

J211549

## IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Prince George (City) v. Stewart*,  
2021 BCSC 2089

Date: 20211022  
Docket: S2159834  
Registry: Prince George

Between:

**City of Prince George**

Petitioner

And

**Sheldon Stewart, Crystal Arndt, Brandon Deeg, Jane Doe, John Doe, and  
Other Unknown Persons**

Respondents

Before: The Honourable Chief Justice Hinkson

### Reasons for Judgment

Counsel for the Petitioner:

T.J. De Souza  
J. McKay

Counsel for the Respondents Crystal Arndt  
and An Unknown Person named Rory  
Emery:

D. Kavka  
M. Bulgalka

Place and Date of Hearing:

Prince George, B.C.  
October 6, 2021

Place and Date of Judgment:

Prince George, B.C.  
October 22, 2021

[1] The City of Prince George (“the City”) is a municipality incorporated under the *Local Government Act*, R.S.B.C. 2015, c. 1.

[2] Encampments occupied by homeless individuals were set up in the City on a vacant lot at 231 George Street (“George Street”), also known as “The Splits”, on May 10, 2021 and on a green space at the end of 5<sup>th</sup> Avenue (“Lower Patricia”), also known as “Moccasin Flats”, in June 2021. I will collectively refer to them as “the encampments”.

[3] The respondents Sheldon Stewart, Crystal Arndt, Brandon Deeg, Jane Doe, John Doe, and other unknown persons are occupants of the encampments. Only Crystal Arndt and Rory Emery appeared before me, and for ease of reference I will refer to them as simply the respondents.

### **The Evidence relied upon by the Parties**

[4] At the outset of the hearing before me, the respondents argued that the City could not proceed summarily, if the remedies it was seeking included an interim injunction.

[5] Notwithstanding the relief set out in its petition, the City confirmed in its written submissions that it was proceeding before me seeking a final order for a statutory injunction, pursuant to section 274 of the *Community Charter*, S.B.C. 2003, c. 26.

[6] Both sides filed affidavits in support of their opposing positions that included hearsay information, but each agreed that they could not rely upon hearsay evidence as the relief sought is a final order.

[7] In addition, the parties filed affidavits that did not meet the eight day time requirements of Rule 8-1(8)(a) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. I advised them that I would ignore the late filed affidavits for the purposes of the application before me.

## **Background**

[8] The respondents acknowledged that the encampments are located on City property and that they did not obtain permission from the City to set up and occupy the encampments.

[9] While accurate figures were not available, Constable Amritpal Dhadwal, a member of the Royal Canadian Mounted Police (“RCMP”), provided an estimation of approximately 50 tent structures inside the “campgrounds” of both encampments with over 80 occupants in total and the vast majority located at the encampment at Lower Patricia. I am prepared to take these approximate numbers into account in determining the application before me.

[10] On June 2, 2021, the City passed a resolution that civil injunctive proceedings be taken to remove the occupants from the encampments, and on June 11, 2021, the City served Notices to Vacate (“Notices”) on some occupants of at least the George Street encampment. In the Notices, the City requested that the occupants leave the encampment within two weeks. The Notices also purported to provide locations for shelter availability for those served.

[11] The occupants at George Street did not vacate that encampment; instead, some moved to Lower Patricia.

[12] According to the City of Prince George, Bylaw No. 7850, *Zoning Bylaw* (2007) (“*Zoning Bylaw*”), the George Street encampment property is zoned as follows:

C1: Downtown: the *Zoning Bylaw* provides for the following permitted uses:

- a. Apartment Hotel
- b. Auction, Minor
- c. Boarding or Lodging House
- d. Club
- e. Community Care Facility, Major
- f. Community Care Facility, Minor
- g. Education
- h. Education, Commercial

- i. Education, Higher
- j. Emergency Service
- k. Entertainment, Adult Orientated
- l. Entertainment, Spectator
- m. Exhibition & Convention Facility
- n. Greenhouse & Plant Nursery
- o. Health Service, Minor
- p. Hotel
- q. Housing, Apartment
- r. Housing, Congregate
- s. Housing, Row
- t. Housing, Stacked Row
- u. Library & Exhibit
- v. Motel
- w. Office

[13] The Lower Patricia encampment property is zoned as follows:

P1: Parks and Recreation: the *Zoning Bylaw* provides for the following permitted uses:

- a. Park
- b. Recreation, Outdoor

[14] In an affidavit that appears to have been sworn on September 22, 2021, but omits some of what are referred to in the body of the affidavit as exhibits, Regional Chief Terry Teegee deposed in part that:

- 1. I am a member of Takla Nation and have been a resident of City of Prince George (the “City”) since 1999.
- ...
- 4. As of the last official count in 2018, 79% of the homeless people in the City are Aboriginal, and this proportion extends to the residents of the tent cities. Yet Aboriginal people make up only 10-15% of the City’s overall population. The tent city at Lower Patricia is just down the hill from the original site of a Lheidli T’enneh village and cemetery (see Exhibit 2) ...

[15] On August 25, 2021, the City commenced these proceedings. It asserts that it delayed its injunction application as a compassionate step while working with BC

Housing to open up more supportive housing for the encampment occupants to coincide with a proposed order for the closure of the encampments.

[16] In her affidavit affirmed August 26, 2021, Charlotte Peters, the City's Manager of Bylaw Services deposed in part that:

16. The concern was over the disproportionate number of occupants at the Properties who were largely First Nations. Given that the issue of Residential Schools and the burial of First Nations children was of deep concern, Council was very sensitive to the approach taken on the Tent Cities. As such, on June 28, 2021, Council instructed City Staff to work closely with BC Housing and other support agencies to ensure a compassionate approach that would approximate a timeline for more housing with a Court order. The goal was to ensure that any order obtained from the Court injunction would coincide with additional housing or shelter support from BC Housing.

[17] On August 30, 2021, the petitioner adopted the City of Prince George, Bylaw No. 9209, *Safe Streets Bylaw* (2021). The preamble to this Bylaw provided, in part:

WHEREAS Council has deemed it desirable to enact a Bylaw for the protection, promotion and preservation of the health and safety of the habitants of the City of Prince George to peacefully use and enjoy public spaces in the City;

AND WHEREAS section 8(3)(h) of the *Community Charter* provides Council the authority to prevent, abate and prohibit nuisances for the protection and enhancement of the well-being of its community in relation to matters referred to in section 64 of the *Community Charter* [nuisances, disturbances and other objectionable situations];

NOW THEREFORE, pursuant to section 64 of *Community Charter*, the Council of the City of Prince George, in open meeting assembled, ENACTS AS FOLLOWS: ...

[18] The *Safe Streets Bylaw* itself provided, in part, that:

2.1 In this Bylaw:

...

(e) Obstruction means:

(i) To sit or lie on a street or erect a chattel or personal property in a manner which obstructs or impedes the convenient passage of any pedestrian traffic in a street;

(ii) To continue to solicit from or otherwise harass a pedestrian after that person has made a negative initial response to the solicitation or has otherwise indicated a refusal; or

(iii) To physically approach and solicit from a pedestrian as a member of a group of three (3) or more persons.

