



October 23, 2024

Dear Mayor Bob Wells, Members of the City of Courtenay Council, and City of Courtenay Staff, I am submitting this report for your review in advance of the upcoming presentation of Bylaw 3121. After consulting with local Indigenous-led and Indigenous-focused organizations, I have committed to sharing additional information regarding the bylaw's alignment with the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA). This report includes letters submitted earlier this year, including one from the BC Civil Liberties Association, which raised concerns about the bylaw's potential human rights implications.

Indigenous partners have expressed growing concerns that Bylaw 3121 may disproportionately impact Indigenous community members, already burdened by systemic inequities. It is crucial that this bylaw fully reflects DRIPA principles and actively supports reconciliation.

Recent developments from the Union of British Columbia Municipalities (UBCM) are relevant here. At the City of Courtenay Council meeting on June 12, 2024, Councillor Jolicoeur presented a Notice of Motion titled "Union of British Columbia Municipalities (UBCM) Resolution - Advancing Local Government Actions Toward the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) and Reconciliation." The motion highlights the extensive work needed to build partnerships between local governments and Indigenous organizations and underscores the need for ongoing financial support.

The motion was passed, advancing the following resolution:

*"WHEREAS the Province of BC is implementing the 10 Principles within the Declaration on the Rights of Indigenous Peoples Act (DRIPA), and local governments and Indigenous organizations are collectively working towards reconciliation actions; and WHEREAS many local governments and Indigenous organizations lack the capacity for the extensive work required for effective partnership building in the spirit of reconciliation; THEREFORE BE IT RESOLVED that UBCM request that the Province of BC provide an ongoing funding stream for local governments and Indigenous partners to advance DRIPA and local reconciliation actions."*

This resolution strengthens the call for meaningful reconciliation in local government actions and highlights the importance of sustained financial support to enable municipalities and Indigenous communities to work together effectively.

In addition, I would like to share insights from the provincial DRIPA Action Plan, developed in consultation with Indigenous peoples. The plan outlines 89 actions across government ministries from 2022–2027 to implement DRIPA. Of particular relevance to local governments are the following actions:

- 1.11: Advancing First Nations participation in regional district boards to support inclusive governance (Ministry of Municipal Affairs).
- 4.27: Reviewing the principles and processes guiding the naming of municipalities and regional districts to foster reconciliation in local processes (Ministry of Municipal Affairs).

These actions demonstrate the need for local governments to actively engage with Indigenous communities to ensure that policies, such as Bylaw 3121, align with reconciliation goals.

While other actions in the DRIPA plan do not explicitly reference local governments, they address issues of local significance, such as Indigenous peoples living in urban areas, environmental stewardship, and emergency management. Addressing these broader concerns will help ensure that Courtenay's policies are equitable and respectful of Indigenous rights.

The DRIPA Action Plan is organized into four key themes:

1. Self-determination and the inherent right to self-government,
2. Title and rights of Indigenous Peoples,
3. Ending Indigenous-specific racism and discrimination,
4. Social, cultural, and economic well-being.

I strongly encourage the City of Courtenay to consider how Bylaw 3121 can reflect these provincial commitments to reconciliation. By taking meaningful steps in this direction, the City can align its actions with DRIPA and contribute to ongoing reconciliation efforts.

Thank you for your attention to this critical matter.

Warmly,

Dayna Forsgren  
Coordinator  
Comox Valley Coalition to End Homelessness

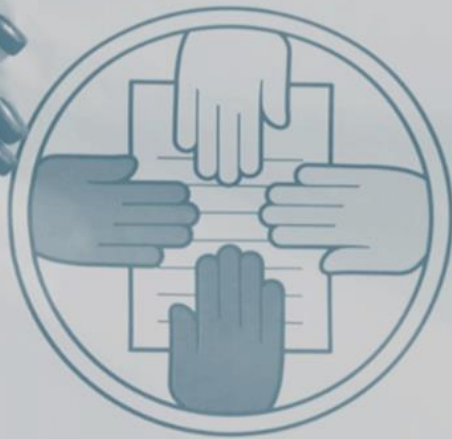
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City of Courtenay. (2024, June 12). *Council minutes: Meeting R10/2024*. Union of British Columbia Municipalities (UBCM) resolution - Advancing local government actions toward the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) and

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**ADOPT & IMPLEMENT**  
The UN Declaration  
on the Rights of  
Indigenous Peoples

# Honouring Indigenous Rights

## Bylaw 3121 and DRIPA Compliance

By Dayna Forsgren,

In conjunction with the Comox Valley

Coalition to End Homelessness Leadership Team and Civil Rights Advocates

April 17<sup>th</sup>, 2024

*The Comox Valley Coalition to End Homelessness gathers on the  
Unceded Traditional Territory of the K'ómoks First Nation*

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## Honouring First Nations Lands and Partnerships for Systemic Change

I want to begin by expressing my deep respect for the traditional territories where the Comox Valley Coalition to End Homelessness (CVCEH) gathers. These lands, including the unceded traditional territories of the K'ómoks, Pentlatch, leeksun, Sathloot, Säsitla, and Xa'Xe peoples, have been cared for by First Nations communities since time immemorial. It's important to me to acknowledge the deep, meaningful connection Indigenous peoples have with this land. As we embark on this journey, I am committed to standing as an ally, actively listening, learning, and advocating for Indigenous rights and traditions.

Through this report, we aim to shed light on the systemic failures perpetuating homelessness and advocate for meaningful change. We are advocating to ensure that respect for human rights and equitable treatment is written into law.

Bylaw No. 3121 directly intersects with the lives of those experiencing homelessness, which are disproportionately Indigenous peoples. The CVCEH is advocating for a pause in the implementation of Bylaw 3121 to ensure that critical considerations are thoroughly addressed. It's important to note that this Bylaw has remained largely unchanged for almost two decades, emphasizing the need for careful review and potential revisions to better serve our community. We fail to understand the City of Courtenay's eagerness to rush legislation without giving due thought to principles of reconciliation, equity, compassion, and support for those most affected by an inadequate housing system.

## Overview of Recent Advocacy - Parks and Open Spaces Bylaw No. 3121

1. Submission of Letters to Courtenay Council seeking further consultation with the community on Bylaw 3121 (See attached letter within the addendum).
2. Submission of Report ("*Working Toward System Change: Assessing Courtenay's Approach to Homelessness*") to Courtenay Council- February 2024 (See attached within the addendum).
  - Report available at: <https://pub-courtenay.escribemeetings.com/filestream.ashx?DocumentId=7034>
  - This report evaluates the alignment of Courtenay's Bylaw No. 3121 with human rights, Diversity, Equity, and Inclusion (DEI) practices and with the City of Courtenay's strategic commitments. Through this examination, the report identifies areas of misalignment and proposes recommendations for improvement.
3. Delegation to Courtenay Council "*Working toward system Change: Assessing Courtenay's approach to Homelessness*" – February 14<sup>th</sup>, 2024 (See PowerPoint Presentation Attached to addendum)
  - Courtenay council meeting presentation – February 14<sup>th</sup>, 2024: <https://youtu.be/i8O1fWoaBnU?si=Ai91u6an7WrxLWbl> (*delegation delivered at 52 mins 30 seconds*).
  - Following Council discussion on "Item 10.2.1 – Parks and Open Spaces Bylaw No. 3121 Council" – (*available at 3 hours 11 mins*).
4. Council Meeting on March 13, 2024 "Item 10.1.2 – Parks and Open Spaces Regulation Bylaw No. 3121"
  - <https://www.youtube.com/live/dY-Trlixds4?si=lyBwbkxnnGJgP8Uj> (*discussion available at 3 hours 39 mins and 48 seconds*).
  - City staff and Council rejected all amendments proposed in the submitted report and delegation but did decide to defer Bylaw 3121 for 60 days to allow local Indigenous partners to review the Bylaw before its third reading. Councillor Evan Jolicoeur pursued a "no timeline" approach for this engagement, but this was denied.

## Reflecting on the Current Situation of Homelessness in the Comox Valley

### Excerpt from *Working Toward System Change: Assessing Courtenay's Approach to Homelessness*

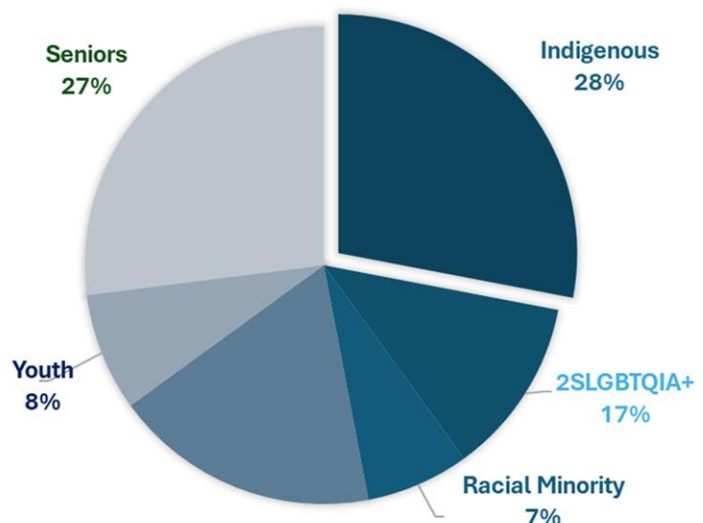
The 2023 Comox Valley Point in Time (PIT) Count has provided an annual snapshot of people experiencing homelessness during a 24-hour period (BC Housing Research Centre, 2023). The PIT's homelessness assessment demonstrates an extraordinary increase in homelessness in the Comox Valley since 2020 and a rising representation of minority groups such as Indigenous People, the LGBTQIA+ community, and persons with disabilities who are disproportionately affected by poverty and the housing crisis.

