

# No Fixed Address

*How Transit Peace Officers and Edmonton Police Services prohibited and penalized homelessness in 2018*

Student Legal Services of Edmonton  
December 2019



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# Key Findings

Student Legal Services (SLS) learned from freedom of information requests that Edmonton Transit Service (ETS) Peace Officers gave the following to people with “no fixed address” in 2018:<sup>1</sup>

- **5,416 (over \$1.425 million of) bylaw and provincial violation tickets**
  - That’s almost 15 tickets every day
  - That’s \$723 from every Edmontonian who experienced homelessness in 2018<sup>2</sup>
    - \$723 is 97% of a month’s income for someone receiving Income Support (Expected to Work) benefits<sup>3</sup>
    - \$723 is six 8-hour days of community service based on a \$15/hr minimum wage
  - That’s 60% of the City of Edmonton’s 2018 investments in affordable housing<sup>4</sup>
  - This represents only a limited selection of bylaws and other laws, so the actual number could be higher. Of the bylaws and fines we requested information about, 58% of the tickets issued in 2018 were issued to people who had “no fixed address.”
  
- **Including 2,102 (over \$600k of) trespassing tickets for breaching bans**
  - That’s 86% of all the trespass tickets ETS issued for breaching bans
  - That’s almost six every day
  
- **Including 561 (over \$140k of) tickets for loitering on transit property or in transit vehicles**
  - That’s 79% of all loitering tickets that ETS issued
  - That’s more than one every day

Also, in 2018 the Edmonton Police Service (EPS) gave the following to people with “no fixed address”:<sup>5</sup>

- **44 criminal charges for screaming, shouting, swearing, or singing in public**
  - That’s almost one every eight days
  - 31% of all such charges were given to people with “no fixed address”

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<sup>1</sup>SLS identifies these Edmontonians as likely homeless because ETS assigned them a “no fixed address” label. ETS disputes this characterization. For more explanation, read our “Analysis of Edmonton Transit Service Results”; all ETS data from Appendices 1-2.

<sup>2</sup>Calculated based on an estimate of 1,971 homeless Edmontonians reported in: 7 cities on housing and homelessness, “2018 Alberta Point-in-Time Homeless Count - Technical Report”, prepared by Turner Strategies (June 2018), accessed October 3, 2019, at p 19, online: <<https://bit.ly/31LzCyG>>.

<sup>3</sup> Government of Alberta, “Financial Benefits Summary”, Revised January 2019 online: <<https://bit.ly/2JJEz4s>>.

<sup>4</sup> City of Edmonton, “Affordable Housing Investments 2017-2018”, accessed 2019 October 3 online: <<https://bit.ly/2VchZFD>>.

<sup>5</sup> EPS’s “no fixed address” label is more likely to properly identify people who are homeless or housing insecure than ETS’s “no fixed address” label. See “Analysis of Edmonton Police Service Results” for more explanation; All EPS data from Appendix 4.

# Summary of Recommendations

Student Legal Services recommends that:

1. Transit Peace Officers stop issuing verbal bans for intoxication;
2. Edmonton City Council repeal the prohibition of loitering on transit property and in transit vehicles;<sup>6</sup>
3. Edmonton City Council decrease fine amounts issued under Bylaws 8353,<sup>7</sup> and other bylaws that disproportionately affect people with “no fixed address”;
4. City of Edmonton provide more effective, transparent, and regular oversight regarding the effect that Transit Peace Officers have on Edmontonians living in homelessness;
5. The Minister of Justice and Solicitor General of Alberta add “housing status” to the Public Security Peace Officer Policy and Procedure Manual’s list of bases on which peace officers should not differentially apply the law;<sup>8</sup> and that
6. The Parliament of Canada remove “screaming, shouting, swearing, singing” and “being drunk” from section 175(1)(a) of the *Criminal Code*.<sup>9</sup>

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<sup>6</sup> City of Edmonton, by-law 8353, *Conduct of Transit Passengers* (Consolidated on 16 July 2019), s 12 [Bylaw 8353].

<sup>7</sup> *Ibid*, s 31(2).

<sup>8</sup> Government of Alberta, “Public Security Peace Officer Policy and Procedure Manual” (Amended February 2012), s 19.2.1(a).

<sup>9</sup> *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*].

# Background

## **Student Legal Services of Edmonton**

This report was prepared by Student Legal Services of Edmonton (SLS). SLS is a not-for-profit organization run by law students from the University of Alberta. SLS has five projects: criminal law, civil law, family law, a local chapter of Pro Bono Students Canada, and legal education & reform. The legal education & reform project of SLS created this report, so for the remainder of the report, "SLS" refers specifically to SLS's legal education & reform project.

SLS visits homeless shelters and drop-in centres to talk with community members about their legal issues. Through such conversations, SLS recently observed that a surprisingly high number of community members reporting legal issues with bylaw tickets. One illustration of this is that between May and August 2019, community members took 50 of our "Bylaws, Tickets & Fines" pamphlets, making it our 7th most popular pamphlet at homeless shelters ahead of other popular pamphlets like "Child & Spousal Support" or "Employment." Similar observations led SLS to become curious whether there is a way to quantify the impact that bylaw and provincial fines have on Edmontonians who are homeless. That curiosity led to us submit freedom of information requests to the City of Edmonton and Edmonton Police Service. SLS wrote this report based on the results of those requests.

