Introduction and Context

This report compiles and analyses the multiple laws and regulations that govern people and their belongings. This helps us understand how law contributes to the marginalization of unhoused and precariously housed people. Personal belongings have physical and emotional significance for everyone. For precariously housed and unhoused people, personal belongings hold particular importance. Belongings can allow people to survive, particularly in outdoor spaces. Belongings also affirm individual identity and autonomy.

The laws and regulations studied in this report notionally apply to all people. If people have secure housing, the law ensures the protection of belongings. But the personal property rights of those people who lack control over the spaces they occupy are systematically undermined, not protected. The fact that precariously housed and unhoused people generally lack title to land upon which they can control their belongings, means that they experience greater regulatory control. This is compounded by the pervasive stigmatization towards people experiencing poverty and the related devaluation of their belongings, and the broad discretion afforded to
those charged with enforcing such regulations regulators of public and private space. This means that the belongings of precariously housed people are at constant threat of seizure and disposal by state and private regulators. Precariously housed and unhoused people thus experience both physical and emotional harms that further their vulnerability and precariousness. The constant cycle of dispossession is a dehumanizing experience that amounts to significant emotional harm.

This inequality is further sharpened by the fact that many unhoused and precariously housed people are forced to continuously move through various public and private spaces, including sidewalks, parks, shelters, transitional housing, storage facilities, rooming houses, single-room accommodations, and other insecure rental housing. Since precariously housed and unhoused people in urban centres almost always lack title or ownership to land, their belongings are at the mercy of landlords, non-profit organizations, corporations, and government actors. Canadian laws provide little recognition and protection of the belongings of precariously housed and unhoused individuals.

Why we focus on belongings

Studying the laws and regulations that govern people and their belongings is therefore important to understand how legislation contributes to the marginalization of people with low income. Compiling the legislation and case law reveals the problematic legal realities these communities face. Legislation that impacts the belongings of precariously housed and unhoused people will in turn impact their stability and thereby their ability to secure and maintain personal arrangements such as shelter, employment, or health services. Further, a study of the laws and regulations that govern people’s belongings increases understanding of the equality issues present in the regulation of property in general. Housed people’s residential and personal property are afforded significant protections, in part because of the societal importance attributed to residential property, while the personal property of people with low income is subject to exclusionary rules that impact their ability to exist in certain spaces.

Political or legal discussions regarding human rights, Indigenous peoples’ rights, municipal planning, community building, poverty, homelessness, encampments, government spending, or sustainability must include serious consideration of the current legal framework around the personal property of people experiencing poverty and homelessness. This legal reality is too often overlooked in such discussions. The regulatory realities faced by people on the streets, in parks, and in precarious accommodations in regard to their personal property create significant social inequities that have lasting detrimental effects on people experiencing poverty. Reimagining other ways of relating, and in the meantime, adjusting these laws and policies, directed by the experiences and realities of people most impacted by them, can ensure that municipal and provincial legal systems are functionally accessible and equitable for all people.
This regulatory matrix, therefore, is fundamentally inequitable, targeting poor people, while upholding the property interests of the more legally secure. This inequity extends beyond questions of social class, however. While contemporary municipal bylaws that restrict sheltering in parks or on sidewalks are not exclusively directed at Indigenous populations, the reality is that a disproportionate number of Indigenous Peoples experience homelessness and poverty and therefore these laws effectively continue to uphold colonial and racist legacies of the control of Indigenous land and belongings.

The legal and cultural concepts of land ownership and private property that have been used to dispossess Indigenous people of their land are the basis upon which laws and bylaws are written and continue to be enforced against precariously housed and unhoused people. Colonization in Canada has been characterized by the displacement of Indigenous communities through the seizure of land and resources in order to advance colonial economic objectives. Contemporary laws that authorize state officials or private landowners to destroy the belongings of precariously housed and unhoused individuals have their roots in these colonial laws and policies of displacement, seizure, and extraction that ignore treaties, and Indigenous legal traditions and concepts of land.