As proposed, Bylaw No. 3121 may exacerbate the already dire conditions faced by the homeless population in Courtenay, leading to mistreatment and, potentially, further loss of life. This experience is specifically impacting minority groups.

The 2023 Point-In-Time Count by BC Housing revealed that Indigenous individuals represent 28% of those experiencing homelessness in the Comox Valley.

According to section 3 of DRIPA, in consultation and cooperation with the Indigenous peoples, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration. A bylaw drafted without Indigenous consultation contradicts the City's stated dedication to reconciliation and to providing a "high quality of life" "for all people" as set out in the City of Courtenay's Strategic Priorities for 2023-2026 (City of Courtenay, 2023.)

**Demographics of those experiencing homelessness**





## Ensuring Meaningful Indigenous Engagement: Evaluating Courtenay's Approach to the Duty to Consult and Accommodate (DTCA)

**Report Title:** "Parks and Open Spaces Regulation Bylaw – Amendment"

**Date:** March 13, 2024

**Source:** Accessed at <https://pub-courtenay.escribemeetings.com/FileStream.ashx?DocumentId=7391>

**Pages Referred:** Pages 415 – 425

When assessing the City Staff report mentioned above, it's crucial to consider how well the comments within adhere to the Duty to Consult and Accommodate (DTCA) as outlined in the Canadian Constitution and the principles guiding Indigenous consultation and engagement.

The report acknowledges attempts to engage with the K'ómoks First Nation but notes a lack of response, suggesting potential gaps in follow-up or alternative engagement strategies. Moreover, the options provided for further engagement with Indigenous communities appear limited, indicating a need for a more robust commitment to consultation and accommodation.

To enhance compliance with DTCA and Indigenous engagement principles, the report should consider the following strategies:

1. **Direct Engagement:** Implement proactive measures such as direct outreach, meetings, consultations, or workshops tailored for Indigenous stakeholders.
2. **Formal Consultation Processes:** Formalize the consultation process through established protocols or agreements defining roles, responsibilities, and expectations for the City.
3. **Incorporating Indigenous Input:** Integrate Indigenous perspectives, concerns, and recommendations into decision-making processes, especially regarding issues impacting Indigenous peoples.
4. **Cultural Sensitivity Training:** Provide training on Indigenous history, rights, protocols, and best practices for City staff and decision-makers to foster respectful engagement.
5. **Monitoring and Reporting:** Establish mechanisms for ongoing monitoring, reporting, and evaluation of Indigenous engagement efforts to track progress and make continuous improvements.

Implementing these recommendations will demonstrate the City's genuine commitment to fulfilling its duty to consult and accommodate Indigenous peoples in a meaningful and respectful manner.

## DRIPA: A Path Toward Equity and Justice

In Canada, colonial laws have served and continue to serve as instruments of oppression against Indigenous peoples, perpetuating power imbalances and preserving the economic interests of colonial elites. This longstanding reality, spanning over 150 years, has seen those in positions of privilege fail to support progress or uphold the rights and dignity of Indigenous peoples and communities.

A clear example of this systemic injustice is the disproportionate representation of Indigenous peoples among the homeless population. Despite comprising less than 5% of the total population, Indigenous individuals accounted for 28% of those experiencing homelessness in the Comox Valley in 2023 (PIT, 2023), with even higher disparities observed in other BC communities.

Despite Canada's legacy of Indigenous cultural erasure, strides have been made to reconcile these longstanding injustices. In 2007, the United Nations announced the **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**, a groundbreaking document defining the baseline individual and collective rights of Indigenous Peoples worldwide. Building upon this framework, the provincial government of British Columbia took a significant step forward with the enactment of the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) in November 2019. DRIPA made UNDRIP domestic law in British Columbia.

DRIPA holds profound significance as it expressly recognizes the applicability of UNDRIP within the legal framework of British Columbia. By mandating the alignment of provincial laws with the principles enshrined in UNDRIP, DRIPA signifies a turning point in BC's commitment to reconciliation.

Embracing UNDRIP as a blueprint for reconciliation, in accordance with the recommendations of the Truth and Reconciliation Commission's Calls to Action, DRIPA symbolizes a step towards redressing historical injustices and fostering meaningful partnerships with Indigenous communities.

At its core, DRIPA lays the groundwork for a more equitable and just society that respects and upholds the inherent rights of Indigenous peoples, both as a collective group and as individuals. It serves as a testament and dedication to reconciliation and offers a framework for future legislative efforts aimed at respecting, incorporating, and defending Indigenous rights and well-being.

Key provisions of the legislation include:

1. The mandated alignment of provincial laws with the UN Declaration (as seen in Section).
2. Requiring the development of an action plan in consultation with Indigenous Peoples (as seen in Section 4).
3. Ensures regular reporting to monitor progress (as seen in Section 5).
4. The provision of flexibility for agreements with Indigenous governments and collaborative decision-making (as seen in Sections 6 and Section 7).

## Proposed Amendments: Aligning Bylaw 3121 with Human Rights and DRIPA

In acknowledging the need for Indigenous perspectives and recommendations within our proposed amendments, we recognize the current gaps in addressing Indigenous Peoples' experiences, particularly concerning homelessness.

Indigenous communities face a disproportionate impact of homelessness due to historical injustices and systemic barriers. The Coalition to End Homelessness invites open dialogue and collaboration to understand and incorporate an indigenous approach to bylaw interaction and services that align with the principles of respect, cultural sensitivity, and inclusivity as they pertain to Indigenous beliefs and customs. Through meaningful engagement, we aim to incorporate Indigenous perspectives into the fabric of our regulatory framework, fostering a more equitable and supportive environment for all individuals affected by homelessness in our community.

### Indigenous Consultation

**Recommended Amendment:** Create a section that states, *"The City of Courtenay recognizes the significance of Indigenous consultation in matters affecting Indigenous peoples' rights and interests, as outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Therefore, before enacting or amending any provisions of this bylaw, the City shall engage in meaningful consultation with local Indigenous partners to obtain free, prior, and informed consent, ensuring alignment with Indigenous peoples' entitlements to adequate housing, non-discrimination, and self-determination."*

**Why this is important:** Bylaw 3121 should explicitly outline a process for meaningful consultation with Indigenous communities before enacting measures that affect their lands or rights, in alignment with Article 10 of UNDRIP (Free, Prior, and Informed Consent). If this section lacks clarity or specific procedures for such consultation, it should be revised to incorporate mechanisms for obtaining free, prior, and informed consent from Indigenous peoples. Municipalities must collaborate with Indigenous communities to implement measures that promote understanding, respect, and awareness of Indigenous rights.

The proposal to review Bylaw No. 3121 with local Indigenous partners aligns with **Articles 15, 18 and 19 of DRIPA**. These articles emphasize the importance of consulting and obtaining free, prior, and informed consent from Indigenous peoples regarding legislative or administrative measures that may affect them. By engaging in meaningful consultation, we aim to incorporate Indigenous perspectives into the bylaw, ensuring that it respects and upholds Indigenous rights and values.

### Harm Reduction Strategies in Section 5.8 - Substance Use

**Existing Bylaw Section - Section 5.8 Substance Use:** A person must not do any of the following activities in a park or open space: b) "Consume cannabis, as defined in the Cannabis Control and Licensing Act;" c) "Smoking or vaping (including e-cigarettes)."

**Recommended Amendments:** In line with harm reduction principles, consider allowing the use of cannabis and smoking or vaping in parks or open spaces within designated areas. This approach ensures that individuals experiencing homelessness have access to

therapeutic options without facing additional targeting or criminalization due to their lack of shelter and privacy.

**Why this is important:** The inclusion of harm reduction strategies reflects a commitment to promoting the health and well-being of Indigenous communities. This resonates with DRIPA's broader principles of ensuring access to culturally appropriate health services and facilities. By implementing harm reduction measures, we aim to mitigate the negative impacts of substance use and promote healthier lifestyles within Indigenous communities.

### Clarity and Non-Discrimination in Section 5.9 (b) Clarity in Behavior Regulation

**Existing Bylaw Section - Section 5.9 (b):** "Disorderly, dangerous, or **offensive** behaviour is not allowed in parks and open spaces (City of Courtenay, 2023a):"

**Recommended amendments:** The term "offensive behaviour" should be removed to specify conduct objectively observed as "disorderly or dangerous", excluding subjective interpretations that may disproportionately impact individuals experiencing homelessness due to implicit bias.