(f) Open Drug Use means injecting, inhaling, smoking or any other method of consumption of any prohibited drug listed in the *Controlled Drugs and Substances Act (Canada)* on a street, roadway, Open Space Area or Park, the latter two which are defined terms in the "Parks and Open Space Bylaw No. 7370, 2002" as amended from time to time;

(g) Open Air Burning means burning of any kind, of any material, for a non-commercial purpose that takes place outside of a building, structure, accessory building or commercial establishment, or anywhere else outdoors;

...

3.1 No person may sit, lie, solicit or physically approach in a manner that causes an Obstruction on a Street or Roadway.

...

3.4 No person shall Solicit any person after sunset on any given day.

3.5 No person shall cause or permit Open Drug Use or dispose of drug paraphernalia on a Street, Roadway, Open Space Area or Park.

3.6 No person shall cause or permit Open Air Burning on any Street, Roadway, Open Space Area or Park.

...

4.1 Every person who violates a provision of this Bylaw, or who consents, allows or permits an act or thing to be done in violation of a provision of this Bylaw, or who neglects to or refrains from doing anything required to be done by a provision of this Bylaw, is guilty of an offence and is liable to the penalties imposed under this Bylaw, and is guilty of a separate offence each day that a violation continues to exist.

4.2 Every person who commits an offence is liable on summary conviction to a fine or to imprisonment, or to both a fine and imprisonment, to a maximum of \$50,000 in fines or six (6) months incarceration as authorized by the *Community Charter*.

[19] The *vires* of the Bylaw was not challenged before me, so I will deal with the City's application on the basis that the Bylaw was validly enacted.

[20] The petition is specifically opposed by the two respondents represented before me by counsel, but I infer that they are representative of others in the encampments.

### **Orders Sought**

[21] The City seeks the following orders:

1. A declaration that the respondents have committed trespass by entering on the following two properties in the City after the owner or occupier of those properties has given the respondents notice that such trespass is prohibited and their departure requested:
  - a. 538 Patricia Boulevard ("Lower Patricia")  
PID: 015-091-465  
BLOCK M1, DISTRICT LOT 343  
CARIBOO DISTRICT PLAN 1268
  - b. 231-233 George Street ("George St")  
PID: 009-483-781  
LOT 3 BLOCK 43, DISTRICT LOT 343  
CARIBOO DISTRICT PLAN 1268
2. A declaration that the respondents have contravened the *Zoning Bylaw* by using the property as a campground contrary to the permitted zoning.
3. A declaration that the respondents have contravened s. 2 of the *Trespass Act*, R.S.B.C. 2018, c. 3 by failing or refusing to comply with a Notice to Vacate.
4. A declaration that the respondents' trespass is particularized by:
  - a. entering and remaining on Lower Patricia and George Street;
  - b. setting up a permanent tent encampment, after the owner or occupier of the property advised that such activity is not permitted and that emergency shelter is available.
5. A mandatory and permanent injunction order against the respondents, and all those having knowledge of the Court order to:
  - a. remove all structures, tents, shelters, shopping carts, stoves, rubbish, objects, personal chattels, and other things on the properties;

- b. vacate the properties within a period specified by the Court;
  - c. not re-enter the properties or any other location within the City not authorized by the petitioner;
  - d. forfeit all prohibited weapons and drugs to the police; and
  - e. not erect or bring structures, tents, shelters, shopping carts, stoves, rubbish, objects, personal chattels, and other things, on City owned property, parks or public spaces except as authorized by the petitioner.
- 6. An order authorizing the City's employees and agents to:
  - a. dismantle and remove from the properties all structures, tents, shelters, shopping carts, stoves, rubbish, objects, personal chattels, and other things remaining on the properties; and
  - b. sell, destroy, or otherwise dispose of, those items removed from the properties, without recourse to the respondents.
- 7. An order authorizing any police officer within the Prince George detachment of the RCMP to arrest and remove from the properties any person who fails to comply with this order in accordance with the standard enforcement practices used by the RCMP and pursuant to s 127 of the *Criminal Code of Canada*.
- 8. Costs on a level and basis to be determined by this Honourable Court.

[22] In its written submissions the City advised that it was waiving its unrecoverable costs to conclude this action for a final order.



## **The Positions of the Parties**

### **The Petitioner's Position**

[23] The City asserts that the encampments have caused harm to residents and businesses in the surrounding neighbourhood and have been harmful to the occupants themselves. It asserts that since the encampments were established, there has been an increase in crime and property theft in the neighbourhoods or areas surrounding the encampments.

[24] The City contends that the encampments have caused a negative impact in the neighbourhood and deprived members of the public of their peace, enjoyment, and personal safety. The City asserts that local businesses and residents have complained of increased theft, shoplifting, drug use, prostitution, discarded needles, loitering, urinating, defecating, and other behaviours coming from the respondents at the encampments.

[25] The City asserts that local residents or employees have ceased walking at or near the encampments due to the garbage, smell, aggressive panhandling, and general fear over their own safety, and that there has been an increase in discarded needles and garbage near the encampments.

[26] The City argues that the occupants of the encampments have placed the properties at risk of fire, due to discarded lit cigarettes next to combustible materials such as cardboard, dry grass, and propane creating a public safety risk.

### **The Respondents' Position**

[27] The respondents oppose the relief sought by the City on several grounds. Firstly, they say the evidence presented by the City is disputed, incomplete, and inaccurate, and assert that I cannot make a final order on evidence that is inadmissible, nor where there are salient facts going to the heart of the issue that have been either left out or are in dispute.

[28] Secondly, the respondents argue that there is no legal basis and no jurisdiction to order a statutory injunction pursuant to the *Trespass Act*.

[29] Finally, the respondents argue that because of the City's multi-pronged approach to criminalizing homelessness, there is no order I can make that they can comply with legally. When assessing whether an injunction should be granted based on a clear breach of the *Zoning Bylaw*, the respondents argue that this case is one of exceptional circumstances, and therefore the Court should not order injunctive relief if a clear breach is found. If an injunction is granted, the occupants will be forcibly displaced with no where else to go. The respondents will be unable to comply with the proposed injunction without breaching the City's *Safe Streets Bylaw*.

[30] The respondents contend that the City is in crisis because there are not enough homes for its residents, and the result is the City's application. They argue that homelessness is a complex social issue and not a crisis that can be solved by the Court.

[31] The respondents deny that their encampments are a protest or demonstration. They contend that they do not come before the Court claiming that their current way of living is acceptable or preferable. Instead, they defend the City's petition because they have no other choice. They have limited financial means and complex personal circumstances that make them unable to rent market housing, so they are left to seek housing in the limited subsidized, supportive, and low barrier options provided by non-profit organizations and government. They argue that there are simply not enough of these options to house all the people who are homeless in the City.

[32] The respondents say that the properties where the encampments are located are unused, vacant lots, and that the encampments are not interfering with any ordinary use of the land.

[33] The respondents contend that the City's application is not about concern that its Bylaws are being flouted. They say that the City is asking to effectively banish those who are homeless from the municipality.

### **The City's Authority**

[34] The City has the statutory authority to establish different zones and regulate the use of land in each zone pursuant to s 479 of the *Local Government Act*.