## **Assumptions**

The 2018 "Alberta Point-in-Time Homeless Count" reported that the total number of homeless Edmontonians at 1,971.<sup>10</sup> For the purpose of this report we will assume that this is accurate. It is difficult to calculate what percentage of the total population of Edmonton in 2018 this represents because there is no census for 2018. The nearest census is the 2019 Municipal Census, which reported that as of April 1, 2019 there were 972,223 people living in Edmonton.<sup>11</sup> Based on the 2019 data, 1,971 represents about 0.2% of Edmonton's population, though that proportion may have been different in 2018. For the purposes of this report though, we will assume that in 2018 there were 1,971 Edmontonians who experienced homelessness representing 0.2% of all Edmontonians.

## **Things that this report does not address**

Topics that this report does not have any data on, and that would be worth gathering data on for similar reports in the future, include: 1) how many tickets issued to people living at "no fixed address" for bringing shopping carts onto transit vehicles and into transit stations;<sup>12</sup> 2) how many verbal bans and written bans do Transit Peace Officers issue to people living at "no fixed address?"; and 3) what is the total amount of tickets that Transit Peace Officers issued to people with "no fixed address" for all bylaws and other laws that Transit Peace Officers have the authority to enforce?

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<sup>10</sup> 7 cities on housing and homelessness, "2018 Alberta Point-in-Time Homeless Count - Technical Report", prepared by Turner Strategies (June 2018), accessed October 3, 2019, at p 19, online: <<https://bit.ly/31LzCyG>>.

<sup>11</sup> City of Edmonton, "2019 Municipal Census Results", accessed October 14, 2019, online: <<https://bit.ly/2f1rv0J>>.

<sup>12</sup> *Supra*, note 6, s 25.

# Analysis of Edmonton Transit Service Results<sup>13</sup>

## **How did SLS collect the information about ETS contained in this report?**

SLS submitted two freedom of information requests to the City of Edmonton. The responses that we received to our questions can be found in Appendices 1-2 below. Later, based on a referral from City of Edmonton Corporate Access and Privacy, an SLS project coordinator e-mailed the responses and accompanying questions about ETS policy to the Safety & Security Operations Coordinator with Transit Peace Officers so that SLS could better understand the data contained in the responses. The Safety & Security Operations Coordinator did not respond substantively to three emails sent between June and August of 2019. After, the SLS project coordinator sent the freedom of information responses and questions about ETS policy to the Superintendent of Transit Peace Officers, who provided insight into ETS policy during a phone conversation. The Superintendent later reviewed and commented on a written summary of the phone conversation to ensure that the information that SLS gathered in their phone conversation accurately reflects ETS policy. That written summary can be found in Appendix 3 below.

## **What does the information say about ETS?**

The information in Appendices 1 and 2 compares the total number of tickets that ETS issued to Edmontonians for a limited number of offences, to the number of tickets issued for those same offences to Edmontonians living at “no fixed address”

“No fixed address” is a label assigned to a ticket recipient if a ticket recipient:

- 1) Does not have an address to disclose to an officer or who discloses to an officer that they are homeless;
- 2) Discloses an address that an officer believes to not be credible; or
- 3) is generally uncooperative with an officer such that an address isn't recorded

Any three of the above categories could refer to a homeless person, so it is possible that 100% of people listed as “no fixed address” are homeless. However, it is also possible that a person who is not homeless could fall into the second and third categories, and so less than 100% of the ticket recipients listed as “no fixed address” could be homeless. ETS either enters a person's address or labels them “no fixed address.” There is no distinct category for people whose addresses are “unknown” or “not entered.” This is different from the EPS, who have distinct categories for “no fixed address” and “not entered.” EPS would use “not entered” for the second and third categories described above.

Transit Peace Officers had a significant impact on people with “no fixed address” in 2018. They issued at least 5,416 tickets to such people. These tickets had a value of \$1,425,099. Transit Peace Officers also had a disproportionate impact on such people. Based on the data SLS received, 58% of the tickets that Transit Peace Officers gave in 2018 were given to people living at “no fixed address.” For contrast, see the above estimate that 0.2% of Edmontonians experienced homelessness in 2018.

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<sup>13</sup> All ETS Results discussed here can be found in Appendices 1-3.

### **Which laws had the biggest impact?**

Some of the provincial laws and municipal bylaws regarding which SLS requested data had a more significant and more disproportionate impact on Edmontonians who lived at “no fixed address” in 2018 than others. The best examples of this are: 1) trespass fines issued for breaching a ban; 2) loitering on transit property or in transit vehicles; and 3) fare evasion.

#### 1) Trespass fines issued for breaching a ban

Transit Peace Officers issued 2,102 tickets pursuant to the *Trespass to Premises Act* after Edmontonians living at “no fixed address” breached ETS-imposed bans.<sup>14</sup> These tickets had a total value of \$603,274. 2,102 tickets is 86% of the 2,432 trespass tickets that ETS issued for “breach of ban” in 2018. 2,102 tickets is over 7x the total number of all trespass charges that the EPS issued to people living at “no fixed address” in 2018.<sup>15</sup>

The duration of, and reasons for, bans depend on whether the ban is issued verbally or in writing. Verbal bans last 1-3 days. They can be issued if someone is intoxicated, however it is unclear how Transit Peace Officers identify people who are intoxicated. Peace Officers report all verbal bans that they issue on a daily shift report. Daily shift reports are reviewed by a Sergeant. As such, verbal bans are not reviewed by a sergeant prior to being served on the banned person. Written bans are typically issued in response to violence and can last 1, 3, 6, 12, or 24 months. The duration depends on the severity of the violence. Written bans must be reviewed by a Sergeant prior to being served on the banned person. Entering any ETS property from which a person is banned is sufficient to be fined for trespass, and bans almost always apply to all ETS property and vehicles. Transit Peace Officers often identify a banned person either by recognizing their face, or incidentally while questioning the person about an unrelated matter.

