcohol use do not protect him; rather, they subject him to harassment and violence by police without providing him the health and social services he needs.

Other Project Inclusion participants shared similar experiences of how abstinence conditions are impossible for them to maintain. "It's all just conditions to set me up to fail to put me in jail longer (28)," one person told us. "Every single time you get released on bail, they say stay away from people in the drug scene, no alcohol use," he added. But those conditions don't work for a person who, as he described it, is "coming from an alcoholic family (28)."

Another participant was frank about the futility of their abstinence conditions. "I was drinking anyways (12)," he said. "Yeah, and then I got 18 breaches...[of] not drinking. Yeah, 18 breaches on that, and so they decided to send me there [to counselling]."

Abstinence conditions are often impossible for people to abide by, particularly for people who have been using substances for most of their lives. Abstinence conditions do nothing to address the fact that substance use is, for people living with few other supports, a tool for survival and a means by which to maintain daily functioning, especially in the face of inadequate income assistance, housing, health supports, and social services.

235 Data from another Canadian jurisdiction also indicates a positive correlation between the imposition of abstinence conditions and subsequent breach charges. See *John Howard Society (2013) at 12*.

## As an Alternative to Abstinence Conditions, Harm Reduction Works

Community-based, non-coercive interventions show positive results when compared to the impacts of impossible-to-maintain abstinence conditions on the lives of the people on whom they are imposed. Whether harm reduction shows up in the form of access to needle exchanges,<sup>236</sup> methadone,<sup>237</sup> prescription heroin or hydromorphone,<sup>238</sup> or access to safe and managed alcohol,<sup>239</sup> the positive health outcomes are extensive and well documented. Basic supports such as income assistance and housing alongside health care and especially peer-driven services, must be made more available to people across BC rather than relying on the criminal justice system to manage people living with the impacts of homelessness and complex substance use issues.

These interventions need not be medicalized or institutionalized. One of us spent some time with members of a drinkers' lounge (Lounge) and a managed alcohol program (MAP). Both were groups comprised of people who have chronically used alcohol most of their lives, and whose circumstances, including intersections of poverty and criminalization, have led them to use non-beverage alcohol. They represent a group of people who have been criminalized for using a substance, alcohol, that is legal in most circumstances in Canada and they need safe alternatives to this criminalization. In the MAP, people with entrenched relationships to alcohol are provided a controlled dose of alcohol every few hours through a service provider.

At the Lounge, a peer-centred group, people trade in their non-beverage



alcohols, such as hand sanitizer, rubbing alcohol, or mouthwash, for safer alternatives. One participant told us that 80% of Lounge members had quit drinking non-beverage alcohol because they now had access to a safer alternative. He told us, "We're saving lives here (91 focus group)."

A mother told us how the Lounge improved things dramatically for her son. "My son got to live two years longer (91 focus group)," she said. He was drinking rubbing alcohol before he found the Lounge; his mother had spent years trying to help him curb his addiction on her own, sinking \$70,000 into rehabilitation attempts that were unsuccessful. The Lounge

236 World Health Organization, *Effectiveness of sterile needle and syringe programming in reducing HIV/AIDS among injecting drug users* (Geneva: World Health Organization, 2004); Evan Wood E et al, "Factors associated with persistent high-risk syringe sharing in the presence of an established needle exchange programme" (2002) 16:6 AIDS at 941.

237 B.A. Hilton, et al, "Harm reduction theories and strategies for control of human immunodeficiency virus: a review of the literature" (2001) 33:3 *Journal of Advanced Nursing* at 357; Lianping Ti L et al, "The impact of methadone maintenance therapy on access to regular physician care regarding hepatitis C among people who inject drugs" (2018) PlosONE, online: <https://www.ncbi.nlm.nih.gov/pubmed/29579073>.

238 Nick Bansback, Daphne Guh & Eugenia Oviedo-Joekes, "Cost-effectiveness of hydromorphone for severe opioid use disorder: findings from the SALOME randomized clinical trial" (2018) 113:7 *Addiction* at 1264.

239 Christopher Fairgrieve C et al, "Nontraditional Alcohol and Opioid Agonist Treatment Interventions" (2018) 102:4 *Med Clin North Am* at 683.



gave him two good years. "He just passed away in July."

Her friend piped in, "We miss him. Yes, we do."

Overwhelmingly, participants told us that harm reduction programs like these create a loving and caring community in which people can share their stories, relate to one another, and provide support without facing criminal consequences or police harassment. They save people's lives, decrease their criminal justice involvement, improve their health, and foster self-determination in participants.<sup>240</sup>

When such programs are available, it seems untenable that we would choose instead to punish and incarcerate.

### **RED ZONES EXILE PEOPLE FROM LIFE'S NECESSITIES**

"The red zone makes poor people feel poorer."<sup>241</sup>

Geographic area restrictions, colloquially known as red zones, are among the most well-researched behavioural conditions. A geographic area restriction, like all court- and police-imposed conditions, is supposed to be linked to the specific circumstances of an alleged offender and offence. But in many communities we visited, Project Inclusion participants indicated it was the other way around. Rather than tailoring a red zone to an alleged offender or offence, the red zone is a predetermined geographic area from which people get banned when charged with an offence, particularly poverty- or drug-related offences. Many people we interviewed could draw the red zone on a map or list the streets that comprise its boundaries.

In some municipalities, there appears to be a phased red zone process, with people being exiled from expanding areas of the city.

Red zones differ greatly from "no-go" conditions. Red zones have a much broader impact on a person's life, health, and safety. A "no-go" may be imposed to prohibit a person from attending a specific location; for example, a "no-go" condition may be applied to the store from which a person shoplifted, or to ensure the safety of people who've experienced violence by prohibiting a person from visiting someone's home or a child's school.

**Justice system actors imposing these conditions often focus on the desire to stop the drug flow into a geographic area or to stop "non-addicted" dealers from entering an area. These rationales, however, do not align with the lived experience of the people we met.**

"No-go" conditions, while at times problematic, can be better tailored to address specifics of the alleged offence, the circumstances of the accused, and the safety needs of people impacted by the accused's actions. Red zones, by contrast, exclude people from large swaths of their communities. Based on our data and other studies, red zones are often imposed on a more global

basis for some offences, particularly drug offences,<sup>242</sup> without specific analysis of the alleged offence, the circumstances of the accused, and any actual public safety concerns.<sup>243</sup>

Actors within the criminal law system, including judges, defence attorneys and prosecutors, give various rationales for imposing red zone conditions. Typically, proponents state that red zones:

- prevent crime and recidivism;
- are issued in certain hotspots tied to drug supply;
- are issued for rehabilitative purposes;
- are issued for policing purposes; and
- are issued to protect the public interest.<sup>244</sup>

Justice system actors imposing these conditions often focus on the desire to stop the drug flow into a geographic area or to stop "non-addicted" dealers from entering an area.<sup>245</sup> These rationales, however, do not align with the lived experience of the people we met. We could not identify any correlation to a decrease in drug availability over time, and certainly found no correlation to a decrease in overdoses and drug use-related harms.

The BC Provincial Court has previously found that the use of red zones does not reduce drug trafficking in a given area, or in a city more broadly. It may, however, mean that new dealers take over when street-level traffickers, who are often people living with multiple barriers, including mental health and addiction issues, are red-zoned.<sup>246</sup>

Given the toxic, unregulated drug supply on our streets, knowing your

240 See Kate Vallance et al, "Do managed alcohol programs change patterns of alcohol consumption and reduce related harm? A pilot study" (2016) 13:13 *Harm Reduction Journal*.

241 Witness testimony in *R v Reid*, 1999 BCPC 12 at para 12.

242 See *Sylvestre* (2017) at 4, 53% of bail orders issued for drug offences included a red zone.

243 See also *Reid* at para 48.

244 *Sylvestre* (2017) at 54.

245 *Sylvestre* (2017) at 54.

246 *Reid* at paras 21, 23, 25, 45, 50, 82.

dealer can be an important safety measure. Red zones, while not fulfilling the public safety purpose of reducing drug trafficking, reduce the ability of substance users to protect themselves from overdose by buying from a known source.

We cannot overstate the impact of geographic area restrictions on the lives and wellness of Project Inclusion participants. Red zones can ban people from accessing shelters and low-barrier housing options, health care and overdose prevention services, food, opportunities for income generation, and community—in other words, the necessities of life.

### Red Zones can Cause Homelessness

For people who have few options for housing, red zones can create housing insecurity and homelessness as they can drive people already living vulnerably closer to the margins and farther away from the only supports they have.

One man we spoke with lost his housing after he was red-zoned from it due to a drug raid. He told us about how the red zone deepened his vulnerability.

Well, I had nowhere else I could go stay, so I had to hit the streets. Like, all my friends, in that sense, were living actually in the apartment building as well. So, there was nowhere for me to go, couch surf, or sleep, so I had to tent it. – 459a

Not only did the red zone cause him to lose his housing, it also cut him off from his primary social network, where he would otherwise have turned in a time of crisis for emergency housing. Without access to that community, he turned to living outdoors in a tent. Other study participants shared similar experiences of being red-zoned from their communities of support.

### Red Zones Isolate People from Essential Services

Previously in this chapter, we detailed how behavioural conditions can drive people into a cycle of criminalization. Red zones are an example of this phenomenon, particularly in instances where the person subjected to a red zone is navigating intersecting barriers like homelessness, poverty, substance use, and/or mental health issues. In those cases, red zones force them to choose between compliance with the order and meeting basic health and safety needs when the red zone cuts them off from accessing the services and community connections that they rely upon.<sup>247</sup>

One participant explained it this way: “Being homeless and then red zone[d] from downtown, I had nowhere to go to sleep. I couldn’t go eat because where they go eat down here at [service provider], everything is downtown. So, that was a pretty rough two years for me (266).” When we asked if it affected his ability to access harm reduction supplies, he replied, “Yeah. I got really sick because of my HIV, I ended up in hospital twice because... they wouldn’t even let me go to see my doctor because my doctor is downtown and [they] told me if I had to go to see my doctor for anything I’d have to go to emergency.”

Another participant told us how red zones feel like traps because, for people in their community, it’s impossible not to violate the condition because the red zone is the only place where they can access food. He told us how the “big red zone” in his community contains food banks and other essential services people need to access daily for survival. “I mean, how are you supposed to go and have lunch if you’re not allowed to go in there (28)?” he asked, adding he’s seen police sitting outside food lineups waiting for people with red zones.

With all of this stacked against him, it seemed to this participant that “red

zones are set up, basically, to make people to go jail.”

### Red Zones Increase Isolation

As we travelled across the province to conduct research for Project Inclusion, we visited spaces where people created community, often on sidewalks, in parks, and near service providers. We heard about the devastation they experience when community falls away, for people living with few resources, tenuous support systems, and the impacts of trauma, a rising sense of isolation can mark a breaking point. For the people we heard from, red zones exile people from their communities and the vital social connections that help keep them well.

One woman made a point of countering the popular misconception that forcing a person out of the “wrong crowd” or a “tough neighbourhood” can be the tough love they need to move somewhere safer and make better friends. For this woman and those she holds dear, red zones that keep them away from the people that mean the most to them only create more loss and fear.

“I got caught once in my red zone and I pleaded with [the police], like come on you guys, I have got nowhere to go...I have no place to go, I have no family out here, and...I’m fucked, basically (427),” she told us. But she didn’t feel her concerns were taken seriously. For her, packing up and leaving the only community to which she feels a sense of belonging would be disastrous. “They’re telling me...Oh, there is lot of places you can go, like get out of the city, right...I shook my head and said, that’s not possible...I’m terrified to go anywhere else...I don’t know anybody...it’s just I’ve heard so many horror stories... anywhere else outside this area.”

It is possible that red zoning could benefit a small minority of people, such as people who are otherwise well-supported and who are not deeply enmeshed in the community from which they are being red-

247 See also Reid at paras 9, 51, 59.



zoned.<sup>248</sup> What red zones seem to do more often, however, is isolate people from the few supports and services they have. The effect of this can be to “inhibit, not help” the successful future of the individual.<sup>249</sup> Police, Crown, and courts imposing such conditions are turning a blind eye to the already highly limited set of resources available to people experiencing poverty, homelessness, and substance use.

In small communities, red zones can span such a broad geographic area that the experience of adhering to one is tantamount to banishment. “The whole town (108),” one participant said, of the area that his

red zone covered. He said he had to move out of the town completely.

It is impossible to know how often people are effectively banished from their communities due to the challenges in data tracking, but we know such all-encompassing red zones are used on occasion, leaving people without support or community. The man whose red zone forced him to move out of town was only able to vary his red zone upon promising to live under house arrest at the homeless shelter.

Banishment orders leave people without support and community, and they push people in need of services from one community to another in a way that “violates basic consideration

for the rights of others and should not be tolerated.”<sup>250</sup>

These experiences are also reflected in academic literature. As Herbert and Beckett note:

The banished repeatedly emphasize the challenges they face in maintaining their social networks, in accessing needed services, and in ensuring their economic and physical security. It is no simple matter to quit the places to which they are complexly and deeply attached.<sup>251</sup>

The isolation caused by red zones can create dangerous conditions for people. We heard from some people, primarily women, that being near

248 See Reid at paras 26, 76.

249 Reid at para 83.

250 Reid at para 83.

251 Steve Herbert and Katherine Beckett, “‘This home is for us’: questioning banishment from the ground up” (2010) 11:3 *Social and Cultural Geography* at 231-239.

people they know and staying close to the areas with which they are familiar are primary safety tactics for them. Being prohibited from entering those areas doesn't mean women will suddenly find family, resources, and friends they did not previously have. It does, however, make them an easier target when they are on the street.

And anybody that knows that if they're red-zoned, then they're most susceptible to being jacked by beat cops and from looky-lous and people that work for the police, the informants, and all that sort of shit.<sup>252</sup> – 56

Our courts have recognized that displacement and isolation, particularly of women who are street involved, increases the risk of them experiencing assault, robbery, or even murder.<sup>253</sup>

### Red Zones can Cause Serious Health Consequences

People seeking assistance to treat addictions often have few options for medical treatment. Many people spoke to us about the difficulty of finding doctors who would treat them and the limited availability of methadone and other addictions treatment in their communities. The consequences for a person who is red-zoned away from those health services, therefore, can be dire. As one participant put it, "I was red-zoned for two years...I ended up in hospital twice because [of that] (266)."

For people who need to access methadone daily, do not have ready access to transportation, and have other physical ailments that impact their mobility, being prohibited from their community clinic can create barriers to their success in addictions treatment.<sup>254</sup>

One woman we spoke with shared her experiences with being red-zoned from her methadone clinic,

which forced her to make a difficult daily journey to receive methadone from a downtown doctor. When she advocated on her own behalf to not be subjected to a red zone that included her methadone clinic, she was told, "Well, you got to work around it (395)."

If people are to avoid committing crime and create supportive networks to keep them away from the criminal justice system, red zoning them from medical treatment for addiction is poor policy, and in the context of the current overdose crisis, it can be life-threatening.

### Increased Police Surveillance—in the Name of Public Safety?

Red zone breaches are unique in their capacity to increase powers of police surveillance. One need do nothing more than be physically present in a location in order to attract criminal sanction. This can lead people to avoid services or disguise themselves, trying to avoid detection as they enter the red zone to access what they need. This has even greater implications for people living in smaller communities, where small populations mean that citizens are familiar to one another and people lack privacy over their identity.

One man, who lost his housing when he was cut off of his pain medication, told us that he does not have the luxury of walking down the street like we do because the police know him and can target him on sight for breaching his red zone. He told us he doesn't breach his red zone to harm anyone; he breaches it to access the spaces and communities that he relies on. Breaches have now become a regular, negative fixture in his life (362).