**Why this is important:** The amendment is to ensure clarity in the bylaw language and prevent unintended consequences aligning with **Article 2 of DRIPA**. This article underscores Indigenous peoples' right to non-discrimination and equality in accessing all human rights and freedoms. Our efforts seek to eliminate ambiguity and ensure that the bylaw is applied fairly and equitably to all individuals, including those from Indigenous communities.

### Respectful Behavior Regulation in Section 5.10 Interaction with City Employees

**Existing Bylaw Section - Section 5.10 Interaction with City Employees:** "The City is committed to providing excellent service to the public and creating positive experiences for all individuals while promoting a culture of respect and professionalism, and to ensure that this commitment is met, *the City has established provisions outlining expectations for the interaction between City employees and members of the public.*"

**Recommended Amendment:** *"To promote a culture of respect and professionalism, City employees shall adhere to the Bylaw Compliance Policy, incorporating trauma-informed approaches in interactions with members of the public, particularly those experiencing homelessness."*

**Why this is important:** Our amendment promotes respectful behaviour regulation in line with DRIPA's overarching principles of respecting Indigenous cultures, traditions, and institutions while fostering their full participation in societal life. By encouraging respectful interactions and behaviours within the community, we aim to create an environment that honours Indigenous values and promotes cultural understanding and respect.

### Safeguarding Advocacy Rights

**Existing Bylaw Section - Section 5.10 (c) & (d):** "It is prohibited to **obstruct or interfere** with the duties of City employees in a park or open space)." **"Interfering with a bylaw officer in performing their duties, including issuing tickets or notices, is prohibited under this bylaw."**

**Amendment recommendation:** It is prohibited to “*physically*” obstruct or “*physically*” interfere with City employees while carrying out their duties in parks or open spaces or bylaw officers while performing their duties, including issuing tickets or notices.

**Why this is important:** These provisions are frequently applied to impede advocates and observers during decampment operations. Mere inquiry, negotiation, or advocacy, whether for oneself or others, should not be deemed ‘obstruction’ or ‘interference.’ To uphold the principles of democracy, public engagement and observation, it is recommended that the provision explicitly recognize the necessity for “physical obstruction or interference.”

### Trauma-Informed Approaches in Bylaw Enforcement

**Existing Bylaw Section - Section 10.2 Enforcement:** “The Director, a bylaw enforcement officer or a peace officer may enforce this bylaw, and in doing *so may be assisted by another such officer or a City personnel*” (City of Courtenay, 2023a).

**Recommended Amendment:** Only trained officials, including bylaw enforcement officers or peace officers, shall enforce this bylaw, with a focus on collaborative partnerships with social support services to provide timely information and resources to individuals affected by the bylaw, thereby minimizing conflicts and enhancing support for vulnerable populations.

**Why this is important:** The principles of trauma-informed approaches and the recognition of historical trauma and ongoing impacts on Indigenous communities can be found implicitly in several articles of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP); **Articles 3, 8, 22, 24 and 25.**

### Considerations for Sheltering and Health Needs

**Existing Bylaw Section - Section 7.2 (d) Sheltering and Health Needs:** “*All temporary shelters must be taken down and moved before 9:00 a.m. each day, except for those situated in a location authorized by the City Manager for daytime use.*”

**Recommended Amendment:** Temporary shelters shall be taken down and moved before 9:00 a.m. each day unless authorized by the City Manager for daytime use, acknowledging the necessity for leniency in cases of serious health issues and disability, thereby upholding the rights of individuals experiencing homelessness to shelter in place beyond designated time slots.

**Why this is important:** By considering sheltering and health needs in the amendments, we align with **Article 21 of DRIPA**. This article recognizes the right of Indigenous peoples to improve their economic, social, and health conditions, including access to housing and health services. Our amendments aim to address the specific challenges faced by Indigenous peoples experiencing homelessness, ensuring that they have access to safe and adequate shelter and healthcare services.

In line with **UNDRIP Article 10**, Indigenous individuals cannot be forcibly removed from their lands or territories. Any relocation must have the free, prior, and informed consent of the Indigenous peoples involved, along with fair compensation and the option of return where feasible.

## Aligning Municipal Bylaws with Indigenous Rights: Incorporating UNDRIP Principles into Municipal Bylaw

UNDRIP Document:

[https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

The municipal government, as a colonial entity, continues to contribute to the displacement of Indigenous peoples and the imposition of colonial systems and values on Indigenous lands and bodies. As such, it bears a responsibility to take meaningful action to address and be accountable for these injustices (British Columbia Assembly of First Nations, 2020, City of Vancouver, 2022).

Below are some articles from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) that may support changes to the Bylaw 3121.

Applicable UNDRIP Articles	Ways to clarify and implement DRIPA into Bylaw and Policy
<p><b>Article 10:</b> Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.</p>	<p><b>Protection Against Forced Removal:</b> In accordance with Article 10 of UNDRIP, no indigenous individuals shall be forcibly removed from their lands or territories. Any relocation must only occur with the free, prior, and informed consent of the indigenous peoples involved. Just and fair compensation must be agreed upon, and where feasible, the option of return shall be provided.</p>
<p><b>Article 15:</b> States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.</p>	<p><b>Combating Prejudice and Discrimination:</b> Municipalities are required to implement effective measures, in collaboration with indigenous communities, aimed at combating prejudice, eradicating discrimination, and promoting tolerance, understanding, and harmonious relationships among indigenous peoples and all other sectors of society.</p>
<p><b>Article 18:</b> Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through</p>	<p><b>Right to Participate in Decision-Making:</b> Indigenous peoples have the right to participate in decision-making processes</p>

<p>representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.</p>	<p>that affect their rights. This includes the selection of representatives through their own procedures and the maintenance and development of indigenous decision-making institutions.</p>
<p><b>Article 19:</b> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.</p>	<p><b>Free, Prior, and Informed Consent:</b> States shall engage in good faith consultation and cooperation with indigenous peoples through their representative institutions to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may impact them.</p>
<p><b>Article 21:</b></p> <p>Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.</p> <p>States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.</p>	<p><b>Economic and Social Conditions Improvement:</b> Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions. States must take effective measures, including special measures where appropriate, to ensure the continuous enhancement of indigenous economic and social conditions, with particular attention to the rights and special needs of indigenous elders, women, youth, children, and persons with disabilities.</p>
<p><b>Article 22:</b></p> <p>Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.</p>	<p><b>Special Attention to Vulnerable Groups:</b> Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children, and persons with disabilities in the implementation of this Bylaw.</p>
<p><b>Article 24:</b></p> <p>Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.</p>	<p><b>Right to Health:</b> Indigenous individuals have an equal right to the highest attainable standard of physical and mental health. States shall progressively realize this right by taking necessary steps to ensure access to healthcare services.</p>

<p><b>Article 26:</b></p> <p>Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.</p>	<p><b>Right to Land, Territories, and Resources:</b></p> <p>Indigenous peoples have the right to the lands, territories, and resources that they have traditionally owned, occupied, or used. This right shall be respected and upheld in the implementation of this Bylaw.</p>
<p><b>Article 43:</b> The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.</p>	<p><b>Minimum Standards for Survival and Dignity:</b></p> <p>The rights recognized in this Bylaw constitute the minimum standards for the survival, dignity, and well-being of Indigenous peoples.</p>
<p><b>Article 46</b></p> <p>The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.</p>	<p><b>Interpretation of Provisions:</b> The provisions of this Bylaw shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith.</p>



## Urging Municipalities to consider the “Federal Housing Advocate ‘s Review on Homeless Encampments”

### 1. Take urgent action to preserve lives and uphold human dignity.

- Access to essential necessities for all encampment residents (clean water, sanitation facilities, food, heating and cooling systems, accessibility accommodations, healthcare services, and harm reduction resources).

### 2. End forced evictions of encampments:

- Forced evictions violate fundamental human rights protected in the Canadian Charter of Rights and Freedoms, the UN Declaration on the Rights of Indigenous Peoples, and international housing regulations.
- Effective solutions should be sought through inclusive engagement with encampment residents, prioritizing their needs in crafting alternatives to eviction.

### 3. Leadership in Human Rights:

- Political leaders and governments at all levels bear the responsibility to safeguard the rights and dignity of individuals experiencing homelessness. They should refrain from actions or rhetoric that perpetuate stigma and increase the vulnerability of encampment residents.

### 4. Respect the inherent rights of Indigenous Peoples:

- Commit to upholding the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This includes addressing the unique needs of urban Indigenous individuals, especially those experiencing homelessness in encampments.
- Support Indigenous governments and representative organizations in developing culturally appropriate housing solutions, including partnerships with existing Indigenous service providers in urban areas.