#### 2) Loitering on transit property or in transit vehicles

Transit Peace Officers issued 561 tickets pursuant to s 12 of Bylaw 8353<sup>16</sup> for loitering on transit property or in transit vehicles. These tickets had a total value of \$140,250. 561 tickets represents 79% of the 713 loitering tickets that ETS issued in 2018. Section 12 of Bylaw 8353 states that “a person shall not loiter on Transit Property or in a Transit Vehicle **for longer than required to reach their destination.**”<sup>17</sup> There is no definition of “loiter” or “loitering” in the Act, so to properly interpret this provision it may be necessary to accept the ordinary meaning of the term as defined in the dictionary. Merriam-Webster defines “loitering” as “to delay an activity with idle stops and pauses” or “to remain in an area for no obvious reason.”<sup>18</sup>

#### 3) Fare evasion

The bylaws that have the most significant impact on people living at “no fixed address” are the bylaws against “fare evasion.”<sup>19</sup> Accounting for both charges issued because of failing to present proof of

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<sup>14</sup> *Trespass to Premises Act*, RSA 2000, c T-7, ss 2-3 [*Trespass to Premises Act*].

<sup>15</sup> Appendices 2, 4.

<sup>16</sup> *Supra*, note 6.

<sup>17</sup> *Supra*, note 6 [emphasis added].

<sup>18</sup> *Merriam-Webster*, “loiter”, accessed 19 October 2019 online: <<https://bit.ly/2pKZIU6>>

<sup>19</sup> *Supra*, note 6, ss 4, 5(b).

payment and charges issued for not paying prior to entry into ETS property, ETS issued 2,514 fare evasion tickets to people living at “no fixed address” in 2018. Those tickets had a total value of \$628,500. 2,514 tickets represents 43% of the 5,780 total fare evasion tickets issued in 2018. While the numbers show that fare evasion bylaws have a significant and disproportionate impact on people living at “no fixed address,” SLS has chosen to not focus on fare evasion in this report, because Edmonton City Council, with help from the Government of Alberta, has taken a meaningful step towards providing more affordable transit by implementing the Ride Transit Program.<sup>20</sup> SLS encourages Edmonton City Council to continue considering new ways to make the Ride Transit Program more affordable and accessible.

### **Other laws with notable impacts**

Other examples had less of a significant impact on Edmontonians living at “no fixed address,” but still had a notably disproportionate impact.

#### **1. Feet on the seat**

Transit Peace Officers gave 75 tickets for having “feet on the seat”<sup>21</sup> to people living at “no fixed address.” These tickets had a total value of \$18,750. 75 tickets represents 75% of the 100 “feet on the seat” tickets that Transit Peace Officers issued in 2018.

#### **2. Urinating or Defecating**

Transit Peace Officers gave 30 tickets for “urinating or defecating”<sup>22</sup> to people living at “no fixed address.” These tickets had a total value of \$15,000. 30 tickets is 75% of the 40 “urinating or defecating” tickets that Transit Peace Officers issued in 2018.

#### **3. Jaywalking**

Between the two types of Jaywalking listed in Bylaw 5590,<sup>23</sup> Transit Peace Officers gave 29 tickets total to people living at “no fixed address.” These tickets had a total value of \$7,250. 29 tickets is 60% of the 48 Jaywalking tickets that Transit Peace Officers issued in 2018.

### **New information learned November 27-29, 2019**

Despite SLS having attempted both unsuccessfully and successfully multiple times to communicate directly with ETS about the information contained in the freedom of information responses between June and October 2019, on November 27, 2019 SLS learned from a journalist that ETS may be disputing the accuracy of the information contained in the freedom of information responses. After a phone conversation with the Director of Community Standards Peace Officers, the Superintendent of Transit Peace Officers, and the Safety & Security Operations Coordinator of Transit Peace Officers (referred to collectively as Community Peace Officer Section or “CPOS” below), SLS learned the following:

- If a Transit Peace Officer is unable to get an address from a ticket recipient for reasons other than homelessness, the Transit Peace Officer will enter NFA on the ticket and then the Records

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<sup>20</sup> City of Edmonton, “Ride Transit Program”, accessed 19 October 2019 online: <<https://bit.ly/2N8N4qn>>.

<sup>21</sup> *Supra*, note 6, s 17.

<sup>22</sup> *Supra*, note 8, s 5.

<sup>23</sup> City of Edmonton, by-law 5590, *Traffic* (Consolidated on 16 July 2019), s 59(1-2) [Bylaw 5590].



Management System will enter the address in as “blank” automatically later on. This is consistent with SLS’s description of the “No Fixed Address” label above on page four.

