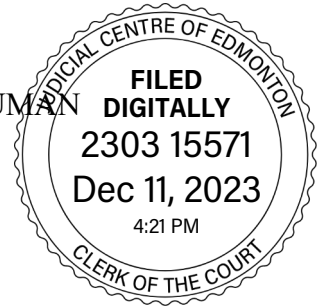


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PLAINTIFF COALITION FOR JUSTICE AND HUMAN RIGHTS LTD.
DEFENDANT CITY OF EDMONTON
DOCUMENT



WRITTEN ARGUMENTS OF THE PLAINTIFF IN SUPPORT OF INTERLOCUTORY INJUNCTION APPLICATION

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WRITTEN ARGUMENTS IN SUPPORT OF INTERLOCUTORY INJUNCTION APPLICATION

TABLE OF CONTENTS

PART I: OVERVIEW AND RELIEF SOUGHT	1
PART II: STATEMENT OF FACT	2
A. Encampments in Edmonton	2
B. Edmonton’s Encampment Response Framework	4
C. Edmonton’s Encampment Response Framework Increases the Likelihood of Grievous Bodily Injury or Death for Encampment Occupants	8
D. The Coalition is Stepping in the Position of Edmontonians Living in Encampments	10
PART III: ISSUES	11
PART IV: APPLICABLE LAW AND STATEMENT OF ARGUMENT	11
A. The Test for Injunctive Relief	11
1. A Serious Issue to be Tried	11
2. Irreparable Harm	12
3. Balance of Convenience	12
B. Interim and Permanent Injunctions in the Encampment Litigation Context	15
C. The Charter Claims Advanced Raise a Serious Issue to be Tried	15
1. Factual Matters in Dispute Raise Serious Issues	15
2. The Section 2(c) and 2(d) Charter Claim Advanced	16
3. The Section 7 Charter Claim Advanced	18
4. The Section 8 Charter and Personal Property Interference Claims Advanced	20
5. The Section 12 Charter Claim Advanced	21
6. The Section 15 Charter Claim Advanced	23
7. No Section 1 Justification Led, Creates Serious Issue to be Tried	24
D. Unhoused People in Edmonton Face Immediate, Irreparable Harm if an Injunction is Not Issued	25
E. The Balance of Convenience Strongly Favours Granting an Injunction	25
1. The Harm to Unhoused Edmontonians is Greater than the Harm to the City	25
2. The Injunctive Relief Sought Strengthens the Public Interest	26
F. Remedy	29
PART V: TABLE OF AUTHORITIES	31

PART I: OVERVIEW AND RELIEF SOUGHT

1. Every night in Edmonton, hundreds of people are forced to stay outside. Not out of choice, but because they have no housing, there is not enough emergency shelter space available, and they face significant barriers in accessing the shelter spaces that are available.
2. To protect themselves from the weather and other dangers, most people who sleep outside congregate together and erect temporary shelters. There is safety in numbers; tents and lean-tos can protect against the elements and other threats. These concentrations of houseless people and their temporary accommodations are called encampments and have increased dramatically in Edmonton in recent years due to a rise in homelessness and the failure to meet this crisis with adequate permanent housing and emergency shelter space.
3. The City of Edmonton (the “**City**”) has the jurisdiction to regulate encampments. It does so through the enactment and enforcement of a regulatory framework that consists of by-laws, policies, operational guidelines, and practices (the “**Encampment Response Framework**”). Under the Encampment Response Framework, the City clears encampments even if there are no safer alternative shelter options for residents, and even when exposing them to the elements without any protections increases the risk of grievous bodily injury or death.
4. The Encampment Response Framework has contributed to record rates of frostbite diagnoses and amputations among the unhoused population over the past two years. According to a range of evidence, including the testimony of houseless Edmontonians, medical experts, and academic researchers, the regulatory framework substantially increases the likelihood that unhoused populations who stay outside in encampments will face serious harms, even death.
5. The Encampment Response Framework is unconstitutional, breaching the rights of Edmonton’s unhoused population at sections 2(c), 2(d), 7, 8, 12, and 15 of the *Charter of Rights and Freedoms*. It cannot be saved pursuant to section 1.
6. The unhoused population is among the most vulnerable and marginalized in our society. Although they directly endure the harms resulting from the Encampment Response Framework, they lack the capacity and resources to commence and sustain litigation to assert their rights in this context. For this reason, the Plaintiff Coalition for Justice and Human Rights Ltd. (the “**Coalition**”) steps in the place of unhoused people in Edmonton who live in encampments to ensure their *Charter* rights and determine the constitutionality of the Encampment Response Framework.
7. While the constitutionality of the Encampment Response Framework awaits a trial, the Coalition seeks to enjoin portions of its regulations.¹ The Coalition does not seek to stop or prevent encampment closures in all contexts. Instead, it seeks an injunction against the City to only permit encampment closures and the displacement of residents if there is a safer alternative. If the encampment is the safest shelter option for them, then residents should be permitted to stay; if there

¹ Appendix “A” — Proposed Encampment Closure Framework.

is safer, more secure shelter elsewhere, which residents are eligible to access, then, with adequate notice and support, encampments can be closed and residents directed to these alternative shelters.

8. The injunctive relief the Coalition proposes does not unduly restrict the flexibility the City requires to address the houselessness epidemic. Rather, it ensures that the closure of encampments achieves the purpose the City asserts behind integral aspects of the Encampment Response Framework: to safeguard the health and well-being of Edmonton’s houseless population. It provides houseless Edmontonians with the flexibility and protections they need to survive life outside, in temperatures that routinely claim their lives. It grants them the dignity that is often denied to them due to their status, and better preserves and strengthens the public interest that undergirds the City’s stated approach to houselessness.

PART II: STATEMENT OF FACT

A. Encampments in Edmonton

9. In Edmonton, there are around 3,000 people experiencing houselessness.² These people are referred to as homeless, houseless, or unhoused. This is likely an undercount.³

10. Around 1,700 of those 3,000 people are “**provisionally accommodated**”, which means they do not have housing, but they are not currently staying in emergency shelters or outside.⁴ The rest, around 1,300 people, either stay in emergency shelters (“**sheltered**”) or stay outside – often in encampments (“**unsheltered**”).⁵

11. As of November 2023, 540 people self-report as primarily using emergency shelter, but Edmonton’s emergency shelters report around 726-958 people using emergency shelters nightly.⁶

12. The number of emergency shelter beds often fluctuates, but there are currently 952 beds.⁷ The quantity of these shelter beds is inadequate to meet the need.⁸ There is a gap of approximately 400 emergency shelter beds for the number of houseless Edmontonians who require them, without considering any of the unhoused who are provisionally accommodated.

13. The nature of the shelter spaces available are also inadequate, causing many more to sleep outside unsheltered than the current shortage of emergency shelter beds in Edmonton. While most unsheltered

² Affidavit of Devyn Ens, sworn September 15, 2023 (“**Ens Affidavit #1**”) at Ex. “B”, pages 18-19; Supplemental Affidavit of Devyn Ens, sworn November 29, 2023 (“**Ens Affidavit #2**”) at Ex. “B”, pages 44-45; Answers to Undertakings of Susan McGee, November 20, 2023 (“**McGee Undertakings**”).

