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## CLIENT BULLETIN

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### ABBOTSFORD BYLAWS PROHIBITING OVERNIGHT CAMPING IN PUBLIC PLACES FOUND UNCONSTITUTIONAL

In *Abbotsford City v. Shantz*, 2015 BCSC 1909, the Chief Justice of the BC Supreme Court found a number of the City's bylaws related to the use of public parks and spaces as they apply to the homeless to be of no force and effect pursuant to s. 7 of the *Canadian Charter of Rights and Freedoms*. The declaration is limited to the prohibition on overnight stays in public places between 7 pm and 9 am.

The Court's decision finds that the City is responsible for balancing the rights of the public to use public spaces the City owns and controls, and the liberty and security rights of the homeless to have a place to sleep. The Court finds that the City's bylaws that prohibit the erection of tents in parks and roads to have a pressing and substantial purpose in terms of the public's right to use parks and travel on roads. However, the Court finds that the prohibition on sleeping in all parks (without a permit), to impair the rights of the homeless beyond what is necessary to ensure the maintenance and public access to parks.

The case is very similar to the precedent set in 2008 and 2009 *Victoria v. Adams*, and relies extensively on the reasoning of that case. As in *Victoria v. Adams* the Court in *Abbotsford* concluded that there was insufficient shelter and housing for the City's homeless population, although the *Abbotsford* decision arguably goes further finding that what shelter is available is inadequate for the needs of the population, including a lack of sufficient accommodation for mental and physical disabilities (including addiction issues).

The case also goes beyond the precedent in *Victoria v. Adams* in considering the issue of moving people on during the daytime hours. The Court finds that while this practice does negatively impact the homeless population, a minimally impairing restriction on use of the parks would only require removal of tents and shelters between 9am and 7pm—two hours shorter than in *Victoria*. The court also found that the encampment on Gladys Avenue in the City was unsafe.

The Court ultimately declined to make the orders sought by the City for a permanent injunction from occupying Jubilee Park and damages against Mr. Shantz personally. The Court also rejected *Charter* arguments and remedies sought by DWS relating to substantive rights to housing and shelter under the *Charter*, and found that that the bylaws did not infringe freedoms of association and assembly, or the right to equality.

The decision leaves some ambiguity as to whether the restrictions on obstructing or interfering with passage on City roads are unconstitutional, but ultimately the Court makes no declaration that these aspects of the challenged bylaws are inoperative.

The decision invites local governments to reconsider their parks and public spaces bylaws in light of the needs of the homeless population in their City, and in particular to make accommodation for the overnight shelter of this population in public places, subject to reasonable restrictions around times of day, location, environmental issues, safety and other considerations.

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