- COPS says that the numbers of tickets given to people with “no fixed address” (“NFA”) would be less if the numbers were adjusted to only reflect ticket recipients with “verified” NFA labels. NFA labels are verified by analytics professionals for recording purposes. The difference between verified NFAs who are verified and unverified NFAs was unknown, because the verification process is handled by City of Edmonton analytics professionals. COPS said it could supply the methodology for validating data early in the week of December 2, 2019.
- A change in address has a retroactive effect on tickets issued prior to the change. ETS said this could affect the data as well.
- ETS has an integrated approach to working with homeless Edmontonians that includes:
  - Partnering with community agencies (AHS, Boyle Street Community Services, Homeward Trust Edmonton, etc) as part of the Homeless on Public Lands program to help people experiencing homelessness
  - Offering referrals for mental health, emergency shelter, addictions support
    - On the topic of referrals COPS said that “[t]he number of tickets may seem high but the interactions [between Transit Peace Officers and people who are experiencing homelessness or housing precarity] are high and when you look at the warnings issued and the number of referrals to other service agencies are considered the numbers [of tickets issued] don’t seem so disproportionate.”
  - Education provided to Peace Officers that includes
    - Awareness training
    - A “human approach” to working with homeless people
- ETS also said that Transit Peace Officers “certainly do use a lot of good judgment”

In conversation with ETS on November 29, ETS did not provide SLS with either of the following:

- Data contradictory to the data found in the freedom of information responses on which this report is based. COPS said that the analytics personnel necessary to provide such data was away but that they could provide data early in the week of December 2, 2019.
- Policy documents regarding what Transit Peace Officers consider when issuing verbal bans for intoxication or loitering tickets. The Director said that it was too short of a time frame to respond to the request. SLS pointed out that they had requested such policy documents from Transit Peace Officers’ Safety and Security Operations Coordinator via email on August 29, 2019. COPS said that training and criteria could be provided early in the week of December 2, 2019.

COPS also mentioned that they have “programming under development around increasing our agency referrals, providing a small immediate support ‘care package’ that was developed with informed thoughtfulness from other stakeholders, health support, etc.”

SLS recognizes the positive, good faith efforts that City of Edmonton Peace Officers have made to working collaboratively with community agencies to help Edmontonians living in homelessness and housing precarity. However, SLS asks that Transit Peace Officers recognize the unjust burdens that some of their current policies impose on Edmontonians living in homelessness.

# Analysis of Edmonton Police Service Results<sup>24</sup>

## **How did SLS collect the information about EPS contained in this report?**

SLS submitted one freedom of information request to the Edmonton Police Service. The response that we received to our questions can be found in Appendix 4 below.

## **What does the information say about EPS?**

None of the responses we received from EPS seemed to illustrate the same significant and disproportionate impact on people with “no fixed address” as we had seen from the ETS results.

That being said, it is possible that ETS’s data included more people who were not homeless than EPS’s data, because EPS’s policy of assigning the “no fixed address” label is designed to more effectively identify only people who are homeless than ETS’s policy.

Still, we believe some attention is warranted to the criminal charges issued to people living at “no fixed address” pursuant to s 175(1)(a) of the *Criminal Code*.<sup>25</sup> s 175(1)(a) reads: “Every one who (a) not being in a dwelling-house, causes a disturbance in or near a public place, (i) by fighting, screaming, swearing, singing or using insulting or obscene language, (ii) by being drunk, or (iii) by impeding or molesting other persons...is guilty of an offence punishable on summary conviction.”<sup>26</sup>

In 2018, EPS charged 144 people with causing a disturbance by “screaming, etc” and 44 for of those people had “no fixed address.” 44 represents about 31% of the total 144 charges. Further, the EPS charged 32 people with causing a disturbance by “being drunk” and 12 of those people had “no fixed address”. 12 represents about 38% of the total 32 charges. These two portions of s 175(1)(a) had a significant and disproportionate impact on Edmontonians living at “no fixed address” in 2018.

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<sup>24</sup> All EPS results discussed here can be found in Appendix 4.

<sup>25</sup> *Supra*, note 9; see Appendix 4 at 14.

<sup>26</sup> *Supra*, note 9.

# Full Recommendations<sup>27</sup>

## Recommendation #1

*SLS recommends that Transit Peace Officers stop issuing verbal bans for intoxication*

Banning people from ETS property and vehicles has led to a high number of trespassing tickets issued to Edmontonians (2,432), with 86% (2,102) of these trespassing charges given to people with “no fixed address.” To reduce the number of trespass fines being issued, it is likely necessary to reduce the number of bans being issued. ETS currently verbally bans people from ETS property for 1-3 days for, among other reasons, intoxication from use of alcohol or other substances. However, public transportation is often used as an alternative mode of transportation for people who have drunk too much alcohol to drive. In fact, the City of Edmonton has a Free ETS Bus & LRT Service on New Year’s Eve to help accommodate people who have drunk alcohol on public transit.<sup>28</sup> So, it is not clear what social objective is served by Transit Peace Officers banning people for intoxication alone.

Also, it is not clear what factors Transit Peace Officers consider in determining who meets their standard for intoxication since Peace Officers are not permitted to administer breath tests.<sup>29</sup> Verbal bans, like the ones given for intoxication, are not reviewed until after being served on the banned person. So, there is a high amount of discretion and deference afforded to Transit Peace Officers in issuing verbal bans, especially for intoxication. This amount of discretion and deference may contribute to the grossly disproportionate impact that trespass fines had on people with “no fixed address” in 2018.

While SLS does not have data on the relationship between verbal bans for intoxication and the significant and disproportionate impact that trespass fines are having on Edmontonians with “no fixed address,” our concerns about social objective and enforcement discretion described above are sufficient to warrant stopping the issuing of verbal bans for intoxication. As such, ETS should stop verbally banning people for intoxication, or for other conduct that has a minimal effect on others transit users.

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<sup>27</sup> All data discussed in the recommendations can be found in Appendices 1-4.

<sup>28</sup> City of Edmonton, “New Year’s Eve Downtown Festival & Fireworks!”, accessed 28 November 2019 online: <<https://bit.ly/2Dr5Nc1>>.

<sup>29</sup> *Supra*, note 8, s 24.4.