³ Affidavit of Yale Belanger, sworn September 21, 2023 (“**Belanger Affidavit**”) at ¶51; Affidavit of Kaitlin Schwan, sworn September 21, 2023 (“**Schwan Affidavit**”) at ¶15; Transcript of Questioning of Damian Collins, October 6, 2023 (“**Collins Transcript**”), page 52, line 16 to page 53, line 10.

⁴ Ens Affidavit #1, Ex. “B”, pages 12, 18-19; Ens Affidavit #2, Ex. “B”, pages 44-45.

⁵ Ens Affidavit #1, Ex. “B”, pages 12, 18-19; Ens Affidavit #2, Ex. “B”, pages 44-45.

⁶ Transcript of Questioning of Susan McGee, November 20, 2023, (“**McGee Transcript**”), page 10 lines 3-24.

⁷ McGee Transcript, page 62 lines 6-11.

⁸ McGee Transcript, page 16 lines 23-27, page 17 lines 3-14, and page 62 lines 6-13.

people do not prefer to stay outside,⁹ many make the “constrained choice”¹⁰ to not use emergency shelters. Common reasons for not accessing emergency shelter include: inadequate space to store personal property; lack of safety; over-crowding; lack of privacy; disliking staff or shelter rules; pests; religious values held or expressed by the Christian non-profits, which operate about 90% of shelter spaces; and the lack of accommodation for partners, children, and pets.¹¹

14. Given the inadequate quantity and quality of emergency shelters, about 692 people self-identify as primarily staying outside (“unsheltered” people) as of November 18, 2023.¹² Of the approximately 692 people who are unsheltered: about 65% self-identify as Indigenous;¹³ 505 (73%) self-report having a chronic health condition; 303 (44%) self-report having an addiction or substance use challenge; 301 (43%) self-report having a mental illness, brain injury, or developmental disability; 163 (24%) self-report having a chronic health condition, mental illness, *and* a substance use challenge; and 100 (14%) self-report having a physical disability.¹⁴ This is a population that already has pre-existing health challenges that are further exacerbated by being unsheltered.

15. Many of these people live in temporary structures like tents or lean-tos that are referred to as encampments. Living in an encampment can be unsafe for a variety of reasons, especially because of public health risks and fire risks.¹⁵ Public health risks arise mainly from poor sanitation. Encampment occupants’ limited ability to dispose of biohazards like human waste and used needles can create health hazards.¹⁶ However, living in encampments is a safer option than the alternative: being alone outside with no protections. Living with others in temporary structures provides safety and security, and is the only rational option when faced with no reasonable alternative.

16. Encampments are some people’s only way to have a place to sleep, shelter from the elements, store their personal property, ensure some privacy and personal security, and to stay together with their family or peers.¹⁷ Encampments ensure unsheltered people meet their basic needs in the absence of temporary and permanent housing, including emergency shelter space. They are safer and preserve human health better than living outside alone or without any shelter. Encampments mitigate against the serious health challenges unhoused people face by addressing their physical and social determinants.

⁹ McGee Transcript, page 46 lines 1-11.

¹⁰ Affidavit of Dr. Damian Collins, affirmed August 29, 2023 (“**Collins Affidavit #1**”) at ¶41; Collins Transcript, page 32 lines 10-21.

¹¹ Ens Affidavit #1, Ex. “F”, page 86; Transcript of Questioning of Raymond Neal Shirt-Yellowbird, September 28, 2023 (“**Shirt-Yellowbird Transcript**”), page 43, lines 5-12 and page 44 line 1- page 45 line 5; Transcript of Questioning of Forrest Richard, November 7, 2023 (“**Richard Transcript**”), page 16, line 16 to page 17 line 1; McGee Transcript, page 72 lines 3-21; Belanger Affidavit at ¶ 46.

¹² Ens Affidavit #2, Ex. “B”, at 46; but see McGee Undertakings, Answer to Undertaking #2 which says 690 unsheltered not 692 as of November 18, 2023.

¹³ McGee Transcript, page 10, line 25 to page 12, line 15.

¹⁴ McGee Undertakings, Answer to Undertaking #2.

¹⁵ Affidavit of Dr. James Talbot, sworn November 8, 2023 (“**Talbot Affidavit**”) at ¶¶23-24; Transcript of Questioning of Dr. James Talbot, November 22, 2023 (“**Talbot Transcript**”), page 38 line 11 to page 39 line 23; see generally Affidavit of Barry Fielden, sworn November 9, 2023 (“**Fielden Affidavit**”).

¹⁶ Talbot Affidavit at ¶¶19-25; Talbot Transcript, page 59, line 10 to page 61, line 16.

¹⁷ Talbot Transcript, page 16, line 16 to page 17, line 13; page 211 line 7 to page 22, line 26; page 39, line 24 to page 40, line 11; page 51, line 26 to page 52, line 6; Collins Affidavit #1 at ¶15;

From a public health perspective, encampments are often the safest choice for unsheltered people who are unable to access shelter or housing.¹⁸

17. Housed people who live near encampments, and business owners who operate near encampments, sometimes complain of other dangers that arise from encampments. Some concerns are real – such as uncontrolled fires; while some are perceived – such as feelings of decreased safety due to the discomfort of living near an unsheltered person. However, the numbers of housed residents and business owners who complain about the presence of encampments is matched by those who support and are concerned about the lack of shelter options for those living in encampments and how they are necessary in the circumstances.¹⁹ There is neither universal support nor opposition to the presence of encampments in Edmonton.

B. Edmonton’s Encampment Response Framework

18. The Encampment Response Framework requires all encampments to be closed regardless of whether there is adequate alternative shelter space. All encampments are closed, but some are closed sooner than others.²⁰ Encampments are cleared without reference to the availability of shelter space, and with the knowledge that residents will be exposed to the elements, including freezing temperatures, and risk suffering debilitating injuries or death.

19. The City led no evidence on the purpose behind its encampment response framework and what societal interests it is intended to achieve in the manner it is structured.

20. The Encampment Response Framework directs the closure of encampments even when residents have no alternative shelter options and even when the displacement will risk causing serious, grievous bodily injury or death.

The By-Laws

21. The City’s authority to regulate encampments arises from the Parkland or Traffic bylaws.²¹ Parkland Bylaw 2202, section 6 reads: ²²

While on Parkland, no person shall: (b) build a structure, whether permanent or temporary, or (c) set up any form of temporary abode except in an area designated by the City for this purpose.

¹⁸ Transcript of Questioning of Dr. Sandy Dong (“**Dong Transcript**”), page 21 lines 15-24; Talbot Transcript, page 16 line 16 to page 17 line 13 and page 20 line 22 to page 23 line 21, page 51 line 11 – page 52 line 6; Collins Transcript, page 49 lines 5-23; McGee Transcript, page 28 lines 9-18, page 39 line 8 – page 40 line 25.

¹⁹ Affidavit of Omar Mouallem, affirmed November 29, 2023; Affidavit of Benjamin Hertwig, sworn November 23, 2023; Affidavit of Celine Chuang, sworn November 23, 2023; and Affidavit of Andy Kennedy, sworn November 29, 2023.

