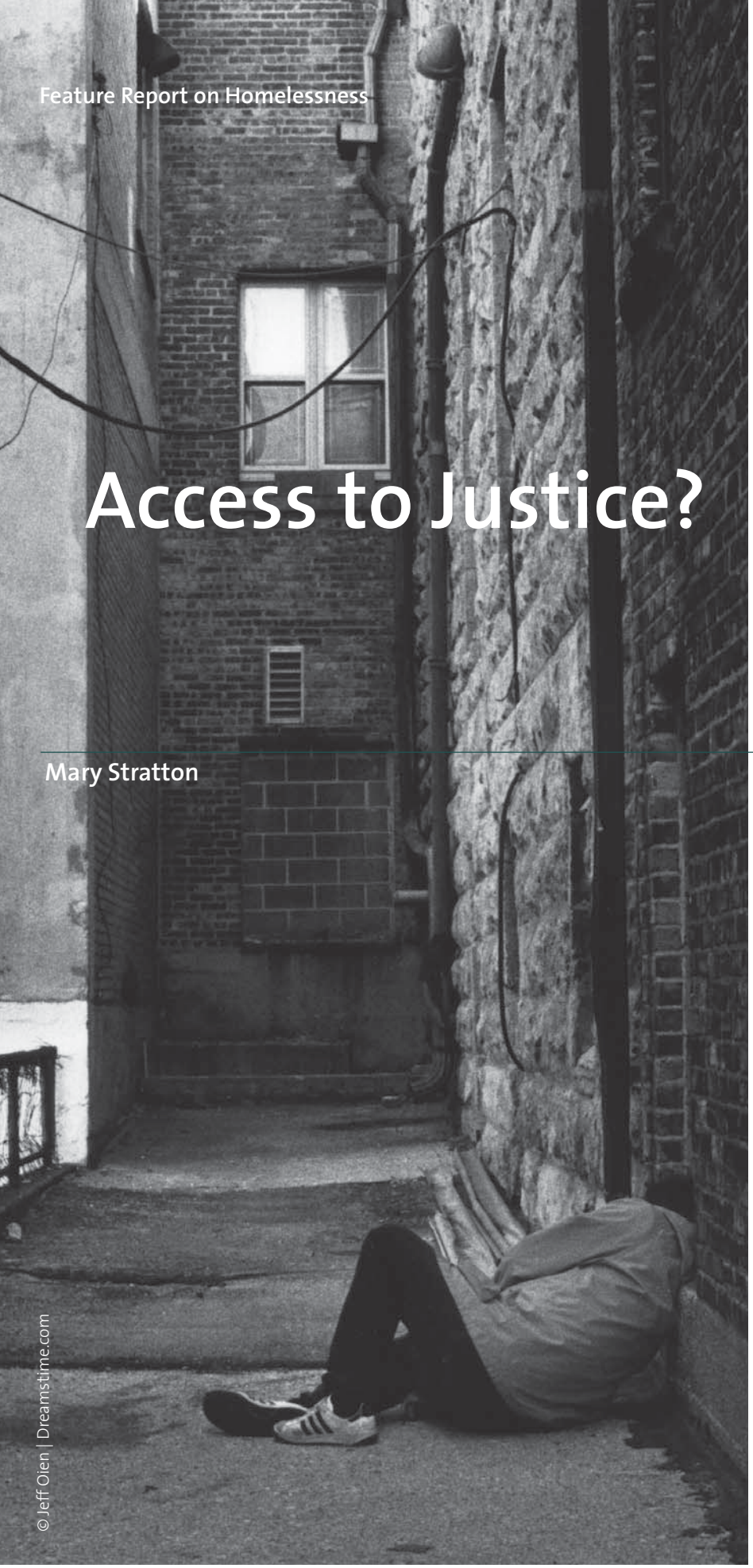

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Access to Justice? The View from the Street

Mary Stratton

Once homeless, our odds for accessing any kind of justice are low. Whether we are chronically or just periodically homeless, we will be familiar with social injustice. The likelihood is high that we also have unresolved legal problems spanning multiple areas of law. Seventeen participants in the Alberta Legal Services Mapping Project (ALSMP) reported being currently homeless.[1] Their experiences, joined with reports from legal and social service providers across Alberta, are the focus of this article.

Who are the Homeless?

