

File No. PRG-S-S-2159834

Prince George Registry

In the Supreme Court of British Columbia

BETWEEN

CITY OF PRINCE GEORGE

PETITIONER

AND:

SHELDON STEWART, CRYSTAL ARNDT, BRANDON DEEG,

JANE DOE, JOHN DOE and OTHER UNKNOWN PERSONS

RESPONDENTS

RESPONSE TO PETITION

Filed by: Crystal Arndt and other unknown person, Rory Emery (the "petition respondent(s)")

THIS IS A RESPONSE TO the petition filed 25 August 2021

Part 1: ORDERS CONSENTED TO

The petition respondents consent to the granting of **none** of the orders set out in Part 1 of the petition.

Part 2: ORDERS OPPOSED

The petition respondents oppose the granting of **all** the orders set out in Part 1 of the petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The petition respondents take no position on the granting of **none** of the orders set out in Part 1 of the petition.

Part 4: FACTUAL BASIS

1. Prince George has a significant homeless population. Statistics are unavailable for 2020 and 2021.
2. The homeless population consists of people who are particularly vulnerable. Homelessness is associated with poor physical health, including high rates of

infectious disease, chronic illness, chronic foot pain, foot and musculoskeletal problems, head injuries, acute respiratory problems and high rates of HIV and Hepatitis C. there is an increased incidence of poor mental health characterized by depression and suicide, and increased rates of substance use. People who experience homelessness frequently have past histories of childhood and other forms of trauma and abuse. People who are homeless or unstably housed are more likely to experience premature aging and death with an average life expectancy of 20 to 25 years less than the rest of the population. People who are homeless are often victims of violence.

3. People who are homeless have unmet health care needs and face barriers or lack of access to appropriate health services such as primary care, public health and harm reduction services. It is often difficult for people to access health care if they lack a permanent address or consistent living arrangements and locations. Stigma and discrimination associated with homelessness, poverty and substance abuse may prevent or discourage people from accessing health services. The risks associated with drug use, such as overdose and death, are substantially increased by homelessness.

4. People who are homeless often experience isolation and social exclusion as a result of their living situation. Safety and belonging are fundamental human needs. Access to both private and communal spaces is important for personal security and creating a sense of community. Both are essential to overcome social exclusion and isolation.

5. Some residents of Prince George have set up tents together on city property in order to seek safety and security. They have established a community of people who are experiencing homelessness.

6. There are approximately 81 permanent Emergency Shelter beds in Prince George. Very few of the emergency shelter beds are low barrier and many of the homeless persons in Prince George are not eligible to stay in the shelters. Reliable up to date numbers are not available.

7. Because of a lack of available shelter spaces dozens of people have nowhere to shelter themselves except outside. There is a lack of both daytime and nighttime shelter.

8. Repeated overnight sheltering has many of the same impacts as daytime sheltering in Prince George. Policing and cleaning up after overnight sheltering and enforcing the bylaws that prohibit homeless from being on the streets traumatizes them and creates great stress. The same applies to continually asking them to disburse.

9. Residents of the Tent Cities experience many significant benefits as a result of being able to stay in one place. It is much easier for service providers, including health care providers, to find their homeless clients, and so health care services, including harm reduction services can be provided on a more consistent basis and more effectively. People are less anxious, less sleep deprived and have more time, so are better able to address their health needs; to rest and to recover from trauma.

10. The risks of drug use are much reduced by the ability to access a private space during the day, and by the presence of the community in the Tent Cities. When people are living together in the same area, they are better able to respond to overdoses and emergency services are better able to locate people in need of assistance.

11. Residents of the Tent Cities feel safer and experience much less stress than when they are required to carry all of their possessions around with them every day, under the constant threat of having their belongings stolen. They are less likely to

use coping mechanisms such as drug use to keep themselves awake at night for fear of falling asleep and being victim of violence or theft. They are less likely to isolate themselves in remote locations to avoid detection. Many of them attain a sense of purpose, belonging and community that they have not felt for many years, if ever before.

12. Several services have been provided by local agencies and some unnamed benefactors. There include meals, a portable washroom which includes maintenance, and a dumpster. Fresh water has also been made available to the residents of the Lower Patricia Tent City. Northern Health also provides some services such as wound care to the residents.

13. The Petitioner is unable to attribute any increase in crime to the residents of the Tent Cities.

14. The Applicant has stated there is enough housing available for the respondents without considering the real barriers to access to housing. Active drug addiction, no identification, no ability to meet application requirements and no bank accounts and records make successful applications a rare exception for the homeless in downtown Prince George.