²⁰ Transcript of Questioning of Troy Courtoreille, November 23, 2023 (“**Courtoreille Transcript**”), page 11 line 24 to page 12 line 11.

²¹ City of Edmonton, Parkland Bylaw 2202; City of Edmonton, Traffic Bylaw 5590.

²² City of Edmonton, Parkland Bylaw 2202, s 6.

22. The Traffic Bylaw prohibits erecting obstructions of any kind on a sidewalk, road, or boulevard without a permit.²³

23. Pursuant to the Parkland or Traffic bylaws, the City has municipal policies that have led to a series of policies and operational documents that set out when and in what manner encampments are assessed, surveilled, and closed.

The Flowchart and Risk Matrix

24. The City responds to all encampments on city lands through a process set out in a flow chart (the “**Flow Chart**”)²⁴ and risk matrix (the “**Risk Matrix**”). The Flow Chart details the process that City Park Ranger Peace Officers (“**Peace Officers**”) and Edmonton Police Service (“**EPS Officers**”) use when identifying and closing encampments on City-owned land. The Risk Matrix describes the risk factors officers consider when assessing encampments’ risk levels and determining when they should be closed.

25. When a Peace Officer or EPS Officer assesses an encampment’s risk, they make a report.²⁵ There is no requirement in the Flow Chart or Risk Matrix to, and officers generally do not, inform encampment occupants about the risks identified in their encampment, the risk level determined, (high, moderate, or low risk) or an opportunity to address any identified risks.²⁶

26. While outreach agencies who partner with the City offer rides to encampment occupants after a closure,²⁷ there is no consideration under the encampment risk matrix for whether there is a shelter space available at the time of closure. In fact, Peace Officers do not even have access to up-to-date information about whether there are shelter spaces available.²⁸

27. All encampments that Peace Officers believe are abandoned are closed immediately. They provide no opportunity for occupants of any encampment they consider abandoned to claim their encampment as not abandoned aside from issuing a closure notice.²⁹ 2,411 encampment sites have been closed in this manner since October 1, 2021.³⁰ The unhoused witnesses’ evidence is that sometimes officers treat encampments as abandoned when an occupant is just temporarily absent, which leads to loss of essential personal property.³¹

²³ City of Edmonton, Traffic Bylaw 5590, ss 56, 66.

²⁴ Affidavit of Forrest Richard, sworn November 7, 2023 (“**Richard Affidavit**”), Ex. “A”; Affidavit of Troy Courtoreille, sworn November 8, 2023 (“**Courtoreille Affidavit**”), Ex. “B”; Affidavit of Michael Dreilich, sworn November 10, 2023 (“**Dreilich Affidavit**”), Ex. “5”.

²⁵ Richard Transcript, page 10, lines 7-11; Dreilich Transcript, page 17, line 38 to page 18, line 1.

²⁶ Courtoreille Transcript, page 18, line 16 to page 19, line 1.

²⁷ Courtoreille Transcript, page 20, lines 17-26.

²⁸ Courtoreille Transcript, page 19, line 6 to page 20, line 12; Richard Transcript, page 37, lines 1-8.

²⁹ Richard Transcript, page 12, line 27 to page 14, line 8.

³⁰ Answers to Undertakings of Forrest Richard, November 21, 2021 (“**Richard Undertakings**”), Answer to Undertaking #1.

³¹ Affidavit of Raymond Shirt-Yellowbird, affirmed July 13, 2023 (“**Shirt-Yellowbird Affidavit**”) at ¶6; Affidavit of Pamela Souter, affirmed August 25, 2023 (“**Souter Affidavit**”) at ¶3; Affidavit of Lauren Rivard affirmed July 13, 2023 (“**L. Rivard Affidavit**”) at ¶4.

28. Peace Officers decide when to close an encampment.³² Prior to closing an encampment, they post a written notice of the bylaw that the encampment allegedly violates, and the date and time of closure.³³ There is no set timeframe of when and for how long notice must be provided, and in what form.

29. When Peace Officers or EPS Officers close an encampment, they give opportunity to encampment occupants to pack and carry their personal belongings and provide limited opportunity to take breaks to get a meal.³⁴ But, unsheltered people still lose personal belongings because of encampment closures.³⁵ They also testify that officers will assume their property, if it is of any significant value, is stolen. EPS highlight reports confirm that, during encampment risk evaluations and closures, they presume some property to be stolen solely based on experience and discretion.³⁶

30. Any encampment that is active for at least 26 days is automatically classified as high-risk and must be cleared within three days, regardless of any public health or security risk.

31. Over the past two years, about ninety percent of encampments are assessed as high risk.³⁷

32. The Encampment Response Team provides housing outreach supports, including connection to Homeward Trust Edmonton's Housing First programs, to low- and moderate-risk encampments. Housing First is the predominant resource through which unhoused Edmontonians obtain housing. But, since low- and moderate-risk encampments comprise only about 10% of encampments, that means people in about 90% of the encampments that Peace Officers and EPS Officers respond to do not receive these supports.

Extreme Weather Policy

33. The City's Extreme Weather Policy is intended "to safeguard the health and lives of Edmontonians who are Vulnerable People,"³⁸ including the unsheltered. It is incorporated into the Encampment Response Framework through the Matrix and limits the clearance of encampments during certain extreme weather events.³⁹ When any of the following weather conditions are present, the City will activate its Extreme Weather Protocol:

- a. -20 ° Celsius with the windchill or colder for a minimum of three consecutive days
- b. 29 ° Celsius for three consecutive days with nighttime lows of 14 ° Celsius or higher for a minimum of three consecutive days

³² Dreilich Transcript, page 8, lines 27 – 32.

³³ Affidavit Richard, at Ex. "C".

³⁴ Richard Transcript, page 17, line 20 – page 19 line 16.

³⁵ Cardinal Transcript, page 10, line 3 to page 20, line 14, page 49 lines 1-17; Transcript of Questioning of L. Rivard, September 28, 2023 ("**L. Rivard Transcript**"), page 15, line 10 to page 16, line 2; Transcript of Questioning of Lisa Wemp, September 28, 2023 ("**Wemp Transcript**"), page 15, lines 23-26.

³⁶ Dreilich Transcript, page 19, line 35 to page 21, line 34.

³⁷ Courtoreille Undertakings, Answer to Undertaking #1; Answers to Undertakings of Michael Dreilich, November 21, 2023 ("**Dreilich Undertakings**"), Answer to Undertaking #1.

³⁸ Affidavit of Stacey Gellatly, sworn November 8, 2023 ("**Gellatly Affidavit**"), Ex. "A".

