

Managing Social Disorder

*Legal Risks, Operational Realities,
and Insights for Local Government*

Jeff Locke & Paige Gibson

Litigation Counsel

- jlocke@sms.bc.ca
- pgibson@sms.bc.ca

The Big Picture

- Social disorder behaviours are complex
 - Driven by underlying medical, social, and economic challenges
 - Will ultimately require high-level political solutions
- Municipalities not well positioned to solve
 - Lack of jurisdiction, expertise, financial or human resources to resolve contributing factors



The Big Picture, *continued*

Jurisdictional
misalignment



The Big Picture, *continued*



Social disorder significantly and disproportionately impacts municipalities

(e.g. public drug use, property offences)



Root-causes of social disorder difficult to address

(addiction/brain injury, mental illness, cycles of poverty & trauma)



Courts do not have the capacity to solve this issue

(multi-faceted societal problem – best suited to political realm)



Current Provincial Policy and Funding Realities



Chapter 1:

Legal Risks to Municipalities



Legal Risks for Municipalities

1

Rights-based claims about parks and public spaces
(aim to apply pressure for broader political solutions)

2

Claims that expose municipalities to financial liability



Defending a claim is expensive...

...even if you win

- 01 Human rights – access to services
- 02 Charter of *Rights and Freedoms* claims
- 03 *Occupiers Liability Act* – hazards in public spaces
- 04 Property seizure claims
- 05 Failure-to-enforce allegations
- 06 Local government “safe workplace” issues



Discrimination in accommodation, service and facility

- 8 (1) A person must not, without a bona fide and reasonable justification,
- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
 - (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public
- because of the Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons.