## Recommendation #2

*SLS recommends that Edmonton City Council repeal the prohibition of loitering on transit property and in transit vehicles*

Most of the recommendations contained in this report respect the policy objectives that the bylaws or legislation in question are meant to accomplish and merely seek to reduce the impact that enforcing those bylaws and laws has on people living at “no fixed address.” However, in the case of the prohibition of loitering on ETS property and vehicles, the objective itself is insufficient to justify having the bylaw at all. Prohibiting loitering prohibits people from remaining on transit vehicles and property for “longer than required for them to reach their destination.”<sup>30</sup> However, it is not obvious why remaining on ETS property or vehicles for longer than necessary warrants prohibition. Also, it is unclear how a peace officer enforcing the loitering prohibition would accurately: a) know the person’s intended destination; and b) know how long an unnecessarily long time to take in reaching that destination is. Because of these ambiguities, peace officers are afforded an unacceptably high degree of discretion in enforcing the loitering prohibition. And data shows that peace officer discretion disproportionately targets Indigenous and black people.<sup>31</sup> The data in this report demonstrates that peace officer discretion not only disproportionately targets racialized people, but also people with “no fixed address.”

The degree of discretion that is afforded to ETS peace officers to enforce the loitering prohibition was observable in a 2018 incident where peace officers detained and inflicted a head injury on a black teenage boy who allegedly loitered on transit property.<sup>32</sup> He was waiting for a bus inside the Belvedere Transit Station because it was cold outside when peace officers saw him miss two LRT trains (which come more frequently than the bus he was waiting for), decided he was loitering, detained and injured him, and ultimately issued him a \$250 loitering ticket.<sup>33</sup> Later, a City of Edmonton investigator determined that the officers’ actions had been lawful.<sup>34</sup> When such egregious harms are considered lawful responses to such harmless infractions (notably committed by a minor, in this case), then the law itself must change.

In addition to the unacceptably high degree of discretion that it affords to peace officers, the loitering prohibition also necessarily targets people who have “no fixed address” (79% of the total loitering tickets issued in 2018), likely because such people often stay inside ETS property and vehicles longer than people with fixed addresses in order to seek shelter and stay warm. They should not be prohibited from and penalized for doing so in one of the coldest cities in Canada.

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<sup>30</sup> *Supra*, note 6.

<sup>31</sup> Moira Wyton, “Indigenous people, racial minorities disproportionately penalized on Edmonton Transit”, (1 October 2019), online: <<https://bit.ly/2NIIQpB>>.

<sup>32</sup> Andrea Huncar, “Edmonton teen’s complaint of excessive force, racial profiling under investigation”, *CBC News* (22 February 2018), online: <<https://bit.ly/2NaRDBB>>.

<sup>33</sup> *Ibid.*

<sup>34</sup> Andrea Huncar, “Edmonton peace officers exonerated in excessive force, racial profiling case”, *CBC News* (19 March 2019), online: <<https://bit.ly/2pCvJhD>>.

For the foregoing reasons, Edmonton City Council should repeal section 12 of Bylaw 8353.<sup>35</sup>

### **Recommendation #3**

*SLS recommends that Edmonton City Council decrease fine amounts under Bylaw 8353 and other bylaws that disproportionately affect Edmontonians with “no fixed address”*

Councillor Paquette has called for fine amounts to be lowered under Bylaw 8353, saying that fines for fare evasion have become a “tax on poverty.”<sup>36</sup> Councillor Paquette is correct, and SLS echoes his call for fine amounts to be greatly reduced. SLS further notes that the significant effects of other bylaws (such as “feet on the seat”) would be similarly reduced if fine amounts under Bylaw 8353 were greatly reduced.<sup>37</sup> In addition, the significant effect that the “urinating and defecating”<sup>38</sup> and “jaywalking”<sup>39</sup> prohibitions have on people living at “no fixed address” could be similarly mitigated by reducing their fine amounts.<sup>40</sup>

In determining more appropriate fine amounts Edmonton City Council must consider that the majority of people receiving fines under Bylaw 8353 (as well as urinating and defecating fines and jaywalking fines) have “no fixed address” and likely have incomes far below the average Edmontonian. To such people, a fine of \$20, for example, may still be a significant deterrent.

### **Recommendation #4**

*SLS recommends that the City of Edmonton provide more effective, transparent, and regular oversight regarding the effect that Transit Peace Officers have on Edmontonians living in homelessness*

Edmonton City Council should regularly collect, and release publicly, data on the effect of Transit Peace Officers on Edmontonians living at “no fixed address.” Also, to ensure that its data regarding people living at “no fixed address” is more precise, ETS should create a new category for when a person’s address is “unknown” or “not entered” as opposed to when it is known that a person has “no fixed address.” EPS has a “not entered” label that officers are explicitly instructed to use when someone’s address is unknown.<sup>41</sup> The implication of this, is that when EPS identifies someone as having “no fixed address” it is a more accurate indicator that that person is homeless or precariously housed because the people from whom officers simply are not able to obtain a reliable address are not included in the same category. Similarly, ETS should begin using a “not entered” label.

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<sup>35</sup> *Ibid.*

<sup>36</sup> Jason Herring, “A tax on poverty’: Paquette to ask council to lower transit fines”, *Edmonton Journal* (16 September 2019), online: <<https://bit.ly/2prLNCW>>.

<sup>37</sup> *Supra*, note 6, s 31(2).

<sup>38</sup> City of Edmonton, by-law 14614, *Public Places* (Consolidated on 22 January 2019), s 5 [Bylaw 14614].

<sup>39</sup> *Supra*, note 23.