³⁹ Gellatly Affidavit, Ex. "A".

c. Air quality index of 7 or higher for three consecutive days or more

34. The only reason that the “three consecutive days” minimum threshold for activating the Extreme Weather Protocol is to account for the time it takes to prepare City services like emergency warming buses to respond to extreme weather conditions.⁴⁰ The minimum days threshold is not set by the actual injuries houseless Edmontonians will face if interventions are not undertaken. Frostbite and hypothermia can occur with exposure to cold temperatures at around 0° Celsius and can occur within minutes of exposure depending on the temperature and windchill.⁴¹

35. When the Extreme Weather Protocol is active, the City only closes high-risk encampments,⁴² but Peace Officers and EPS Officers classify most encampments as high-risk.⁴³ The decision to close an encampment during the Extreme Weather Protocol is entirely at the discretion of the Park Ranger Peace Officers without need for approval from a supervisor.⁴⁴ The City and EPS say they use discretion and only close encampments that pose a significant risk of public harm.⁴⁵ But, they consider all risk factors listed in the Risk Matrix when assessing whether an encampment poses a significant risk of public harm, and the presence of any one of the factors could form the basis for a high-risk assessment and closure despite the Extreme Weather Protocol being active.⁴⁶ This includes consideration of unproven criminal allegations within 20 feet of the encampment, whether the location has been used before as an encampment, and the number of 311 complaints.⁴⁷ There is no consideration of alternative shelter spaces when an encampment is closed in this context, which means encampment residents are forced to be outside, exposed to the ‘extreme weather’ elements.

36. The City closed 14 active encampments during periods when the Extreme Weather Protocol was active in winter 2021/22, and 25 active encampments during periods when the Extreme Weather Protocol was active in winter 2022/23.⁴⁸

37. Peace Officers testified that they still clear encampments and evict residents under the Extreme Weather Protocol even after residents have informed them that they are unable to access any alternative shelter:⁴⁹

Q: Have you ever observed a community member whose encampment you’ve closed during an extreme weather event tell you that they’re unable to access shelter?

⁴⁰ McGee Transcript, page 31, line 20 to page 32, line 8.

⁴¹ Dong Affidavit #2 at ¶5; Dong Transcript, page 21, lines 15-24; Talbot Transcript, page 51, line 11 to page 52, line 6; Collins Transcript, page 58, line 13 to page 59, line 7; McGee Transcript, page 28 lines 9-18, page 39 line 8 – page 40 line 25.

⁴² Richard Affidavit at ¶16 and Ex. “B”.

⁴³ Answers to Undertakings of Troy Courtoreille (“**Courtoreille Undertakings**”), Answer to Undertaking #1; see also Ex. “1” from Dreilich Transcript at page 13.

⁴⁴ Richard Transcript, page 40 line 24 – page 41 line 14.

⁴⁵ Courtoreille Affidavit at ¶28; Richard Affidavit at ¶16.

⁴⁶ Dreilich Transcript, page 14 line 28 to page 16 line 33, Richard Transcript, page 25 line 26 to page 36 line 27.

⁴⁷ Richard Transcript, page 26 line 3 to 36 line 13.

⁴⁸ Courtoreille Undertakings, Answer to Undertaking #5.

⁴⁹ Richard Transcript, page 37 lines 21-27.

A: Yeah, I've been told that, but whether or not I confirm it with the shelter or not, it's – again, that information isn't shared.

38. Low- and moderate-risk encampments are not subject to closure when the Extreme Weather Protocol is active, but they are subject to closure the rest of the year, including when the temperature outside is between 0 ° and -20 ° Celsius with the windchill, and even when the weather outside is -20 ° Celsius or colder with the windchill for fewer than three consecutive days.

Draft Operational Guidelines for Encampment Clearances During Extreme Weather Events

39. Days before this argument was due, the City produced a draft set of guidelines for the enforcement of the Encampment Closure Framework when the Extreme Weather Protocol is active.⁵⁰ Although developed in 2020, the guidelines “remain in draft form” and there is no evidence of when or if it is fully followed, or why it has not been adopted as an official document that constrains when encampments can be cleared and residents displaced. The late and incomplete disclosure prevents the Applicant and this Court from fully examining the impact of the guidelines on the Encampment Closure Framework during the Extreme Weather Protocol. This issue will be explored at trial.

C. Edmonton's Encampment Response Framework Increases the Likelihood of Grievous Bodily Injury or Death for Encampment Occupants

40. The Encampment Response Framework increases the likelihood of unsheltered Edmontonians suffering grievous bodily injury or death.

41. Encampments provide occupants some ability to shelter from the elements when there is no reasonable alternative shelter. When the weather is 0 ° Celsius or colder with the windchill, the closure of encampments creates a risk of exposure-related injuries like frostbite or hypothermia.⁵¹ The risk generally increases as the temperature decreases,⁵² but when there is snow out and temperatures hover around zero creating a cycle of thawing and freezing, that also creates a high risk of exposure-related injuries.⁵³ The risk of exposure to cold is not considered within the City's Encampment Response Framework aside from the limited protections related to the Extreme Weather Response that arise when the weather is -20 ° with the windchill or colder for three or more consecutive days.

42. Paradoxically, if an encampment occupant is unable to keep themselves warm in their encampment, that is a factor weighing *in favour* of a high-risk assessment, which could lead to faster closure and closure when the Extreme Weather Protocol is active.⁵⁴ That encampment occupant may be offered a ride to a shelter or given opportunity to access a warming bus, but space is not

⁵⁰ Answers to Undertakings of Stacey Gellatly (“**Gellatly Undertakings**”), Answer to Undertaking #4.

⁵¹ Dong Transcript, page 21 lines 15-24; Talbot Transcript, page 51 line 11 to page 52 line 6; Collins Transcript, page 58 line 13 to page 59 line 7; McGee Transcript, page 28 lines 9-18, page 39 line 8 to page 40 line 25.

⁵² Talbot Transcript, page 54 line 26 to page 55 line 6.

⁵³ McGee Transcript, page 82 line 17 to page 84 line 15.

⁵⁴ Affidavit of Dr. Sandy Dong, affirmed November 29, 2023 (“**Dong Affidavit #2**”) at ¶3(iv).

guaranteed and there is no consideration of whether a shelter space is available under the framework.⁵⁵ This creates a risk of injury and death from exposure to cold.⁵⁶

43. The unhoused affiants testified about experiencing cold-related injuries or illnesses because of encampment closures during winter.⁵⁷ According to Alberta Health Services, between April 1, 2021 – March 31, 2022, 321 homeless Edmontonians visited an emergency department or urgent care centre with a frostbite diagnosis and 16 received amputations because of frostbite.⁵⁸ Between April 1, 2022 – March 31, 2023, 376 Edmontonians visited an emergency department or urgent care centre with a frostbite diagnosis (a 15% increase from the year before) and 21 received amputations because of frostbite (a 31% increase).⁵⁹ The increase in these cold-related diagnoses and amputations correlates with: a 23% increase in the overall houseless population;⁶⁰ a 32% increase in active encampment closures on city-owned land from winter 2021/22 to winter 2022/23;⁶¹ and an 86% increase in active encampment closures on city-owned land when the Extreme Weather Response was active from winter 2021/22 to winter 2022/23.⁶² The Encampment Response Framework increased unsheltered Edmontonians’ risk of suffering frostbite injuries.