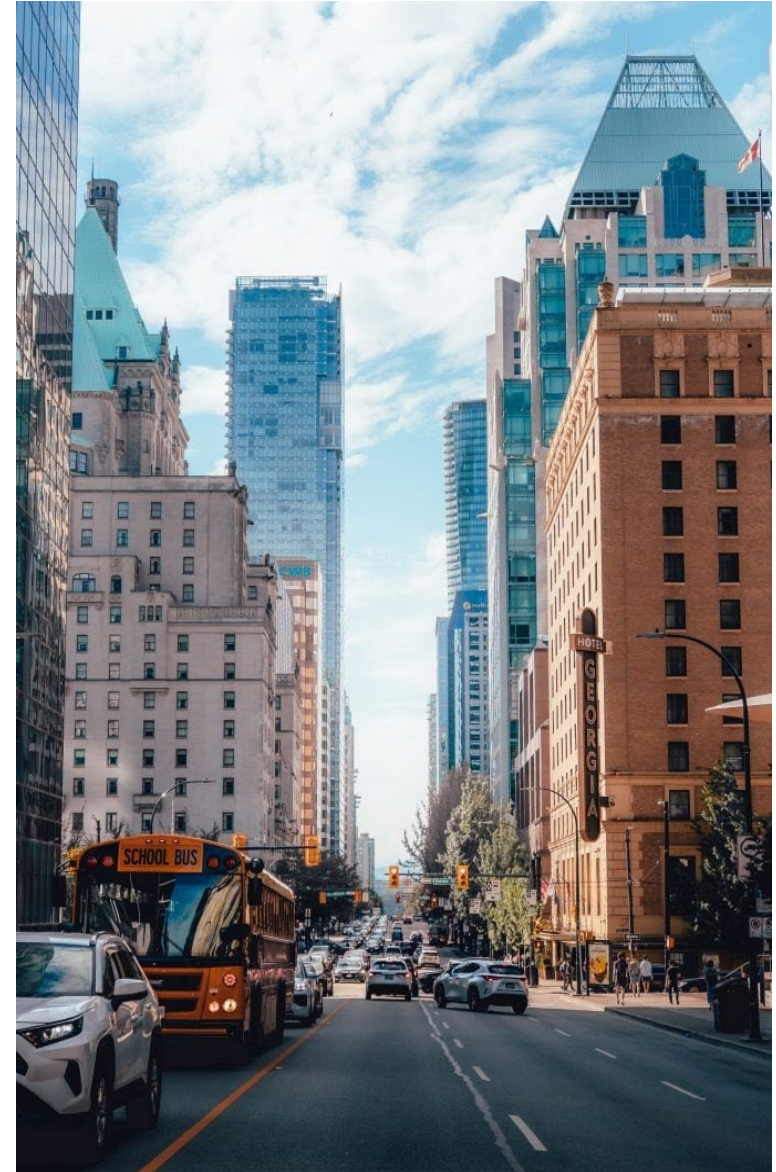
Human rights claims

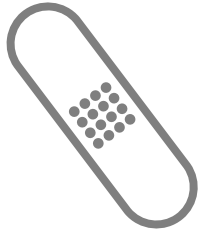
- Homelessness is not a ground explicitly protected by the HRC. However, “the question of whether the evidence establishes sufficient connection between adverse treatment and prohibited grounds of discrimination is largely one of fact”

Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association, 2018 BCAA 132 at para 81

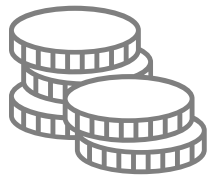
- Tribunal accepted that providing a service to the public could capture police pepper spraying a homeless individual’s belongings because policing generally is a “Service customarily available to the public”

BC/Yukon Association of Drug War Survivors v. City of Abbotsford and another, 2020 BCHRT 86





BC HRT can award damages where it finds discrimination has occurred, including damages for “injury to dignity, feelings and self respect”



From 2015 to 2025, the Tribunal has made seven orders of \$50,000 or more. Three of those were \$100,000 or more.



Risk Management Takeaways:

TOS rights are not a “service”. Avoid language suggesting otherwise

Ensure bylaw enforcement policies are neutral, consistent, and documented

Avoid enforcement patterns that could be perceived as targeting individuals based on disability or related characteristics

Maintain clear records of decision-making and enforcement rationale



Charter of Rights and Freedoms

Generally, a finding that a government has acted in an unconstitutional manner does not result in civil liability (\$).

However, s. 24 of the *Charter* contemplates damages awards flowing from breaches of *Charter* rights:

24.(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances



Charter of Rights and Freedoms

The greater municipal risk is not *Charter* damages *per se*, but the significant financial and operational burdens created by outdoor sheltering – including increased exposure to occupiers' liability and damage to parks and public infrastructure.



Risk Management Takeaways:



Draft bylaws and enforcement policies with Charter compliance in mind, particularly regarding outdoor sheltering and public space access.



Ensure enforcement actions are reasonable, proportionate, and well documented.



Maintain clear internal records showing the rationale for enforcement decisions, including public safety concerns and operational constraints.