<sup>40</sup> *Supra*, note 36, s 23(2)(c); *Ibid*, s 100(2).

<sup>41</sup> Appendix 4, at 21.

## Recommendation #5

*SLS recommends that the Minister of Justice and Solicitor General of Alberta add “housing status” to the Public Security Peace Officer Policy and Procedure Manual’s list of bases on which peace officers should not differentially apply the law<sup>42</sup>*

The Public Safety Peace Officer Policy Manual<sup>43</sup> provides a list of considerations that are used in interpreting the prohibition of peace officers from engaging in “disorderly or inappropriate conduct, or acting in a way harmful to the discipline of peace officers or that is likely to discredit the office of peace officer.”<sup>44</sup> One of the considerations listed is “differentially applying the law or exercising authority on the basis of race, colour, religion, sex, physical disability, mental disability, marital status, age, ancestry or place of origin...” As a meaningful step towards reducing the extent to which peace officers disproportionately target people with “no fixed address”, the Minister of Justice and Solicitor General of Alberta should add “housing status” to the list of bases on which peace officers should not differentially apply the law.

## Recommendation #6

*SLS recommends that the Parliament of Canada remove “...screaming, shouting, swearing, singing...” and “being drunk” from section 175(1)(a) of the Criminal Code<sup>45</sup>*

The offences in section 175 of the *Criminal Code*<sup>46</sup> punish conduct that causes disturbance in a public place, thus interfering with society’s right to enjoyment of public places. This is a legitimate right of citizens and this is clearly the legislative objective intended by Parliament. However, the Supreme Court of Canada has made clear that “mere emotional upset” will not meet the standard of disturbance to make out the offence.<sup>47</sup> We are concerned that the offences, as they currently stand, are overbroad and thus offend section 7 of the *Canadian Charter of Rights and Freedoms*.<sup>48</sup> A narrower range of prohibited conduct is possible to meet the legislative objective of protecting the public’s right of enjoyment to public places. We take no issue with fighting, using insulting or obscene language, openly exposing or exhibiting an indecent exhibition, loitering in a manner which obstructs another person, or the section 175(1)(d) firearms provision, staying on the books as a means to cause a disturbance that attracts criminal liability.<sup>49</sup> However, we urge Parliament to remove “screaming, shouting, swearing, singing” from section 175(1)(a)(i) and repeal section 175(1)(a)(ii) (being drunk) altogether.<sup>50</sup> Otherwise, we see too much risk that the offence captures innocent conduct and relies too much on subjective perceptions of disturbances.

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<sup>42</sup> *Supra*, note 8.

<sup>43</sup> *Ibid*.

<sup>44</sup> *Peace Officer (Ministerial) Regulation*, Alta Reg 312/2006, s 13(2)(d).

<sup>45</sup> *Supra*, note 9.

<sup>46</sup> *Ibid*.

<sup>47</sup> *R v Lohnes*, [1992] 1 SCR 167, 109 NSR (2d) 145, at 181 [*Lohnes* cited to SCR].

<sup>48</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*].

<sup>49</sup> *Supra*, note 9.

<sup>50</sup> *Ibid*.

In the alternative, we are concerned that these offences, as they currently stand, disproportionately affect homeless populations and we are troubled by their potential for over-use. For example, while 144 charges of section 175(1)(a)(i) for “...screaming, shouting, swearing, singing...” were laid in 2018 in Edmonton, 44 of them were laid against people who were likely homeless - constituting 31% of charges.<sup>51</sup> 38% of people charged under section 176(1)(a)(ii) (being drunk) were likely homeless.<sup>52</sup> Given that, based on our working statistics, 0.2% of Edmontonians were homeless in 2018, this difference is staggering and worrisome. Again, we urge Parliament to remove the above language to address its disproportionate application to homeless people. Homeless people are entitled to utilize public space in the same manner as non-homeless people, and we are hopeful that removing this language will reduce the proportion of homeless people who are convicted of this offence.

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<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

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*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11

## Statutes

*Criminal Code*, RSC 1985, c C-46

*Trespass to Premises Act*, RSA 2000, c T-7

## Bylaws

City of Edmonton. By-law 5590, *Traffic* (Consolidated on 16 July 2019)

———. By-law 8353, *Conduct of Transit Passengers* (Consolidated on 16 July 2019)

———. By-law 14614, *Public Places* (Consolidated on 22 January 2019)

## Regulations

*Peace Officer (Ministerial) Regulation*, Alta Reg 312/2006

## Guidelines

Government of Alberta, “Public Security Peace Officer Policy and Procedure Manual” (Amended February 2012)

## Case Law

*R v Lohnes*, [1992] 1 SCR 167, 109 NSR (2d) 145 (SCC)

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# Appendices

## Appendix 1

Results received from City of Edmonton freedom of information request 2019-G-0176

Total Number of Tickets that Edmonton Transit Services issued in the City of Edmonton in 2018

BYLAW or <i>PROVINCIAL ACT</i>	TYPE	SUBTYPE	SECTION	# of TICKETS	\$ VALUE
Bylaw 8353 (Conduct of Transit Passengers)	Fare Evasion	Proof of Payment	5(b)	5,741	\$1,435,250.00
<i>Trespass to Premises Act</i>	Trespass	Breach of Ban	3	2,432	\$697,984.00
Bylaw 8353	Loitering	-	12	713	\$178,250.00
Bylaw 8353	Feet on the Seat	-	17	100	\$25,000.00
Bylaw 14614 (Public Places)	Trouble with Person	Urinating or Defecating	5	40	\$20,000.00
<i>Gaming, Liquor, and Cannabis Act</i>	Liquor	Open liquor	89(1)	163	\$18,745.00
Bylaw 8353	Fare Evasion	No Payment Prior to Entry	4	39	\$9,750.00
Bylaw 5590 (Traffic)	Jaywalking	Ticket issued	59(1)	32	\$8,000.00
Bylaw 5590	Jaywalking	Ticket issued	59(2)	16	\$4,000.00
			<b>Grand Totals:</b>	9,288	\$2,396,979.00