44. The direct and statistical evidence of the harms flowing from the Encampment Response Framework is consistent with the expert evidence of the all the medical and public health experts called by the parties in this proceeding. Encampments mitigate against the health harms unsheltered people face when there is no alternative shelter. By displacing residents and exposing them to the elements, even in extreme settings, it risks causing them serious injuries and death, including:

- a. Increased risk of injury and death from exposure to cold;⁶³
- b. Increased use of drugs,⁶⁴ and risk of death from drug poisoning⁶⁵

⁵⁵ Courtoreille Transcript, page 19 line 6 to page 20 line 12; Richard Transcript, page 37 lines 1-8.

⁵⁶ Affidavit of Dr. Sandy Dong, affirmed September 15, 2023 (“**Dong Affidavit #1**”).

⁵⁷ Affidavit of Dean Gladue, affirmed August 25, 2023 (“**Gladue Affidavit**”) at ¶6; Affidavit of Asia Rivard, affirmed August 18, 2023 (“**A. Rivard Affidavit**”) at ¶5; Affidavit of Tristan Scott, affirmed August 18, 2023 (“**Scott Affidavit**”) at ¶5; Affidavit of Tristan Seneca, affirmed August 18, 2023 (“**Seneca Affidavit**”) at ¶3.

⁵⁸ Dong Affidavit #2, Ex. “C”.

⁵⁹ Dong Affidavit #2, Ex. “C”.

⁶⁰ Ens Affidavit #1, Ex. “B”, page 18 shows 3,112 unhoused in 2023 versus 2,537 in 2022.

⁶¹ Courtoreille Undertakings, Answer to Undertaking #1 shows 182 active encampment closures from October 2021 through March 2022 versus 240 from October 2022 through March 2023.

⁶² Courtoreille Undertakings, Answer to Undertaking #5 shows 14 active encampment closures when the Extreme Weather Response was active from October 2021 through March 2022 versus 26 from October 2022 through March 2023.

⁶³ Dong Transcript, page 21 lines 15-24; Talbot Transcript, page 51 line 11 to page 52 line 6; Collins Transcript, page 58 line 13 to page 59 line 7; McGee Transcript, page 28 lines 9-18, page 39 line 8 to page 40 line 25; Dong Affidavit #2 at ¶5.

⁶⁴ Affidavit of Russell Cardinal, affirmed August 23, 2023 (“**Cardinal Affidavit**”) at ¶13.

⁶⁵ Dong Affidavit #1 at ¶14; Dong Affidavit #2 at ¶3(v); Affidavit of Dr. Andrea Sereda, affirmed September 5, 2023 (“**Sereda Affidavit**”) at ¶17.

- c. Loss of essential property, including IDs (which are necessary to obtain income and housing), phones (which are important for maintaining contact with essential supports), bikes, tools, tents, propane tanks, and items of sentimental value;⁶⁶
- d. Disrupted contact with essential relationships and supports, including family members,⁶⁷ housing service providers (which is especially problematic, given that housing is the only permanent solution to homelessness),⁶⁸ and medical services;⁶⁹
- e. Loss of community, which has a disproportionate impact on women, girls, and gender diverse people;⁷⁰
- f. Aggravation of illness and injury;⁷¹ and
- g. Mental distress and trauma.⁷²

45. The Encampment Response Framework does not account for the harms from displacing residents with no safer alternative. The City removes the only protections that many unsheltered Edmontonians have against the elements while living outside. It also perpetuates a cycle of displacement that is dehumanizing and degrading.

46. Encampment closures do not lead to a decrease in unsheltered homelessness. Unsheltered Edmontonians face a “constrained choice” or are forced to stay outside in encampments because there are no safer alternatives.⁷³ There is inadequate permanent and temporary housing in Edmonton, including in the numbers and types of emergency shelter space available. Closing an encampment and displacing residents does not reduce unsheltered homelessness; it simply leads to a cycle of displacement that increases the risk of harm for the unhoused.⁷⁴

47. The Applicant’s proposed remedy modifies the Respondent’s existing encampment response to better balance the health and safety of people living in encampments with the City’s interest in responding to the real and perceived risks that encampments pose.

D. The Coalition is Stepping in the Position of Edmontonians Living in Encampments

48. The Coalition is a non-profit comprised of community services leaders and workers who organized to provide human rights advocacy for marginalized people, including unhoused

⁶⁶ Cardinal Affidavit at ¶¶13-14; L. Rivard Affidavit at ¶¶4-6; Affidavit of Lisa Wemp, affirmed July 13, 2023 (“**Wemp Affidavit**”) at ¶¶4-6; Collins Affidavit #1 at ¶55; Scott Affidavit at ¶¶7-8.

⁶⁷ Cardinal Affidavit at ¶5, ¶11; Transcript of Questioning of Russell Cardinal, September 27, 2023, at page 27 lines 7-14; Scott Affidavit at ¶7.

⁶⁸ McGee Transcript, page 24 line 18 – page 25 line 4; Scott Affidavit at ¶7.

⁶⁹ Sereda Affidavit at ¶16; Collins Transcript, page 49 lines 5-23.

⁷⁰ Schwan Affidavit.

⁷¹ Sereda Affidavit at ¶¶16-17; Wemp Transcript at page 32 lines 11-20.

⁷² Collins Affidavit #1 at ¶¶53-54; L. Rivard Affidavit at ¶7; Shirt-Yellowbird Affidavit at ¶7, ¶12; Transcript of Questioning of Joshua Bell, September 27, 2023 (“**Bell Transcript**”), page 14 lines 9-22, page 16 lines 11-20.

⁷³ Collins Affidavit #1 at ¶¶53-54; Shirt-Yellowbird Transcript, page 10 line 21 – page 11 line 2; L. Rivard Transcript, page 13 lines 19-23.

⁷⁴ Collins Affidavit #1 at ¶¶53-54; Shirt-Yellowbird Transcript, page 10 line 21 – page 11 line 2; L. Rivard Transcript, page 13 lines 19-23.

Edmontonians and Albertans. They do not receive funding from the City, which makes them uniquely able to bring this action.⁷⁵

49. Its directors' and members' relevant work includes: Judith Gale's outreach efforts with Bear Claw (formerly known as Bear Clan Patrol), human rights complaints arising out of encampment closures in Wetaskiwin, advocating against the closure of the EXPO shelter, and advocating for better conditions at Hope Mission⁷⁶

50. Unsheltered people face insurmountable barriers to bringing legal action on their own. The Coalition satisfies the legal criteria for public interest standing to bring this action on their behalf.

PART III: ISSUES

51. The Coalition has demonstrated that there is a serious issue to be tried in this action, that unhoused people in Edmonton faces irreparable harm if the injunction is not issued, and the balance of convenience favours the granting of an injunction in the circumstances.

PART IV: APPLICABLE LAW AND STATEMENT OF ARGUMENT

A. The Test for Injunctive Relief

52. To receive an interim injunction against state action that is alleged to be unconstitutional, an applicant must demonstrate that:⁷⁷

- a. there is a serious issue to be tried,
- b. they would suffer irreparable harm if no injunction was granted and the applicant was ultimately successful in the action, and
- c. the balance of convenience between the parties favours the granting of an injunction.

53. In *AC and JF v Alberta*,⁷⁸ the Court of Appeal clarified the framework for injunctions in this context and the approach and thresholds that apply at each prong of the test. The panel presiding in *AC and JF v Alberta* was specially constituted to clarify the framework and approach to deciding public law injunctions. The decision is the definitive statement on the law of injunctions against state action in Alberta.

