

### CLIENT BULLETIN

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The majority of our clients may have greeted the decision in *Victoria (City) v. Adams*, 2008 BCSC 1363 with a mixture of dismay and disbelief. A careful reading of the 54-page decision of Madam Justice Ross, however, suggests that the Court's conclusions as to the effect on the homeless defendants' rights under Section 7 of the *Canadian Charter of Rights and Freedoms* of the City's prohibition on the erection of temporary shelters on public property were likely well-founded, and further that the specific shelter prohibitions in issue may not actually be essential to the proper operation and maintenance of public parks.

The heart of the factual context that the Court had to consider was the severe shortage of shelter for the homeless in Victoria, coupled with the threat of exposure faced by those who, voluntarily or otherwise, sleep outdoors without the benefit of some sort of temporary shelter. After considering statistical evidence on the number of homeless people and the number of permanent shelter beds in Victoria, the Court concludes that "*the majority of homeless people in Victoria have no choice but to sleep on public property*". Expert testimony from a specialist in general internal medicine on the threat of exposure led the Court to conclude that the City's bylaw prohibition on the erection of temporary shelter in the form of overhead protection exposed the homeless "*to a risk of significant health problems or even death*".

Of particular interest to some will be the Court's analysis of the causes of homelessness, on which point the evidence implicated both federal and provincial governments. While the senior levels of government may share the lion's share of responsibility for the situation, the consequences rest with local governments and regional districts, which own and maintain the easily accessible urban public spaces frequented by the homeless.

It is important to keep in mind that the declarations made by the Court only apply to rules absolutely preventing homeless people from erecting temporary shelter on public land in the City of Victoria. It seems then that it is open to the City of Victoria to continue to require the homeless to remove their temporary shelters on a day-to-day basis, thereby preventing the creation of the much-feared permanent "tent city", and that it is open to other local governments experiencing significant local homelessness to enact similar regulations (or revise existing regulations containing outright bans on shelters so as to permit the use of such shelters overnight).

The Court was "*mindful of the fact that there are many different ways in which the City could approach the reconciliation of the rights of the homeless with the objectives or preservation of parks*". The Court noted that, to the extent that the City feared the degradation of the flora and fauna of its parkland, camping could still be prohibited in environmentally sensitive areas of a park. Another suggestion, perhaps more restrictive and hence more palatable to local governments, is that the City could designate specific areas of specific parkland for overnight camping for the homeless, setting hours of occupation and specific rules related to activities that might disqualify the user from returning to the designated area. The City would have to keep in mind that services available to and utilized by the homeless would have to be reasonably proximate to these designated areas, and that the capacity of spaces assigned would have to approximate the local shortfall in permanent shelter beds.

The City of Victoria has appealed this decision.

Don Howieson ✍