## Appendix 2

Results received from City of Edmonton freedom of information request 2019-G-0419

Total Number of Tickets that Edmonton Transit Services issued to people with “No Fixed Address” in the City of Edmonton in 2018

BYLAW or <i>PROVINCIAL ACT</i>	TYPE	SUBTYPE	SECTION	# of TICKETS	\$ VALUE
Bylaw 8353 (Conduct of Transit Passengers)	Fare Evasion	Proof of Payment	5(b)	2,486	\$621,500.00
<i>Trespass to Premises Act</i>	Trespass	Breach of Ban	3	2,102	\$603,274.00
Bylaw 8353	Loitering	-	12	561	\$140,250.00
Bylaw 8353	Feet on the Seat	-	17	75	\$18,750.00
Bylaw 14614 (Public Places)	Trouble with Person	Urinating or Defecating	5	30	\$15,000.00
<i>Gaming, Liquor, and Cannabis Act</i>	Liquor	Open liquor	89(1)	105	\$12,075.00
Bylaw 8353	Fare Evasion	No Payment Prior to Entry	4	28	\$7,000.00
Bylaw 5590 (Traffic)	Jaywalking	Ticket issued	59(1)	18	\$4,500.00
Bylaw 5590	Jaywalking	Ticket issued	59(2)	11	\$2,750.00
			<b>Grand Totals:</b>	5,416	\$1,425,099.00

## Appendix 3

The following represents SLS's understanding of some ETS policies that are relevant to this report. The information is based on a conversation with the Superintendent of Edmonton Transit Services Peace Officers and subsequently was subject to the Superintendent's review and approval.

*When is "No Fixed Address" used in lieu of a ticket recipient's address?*

"No Fixed Address" could be used only if a ticket recipient:

- Does not have an address to disclose to an officer or who discloses to an officer that they are homeless;
- Discloses an address that an officer believes to not be credible; or
- is generally uncooperative with an officer such that an address isn't recorded

*How likely is it that a ticket recipient labeled "No Fixed Address" is homeless?*

Any three of the above categories could refer to a homeless person, so it is possible that 100% of people listed as "No Fixed Address" are homeless. However, it is possible that a person who is not homeless could fall into the second and third categories, and so less than 100% of the ticket recipients listed as "No Fixed Address" could be homeless. ETS either enters a person's address or labels them "No Fixed Address." There is no distinct category for people whose addresses are "unknown."

*Some basic information about bans*

- 99% of bans issued prohibit a banned person from entering any ETS vehicle or property
- Some bans are served verbally
  - These bans are issued for causing a disturbance on transit property or vehicles, such as when a person is intoxicated
  - Verbal bans last 1-3 days
  - Verbal bans are recorded in the officer's daily report, and the daily report is reviewed by a sergeant. So verbal bans are reviewed after being served.
  - Verbal bans can result from intoxication, narcotics usage, or from multiple violations
- Other bans are served in writing
  - Last for 1, 3, 6, 12, or 24 months
  - Written bans of 1 to 6 months would be more likely to involve multiple offences (bylaw and/or provincial), criminal acts, or a combination of those.
  - Written bans of 12 or 24 months are usually in response to violence and the duration depends on the severity of the violence
  - Prepared in writing and reviewed by a sergeant prior to service
- Key considerations that inform the duration of bans include:
  - How extreme was the disturbance?
  - Was there violence?
  - How long will it take before the banned person is ready to re-enter transit property without causing similar disturbances?
- ETS Officers record all bans electronically, including the following information:

- Name of person
- Address of person
- Duration of the ban

*What constitutes a breach of a ban that would result in a trespass fine?*

- Entering any ETS property from which a person is banned is sufficient to be fined for trespass
- So, because 99% of bans prohibit someone from entering all ETS property or vehicles, then 99% of ban recipients would receive trespass fines if they entered any transit property while their ban was in effect
- ETS officers often identify a banned person either by recognizing their face, or incidentally while questioning the person about an unrelated matter

*Does ETS have any training programs, or policies/guidelines that are meant to reduce the impact that its Peace Officers have on Edmontonians living in homelessness?*

- ETS has had, and continues to have, various training seminars/guest speakers/working committees that all touch on the situations experienced by a number of vulnerable populations; including the homeless.
- The City has a Code of Conduct for all employees which directs professional behaviours.
  - Examples of provisions from the City of Edmonton's Code of Conduct that may be relevant include (at 17):
    - "Treat people as you want to be treated"
    - "Represent the City in a positive way"
    - "Exercise diplomacy and tact when dealing with difficult people"
- The Public Security Peace Officer Policy Manual speaks to a Code of Conduct as well
  - Examples of provisions from the Public Security Peace Officer Policy Manual that may be relevant include:
    - the minimum code of conduct required of any authorized employer of peace officers (at 43-44):
      - "prohibiting peace officers from exercising the peace officer's authority as a peace officer when it is unnecessary to do so"
    - considerations used for interpreting s 13(2)(d) of the Peace Officer (Ministerial) Regulation (at 45-46):
      - "differentially applying the law or exercising authority on the basis of race, colour, religion, sex, physical disability, mental disability, marital status, age, ancestry or place of origin"
      - "doing anything prejudicial to discipline or likely to bring discredit on the reputation of the Authorized Employer"