His experiences were familiar to other study participants. "They know you, right, and recognize you...as soon as they see you in your red zone,

immediately breach (396)," another person told us.

It seems police can even visibly identify a person in their red zone, note the occurrence, and not inform the individual at the time that they've been caught in their red zone. One participant told us about attending court one day to find out he was being charged with multiple red zone breaches, long after he'd breached them. "They don't even have to come up to you and give you a ticket, they can just breach you from seeing you (396)," he said. "I had a bunch of breaches when I was in court handed to me from that, that I never even got tickets from." He was given no notice to change his behaviour and no warning that he could be facing a slew of new criminal charges if he couldn't have his red zone varied. Though such charges may be hard to prove where no arrest occurred at the time, they can nonetheless bring people back into the criminal justice system again and again.

One man we spoke with had been convicted of breaching his conditions not to carry drug paraphernalia, resulting in him being red-zoned. His red zone resulted in years of entanglement with the criminal justice system. His time in jail led to profound disconnect and isolation from anyone he knew.

I've been red-zoned. It fucked me right up. It kept me in the system for...years. I did a four-month fucking bit with 18 months probation on there. I did like a year, all in jail, from...breaches. It went from 18 months to...four years. Finally I get done, and by that time I lost right touch with everyone. – 332 (focus group)

Our research strongly suggests that red zones can result in a cycle of warrants, arrests, incarceration, and more stringent release conditions that exacerbate the cycle of criminalization. The magnitude of this

<sup>252</sup> See also Reid at para 20.

<sup>253</sup> See Reid at para 31; Bedford para 70.

<sup>254</sup> See also Reid at para 47.

harm compared to the underlying offences we heard about are disproportionate.

## NO SAFETY IN EXEMPTIONS OR VARIATIONS

While it is possible to secure a variation of one's bail or probation conditions from the court or to request specific exemptions from a bail or corrections supervisor that could make an individual's circumstances more workable, our research indicates there is no real sanctuary for people in securing an exemption or variation. Delays mean that the harms people endure before they are able to do so alter the course of their lives and the realities of criminalization often make seeking such alterations unrealistic.

One woman we spoke with told us about how a judge had found she had more than served her time because of all the time she spent in custody for breaches of her probation—six breaches later. “They just kind of threw my probation order out (313),” she said. But this decision came only after years of suffering and continuing to breach her red zone because of ongoing substance use issues. “They just said, obviously, it's not going to be doing her any good to keep breaching her,” she remembers. That decision arrived so late that much of the harm of living with a behavioural condition had already been done.

Similar harms were noted by several Indigenous participants who, after being in the court system for an extended period, and after being convicted of multiple breaches, were finally able to convince a judge to vary their conditions, removing conditions that were setting them up to fail such as abstinence conditions.

On a more regular basis, people are told by either courts or police that they can manage the conditions placed on them by requesting an

exemption letter from their bail supervisor or probation officer excusing them from a specific condition during a limited timeframe or for a specific purpose. What we heard, however, is that such letters do not stop people from being detained by police, nor are they always possible to secure.

They tell you, ‘Oh, you can go get a note...so you can go eat, then you got to get out of the red zone afterwards.’ But that's bullshit because when I did try—I need to go [into my red zone] to eat— [I was told] ‘No no, you go somewhere else, or buy food.’ I don't have a place to live. Where am I going to keep my, you know, it's too tiring. For people that are homeless that's even harder for them. – 266<sup>255</sup>

People trying to access necessary services will miss important opportunities to improve their lives and health if they are required to seek red zone exemptions each time an opportunity arises. Many people we interviewed opt instead to risk breaching their condition. “It's just quicker (63),” one person said. “I just found out I could go see a doctor that day and I didn't want to go through all the bullshit [of securing an exemption].”

In BC, the Provincial Court has found that getting an exemption from a bail supervisor or probations officer may not be viable for all people.<sup>256</sup> When it comes to accessing harm reduction services such as obtaining clean syringes, people are particularly reluctant to ask permission because doing so means admitting to a bail supervisor or corrections officer that you are planning to break the law by possessing drugs for consumption or breaching an abstinence condition.<sup>257</sup>

Where people need daily medical treatment, the strictures of an exemption can create barriers to accessing care. One person told us

about receiving a red zone exemption to access methadone treatment. “They basically only allowed me within that one-hour time period to get in there, get your methadone, get out (427),” she said. “It didn't necessarily mean I had the whole hour to do so...they would watch me like a hawk.”

At a time when thousands of people are dying from using unregulated illicit drugs across BC, it is untenable to ask that people request exemptions from bail or probation in order to access basic, life-saving services, such as clean syringes, methadone, or supervised consumption services, that must be accessed on a daily basis.

## BAD DATA CAUSES REAL HARMS

There's little accountability around the imposition of conditions, particularly those issued by the police. A more accountable system would require that police register the conditions they impose into a database by the type of condition, not only the name of an accused person, allowing the public to access information regarding the frequency with which different conditions are imposed by police. A more accountable system would also require that the justice system track specific breach allegations coming before the court in a manner allowing for aggregated data to be made easily accessible to the public. Neither is currently the case.

Police-imposed conditions are almost impossible to track by researchers through Freedom of Information requests and they currently cannot be subject to internal police review or oversight because they are not logged in any database in a way that is searchable based on the types of conditions imposed.

When courts impose conditions, it is very challenging to assess how they are being used and enforced.

<sup>255</sup> See also Reid at para 38.

<sup>256</sup> Reid at para 50.

<sup>257</sup> See e.g. Reid at para 42.

All adult and youth criminal matters are administered, managed, tracked, and documented through a database called the JUSTIN Justice Information System (JUSTIN), a system containing BC Courts information.<sup>258</sup> There is currently no way, however, to track what conditions are being breached on a statistical level without the use of complex computer science analysis tools,<sup>259</sup> as doing so would require individually reviewing every single breach allegation that comes before the courts. This is not inherent to the nature of breach allegations nor to the court's process; it is caused by how breaches are logged in JUSTIN.<sup>260</sup>

Due to the manner by which tracking occurs, we are unable to discern exact numbers of breach charges laid or convictions entered in relation to particular conditions. Our Freedom of Information request returned data on the number of times a particular condition had been imposed and the number of individuals upon whom such conditions has been imposed. The numerical data did not, however, accurately capture the number of times people were charged or convicted for breaching specific conditions. That is because all breach of bail charges (for all conditions) are laid pursuant to one section of the *Criminal Code*, section 145, and all breaches of probation are laid pursuant to section 733.1. The specifics of each breach charge are not tracked in a way that allows numerical data to readily be extracted for breaches of each type of condition.

Tracking such data would allow us, for example, to easily assess how often people are charged or convicted for carrying harm reduction equipment or breaching abstinence conditions. Further, our own data request reflects the need to better track how often conditions are imposed, who is being subject to them, and how often people are being convicted

for breaching various offences. For example, data is not available to assess how often curfew conditions are imposed on people experiencing homelessness.

Shortcomings in accountability mechanisms also impact people directly. People we spoke with often told us that they found it difficult to understand what specific offence their conditions were tied to, how long their conditions applied, and how they were to be enforced. Some study participants told us they were unaware when their conditions had been lifted. Without that knowledge, they had continued to deal unnecessarily with red zones and breaches, even in cases where the Crown never approved the underlying charges.

This lack of accountability extends to what seems to be an uneven landscape of police database updates. The result is that PRIME-BC may not always reflect recent changes to people's conditions, including when they are lifted.

One person we spoke with described how they were arrested for a breach, even after they'd completed bail or probation. We found this to be a shared experience among some other participants and heard similar stories from some criminal defence counsel.

I got nailed for [a] paraphernalia charge and it wasn't even in my conditions anymore. It was in my previous conditions that had ended six weeks before I got arrested. And they picked me up on a paraphernalia [breach] and charged me. – 153

### **BILL C-75: LAW REFORM AND UNCERTAINTY**

The proposed reforms put forward in C-75 are wide-ranging. The proposed reforms to court-imposed conditions and bail are particularly relevant to

Project Inclusion. We are mindful that at the time of writing, C-75 was only at second reading. It may go through significant amendments, and may never become law.

C-75 proposes to streamline the bail process, ostensibly with the aim to decrease the number of conditions to which people are subjected, decreasing the number of criminal convictions for breaches of conditions, and reducing the time people spend in courts and jails for those breaches. How these proposed amendments will operate is, however, unclear and some portions of C-75 raise preliminary concerns for us.

C-75 reiterates and reinforces the existing requirement that people be released under the least restrictive terms, including without conditions, unless Crown justifies the imposition of each condition. It also legislates the requirement to consider the overrepresentation of Indigenous people in the criminal justice system in determining whether or not to release a person on bail. It extends such considerations to other vulnerable populations overrepresented in the criminal justice system and who are disadvantaged in obtaining release on bail. This is a powerful step towards recognizing the systemic injustices against Indigenous people resulting in their drastic overrepresentation in prisons. It will hopefully also benefit other racialized people who are more likely to be detained and are overrepresented in the criminal system. C-75 does not define its use of the phrase "vulnerable population," so it remains to be seen whether people living with addictions, experiencing homelessness, or deep poverty will also benefit from this amendment.

Two amendments in particular may have unintended negative

258 Office of the Auditor General of B.C., *Securing the JUSTIN system: access and security audit at the Ministry of Justice (Office of the Auditor General of B.C., 2013)* at 6.

259 Sylvestre (2017) at 12-13.

260 Sylvestre (2017) at 46.

consequences for the people we heard from in Project Inclusion.

Rather than limiting the use of harmful red zones, C-75 explicitly adds red zones as an optional condition that may be imposed upon people who are released by the court. While this practice already occurs, Pivot Legal Society is of the opinion that adding red zones as an optional condition listed in the *Criminal Code* only encourages what we see as harmful practice, rather than curtailing it, which we argue is necessary.<sup>261</sup>

Further, C-75 contains a new initiative allowing police to compel a person to attend court for a suspected breach of a condition without charging them criminally where the breach does not involve violence, harm, or property or economic damage. The intention of these amendments is to decrease the number of charges laid for non-violent/damaging breaches. These amendments could have unintended negative consequences, however, if they encourage police officers to issue appearance notices on people for behavior so minor that the officer may have previously taken no action at all.

Far from limiting the number of people appearing in court for breaches of conditions, these amendments could encourage even more people to be brought into the system where they may face multiple appearance notices that they cannot adhere to, and where their liberty may be further infringed upon without being convicted of a crime.

Finally, Project Inclusion participants told us that the myriad conditions to which they are subjected are complex and confusing. They include bail conditions, but also probation and police-imposed conditions, often leading people to be confused about what conditions they are subject to and who imposed them. C-75 does

not adequately address this concern and so, regardless of the Bill's trajectory, we are concerned that this issue will persist.

### **FINAL WORDS: CONDITIONS DON'T CORRECT BEHAVIOUR— THEY PUT PEOPLE AT RISK**

Behavioural conditions impose inordinate complexity and negative impacts on the lives of the people to whom they have been issued, often at times when they are the most vulnerable and have the least access to resources. Each of the conditions identified in this chapter can lead to harmful results unto themselves, but when they are layered one upon another,<sup>262</sup> their potential to send a person into a spiral of riskier behaviours, to alienate them from services and community, and to keep them entrenched in the criminal justice system compounds.

A federal government study has noted the absurdity created by the current system of conditions. In 2015, the Research and Statistics Division of the Department of Justice published a report finding that the current bail system creates barriers to being re-released, adds to criminal charges, and creates a likelihood that anyone re-released will be subject to even more onerous conditions.

This feedback loop becomes especially disconcerting when one recalls that many of the original bail conditions may have been unnecessary, unreasonable, or clearly setting up the accused for failure (e.g., imposing a condition to abstain from drugs/alcohol on an accused person who has clear substance abuse issues; requiring an accused suffering from Fetal Alcohol Spectrum Disorder (FASD) and experiencing homelessness to report to a police station on a specific day each week).<sup>263</sup>

Through the course of our research for Project Inclusion, we found that

behavioural conditions put both individuals and their communities at risk of harm. Many participants told us about the people in their lives who rely on them and whom they rely upon for support, resources, and companionship. Risking criminal sanction and incarceration for breaching a condition creates ripple effects that can endanger the people close to the individual charged for a breach. One participant put it this way: "A friend of mine... kind of depends on me. He has autism and doesn't have any family and I'm his only friend. And we're staying in the shelter together and I, you know, I don't want to leave him, you know, without having me around, because he trusts me (304)." Risking incarceration for breaching a condition puts both this participant and his friend at risk. "I don't really know what to do," he said. "I'm going to have to go to my court appearance. Is there a way to find out whether or not there's a warrant for me before I walk in there?"

In every community we visited while conducting research for this project, most people we talked to found their behavioural conditions to be inordinately punishing given their personal situations. Where police, Crown, or courts issue behavioural conditions with the eye towards behavioural modification motivated by the risk of criminal sanction, that approach carries consequences that work against its intended purpose because of its negative impact on people's lives. Those impacts show up in a number of ways, from a person going hungry because they are unable to access their only food source, to a man afraid to carry clean harm reduction supplies, to a terrified woman cowering alone in a dark trailer waiting for morning to come. These are not reasonable or justifiable applications of the criminal law.

261 C-75 at cl 227 amending ss. 515 of the *Criminal Code*.

262 Sylvestre (2017) at 49.

263 Webster at 8.

## Recommendations

1. The Government of Canada must amend the *Criminal Code* to prevent the use and prosecution of discriminatory or destructive behavioural conditions of interim release and sentencing, specifically:
  - a. legislate that conditions imposed on interim release be reasonable and proportionate to the nature and seriousness of the alleged offence and the circumstances of the accused;
  - b. define “drug paraphernalia” as harm reduction medical equipment and prohibit the imposition of conditions that would interfere with the ability to access or possess harm reduction equipment;
  - c. prior to imposing an abstinence condition, require that courts consider a person’s dependence on drugs or alcohol. Abstinence conditions shall not be imposed on people living with addictions, except where doing so is necessary to protect the safety of a victim, witness, or the public, and harm-reduction measures shall be preferred over abstinence;
  - d. limit “red zone” conditions to situations where there is a substantial likelihood that, if released without a red zone, the accused will commit an offence involving violence or serious harm within the red zone and ensure that any red zone is tailored to the alleged offence, the principles of judicial interim release or probation, and circumstances of the individual;
  - e. remove paragraph 504(2.1) (g), the power for police to impose “abstinence” conditions; and
  - f. eliminate criminal sanctions for non-violent breaches of behavioural conditions.
2. The Governments of BC and Canada must amend their prosecutorial policy, specifically:
  - a. amend the BC Crown Counsel Policy Manual to include a policy on “Conditions of Release” that:
    - i. aligns with the *Criminal Code* requirement that an accused be released unconditionally unless their detention or the imposition of conditions is justified;
    - ii. reflects Supreme Court of Canada jurisprudence requiring that conditions of release be minimally onerous and that every imposition of more restrictive conditions must be individually justified; and
    - iii. takes into consideration the potential harms of imposing certain conditions on some individuals based on their social condition, race, ability status, housing status, and substance use.
  - b. amend the BC Prosecution Service Information Sheet “Bail (Conditional Release)” to reflect the presumption of unconditional release; and
  - c. amend the Public Prosecution Service of Canada Deskbook Part 3.18 sections 2 and 5 to:
    - i. more clearly reflect the *Criminal Code* requirement that an accused be released unconditionally unless their detention or the imposition of conditions is justified; and
    - ii. take into consideration the potential harms of imposing certain conditions on certain individuals based on their social condition, race, ability status, housing status, and substance use.
3. The Provincial Court of British Columbia should:
  - a. establish a Practice Direction re-affirming the presumption of unconditional release and the requirement that Crown individually justify the imposition of every restriction on release;
  - b. amend the Provincial Court of British Columbia, “Bail Orders Picklist”, May 1, 2017 and Provincial Court of British Columbia, “Probation Orders Picklist” May 1, 2017 to:



- i. remove “Drug Paraphernalia” conditions;
  - ii. restrict the use of “No Alcohol or Drugs” conditions in relation to people with addictions;
  - iii. remove “banishment” conditions entirely;
  - iv. ensure that all “red zone” conditions are imposed only where doing so is required to protect the safety of a victim, witness, or the public from violence or serious harm. In doing so, red zones must be tailored to the alleged offence and the circumstances of the individual. Under no circumstances are standardized red zones appropriate; and
  - v. prohibit the imposition of behavioural or geographic conditions that would interfere with the ability to access health or social services, including harm reduction health services.
- c. Create a Provincial Court resource outlining “harm reduction services,” including a definition of:
- i. “drug paraphernalia” as harm reduction equipment;
  - ii. “Safe Consumption Sites” and “Overdose Prevention Sites”;
  - iii. needle exchange;
  - iv. opioid substitution treatment; and
  - v. low-barrier health services.
4. Police Services must create a provincial practice direction for police officers upon release of an accused, adopting the following recommendations of the Canadian Civil Liberties Association:<sup>264</sup>
- a. police should make increased use of their power to release and ensure that any conditions imposed are constitutional and legally permissible under the *Criminal Code*;
  - b. individuals released from police custody should be proactively informed of the procedures that can be used to vary police-imposed conditions under the *Criminal Code*; and
  - c. police should release individuals under the most minimally restricting conditions available in the circumstance, taking into consideration an individual’s need to access shelter, social services, health care, and community, as well as the possible disability status of the individual, including addiction.
5. The Ministry of Justice and/or Court Services Branch must update any Ministry of Justice databases (e.g. JUSTIN) and related practices, policies, and technology platforms, to ensure that the imposition of bail and sentencing conditions can be tracked in correlation with housing status and race, and that breaches of bail or sentencing can be properly recorded and searched based on the type of condition breached.
6. Relevant policing stakeholders must update database systems, e.g. PRIME-BC, to:
- a. require that all police-imposed conditions are electronically registered, including:
    - i. the date of imposition;
    - ii. the date or causal mechanism by which the condition will expire;
    - iii. the specific content of the condition; and
    - iv. the underlying reason for imposing the condition.
  - b. ensure that PRIME-BC can be searched to track all police-imposed conditions in the aggregate, rather than only being tied to an individual’s file.

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<sup>264</sup> See *Deshman & Myers at 83*.

# Section Three

## No Access, No Support: Service Gaps and Barriers



Through the course of our research for Project Inclusion, we connected with a number of people like the soft-spoken woman we met one rainy morning in front of an emergency shelter where she was staying. She was doing her best to make herself comfortable near the shelter's front door, despite the fact that she was in extreme physical pain. We later learned that she was also living with advanced cancer.

She took some time to consider before deciding she would like to share her story, although she wasn't sure she would have too much to say. We are deeply indebted to her for making the choice to speak with us. She is alone for the first time and living on basic income assistance after having spent her life living with a parent until they passed away a few years ago. Unable to find housing, she was now homeless in the same community she had lived in all her life.

We don't know where this woman is today, but we do know that the shelter is now gone, as it was only operating on a temporary basis. We also know that we have a responsibility not just to share the heart-wrenching details of her story, but to pose the question: how, in contemporary British Columbia, could this situation even happen?

Some of the answer lies in issues we were not going to take on here, such as housing stock and income assistance rates, because they have been documented *ad nauseam*.<sup>265</sup> These are critical issues that must be addressed to ensure that people who rely on income assistance, low-income workers, and other low-income people are not sentenced to homelessness or forced to

decide between housing and other necessities of life such as food and transportation.

**Stigma is embedded in the fabric of health and social services in a way that is undermining public health, perpetuating criminalization, and, in some cases, leading to violations of human rights.**

We also need to look deeper, because the answer lies not only in infrastructure and funding levels, but in the ideologies and beliefs that underlie the development and delivery of many essential services. To be more specific, stigma is embedded in the fabric of health and social services in a way that is undermining public health, perpetuating criminalization, and, in some cases, leading to violations of human rights.

Many participants in this project identified services and specific service providers as critical sources

<sup>265</sup> See for example, Seth Klein, Iglia Ivanova, & Andrew Leyland, *Long Overdue: Why BC Needs a Poverty Reduction Plan* (CCPA BC Office, 2017), online: [https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2017/01/ccpa-bc\\_long-overdue-poverty-plan\\_web.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2017/01/ccpa-bc_long-overdue-poverty-plan_web.pdf).

of safety, support, and community. We know that we could not have undertaken this project without the openness and dedication of overtaxed frontline service providers who were willing to add to their already overflowing plates by sharing their knowledge and facilitating research visits to their communities.

Despite the many highly skilled service providers working tirelessly to support people in their communities, project participants across the province consistently identified ways in which not only emergency and health services geared toward the public at large, but also organizations and programs ostensibly operating specifically to serve people experiencing deep poverty, homelessness, and substance use, were not meeting their needs.

The service barriers and gaps that project participants identified span the gamut, from waitlists due to chronic underfunding, to logistical barriers that make services inaccessible, to attitudinal issues among staff, to underlying stigma embedded in program design. Considering this range of barriers and gaps, participants emphatically shared that they need services that support people's sense of dignity and autonomy, that are trauma-informed, that are culturally appropriate, and that engage peers in program design and delivery. Services that lack those features have negative impacts on health, safety, dignity, and well-being in the short term, and in the long term, they drive people away from engaging with health services, shelter and housing options, and income support programs.

### **STIGMA CUTS PEOPLE OFF FROM BASIC NECESSITIES, PUBLIC RESOURCES**

People who took part in this project experienced many of the barriers we discuss when accessing even basic necessities like washrooms and clean drinking water.

Many people also experience barriers in accessing services that are generally available to the public as a whole.

People spoke, for example, about barriers to spending time in public libraries as this couple, who participated together, explained. "Sometimes they'll call security (459a)," he said. His partner added, "Yeah, it depends on if...that's one of the days where all the kids are in... like a field trip there. Then they'll ask you to leave or call security, and get security to get you to leave (459b)." When evaluating the role that stigma and discrimination play in limiting access to services generally available to the public, we feel compelled to share that as we write this, we are well into our fifth hour in a study room at the Vancouver Public Library that is explicitly limited to two-hour bookings in a given day. Security has walked by several times over the last three hours and has said nothing.

### **"No Address, No Food"**

Discrimination also shows up in services meant to cater exclusively to people living in poverty. One participant explained that in her community, the local food bank does not serve homeless people. "I don't have ID, which makes it hard for me to go to the food bank or anything. I can't get food or nothing (397)," she said, explaining that her community food bank requires people to produce documentation that shows they have a fixed address in order to access its services. "You have to have a residence, too."

This woman was one of many participants who explained the "no address, no food" rule. "You can't get food from the food bank if you're homeless (262a)," another participant said. "If you don't have an address, if you're homeless...they will not so much as give you a can of pop, a bottle of water, nothing...You have to have an address, they will check with welfare...if you only get

[financial] support [through income assistance, with no shelter allowance] you cannot go to the food bank because that means you don't have an address."

It is important to note that many of the participants in this study only receive the support portion of their income assistance, and they cannot access shelter allowances to pay for things such as tents or tarps or to cover other costs associated with homelessness.

Given that basic income assistance support rates are currently \$335 per month,<sup>266</sup> it is impossible for a person to feed, clothe, and otherwise support themselves without additional resources.

Another participant explained that the shelter does not constitute an address for the purposes of accessing the food bank. "You have to have an ID too, and proof of address. And the shelter doesn't constitute as an address (459a)," he said.

### **THREE FOCUS AREAS: INCOME SUPPORT, SHELTERS, HOSPITALS**

Among the vast array of service gaps and barriers that participants in this project navigate in their lives, we identified three major areas where gaps and barriers are substantially undermining health and safety:

- provincial income support programs;
- shelters; and
- hospitals.

We have chosen to focus on gaps and barriers in relation to these three broad service areas, both because they came up most often in discussions with participants and because of the very real and direct health, safety, and human rights implications that arise where these services are not available or accessible to marginalized people.

<sup>266</sup> Government of British Columbia, *Rate Table: Income Assistance (BC Employment & Assistance Policy & Procedure Manual)*, online: <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/bc-employment-and-assistance-rate-tables/income-assistance-rate-table>.

Throughout the course of our research, the following key findings emerged from our exploration of service gaps and barriers which surfaced through discussion with Project Inclusion participants:

- across BC, there are too few safe drop-in services, shelter spaces, harm reduction services, treatment beds, and advocacy services to meet the most basic needs of people living in poverty;
- a range of factors, from stigma to resource constraints, result in services that are, by design, difficult for their intended population to access or that are inadequate to meet people's complex needs;
- decades of de-funding and resulting privatization of services for people who live in deep poverty has created a patchwork system of service delivery, where the number and types of services available, rules for clients, and oversight standards vary arbitrarily from municipality to municipality;
- even well-intentioned service providers and health care professionals set up policies and engage in behaviours that are based in stigma and create service barriers; and
- the barriers we have identified, particularly where they result from attitudes of staff or policies rooted in stigma, have real-time negative impacts on people's psychological and physical health, making it less likely that people will engage with the health care system in future.

We will explore each of the three broad service areas in detail, and conclude this chapter with a look at the role that engaging peers can play in improving service design, delivery, and advocacy.

### **NEOLIBERALISM IN CONTEXT: HOW BC WAGED A NEW WAR ON THE POOR**

While the housing crisis in BC is not attributable to any one cause and not all homeless people rely on income assistance or disability assistance,<sup>267</sup> it is clear that both the inadequacy and the inaccessibility of government income assistance are major drivers of homelessness.

There is widespread recognition among social scientists that many western nations, including Canada, have embraced an economic philosophy termed neoliberalism since the 1980s. Among other things, neoliberalism strives to achieve so-called "smaller government," lower taxes on income and corporations, and privatization of government services.<sup>268</sup> The continual rise in BC's rates of homelessness since 2002, and the increasing role that private charities play in the lives of people living in poverty, track alongside the coordinated implementation of neoliberal policies in this province, including aggressive restrictions on the availability and adequacy of income assistance.

Despite already stringent eligibility requirements and poverty-level assistance rates, when the BC Liberal party came to power in 2001, they declared that they would put an end to the "culture of entitlement" the previous government had

purportedly fostered. The government of the day implemented a number of far-reaching changes to income assistance, with the goal of reducing the operating budget of the then-named Ministry of Employment and Income Assistance by approximately one-third, over a three-year period. The BC Liberal government began its economic restructuring program in 2001 with a 25% across-the-board tax cut.<sup>269</sup> This cut resulted in diminished levels and availability of income assistance, increased pressure on single parents to find paid work, an erosion of labour standards, and greater reliance on the private sector to provide formerly public services.

In April 2002, the provincial government revamped income assistance in British Columbia. While the province's income assistance rates and policies were already a target of criticism from anti-poverty activists and scholars, support rates were reduced and employable clients were limited to 24 cumulative months of assistance in any five-year period.<sup>270</sup> The \$100-\$200 earnings exemption for those who earned additional income while on assistance was discontinued.<sup>271</sup> Those changes to income assistance have had profound, longstanding impacts on the levels of poverty in Vancouver and across BC.

The sweeping cuts, which came into effect in April 2002, included the closure of 36 income-assistance offices across the province and the loss of 459 full-time-equivalent positions. The provincial government justified the cuts by virtue of the fact that they planned to significantly reduce the number of welfare

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267 *The 2017 Metro Vancouver Homeless Count found that 22% of homeless people counted had part- or full-time employment and that others engaged in informal labour such as binning/bottle collecting to support themselves.*

268 *Key texts include: David Harvey, A Brief History of Neoliberalism (Oxford: Oxford University Press, 2005) and Jamie Peck, Constructions of Neoliberal Reason (Oxford, Oxford University Press, 2010).*

269 *Doug Ward, "BC Liberals' 12 Years of Tax Shifts, Explained" The Tyee (May 6, 2013), online: <https://thetyee.ca/News/2013/05/06/BC-Liberals-Tax-Shifts/>.*

270 *This policy was changed in 2012 see: Legal Services Society Updates to your Welfare Rates (October 1, 2012), online: <https://sci-bc-database.ca/wp-content/uploads/Your-Welfare-Rights-Update.pdf>.*

271 *Earning exemptions were re-introduced in 2012 see: Government of British Columbia, Changes to Income and Disability Assistance take effect today (October 1, 2012), online: <https://news.gov.bc.ca/stories/changes-to-income-and-disability-assistance-take-effect-today>.*

recipients.<sup>272</sup> Other changes included an unwieldy new process for applying for disability benefits. Changes to income assistance were part of a broader project that unfolded during the early 2000s of dismantling social services including drastically reducing investment in low-income and social housing, privatization of formerly public services, and reducing regulations in areas such as labour standards.

In order to combat homelessness, income assistance rates must be raised to reflect the actual minimum cost of living, and the provincial government must invest in building an adequate supply of welfare-rate housing that meets the demand for it.<sup>273</sup> What we learned from participants in this study is that BC needs to take immediate steps to address both the deliberate and the downstream access issues that make it difficult to secure and maintain even the meager income assistance benefits that are available.

## A PROJECT OF EXCLUSION: INCOME ASSISTANCE IN BC

### Access

The provincial government has described income assistance, known colloquially as welfare, as a “program of last resort.” Even if we accept that dissuading people from accessing income assistance is a legitimate policy goal, which we dispute, it is clear that the notion that welfare is and should be a last resort for people has been taken to such an extreme that it is causing objective harm to people in need, the communities in which they live, and society as a whole. A major study of people who are homeless in Vancouver reveals that the over half of respondents, 57%, never or only sometimes

had access to Income Assistance within the previous two years.<sup>274</sup> People experiencing deep poverty are precisely the people income assistance exists to support. This statistic demonstrates the chasm that exists between the people who require social services and the real-life accessibility of those programs.

The provincial changes to income assistance in 2002 included new mandatory wait times for accessing assistance. This change had an immediate, negative impact for people who suddenly lost their housing or found themselves unable to pay their rent. One man who took part in this study was a professional contractor who found himself destitute in the midst of a struggle with anxiety, depression, and substance use.

He explained the reality of mandated wait times<sup>275</sup> from the perspective of someone experiencing homelessness for the first time.

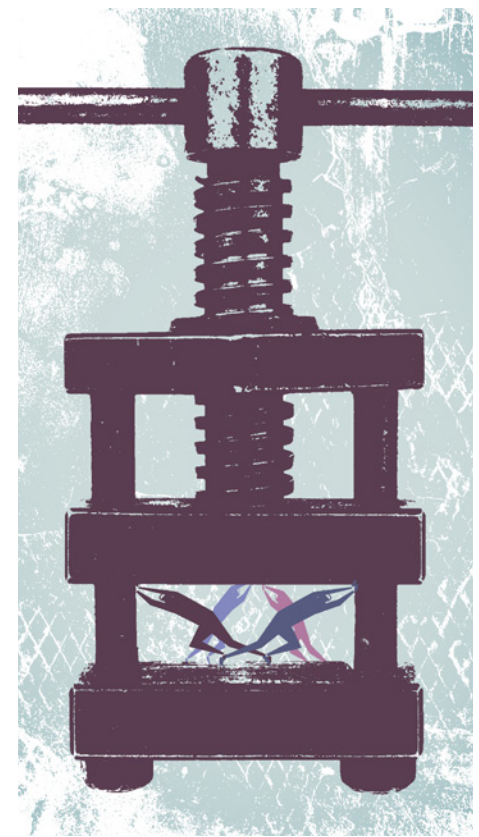
I was sleeping outside in a ditch at the time. And when you apply for welfare it takes over a month before they'll even think about cutting you a cheque...So, I mean, I don't know where I'm going to be in a month. I don't have a clue.  
- 175

Once this cycle of poverty begins, a person may become entrenched in homelessness. The cycle makes it increasingly difficult to re-enter the labour or the housing market.