[35] The City regulates zoning through the *Zoning Bylaw*.

[36] Section 1.6.1 of the *Zoning Bylaw* states:

Except for legal non-confirming uses or development approved by a development variance permit, temporary use permit, or a Board of Variance order, uses, buildings, and structures in each zone or area shall be in accordance with the uses listed in the zone and all the appropriate regulations and requirements in this Bylaw, and any applicable housing agreement, or heritage revitalization agreement.

[37] Section 1.6.7 of the *Zoning Bylaw* states:

Uses not permitted in the Bylaw are prohibited.

[38] Section 2.3.6 of the *Zoning Bylaw* defines "Campground" as follows:

Campground: land which has been planned, improved, or occupied for the seasonal short term use of tents, and camper vehicles, and is not used as year round storage or accommodation for residential use for a period exceeding 240 days in a calendar year. Typical uses include tourist trailer parks, campsites, and tenting grounds. This use may include accessory facilities for eating and assembly purposes, washrooms and bathing facilities, entrance kiosk, minor indoor and outdoor recreation, spectator and patron participation entertainment, and convenience retail with a maximum gross floor area of 100 m<sup>2</sup>.

[39] Section 274(1) of the *Community Charter* provides a municipality the authority to grant a statutory injunction to restrain the conduct of a bylaw breach stating:

274(1) A municipality may, by a proceeding brought in Supreme Court, enforce, or prevent or restrain the contravention of,

(a) a bylaw or resolution of the council under this Act or any other Act ...

[40] In *City of Burnaby v. Oh*, 2011 BCCA 222 at para. 41, Justice Rowles held that:

[41] Once the municipality applying for the injunction has demonstrated that there has been a breach of a bylaw, the court has limited discretion to deny a statutory injunction to enforce a public right: *Maple Ridge (District) v.*

*Thornhill Aggregates Ltd.*(1998), 1998 CanLII 6446 (BCCA), 54 B.C.L.R. (3d) 155, 162 D.L.R. (4<sup>th</sup>) 203 (C.A.) at para. 9:

Where an injunction is sought to enforce a public right, the courts will be reluctant to refuse it on discretionary grounds. To the extent that the appellants may suffer hardship from the imposition and enforcement of an injunction, that will not outweigh the public interest in having the law obeyed.

[41] The City alleges that the occupants of the encampments are using the encampments as “Campgrounds”, a use not permitted under the *Zoning Bylaw* parts P1 or C1. The City also contends that the respondents will not leave the properties even though there is shelter housing currently available in the City.

[42] The respondents concede that they are using the encampments without permits, but they argue that whether this amounts to a clear breach of the City's Bylaws is a question of law and is a determination for the Court.

### **The Admissible Evidence**

[43] The parties agreed that they could not rely upon hearsay evidence on the City's application for a final order. The City's evidence to support the allegations in the paragraphs 23-26 is thus scant at best.

### **Harm to Residents and Businesses Neighbouring the Encampments**

[44] The City asserts that unsanitary conditions, garbage, and debris are irreparable harms, but the respondents say that they are not.

[45] The City relied heavily on the evidence of Ms. Charlotte Peters, Manager of Bylaw Services for the City of Prince George. She affirmed in her affidavit of August 26, 2021 that she coordinates compliance and enforcement issued on the properties with the RCMP, bylaw services, and outside agencies, and she expressed her view that the encampments and the vicinity around them continue to deteriorate. Due to the hearsay nature of most of the contents of her affidavit, I am unable to rely on much of her evidence.

[46] I am prepared to infer that her evidence regarding the rapid deterioration of the Lower Patricia encampment is based on her own observations. Her evidence

and observations state that a waste management company donated a large dumpster, but the occupants in the encampment are largely not using it; therefore, garbage is piling up outside of the tents and is starting to attract rats. Ms. Peters further asserted that while a 'port-a-potty' was donated to the encampment, people appear to not always be using it, and human feces are piled along the tree line at Lower Patricia.

[47] I am also prepared to rely on her assertions that large pieces of the chain link fence that ran along the tree line have been removed and are being used to wrap and secure structures in the encampment. In addition, she asserts that the water treatment building next to Lower Patricia has had to erect a fence to protect the building and equipment.

### **Criminal Activity**

[48] Ms. Peters' evidence that she has reached her conclusions based upon what she describes as numerous calls to police, fire, bylaw, and other city services is hearsay, as is her view that criminal behaviour has increased including gunshots, theft, vandalism, assaults, bear spray incidents, and other nuisance behaviours that have negatively impacted the neighbourhood and businesses.

[49] Ms. Peters also asserts that people are going through the camp to identify stolen property, as many bikes and multiple barbeques down there are believed to be stolen. This assertion is not explained, so I infer that it must be hearsay.

[50] Constable Amritpal Dhadwal has been a part of the City's Downtown Safety Unit for over two years. The City relied on parts of his affidavit affirmed August 25, 2021, where he deposed, in part, that:

21. At 2021-07-11 at 21:16 hours Prince George RCMP received a report of a domestic in progress at Lower Patricia. Tent Cities occupant Darlene LAROSE called to report that Daniel ANDREW was standing outside her tent refusing to leave when asked. LAROSE claimed there is a no-contact order in place between them and that he is breaching by being there. Members attended and located LAROSE who stated that a verbal dispute had transpired between her and ANDREW. LAROSE stated she was scared of ANDREW as he had assaulted her

in the past. Again, LAROSE confirmed no violence transpired but claimed ANDREW had stated he would get other people after her. Police inquiries conducted but there were no no-contact conditions in place between the two. There is however, two endorsed warrants out of PG, one of which was a current k-file... against ANDREW by LAROSE (PG File: 21-15395) and the other for theft (21-8830). Members conducted patrols, located ANDREW and arrested him for his endorsed warrants. As it appears ANDREW had not been arrested on his K-File warrant and was transported to cells and held for court.

22. 2021-08-10 1235hrs Prince George RCMP attended at Lower Patricia to assist Cpl CHAPMAN with a traffic stop. Police located ROBERT BASIL. Inside the vehicle, and it was determined that BASIL had an endorsed warrant for drive while prohibited (XREF PG 21-12199). BASIL a/c/w for same and search incidental to arrest found a collapsible metal baton, 0.10g of crack cocaine, and numerous hydromorphone pills which were not prescribed to BASIL. BASIL signed CST. Mahaffey's notebook to relinquish the baton and the drugs were seized for destruction.

...

24. On 2021-08-05 at 1004 hours Constable Kaplan was dispatched to Steel Grid Construction located near Lower Patricia, regarding a mischief/vandalism incident. A complainant reported over the past few days their security camera was smashed and had the wires yanked out. As well someone had written in blue paint "this is not yours". On attendance Constable Kaplan observed the camera damage and the writing on the wall. There was no CCTV of the incident, and damage was under \$5000. The company had been having issues with occupants at Lower Patricia attending their property to use their power. The complainant wanted to turn off the electricity but was concerned over retaliation. Constable Kaplan recommended that the complainant contact the City due to the problems arising from Tent Cities including garbage, human waste, and needle build up which was accumulating along their property fence line.