In 2007, the United Nations Special Rapporteur on housing reported continuing concern about the significant number of homeless in the wealthy country of Canada, expressing his disappointment that the government could not provide reliable statistics. The National Homelessness Secretariat has estimated that there might be 150,000 homeless people in Canada, but experts suggest that the actual number is closer to 300,000 (UN, 2008, p.3, http://intraspec.ca/Go811092.pdf). It is likely that even the top end of this range is significantly underestimated when the people in substandard or insecure housing are also considered.

Canada has no official definition of homelessness and no consistent approach to the task of enumeration. This lack of reliable data impedes the ability

to effectively understand and constructively attend to homelessness. Municipal counts across Canada report a steady, decade-long increase in observable homelessness; Calgary Police Services recently estimated that 10,000 city residents are chronically homeless. The City of Edmonton identifies a housing gap of approximately 20,000 emergency, transitional, and long-term housing units. It also needs 20,000 more affordable housing units with an estimated increase of 700 more per year for at least five years.

For most of us, our immediate concept of homelessness conjures an image of an obviously down-and-out panhandler. In fact, 'street people,' who at best only find an emergency shelter bed, are the visible minority of Canadian homeless. Homelessness is widespread and the majority of people without a place of their own are concealed from the public gaze. Many 'couch surf' at the homes of family and friends, stay temporarily in cheap motels or rooming houses, or live in their cars. Most work or actively seek work, and accommodation may be attached to employment. Some are children. All are one step away from street homelessness.

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Pathways to Homelessness

There are many pathways to homelessness, but whatever the route, intersections with systems of law seem inevitable. The following examples outline some of the life circumstances that increase susceptibility to becoming homeless.

- *Involvement in domestic abuse as a victim or abuser*. Women and children who have fled from violence at home often find emergency shelter accommodation but not affordable permanent housing. Men who are charged with abuse may be immediately evicted and enter into a cycle of institutionalization and homelessness. For men and youth who are victims, shelter and services outside of major cities are rare. Young children sometimes stay with friends or sleep in the street to avoid violence at home.
- *Contentious family breakdown*. Legal battles over property division, child custody and visitation, and/or maintenance payments can be drawn out, costly, and very stressful. Property division alone can lead to loss of housing, but lengthy battles often also result in loss of employment, debt, and mental and physical health problems, which may culminate in homelessness.
- *Mental illness and cognitive disability.* Since the 1980s, policies of deinstitutionalization without ensuring adequate community housing and supports have significantly increased street homelessness for these very vulnerable people. This group, as well as those with Fetal Alcohol Spectrum Disorder (FASD) disabilities, is especially vulnerable to substance abuse and generally need assistance to access the services and benefits to which they are entitled.
- *Substance abuse.* Untreated addictions lead to behaviour likely to result in homelessness and negative interactions with police services. However, the stress and hopelessness of homelessness also encourages substance abuse. Canada has insufficient addictions treatment services.
- *Living in a remote community*. Residents in Canada's many remote communities must go to regional centres to access legal, health, and social services. Travelling back and forth is often not viable, but affordable accommodation in town is not available either. Aboriginal peoples are particularly likely to encounter this problem and face increased racism and discrimination because of it.
- *Migrant and immigrant employment*. Temporary Foreign Workers and transient Canadian workers are very susceptible to homelessness. Accommodation may be tied to employment that can be reduced or terminated without notice. Their few rights are frequently violated. They are away from their home community supports and networks without the means to return. Even if contract workers understand their contract rights and workplace safety regulations, and speak English sufficiently, access to just a telephone call can be difficult without risking reprisals.
- *Criminal incarceration*. People released from prison or from half-way housing often receive minimal assistance to obtain income support, housing, or employment. The odds are against them doing so unaided.

Homelessness, the Law, and Access to Justice

The routes towards homelessness entwine with legal matters in many ways. Without timely assistance, one unresolved legal problem can quickly snowball with devastating results.

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> "My court date [that was put off for a year] came up last week. But I got … mixed up. I arrived too late. I talked to someone from the Calgary Police Service at the courthouse and he said there would be a warrant issued for my arrest and that I would have to turn myself in. There was nothing that I could do to avoid the warrant … My whole immigration process … is in limbo based on the outcome of this … I didn't have permission to work in Canada [but] even now that I do … no one wants to hire someone who might not be able to stay in Canada, who hasn't worked for the last year, and may have a criminal record soon. My husband broke his arm a few months ago and was laid off from his construction job as a result. He has an Employment Insurance claim in right now, but it's taking a while to get sorted out… We have no money and so we just lost our home. We are now living in a homeless shelter. Things just get worse and worse for us."