Someone is like, 'Get a fucking job.' Well, if that person...doesn't have an alarm clock, doesn't have food, doesn't have something nice to wear, they are not going to get a job and then they are not going to be able to go to work. You need

somewhere, somebody, to help you somewhere along the line. - 373

Along with the wait time, the closure of offices and the application process for both income assistance and disability benefits have become a major barrier for the people the system is intended to support. One woman we heard from, who lives with a range of physical and intellectual disabilities, told us that her boyfriend helps her with the administrative aspects of accessing income assistance. “He knows how to read and write and he knows how to talk to the system (121),” she told us. For a person struggling with literacy, accessing income assistance would be impossible without help. That struggle also places the



272 Darcie Bennett & Lobat Sadrehashemi, “Broken Promises: Parents Speak About BC’s Child Welfare System” (Pivot Legal Society, 2008), online: [http://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/legacy\\_url/310/BrokenPromises.pdf?1345765642](http://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/legacy_url/310/BrokenPromises.pdf?1345765642).

273 Seth Klein & Pamela Reaño “Time to raise welfare rates: Debunking the BC government’s sorry excuses for inaction” CCPA Policynote (March 30, 2017), online: <http://www.policynote.ca/time-to-raise-welfare-rates/>.

274 Mario Berti & Jeff Sommers (2010) “The Streets Belong to the People who pay for them: The Spatial Regulation of Street Poverty in Vancouver British Columbia” in Diane Crocker and Val Marie Johnson eds, *Poverty, regulation and social justice: Readings on the Criminalization of Poverty* (Halifax: Fernwood, 2010) at 60-74.

275 For a current overview of wait times for accessing income assistance benefits, visit the Ministry’s website, online: <https://www2.gov.bc.ca/gov/content/family-social-supports/income-assistance/apply-for-assistance>

woman in a position of significant dependence in her relationship.

Many of the people we spoke with find web-based systems, like the main system through which people are expected to apply for income assistance and through which many rental vacancies are posted, to be highly inaccessible. "I need help sometimes finding housing (256)," one participant told us. "I'm kind of computer illiterate so I have a hard time with that [accessing rental listings online]. Telephoning is fine."

Even many of the participants in this study who felt comfortable using the internet did not have access to digital devices or places where they could go to use web-based services. "The only internet that's there is in [local service hub] we're not allowed access to it. Only the workers can... It's like in the back of the staff room, like our little office (313)," one person said. "And you ask them to do stuff like that and it's just like—like they're so busy."

We learned from service providers that in rural and remote communities, accessing services online is virtually impossible. People cannot access the internet from home and service hubs are located far from where people live.

Many people we spoke to also explained that they need help from an advocate to successfully navigate the income-assistance process. This means that community-based services mandated to serve a large potential client base and offer a broad range of services are increasingly overstretched as advocates spend much of their time helping clients access the government services to which they are entitled. This is especially the case for people like the woman we profiled at the beginning of this chapter who is homeless, living with cancer, and unable to access disability benefits.

She is the quintessential example of what happens when a system meant to provide a safety net for those in the greatest need is focused on keeping people off of benefit programs.

**Interviewer:**

How do they treat you at the office?

**Interviewee:**

Good. I know them all, so. I've been on it since I've been 18.

**Interviewer:**

So you've been trying to get onto disability, you clearly have a diagnosis. What do you feel like the block has been?

**Interviewee:**

Not enough services. The advocate. There's three different sections of it [the application form for disability assistance]. My doctor filled it out right away. I need the other two people to help me fill it out. I still haven't done that.

**Interviewer:**

How long have you been trying?

**Interviewee:**

Seven years now.

**Interviewer:**

And nobody at the welfare office has offered to help you?

**Interviewee:**

No. Of course not. – 397

The barriers people face in navigating the current system cannot be overstated. It is also important to recognize that people need to find ways to survive. While many people manage to get by engaged in lawful activities, such as collecting recyclables, the likelihood that someone will resort to illegal income generation is greatly increased when they have no access to basic income. One participant who was kicked off of income assistance explained his

circumstances. "If you got warrants, they kick you off [income assistance] (459a)," he said. Getting kicked off of income assistance, he added, strips a person of their ability to attend to basic necessities like purchasing food and clothing for themselves. When asked if such a situation would make it more likely for him to steal food, he replied, "It does most definitely."

## Rules, Investigations, and Why Advocates are Sorely Needed

Once a person has been successful at securing income-assistance benefits, experiences of precarity continue to feature prominently in their lives, particularly those living with intersecting barriers. Many people expressed frustration with the onerous requirements for maintaining their benefits, including implementing an employment plan,<sup>276,277</sup> given all the challenges in their lives. One participant put it this way:

Last month, I had a hold on my cheque because I needed to sign an employment agreement. I tried to do so, but it was online. There's still no way for me to sign it. So now there's a hold on my cheque this month until it gets signed. – 332

Study participants also noted how easy it is for someone to reach out to income assistance and prompt an investigation questioning their eligibility due to income, assets, or family status. Several people who took part in this study had been kicked off of income assistance after someone contacted the Ministry with an allegation that prompted an investigation. Welfare "snitch lines" and anonymous fraud reporting are a major source of stress and concern in people's lives. In BC, anyone can report suspected welfare fraud by filling out an online form that is easily accessible on the Ministry of Social Development

276 Government of British Columbia, *Employment Planning*, online: <https://www2.gov.bc.ca/gov/content/family-social-supports/income-assistance/on-assistance/employment-planning>.

277 Government of British Columbia, *On Assistance*, online: <https://www2.gov.bc.ca/gov/content/family-social-supports/income-assistance/on-assistance>.

and Poverty Reduction's website.<sup>278</sup> The form allows people to tick a box stating that they would like to remain anonymous when making their allegation. The way in which fraud allegations, including those submitted anonymously, are investigated and the impact on people's income, health, and safety is a complex issue that warrants further study.

In the current system, advocates play an important role; well-resourced advocacy services are needed in every community in BC. At the same time, when accessing government services, the need for advocacy support should be exceptional, not an everyday occurrence, because government services should be designed in such a way that they are accessible to those the services are in place to support.

The role of government employees administering these programs should be to connect people to services and benefits for which they are eligible. The stigma-driven ideology that underpins BC's approach to income assistance has created a system that prevents the very people income assistance programs exist to serve from accessing desperately needed economic support.

Those with the fewest resources to fall back on have been diverted not into a booming labour market, but rather into homelessness for over a decade.<sup>279</sup> Others have remained in abusive relationships, allowed employers to violate labour and human rights standards in order to keep their jobs, or turned to work in criminalized survival economies.

## SHELTERS

Homelessness in Canada is not new, but it's notable that homelessness

has only emerged as a pervasive, growing so-called "social problem" in recent decades. In the late 1980s and early to mid-1990s, the federal government shifted its housing policy in favor of home ownership, and drastically cut spending in order to balance the budget. In practice, this shift meant cuts in federal funding transfers to the provinces, who then drastically cut their own program spending for housing and social services.<sup>280</sup>

The result was a rise in homelessness and with it, the emergence of a loose system of faith groups, non-profit organizations, and local governments aimed at responding to the immediate needs of people who are homeless. That scattered web of supports responds to what needs it can in the form of emergency shelters, drop-in centres, counselling, social supports, and in some cases health supports, while being unable to provide adequate income and permanent housing, the actual keys to lifting a person out of poverty. This privatization process does not constitute a genuine replacement of the welfare state, but instead offers small-scale band-aid solutions. In BC, particularly from 2001 to the present, this process has led to the increasing formalization of the so-called "emergency" shelter system. This system provides beds or mats on a floor on a night-by-night basis. Some shelters only operate during specific times of year or when the temperature drops below a certain level.<sup>281</sup>

Shelters are not an answer to the need for affordable housing in BC. However, as long as homelessness remains a reality in this province, it is critical that everyone in need has access to safe shelter that meets their needs on a more than overnight

basis. Shelter providers must also do all that they can to promote health and dignity of their clients and offer as much privacy and autonomy as possible.

## Unavailable and Inaccessible

In every municipality we visited, issues related to the availability of shelter spaces, living conditions inside of shelters, and reasons that people could not or would not access them, were a major topic of conversation.

One man who lives with anxiety, depression, and chronic back pain explained what living in the shelter is like for him.

I over-medicate myself at night so [I] can...not think about all the other people. And [I] do stay away from a lot of the people. Like I go outside a lot or I'll hang out somewhere else away from inside, because once you're inside, it's 15 people to 20 people in a small little building, you're cramped. You're elbow-length away from your neighbour. So, it's like a lot of little butting of heads here and there, and once in a while, of people. And it's just part of having so many people in a small space, but I'm hoping this new shelter gets built because that will be helpful anyways...I already wanted to leave there many times and go stay in the bush if I could, but I can't. So I'm just forcing myself through the process of being there like but it's hard for me, so I smoke a lot more to medicate myself to just go sleep. – 269

He also explained that just maintaining access to his mat on the floor at the local shelter has taken over his life.

278 You can view the entire form here: BC Ministry of Social Development and Poverty Reduction, *Fraud Allegation Reporting Form*, online: <https://www.reportfraud.gov.bc.ca/Allegation.aspx>.

279 Seth Klein, Marge Reitsma-Street, & Bruce Wallace, "Denied Assistance: Closing the Front Door on Welfare in BC," (CCPA, BC Office, 2006) online: [http://www.policyalternatives.ca/sites/default/files/uploads/publications/BC\\_Office\\_Pubs/bc\\_2006/denied\\_assistance.pdf](http://www.policyalternatives.ca/sites/default/files/uploads/publications/BC_Office_Pubs/bc_2006/denied_assistance.pdf) at 6.

280 Stephen Goetz, "The Struggle to End Homelessness in Canada: How we Created the Crisis, and How We Can End it" (2010) 3 *The Open Health Services and Policy Journal* at 21.

281 BC Housing, "Emergency Shelter Program," online: <https://www.bchousing.org/housing-assistance/homelessness-services/emergency-shelter-program>.



You get kicked out at eight o'clock and then you wait all day long and then you got to go back at four and then they will open up again... If it's too full, that's it, you are done, you got to go somewhere else...that's why I show up early, I just go there at 3:30 and hang out 'til it opens up and then I set my bed up and whatnot so I have my guaranteed spot every night. – 269

Another man explained the shelter situation in his community. "Especially through the winter months, they're always full (175)," he said. "Basically, you got to pray that somebody goes and gets drunk

and passes out in a bush and doesn't show up so that you can get a bed."

We heard stories of shelter turn-aways in every region. For some regions, we have quantitative data that demonstrates the lack of shelter spaces is a pervasive problem. The Metro Vancouver homeless count is a 24-hour point-in-time measure of homelessness in the region. The 2017 count took place on March 7, and the report authors state that demand for shelter was so high on that single evening "that shelters, safe houses, EWR [Extreme Weather Response] shelters, transition houses, and detox facilities reported 334 instances of

turning away individuals, primarily because they had reached full capacity."<sup>282</sup>

While the number of shelter beds in BC has increased since the last count in 2014, the latest count found that the increase was not enough to result in a lower number of persons turned away in 2017 compared to 2014.<sup>283</sup>

### **The Problem with Shelter Operating Hours and Good Neighbour Agreements**

Even where shelter beds are available on an overnight basis, they do not often address people's need to have somewhere to spend time and attend to basic needs during the day.

As one participant explained, "We stayed [in the shelter] during the night, [they] kicked us out early in the morning, then we have to find shelter for the day (13)." She told us about having no shelter during the day, which results in exposure to the elements and pests, all while facing the threat of criminal sanction if she tries to shelter herself in public space. "We are not allowed to put up a tent or little tarp over us."

This woman went on to explain that having to leave the shelter each day is made even more difficult because in her community, shelter residents have to take all their possessions with them and carry them around all day.

If I'm gone more than an hour they throw all our stuff in the bin... Like brand new clothes, whatever, they will throw it all way, no matter what. They will take the IDs out or whatever, and that's the only thing they take out of the bag, and they throw everything away. All our personal...belongings, everything. – 13

She explained that having to carry all of their belongings, especially when using bags provided by the shelter, makes shelter residents who have no place to go more vulnerable to police

282 BC Non-Profit Housing Association & M. Thomson Consulting, 2017 Homeless Count in Metro Vancouver, online: <http://www.metrovancouver.org/services/regional-planning/homelessness/HomelessnessPublications/2017MetroVancouverHomelessCount.pdf> at 8.

283 BC Non-Profit Housing Association & M. Thomson Consulting.



harassment. "They know who all the homeless people are with the tote bags (13)," she said. "They know that the shelters are giving out tote bags and we are always getting our clothes thrown out, so we pack our stuff around, so now they just randomly search us all the time."

In another community, a woman told us about the shelter where she stays when the temporary 24-hour shelter is not in operation. That shelter, like others we heard about in the course of our research, requires residents to leave after breakfast each day. While she shared that the staff are "lenient" with her because of her physical health condition and allow her to hang out in front of the shelter during the day, others are not extended the same courtesy. "Other people, they kick out (397)," she says.

We found this situation repeated itself in another municipality, where participants reported that shelter staff spent time looking for residents offsite during the day to ensure that they are not spending daytime hours too close to the shelter:

At [shelter], you are not allowed to be anywhere within a two-block radius. They do grounds checks and they actually leave the property to do their grounds checks. They walk all the way around the [big box store], around the front of the business, and around an entire block. And then they go an entire block up, around the hardware store. So, they're not even on their own premises. These are the [shelter] staff that does this. If you're sitting, hanging out, and just chilling anywhere, they bar you. They kick you out. You can't be across the street, down the road, anywhere. – 45 (focus group)

Many shelter operators are asked by municipal governments, surrounding residents' associations, business improvement association, and other community groups to enter into

what are known as "Good Neighbour Agreements" (GNAs).<sup>284</sup> Municipal governments across Canada put GNAs into play as part of their response to public concern about services such as shelters. GNAs often include specific commitments by the service provider to take action on any issues or concerns identified by local residents.

Good Neighbour meetings, sometimes mandated as part of the agreements, are often unsafe for those who use the service in question to attend because service-users and their presence in the community is often conceptualized as a "problem."<sup>285</sup> In this way, the needs and realities of people who rely on shelters are not considered by the community in which they reside; this is yet another example of how essential services are not working to meet the needs of the people for whom they are designed.

### **Rules on Length of Shelter Stays: Reasonable in Theory, not in Practice**

Not only are there limits on the hours shelters are open each day, some shelters also have restrictions on how many nights in a row people can stay or how many nights they can stay in a given month.

One man explained the rules around lengths of stay at the shelter in his community.

You have to have a plan in place...as far as I know it's 30 days maximum...but there are extenuating [circumstances] where, like I know there's one lady where she's waiting on furniture. She has housing and she's waiting on like a bed and stuff. So, her 30 days is up but she's there an extra two days or something. There's another fellow and he was there an extra eight days, and they gave him the boot last night, so he's sleeping in a tent now. – 175

## **"Your 15 days are up and it's minus 40. What are you guys going to do?"**

He went on to explain that while the rules around length of stay might make some sense in theory, given the affordable housing crisis in his community, they make little sense in practice.