1. A Serious Issue to be Tried

54. At the first stage, an applicant must demonstrate that there is a serious issue to be tried. This is a low threshold determination that involves a preliminary, limited merits assessment of the claims

⁷⁵ Answer to Undertaking given during Questioning of Sam Mason (“**Mason Undertakings**”), Answer #20.

⁷⁶ Affidavit of Sam Mason, affirmed August 25, 2023 (“**Mason Affidavit**”) at ¶7; Mason Undertakings, Answer #11 and #12.

⁷⁷ *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 (“**RJR-MacDonald**”) at pages 332-333, Plaintiff's Authorities, Tab 5.

⁷⁸ *AC and JF v Alberta*, 2021 ABCA 24 (“**AC and JF 2021**”), Plaintiff's Authorities, Tab 6.

advanced to determine that they are “neither vexatious nor frivolous.”⁷⁹ If a case is arguable, then there is a serious issue to be tried and the applicant has satisfied this prong of the test.

55. There are exceptions to the “deliberately low” threshold that applies at the serious issue to be tried prong of the framework.⁸⁰ In the public law context, these exceptions include (a) where the injunction application amounts to a final determination of the action, and (b) where the underlying constitutional question “presents itself as a simple question of law alone,” a more extensive consideration of the merits of an action are warranted.⁸¹ Neither of these exceptions apply in this case. The injunction will not decide the action, and questions of liability cannot be divorced from the intricate factual narrative advanced by the parties that will require a trial to resolve.

2. Irreparable Harm

56. Irreparable harm “refers to the nature of the harm suffered rather than its magnitude.”⁸² It refers to harm that cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.”⁸³ The consideration is the nature of the harm and not the magnitude of the harm or the number of people impacted.⁸⁴

57. “The harm engendered by the failure to grant interlocutory relief is generally assessed from the standpoint of the person seeking to benefit from that interlocutory relief.”⁸⁵ Irreparable harm is to be assessed from the perspective of the applicant, based on their unique circumstances.⁸⁶ A court has to take an applicant as they are in assessing irreparable harm, rendering it a subjective determination rather than an objective one.

3. Balance of Convenience

58. In *AC and JF v Alberta*, a five-member panel of the Court of Appeal clarified the approach to assessing the balance of convenience under the public law framework for injunctive relief. The panel was constituted for the express purpose of determining the correct framework for public law injunctions. Clarity was specifically sought by the respondent in *AC and JF v Alberta* on whether there is a strong presumption that impugned state action is constitutional and that this presumption must be rebutted to access injunctive relief in the public law setting.⁸⁷ The majority in *AC and JF v Alberta* determined it was not, rejecting the existence of a rebuttable presumption of constitutionality at any prong of the analysis but in particular at the balance of convenience stage.

⁷⁹ [AC and JF 2021](#) at ¶¶22-25, Plaintiff’s Authorities, Tab 6.

⁸⁰ [AC and JF 2021](#) at ¶21 and ¶26, Plaintiff’s Authorities, Tab 6.

⁸¹ [AC and JF 2021](#) at ¶26, Plaintiff’s Authorities, Tab 6.

⁸² [RJR-MacDonald](#) at page 341, Plaintiff’s Authorities, Tab 5.

⁸³ [RJR-MacDonald](#) at page 341, Plaintiffs’ Authorities, Tab 5.

⁸⁴ [RJR-MacDonald](#) at page 341, Plaintiff’s Authorities, Tab 5.

⁸⁵ [AC and JF 2021](#) at ¶55, Plaintiff’s Authorities, Tab 6.

⁸⁶ [Moms Stop the Harm Society v Alberta](#), 2022 ABQB 24 at ¶50, Plaintiff’s Authorities, Tab 7.

⁸⁷ [AC and JF v Alberta](#), 2020 ABCA 251, at ¶3, Plaintiff’s Authorities, Tab 8.

59. The panel in *AC v JF* rejected a presumption of constitutionality or legality that must be rebutted by an applicant to secure an injunction against state action. A year later, the Court of Appeal in *Moms Stop the Harm v Alberta* departed from this framework.

60. *Moms Stop the Harm v Alberta* imposes a rigorous merits assessment at the balance of convenience stage of the analysis.⁸⁸ A moving party must demonstrate that the impugned state action engages *Charter* rights in an “obviously unreasonable” manner and that such action cannot be justified. Although the term “engaged” is used, in the context that it is set out, it signifies that a breach of a *Charter* right must be established by an applicant. A requirement that the challenged state action “cannot be justified” also mirrors the language of the section 1 *Charter* framework. This denotes that an applicant must satisfy a court that the impugned state action being targeted by an interlocutory injunction breaches *Charter* rights and cannot be justified in the circumstances, and the onus is on the applicant to establish both propositions (whereas in non-injunction settings the onus to justify an infringement rests with the governmental actor).

61. The approach to the balance of convenience stage in *Moms Stop the Harm v Alberta* is inconsistent with the direction provided by the specially-constituted panel in *AC and JF v Alberta*. The majority in *AC and JF v Alberta* states, repeatedly and in an unequivocal manner, that there is no presumption that impugned state action is constitutional under the correct iteration of the test for injunctive relief in the public law setting. In contrast, the Court in *Moms Stop the Harm v Alberta* states the opposite, that an injunction is only permitted when an applicant for injunctive relief must demonstrate both a *Charter* breach and that the breach cannot be justified under section 1. This is a reimposition of the framework rejected by the Court in *AC and JF v Alberta*.

62. In *Black v Alberta*, Justice Feasby reviewed the competing frameworks provided in *AC and JF v Alberta* and *Moms Stop the Harm v Alberta*, and found that the court was bound to follow former’s direction because the panel assigned in the appeal was tasked to decide the question on the correct framework to apply at the balance of convenience stage of the analysis and the approach set out followed Supreme Court of Canada jurisprudence on the same question.⁸⁹

63. In assessing the balance of convenience correctly, a court should weigh the *harm to the applicant* that would be caused if the injunction is not granted against the *harm to the respondent* that would be caused to if the injunction is granted.⁹⁰ An injunction will only issue if the harm to the applicant outweighs the potential harm to the respondent. This is the sole threshold question at the balance of convenience stage of the analysis.

64. When seeking an injunction against state action, it should be assumed that the action in question is aimed at the public good.⁹¹

⁸⁸ *Moms Stop the Harm Society v Alberta*, 2022 ABCA 35 at ¶36, Plaintiff’s Authorities, Tab 9.

⁸⁹ *Black v Alberta*, 2023 ABKB 123 (“*Black*”), at ¶¶60-69, Plaintiff’s Authorities, Tab 10.

⁹⁰ *Lubicon Lake Band v Norcen Energy Resources Ltd.*, 1985 ABCA 12 at ¶34, Plaintiff’s Authorities, Tab 11.

⁹¹ *Harper v Canada (Attorney General)*, 2000 SCC 57 (“*Harper*”) at ¶9, Plaintiff’s Authorities, Tab 12.