The observations of service providers participating in the ALSMP emphasize that a vicious cycle of poverty is at the root of homelessness:

> "Poverty begets crime, begets more poverty … There are people living in inadequate housing or taking drugs to deal with bad feelings. Where you get on the wheel doesn't matter … One leads to the other. Somebody becomes desperate. The circle continues."

The struggle for daily survival increases instability and vulnerability to violence, illness, substance abuse, criminal activity, and social discrimination at every turn. Without safe shelter, or even a certainty of sufficient food, it is difficult to face and resolve other social and legal problems. Unfortunately, our laws and legal systems do little to prevent or reduce homelessness but often have a role in precipitating or deepening it. Even highly educated and securely housed Canadians find our legal process complex and challenging to navigate; the barriers can be insurmountable for the homeless unless advocacy is provided.

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Legal services reported that few homeless people access their services even though they are over-represented in involvements with the justice system. Key services are often located in courthouses, however, as courthouse staff pointed out, court is associated with being in trouble, and passing through airport-type security can be very intimidating. For transient workers, the court security means they cannot take valuable essential tools in with them, but have no safe place to store them.

Lack of income places many homeless people within legal aid income guidelines for representation and/or other services – if their legal matter is in an area of law that is covered. However, working homeless may be above the financial cut-off or at a level where a cost contribution is required. As one participant remarked, "it's not realistic to think that someone who can't afford a place to live is going to spend money on a lawyer."

Even if access to a lawyer is a possibility, the Law Society of Alberta requires that clients have valid ID in order to retain a private or legal aid lawyer. Identification and other documentation, including a bank account, are also required to apply for social benefits. The longer a person is homeless, the more likely they are to lose their ID or have it stolen, and the more difficult it becomes to produce the records and money necessary to get replacements. Service providers underlined the futility of this problem:

> "We've really tried to find some way to get people bank accounts when they don't have ID but it's next to impossible. They can get a photo ID card and it costs money and they have to have ID to get ID."

> "You need picture ID to stay in [some homeless shelters]. If a person has outstanding fines, unpaid tickets, or is in arrears for child support, they cannot acquire picture ID from a license Registry in the province of Alberta."

Adding to these obstacles to accessing assistance, the visibly homeless get negative attention from citizens. Complaints to municipal and police services usually generate attempts to 'hide' the problem by moving the homeless out of sight. Unquestionably, a high proportion of those living on the street have mental health and/or addictions problems that sometimes lead to volatile behaviour. Front-line police officers expressed frustration at having to deal with danger-

ous situations without any real resources to change the conditions behind the problems:

"I see a lot of individuals that have mental health issues that are not getting treated. I've even taken a few to the hospital … [but] they're out the next day without meds, with "there's nothing wrong with you" … If the person could get a diagnosis and meds then possibly he wouldn't be caught shoplifting. This just happened by the way… caused by hunger so now he's in jail."

"An officer can see somebody one time and the interaction is fine. Then, the next time, that person has totally changed … The officers might taser them or do what they have to … but, after it is all over, the person doesn't remember anything leading up to being [subdued] … They only remember the outcome."

Almost all of the homeless participants, however, complained of police harassment in the form of issuing violation tickets:

"Because of what happened, I was homeless and living in a derelict car. It was up on blocks. Then one day the Police came and charged me with failure to insure the car. That was on top of the failures to appear … because I hadn't dealt with 16 to17 C-Train tickets."

"I had taken the C-Train and was going to 7–11 to use the washroom but it was out of order. I went downtown to … the Library or City Hall but both were closed. I couldn't wait so I relieved myself behind a tree. Police pulled up and gave me a $300 ticket and said that I had exposed myself in front of children. I stated that it was January and very cold and there was nobody in the park. I swear there were no children. But there are not enough public bathrooms and courts have been throwing such cases out."

Indeed, judges participating in the ALSMP also expressed frustration at the lack of treatment options for addictions, and supports for people with mental impairment. They saw these kinds of charges and prosecution of minor thefts of food as pointless. They did not view incarceration as helpful, but often have no viable alternatives.