### 5. Shift the Rhetoric away from the “Criminalization” of Homelessness:

- Law enforcement's role should be minimized, ensuring adherence to human rights and ending practices like confiscation of belongings, surveillance, targeting and persecution of individuals most impacted by the housing crisis.
- Individuals in encampments should have access to efficient and fair mechanisms to address any threats or violations of their rights.

### 6. Empowerment in Decision-making:

- Encampment residents should actively participate in decision-making processes concerning their living conditions. Governments must engage in continuous and meaningful dialogue with encampment residents and their advocates.

## Definitions and Contextual Framework

**“Consultation and Consent”** refers to the legal obligations of the Canadian government to consult with Indigenous peoples and obtain their free, prior, and informed consent before making decisions that may impact Indigenous rights, lands, or resources. This principle is enshrined in various legal precedents, including Supreme Court decisions and international agreements like UNDRIP.

**“Decolonization”** refers to the process of undoing the effects of colonialism, which involves dismantling colonial systems, structures, and ideologies and restoring autonomy and sovereignty to colonized peoples. It encompasses various political, social, cultural, and economic strategies aimed at challenging and transforming the legacies of colonialism and empowering Indigenous peoples and other marginalized groups.

Decolonization involves recognizing and addressing the historical injustices and ongoing impacts of colonization on Indigenous peoples and their lands, cultures, and communities. This may include efforts to reclaim Indigenous languages, traditions, and knowledge systems, as well as advocating for Indigenous rights and self-determination. Decolonization also entails challenging Eurocentric perspectives and power dynamics in academia, governance, and other institutions, and centering Indigenous voices, perspectives, and priorities in decision-making processes.

In essence, decolonization seeks to create a more just and equitable society by acknowledging and rectifying the harms inflicted by colonialism, promoting Indigenous sovereignty and self-governance, and fostering meaningful reconciliation between Indigenous peoples and settler societies. It is an ongoing process that requires collective efforts and commitments to address systemic injustices and create space for Indigenous resurgence and empowerment.

**“The Declaration on the Rights of Indigenous Peoples Act (DRIPA)”** refers to DRIPA in British Columbia, Canada. DRIPA is a provincial legislation passed in November 2019, making British Columbia the first Canadian province to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into law.

DRIPA aims to align the laws of British Columbia with the principles of UNDRIP, which recognizes and protects the rights of Indigenous peoples. The act requires the provincial government to develop an action plan in consultation with Indigenous peoples to bring provincial laws into harmony with UNDRIP principles. It mandates the government to work collaboratively with Indigenous

nations to address issues such as land rights, self-governance, and economic development.

“**Erasure**” refers to the act of removing, hiding, or obliterating something, often intentionally, so that it no longer exists or is no longer visible or acknowledged. In various contexts, erasure can take different forms:

1. **Cultural Erasure:** This occurs when the cultural practices, traditions, languages, or histories of a particular group are marginalized, suppressed, or ignored, leading to their disappearance or diminished visibility. This can happen through policies, institutions, or societal attitudes that prioritize dominant cultures or actively work to suppress minority cultures.
2. **Historical Erasure:** This involves the deliberate omission, distortion, or suppression of historical events, narratives, or perspectives, often to uphold particular ideologies, power structures, or national myths. Historical erasure can involve ignoring the contributions or experiences of certain groups, downplaying atrocities or injustices, or rewriting history to fit a specific narrative.
3. **Identity Erasure:** Identity erasure occurs when the identities, experiences, or rights of individuals or groups are denied, invalidated, or marginalized, often due to discrimination, prejudice, or stereotypes. This can happen through societal norms, laws, or policies that exclude or marginalize certain identities, such as gender identity, sexual orientation, race, ethnicity, or religion.
4. **Environmental Erasure:** This refers to the destruction, degradation, or alteration of natural landscapes, ecosystems, or habitats, often as a result of human activities such as deforestation, pollution, or urbanization. Environmental erasure can have significant ecological, cultural, and social consequences, including the loss of biodiversity, displacement of communities, and disruption of traditional ways of life.

Overall, erasure involves the systematic removal or suppression of something, whether it be cultural, historical, identity-related, or environmental, and it often reflects unequal power dynamics and the privileging of certain perspectives or interests over others. Recognizing and addressing erasure is essential for promoting inclusivity, preserving diversity, and upholding the rights and dignity of all individuals and communities.

“**Free, Prior, and Informed Consent (FPIC)**” is a principle used in Indigenous rights and international law, particularly in the context of development projects

or activities that may impact Indigenous communities and their lands. Here's a breakdown of what each component means:

1. **Free:** This refers to the idea that consent must be given voluntarily and without coercion or undue influence. Indigenous communities should not be pressured or forced into providing consent but should have the freedom to make decisions based on their own will and understanding.
2. **Prior:** This emphasizes that consent should be sought and obtained before any project or activity that may affect Indigenous lands, resources, or rights begins. It requires engagement and consultation with Indigenous communities at an early stage, allowing them sufficient time to understand the proposed project and its potential impacts.
3. **Informed:** This aspect requires that Indigenous communities have access to all relevant information about the proposed project or activity. This includes information about potential benefits and risks, environmental impacts, cultural implications, and any alternatives or mitigation measures. Communities must be adequately informed to make a well-informed decision.
4. **Consent:** FPIC requires the explicit consent or agreement of Indigenous communities before proceeding with a project or activity. This consent should be based on a clear understanding of the information provided, and communities should have the opportunity to express their concerns, ask questions, and negotiate conditions or terms if necessary.

FPIC is considered a fundamental right for Indigenous peoples, recognizing their inherent rights to self-determination, land, and resources. It is often seen as a way to ensure meaningful engagement, respect Indigenous knowledge and governance systems, and promote sustainable development that aligns with Indigenous priorities and values.

**“K’omoks First Nation”** refers to the First Nations community located on the east coast of Vancouver Island in British Columbia, Canada. The traditional territory of the K’ómoks First Nations people encompasses the Comox Valley region, including the areas around the Comox Harbour, Courtenay, and surrounding areas.

The K’ómoks First Nation is made up of multiple Indigenous groups, including the Pentlatch, Sathloot, Sāsītla, leeksun, Pentlatch, and Xa’Xe. Historically, these groups inhabited the lands around the Comox Valley and maintained distinct cultures, languages, and traditions.

Today, the K’ómoks First Nation is a self-governing Indigenous community with its own governance structure and leadership. The Nation is actively engaged in

various economic, social, and cultural initiatives aimed at promoting the well-being of its members and preserving its cultural heritage. These initiatives may include economic development projects, cultural revitalization efforts, environmental stewardship programs, and collaborations with other Indigenous and non-Indigenous organizations.

The K'ómoks First Nation plays an important role in the ongoing process of reconciliation in British Columbia, working towards addressing historical injustices, promoting Indigenous rights, and fostering meaningful relationships with other governments and organizations.

**“Reconciliation,”** in the Canadian context, refers to the ongoing process of healing and rebuilding relationships between Indigenous peoples and non-Indigenous Canadians. It acknowledges the historical injustices, including colonization, the residential school system, forced assimilation, and other forms of systemic discrimination, that have marginalized and oppressed Indigenous communities for generations.

Reconciliation seeks to address these injustices through various means, including acknowledging past wrongs, apologizing for historical harms, and taking concrete actions to address the legacies of colonialism. This may include initiatives to support Indigenous self-determination, preserve Indigenous languages and cultures, promote Indigenous rights and land claims, and improve socio-economic conditions in Indigenous communities.

Importantly, reconciliation is not just about addressing past wrongs but also about building a more equitable and inclusive future where Indigenous peoples are respected as equal partners in Canadian society. It requires ongoing dialogue, mutual understanding, and a commitment to justice, equality, and Indigenous rights.

The Truth and Reconciliation Commission of Canada, established in 2008, played a significant role in advancing the reconciliation process by documenting the history and impacts of residential schools, facilitating healing and reconciliation between Indigenous and non-Indigenous Canadians, and making recommendations for action. However, reconciliation is a complex and long-term process that requires sustained efforts and collaboration from all sectors of society.

**“The Indian Act”** outlines various aspects of governance and administration concerning First Nations persons, including:

1. **Administration of Reserves:** The Act provides the federal government with authority over "Indian reserves," which are lands set aside for the

use and benefit of Indigenous communities. It establishes rules and regulations regarding the management of reserves, including land use, leasing, and governance structures.

2. **Indian Status:** The Indian Act defines who is considered a "Status Indian" and eligible for certain rights and benefits, such as access to healthcare, education, and tax exemptions. Status is determined based on criteria such as ancestry and registration with the federal government's Indian Register.
3. **Band Councils:** The Act mandates the creation of Band Councils as elected bodies responsible for the administration of reserve lands and resources. Band Councils operate under the oversight of the federal government and have authority over various local matters, including education, housing, and social services.
4. **Policies of Assimilation:** Historically, the Indian Act has included provisions aimed at assimilating Indigenous peoples into mainstream Canadian society. These policies have included restrictions on cultural practices, such as banning traditional ceremonies and prohibiting the potlatch, as well as measures aimed at promoting Christian education and undermining Indigenous governance structures.
5. **Federal Control:** The Indian Act establishes a paternalistic relationship between the federal government and Indigenous peoples, giving the government extensive powers to intervene in Indigenous affairs, often without meaningful consultation or consent from Indigenous communities.