They're all run by [faith-based service provider], but each shelter has its own individual rules. And this one here you get, I think, five days. And then by the fifth day you have to have had an interview with one of the fellows out of the office. And you have to show them that you're working towards something other than just staying there until your time's up, which is, I mean, it's good because it motivates you to try and find housing and whatnot, but unfortunately the housing situation here—you might just go beat your head against the wall because there's nothing out there. – 175

In another community, people reported that the maximum length of time they could stay in the shelter was 15 days.

When asked whether this was because the shelter was at capacity, "I don't know (170)," one participant replied. "That's just the policy in town. Like, okay, your 15 days are up and it's minus 40. What are you guys going to do?"

He explained that the application of the rule did not seem to be contingent on whether there was a waitlist for beds. After being out of the shelter for a couple of days, people were allowed to return. The ineffectual redundancy of this rule was not lost on participants.

Shelters were never intended to be permanent housing solutions, but they have become just that for a

284 Geoff Cross & Bernie Pauly.

285 Geoff Cross & Bernie Pauly.

growing segment of BC's population. The growing, unsustainably long-term reliance on shelters, intended to be temporary places to stay while people get back on their feet, is the result of intersecting systemic influences. It is the result of income-assistance allowances for housing (known as shelter allowances) that fail to reflect the price of rent for even the most undesirable accommodations. It is the result of low vacancy rates in both the public and private markets. And the problem is perpetuated by the stigma and discrimination that people experience in the rental market and the search for employment if they receive income assistance, especially those who have no fixed address or who use the shelter as an address.

### House Rules and Sanctions

Restrictions on the hours of the day that a person can be inside a shelter and how many nights they can stay are only a few of the rules that govern the lives of people who rely on shelters. The people we spoke with for this study who use shelters expressed understanding about why some shelter rules are necessary; they acknowledged that shelters are shared spaces and could appreciate that shelter operators are making do with limited staff. At the same time, they expressed frustration that shelter rules impacted their personal autonomy. As one participant explained, "Some of [the rules are] a little ridiculous, but I can understand them. Like, the one rule that they've just come up with is they only let you in the door on the half hour and on the hour. And that sucks when you show up five minutes late and you're stuck outside for 25 minutes (175)," they said. "But on the other hand, there's only two people running the place. They're trying to keep an eye on 20 people, and if they're running to the front door every 30 seconds to let in the next smoker, how are they going to get anything else done. So, I mean, I understand it."

A woman in her fifties explained the rules at her local shelter, the only one in her community. "No paraphernalia, right, and you can't be high or drunk or anything coming in...then you have curfew. You have to be in by nine and you have to be gone by whatever time it is in the morning, I think it's eight or nine (256)," she said. As has been discussed throughout this report, people's experiences with homelessness can intersect with substance use. Because of the sobriety rules at this shelter, this woman has now been banned. "I OD'd [overdosed] in the shelter...I used outside of the shelter, right, and then I as soon I used I went directly in and then when it hit me because I don't do IV right I do subcute,<sup>286</sup> so it takes about 20 minutes. So when it hit me, I was already in the shelter and I dropped, right (256)," she explained. "So, they said, 'No, you can't come back for 30 days or 90 days something like that.'"

While it is clear that the rules at her local shelter are not meeting her needs, or the needs of many people experiencing homelessness in her community, she remains conciliatory. "It's actually really good. Some of the people that run it aren't, but regardless most of the times, it's really good (256)." Some people were supportive of, or at least resigned to, the rules in place at their local shelter. However, in many cases, these rules are not aligned with the needs of local shelter users, and even work at cross purposes with the goal of keeping shelter users and the broader community safe.

### Restrictions on Health Care Essentials

Shelters are the hubs for harm reduction supplies in some communities. In other communities, however, people reported not being able to keep harm reduction supplies at the shelter.

The shelter will take even clean rigs and stuff. And you know, like, they're supposed to be into

harm reduction and how can that be harm reduction when they're taking our clean rigs?...Especially if it's in its wrapper and stuff...I guess you have to be respectful and not use it in some places, but...I mean a lot of people won't stay there because they're alcoholics or drug addicts, right? – 181

Banning or confiscating harm reduction supplies from shelter users does little but put people at risk of further health-related harms. Shelter rules that prevent people from bringing harm reduction supplies inside have serious impacts on shelter users' health and safety. As some participants explained, it also has public safety implications. Some people reported hiding harm reduction supplies or disposing of them improperly because they did not want to get caught bringing them into the shelter.

### Discarding Belongings

In one community we visited, study participants expressed concern that shelter staff were regularly throwing away all of their personal belongs, not just harm reduction supplies. It was a major source of stress that was leading to deep distrust between shelter users and staff.

One participant told us that the regular practice of discarding shelter users' belongings was especially hard on women. "There's a lot of women that have a hard time finding clothes (326)," she said. She added that attempts to get belongings returned would result in losing access to the shelter. "If you try to get them back you get kicked out of [shelter]."

Shelters exist to provide a temporary housing solution for people with no other options. To discard what few belongings they possess does nothing to acknowledge their dignity, autonomy, and humanity.

286 A subcutaneous injection is administered as a bolus into the subcutis, the layer of skin directly below the dermis and epidermis, collectively referred to as the cutis.

## Sobriety

We heard stories from people who had been banned from shelters as a result of intoxication. Many shelters have rules related to intoxication that span the gamut, from using on site to being identified by staff as being under the influence of a substance while on the premises. These rules, which can lead to a ban for a night, a ban for a specific period of time, or an indefinite ban, proved to be a major barrier to shelter access for many study participants.

When asked how often he sleeps outside, one man explained that as a result of vague shelter rules related to intoxication, he needs to sleep outside about twice a month. Sleeping outside, he told us, is especially difficult for his partner, “with her addiction. She’s on methadone and she’s got a problem with crack...being on the streets, it’s always there, and it’s really, really hard for her (266),” he said. “She starts smoking and when she does it and she takes her methadone and she flails so...But when she’s flailing a little bit she’s not hurting and bothering nobody, the [shelter] workers are like ‘No, you are out of here. Come back tomorrow.’”

Along with obvious health and safety concerns, denying a person shelter due to intoxication raises human rights issues, since BC’s *Human Rights Code* prohibits discrimination on the basis of physical or mental disability, with addiction being classified as a disability under s. 8 of the Code.<sup>287</sup> It is important to note that having to sleep outside opens people (like the woman denied shelter access due to intoxication) up to health issues related to the cold and to criminalization because they have nowhere else to go.

They say that you can’t come in until you’re sober, so I had to sleep outside a lot...It’s hard. It’s getting cold at night...They come and they kind of bother me. They say, ‘You can’t be here.’ And I said, ‘Well,

“I can’t sleep anywhere—anywhere. They say, ‘Well, we have the [main shelter] and [other shelter],’ but by the time I walk down there, will there be one of those 80 beds available? No. Am I actually going to allow you to treat me like a child and strip me of even more of my dignity and humanity? No. Am I going to walk away from that place with the stigma attached so everybody that sees me is now all of a sudden associating me with whatever it is they associate the shelters with? No, I’m not going to do that to myself. There’s no way.” – 332

they won’t let me in the shelter, where else am I supposed to go?’  
– 395

Imagine getting kicked out of a shelter on a cold night and bedding down on the street, only to encounter a bylaw officer telling you that you can’t stay there. Even with nowhere else to go, people persist and survive.

### “Choosing” to Forgo Shelters

Accessing shelter can be a matter of life and death, especially in extreme weather. Several participants explained the impact of not being able to sleep inside, even for a night or two. One woman told us about getting kicked out of her local shelter because she was intoxicated. To stay safe overnight because she was alone, she stayed close to the shelter and in a central area so she could scream if she needed help or press the shelter’s emergency button (312). Others also told us how being unable to access shelter for a night put their personal safety at risk.

Failure to access shelter can also open people up to harassment and criminal sanctions, since police, private security, bylaw enforcement officers, and even members of the public patrol spaces where people could rest or sleep, prevent people from setting up encampments, and seize or destroy belongings.

Yet for some people who took part in this study, staying in a shelter is not an option. One man who is often

hassled by police, bylaws officers, or private security for sleeping in public space explained his rationale for continuing to stay outside.

I can’t sleep anywhere—anywhere. They say, “Well, we have the [main shelter] and [other shelter],” but by the time I walk down there, will there be one of those 80 beds available? No. Am I actually going to allow you to treat me like a child and strip me of even more of my dignity and humanity? No. Am I going to walk away from that place with the stigma attached so everybody that sees me is now all of a sudden associating me with whatever it is they associate the shelters with? No, I’m not going to do that to myself. There’s no way.  
– 332

For some people who experience anxiety and other mental health challenges, the conditions in the shelter cause more distress than sleeping outside:

#### Interviewee:

There is just way too much shit in there...I want to choose who I’m around.

#### Interviewer:

Do you feel like that might be partly because you’re saying you had a lot of anxiety.

#### Interviewee:

Yeah, big time. – 416

Some shelters force couples to separate for the night; many study

287 Government of British Columbia, *Human Rights in British Columbia: Discrimination against people with physical or mental disabilities*, (2016), online: <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/human-rights/human-rights-protection/disability.pdf>.

participants identified this policy as a major deterrent from staying in shelters. In order to fully understand the implications of the widespread lack of couple-friendly shelter spaces, it is important to recognize that these impacts go well beyond a situation where two people want to spend a night together. As the homelessness crisis continues to escalate, more and more long-term couples are experiencing sustained periods of homelessness. Many of the couples that took part in this study felt that having to separate every night had more negative impacts on their relationships than sleeping outdoors. One woman put it simply: "I've been with my spouse for 17 years. So when we were in the shelter I had to be away from him (181)."

No-pet policies also present major barriers to access to many people experiencing homelessness, including numerous Project Inclusion participants. Again, it is important to recognize that pets are family for some people who experience homelessness. They provide a source of connection, critical emotional support, and in the case of dogs, physical safety.

"We always say we'd rather be in the bush with our cat than downtown [in a shelter] (90)," one participant explained. "We couldn't justify our cat sleeping out in the cold and we're in there sleeping all warm and stuff. I love my cat."

Our research shows that people's experiences with shelters are at odds with the popular misconception that shelters are widely accessible, available, and welcoming to anyone in need. When considering how to improve BC's shelter system, it is important to note the intersecting stressors that shape the lives of people experiencing homelessness. Those stressors are not inevitabilities or the result of individual shortcomings; they are driven

by policy and stigma. Changing policy and how we treat people experiencing homelessness as a society, then, will contribute much to lightening their impact.

## HOSPITALS

When we began this study, hospitals were not an area we were planning to explore, but issues related to people's experiences in hospitals came up so clearly and consistently that they could not be ignored.

Homelessness entails a daily struggle for the essentials of life, and homelessness has a direct impact on health. Shelter conditions can result in exposure to infections and for those who spend their days outside, long periods of walking and standing and prolonged exposure of the feet to moisture and cold can lead to cellulitis venous stasis and fungal infection.<sup>288</sup> As a result, people experiencing homelessness, whether they are staying in a shelter or sleeping outdoors, have unique and pressing health care needs.

Even under the Canadian system of universal health insurance, many people experiencing homelessness do not have access to a general practitioner or even a health card due to the barriers to maintaining possessions while living outdoors or in shelters. It is also difficult to make or keep appointments while living outdoors.

Health issues that are caused or compounded by homelessness, combined with lack of access to physicians, telephones, and safe places to rest comfortably make people experiencing homelessness particularly likely to use emergency health services<sup>289</sup> and/or to require hospitalization.

Across the province, people felt that their local hospitals discriminated against people who use substances.

One respondent in a small community with very limited services described her experience seeking out harm reduction supplies from the hospital.

We went because my ex-boyfriend, we sent him up there to get some harm reduction kits for us...And they told them they didn't have any. And then another time he went back up there, they told him to sit down and wait and but they were on the phone calling the cops. So he took off. – 108

Similar concerns arose in communities across BC when people who were homeless and people who use substances attempted to access care for health conditions that would lead anyone to seek treatment in a hospital.

**In cases where there was no clear diagnosis, participants told us that hospital staff sometimes refused to believe that people identified as homeless or as substance users who were actually sick or injured.**

At first, one woman was nervous to tell us she used illicit drugs. Once she opened up, however, it became clear that her local hospital's response to her status as an illicit substance user was having a profound effect on her access to appropriate health care, despite her critical health issues.

This last time I was in the hospital with my leg, my doctor recommended I go to the hospital, so I went there...the staff in the emergency was so mean to me, like I couldn't believe it, they were

288 C. James Frankish, Stephen W. Hwang & Darryl Quantz "Homelessness and Health in Canada: Research Lessons and Priorities" (2005) 96:2 *Canadian Journal of Public Health / Revue Canadienne de Santé Publique* at 23.

289 Our findings are in keeping with the results of the 2017 Metro Vancouver Homeless, which found that 50% of the respondents had used an emergency room in the past year; 40% had used the hospital for non-emergencies; 39% had used an ambulance; and, 39% had used a health clinic.



just so rude that they actually had me crying and I left and I went to their manager. I put in a complaint with their manager and I don't know what happened with the two nurses that were being that way towards me. But I said, "I'm leaving," and the manager says, "You can't leave, it's your health that's the most important." I said, "I don't care, I'm leaving. I don't want to deal with these two and I'm leaving"...She accused me of being outside using drugs for an hour and a half. Some lady in the waiting room stuck up for me and said, "No she was only outside to have a cigarette and come back in." And they still continued to be ignorant to me. - 397

This woman was one of three study participants who reported that they were dealing with cancer treatment while homeless.

In another woman's case, the hospital was either unable or unwilling to provide a bed during treatment.

My last round of chemo I did living in a tent behind [business]. My husband thought I was going to die, the hospital wouldn't keep me because I was an active addict, the hospital won't keep me, and

nowhere would help me. I'm still barred from all services of the [local shelter]...They barred me indefinitely two weeks before I was scheduled to start my last round of chemo...and they knew I was scheduled to start chemo, and they barred me indefinitely...I did a full round of chemo—of radiation—living in a fucking tent. - 153

In cases where there was no clear diagnosis, participants told us that hospital staff sometimes refused to believe that people identified as homeless or as substance users who were actually sick or injured.

If they know that you've used or whatever, they red-flag you. So, it pops up on the computer that you're a drug addict or that you have addiction issues. So, basically...they're done with you then...they started treating [you]... at first if you look okay and you're not sick or looking rough, you know, like they're okay, and they're polite. They get you into a room fast. They come and see you every five minutes. And then as soon as they find out you're an addict, they can leave you sitting for six hours sometimes...my boyfriend had appendicitis and they had

him in the hospital here. And then they moved him up to [a larger hospital] and he went all the way without painkillers. And then they wanted to take X-rays in the morning and as they were taking X-rays, I guess his appendix burst because of all the pressure...You ask anybody who comes in here if they will go to the hospital, every single one of them will say no. - 181

Project Inclusion participants made it clear that BC hospitals are also poorly equipped to deal with the reality that people with addictions also have legitimate pain issues. Some are also failing to accommodate patients in withdrawal.

One person described their experiences with pain medication and dope sickness while in hospital. "They don't like to give me anything... they'll pump me full of valium and saline and few times I've been in there, they'll give me two milligrams or five milligrams of morphine every two hours, and which isn't even enough to keep off the dope sickness (396)," they said. "Last time I was in there, I had to shoot up and they caught me shooting up and then they kicked me out...I was on intravenous Vancomycin for blood poisoning, yeah. And I had an abscess on my spine too, and they kicked me out."