Homeless Children and Youth

Sadly, many of the homeless are children and teenagers, and it is believed that the numbers of homeless under 24 years of age are growing, although recent reliable statistics are lacking (**www.canadiancrc.com**).

Some remain with intact families living in shelters or the houses of relatives as they try to regain stability. Others are subjects of protection orders, enduring a succession of group and foster homes until they are old enough to attempt independent living. Some just hide out on the streets on days when that seems safer than home. Others run from intolerable situations, believing the street cannot be any worse. Service providers are well aware of the dangers these young people face:

"Homelessness with youth – What are homelessness rates like here? I couldn't tell you for sure but I know I come across it almost daily – couch surfing – to me they're not technically on the streets, and you wonder why they're in certain places."

"Our priority is to get the young people who come here off the streets as soon as possible, before they get into drugs. The people who have been on the streets here for some time are a rough group."

Our justice and social systems have already miserably failed these vulnerable young people, but a remarkable number continue to struggle to make something of their lives. A Fort McMurray survey reported that of 56 homeless youth, 45 were going to school and/or working. We need to do more to support them.

Building Futures: Housing and Access to Justice

Laws, justice systems, and legal services alone cannot resolve the wicked social problems entwined with homelessness. They can and do play a critical role within which there is much room for improvement. Justice systems are not directly responsible for housing, but our civil and administrative laws do have a direct impact:

- Legal rulings sometimes precipitate homelessness. With a lack of available alternatives this can be

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unavoidable, especially where domestic violence is involved.

- Delay in providing legal decisions and failure to enforce court orders can lead to financial ruin, physical and mental illness, homelessness, and destroyed lives (Stratton & Anderson, 2006, **http://cfcj-fcjc.org/publications/cjsp-en.php#21**).
- Administrative tribunals are responsible for ensuring compliance with laws related to employment, workplace, and residential tenancy. They are tasked with ensuring human rights are not violated and that people receive social benefits.
- The courts are not responsible for the de-institutionalization of psychiatric patients without sufficient community supports, but they are responsible for ensuring *Charter* rights, hearing appeals of tribunal decisions, and for how courts respond to citizens with mental health challenges.
- The lack of alternative resolutions to criminal records and/or incarceration for minor poverty-driven violations intensifies problems.

Right now, the view from the street on accessing justice is commonly one of despair. We must do better. We are beginning to. Particularly encouraging in Alberta and across Canada is municipal endorsement of a Housing First philosophy. This approach holds that for the homeless, the primary need is to obtain stable housing. Once this is provided, other issues impacting that household can and should be addressed. Ideally, Housing First moves people straight from the street to secure housing that is a part of a community continuum of supports that will work to resolve other legal, social, and health problems. In practice, an initial step of temporary shelter may be necessary, as a participant from Medicine Hat explained:

> "Last year we ran the Damp Mat Project for a month and it doesn't matter if you are an alcohol or drug user you just come and show up and sleep on a mat and get fed and leave in the morning … The majority of them are housed right now through the Housing First Initiative … [It] doesn't really matter what situation you are in, we're going to house you first and then we're going to deal with the … supports and with your issues."

There are also promising justice-related initiatives emerging that recognize that services need to better understand and respond to homelessness issues:

- Calgary Legal Guidance and Edmonton Community Legal Clinic both have outreach programs that go to homeless shelters to provide legal assistance;
- Legal services, especially community clinics, are increasingly developing programs to provide and safeguard identification when needed;
- Calgary Police Services has formed a Homeless Portfolio committed to liaising with health services and the Calgary Homeless Foundation in establishing an Opportunities Centre to provide a "one stop shop" with front-line workers from law enforcement, social, and health services; and
- Alberta Court Services is, where possible, establishing diversion courts especially for people with mental illness and disabilities.

We need to work together and change the view from the street from one of homelessness and despair to one of hope that justice is accessible and a future is possible.

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Notes

1. The author wishes to thank the participants across Alberta whose input to the Alberta Legal Services Mapping Project is the focus of this article. Details and reports are available at **http://cfcj-fcjc.org/research/mapping-en.php**. Out of 48 public participants from three Alberta cities, 17 were homeless. The project is funded by Alberta Justice and the Alberta Law Foundation. The views expressed in this article do not necessarily reflect those of the funders or Research Directors. Background information on homelessness across Canada is drawn from the many resources provided by **http://intraspec.ca** which suggest the experiences of Albertans mirror those in other provinces.