Over the years, the Indian Act has been heavily criticized for its discriminatory and oppressive provisions and its role in perpetuating colonialism and systemic injustices against Indigenous peoples. Efforts to reform or replace the Indian Act have been ongoing, with calls from Indigenous communities for greater self-determination and recognition of Indigenous rights and sovereignty.

### **"The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)"**

is a comprehensive international instrument that sets out the individual and collective rights of Indigenous peoples, as well as the principles for their protection and promotion. Adopted by the United Nations General Assembly in 2007, UNDRIP represents a significant milestone in the recognition and advancement of Indigenous rights on the global stage.

The declaration covers a wide range of rights, including the rights to self-determination, culture, language, education, health, and land. It also emphasizes the importance of Indigenous peoples' participation in decision-

making processes that affect them and the need for states to obtain their free, prior, and informed consent before undertaking any activities that may impact their lands, territories, or resources.

UNDRIP is a non-legally binding instrument, meaning it does not create legally enforceable obligations on states. However, it carries significant moral and political weight and serves as a framework for advocacy, policy development, and legal reform related to Indigenous rights at the national and international levels.

Many countries, including Canada, have endorsed UNDRIP and committed to its implementation. In Canada, the government officially adopted UNDRIP in 2016, and efforts have been made to integrate its principles into domestic law and policy-making processes. However, challenges remain in fully realizing the rights and aspirations of Indigenous peoples as outlined in UNDRIP, and ongoing efforts are needed to address issues such as land rights, self-governance, and socio-economic inequalities.

**“Unceded Lands”** refer to territories in Canada where Indigenous peoples have not signed treaties or agreements to surrender, sell, or otherwise cede their rights to the land to the Canadian government or Crown. Indigenous communities often consider these lands to be their ancestral territories, which they have inhabited and cared for since time immemorial.

The concept of unceded lands highlights the ongoing assertion of Indigenous sovereignty and land rights. It underscores the fact that many Indigenous nations did not willingly relinquish their lands through treaties or other legal agreements but rather continue to assert their inherent rights to the land based on their own legal, cultural, and spiritual traditions.

In Canada, there are several regions where large portions of land are considered unceded territories, including parts of British Columbia, where treaties were not signed with many Indigenous nations. These unceded territories are the subject of ongoing discussions and negotiations between Indigenous peoples, provincial governments, and the federal government regarding land rights, resource management, and self-governance.

Acknowledging and respecting the status of lands as unceded is an important aspect of reconciliation and efforts towards Indigenous rights and self-determination in Canada. It involves recognizing and upholding Indigenous peoples' rights to their traditional lands and territories, as well as engaging in meaningful dialogue and negotiations to address historical injustices and establish mutually respectful relationships.

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# **Addendum 1: Letter 1 - To Courtenay Mayor and Council**

## Re: Parks and Open Spaces Bylaw No. 3121

January 17, 2024

Dear Mayor Wells and City Councillors

RE: Parks and Open Spaces Bylaw No. 3121

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We are writing in solidarity to voice our opposition to the new proposed Parks and Open Spaces Bylaw No. 3121 (“the Bylaw”). We are deeply concerned about the Bylaw’s potential impact on individuals experiencing homelessness and strongly urge Mayor Wells and the City Council not to adopt it.

At the City Council meeting on January 10, 2024, the Director of Corporate Services, Kate O’Connell, stated the Bylaw is “not intended to focus on a specific population”, namely individuals experiencing homelessness. While this may be true, the unintended consequences of similar Bylaws have been disproportionately applied to and harmed people relying on public space for survival.

We believe that more consultation is necessary to ensure a balanced approach to addressing the issue of sheltering in parks. On September 27, 2023, the City of Courtenay’s representative for the Comox Valley Coalition to End Homelessness (the “Coalition”), Angela Fletcher, wrote a letter to the City Council stressing the importance of including individuals with lived experience from the beginning of the consultation process.

Statistically, Indigenous people are overrepresented in the unhoused community, causing them to frequently interact with law enforcement. It has come to our attention that key interest-holders in the Indigenous community were not part of the consultation process. We agree with the Coalition that the perspectives and insights of those with lived experience are invaluable in shaping effective solutions, and strongly urge the City Council to engage in further consultation with these impacted communities.

We also find that the Bylaw fails to expressly acknowledge the human right to shelter. Most recently, in *Bamberger v. Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49, the Court acknowledged that if there are no accessible shelters available, unhoused persons may temporarily shelter in a park. For a shelter to be accessible, it must have water, shower facilities, the ability to prepare food, and meet the necessities of life. Two temporary shelters in Courtenay

that have been turning people away every night. Therefore, there are no accessible shelters available in the city.

We find the Bylaw’s language ambiguous, making it susceptible to misinterpretation. For example, the definition of “camping” overlaps with the definition of “sheltering,” making the associated provisions open to misinterpretation or misapplication. Several Bylaw provisions do not reflect the lived reality of those experiencing homelessness. Consequently, we find these provisions unreasonable in the circumstances. For example, section 7.3(f) states, “temporary shelters must not be left unattended.” Individuals sheltering may need to leave their temporary shelter for a variety of reasons, including accessing the washroom.

The Bylaw also fails to provide clear guidance to enforcement bodies and the public regarding their rights, responsibilities, or enforcement procedures. At the City Council meeting on January 10, 2024, Kate O’Connell relied on the Bylaw Compliance Policy to provide sufficient guidance when enforcing this Bylaw. For example, approaching situations with curiosity and a trauma-informed approach. After reviewing this policy, we disagree.

The Bylaw Compliance Policy highlights aspirational goals but fails to provide specific operational guidelines or procedures. For example, it does not provide guidance congruent with emerging case law, specific things bylaw enforcement should consider when exercising discretion, the specific consequences for non-compliance, the nature and scope of the City’s impact assessments, or what, if any, training bylaw enforcement must complete to ensure trauma-informed practice. Therefore, the Bylaw Compliance Policy provides insufficient guidance to ground this Bylaw.

We strongly ask that the City Council does not adopt the proposed Parks and Open Spaces Bylaw.

Sincerely,



Taija McLuckie  
Peer Advisor, CV CAT

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We have read, understood, and consent to sign this letter. We ask the City Council not to adopt the proposed Parks and Open Spaces Bylaw No. 3121.

AVI Health and Community Services  
Comox Valley Coalition to End Homelessness, Leadership Team  
Daniel Baboolal, Vice Principal, École Au-coeur-de-l'île  
Dayna Forsgren, Coordinator, Comox Valley Situation Table  
Fairahn Reid, Registered Social Worker  
David Tazumi, Registered Nurse  
Kaida Penney, Registered Occupational Therapist (MSc)  
Thea Cowan, Registered Nurse  
Gavin Miller  
Daniel Nordstrom  
Mariah Ricketts  
Amy Greene  
Maeve Bergeron  
Aidan Bradfield

## Addendum 2: Letter 2 - To Courtenay Council - Addressing Bylaw 3121

Bob Wells  
Mayor of Courtenay  
830 Cliffe Ave., Courtenay, BC, V9N 2J7  
250-334-4441

January 16, 2024

To Mayor Bob Wells, City Councillors, and City Employees to whom this may concern,

We are writing to express our collective concerns regarding the proposed City of Courtenay Bylaw No. 3121, Parks and Open Spaces Regulation Bylaw (“Bylaw 3121”). Bylaw 3121 passed its first and second readings during the January 10<sup>th</sup>, 2024, council meeting and was supported by the majority of Courtenay Councillors.

We are a group of community members, including lived experience experts and local professionals such as legal advocates, indigenous social services, and social service providers. We are united in our sincere concern that Bylaw No. 3121, as currently drafted, does not support the City of Courtenay’s vision to provide a **“high quality of life” “for all people”** as set out in the City of Courtenay’s *Strategic Priorities for 2023-2026* (City of Courtenay, 2023).

We appreciate Councillor Kate O’Connell’s recognition of vulnerable individuals’ need to shelter in parks, as stated in section 7.1, but Courtenay’s proposed Bylaw No. 3121 will continue to add significant stress and pain to an already struggling population within the community. Currently, individuals who are unhoused are dealing with a wide range of daily struggles, including:

- Physical disabilities, while still being required to relocate heavy personal items daily.
- Physical health concerns exacerbated by the lack of appropriate washroom facilities and due to tents and sleeping bags being unable to dry appropriately after rainy nights.

The city of Courtenay recently released its strategic priorities and initiatives, which include a commitment “to review city operations with a **social equity, reconciliation and anti-racism lens** (City of Courtenay, 2023).” Although a consultation was undertaken to incorporate diverse feedback from the community into Bylaw 3121, as currently drafted, it does not appropriately support and protect those who are most vulnerable in our community. Our unhoused community members are experiencing significant risk due to our city’s housing crisis yet remain in a state of perpetual fear for their personal safety and well-being. This group includes those community members also dealing with poverty, disabilities, and mental illnesses in addition to being unhoused.