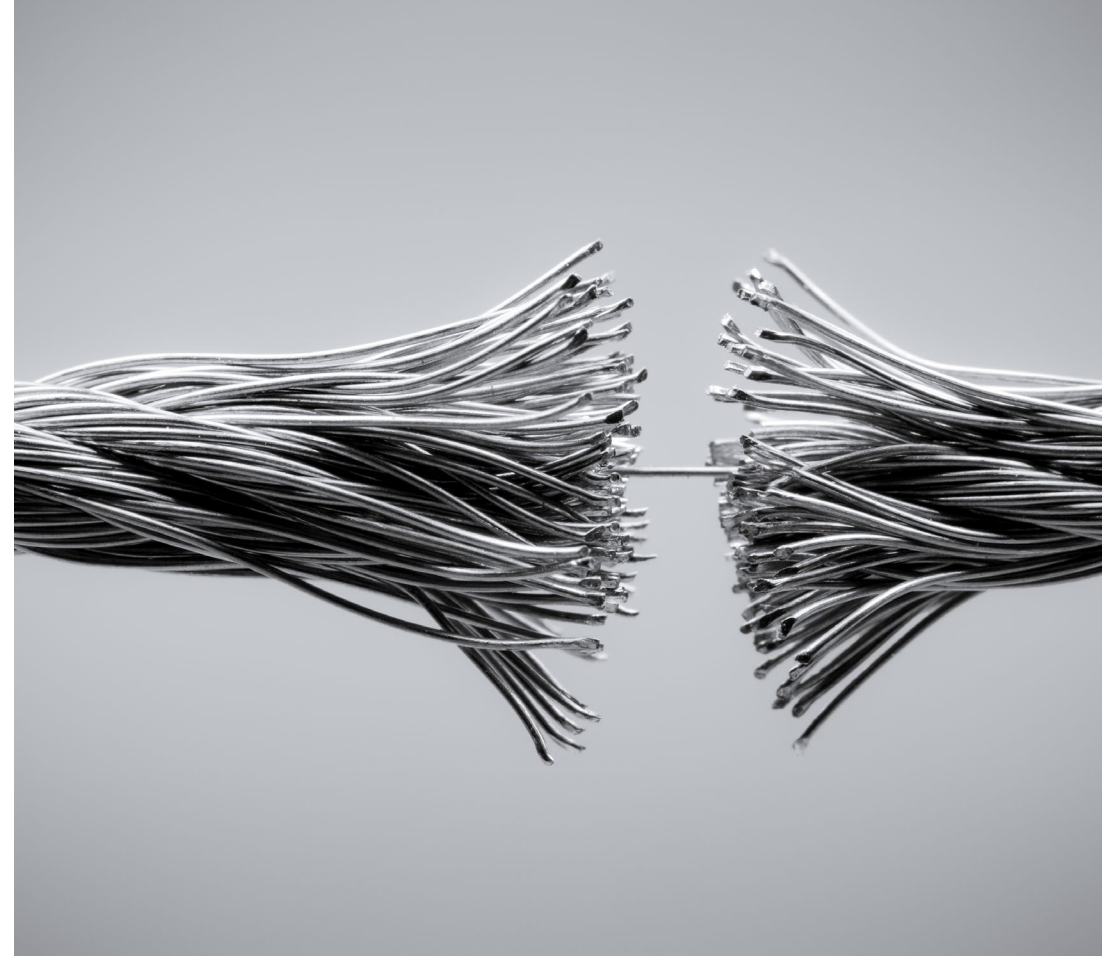
Occupiers Liability Risk

- As owners and occupiers of sidewalks, boulevards and other public spaces, local governments have a statutory duty “to take that care that in all the circumstances is reasonable to see that a person, and their property, will be reasonably safe in using the premises”



Risk Vectors

- Damage and/or vandalism to public amenities or infrastructure resulting in:
 - Dangerous conditions or hazardous materials at public amenities (washrooms, parks, play spaces)
 - Fire or other damage which spreads to private property
 - Unsafe conditions at public facilities, which could pose a risk to users



Example: *Ross v. Vernon (City)*, 2009 BCSC 1378

The law agrees – the courts in this province had repeatedly stated that all that is required of the defendants in this situation is to take reasonable, not perfect, care in all the circumstances so as to allow the plaintiff to be safe when using the park. See, for example: [citations omitted]

*The city likewise was under no duty to warn the plaintiff that the path might, from time to time, be slippery due to the presence of duck droppings. As McEachern C.J. said in *Malcolm v. British Columbia Transit* (1988), 1988 CanLII 3213 (BC CA), 32 B.C.L.R. (2d) 317:*

In my respectful view, it is not negligence or a breach of any duty not to warn an adult person, not suffering under any disability, of the ordinary risks arising out of the exigencies of everyday life...