## Appendix 4

Results received from Edmonton Police Service freedom of information request 2019-G-260

### ***Number of Criminal Charges in 2018 for Disturbing the Peace CC 175***

Occurrence Reported Year	2018
Row Labels	Sum of # Charges (Person)
<b>CC 175(1)(a)(i)</b>	<b>177</b>
CAUSE DISTURBANCE BY FIGHTING	33
CAUSE DISTURBANCE BY SCREAMING, ETC.	144
<b>CC 175(1)(a)(ii)</b>	<b>32</b>
CAUSE DISTURBANCE BY BEING DRUNK	32
<b>CC 175(1)(a)(iii)</b>	<b>6</b>
CAUSE DISTURBANCE BY IMPEDING / MOLESTING	6
<b>CC 175(1)(b)</b>	<b>4</b>
INDECENT EXHIBITION IN A PUBLIC PLACE	4
<b>Grand Total</b>	<b>219</b>

### ***Subset of Persons Charged with a current address type "No Fixed Address"***

Address Type Description (Person)	No fixed address
Occurrence Reported Year	2018
Row Labels	Sum of # Charges (Person)
<b>CC 175(1)(a)(i)</b>	<b>47</b>
CAUSE DISTURBANCE BY FIGHTING	3
CAUSE DISTURBANCE BY SCREAMING, ETC.	44
<b>CC 175(1)(a)(ii)</b>	<b>12</b>
CAUSE DISTURBANCE BY BEING DRUNK	12
<b>CC 175(1)(a)(iii)</b>	<b>3</b>
CAUSE DISTURBANCE BY IMPEDING / MOLESTING	3
<b>CC 175(1)(b)</b>	<b>2</b>
INDECENT EXHIBITION IN A PUBLIC PLACE	2
<b>Grand Total</b>	<b>64</b>

**Number of Non-Criminal Charges in 2018 for Trespassing (Petty Trespass Act s2, Trespass to Premises Act, ss2-3)**

Row Labels	Sum of # Charges (Person)	Sum of Fine Amount
Occurrence Reported Year	2018	
<b>TTP 2</b>	<b>6</b>	<b>1722</b>
UNLAWFULLY TRESPASS (PRIVATELY OWNED LAND)	3	861
UNLAWFULLY TRESPASS (TO PREMISES)	3	861
<b>TTP 3</b>	<b>1938</b>	<b>342678</b>
TRESPASS ON PREMISES	1938	342678
<b>PTA 2(1)(a)</b>	<b>4</b>	<b>1148</b>
ENTER ON LAND WITHOUT PERMISSION	4	1148
<b>PTA 2(1)(b)</b>	<b>1</b>	<b>287</b>
FAIL TO LEAVE LAND WHEN DIRECTED	1	287
<b>Grand Total</b>	<b>1949</b>	<b>345835</b>

**Subset of Non-Criminal Charges for Persons with a current address type "No Fixed Address"**

Row Labels	Sum of # Charges (Person)	Sum of Fine Amount
Address Type Description (Person)	No fixed address	
Occurrence Reported Year	2018	
<b>TTP 2</b>	<b>3</b>	<b>861</b>
UNLAWFULLY TRESPASS (PRIVATELY OWNED LAND)	2	574
UNLAWFULLY TRESPASS (TO PREMISES)	1	287
<b>TTP 3</b>	<b>287</b>	<b>51373</b>
TRESPASS ON PREMISES	287	51373
<b>Grand Total</b>	<b>290</b>	<b>52234</b>

**Number of Non-Criminal Charges in 2018 for Open Liquor violations (Gaming Liquor and Cannabis Act, s 89(1))**

Row Labels	Sum of # Charges (Person)	Sum of Fine Amount
Occurrence Reported Year	2018	
<b>GLC 89(1)</b>	<b>196</b>	<b>17480</b>
UNLWFL CONSMPTION-PUBLIC	196	17480
<b>Grand Total</b>	<b>196</b>	<b>17480</b>

**Subset of Non-Criminal Charges for Persons with a current address type "No Fixed Address"**

Row Labels	Sum of # Charges (Person)	Sum of Fine Amount
Address Type Description (Person)	No fixed address	
Occurrence Reported Year	2018	
<b>GLC 89(1)</b>	<b>15</b>	<b>1265</b>
UNLWFL CONSMPTION-PUBLIC	15	1265
<b>Grand Total</b>	<b>15</b>	<b>1265</b>

Notes about EPS Methodology & Data Limitations:

1. When a person's address is simply unknown, EPS officers are explicitly instructed to not enter the address as "no fixed address" but rather to enter the address as "not entered".
2. The "no fixed address" criteria used in the data here is not necessarily based on the individual's status at the time that the police event occurred. Rather, "no fixed address" is based on the individual's most current address type status in EPS's Record Management System. For example, an individual could have a listed residence at the time of an incident occurring Jan 15 2018. After a subsequent police interaction the individual could then declare they have no fixed address, which should result in their previous listed address to expire.
3. Ideally, a person should only have one "most current address" in the EPS's Records Management System. The fluidity in a person's address often causes a person to have multiple current addresses listed in EPS's Records Management System. If an individual has both a "most current" address statuses of "no fixed address" and "residence", they are still counted here as a "no fixed address" person. As such, this limitation will capture some persons who have shown signs of housing insecurity, but may not be in fact permanently homeless.