### **Drug Use**

[51] In her affidavit of August 26, 2021 at para. 20, Ms. Peters deposed that "[t]he downtown population commonly suffers from substance dependency and mental health issues".

### **The Risk of Fire**

[52] Ms. Peters' assertion that she has "been apprised of an increased amount of fires emanating inside the Tent Cities" is hearsay. However, I will rely on her assertion that she has observed an increased number of fire hazards inside the

Lower Patricia encampment, and I accept that those fires are a public safety hazard due to the encampment being right next to a forested area.

[53] Steve Feeney is the Chief Fire Prevention Officer to Prince George Fire Rescue. In his affidavit affirmed August 25, 2021, he deposed in part that:

1. I have attended the Tent Cities in the City of Prince George referred to commonly as George St. and Lower Patricia. George St. is minimally occupied as most occupants moved earlier this summer to the larger encampment at Lower Patricia.
2. I have attended at Lower Patricia between June through to August 24, 2021 on multiple occasions and have made the following observations:
  - a. Lower Patricia has multiple tents and occupants under one large tarp. Fires and propane heat are used in these areas under tarps with very little consideration for fire safety. This is a clear risk to the occupants.
  - b. These large tarped areas have fortified their boundaries with chain-link fencing which occupants removed from a nearby fence. This makes accessing and entering the tents difficult for first responders. This is a public safety risk in cases of emergency, particularly drug overdoses.
  - c. The occupants are using pallets and other wooden material to build walls and barricades around their tents. These pallets are unfinished wood products and are combustible with little exposure to fire or heat. Many of the tents are in close proximity to these pallets.
  - d. There has been evidence of burning of outdoor fires. This increases the fire risk as Lower Patricia is adjacent to a forested area.

[54] The respondents accept that Ms. Melanie Joseph, an occupant of the Lower Patricia encampment was the subject of the recent fire, but they contend that she was alerted and assisted by her neighbors in the encampment, who may have saved her life.

## **Discussion**

### **Harm to Residents and Businesses Neighbouring the Encampments**

[55] I find that the following statements made by Ms. Peters are hearsay:

- a) Some of the occupants in the Tent Cities are no longer happy with the food and services that are being provided and have complained;
- b) The demographic at the Tent Cities has shifted from genuine homeless occupants to a criminal element, and some occupants have left the camp due to concerns over their personal safety;
- c) Northern Health workers are reassessing whether they will continue to attend the Tent City for wound care clinics due to reports of early morning gunshots; or
- d) Since May 10<sup>th</sup>, 177 Calls For Service (CFS) have been made, which require police, bylaw, and City services at the Lower Patricia to address issues including needles, human waste, and trespassing.

[56] According to Ms. Peters' evidence, "Disturbance Callouts", which apparently include domestic violence, gun shots, and bear spray incidents, occupy significant resources and involve multiple member attendance. I will not rely upon this evidence as it is hearsay. Nor will I rely upon her comments related to stolen property and vandalism directly impacting businesses or residents of Prince George.

[57] Ms. Peters has failed to distinguish between events that she has witnessed and what she has learned from the work of others. Therefore, I am also not prepared to rely on Ms. Peters' evidence that she has witnessed or conducted file reviews relating to the following contraventions at the encampments:

- 3 overdoses
- 6 Fire Hazards
- 8 Disturbances
- 4 Property Issues

**Criminal Activity**

[58] The difficulty with the City's reliance on Cst. Dhadwal's affidavit is the hearsay nature of the parts it relies upon and the lack of proof that the claimed incidents were committed by occupants of the encampments. While I am prepared to accept that



the complaints described were made, I am not prepared to accept the complaints as proof that the accusations in the affidavit were performed by occupants of the encampments.

[59] There is no admissible evidence that crime has increased because of the encampments, or that homeless individuals sheltering together cause an increase in crime, or that displacing the residents of the encampments will lower incidences of crime.

[60] Furthermore, a neighbour of the encampment, April Ottesen, deposed that she has seen very little of the crime that the City asserts. She says that she has “no fear of harm of any kind from the homeless congregating at Moccasin Flats” and has not observed an increase of crime in downtown Prince George: para. 8 of her affidavit made on September 21, 2021.

### **Drug Use**

[61] I cannot rely upon Ms. Peters’ view that “[t]he downtown population commonly suffers from substance dependency and mental health issues”.

[62] Ms. Peters did not explain the basis for her assertion that most of the encampment population comprises of the “downtown population” that “commonly suffers from substance dependency and mental health issues”.

### **The Risk of Fire**

[63] The respondents maintain that risk of fire is a concern for anyone who is trying to stay warm while sheltering outside, particularly in cold climates such as Prince George. They contend that there is no evidence before me to support a conclusion that the fires and the fire risks in the encampment are any greater than those in other parts of the City. They also argue that any risk of fires will likely remain at the encampments or elsewhere if people are sheltering outside. The respondents maintain that displacing people will not lessen the risk of fire.

[64] I am prepared to take judicial notice that Prince George can be very cold in the fall and winter, and that people with nowhere warm to stay must find ways of keeping warm to stay alive. I accept that if the occupants of the encampments are enjoined from using those encampments, they will present the same risk of fires, wherever they move to, unless they move to alternate shelters.

**Alternate Available Shelter Space**

[65] The City asserts that there are approximately 81 permanent emergency shelter beds in Prince George. Its assertion that there is enough housing available for the respondents makes no consideration of barriers to access to housing.

[66] In her affidavit of August 26, 2021, Ms. Peters deposed in part that:

17. As part of the approach to ensure shelter availability, I canvassed with the local representative of BC Housing in Prince George regarding the available shelter between... July 20, 2021 through to August 11, 2021. Attached to this my affidavit as Exhibit "J" is a copy of an excel spreadsheet which I prepared outlining three shelters with the average vacancies below:
  - ASAP at Bridge Moran Place
    - o Vacancy Rate: 76.44% (30 spaces total)
  - AWC Women's Shelter
    - o Vacancy Rate: 47.33% (30 spaces total)
  - Ketso Yoh Centre Men's Hostel
    - o Vacancy Rate: 73.97% (21 spaces total)
18. I have checked with shelters and occupants that a number of occupants at the Tent Cities do not want to be inside during the warm summer months or comply with shelter rules. In addition there are restrictions on alcohol and drug use and other rules that occupants do not wish to comply with or have been kicked out of some shelters for breaching protocols.
- ...
31. In addition to the shelter already available, I spoke to that same representative from BC Housing who is prepared to provide an additional 30 shelter beds. It is also my understanding that BC Housing is in the process of obtaining approximately 44 units of supportive housing from a nearby motel. It is however my understanding that... such housing may be available with 2-3 weeks notice.

[67] The respondents contend that the housing options listed by Ms. Peters and set out in the Notice of Trespass are the extent of the City's efforts to assist the homeless to find housing alternate to the encampments. They assert that many occupants of the encampments have sought to access one or more of the shelter options in the City but have been unable to do so because the facility was full or the resident did not meet the eligibility criteria. They say that many of the most challenged of the homeless who have the greatest need for more comprehensive wrap around services that include consistent, affordable, low barrier housing have been banned from the emergency shelters because of their substance use or mental health conditions.