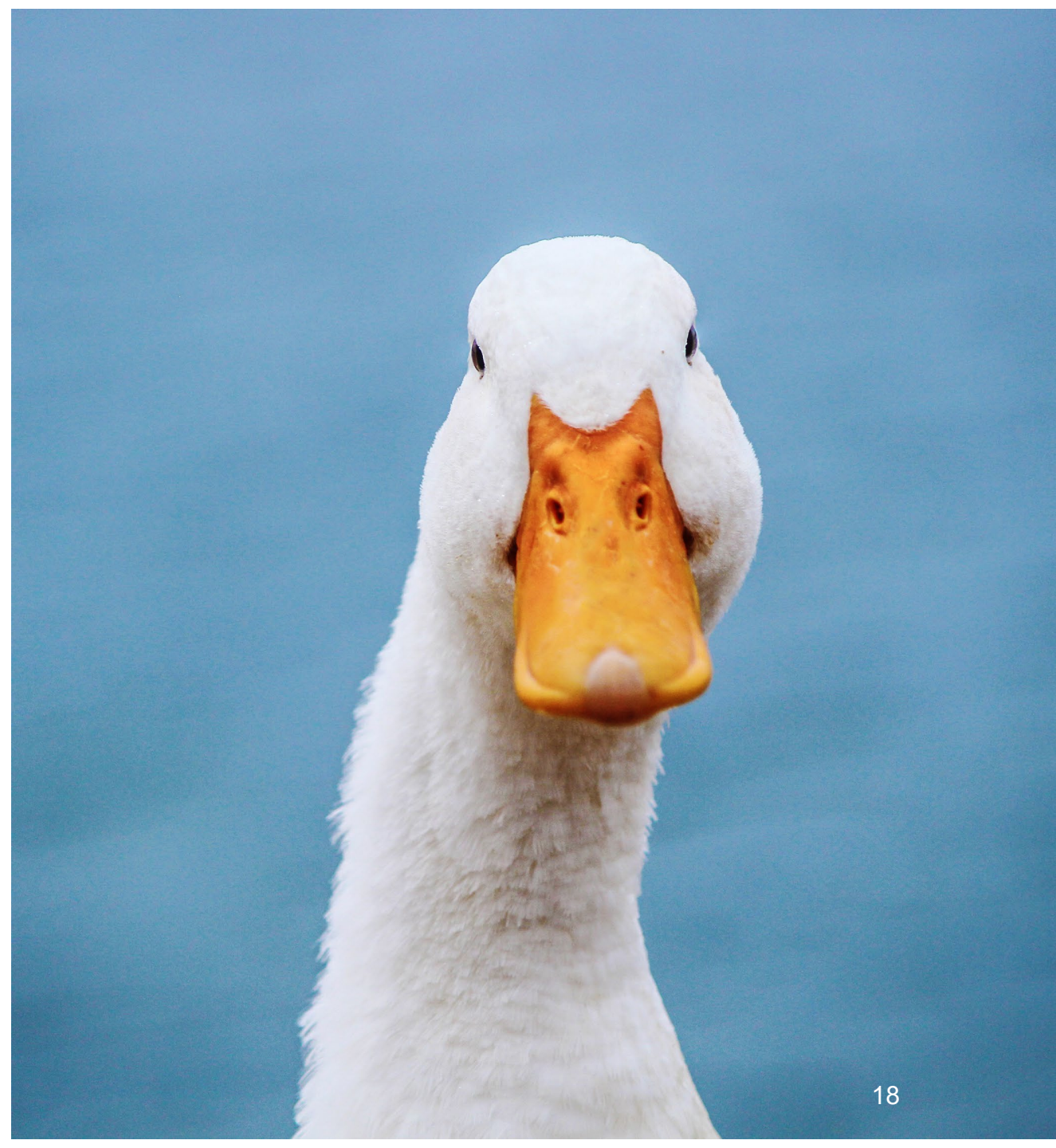
The slippery nature of droppings left by wild birds in a public park such as Vernon's Polson Park come within that same category of ordinary risk about which every adult and non-disabled person must be taken to be aware.



Raises questions ...

Are occasional duck droppings legally analogous to risks arising from overnight sheltering – e.g. structures, obstructions, toxic substances?

What about in an entrenched encampment on City land, where the City is aware of consistently hazardous conditions?



Risk Management Takeaways:



Consider inspection and maintenance policies for public spaces and amenities, particularly where vandalism or disorder is recurring



Consider prioritization of mitigation of known risks in parks, sidewalks, and facilities where encampments or disorder create unsafe conditions



Document awareness and response to hazards, including obstructions, debris, hazardous materials, or damaged infrastructure



Adopt clear protocols for addressing violent or disruptive behaviour in public facilities, including removal from premises, police reporting, and escalation where incidents happen



Property Seizure Risks

Claims relating to unlawful seizure, detention, or loss of property are becoming increasingly common



Civil Resolution Tribunal Claims

- Local governments must seek permission to be represented by legal counsel
- Little opportunity to make procedural objections at a preliminary stage
- The usual rules of evidence (ie rules against hearsay) are loosely applied and generally go to weight rather than admissibility
 - I. Contemporaneous evidence is exceptionally important in these types of proceedings: notes, photos, impoundment ledgers, etc.
 - II. Evidence of existing local govt policies also very helpful in these proceedings



Risk Management Takeaways:



Ensure clear bylaw authority and policies governing the seizure, storage, and return of property in public spaces.



Maintain meticulous contemporaneous records at the time of seizure: notes, photographs, inventory lists, and impoundment logs.