65. However, the state “does not have a monopoly on the public interest.”⁹² In considering the public interest, it is important to consider the broader public objective that the impugned state action flows from, and whether in granting an injunction, the societal harm that the state is seeking to cure would be facilitated or curtailed through the issuance of the injunction. Where granting an injunction would itself cause or perpetuate harm, such as by preventing laws aimed at reducing the incidence of smoking,⁹³ or permitting a party to violate campaign spending limits,⁹⁴ the public good will correspondingly weigh against granting the injunction. If granting an injunction will not cause the public harm that the state seeks to prevent, the public interest is not impinged if the Court grants the injunction.⁹⁵

66. An injunction will only issue in a “clear case.” The threshold strictly concerns whether the granting or dismissal of an injunction furthers the public interest. The “clear case” threshold does not refer to the likelihood of an action’s success at trial. It does not require a second, more stringent merits assessment on the limited record parties tender on such applications.⁹⁶ As Justice Feasby outlined:⁹⁷

If “clear case” referred to the merits, that would mean that applicants have to show a clear case instead of a serious issue to be tried. To interpret the words “clear case” as referring to the merits would mean that *Harper* overruled *RJR*. There is no suggestion in *Harper* that this was the Court’s intention. Indeed, this conclusion is compelled by Paperny JA’s observation in *AC and JF* at para 30 that “[e]ven weak cases may be entitled to interlocutory relief if the other aspects of the test weigh heavily in that direction....”

67. The balance of convenience assesses relative harms if an injunction issues or not, and where the public interest lies in both scenarios. A court must assess the impacts of the injunction in the context of the legislative frameworks at issue. For instance, if the injunction furthers the intent behind a state action, whether legislation or practice, then the public interest is preserved or enhanced through an injunction, and the balance of convenience rests with the applicant. Further, if the injunction maintains human life and well-being while it has an adverse impact on aesthetic appearance of a neighbourhood, then the balance of convenience favours an applicant, as the former is a *Charter* protected right and the latter is not.

68. Finally, when the Court assesses the relative inconvenience caused by an injunction, it must consider the precise scope of the injunctive relief sought. The inconvenience to the state is greater if the injunction seeks to fully enjoin the state action, and is lesser if it merely modifies the parameters around when it can occur. If the proposed restrictions are in-line with or strengthen the underlying purpose behind the impugned state action, then the injunction enhances the public interest.

⁹² [AC and JF 2021](#) at ¶60, Plaintiff’s Authorities, Tab 6.

⁹³ [RJR-MacDonald](#), Plaintiff’s Authorities, Tab 5.

⁹⁴ [Harper](#), Plaintiff’s Authorities, Tab 12.

⁹⁵ [RJR-MacDonald](#) at pages 342-347, Plaintiff’s Authorities, Tab 5.

⁹⁶ [Harper](#) at ¶9, Plaintiff’s Authorities, Tab 12.

⁹⁷ [Black](#), at ¶67, Plaintiff’s Authorities, Tab 10.

B. Interim and Permanent Injunctions in the Encampment Litigation Context

69. Although both governments and encampment residents (or public interest litigants advancing claims on their behalf) have sought injunctions in other Canadian jurisdictions, there is no Alberta authority on the matter, and no decision has used the *AC and JF* framework for interim injunctive relief in the *Charter* context.

70. A review of the jurisprudence is still helpful in identifying common themes around how courts have approached the issue. Among the findings, consistent across jurisdictions, is that displacing encampment residents when there are no safer alternatives breaches the *Charter*. Removing the temporary shelter of unhoused individuals, exposing them to the elements, in any season, results in irreparable harm. Finally, the balance of convenience will only favour the state actor if it can establish a safer alternative form of shelter for encampment residents. This approach has been followed in cases where both interim and permanent injunctions were granted.

71. The approach that has emerged in this line of injunction decisions is not binding on this Court. But, it is instructive and sets out the scope of the *Charter* in the context of the state seeking to displace unsheltered individuals living in encampments without any housing alternatives.

C. The *Charter* Claims Advanced Raise a Serious Issue to be Tried

72. The threshold to establish that there is a serious issue to be tried is low.⁹⁸ An applicant must demonstrate that “the claim is not frivolous or vexatious.”⁹⁹

73. The Coalition advances this action on the grounds that the Encampment Response Framework causes unhoused people in Edmonton significant harms, including an increased likelihood of death and grievous bodily injury. From a quantitative and qualitative perspective, there is inadequate shelter space in Edmonton to house all the individuals who require it, particularly during the winter. The Encampment Response Framework breaches the rights of unhoused people in Edmonton at sections 2(c), 2(d), 7, 8, 12, and 15 of the *Charter of Rights and Freedoms*. These claims raise factual and legal questions that establish a range of serious issues that must be tried in determining this action.

1. Factual Matters in Dispute Raise Serious Issues

74. There are a number of factual issues in dispute between the parties that engage the questions of liability in this action and raise serious issues to be tried. This includes what benefits and harms flow from encampments, whether there is adequate shelter space from a quantitative and qualitative perspective to house the number of unhoused Edmontonians, what is the purpose behind the Encampment Response Framework, and whether the Encampment Response Framework has led or contributed to the increase in frostbite amputations and freezing deaths or other harms.

⁹⁸ *RJR-MacDonald* at page 348, Plaintiff’s Authorities, Tab 5.

⁹⁹ *RJR-MacDonald* at pages 337 and 348, Plaintiff’s Authorities, Tab 5.

2. The Section 2(c) and 2(d) *Charter* Claim Advanced

75. Section 2(c) of the *Charter* protects the rights of everyone to peaceful assembly, and 2(d) protects their rights to association.¹⁰⁰

76. The freedom of peaceful assembly protects the right of people to gather physically. It is often raised in situations where the freedom of expression is also implicated, but it is a separate freedom protected under the *Charter* and thus should not be treated merely as a subset of freedom of expression.

77. Freedom of association protects the rights of people to build connections with each other, and comprises at least three aspects, all of which are protected by the *Charter*: (1) **Constitutive**: “the bare right to belong to or form an association”; (2) **Derivative**: “the right to associational *activity* that specifically relates to other constitutional freedoms”; and (3) **Purposive**: “collective activity that enables ‘those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict.’”¹⁰¹

78. The *Charter* protection for freedom of association has predominantly been applied in the context of labour negotiations; but it has applicability in other contexts.

79. In determining what activities are protected by freedom of association, the relative power of the parties should be a guiding principle: “Section 2(d) of the *Charter* is aimed at reducing social imbalances, not enhancing them”. As a result of this corrective focus, freedom of association is particularly relevant to the “most easily ignored and disempowered individuals”, because it protects their ability to enhance their strength “through the collective exercise of power.”¹⁰²

80. Unsheltered Edmontonians are entitled to protection for their freedoms of assembly and association. The displacement practices of the City of Edmonton violate these freedoms.