[68] I accept the submission of the respondents that substance use disorders, lack of identification, the inability to meet application requirements, and the lack of bank accounts or records have prevented at least some of the homeless to secure alternate housing in downtown Prince George.

[69] The respondents asserted that many of the people living in the encampments are struggling with mental illness, trauma, physical disabilities, substance use disorders, and the impacts of first-hand and intergenerational trauma from residential schools. As provided in the September 22, 2021 affidavit of Terry Teegee, a disproportionate number of homeless people in the City are Indigenous. Furthermore, the September 21, 2021 affidavit evidence of Mary MacDonald explained the significant effects of discrimination, racism, and historical trauma on the health and social wellbeing of Indigenous peoples.

[70] Indeed, "courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide...": *R v. Ipeelee*, 2012 SCC 113 at para. 60.

[71] Chief Justice Finch declared the need for courts and the broader existing legal landscape to be more receptive to Indigenous realities. In "The Duty to Learn:

Taking Account of Indigenous Legal Orders in Practice” (2012) Indigenous Legal Orders and the Common Law at para. 42, Finch C.J.B.C. explained that this involves “[taking] account of context, including the context of the colonial enterprise and the injustice it has so often created... [and] acknowledgement of real past and present wrongs”. I, thus, acknowledge and take judicial notice of the impacts of trauma from residential schools on the Indigenous homeless population of the City and occupants of the encampments.

[72] The respondents contend that because of the lack of appropriate, accessible shelter, or indeed any shelter at all, many people in the City end up “sleeping rough” on the streets or in parks. They contend that the occupants of the encampments are not trying to disrupt or displace anyone but are simply trying to survive. They say they need 24-hour a day shelter because BC Housing has not been able to find housing for all of the homeless, and they have worked to not interfere with other uses of the land. They assert that the encampments have specifically avoided any property that is being actively used by other City residents. They contend that they cannot comply with the injunction sought by the City without being in breach of the City’s *Safe Streets Bylaw*.

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

[74] It is apparent that very few of the emergency shelter beds are low barrier, and it appears that many of the homeless persons in the City are ineligible to stay in at least some of the shelters. While the City contends that the availability of 81 shelter beds in the City is sufficient to house the encampment occupants, I am not satisfied that these shelter spaces are in fact accessible to all of the occupants of the encampments.

[75] Affidavits from Mr. Santos and Ms. Joseph show that they have either tried to be housed in those locations, and have been refused, or could not meet the eligibility

criteria. Ms. Melanie Mae Joseph is an occupant at the Lower Patricia encampment. In her affidavit sworn September 12, 2021, she deposed in part that:

7. I was diagnosed with Lupus about 10 years ago. It's been a tough 10 years. I lost my dad, my husband of 13 years; the father of my children. And I have lost three cousins and many friends to drug overdoses.
- ...
28. We don't have a lot of rules, but I have seen residents interrupt couples fighting and the violent have been told to leave from Lower Patricia. Other people that have come to Lower Patricia have also been asked to leave if they do not follow the guidelines of Lower Patricia.
29. I and other Residents of Lower Patricia take steps to ensure Lower Patricia Residences and our community are safe, as clean as possible and discourage crime. [The] Guidelines of Conduct are self-imposed.  
Some of the guidelines are:  
No Scum bagging (Stealing)  
No violence  
No Fights  
Respect each other's space
30. We know no one wants us here and it is not our first choice either. And if not here, where?
31. If I am ever evicted from Lower Patricia, I will have no where to go. I can't afford or qualify to get into alternate housing. I will continue my homelessness somewhere else. It is very upsetting for me to think about this. I literally have no options. I don't want to live like this.
32. I believe that the following person is our community leader, Jim, [who] is the self-appointed Elder. Jim keeps us civil and tries to help us get along with one another.

[76] Mr. Jimmy Santos is an occupant of the Lower Patricia encampment. In his affidavit sworn September 21, 2021, he deposed in part that:

16. In my experience, being homeless at Lower Patricia is better than being homeless anywhere else in Prince George because the by law officers will confiscate, destroy and get rid of my personal belongings in 24 hours or less, I had a tent, stove, a [heater] and many things that cost me about \$3000, I get shuffled around being told not to be where I am. I would not have anywhere else to go.
17. In my experience, I feel safer at Lower Patricia because, the bylaw officers will not dispose of my personal belongings, I feel safer being

in a group, we get along, we have a community. Just like the pioneers used to have. I like to keep our space clean.

20. If I am evicted from Lower Patricia, I have no idea what I will do and I have nowhere to go. Especially now with the new Safe Street bylaw. I will not be able to access any services especially in the downtown core. I feel this will have a catastrophic impact on me.

[77] Their evidence is supported by that of Ms. Katherine Mueller who deposed in her affidavit sworn September 22, 2021, in part, that:

4. The underlying theme in all the work I have conducted between late 2019 and my present role at the [Indigenous Justice Center], is to try and help find housing and other essential services for the homeless or those who are precariously sheltered. Simply put, it was my role to seek out suitable, affordable housing.
5. In order to assist my clients, I personally helped them to fill out many hundreds of applications. I did this for people who came to me, and I also sought out others, who appeared to need help, to find housing and offered them help.
6. I do not want to sound overly dramatic, but the lack of response was notable. Not once did ANY organization get back to me, including BC Housing. This is an important point because [I] usually listed my own name and contact information for contact purposes because the homeless and precariously housed people rarely have reliable phone service, they have no homes for mail and no computers to receive email. I was prepared to go find each of them to help secure housing. It never went that far because of the lack of response to the applications from the landlords or from BC Housing.
7. I recently reached out to the Aboriginal Housing Society of Prince George, to see what their capacity and available housing options were. I was advised by Hawa, that their waitlist is presently 3 years long. Hawa also confirmed that they are not set up to provide emergency or assisted living, housing accommodations. Exhibit A is a copy of flyer provided to me. This flyer sets out some of the tremendous work being done and the fact that most of the projects are geared to families and seniors and not low-barrier housing for the presently homeless. The flyer sets out how to apply and the requirements for consideration. Those requirements include: 3 recent paystubs from all sources, 3 landlord references and contract information for the past 5 years, and the most recent 90-day bank statements.
8. Most of the homeless clients I work with have no bank accounts and lack identification. Some are struggling with addiction disorders and mental health and medical health challenges. Finding them stable, appropriate and supportive housing requires special facilities. There is a dire shortage of available residences for these folks. The homeless I meet want housing, that's why they have me fill out applications for them. They want to sleep in the warm and be able to be safe or walk

away from their things without fearing they will be gone when they wake up or return.