In order to further this discussion and better address these concerns, we submit the following questions and recommendations for the Council:

**1) Public Awareness and Human Rights:**

How will the public be informed of Courtenay's Bylaw policies, which incorporate recent community feedback and consultation, guiding Bylaw 3121 and Bylaw Officers? Can these policies be explicitly stated or referenced in the section of Bylaw 3121 pertaining to "sheltering in parks?"

- a. **Recommendation:** In order to address the community's current struggle with ongoing stigma, discrimination, and potential radicalization to violence, it is imperative that City leadership, policies, and bylaws clearly define and articulate the City's stance on the Human Rights of all community members which must address the following:
  - i. Recognition of the **human rights of those experiencing homelessness** and the systems that are failing individuals who are at high risk of experiencing poverty and systematic discrimination (such as those with a disability, mental illness and of a racial minority group).
  - ii. **Incorporation of cultural and trauma-informed practice guidelines.** This ensures that individuals facing challenges related to physical disabilities, mental illness, and homelessness receive adequate support from City employees. Demonstrating compassion and understanding in these areas will not only showcase the City's leadership but also guide our community towards a more unified stance, reducing divisive rhetoric associated with a situation primarily caused by a failing system.

**2) Prioritizing and Emphasizing Social Service Support for Trauma-Informed Bylaw Enforcement**

Pursuant to Section 10.2, "Enforcement," delineated in Bylaw 3121, it is expressly stipulated that "The Director, a bylaw enforcement officer, or a peace officer may enforce this bylaw ('Bylaw 3121'), and in doing so, may be assisted by another such officer or a City personnel."

- a) **Recommendation:** In response to community feedback and in alignment with trauma-informed and culturally sensitive practices, we implore City Councillors to consider incorporating language that promotes collaborative partnerships with more suitable social support services. This collaborative approach aims to assist bylaw officers, thereby mitigating the potential for re-traumatizing vulnerable individuals and facilitating meaningful connections with essential resources. Express language in Bylaw 3121 that welcomes social support services not only diminishes the likelihood of conflicts but also enables individuals experiencing homelessness to receive timely information on available resources, services, and

secure locations for additional support and rest. This proactive approach aligns with the principles of community well-being and inclusivity.

### **3) Indigenous Consultation:**

With the Council's efforts on Reconciliation, has Bylaw 3121 been reviewed by local indigenous partners, given that nearly 30% of the region's homeless population identifies as Indigenous (BC Housing, 2023)?

- **Recommendation:** If this review has not taken place, we recommend it does.

### **4) Leniency for Health Issues:**

Will individuals experiencing illness and physical disabilities receive leniency to shelter in place beyond the proposed time slots of 7:00 pm to 9:00 am (stated in Bylaw 3121, section 7.2 C) if Bylaw Officers are made aware that an individual is experiencing physical ailments, which may impact an individual's ability to move their belongings?

- **Recommendation:** leniency be provided in the appropriate circumstances, which will support our most vulnerable populations, cultivate trust between City staff and those affected by the Bylaw, and reduce the need for other support services by helping the homeless maintain their belongings (vs. being thrown away; adding to the cycle of poverty and waste).

### **5) Washroom Facilities:**

As there is mention of preventing waste in parks, specified as "no fouling or polluting" in Bylaw 3121, section 6.4, will appropriate washroom facilities be provided to those needing to shelter in parks due to the lack of appropriate housing in shelters?

- **Recommendations:**
  - a. The addition of a monitored overnight washroom facility or additional public washroom hours will offer our most vulnerable community members the ability to maintain proper gastrointestinal health and personal safety and dignity with this basic human need.
  - b. When analyzing the costs associated with a monitored overnight washroom facility, it is imperative to consider the effects on the health and safety of individuals (the resulting impact on hospitals with increased visits), the protection of the park's natural environment and local park users due to the absence of these basic facilities.

### **6) Access to Medical Marijuana:**

Will there be further consideration and leniency for those experiencing homelessness to access medical marijuana in park spaces? Section 5.8 of Bylaw 3121 prohibits the use of marijuana.

- **Recommendation:** we recommend leniency with respect to access to medical marijuana as it is. However, the use of marijuana is often prescribed to treat pain and reduce the use of further substances (as described by the UBC Faculty of Medicine in 2020).

In conclusion, we ask that the Courtenay Mayor and Councillors consider utilizing the information that the community provided in consultation with the City for the purpose of better understanding and forming City regulations within an accessibility, diversity, and equity lens. Community members and local professionals worked with a city consultant, providing professional and first-hand experience, to ensure that appropriate considerations would be reflected in Courtenay's Bylaw Policies **as well as Bylaw No. 3121**. We fail to see how those comments were incorporated into Bylaw 3121.

The inclusive language, ideas, and conversations collected during this city consultation should be used to draft a more progressive Bylaw 3121. This was a conversation to build trust and relationships, which, if it is not taken into consideration, will make a negative statement and impact our community. Using this information will ensure that the money used during this important process does not go to waste and is used appropriately.

We ask that you do not dismiss the concerns of those who are experiencing discrimination in our community. We hope to continue to build trust with those community members whose human rights have been disproportionately neglected over prior decades.

In summary, we ask that the Courtenay Mayor and Councillors consider the following:

- The City's Strategic Plan and Priorities include a commitment to review city operations with a **social equity, reconciliation and anti-racism lens**.
- Prioritizing and emphasizing social service support within Bylaw 3121. A trauma-informed approach to bylaw enforcement will be a more effective method for decreasing the likelihood of conflicts and harm. This initiative also aids in risk reduction by providing relevant and up-to-date support services.
- Consultations were undertaken by the City to solicit feedback from a diverse group of community members with respect to the matters contemplated by Bylaw 3121.
- Those most vulnerable community members using parks to "shelter in place" due to the housing crisis are also experiencing poverty, mental health concerns, and disabilities.
- Bylaw 3121, as currently drafted, does not accord with our City's Strategic Plan and Priorities, nor does it address the concerns raised in consultation with the City.

- Failing to address or being perceived as failing to address these concerns after undertaking such consultation will erode trust among our community members and public institutions.

Sincerely and in alliance with,

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## **Addendum 3:** Letter 3 - To Courtenay Mayor and Council re Bylaw 3121



January 24, 2024

Mayor and City of Courtenay Council  
830 Cliffe Ave., Courtenay, BC, V9N 2J7  
250-334-4441

Subject: Recommendations for Improving Bylaw 3121 and Addressing Concerns

Dear Mayor and City of Courtenay Council,

As the Coalition coordinator, I consistently navigate a spectrum of diverse needs, opinions, roles, and relationships. Today, I bring forward the collective voice of those frequently overlooked, marginalized, and disproportionately impacted by challenges, especially within the housing realm. As the facilitator of the homeless response team and coordinator for meetings with individuals who have lived experiences, it is imperative to express concerns before the third reading. Please take a moment to reflect on the complexity and lack of clarity in Bylaw 3121 and consider the potential hardships it may impose on those striving to survive on the streets.

Working closely with individuals experiencing homelessness has shown me the profound impact interactions have on their lives. Homelessness, a multifaceted issue intertwined with

poverty, mental illness, addiction, and trauma, necessitates compassionate and holistic solutions, including in legal frameworks.

When assessing proposed Bylaws, understanding the needs and experiences of individuals with lived experience of homelessness is paramount. Policy design should involve these individuals, prioritizing harm reduction, cultural humility, and empowerment practices. Homelessness often stems from systemic injustices, requiring forward-thinking Bylaws grounded in empathy, dignity, and compassion to provide opportunities for healing and growth.

However, the proposed Bylaw's inherent ambiguity raises concerns about the arbitrary application, fostering further discrimination and societal divisions. Neglecting to address these deficiencies will exacerbate root issues, leaving the unhoused community vulnerable to further harm and trauma.

Therefore, we request that the Council pause before passing the Bylaw and consider the following before adoption:

1. Clarity and Transparency:

- Use plain language to eliminate ambiguity.
- Clearly state intentions to ensure a uniform understanding.
- Provide a comprehensive list of areas where individuals can go.

2. Inclusivity and Accessibility:

- Engage in further consultation, especially with vulnerable groups.
- Collaborate with consultants embracing social justice and trauma-informed lenses.
- Prioritize inclusivity by ensuring legal documents are accessible to all.
- Specify in the Bylaw the priority of working with community outreach programs.

3. Equitable Enforcement:

- Establish cooperation mechanisms among bylaw officers to prevent unequal application.
- Avoid punitive responses for the unhoused.
- Create an equitable complaint system accessible to all.

4. Education and Training:

- Implement regular training programs for bylaw officers on harm reduction, cultural safety, and humility.
- Get curious about using a human rights lens in supporting our most vulnerable.

