

## ENCAMPMENTS, TRESPASS ORDERS, AND THE MITIGATION OF HARMS:

### *MATSQUI-ABBOTSFORD IMPACT SOCIETY V. ABBOTSFORD (CITY)*, 2024 BCSC 1902

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*In a decision not to grant an injunction to prevent clearance of a homeless encampment, the Supreme Court of British Columbia gave tacit approval to the City's use of a trespass notice under the Trespass Act. Nonetheless, in light of the Charter infringements alleged by the petitioner, the Court imposed demanding conditions on how the City must carry out the removal to mitigate impacts on individuals with disabilities and substance abuse disorders. The decision reflects that municipal responses to acute symptoms of the homelessness crisis must consider the particular needs of affected individuals and be supported by more than the mere availability of shelter spaces and other areas in which overnight shelter may be sought.*

Since June 29, 2024, an encampment of unhoused persons has occupied part of the grounds north of Abbotsford City Hall, consisting of a plaza and park space used for communal gathering, relaxation, and events. On September 19, 2024, the City issued a trespass notice directing the occupants of the encampment to vacate the premises, dismantle all structures, and remove all belongings by September 23, 2024, and not to re-enter before October 2, 2024. In response, the Matsqui-Abbotsford Impact Society petitioned the Court for judicial review of the City's issuance of the trespass notice and an interim injunction restraining the City from enforcing the trespass notice and its bylaws against the encampment until the Court decided the judicial review.

The encampment was described by the Society as both symbolic – having been initially established in protest of treatment of the unhoused and lack of adequate shelter options - and supportive – providing community, safety, and services to occupants. Nonetheless, as the encampment grew, it led to increased calls to police, instances of violence with weapons, overdoses, property damage, and unsafe conditions, including discarded needles, human waste, accumulation of combustible and flammable materials, and impeded emergency access. Bylaw enforcement officers and other operations staff required police escorts to inspect and conduct work in and around the grounds.

When a party seeks an interim injunction to prevent another party from taking a certain action, the former party must satisfy the court that (1) there is a serious question to be tried, (2) that party will suffer irreparable harm if the injunction is not granted, and (3) the balance of convenience favours granting the injunction. In this case, the Society sought to enjoin the City's reliance on a trespass notice, which the City issued based on the encampment occupants' non-compliance with the rules of its *Parks Bylaw* and *Outdoor Special Event, Filming & Activities Bylaw*. The Society argued that guarantees under the Canadian Charter of Rights and Freedoms operate to prevent the application of those rules to the encampment occupants.

On the first issue, the existence of a serious question to be tried, the Society grounded its argument in three sections of the *Charter*: s. 2(c), freedom of peaceful assembly; s. 7, the right to life, liberty and security of the person; and s. 15, the right to equal protection and equal benefit of the law without discrimination. Without undertaking a comprehensive *Charter* analysis at this time, the Court held that the Society had raised important issues in relation to ss. 7 and 15. Forced decampment of vulnerable individuals to facilities that would not provide appropriate services could infringe their rights to life, liberty and security of the person. Disabled individuals could be put at particular

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disadvantage and risk where they find themselves physically unable to comply with requirements to take down shelters in parks that permit only overnight sheltering, leaving them to either break the law or forgo temporary sheltering entirely.

On the second issue, irreparable harm, the Court readily accepted that clearance of the encampment's occupants without adequate alternative shelter options could jeopardize their health and very lives. Individuals who lost what shelter they had would be exposed to weather-related health risks, including hypothermia and illness. Individuals requiring medical and harm reduction services would suffer worse conditions if they moved to shelters that either did not provide or were further from such services. Especially in the context of the ongoing toxic drug crisis, severing community support networks that assisted individuals with managing their issues, monitored and responded to overdoses, and reduced isolation could exacerbate risks to individuals' health and wellbeing.

It was on the third issue, the balance of convenience, that the Society's case stumbled. When an administrative decision's nature and stated purpose are to promote the public interest, the court presumes that it does so:

In this case, the City's bylaws regulating public spaces, and its issuance of a Trespass Notice are designed to maintain public order, safety, and accessibility for all residents. The Court must assume these actions promote the public interest unless there is compelling evidence to the contrary... the Court's role is not to speculate on the effectiveness of the City's actions, but to assess whether, on balance, the harm to the public interest and the City outweighs the harm to the Encampment's occupants. (at paras. 159, 161)

Further, while the risks of irreparable harm from decampment were very real, so too were the risks from the encampment remaining, especially in relation to occupants' resort to unsafe methods to stay warm:

There is... significant evidence reported of the use of ad hoc fires, propane tanks, and makeshift fireplaces by the residents which will only increase as temperatures begin to drop... These methods, while understandable given the circumstances, are inherently dangerous in an encampment setting. (at paras 147-148)

The Court held that the balance of convenience supported allowing the City to proceed with decampment, given the risks the encampment presented to occupants and the public, the encampment's interference with the rights of others in the space, the costs of maintaining the space (e.g., \$13,000 per month on garbage disposal), and the general public interest in maintaining public order and respect for municipal bylaws. The Court decided that it could tailor its order for enforcement to mitigate the harms and potential Charter infringements that might occur. The Court therefore imposed fourteen conditions, for instance, that the City must conduct individual needs assessments for each occupant to identify appropriate accommodations or needs tailored to their specific requirements.

The decision is of interest for a couple of reasons. First, the decision demonstrates judicial approval of local governments' use of trespass notices under the *Trespass Act* as a method for breaking up unlawful encampments established on public property. Strictly, the *Trespass Act* authorizes peace officers to arrest without warrant individuals they have reasonable and probable grounds to believe are trespassing. However, although local governments have often issued trespass notices, the notices have oftentimes not been enforced until the local government has gone to the extra trouble and expense of seeking and obtaining injunctive relief from the Court.

Second, although the Court found that the balance of convenience weighed in favour of enforcement of the trespass notice and City bylaws, it imposed significant conditions on how the City must carry out the decampment, including by ensuring that shelter spaces would one way or another be capable of meeting the individual needs of encampment occupants with respect to harm reduction and medical services, access to necessary resources, and continuing social connections. The Court took notice that the City was already taking steps to make the relocation easier on and fairer to occupants. When the City issued the trespass notice, it offered to store encampment occupants' belongings at its expense. Bylaw enforcement officers advised occupants of other City parks in which nighttime sheltering is available, while the City's manager of bylaw services responded to submissions about the trespass notice and its impacts.

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