10. Shelters are another problem for the people I serve. There are not enough shelter spaces for all the homeless I work with. The shelters do not have sufficient room for the numbers of homeless and they have barriers, lock-out times. If you don't make it there you don't get inside. There are also abstinence rules that make it impossible to house those with active addiction disorders. I have been told by several of my clients that they do not feel safe at shelters. They describe having been victimized by thefts and assaults. Couples are required to separate. The issues of thefts and fear of violence came from females with the initials D.J., C.A., M.P., J.G., and males with the initials J.S., T.B., G.C., and G.M. Their full names are confidential. I believe they were truthful when expressing their fears and concerns.
11. I personally attend the Tent Cities at Moccasin Flats (Lower Patricia) and The Splits ("George Street"). I observe communities in crisis but clinging to whatever dignity they can muster. They have portable washroom facilities at Moccasin Flats. I cannot imagine how difficult it is for a person to have no place to relieve themselves, particularly in the time of Covid, or after all the doors are closed downtown. I understand the disgust at witnessing the human excrement. I see it too. But when I see it I see the indignity and anguish that must be felt by the people who had absolutely no other option because they are literally locked out everywhere else.
12. I have observed the effects of extreme cold on the homeless. I have seen the frostbitten hands and sometimes the toes on their feet. Some have had frostbite visible on their noses and faces too. People who are homeless suffer immensely living with housing insecurity. It is not their choice it is their present circumstance.

[78] In her affidavit sworn September 21, 2021, Ms. Mary MacDonald, a registered Social Worker deposed in part that:

13. During the period of COVID-19 measures, many social support agencies have had their programs and service delivery curbed and in addition, many public places with facilities that would have been accessible to people in need of physical/mental health and/or addictions support became less accessible than previously.
14. The focus of my work over the years has been to help people meet their basic needs, that is shelter, food and water and fundamental sense of safety, which is in my experience, the basis needed for people to be able to work on improving their overall health and well being.
- ...
17. On May 19, 2021, I witnessed City of Prince George bylaw officers at the vacant lot on George Street across from the Prince George courthouse, taking apart the tent shelters of certain persons who

happened to be sheltering there at that time. I witnessed a couple of the bylaw officers throwing these people's possessions into the nearby dumpster and a couple of the people expressed to me they had nowhere to go.

### **The Right to Shelter**

[79] The City contends that it represents the public interest, which by definition addresses a broad variety of competing needs and priorities. It maintains that “[t]he purpose of s. 274 of the *Community Charter* is to give a municipality broad powers to approach the Court for the purposes of ensuring that its bylaws are not flouted”: *Denman Island Local Trust Committee v. Ellis*, 2005 BCSC 1238 at para. 78.

[80] The City asserts that the right to camp temporarily, and only overnight, is not a freestanding right to erect shelter. The City also asserts that the occupants have used the properties as an encampment for permanent occupation. The occupants have placed tents, stoves, structures, and various personal chattels, and they do not remove their tents or vacate their encampment each day.

[81] The City argues that once it has demonstrated a contravention of its bylaws, the Court's jurisdiction to refuse an injunction is exceptionally narrow and limited to “rare cases with exceptional circumstances”: *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 at paras. 37-39; *Langley (Township of) v. Wood*, 1999 BCCA 260 at para. 17; *Delta (Corporation) v. WeeMedical Dispensary Society*, 2016 BCSC 1566 at para. 17; *Burnaby (City) v. Oh*, 2011 BCCA 222; and *Vancouver (City) v. O'Flynn-Magee*, 2011 BCSC 1647 [*O'Flynn-Magee*].

[82] Other than *O'Flynn-Magee*, the authorities relied upon by the City are all cases where an owner's use of their own property was not permitted under the relevant bylaws of the municipalities. I find that they are of limited assistance where homeless individuals are occupying public property.

[83] The decision of Associate Chief Justice MacKenzie in *O'Flynn-Magee* does deal with an application for an injunction to enforce compliance with the *City Land Regulation Bylaw*. However, that case must be distinguished from the case before me as the occupants camped outside of the Art Gallery in *O'Flynn-Magee* were part



of the so-called Occupy Vancouver protest movement, which advocated economic and political change; they were not homeless individuals without optional spaces to shelter, as is the case here.

[84] Circumstances more comparable to those before me were considered by Justice Ross in *Victoria (City) v. Adams*, 2008 BCSC 1363. There were more than 1,000 homeless people living in the City. Through impugned bylaws, the City prohibited the homeless from erecting any form of overhead protection, even on a temporary basis, but did not prohibit the homeless from sleeping in public spaces. The City had 104 shelter beds, which could be expanded to 326 in extreme conditions. Accordingly, hundreds of homeless had no option but to sleep in public spaces of the City.

[85] Justice Ross declared the bylaws unconstitutional and to be of no force and effect, holding that the effect of the complete prohibition was to impose upon homeless persons significant and potentially severe additional health risks, and that sleep and shelter were necessary preconditions to any kind of security, liberty, or human flourishing, and that the prohibition contained in the bylaws and operational policy constituted an interference with the life, liberty, and security of the homeless people.

[86] The respondents contend that a constitutional right exists for the homeless to shelter overnight where inadequate shelter spaces are available based upon the decision of Justice Ross in *Adams* and my own decision in *Abbotsford v. Shantz*, 2015 BCSC 1909 [*Shantz*]. The respondents contend that the City has ignored this right by enacting bylaws that are directly in breach of their constitutionally protected rights.

[87] The City argues that the *Adams* case is restricted to allowing only temporary overnight shelters where alternatives are not available.

[88] In *Shantz*, at para. 174, I found that there was no *Charter* right to housing, a finding that I reiterated in *British Columbia v. Adamson*, 2016 BCSC 584 at para. 50 [*Adamson*] and 2016 BCSC 1245 at para. 10 [*Adamson 2*].

[89] However, in *Shantz*, at paras. 124-132, I commented on *Adams*, as follows:

124 Given the similarities between the proceedings before me and the proceedings in *Adams* an understanding of that case is useful for this proceeding. The findings of fact made at trial by Ross J. were that there were more people living homeless in Victoria than there were available shelter spaces, but that the homeless people were nonetheless prohibited by the City's *Parks Regulation Bylaw* and the *Street and Traffic Bylaw* from erecting temporary shelter on public property. Ross J., found that by preventing the claimants from erecting temporary overnight shelter in public spaces, Victoria had violated their s. 7 rights.

125 Ross J. recognized the limited scope of the remedy sought by the homeless in at paras. 127 - 128 of her reasons:

[127] ... The litigation had its origins in the Tent City erected in Cridge Park. It is also the case that many of the Defendants deposed that they wanted to be able to set up and maintain a camp in a park and that for a variety of reasons they preferred the camp in Cridge Park to accommodation in shelters. However, in this summary trial application, the relief sought by the Defendants is not what the AGBC and the City contend is the right to camp on public property. In other words, the issue of the right to camp in public spaces in the sense of a right to set up a semi-permanent camp, like the one established in Cridge Park, is not before the Court.

[128] Rather, the issue is the prohibition on erecting even a temporary shelter taken down each morning in the form of a tent, tarp or cardboard box that is manifested in the current Bylaws and operational policy of the City. In my view, the issue before the Court on this summary trial application is not an assertion by the Defendants of a right to property as contended by the AGBC and the City.

[Emphasis added.]