This report focuses on the complex legal realities that precariously housed and unhoused people face in maintaining their belongings. These legal realities are rooted in colonial notions that inherently value private property and devalue Indigenous laws and the lives and survival of precariously housed and unhoused people. Paradigm-shifting changes are required in the way we as a society value property compared to how we value human beings.

What we mean by “unhoused” and “precariously housed”

While the Government of Canada does not have an official definition of poverty, this report focuses on the experiences of people whose low-income has impacted their ability to obtain and maintain stable housing, thus pushing them to periods of homelessness or unstable housing arrangements that often force them to a greater reliance on public space. This report often refers to this population as “precariously housed and unhoused people.” This is intended to capture the broad spectrum of housing insecurity that many people face. ‘Precariously housed’ signals a particular legal relationship, in which a person is subject to the will or decision of others (see glossary below). It would include the situation of a person living in a highly insecure rental property (couch surfing with a friend, for example) as well as that of a person camped on public property. This differs from other definitions of the term, which use it to refer only to those who are at risk of losing their housing.

We use the term ‘unhoused’ as a synonym for ‘homelessness’, defined by the Canadian Observatory on Homelessness as ‘the situation of an individual, family, or community without stable, safe, permanent, appropriate housing, or the immediate prospect means and ability of acquiring it.’ We use ‘houseless’ in place of ‘homeless’ to signal that...
while a person may lack a physical structure that they can call their own, they still have a social connection with a broader community. We use the two terms, therefore, interchangeably.

A significant number of people in Canada, approximately 10%, who live in unsuitable, inadequate, or unaffordable housing, can be described as precariously housed and unhoused. Not all of this population experience enforcement regarding their belongings in the same way. Some are able to exist within the confines of laws, bylaws, and regulations in ways where they avoid regular confrontational interactions with enforcement entities. Others experience lack of stability of their belongings because of being restricted to one location due to being criminalized or medicalized in institutions, but do not regularly cycle through public and private space. While there is a large range of populations that exist as precariously housed or unhoused, this report focuses on those who are forced to continuously move through public and private spaces, including sidewalks, parks, shelters, transitional housing, storage facilities, rooming houses, single-room accommodations, and other insecure rental housing.

Certain populations are more likely to be living in poverty in Canada and thus more likely to be represented in this report. This includes single people aged 45–64, single parents, new immigrants who migrated less than 10 years ago, people with disabilities, and Indigenous Peoples. Within these populations, certain groups experience greater surveillance and criminalization. Indigenous, Black, and other People of Colour, visibly poor people, people who use drugs, people stigmatized around mental illness or other health conditions, people with disabilities, gender non-conforming people often experience greater enforcement than other precariously housed individuals who exist in these same spaces and are able to exist within the complicated legal matrix of street spaces, or are not stigmatized in the same ways.

Canadian police and enforcement agencies in Canada have been found to be systematically racist. Indigenous, Black, and other racialized people are disproportionately over-policed in municipalities across the country. As police and other peace officers are often instigating or involved in the enforcement of laws and bylaws regarding the possessions of precariously housed and unhoused people, systemic racism similarly impacts racialized people and their security of belongings. Racism underscores every discussion about laws and bylaws which have been used, and continue to be used, to control precariously housed and unhoused people and their belongings.

Please see a glossary of other terms used in the report here.