**"I did a full round of chemo—of radiation—living in a fucking tent." - 153**

There is strong evidence that these experiences are compounded for Indigenous patients. Several Indigenous participants in this project reported that they, a close friend, or family member had been ignored or sent away from the hospital despite being in serious medical distress. BC-based research indicates that Indigenous peoples face multiple barriers in their quest to receive

## Several Indigenous participants in this project reported that they, a close friend, or family member had been ignored or sent away from the hospital despite being in serious medical distress.

health care.<sup>290</sup> For example, a recent study published in *Social Science & Medicine* found that Indigenous people in the Downtown Eastside face stigma when accessing health care,<sup>291</sup> including the denial of painkillers when in intense pain. Patients attribute this to the doctor's assumption that they are addicted to painkillers and seeking to obtain them.<sup>292</sup> This perspective from patients is corroborated by some Indigenous health care workers, including a nurse who recently told CBC's *The Current* that she has heard of surgeons telling nurses during surgery that Indigenous patients have different pain receptors and that they do not require the same level of narcotics as a result.<sup>293</sup>

When accessing emergency health services, Indigenous people are often presumed to be intoxicated and thus their medical needs are discounted. In 2015, Victoria's *Times Colonist* reported the story of an Indigenous woman who had a seizure and banged her head. Her boyfriend at the time called an ambulance. The woman recalled that her boyfriend was assisting her down the stairs. When they reached the bottom of the stairs, one of the paramedics who had arrived on scene said loudly, "oh great, another drunk native we have to pick up," the woman recalled.<sup>294</sup>

When compared to non-Indigenous Canadians, Indigenous people experience disparities in "health status, morbidity, and mortality rates, and health care access."<sup>295</sup> The racism that Indigenous people face in the health care system leads some people to avoid the system altogether, further endangering their long-term health.<sup>296</sup> Racism in health care settings can also be deadly. There have been several high-profile incidents of Indigenous people in Canada dying after it was assumed incorrectly that they were under the influence of alcohol.<sup>297</sup>

The contemporary experiences of Indigenous people, people experiencing homelessness, and people who use substances in hospitals across BC demonstrate the harmfulness and persistence of stigma and stigmatizing behaviours. As we've stated elsewhere in this report, this is not a simple case of "a few bad apples." The stigma experienced by people who use substances and people who live in public space, alongside the racism that Indigenous people continue to experience at the hands of people who have a duty to provide them care, is an unacceptable outcome of generations of legislated racism and stigmatizing policy that we must all work to dismantle.

## THE NEED FOR PEER-DRIVEN SERVICES

People who took part in this study had a lot of positive things to say about some of the service providers who made real differences in their lives. They also expressed that government and non-profit services often felt like unsafe, inaccessible institutions.

One participant explained how it feels to go into a government office and engage in self-advocacy. "Government offices are horrible, like I actually trip over my tongue (416)," she said. "I can't talk in them."

Even where services have been designed specifically for people who use drugs, distrust, criminalization, and a history of experiences of stigma can make services inaccessible for people like this woman, who offered the following response when asked if she used the local Overdose Prevention Site.

### Interviewee:

No. No thanks.

### Interviewer:

No, this is probably a dumb question, why not?

### Interviewee:

Using drugs around people who don't use drugs, I'm sorry, but I just

290 Ashley Goodman, et al. "They treated me like crap and I know it was because I was Native": The health care experiences of Aboriginal peoples living in Vancouver's inner city" (2017) 178 *Social Science and Medicine* 88.

291 Ashley Goodman et al.

292 Ashley Goodman et al.

293 Piya Chattopadhyay "The Current" (March 2, 2018), CBC, 7.

294 Sarah Petrescu "Health system struggles with racism, research shows," *Victoria Times Colonist* (February 21, 2015), online: <http://www.times-colonist.com/news/local/health-system-struggles-with-racism-research-shows-1.1770821>.

295 Ashley Goodman et al.

296 Ashley Goodman et al.

297 See for example: Hillary Bird, "Inuvialuit woman says uncle's stroke mistaken for drunkenness." *CBC News* (August 15, 2016), online: <http://www.cbc.ca/news/canada/north/hugh-papik-stroke-racism-1.3719372> and CBC, "Ignored to death: Brian Sinclair's death caused by racism, inquest inadequate, group says." *CBC News* (September 19, 2017), online: <http://www.cbc.ca/news/canada/manitoba/winnipeg-brian-sinclair-report-1.4295996>.

can't do it. Yeah, it's just strange to me, very strange. – 416

In some communities, peer-run services—services operated by people with lived experience of poverty, homelessness, and substance use, such as peer-run needle exchanges or peer-run groups for people who use drugs—are not widely available or understood. When we explained the concept of such services to her, she expressed more openness to making use of them.

In other communities, people we heard from were already working as peer-service providers. However, barriers like shelter rules against carrying harm reduction supplies were making it hard for them to do their jobs.

I used to carry supplies, hand them out, because I was rig digging<sup>298</sup> through [peer outreach service] and I was homeless. They knew that I had supplies on me and they wouldn't let me in [the shelter]...I was banned...So it was a catch 22, right. I'm just handing supplies out...I wasn't implementing nothing. I am just here, if you need supplies I am here. I'd rather see you use safe supplies than bad supplies, like using the same rig or using the same shit over and over. That is not good, that is not healthy. – 165

In other cases, we heard that rules around employment are preventing people with lived experience from getting involved in service delivery.

"I wish I could become staff, but because I don't want to stop [using] marijuana, they don't want to give me a job (289b)," one participant told us. "They need to do a better job of hiring people who have experience living out."

As we spoke to people around the province, a vision emerged for the types of services that people who have experienced poverty and social exclusion would like to see in their communities.



There was a notable interest in establishing safe, inclusive, community driven spaces for people to find community, solidarity in their shared experiences, and protection from the elements.

There's a lot of street people that use drugs, and they don't want to stay indoors, and I always say they should have a gigantic tent with heaters in there, and they could all come there and be safer...you be together and do their drugs together...that would help a lot. – 326

Participants also expressed a desire for an inclusive, one-stop facility in which people could use substances and dispose of harm reduction

supplies safely, with supports close at hand.

If I ever won a lottery, I would like to have a place where people would go [to] like two different floors, one where they could use... safely, have a nurse there and all that, and a place where they could go without using...That way they could interact with each other but be more respectful and...in [a] safe and clean environment. And clean up after themselves, like if they use there'd be a room where they could go and there will be things for needles. – 71

Back in front of the shelter that opened this chapter, the woman who shared her experiences of homelessness with us described two

298 "Rig digging" is a term for locating and safely disposing of used syringes.

things she'd like to see change in the realm of service provision. "I think that there should be more advocates (397)," she said. "And they should be more lenient with the food [bank]."

In her words, we hear two simple themes that should guide services around the province: make sure

that services and systems are accessible and navigable for those who need them most, and treat people in need with respect. Livable income assistance rates, more social housing, and health care options that work for people living with substance use and poverty, are also essential.

In order for all of this to happen, we need more financial resources, but we also need to undo the underlying stigma that informs everything from punitive income assistance policies to the negative experiences people have with service providers during a health crisis.

## Recommendations

1. The Province of British Columbia must amend the *Human Rights Code*, RSBC 1996, c 210 to prohibit discrimination and harassment based on social condition.
2. The Ministry of Mental Health and Addictions and the Ministry of Health must improve the ability of BC hospitals to meet the needs of people living with the effects of substance use, mental illness, and/or homelessness by:
  - a. auditing experiences in hospitals, beginning with an analysis of people's experiences where they have been turned away from emergency rooms or discharged and where there have been negative health consequences;
  - b. working with people with lived experience to audit provincial standards for effectively managing substance withdrawal in hospital settings;
  - c. ensuring that all hospitals offer supervised consumption services to patients; and
  - d. working with the Ministry of Municipal Affairs and Housing to create transitional housing options to ensuring that sick and injured people are not released from the hospital to the streets or to emergency shelter.
3. The Ministry of Social Development and Poverty Reduction must make immediate changes to BC's Income Assistance and Disability Assistance programs including:
  - a. increasing income assistance rates to the Market Basket Measure<sup>299</sup> and indexing them to inflation;
  - b. reviewing the processes that are currently in place for reporting "welfare fraud" to provide greater accountability and ensure that people receiving income assistance are not denied survival income without due process;
  - c. increasing access to in-person services for income assistance and disability applicants; and
  - d. ensuring that people living with disabilities can access disability support by:
    - i. simplifying the application process to reduce wait times and lessen reliance on advocates;
    - ii. providing provincial guidelines for doctors/service providers on how and when to fill out disability forms; and
    - iii. ensuring that hospital social workers are resourced and directed to work with patients in need to apply for disability benefits.
4. The Legal Services Society of BC must provide legal support for appeals where a person has been denied income assistance or disability assistance.
5. The Ministry of Housing and Municipal Affairs must immediately improve the number and accessibility of shelter options to ensure that everyone in BC always has access to a physical location where they can sleep, store belongings, and attend to personal care and hygiene in safety and without threat of displacement or sanctions. To do so they must:
  - a. work in partnership with BC Housing to reinstate nightly turn-away counts at shelters and use data to ensure that there are adequate shelter beds to address the level of need in each municipality;
  - b. with the exception of temporary Extreme Weather Response shelters, recognize that overnight-only shelters are untenable for residents and provide funding to expand shelter hours; and
  - c. provide shelter residents an accessible and independent complaint process.
6. All government actors and health care providers must recognize the specific and indispensable expertise of people with lived experience. Increase peer-run and peer-delivered services and peer-support positions within government services by:
  - a. developing a provincial advisory board of people with lived experience of homelessness for BC Housing;
  - b. establishing provincial best practices for engaging people with lived experience of poverty, homelessness, and substance use in service delivery modelled on GIPA (Greater Involvement of People living with HIV/AIDS), MIPA (Meaningful Involvement of People Living with HIV), and NAUWU (Nothing About Us Without Us) principles;
  - c. collaborating with peer-led organizations to audit all provincial services (hospital, health, income assistance, shelter, housing) to identify and fund opportunities for peer engagement in service provision and planning; and
  - d. developing a model for peer-involvement in the design and execution of homeless counts.

<sup>299</sup> Statistics Canada, *Market Basket Measure (MBM) thresholds for economic families and persons not in economic families, 2015* (Statistics Canada: Census Division:2017), online: [https://www12.statcan.gc.ca/census-recensement/2016/ref/dict/tab/t4\\_5-eng.cfm](https://www12.statcan.gc.ca/census-recensement/2016/ref/dict/tab/t4_5-eng.cfm).



# Why a Stigma-Auditing Process Matters for BC



At the outset of the Project Inclusion, our goal was to connect with people who currently live in public space or rely on public space for the necessities of life, as well as with people who are criminalized as a result of poverty and substance use.<sup>300</sup> We connected with them in order to develop a grounded understanding of the laws, policies, and practices that intensify the harms associated with substance use or poverty, and undermine public health measures.

Through our research, individuals shared a range of life experiences with us. We heard from people who have been in and out of prison countless times and people who have never been convicted of a crime. We met people who had lived on the streets and in shelters since their teens, and people who were experiencing homelessness for the first time in their 40s or 50s. Some people who participated in this study have injected illicit opiates every day for decades, while others never use psychotropic substances besides drugs prescribed by their doctor or alcohol purchased from the local liquor store.

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<sup>300</sup> We make a distinction between people who are criminalized as a result of substance use and people who use illicit substances, because there are groups of people who use illicit substances who are not labelled as criminal and are at low risk of experiencing criminal sanctions as well as groups of people who are criminalized as a result of their alcohol use.

Through our conversations with these diverse, insightful participants, we heard about how people become homeless. We learned about the far-reaching impacts of not having a private residence in municipalities across BC. We heard about the realities and layered complexities of what it is to be a person who uses substances while living in poverty. We also examined the frequency and nature of interactions between people who live in public space and police, bylaw officers, and private security. We looked at the role court-imposed conditions play in shaping the lives of people who took part in this study, as well as the barriers people face in accessing income assistance, shelter, and health care.

**Because stigma is culturally constructed, it is often difficult for those living in the society out of which it arises to see it, especially if one is privileged enough not to experience that stigma directly on a daily basis.**

Throughout this report we make many specific policy recommendations based on what we learned. However, we would be remiss to stop there. Improving the health, safety, and well-being of everyone who took part in this study requires more than identifying individual laws, policies, and practices that are leading to harmful outcomes. It requires that we address the mechanism that underlies the experiences of all the participants in

this study and the wide range of laws and policies that we discuss in this report: stigma.

Stigma is a widely used term that means different things to different people. We begin this chapter with an overview of how we understand stigma and its component parts. Next, we look at questions that we can ask to identify stigma. We then move on to look at processes through which stigma can shape legislative agendas and become embedded in our laws and policies. We work with a composite case study based on issues that we have seen in a number of municipalities to explore how we can audit for manifestations of implicit and explicit stigma in public dialogues and ultimately in our law and policy decisions. Finally, we make recommendations with an eye to operationalizing a stigma auditing process in BC. As well as addressing stigma in future decision-making, it is also necessary to acknowledge the extent to which stigma is bound up with our existing laws and policies.

#### WHAT IS STIGMA?

Stigma has historically been conceptualized as an attribute, behaviour, or reputation that is socially discrediting.<sup>301</sup> Though they used different language for it, people who participated in this study repeatedly describe the experience of feeling “socially discredited” as a result of their reliance on public space and/or their substance use. While many BC residents, including some elected officials, seem to be comfortable using language that explicitly discredits people who are homeless and/or people they perceive as drug users, it is important to note that many participants also experienced being discredited as a result of other, intersecting

characteristics, such as being diagnosed with a particular illness or being an Indigenous person.

Stigma is not inherent to a particular behaviour or attribute.<sup>302</sup> It is contextual and can shift over time. For example, there used to be significant stigma attached to “living in sin” and little stigma attached to driving while intoxicated. The amount of stigma attached to a specific behaviour or characteristic can depend on other intersecting attributes; consider the relative stigma experienced by the man and the woman if they were to conceive a child while “living in sin.” Because stigma is culturally constructed, it is often difficult for those living in the society out of which it arises to see it, especially if one is privileged enough not to experience that stigma directly on a daily basis.

Stigma can be particularly difficult to identify and address where the law does not protect against discrimination based on the attribute in question, as is the case for people who experience discrimination on the basis of “social condition” in BC.<sup>303</sup> Social condition is defined in a variety of ways in various Canadian jurisdictions. We recommend that BC amend the *Human Rights Code* to adopt the following definition of social condition: *Inclusion in a socially identifiable group that suffers from social or economic disadvantage on the basis of poverty, source of income, occupation, housing status, level of education, or any other similar circumstance.*

In her 2017 book *Discrimination as Stigma: A Theory of Anti-Discrimination Law*, Iyiola Solanke conceptualizes stigma as a “mark” and lays out a series of ten questions to determine whether a particular

301 Irving Goffman, *Stigma: notes on the management of spoiled identity* (Englewood Cliffs, NJ: Prentice-Hall, 1963).

302 In their 2001 article “Conceptualizing Stigma”, Link and Phelan look at stigmatization as a process involving five components:

- labelling (constructing a cognitive category and attaching it to a person);
- stereotyping (attaching beliefs to a label that is based on misinformation or a lack of information. This mistaken belief can be widely held, and even considered to be “common sense”);
- separation (distinguishing between “us” and “them”);
- status loss (“they” are not just different than us, they are less than “us”); and
- discrimination (unjust or prejudicial treatment- either individual or structural)

303 Unlike some other Canadian jurisdictions, BC’s *Human Rights Code* does not protect against discrimination on the basis of social condition.

characteristic is “marked” by stigma in a particular context.<sup>304</sup> Working through Solanke’s list of questions is instructive for revealing implicit stigma.

### 1. Is the mark arbitrary or does it have some meaning in and of itself?

This question draws our attention to the way we categorize and talk about people and whether the categories we attribute to people are objective, as well as whether the meanings and connotations associated with those categories are rationally connected.