Follow consistent procedures grounded in written policies, as evidence of established municipal practices can be critical in defending these claims

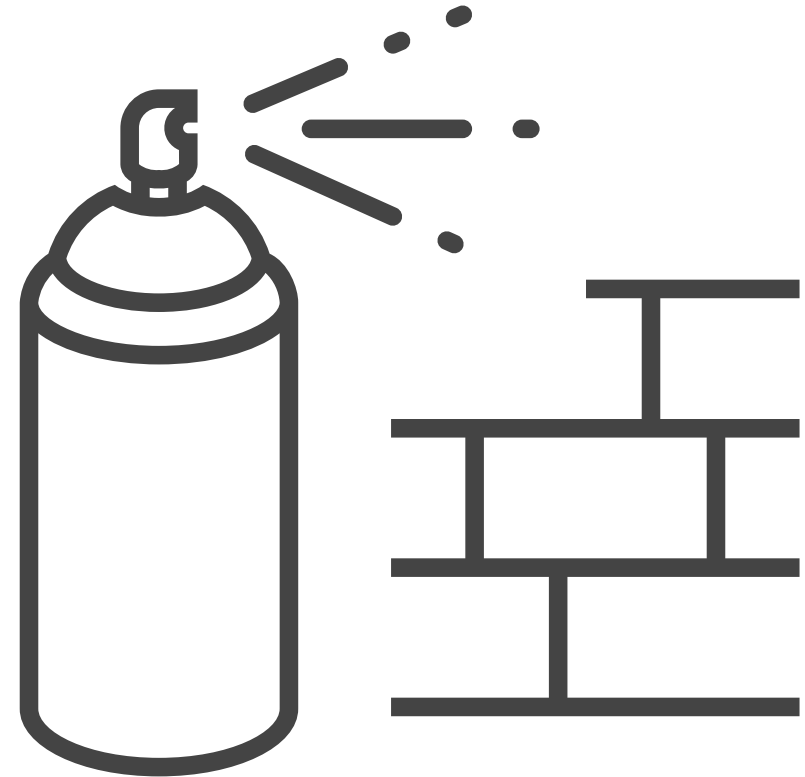


Train frontline staff on documentation and basic chain-of-custody practices, as the strength of the municipality's defence often depends on the quality of the record keeping



Duty/Failure to Enforce

- No duty at law to enforce a bylaw, so long as decision not to enforce is made in good faith.
- Unlikely to be a duty to protect properties from harm arising from illegal activities?



Risk Management Takeaways:



Encourage staff awareness for risks, particularly where illegal activity could create risk to neighbouring properties.



Coordinate with the appropriate authority when risks extend beyond municipal jurisdiction: police, utilities operators, or provincial agencies responsible for the underlying property or activity.



Focus on reasonable response rather than perfect control. Courts generally assess where the municipality acted reasonably in the circumstances, not whether it prevented all possible harm.



Employee Protection – *Workers Compensation Act*

General Duties of Employers

21 (1) Every employer must

(a) ensure the health and safety of

(i) all workers working for that employer, and

(ii) any other workers present at a workplace at which that employer's work is being carried out, and

(b) comply with the OHS provisions, the regulations and any applicable orders.

(2) Without limiting subsection (1), an employer must

(a) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers



Occupational Health and Safety Regulation



Violence in the Workplace

Definition

4.27 In section 4.28 to 4.31, “**violence**” means the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that the worker is at risk of injury [am. B.C. Reg.116/2022, App. B, s.4]



Risk Management Takeaways:

 Identify and assess risks associated with social disorder, including violence, aggressive behavior, hazardous materials, and unsafe environments encountered by frontline staff.

 Implement clear safety protocols for high-risk situations, including requirements for backup, police assistance, or avoiding solo attendance at volatile sites.

 Provide appropriate training and equipment for staff regularly responding to disorder-related complaints.

 Encourage incident reporting and maintain detailed records, as documentation of hazards and employer response is critical in demonstrating compliance with workplace safety obligations.

 Regularly review and update safety policies as conditions evolve, particularly where encampments or recurring disorder create ongoing risks to staff.



Chapter 2:

So, what's the solution?

A decorative graphic in the bottom right corner consisting of several overlapping, rounded, teardrop-like shapes in various shades of blue, creating a layered, abstract effect.