126 At para. 191, Ross. J. indicated that questions as to why people do not use shelters were questions for another day:

There are not enough shelter spaces available to accommodate all of the City's homeless; some people will be sleeping outside. Those people need to be able to create some shelter. If there were sufficient spaces in shelters for the City's homeless, and the homeless chose not to utilize them, the case would be different and more difficult. The court would then have to examine the reasons why homeless people chose not to use those shelters. If the shelters were truly unsafe, it might be that it would still be an infringement of s. 7

to require the homeless to attend at shelters or sleep outside without their own shelter. However, if the shelters were safe alternatives, it may not be a breach of s. 7 for the homeless to be required to make that choice. That, however, is not the case here, where there is a significant shortfall of shelter spaces.

127 Ross J. made the following declarations at para. 239:

(a) Sections 13(1) and (2), 14(1) and (2), and 16(1) of the Parks Regulation Bylaw No. 07-059 and ss. 73(1) and 74(1) of the Streets and Traffic Bylaw No. 92-84 violate s. 7 of the Canadian Charter of Rights and Freedoms in that they deprive homeless people of life, liberty and security of the person in a manner not in accordance with the principles of fundamental justice, and are not saved by s. 1 of the Charter.

(b) Sections 13(1) and (2), 14(1) and (2), and 16(1) of the Parks Regulation Bylaw No. 07-059 and ss. 73(1) and 74(1) of the Streets and Traffic Bylaw No. 92-84 are of no force and effect insofar and only insofar as they apply to prevent homeless people from erecting temporary shelter.

128 On appeal, *Adams BCCA*, the Court of Appeal described the issue in the following terms at para. 1:

This appeal addresses a narrow issue: when homeless people are not prohibited from sleeping in public parks, and the number of homeless people exceeds the number of available shelter beds, does a bylaw that prohibits homeless people from erecting any form of temporary overhead shelter at night - including tents, tarps attached to trees, boxes or other structure - violate their constitutional rights to life, liberty and security of the person under s. 7 of the *Canadian Charter of Rights and Freedoms*?

129 At para. 28, the Court of Appeal found that the trial judgment was based on five critical findings of fact:

(a) There are at present more than 1,000 homeless people living in the City.

(b) The City has at present 141 shelter beds, expanding to 326 in extreme conditions. Thus hundreds of the homeless have no option but to sleep outside in the public spaces of the City.

(c) The Bylaws do not prohibit sleeping in public spaces. They do prohibit taking up a temporary abode. In practical terms this means that the City prohibits the homeless from erecting any form of overhead protection including, for example, a tent, a tarp strung up to create a shelter or a cardboard box, even on a temporary basis.

(d) The expert evidence establishes that exposure to the elements without adequate protection is associated with a number of significant risks to health including the risk of hypothermia, a potentially fatal condition.

(e) The expert evidence also establishes that some form of overhead protection is part of what is necessary for adequate protection from the elements.

130 At para. 74, the Court of Appeal held that:

Thus, the decision did not grant the homeless a freestanding constitutional right to erect shelter in public parks. The finding of unconstitutionality is expressly linked to the factual finding that the number of homeless people exceeds the number of available shelter beds. If there were sufficient shelter spaces to accommodate the homeless population in Victoria, a blanket prohibition on the erection of overhead protection in public parks might be constitutional. That question is yet to be determined.

131 The Court of Appeal upheld the finding that there was a violation of the claimants' s. 7 rights, however, it varied Ross J.'s declaration to refer only to the *Parks Regulation Bylaw* and to say that homeless people have the right to cover themselves with temporary overhead shelter while sleeping overnight in parks and only when there are not enough shelter spaces available to accommodate all of Victoria's homeless.

132 *Adams BCSC* and *Adams BCCA* thus established that in circumstances where there is no practicable shelter alternative, homeless people are exposed to a risk of serious harm; including death and that the risk of this harm is an interference with a homeless person's rights to life, liberty and security of the person.

[90] In *Johnston v. Victoria (City)*, 2011 BCCA 400 [*Johnston*], the Court of Appeal confirmed that *Adams* did not bestow any rights to property and stated at para. 12:

As to the scope of the trial decision in *Adams*, this Court said:

[74] Thus, the decision did not grant the homeless a freestanding constitutional right to erect shelter in public parks. The finding of unconstitutionality is expressly linked to the factual finding that the number of homeless people exceeds the number of available shelter beds. If there were sufficient shelter spaces to accommodate the homeless population in Victoria, a blanket prohibition on the erection of overhead protection in public parks might be constitutional. That question is yet to be determined.

[Emphasis in original.]

[91] Both *Adams* and *Shantz* dealt with homeless residents in southern British Columbia. The cold is a more severe threat to life for the homeless in Prince George than in Victoria or Abbotsford.

[92] Services, such as meals, a portable washroom with maintenance, and a dumpster, have been provided to occupants of the encampments by local agencies

and some unnamed benefactors. Fresh water has also been made available to the residents of the Lower Patricia encampment.

[93] The respondents contend that the occupants of the encampments experience many significant benefits as a result of being able to stay in one place. They argue that 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.

[94] They argue that occupants of the encampments are less anxious, less sleep deprived, and have more time, so they are better able to address their health needs to rest and to recover from trauma. The respondents contend that people who are homeless often experience isolation and social exclusion as a result of their living situation. They argue that safety and belonging are fundamental human needs, and that access to both private and communal spaces is important for personal security and creating a sense of community to overcome social exclusion and isolation.

[95] While the advantages in the preceding three paragraphs are most desirable, I am unable to accept that such considerations alone can justify the occupation of property belonging to another.

[96] I do find, however, that there is insufficient alternate housing for the occupants of the George Street and Lower Patricia encampments. As I mentioned earlier, I find that the alternate housing options proposed by the City are not sufficiently low barrier and accessible to all of the occupants of the encampments.

### **Trespass**

[97] The City asserts that at common law, a landholder is entitled to possession of his land, and when a landowner seeks an injunction in trespass, all that is required is that the landowner show entitlement to the land. After that, the injunction "should be granted unless there are exceptional circumstances".

[98] The respondents contend that this Court has no jurisdiction to order an injunction on the basis of a contravention of the *Trespass Act* because 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).

[99] In addition, they argue that the City has not established that there has been an offence under the *Trespass Act*.

[100] For an offence to be committed, under s. 2(3)(c) of the *Trespass Act*, the person must "not leave the premises or stop the activity, as applicable, as soon as practicable after receiving the direction". The respondents contend that as there is no adequate shelter available, it is not practicable for them to leave the encampments, and that to require them to do so is a violation of their rights under s. 7 of the *Charter*.

[101] The respondents further submit that to fairly meet allegations of trespass, they must be entitled to a trial. They argue that the statutory and common law defences to trespass cannot be determined on affidavit evidence, and they contend that it is inappropriate for the City to seek a final order in a summary way in this case.

[102] I find that it is unnecessary for me to resolve the alternate submissions with respect to trespass of the respondents who appeared before me, as I find that the remedies sought by the City for what it contends to be trespass, cannot be advanced on this petition.

### **Remedies Other than Injunctive Relief**

[103] An injunction is an extraordinary remedy and should only be granted when there are no other alternatives.