**Cities and jurisdictions**

This report was written and edited on various traditional Indigenous territories, and discusses colonial laws from various traditional Indigenous territories, including:
the territories of the xwmə̱θkwəy̓əm (Musqueam), Skwxwú7mesh (Squamish), Stó:lō and Səl̓ílwətaʔ/Selilwitulh (Tsleil-Waututh) Nations;

- the territories of the lək̓ʷəŋən (Lkwungen) People;

- the traditional and unceded territories of the Stó:lō people, the Semá:th First Nation and Mathxwí First Nation

- Tk̓akəŋtə, the traditional territories of the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee, and the Wendat peoples;

- Dish With One Spoon Wampum Belt Covenant Territory, including the traditional territories of the Erie, Neutral, Huron-Wendat, Haudenosaunee and Missisaugas of the Credit

- Adawe/Odawa, unceded Anishinabe Algonquin territory

The legislation in this report focuses on the cities of Toronto, Hamilton, Ottawa, Vancouver, Victoria, and Abbotsford. These jurisdictions represent both large metropolitan areas and smaller urban centres, giving a representative range of municipalities in two of Canada’s most populous provinces. Other municipalities are referenced throughout to draw distinctions in legislation, to demonstrate the similarities that exist outside of these surveyed examples, and to raise important legal decisions that have implications elsewhere.

The report has a particular focus on formal legal mechanisms such as provincial laws and municipal bylaws, and focuses less on routine forms of governance or extra-legal regulation by private citizens (e.g., vigilante housed community members destroying tents).

Four legal spaces

The report focuses on four interacting and overlapping legal spaces - frequently used by precariously housed and unhoused people - in which belongings are regulated:

Streets

Sidewalks, streets, highways, boulevards, and other spaces that include vehicular and pedestrian traffic governed under municipal streets bylaws in urban centres.

Parks

Public parks, greenspaces, parklets, public squares, playgrounds, paths/trails, beaches, and other publicly accessible space often connected to recreation governed under parks bylaws in urban centres.
Rentals / Tenancies

Indoor rental accommodations governed by provincial residential tenancies legislation. This report focuses on rooming houses and single-room accommodations.

Non-tenancy accommodations

Indoor accommodations that may or may not require rent or maintenance payments and are exempt from residential tenancies legislation. This report focuses on emergency shelters and rooming houses that have shared amenities with the landlord.

The distinction between these four spaces is often not clear. The ways that laws, bylaws, and court orders are enforced in some of these spaces can be dependent on whether the property is considered public or private property. This report highlights how each space is regulated differently based on its understanding as public or private space, and what impact this has on the belongings of precariously housed and unhoused people.

This report focuses on municipal bylaws, as well as provincial laws and regulations and how they impact the belongings of precariously housed and unhoused people. It does not claim to be a comprehensive review of all laws that can impact a person’s personal belongings. This would need to include federal legislation that has implications on people’s belongings, such as the Canadian Charter of Rights and Freedoms, the Criminal Code of Canada, or the Controlled Drugs and Substances Act.

Where this work comes from

This report was written by scholars and researchers from a variety of institutions across Canada, trained in both legal and social science analysis. It was guided by the advocacy, work, and experiences of people at the frontlines of these legal realities—for example, people with lived and living experience of poverty and houselessness, community organizers, frontline outreach workers, and community legal advocates.

The report would not be possible without the expertise and firsthand legal knowledge of those individuals who have been exposed to laws, regulations, and rules that have impacted their security to their personal belongings. We are deeply grateful for them for sharing their wisdom and experience. We are also grateful for our past research assistants and the many reviewers of this report.

The report hopes to fill a valuable gap, serving as a resource to frontline advocates and policy makers, who signaled a need for such
an analysis. It focuses on the regulatory matrix governing people’s belongings. It does not centre the lived experience of those who are governed by such controls. We do provide vignettes, drawn from the interviews with people with lived experience. The interviews also informed the broad analysis conducted in this report. First-hand testimonies documenting the experience and effect of regulation are analyzed elsewhere. Please see In Their Own Words.

Watch the report launch video here.

Footnotes


3. See Statistics Canada, “Core housing need in Canada” (21 September 2022), online.


6. See Ron Fanfair, “Race-Based Data Shows Over-Policing", Toronto Police Service (15 June 2022), online; Akshay Kulkarni, “Data shows Indigenous, Black people have more police interactions. Advocates say it reflects systemic racism“ (12 February 2023), online.