***An Objectives-Based Strategy:
Defining Desired Outcomes and
Aligning Municipal Levers
Accordingly***



Objectives-Based Strategy



Policy and Strategy Consideration

Any operations or policies to curb social disorder must:

1 Within Municipal Jurisdiction

2 Financially Viable

3 Legally defensible

4 Politically realistic ... *locally and provincially*

5 Demonstrate willingness to cooperate with the Province...

... without agreeing to assume Provincial responsibilities



Building your objectives-based strategy

Focused Area and Amenity Protection

- **Identify vulnerable municipal areas and amenities**
 - Waterfront/tourist/business zones
 - Libraries
 - Recreation Centers
 - Parks
 - Public washrooms
- **Consider security at “hot spots” and staff entrances**
- **Post clear behavioral standards, in plain English**
- **Prompt enforcement**



Address Public Spaces

- Crime Prevention Through Environmental Design (CPTED) redesign of spot locations, parks, plazas and other sensitive public areas
- Remove concealment spaces
- Improve lighting
- Design washrooms for durability



Considered Design & Rotation of Authorized TOS Areas

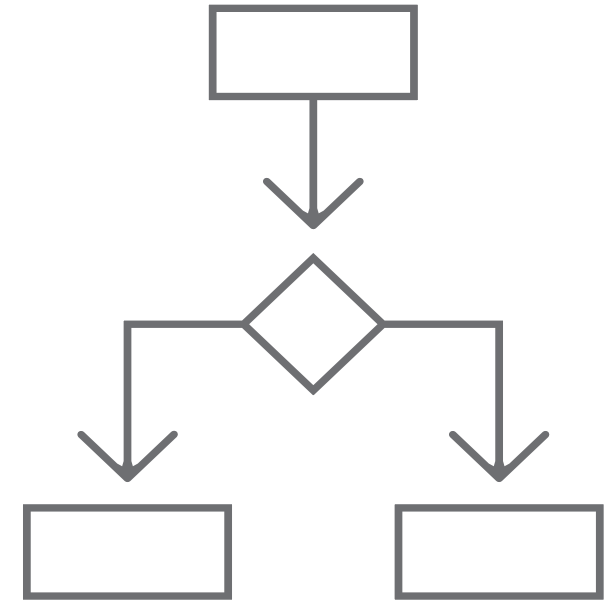
- Evaluate sheltering needs and capacity
- Rotate shelter-tolerant zones
- Give impacted communities periodic relief
 - i. Document rationale for changes
 - ii. Ensure no net loss in overnight sheltering capacity



Data Collection and Transparency

Current data helps to support decisions and mitigate risk

- Visual data: heat maps, charts, graphs
- Detailed reporting from staff on ground: contemporaneous notes, photographs
- Coordinate with fire and police services



Data worth tracking...

- **Direct cost statistics:**

- Damages to municipal assets and amenities (vandalism, theft, hazardous waste)
- Additional regular maintenance costs (extra garbage collection, additional maintenance checks, increased patrols, police escorts)

- **Complaint statistics**

- **Enforcement statistics**

- **Demand statistics**

- Number of outdoor shelter structures in designated areas
- Number of outdoor shelter structures in non-designated areas

- **Budget impact:**

- Bylaw
- Parks
- Civic Ops
- Municipal Policing
- Fire Services

- **Provincial Supports Shift & Reality**

- Provincial fiscal capacity is tightening
- Social disorder drivers (addiction + mental health) are chronic and growing



Presentation Conclusions

**Social disorder is
chronic & complex**

**Courts alone cannot
correct the situation**

**Provincial funding
unlikely to keep pace**

**Criminal justice
responses remain
unpredictable**

**Municipal risk exposure
is real...
... but manageable!**



Next:
Fireside Chat



Fireside Chat

Host:

Jeff Locke

SMS Law

Litigation Counsel



Ken Uzeloc

City of Kamloops

Fire Chief and
Director of Protective
Services



Kevin Mead

City of Kelowna

Bylaw Services
Manager



Paige Gibson

SMS Law

Associate Counsel



SMS LAW

Local Government Lawyers

Advice and Advocacy
for Local Government

SMS.BC.CA

STEWART MCDANNOLD STUART, BARRISTERS & SOLICITORS
2nd Floor, 837 Burdett Avenue, Victoria, BC