If the case can be made that a mark and the meanings attached to it are arbitrary, it is possible that stigma is present.

On first read, “drug user”<sup>305</sup> may seem like an objective category or characteristic. Upon closer examination, however, it turns out this category is not obvious, historically consistent, or universally applied. For example, in Canada people who use cannabis recreationally have historically been marked as “drug users” while people who use alcohol recreationally have

not. Changing attitudes have also led some Canadians to distinguish between people who use cannabis and so-called “drug users” who use cocaine, methamphetamine, opioids, or other drugs, despite cannabis’ legal status prior to October 17, 2018. The federal government’s decision to legalize marijuana is shifting the legal status of people who possess cannabis, making it more likely that cannabis users will be spared the mark “drug user” while leaving it in place for people who use other substances. At the same time, some long-term opioid users are spared the label “drug user” because their opiates are prescribed. Upon review, the category begins to feel less conceptually clear.

A consideration of the arbitrariness of a mark inevitably leads to questions about the validity of any meaning attached to it.

### 2. Is the mark used as a social label?

Labelling occurs when a “mark” takes on a set of meanings and values beyond the objective attribute or behaviour being described, and where a mark comes to be understood as an essential element of a person’s identity.

“Drug user” is a label that is sometimes applied to socially and economically marginalized people who rely on public space, even if they never or rarely use illicit drugs or are in a treatment program. At the same time, more privileged people can often actively use illicit substances without ever having the morally-loaded label “drug user” applied to them. The label “drug user” also carries with it connotations that extend far beyond ingesting a particular substance. Characteristics and meaning attached to the mark “drug user” include unemployment or poor work ethic, vector of contagious disease, association with violent crime, and a lack of concern for children, seniors, and community



304 Iyiola Solanke, *Discrimination as Stigma: A Theory of Anti-Discrimination Law*. (Oxford: Bloomsbury, 2017).

305 In many cases, labels such as “bum” or “junkie” are substituted for “homeless” or “drug user”.

safety. As a medical and public health model of drug use becomes more prominent, people who use drugs are more and more often cast as “sick,” mentally ill, and/or incapable of making their own decisions.

### 3. Does this label have a long history? How embedded is it in society?

Another example of a mark that is used as a social label is “homeless.” While this label has shifted over time, “homeless” and other labels have long, deeply entrenched histories. For example, the first English vagrancy statute, *The Statute of Labourers*, was passed in 1349 and made it an offence to give alms to someone capable of work.<sup>306</sup> By the 1700s, the fact of being homeless and sleeping outdoors or in places not designated as housing was criminalized through an ever-expanding set of vagrancy offences.<sup>307</sup>

Elements of the *British Poor Law* and *Vagrancy Law* (along with many people convicted under those laws) were exported wholesale to colonies around the world.<sup>308</sup> In countries like Canada, where British laws were incorporated into domestic law, over the past several decades there has been a movement toward abolishing vagrancy provisions and ensuring that offences relate to specific activities rather than personal characteristics. Therefore, as the law evolved, people labelled homeless were no longer accused of vagrancy, but rather of enumerated behavioural offences in the *Criminal Code* or local bylaws to similar effect.

That legacy is evident in the present-day experiences of participants in this study who contend with restrictive anti-camping bylaws, bylaws that prevent people from sleeping in vehicles, and restrictions on panhandling.

### 4. Can the label be “wished away”?

In assessing the ‘legitimacy’ of inequality or privilege, many Canadians make a conscious or unconscious distinction between an ascribed status and an achieved status. Ascribed status refers to a position into which a person is born, such as race. Achieved status refers to a position that a person can acquire, such as educational attainment or professional credential.<sup>309</sup> However, a careful look at demographic trends suggests that there is significant overlap and influence between the two categories. For example, while the rate of Indigenous youth in BC who graduate from high school is increasing, in the 2016/2017 school year Indigenous students had a graduation rate of 66% compared to a graduation rate of 84% for all students in the province.<sup>310</sup> High school graduation is generally considered an achieved status, but the ongoing impacts of colonialism, including poverty, insecure housing, and disproportionate child welfare involvement in the lives of Indigenous families, all affect whether a person achieves that particular status.

In determining whether a specific characteristic should be protected under the *Charter* or various human

rights statutes, Canadian courts and lawmakers have tended to rely on the concept of immutability—whether the source of discrimination cannot be changed or can only be changed at excessive cost, such as changing religions (constructively immutable).<sup>311,312</sup>

Considering whether the label can be “wished away” creates space to acknowledge that individuals who have been labelled “homeless” or “drug user” can, and often do, cease to be homeless or stop using substances, but that changing their situation is by and large not within their control. It also recognizes that the label may persist even after they have found housing or ceased using a particular substance.

### 5. Is the label used to stereotype those possessing it?

In order to determine whether there are stereotypes attached to a specific label, it is useful to begin by reflecting on our own cultural knowledge to explore commonly held perceptions about people targeted with a specific label. By attempting to conjure up an image of a “homeless person” or a “drug user,” you may be able to identify widely held cultural stereotypes.

A stereotype is often based on a knowledge gap, a mistaken belief (even if it is genuinely held), an overgeneralization, or an incorrect theory of causation. This is one of the reasons that identifying stereotypes is difficult: we are often unaware that we are missing information or that

306 South Africa Litigation Centre and Centre for Human Rights Education, Advice and Assistance, “A Short History of English Vagrancy Laws”, *No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi* (2013) at 16, online: <http://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/No-Justice-for-the-Poor-A-Preliminary-Study-of-the-Law-and-Practice-Relating-to-Arrests-for-Nuisance-Related-Offences-in-Blantyre-Malawi.pdf>.

307 South Africa Litigation Centre and Centre for Human Rights Education at 17.

308 Julie Kimber, “A Nuisance to the Community’: Policing the Vagrant Women” (2010) 34:3 *Journal of Australian Studies* 275 at 279, online: [doi.org/10.1080/14443058.2010.498092](https://doi.org/10.1080/14443058.2010.498092).

309 Ashley Crossman, “Sociology: Achieved Status Versus Ascribed Status”, ThoughtCo. (16 April 2018), online: <https://www.thoughtco.com/achieved-status-vs-ascribed-status-3966719>.

310 Government of British Columbia, “Completion Rates for 2016/17 B.C. Public School System”, online: <http://www.bced.gov.bc.ca/reporting/systemperformance/?evidence=completion-rates&sd=048>.

311 Martha Butler, “Section 15 of the Canadian Charter of Rights and Freedoms: The Development of the Supreme Court of Canada’s Approach to Equality Rights Under the Charter” (2010) *Library of Parliament Background Papers*, online: <https://lop.parl.ca/Content/LOP/ResearchPublications/2013-83-e.htm?cat=law#a19>.

312 See Solanke at 56-57 for a discussion of the evolving debates related to the concept of immutability.

our genuinely held belief is mistaken, particularly when it is shared by our friends, families, or neighbours.

### **6. Does the label reduce the humanity of those who are its targets? Does it evoke a punitive response?**

An illustrative way of thinking about whether the label reduces the humanity of those who are its targets is to consider the extent to which people targeted with a specific label are dis-individualized. For example, over the course of this project, we found that when one person who has been marked “homeless” commits a crime in a community, all people targeted with that label are often implicitly or explicitly held responsible and targeted for sanctions.

### **7. Do these targets have low social power and lower interpersonal status?**

Power is central to the analysis of stigma<sup>313</sup> because it is what distinguishes “stigmatization,” which is a systemic exercise of power, from dislike or prejudice. For example, if during a city council meeting a property developer who wants to redevelop an old building is personally named as part of an anti-gentrification campaign and targeted with a label they find unfair or hurtful based on their class position, it is unlikely that stigma would be at play. If, at that same meeting, residents of the low-income housing that would be torn down to make way for the project are also targeted with labels rooted in stereotypes linked to their socio-economic status, there may well be stigma at work. The underlying difference is power, in this case economic power, which is closely tied to political, legal, and cultural power. Stigma is wielded

as a tool, whether consciously or unconsciously, to maintain structural power imbalance.

### **8. Do the targets suffer discrimination as a result?**

This report documents myriad ways in which people who are targeted with the label “homeless” or “drug user” are discriminated against when using public space, in accessing services, in interactions with policing bodies, and in the justice system. We also learned about the profound impacts of that discrimination on people’s health and well-being.

### **9. Do the targets suffer exclusion?**

Exclusion is a recurring theme in this report. Participants in this study described feeling excluded in parks, in malls, and in hospitals. Community narratives about homelessness and drug use often revolved around the theme of “homeless drug users” as invaders who have come from elsewhere and do not belong in a given community. Organized opposition to services for anyone targeted with those labels is often characterized as preventing “them” from establishing a foothold in the community.

This deliberate exclusion is not a new phenomenon nor one that is unique to BC. In 1997, Lois Takahashi, a California based professor of urban planning, examined the socio-spatial stigmatization of homelessness and HIV/AIDS. She noted that human services facilities, such as shelters that serve people who are homeless and living with HIV “have increasingly become flashpoints for community opposition.”<sup>314</sup> Takahashi went on to explain that this is in part because stigma creates a definition of acceptable and non-acceptable

individuals and groups, and it also creates a powerful cognitive map of acceptable and non-acceptable places.<sup>315</sup> As such, excluding people with stigmatized characteristics and services that cater to them is recast as protecting communities from devaluation by association.

### **10. Is their access to key resources blocked?**

One of the core findings of this report is that people who are targeted with the labels “homeless” and “drug user” consistently find their access is blocked to the most basic necessities of life. People who participated in this study are denied access to food banks, public space, life-saving health care, shelter, and police protection due to the labels applied to them. Based on this analysis, it is difficult to deny that people targeted with the labels “homeless” and “drug user” experience stigma. What is less immediately obvious is how that stigma affects people’s lived experiences on a structural rather than an interpersonal level.

When an individual business owner moves someone who appears to be homeless from under their awning in a rainstorm, that act is generally experienced as an interpersonal manifestation of stigma. However, that interaction is situated in a broader structural context in which income assistance rates make it impossible for people to secure adequate housing; institutionalized shelter rules and resource restrictions prevent people from staying indoors during the day; anti-camping bylaws prevent people from setting up their own shelter; and city-wide Crime Prevention Through Environmental Design (CPTED)<sup>316</sup> initiatives cut off places where people can sit or shelter themselves in public. Those

313 Bruce G Link & Joe C Phelan, “Conceptualizing Stigma” (2001) 27 *Annual Review of Sociology* at 363, online: doi.org/10.1146/annurev.soc.27.1.363.

314 Lois M Takahashi, “The Socio-spatial stigmatization of homelessness and HIV/AIDS: toward an explanation of the NIMBY syndrome” (1997) 45:6 *Soc Sci Med* at 903, online: <https://www.ncbi.nlm.nih.gov/pubmed/9255923>.

315 Takahashi at 904.

316 *Crime prevention through environmental design is premised on the faulty “broken windows theory” that by eliminating visual signs of poverty and disorder, major crimes can be prevented. It is presented as an evidence-based process for preventing criminal acts through careful design of the physical environment. In practice, this takes the form of eliminating places and structures where people who are homeless can shelter themselves or rest. City planners and other professionals can get a CPTED Designation. See for example: <http://www.cptedtraining.net/>.*

laws, policies, and practices were all designed based on a set of widely-held beliefs about the root causes of poverty, people experiencing homelessness, and what makes a community safe.

### STIGMA IN LAW AND POLICY

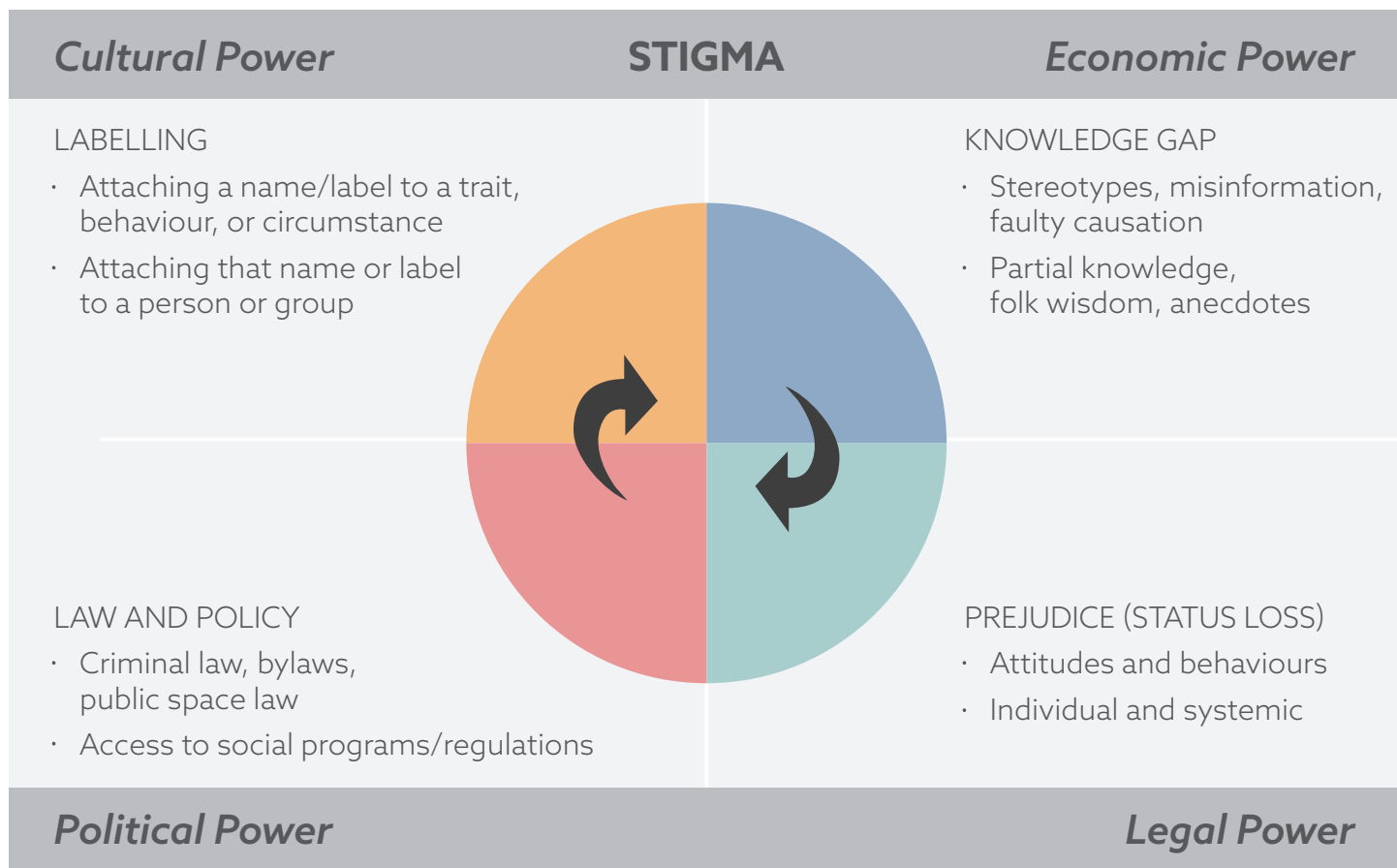
Stigma is generally understood as a problem of individual beliefs and attitudes which may lead individuals to engage in prejudicial behaviours. There is inherent value in identifying stigmatizing beliefs and values and in taking steps to change them. However, that work is often seen as distinct from law and policy reform work aimed at addressing systemic inequality. We take the position that making stigma visible is integral to shifting laws, policies, and decision-making practices that create and intensify harms such as ill health, opioid-related deaths, and homelessness.