[104] The respondents contend that any public spaces that are not covered by the *Safe Streets Bylaw* are covered by the *Parks and Open Space Bylaw*, which

prevents sheltering by homeless residents anywhere in the City that is a park or public open space, leaving them with no place in the City that is zoned to permit homeless residents to shelter outside, either overnight or during the day. As a result, the respondents have no lawful way to comply with the injunction sought by the City.

[105] In *Vancouver (City) v. Maurice*, 2002 BCSC 1421 at para. 20, Justice Lowry provided a list of recognized exceptional circumstances:

[20] ...Exceptional circumstances might be found in the instances where there was a right that pre-existed the enactment contravened, where there is a clear and unequivocal expression that the unlawful conduct will not continue, where there is such uncertainty that it can be said that the breach is not being flouted, or where the events do not give rise to the mischief the enactment was intended to preclude.

[106] The respondents assert that their occupation at the encampments qualifies as “events that do not give rise to the mischief the enactment was intended to preclude”, and therefore they fall under exceptional circumstances. The respondents argue that homelessness is not a harm intended to be prevented by zoning in this case, and they argue that this case is not in fact about enforcing zoning. They submit that the City is advancing a social policy agenda in a matter that will greatly harm the respondents. The injunction sought does not address the mischief the enactment was intended to preclude; instead, it is being used to force the homeless out of the City and as a weapon against the most vulnerable citizens.

[107] In this case, the respondents assert that the City is asking for an injunction before using existing resources to address the problem.

[108] They say, for example, that the City could provide fire extinguishers, and develop a fire plan, including exit routes and egress, and work with them to remove fire hazards, and educate them about dangerous conditions and combustibles as described in *Maple Ridge (City) v. Scott*, 2019 BCSC 157.

[109] The respondents argue that as with other categories outlined above, there are simple, cost-effective ways of addressing the alleged unsanitary conditions relied upon by the City, such as providing regularly serviced garbage disposal services and

outhouses for the occupants. Occupants have deposed to being committed to ensuring cleanliness and sanitary conditions in the encampments; they just need resources to do so.

[110] They contend that the City could work with respondents and with BC Housing to move the occupants to provide not only enough housing for everyone, but also safe, accessible, and appropriate housing for all.

[111] Finally, they contend that the police could enforce the *Criminal Code* where offences are committed.

[112] I am not persuaded that the City is obliged to go to the lengths proposed by the respondents, as outlined in the preceding paragraphs to preserve the encampments on City property. The City must allocate scarce resources to meet the needs of all of its residents and prioritize its expenditures with that goal in mind.

## **Conclusion**

### **The Relief sought by the City**

[113] I agree with the respondents that there must be a reason for seeking a declaration, and that such relief should only be granted in limited circumstances.

[114] The City's application for a declaration that the respondents have committed trespass at the George Street and Lower Patricia encampments is not properly before me, and is thus dismissed, without prejudice to its ability to seek such a declaration by way of notice of civil claim.

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

[116] The City's application for a declaration that the respondents have contravened s. 2 of the *Trespass Act*, by failing or refusing to comply with a notice to



vacate is dismissed, for the same reason that their declaration that the respondents have committed trespass at the George Street and Lower Patricia encampments is dismissed.

[117] Given the migration of most of the occupants of the George Street encampment to the encampment at Lower Patricia, I find that it is unnecessary for the George Street encampment to continue. Its residents can move to the Lower Patricia encampment. In the result, the City's application for a mandatory and permanent injunction order against the respondents, and all those having knowledge of the order Court:

- a. to remove all structures, tents, shelters, shopping carts, stoves, rubbish, objects, personal chattels, and other things on the George Street property;
- b. to vacate the George Street property;
- c. not re-enter the George Street property; and
- d. not erect or bring structures, tents, shelters, shopping carts, stoves, rubbish, objects, personal chattels, and other things, at other than the Lower Patricia encampment.

is granted to take effect seven days from the date of these reasons for judgment.

[118] As there is no admissible evidence of prohibited weapons or drugs at either of the two encampments, I decline to order the forfeiture of such weapons and drugs to the police.

[119] I will grant the City's application for an order authorizing its employees and agents to:

- a. dismantle and remove from the properties all structures, tents, shelters, shopping carts, stoves, rubbish, objects, personal chattels, and other things remaining on the properties; and
- b. sell, destroy, or otherwise dispose of, those items removed from the properties, without recourse to the respondents.

if the occupants of the George Street encampment have not vacated the George Street encampment, and moved their possession therefrom within the seven days referred to in para. 117 above.

### **Police Enforcement Clause**

[120] Counsel for the City advised me that it contracts with the RCMP for its policing services, and that the RCMP may “decline” to act upon a court order in the absence of an enforcement clause in such an order. Counsel for the City further advised that the RCMP “will require an enforcement clause if occupants are not willing to vacate the Properties with a Court order”.

[121] This proposition is unacceptable. Members of the RCMP are obliged to uphold the Rule of Law. One of the oaths that they take pursuant to the *Royal Canadian Mounted Police Act*, RSC, 1985, c. R-10, when they are sworn in, states that they will “faithfully, diligently and impartially execute and preform the duties required of you as a member of the Royal Canadian Mounted Police, and will well and truly obey and preform all lawful orders and instructions that you receive, without fear, favor or affection of or towards any person so help you god”.

[122] As I said in *Pagedped v. Singh*, 2020 BCSC 236, at paras. 29-31:

[29] While police enforcement orders are sometimes granted in the civil and family law context, some judges have taken the view that such enforcement orders are unnecessary because the police already have a duty to uphold orders. Mr. Justice Vickers, in dealing with an application for an injunction, held in *Finning Ltd. v. U.M.W.*, (1992) 10 C.P.C. (3d) 17 (B.C.S.C.), at para. 2:

... I want to say for the record that orders of this court should be enforced without an enforcement order. The police

authorities have a public duty, as well as a duty to this court, to enforce its orders without any further direction... I repeat, I remain of the view that court orders should not have enforcement provisions because it is the duty of the police to enforce them without any further direction.

[30] In *Ochiichagwe'babigo'ining First Nation Council v. Beardy*, (1996) 1 C.P.C. (4th) 276 (Ont. Gen. Div.) at para. 21, Mr. Justice Stach wrote:

It is a fundamental proposition that a court order in the nature of an injunction is immediately enforceable and that the order must be obeyed until it is varied by the court which made it or on appeal. [per Esson C.J. as cited in *Canada Post Corp. v. C.U.P.W.* (1991), 6 C.P.C. (3d) 105, by B.D. Macdonald J. at 117 (B.C. S.C.)]. Police authorities already have a public duty as well as a duty to this court to enforce the court's orders without an enforcement order and without any extraordinary direction. [*Finning Ltd. v. U.M.W.* (1992), 10 C.P.C. (3d) 17 (B.C. S.C.), per Vickers J. at 18].

[31] I accept that this Court has the power to make a police enforcement order if the circumstances require, but it is my view that enforcement orders ought to be made only in extraordinary circumstances.

[123] In my view, the circumstances before me are not extraordinary, warranting the need for a police enforcement clause.

[124] The City's application for a police enforcement clause is dismissed.

"The Honourable Chief Justice Hinkson"