15. Many residents of the Tent Cities have sought to access one or more of the shelter options in Prince George but have been unable to do so because the facility was full or the resident did not meet the eligibility criteria. Many of the most challenged of the homeless have been banned from the emergency shelters because of their active addictions or mental health challenges. Those Tent City residents have the greatest need for more comprehensive wrap around services that include consistent, affordable low barrier housing.

16. Many residents of the Tent Cities cannot access one or more of the shelter options in Prince George because they feel unsafe, have been barred.}

17. The Petitioner does not claim to have an immediate use for the areas where the Tent Cities are located. The properties are unused, vacant lots. The Tent Cities are not interfering with any ordinary use of the land.

Part 5: LEGAL BASIS

Charter of Rights and Freedoms

19. The Respondents rely on section 7 and section 1 of the *Canadian Charter of Rights and Freedoms* (the "Charter"):

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

20. In *Adams* the Court of Appeal upheld the trial decision that the prohibition in the City of Victoria bylaws that prohibited the erection of temporary shelter violated the rights of homeless people to life, liberty and security of the person under s. 7, and the violation was not justified under s. 1 of the *Charter*. The Court also upheld the trial judge's finding that the impugned bylaw provisions were of no force or effect insofar as they prohibit homeless persons from erecting temporary shelter.

Victoria (City) v. Adams, 2009 BCCA 563, para 10

21. In this case, the Petitioner seeks an of the Court to prohibit temporary sheltering by the Respondents, in violation of their right to life, liberty and security of the person in a manner that cannot be justified under s.1 of the *Charter*. The Petitioner is seeking an unconstitutional order.

Trespass

22. The *Trespass Act* is not subject to enforcement via petition to the court. The Petitioner seeks relief that is not available under any statutory authority.

23. The Court has no jurisdiction to order an injunction on the basis of a contravention of the *Trespass Act*. The remedies for trespass are contained in the Act and there is no authorization therein for an application to the court or a judge, as required by the *Supreme Court Civil Rules, Rule 1-2(4)*.

24. Additionally, the Petitioner has not established that there has been an offence under the *Trespass Act*. For an offence to be committed, the person must “not leave the premises or stop the activity, as applicable, as soon as practicable after receiving the direction”. In the circumstances, it is not practicable for the Respondents to leave the premises as they have nowhere safe to go. To require them to do so is a violation of their rights under s. 7 of the *Charter*.

Trespass Act, s.2(3)(c)

25. The Petitioner has not provided evidence that they have given direction to the Respondents to leave the premises, as required by the *Trespass Act*. They have also not provided evidence that they have complied with the resolution from Council that “require(s) all occupants to sign and acknowledge a Notice of Trespass” (Exhibit H referred to in the Affidavit of Charlotte Peters, 26 August 2021, filed in these proceedings).

26. The Petitioner has not demonstrated that it is “practicable” for the homeless persons to cease sheltering on the Properties. There is not adequate shelter available. There has not been adequate alternative housing provided. There are not enough accessible, available shelter spaces for the Respondents. The solutions offered are not practicable.

27. Even if the Petitioner could prove it has an arguable case in trespass, the homeless residents also have an arguable case that the prohibition on sheltering on public land is an unjustifiable breach of their rights under s. 7 of the *Charter*. Prohibition sheltering on public land will subject the homeless to decreased dignity and

independence and increased physical and psychological harm. It will increase the risk of death from overdose for those who are drug users. Continual displacement of the homeless causes them impaired sleep and serious psychological pain and stress and creates a risk to their health. It implicates life, liberty and security concerns.

28. This deprivation is not in accordance with the principles of fundamental justice as it is arbitrary, overbroad, and grossly disproportionate. It is not justifiable under s. 1 of the *Charter*.

Abbotsford (City) v. Shantz, 2015 BCSC 1909

Adams v. Victoria, 2009 BCCA 563: aff'ing 2008 BCSC 1363

Canada (Attorney General) v. Bedford, 2013 SCC 72

29. It is a defence under the Trespass act that the Respondents acted with a colour of right.

Defences to trespass charge

3. A person may not be convicted of an offence under section 2 in relation to premises if the person's action or inaction, as applicable to the offence, was with

(a) the consent of an occupier of the premises or an authorized person,

(b) other lawful authority, or

(c) colour of right.

Trespass Act, RSBC 2018, c.3. s.3

30. This petition, combined with the City of Prince George Safe Streets Bylaw No. 9209, 2021 have made it an offence for the Respondents to shelter anywhere in the City. This is a violation of the Respondents rights under s. 7. It has made it impossible to shelter outdoors anywhere in the City if one does not have a home or a shelter bed to go to.