Stigma shapes what is defined as a legal or governance problem. It drives what makes it onto the legislative and regulatory agenda. For example, many jurisdictions adopt bylaws meant to address behaviours that arise out of homelessness rather than the fact of homelessness itself. Stigma also shapes the internal logic of legislative and regulatory solutions; for example, deciding to use zoning powers to deny projects that would house people experiencing homelessness based on public frustration about people sleeping or attending to other needs in doorways, or the sight of people pushing shopping carts filled with belongings. It also impacts the enforcement of laws and regulations. Such stigma can even be seen in the enforcement of bylaws that seem neutral on the surface, such as prohibitions on jaywalking.<sup>317</sup>

Failure to recognize the role that stigma plays in shaping the legal and regulatory landscape does not just lead to people with stigmatized characteristics feeling bad. Stigma-driven policy is, at its core, based on a mistaken, though often genuinely held set of beliefs about a group of people who have been marked with a particular social label.

Stigma-based policy is the antithesis of evidence-based policy. It leads to outcomes that are harmful and even fatal to people with stigmatized characteristics and to the broader public. As such, we are interested in identifying processes through which stigma becomes codified in law and policy and in developing a consistent way of recognizing it.

317 Douglas King, "Pivot and VANDU slam VPD over city bylaw enforcement", *Pivot Legal Society* (6 June 2013), online: [http://www.pivotlegal.org/pivot\\_and\\_vandu\\_slam\\_vpd\\_over\\_city\\_bylaw\\_enforcement](http://www.pivotlegal.org/pivot_and_vandu_slam_vpd_over_city_bylaw_enforcement).



## Stigma Audit in Action: Community Case Study

Our composite community is a municipality with approximately 90,000 residents and one homeless shelter operated by a faith-based organization. A quick look on Craigslist shows that there are no housing options listed in the municipality for \$375 a month, the income assistance shelter rate for a single person. Many of the available lower-cost options also explicitly state “no welfare” or “proof of employment required” in the listing.

A semi-permanent encampment has been established in an abandoned lot just outside of the downtown core. Some of the 200 homeless residents of the community use illicit substances, including some of the approximately 20 people who stay at the encampment on any given night. There have been over 50 opioid-related deaths in the municipality since the public health emergency was declared in April 2016, though many did not involve people experiencing homelessness.

The City has recently passed restrictions on panhandling and sleeping in

vehicles and a “no drug paraphernalia on city property” bylaw in response to community anger about visible homelessness and substance use. Housed residents and local business owners have since become increasingly vocal in their opposition to the encampment, which they describe as a “health hazard,” an “eyesore,” and a “crime hub.” They have also publicly used words such as “junkies,” “bums,” and “losers” to describe members of the local homeless population.

BC Housing made funds available for a housing development and identified a lot for the project, but it required rezoning. Housed residents of the community immediately started an online petition to pressure the local government not to rezone the property. Some local councillors were quoted in the media saying that they have heard residents’ concerns and that they agree the site identified for the development is not an appropriate location because there is a seniors centre and public pool nearby. Another councillor said she will never

support the housing project anywhere in the community unless there is a zero-tolerance policy for drug and alcohol use and a curfew for residents.

During a lengthy public consultation process, 48 residents spoke about their concerns that there would be an increase in noise or mess around the housing. They also stated that it will enable drug users, lead to needles on the street, and that it will make the area unsafe for children and seniors. Some argued that it will attract homeless people from other communities. Three representatives from the local Business Improvement Association also spoke out and said that the project will hurt business. Two local service providers spoke in favour of the new housing project, explaining that it will house people with longstanding ties to the community, including several seniors and people with disabilities. City council voted against the rezoning application. The same week, bylaw officers seized several tents from homeless people in the neighbourhood.

## AUDITING FOR STIGMA

Over the course of our research for this project, we identified the need for a systematic way for policymakers and advocates to identify and discuss stigma embedded in existing laws, policies, and decision-making practices. We also need a way to pre-emptively identify situations where stigma is informing policy development and/or driving the legislative agenda.

Auditing for stigma must be more than a semantic exercise. It is not just about looking for labels that are overtly problematic or discriminatory and removing them from legislation and policy. It is also more than simply auditing for compliance with human rights and *Charter* law, although that should certainly be an element of the process. Auditing for stigma is about identifying underlying labels

and associated knowledge gaps, misinformation, and prejudices that are driving a policy agenda and leading to policy outcomes that intensify disadvantage for people with stigmatized characteristics while failing to improve public health or safety.

Stigma is pervasive and often so deeply embedded in our cultural context that it becomes invisible except to those who are targeted with stigmatizing labels. Even those who are negatively impacted by it may internalize that stigma. It is only after significant advocacy and collective resistance, often undertaken by people with stigmatized characteristics and at great personal risk, that stigma becomes visible. For example, a 2014 study looking at multinational, longitudinal data on public attitudes toward homosexuality

found that respondents from countries with greater acceptance of homosexuality reported more, not less discrimination against gay, lesbian, and bisexual people.<sup>318</sup> These findings suggest that where stigma and discrimination are highest, they are also most tolerated and least likely to be visible to those who are not directly impacted.

In addition to problems of structural power, stigma entails problems of knowledge, problems of attitude, and problems of behaviour.<sup>319</sup> The purpose of a stigma-auditing process is to identify places where problems of knowledge and attitude—embedded in a context of unequal power relations—impact law and policy-making making behaviour.

In order to examine how we might begin the process of auditing for stigma in both existing laws and

318 Tom W. Smith, Jaesok Son & Jibum Kim. “Public Attitudes towards Homosexuality and Gay Rights across Time and Countries” (2014) *The Williams Institute*, UCLA School of Law, online: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/public-attitudes-nov-2014.pdf>.

319 Graham Thornicroft et al., “Reducing stigma and discrimination: Candidate interventions” (2008) 2:3 *International Journal of Mental Health Systems*, online: [doi.org/10.1186/1752-4458-2-3](https://doi.org/10.1186/1752-4458-2-3).

policies and in policy discussions, we have put together a composite case study based on laws, policies, and institutional decision-making that we have encountered over the course of our research for this project.

## 1. IS THERE A STIGMATIZING LABEL AT PLAY?

In order to ascertain whether there is stigma at work, we need to determine whether there is a “marked” population that the law or policy is meant to regulate or exclude. In some cases, this may be obvious. For example, HIV non-disclosure laws are exclusively relevant to people who have tested positive for HIV.

It’s not always clear, however, whether there is a labelled population that a given law or policy is meant to regulate, target, or protect. To bring clarity to what can often be murky territory, recall Iyiola Solanke’s questions to determine whether a particular characteristic is “marked” by stigma in a given context:

- Is the label arbitrary?
- Is the label socially discrediting?
- Do the targets of the label have low social power or social status?
- Does the label have a long history?
- Can the label be wished away?

In our case study community, the bylaw restricting people from carrying “drug paraphernalia” on city property is a law of general application. However, it is likely to mainly impact people who use substances in public space, or who are marked with the social label “drug user” based on factors such as actual substance use, but also social condition and ethnicity. Proponents of such a bylaw may state that it is to be one of general application—and therefore neutral and stigma-free.

But it becomes quickly apparent whom the bylaw is meant to regulate against when we consider the public conversation at the time the law was put in place, comments from counsel when the law was debated, and enforcement data.

To that end, it is instructive to look at the community reaction to a real-life bylaw amendment in Kelowna, which focused largely on panhandling and collecting bottle donations, but also included changes to the regulation of buskers. Reportedly, there was “an onslaught of public criticism on social media” after news of the city’s proposed changes to the busker program surfaced.<sup>320</sup> One Kelowna city councillor was quoted as saying that critics feared it amounted to “criminalizing culture.”<sup>321</sup> Council then said it plans to review the entire busker program in consultation with the local arts community.<sup>322</sup> Concerns about criminalizing poverty through the bylaw amendments, however, did not garner the same type of political or media attention.

In order to understand whether the decision to deny the rezoning application in our composite community was based in stigma, we have to look at the decision-making process and the belief systems and evidence that informed it.

Municipalities in BC have the power to regulate land use, based on factors such as traffic, sight lines, and density. Neighbours have the right to weigh in on those issues. Municipalities (and individual residents and business owners) do not, however, have the authority to decide who lives in a particular neighbourhood or what type of health services are offered. It is therefore important to examine the type of arguments that were raised during the process, as well as what was being said by councillors both

during the official rezoning process and in the media, at events, or online.

It is also important to look to see if the project was subject to additional consultations and administrative requirements as compared to other development proposals. In this composite community, councillors made public comments that showed a clear focus on who would use the service. This focus on service users rather than land use issues suggests stigma might be at play.

## 2. ARE THERE STEREOTYPES, MISINFORMATION, AND UNTESTED THEORIES OF CAUSATION AT WORK?

The fact that a law, either overtly or in practice, acts upon a specifically labelled group is not necessarily problematic. For example, laws such as the graduated licensing program for new drivers are intended to act upon a specifically labelled group: teenagers/young adults (even though older adults may at times be affected). Those laws are not problematic in the context of our stigma audit. We are auditing for laws and policies grounded in stereotypes or misinformation, not evidence.

Laws and policies are likely not stigma based if they are:

- grounded in solid evidence rather than relying on stereotypes or folk wisdom;
- rationally connected to a legitimate policy objective; and
- written and enforced in a way that is respectful of human rights and does not place unreasonable or unfair restrictions on a specific group.

As such, it is important to look for contextual information to better understand the ideologies, beliefs, and evidence that informed the law,

320 Alistair Waters, “Kelowna council changes panhandling, busking rules”, *Kelowna Capital News* (27 March 2018), online: <https://www.kelownacapnews.com/news/kelowna-council-changes-panhandling-busking-rules/>.

321 Ron Seymour, “Kelowna to fine those who donate empties near depots or give cash to intersection panhandlers”, *Vancouver Sun* (27 March 2018), online: <http://vancouversun.com/news/local-news/kelowna-to-fine-those-who-donate-empties-near-depots-or-give-cash-to-intersec-tion-panhandlers>.

322 Waters.



regulation, or government action by asking:

- is there a faulty or unsupportable assumption about the “labelled” group at work?
- is there a faulty or unsupportable assumption made about the “problem” this labelled population has been connected to that is underlying this law or policy?
- what evidence was relied on in making the decision in question?
- what evidence was excluded or ignored in making the decision?

In our case study community, there are several stereotypes, knowledge gaps, and unsupportable theories of causation that are guiding policy-making. Like many of the communities we visited over the course of this study, in our case study community there are public narratives about people who are experiencing homelessness at play—including a belief that people who are currently or have previously experienced homelessness are not from the community in question, and pose a danger to seniors and children.

There are also attribution errors at work. Behaviours that result from homelessness, such as belongings being stored in vacant lots, people sleeping in doorways, or people relieving themselves in public are being conceptualized as being due to the character and innate attributes of people experiencing homelessness rather than as natural results of the fact of homelessness and a lack of social supports and services. This misattribution results in communities pushing for a punitive policy solution (do not build housing for people who are currently homeless) that works at cross-purposes with the policy outcomes they are seeking (fewer visible signs of homelessness on their streets).

In our case study community, we also see a reliance on folk wisdom about how best to address substance use. It begins with the decision to ban harm reduction supplies (labelled

“drug paraphernalia”) in public space, and culminates in a city councillor setting parameters (abstinence-based) around housing models for people who use substances. In these instances, it is important to ask what type of evidence is being relied on to adopt policy positions or inform decision-making, and which bodies of evidence are being excluded or discounted.

Sometimes, the knowledge gaps that inform law and policy are immediately evident. In other cases, the beliefs are so pervasive that even experts and allies cannot agree on whether they are problematic. As a result, a stigma-auditing tool needs a mechanism for determining what evidence has been considered in coming to a policy or legislative decision and for weighing the completeness and credibility of that evidence. Beyond looking at relevant legal precedents, academic literature, and expert opinions, it is critical to ensure that the voices of labelled populations are part of the discussion. However, sometimes there is a level of prejudice or discrimination at work in the community that makes such engagement unfeasible or unsafe.

It is possible that in many instances, law and policymakers believe they are acting on the best possible evidence to create good policy. However, in some cases law or policymakers may:

- refuse educational opportunities;
- fail to work in good faith with labelled populations;
- fail to seek out widely available information or relevant experts; and
- ignore credible information that is provided while accepting or actively soliciting less credible information.

In those cases, stigma is likely at play. At the same time, stigma is likely driving the legislative and policy agenda if policy makers are actively perpetuating stigma by:

- othering the objects of policy in their public comments or in the

stated purposes of a piece of law or policy;

- using derogatory language or allowing such language to go unchallenged in public venues;
- actively spreading misinformation;
- preying on prejudice (which they may or may not genuinely share) to rally support;
- ignoring harms to the stigmatized group; and
- failing to accommodate marginalized populations to participate in processes through the use of physical, administrative, or bureaucratic barriers.

### **3. IS PREJUDICE OR DISCRIMINATION BEING CODIFIED IN LAW AND POLICY IN A WAY THAT PERPETUATES DISADVANTAGE?**

In determining whether stigma is present, Solanke invites us to consider whether those targeted with a particular label experience exclusion, and whether their access to key resources is blocked. In the context of auditing for stigma in laws, policies, and institutional decisions, we consider whether the law or action in question increases discrimination or exclusion for a stigmatized population, and whether access to specific key resources are blocked. We also take the analysis one step further and consider whether the law, policy, or decision in question invites further stigma.

In our case study community, we see a cascading series of decisions based on stigma that impact the people targeted with the labels “homeless” and “drug user.” At an individual level, prejudicial beliefs about people who receive income assistance are leading landlords to refuse accommodation to people targeted with labels associated with receipt of “welfare.”

At a policy level, prejudices that evoke a punitive response have led to income assistance policies and impossibly low benefits rates that

systemically block access to housing. These policies in turn lead to people living in public space without access to enough income to meet their most basic needs. The result of having a population without access to housing or adequate income is an increase in grey-economy income generation activities, such as panhandling. That has led to new bylaws that open the door to ticketing and eventual criminal justice system involvement, inviting further stigma for those marked as “criminal,” a label which is then applied to all people labelled “homeless.”

All of this informed the decision not to issue the rezoning required to build the housing that would bring people inside. That decision, rooted in stigma, will lead to people remaining on the street, where they will continue to be at risk of further stigmatization as a result of behaviours directly attributable to the fact that they live in public space without access to adequate income.

Ultimately, identifying places where stigma is driving law and policy is not about preventing governments from addressing governance challenges. It is about reframing discussions in order to create policies that reduce social exclusion, promote public health, and increase safety for everyone.



## Recommendations: Operationalizing Stigma-Auditing

Broader implementation of a stigma-auditing program would require consultation and refinement, as well as the creation of a training program and a tool for policymakers and advocates.

To that end, we make the following recommendations:

1. The Province of British Columbia must amend the *Human Rights Code*, RSBC 1996, c 210 to prohibit discrimination and harassment based on social condition.
2. In consultation with experts, including human rights law organizations, trauma specialists, and people with lived experience, the Province of British Columbia should adopt a standardized tool and training protocol for conducting “stigma audits” of current laws, policies, and regulations in BC, and to inform the development of new laws, policies, and regulations.
3. The relevant provincial ministries should engage in extensive education and outreach to legislators and staff across the provincial government, and local governments to introduce the stigma-auditing tool to law and policymakers, and to train stigma auditors.
4. In its first year in operation, the BC Human Rights Commission should prioritize stigma-auditing areas of law and policy that most directly impact highly stigmatized populations, including, but not limited to:
  - i. public space governance;
  - ii. income assistance and disability policy;
  - iii. housing policy and residential tenancy law;
  - iv. child welfare law and policy;
  - v. policing law and policy;
  - vi. health policy related to mental health and substance use; and
  - vii. privacy law as it relates to people who live in public space and people who are criminalized as a result of substance use.