Concerns about deeper consultation with individuals with lived experiences highlight the need for further engagement. Addressing equity-deserving groups during the third stage of a four-stage process, focused on presenting recommendations rather than open conversations, raises significant concerns. In the Bylaw strategy, there was a 5-step engagement process that notes that groups were engaged and approved decisions at every stage, and it ends with saying that the public makes the final decision. As a participant in the 3 groups identified during the consultation, I do not believe this to be a fact. The Coalition asked for people with lived experiences to be deeply involved numerous times over a year. Requests went to the current Bylaw manager, the Director of Corporate Services, and the consultant. Moreover, human rights information was shared, and a specific request to pay attention to current case law was made, noting that information around and acceptance of encampments was changing rapidly.

Recent experiences of our unhoused community members indicate a shift towards punitive measures by Bylaw, eroding the previous collaborative relationship with community organizations. The new Bylaw manager has yet to attend more than one homeless response team meeting. Rebuilding trust through transparent collaboration and honest communication is essential. The homeless response team is eager to share what was working, but we were not even informed that the previous Bylaw manager had left the City, which made us feel that the depth and importance of our relationships were not recognized.

In conclusion, I urge you to consider the valuable input provided and ensure that all supported law and documentation is within an accessibility, diversity, and equity lens. As such, I request a pause in deciding on the Bylaw 3121 as written. Real stories and recommendations are attached to support a more progressive vision.

Thank you for your time and dedication to ensuring a high quality of life for all community members.

Sincerely,



Angela Fletcher

Coordinator- Coalition to End Homelessness

## **Appendix A**

### **Comox Valley Stories- Friday Meeting**

"I am over 70 years old and I cannot keep one thing. This is ridiculous. I spent my life working and now I am walking the streets with no where to go and with nothing!"

"I was sleeping and woke up and the RCMP were right outside my tent. Bylaw was there and they wanted me to move. It was 9:30 but I didn't get to sleep last night. Imagine waking up every day with the RCMP outside your door to make sure you back up your bed."

"We left to try to use the bathroom and we came back and all our stuff was gone. Bylaw was just loading it into the truck. I had pictures of my kids. They didn't care."

"I was needing help but Bylaw wouldn't call outreach. They told me to leave and when I didn't because I was in a state of needing support, they gave me a trespass order. Now I can't be there either or support my friends."

"I need my medicine by Bylaw threw it away. I am so sick."

"What are we supposed to do with no washroom? And where are we supposed to go when we get kicked out of a park?"

"They just threw our s\*\*\* out in front of. No one cared that we have nothing. Why can't we come up with a solution where we can get our stuff back?"

"Bylaw doesn't care. We have no where to go. We aren't important? We can't access Connect. We have nothing."

"Our stuff is soaking wet and dirty. What can we do with it? It is impossible to pack it up."

"I was having an episode and Bylaw thought I was being aggressive and called the cops. I was arrested for having a mental health condition I cannot control."

### **Summary of some recommendations**

(all been brought forward for discussion with City staff or a council member)

A Tiny Village is our most requested type of housing.

### **Stop the Sweeps**

The practice of Street Sweeps, involving the displacement and confiscation of possessions from individuals, particularly those experiencing homelessness, raises constitutional and human rights concerns and may provide grounds for private lawsuits. In Vancouver, these sweeps are conducted by a partnership between municipal employees and the Vancouver Police Department, often justified by local bylaws such as the Street and Traffic By-Law. The legal underpinnings of street sweeps are criticized for lacking meaningful protections for homeless individuals and perpetuating systemic discrimination.

### **Legal Concerns:**

### 1. **Constitutional Infringements:**

- Street Sweeps may infringe on Section 7 of the Charter by jeopardizing individuals' health and survival, thus violating their rights to life and security of the person.
- Repeated displacement and seizure of possessions contribute to adverse health and safety risks, infringing on constitutional rights.

### 2. **Discrimination:**

- Street Sweeps disproportionately target and impact protected groups under the BC Human Rights Code and Section 15 of the Charter, including Indigenous Peoples, Black people, people of color, drug users, and individuals with disabilities.
- Discriminatory practices violate the right to be free from government discrimination.

### 3. **UN Declaration on the Rights of Indigenous Peoples:**

- Street Sweeps may conflict with UNDRIP, particularly by disregarding the protection of life, integrity, security, and possessions of Indigenous peoples.

#### **Access to Justice:**

- Legal remedies, including constitutional and human rights protections, are often hindered by the costly and complex nature of the legal system, limiting access to justice for affected individuals.

#### **Vancouver City Council Authority:**

- Various plans, frameworks, and motions approved by Vancouver City Council, such as the Downtown East side Local Area Plan and the Framework for City of Reconciliation, are undermined by the continued practice of Street Sweeps.

#### **Moving Away from Harms of Confiscation:**

- Recommendations include developing a policy on confiscating belongings, providing advance notice, issuing receipts for confiscated items, and ensuring accessible storage within the affected community.
- Emphasizes the need for community-based responses and inclusion of directly impacted communities in finding long-term solutions.

#### **Inclusion of Directly-Impacted Communities:**

- Advocates for solutions to Street Sweeps to be peer-led by community organizers with lived experiences, emphasizing the principle of "nothing about us without us."

Overall, the legal and social consequences of Street Sweeps call for a re-evaluation of municipal practices, urging a more inclusive and rights-based approach to address the complex challenges faced by those experiencing homelessness and precarious housing.

### **Encampments through a Human Rights Lens**

#### **Priorities:**

1. **Recognition of Human Rights:** Emphasizes the importance of recognizing and respecting the human rights of individuals living in homeless encampments, including the right to housing, dignity, health, and security.
2. **Legal and Policy Frameworks:** Advocates for the development of legal and policy frameworks that align with human rights principles to address the complexities of homeless encampments.
3. **Non-Discrimination:** Prioritizes efforts to eliminate discrimination against individuals in encampments based on factors such as race, gender, disability, or other protected characteristics.
4. **Public Health and Safety:** Highlights the need to address public health and safety concerns in encampments while respecting the rights and dignity of those residing there.

#### **Recommendations:**

1. **Rights-Based Approaches:** Urges policymakers and service providers to adopt rights-based approaches in their strategies, considering individuals' specific needs and vulnerabilities in encampments.
2. **Community Engagement:** Encourages inclusive and meaningful engagement with affected communities to develop and implement policies directly impacting them.
3. **Access to Essential Services:** Recommends ensuring that individuals in encampments have access to essential services, including healthcare, sanitation, and social support.
4. **Legal Protections:** Calls for legal protections that safeguard the human rights of those in encampments, including the right to adequate housing, privacy, and freedom from discrimination.
5. **Collaboration:** Stresses the importance of cooperation between government agencies, service providers, and community organizations to address the multidimensional challenges associated with homeless encampments.

The priorities and recommendations outlined in the document underscore the significance of approaching the issue of homeless encampments with a human rights

perspective, aiming to balance public health and safety concerns with the protection of the rights and dignity of individuals experiencing homelessness.

**References:**

[Tent Encampment Protocol \(make-the-shift.org\)](https://www.make-the-shift.org/)

[A Human Rights Approach to Encampments | The Homeless Hub](#)

[2022 04 25 Street Sweeps \(stopthesweeps.ca\)](https://stopthesweeps.ca/)

[Street Sweeps & Disability Justice - Pivot Legal Society](#)



**Addendum 4:** Letter 4 - Re: Parks and Open Spaces Bylaw No. 3121  
Ban on daytime sheltering contravenes life, liberty, and security of the  
person.



**VIA Email**

February 12, 2024

Dear Mayor Wells and City Council

**Re: Parks and Open Spaces Bylaw No. 3121**

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**Ban on daytime sheltering contravenes life, liberty, and security of the person**

The *Canadian Charter of Rights and Freedoms* (“*Charter*”) takes precedence over all other Canadian legislation. The Courts have repeatedly recognized the human right to shelter and held that people have the right to set up temporary shelter where there are insufficient alternatives.<sup>1</sup> These alternatives must be accessible to individual people. There are many reasons why available shelter might not be accessible to an individual person. For example, gender, family status, or disability needs. Alternative shelter must be responsive to the specific issues faced by individuals experiencing homelessness.<sup>2</sup> Therefore, “it is not just the number of available indoor sheltering spaces that frames the right but also whether those spaces are truly accessible to those sheltering in parks.”<sup>3</sup>

Politicians at all levels of government have acknowledged that Canada is suffering from a housing crisis. Disparate access to affordable housing has only worsened since the Covid-19 pandemic and the soaring cost of living. As a result of economic and political decisions beyond their control, people have been experiencing homelessness in record numbers across Canada. In Comox Valley, the unhoused population has doubled since 2020, ballooning to over 272 people in the region.<sup>4</sup> More than half of the unhoused people counted cited their inability to afford rent as the reason they were sleeping rough.<sup>5</sup> That number is only increasing.