City of Prince George Safe Streets Bylaw No. 9209, 2021

Injunction

31. In order for the Petitioner to obtain an injunction on the basis of its allegation that the Tent Cities are in breach of the *City of Prince George Zoning Bylaw No. 7850, 2007*, the Petitioner must meet the three part test set out in *RJR-MacDonald Inc.*

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311

32. Injunction applications which raise issues under the *Charter* involving the displacement of homeless people are decided on the *RJR MacDonald* test.

Vancouver Board of Parks and Recreation v. Williams, 2014 BCSC 1926, paras 58-60, *British Columbia v. Adamson*, 2016 BCSC 584, para 35

33. The Petitioner is not in the same position as a private landowner, given the public aspect of the land in question. Moreover, the three-part test must always be met if the Defendant can demonstrate that there is an “arguable case” that the activities that would otherwise constitute a trespass are justified

BC Ferry Services Inc. v. Tsawwassen Rental Connection Ltd. 2004 BCSC 982

at paras 41 and 48

Has the applicant demonstrated there is a fair question to be tried?

Zoning Bylaw

34. The Petitioner has not demonstrated that there is a fair question to be tried.

35. The land in question is not being used by the Petitioner for any specific purpose.

36. The Respondents’ activities constitute an exercise of their fundamental rights essential to human dignity, liberty, safety and security, the utility of their conduct must be given significant weight. In this case, the existence of the Tent Cities has permitted some of the most vulnerable and marginalized residents of Prince George to achieve significant physical security, emotional stability, a deeply needed sense of community and support, and improved access to health care and other

essential services. In the circumstances, any of the alleged interferences with the Petitioner's private property interest cannot be characterized as unreasonable.

38. The existence of the Tent Cities does not 'unreasonably interfere with the public's interest in questions of health, safety, mortality, comfort or convenience.'

39. Whether the Respondents are using the Properties as a "Campground" under the *Zoning Bylaw* is a question of law and is disputed by the Respondents.

Will the applicant suffer irreparable harm if an injunction is not granted

40. The Petitioner has not demonstrated that any irreparable harm will flow from permitting the Respondents to continue sheltering on the Properties.

Does the balance of convenience favour the granting of an injunction?

41. The marginal impacts of allowing sheltering during the period leading to the hearing of the Petitioner's claim are not significant. The parking lot was not in use before the Tent Cities were established. There is no evidence of any real interference with any public services. There is no evidence of an increase of crime caused by or linked to the Respondents.

42. Many of the harms the Petitioner says it wishes to avoid are simply the result of having a significant homeless population with nowhere to shelter themselves other than in public spaces. The homeless must exist somewhere. If they are evicted from these sites, they will have to go somewhere else where it is harder to provide services. If the homeless are scattered around the Petitioner, they will be less able to effectively contribute to solving the issues that outdoor sheltering gives rise to. There is no broader public benefit to having them displaced around the city.

43. On the other side, the harm caused by requiring the homeless to abandon their shelter and return to the city's parks, alleys, and sidewalks, where they will be displaced every day, where they will have no place to rest, recover or receive

services, where they will have no sense of privacy, community or support, and where they are at more harm from drug use, is very significant.

Part 6: MATERIAL TO BE RELIED ON

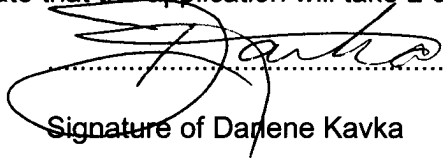
44.

1	Affidavit #1 of Melanie Mae Joseph, September 21, 2021
2	Affidavit #1 of Jimmy Santos, September 21, 2021
3	Affidavit #1 of Belvery Edward Johnny, September 21, 2021
4	Affidavit #1 of Dr. Joseph Hermer, Criminologist, September 22, 2021
5	Affidavit #1 of Katherine Mueller, Outreach at BCFNJC, September 22, 2021
6	Affidavit #1 of Mary Macdonald, Social Worker, September 21, 2021
7	Affidavit #1 of April Dawn Ottesen, Resident of Millar Addition, September 22, 2021
8	Affidavit #1 of Amelia Merrick, Witness, September 22, 2021
9	Affidavit #1 of Sophia Iliopulos, Resident of Millar Addition, September 22, 2021
10	Affidavit #1 of Michelle McGregor, Legal Advocate, September 22, 2021
11	Affidavit #1 of Maybelline Amelia John, September 22, 2021
12	Affidavit #1 of Terry Teegee, Regional Chief of the BC Assembly of First Nations September 22, 2021
13	Affidavit #1 of Margaret Skin, September 22, 2021

45. Such other material as counsel may advise and the Court will allow.

The petition respondents estimate that the application will take 2 days.

Date: 2021-Sep-22.



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Signature of Darlene Kavka

Lawyer for petition respondents

Petition respondent's(s') address for service:

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Name of the petition respondent's(s') lawyer, if any:

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