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<sup>1</sup> *Victoria (City) v. Adams*, 2009 BCCA 563 (CanLII), *Abbotsford (City) v Shantz*, 2015 BCSC 1909 (CanLII), *Prince George (City) v Stewart*, 2021 BCSC 2089 (CanLII), and *Bamberger v Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49 (CanLII).

<sup>2</sup> *Bamberger v Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49, online: <<https://canlii.ca/t/ilqf6>>, para 122 [Bamberger].

<sup>3</sup> *Ibid.*, paras 194-195.

<sup>4</sup> <https://vancouverisland.ctvnews.ca/comox-valley-homeless-population-doubles-since-2020-report-1.6599982#:~:text=New%20data%20shows%20a%20huge.They're%20not%20just%20numbers>.

<sup>5</sup> *Ibid.*

Given the current housing crisis, until there is adequate and accessible shelter or accommodation for people experiencing homelessness, evicting people who set up temporary shelter, whether at night or during the day, violates their Section 7 right to life, liberty and security of the person. That violation is not justified under section 1 of the *Charter*.<sup>6</sup>

The enactment and enforcement of proposed Bylaw No. 3121 violates the *Charter* rights of residents sheltering in parks and open spaces because:

1. There is insufficient accessible shelter space in Courtenay to adequately house all the City's unhoused people.
2. Consequently, people experiencing homelessness must sleep outside in public spaces.
3. The harm resulting from being forced to take down their shelter and pack up their belongings every day only exacerbates the harm experienced from sleeping outside every night.
4. Unhoused people represent some of the most vulnerable and marginalized members of our society.
5. Due to the lack of adequate and accessible shelter, Bylaw No. 3121 impedes the ability of unhoused people to adequately shelter during the day.

In *Shantz*, the Court expressly recognized “there is a legitimate need for people to shelter and rest during the day.”<sup>7</sup>

In *Stewart*,<sup>8</sup> the Court held that there was a need for daytime sheltering when there are insufficient daytime options.<sup>9</sup> The trial judge held that temporary shelters during the day were permissible, given that there were insufficient alternatives provided by the City:

I am satisfied that the COVID-19 pandemic has resulted in the closure of normally accessible shelter spaces, and that in the result, scores of people have nowhere to shelter themselves except outdoors in either the daytime or the nighttime.<sup>10</sup>

[...] The City's application for a declaration that the respondents have contravened the *Zoning Bylaw* by using the encampments as campgrounds contrary to the permitted zoning is dismissed on the basis that absent other suitable housing and daytime facilities, the occupants of those encampments must be permitted to stay at the encampments.<sup>11</sup>

Courtenay does not have a shelter let alone accessible places to shelter during the day. Where there is insufficient accessible shelter for people experiencing homelessness, a complete ban on daytime sheltering infringes their section 7 rights.

Furthermore, Bylaw No. 3121 does not reflect the ruling in *Bamberger* which acknowledged procedural rights of unhoused residents. The Court found that prior to the City attempting any

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<sup>6</sup> *Victoria (City) v. Adams*, 2009 BCCA 563 (CanLII), para 10 [*Adams*].

<sup>7</sup> *Abbotsford (City) v Shantz*, 2015 BCSC 1909, online: <<https://canlii.ca/t/g1ps4>> [*Shantz*].

<sup>8</sup> *Prince George (City) v Stewart*, 2021 BCSC 2089, online: <<https://canlii.ca/t/ijz14>>, [*Stewart*].

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, para 73.

<sup>11</sup> *Ibid.*, para 115.

eviction, residents must be given notice, the opportunity to be consulted and heard, and the decision must be transparent.

*A complete ban on daytime sheltering is grossly disproportionate*

Gross disproportionality ensures that “even where the impact on the s. 7 interest is connected to the purpose of the law, this impact cannot be so severe that it violates our fundamental norms.”<sup>12</sup> “State actions or legislative responses to a problem must be so extreme as to be disproportionate to any legitimate government interest. The focus is not on the impact of the measure on society or the public, but on its impact on the rights of the claimant.”<sup>13</sup>

Courtenay’s proposed Bylaw No. 3121 intends to regulate the use of parks and open spaces to ensure that they are accessible, safe, and enjoyable for all members of the public, and to preserve environmental and cultural areas. The section on temporary sheltering intends to “regulate the use of temporary sheltering within parks and open spaces to ensure that it is done in a safe and healthy manner.”<sup>14</sup> Therefore, the thrust of the Bylaw is to ensure enjoyment, safety and well-being.

The complete ban on daytime sheltering subjects people experiencing homelessness to “decreased dignity and independence and increased physical and psychological harm.”<sup>15</sup> Many unhoused people have disabilities which impede their ability to dismantle their shelter, pack up their belongings, and become mobile every day. Without adequate accessible daytime shelter, people experiencing homelessness have nowhere to go, have nowhere to store their belongings, and are forced to wander the City, negatively impacting their physical and mental well-being. In some cases, forced decampments and the lack of accessible shelter has led to serious bodily harm and even death.

In *Shantz*, the Court found that the constant movement of the unhoused “exacerbates their already vulnerable position, causes them impaired sleep, and serious psychological pain and stress, and creates a risk to their health.”<sup>16</sup> The Court further held that constant displacement inhibits the ability of the service providers who endeavor to help unhoused people, to locate them and provide help.<sup>17</sup> The Court concluded that the effect of denying the City’s unhoused people access to public spaces without permits and not permitting them to erect temporary shelters without permits was grossly disproportionate to any benefit the City might derive from furthering its objectives.<sup>18</sup>

We believe these findings are applicable to Bylaw No. 3121. Without accessible daytime shelter, the harm caused by the City’s daily displacement of people experiencing homelessness directly undermines the proposed Bylaw’s intention to ensure their safety and well-being.

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<sup>12</sup> *Ibid.*, para 192.

<sup>13</sup> *Ibid.*, para 204.

<sup>14</sup> Courtenay’s proposed *Parks and Open Spaces Bylaw No. 3121*, section 7.1.

<sup>15</sup> *Shantz*, para 188.

<sup>16</sup> *Ibid.*, para 219.

<sup>17</sup> *Ibid.*, para 209.

<sup>18</sup> *Ibid.*, 224.

## *A complete ban on daytime sheltering is not saved by s. 1 of the Charter*

Given the current case law, Bylaw No. 3121 is not minimally impairing the section 7 rights of people experiencing homelessness in Courtenay. The deleterious effects of the Bylaw and its enforcement far outweigh its beneficial effects. The Bylaw does nothing to accommodate people experiencing homelessness, exacerbates physical and psychological health by constantly displacing them, and causes them to lose or damage items essential for their survival. Constant displacement fundamentally disrupts access to support services and undermines any stability established within the unhoused community.

### **Other Charter right violations**

Many people experiencing homelessness have physical disabilities and other mental health conditions. For a variety of reasons, they cannot carry their belongings around all day. Furthermore, due to settler-occupation, land dispossession, and removal policies such as residential schools, it has been well established that Indigenous people are disproportionately represented in the homeless population. Therefore, the Bylaw also engages section 15 *Charter* protected equality rights.

The Court has recognized the negative impact continuous displacement has on the psychological well-being of people experiencing homelessness. The frequent encounters with enforcement officers, repeated street sweeps, evictions, and displacement, without anywhere else to go, are hugely traumatic events. Consequently, we believe this Bylaw also engages section 12 *Charter* rights against cruel and unusual treatment.

### **Do not adopt Bylaw No. 3121**

We urge the City of Courtenay to not adopt the proposed *Parks and Open Spaces Bylaw No. 3121*, as it is susceptible to legal challenge, and violates the *Charter* of the City's most vulnerable and marginalized residents. Legal challenges to similar actions have been launched in British Columbia, Alberta, Ontario, and Quebec.

Courts across Canada have recognized the human right to shelter, the precarious position of the unhoused, and how state action, including decampments, threatens the life, liberty, and safety of people experiencing homelessness. Until unhoused people have access to adequate shelter, a ban on sheltering in parks and open spaces during the day is a direct violation of their section 7 *Charter* rights.

We urge the City of Courtenay to consider developing innovative solutions to the housing problem, in consultation with people with lived experience. People experiencing homelessness are in the best position to describe the specific challenges they face and identify whether a course of action is likely to make an effective change.

Additionally, the City should engage in meaningful consultation with Indigenous groups consistent with its obligations under the *UN Declaration of the Rights of Indigenous People*, and with

organizations providing frontline service and support for the unhoused community. This includes meeting with the grassroots groups and individuals that work with and are trusted by the unhoused community, not solely state-funded non-profit organizations.

Life is invaluable. Where life and dignity are on the line, care and compassion are paramount. The City has the opportunity to truly be leading edge in developing an innovative solution to a complex issue, rather than implementing a demonstrably ineffective model.

Sincerely,

A handwritten signature in black ink, appearing to read 'Latoya Farrell', with a stylized flourish at the end.

Latoya Farrell  
Policy Staff Counsel (Community)  
BC Civil Liberties Association  
[Latoya@bccla.org](mailto:Latoya@bccla.org)