81. In *Abbotsford v Shantz*, the British Columbia Supreme Court determined that municipal bylaws, which prevented people from camping overnight in public parks, did not violate freedom of association or assembly. The Court held that neither section of the *Charter* gave unhoused people a right “to the use of a public space for which it is not generally intended.”¹⁰³

82. The Court’s analysis in *Shantz* fails to recognize the life-preserving role of encampments. Unsheltered residents in encampments are not merely using public space in an unintended way: this is not an unauthorized fun-run or after-hours cookout. Unsheltered residents in encampments are gathering together physically (assembling) and building connections (associating) to create a community. The community members, who are some of Edmonton’s most marginalized residents,

¹⁰⁰ [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 2(c)-(d), Plaintiff’s Authorities, Tab 3.

¹⁰¹ [Mounted Police Association of Ontario v. Canada \(Attorney General\)](#), 2015 SCC 1 (“*MPAO*”), at ¶¶51-54, Plaintiff’s Authorities, Tab 13.

¹⁰² *MPAO*, 2015 SCC 1, at ¶57, ¶59, ¶70, Plaintiff’s Authorities, Tab 13.

¹⁰³ [Abbotsford \(City\) v. Shantz](#), 2015 BCSC 1909, at ¶¶157-68, Plaintiff’s Authorities, Tab 14.

come together to survive in harsh conditions, to protect themselves against threats, and provide each other with a sense of belonging, by:

- Sharing resources, including shelters,¹⁰⁴
- Protecting each other from others who might be violent towards them,¹⁰⁵
- Watching out for each other's possessions,¹⁰⁶
- Allowing encampment residents to remain close to family¹⁰⁷ and pets,¹⁰⁸
- Sharing vital information, including about upcoming displacements,¹⁰⁹
- Helping each other move their belongings and re-establish encampments, when a displacement occurs,¹¹⁰ and
- Responding with life-saving interventions when they experience drug poisonings,¹¹¹ or are suffering from cold-related injuries such as hypothermia.¹¹²

83. Individuals in encampments are assembling and associating to protect their life, liberty and security of the person, thus the freedoms of assembly and association protect the *derivative* function of encampments. The freedom of association also protects the *purposive* function of encampments, by “recogniz[ing] the profoundly social nature of human endeavours and protect[ing] the individual from state-enforced isolation in the pursuit of his or her ends.”¹¹³

84. The City's encampment displacement practices and policies violate the freedoms of assembly and association of unhoused peoples by breaking up physical gatherings of unsheltered people and undermining their ability to build connections. Notably, the City specifically targets *the number of people in an encampment* when determining when an encampment should be displaced.¹¹⁴

¹⁰⁴ Wemp Transcript, page 19, lines 20-25; Bell Transcript, page 33, line 5-8; A Rivard Affidavit at ¶5.

¹⁰⁵ Bell Transcript, page 22, line 17-page 23, line 1 (describing lack of safety after displacement from an encampment); Wemp Transcript, page 26, line 16 to page 27, line 9; Gladue Affidavit at ¶2; Souter Affidavit at ¶2; Sereda Affidavit at ¶27(iii); Schwan Affidavit at ¶36-38

¹⁰⁶ Sereda Affidavit at ¶27(iii).

¹⁰⁷ Cardinal Transcript, page 7, lines 24-27; page 21 lines 1 - 8.

¹⁰⁸ Shirt-Yellowbird Transcript, page 17, line 22-page 18, line 18.

¹⁰⁹ Cardinal Transcript, page 19, lines 2-4; page 25, lines 23-27; Wemp Transcript, page 17, lines 10-16.

¹¹⁰ Cardinal Affidavit at ¶9; Cardinal Transcript, page 19 line 10 - page 20 line 4; page 28, lines 4-6

¹¹¹ Transcript of Questioning of Sam Mason, October 11, 2023, page 38, line 22 to page 39, line 3; Sereda Affidavit at ¶27(iii).

¹¹² Shirt-Yellowbird Transcript, page 28, line 15- page 29, line 7.

¹¹³ *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 at page 365, Plaintiff's Authorities, Tab 15, cited in *MPAO*, at ¶54, Plaintiff's Authorities, Tab 13.

¹¹⁴ Dreilich Affidavit at Ex. “6”; Wemp Transcript, page 14 lines 16-17.

3. The Section 7 Charter Claim Advanced

85. For a section 7 *Charter* claim to be successful, a claimant must demonstrate that their life, liberty, or security of the person interest has been deprived in a manner that fails to accord with the principles of fundamental justice.

86. The right to life is engaged where the law or state action imposes death or an increased risk of death, either directly or indirectly.¹¹⁵

87. The liberty interest is engaged “where state compulsions or prohibitions affect important and fundamental life choices.”¹¹⁶ This includes decisions around one’s living arrangements, which is understood to be “...within that narrow class of decisions deserving of constitutional protection”.¹¹⁷ This is because residence is intimately connected to personhood, human dignity, individual autonomy, and privacy.¹¹⁸

88. Security of the person relates to “control over one’s bodily integrity” and encompasses any state action that “causes physical or serious psychological suffering.”¹¹⁹ Psychological integrity is engaged where “state interference with an individual interest of fundamental importance” brings about “serious psychological incursions”.¹²⁰ Ultimately, both “liberty” and “security of the person” are directed towards protecting an individual’s quality of life.

89. The Encampment Response Framework increases the risk of death by creating increased exposure to extreme temperature, by drug poisoning, by isolating individuals from a potential network of safety and connection, and by depriving them of the protection provided by essential survival items including propane tanks, tent, blankets, and sleeping bags.

90. Furthermore, the Encampment Response Framework significantly undermines the section 7 rights of Edmonton’s homeless population by dictating how they can obtain the necessities of life, including making choices around their living arrangements.

91. The risks to actual life and quality of life are inherent to any displacement policy. It creates an impossible situation for encampment residents. It forces them to choose compliance with City policy or risk the psychological and physical harms worsened by living rough or outside of an encampment situation. The risks inherent to the displacement policy are aggravated where there are not an adequate number of shelter beds available.

¹¹⁵ *Carter v Canada (Attorney General)*, 2015 SCC 5 (“*Carter*”), at ¶6, Plaintiff’s Authorities, Tab 16; *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35 at ¶124 and ¶200, Plaintiff’s Authorities, Tab 17.

¹¹⁶ *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at ¶49, Plaintiff’s Authorities, Tab 18.

¹¹⁷ *Godbout v Longueuil (City)*, [1997] 3 SCR 844 (“*Godbout*”), at ¶68, Plaintiff’s Authorities, Tab 19.

¹¹⁸ *Godbout* at ¶¶65-69, Plaintiff’s Authorities, Tab 19.

¹¹⁹ *Carter* at ¶64, Plaintiff’s Authorities, Tab 16.

¹²⁰ *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46 at ¶60, Plaintiff’s Authorities, Tab 20.

92. At minimum, the processes imposed on encampment residents must accord with the principles of fundamental justice. The City’s displacement policy fails to meet this standard because it is overbroad and grossly disproportionate.

93. Recognizing the City’s Encampment Response Framework and the bylaws that form the basis for that Framework, violates section 7 for overbreadth and gross disproportionality is consistent with the jurisprudence from other provinces.¹²¹

94. In these other encampment cases, bylaws that mirror the City’s have consistently been read down due to overbreadth and gross disproportionality. For example, in *Victoria v Adams*, the British Columbia Court of Appeal affirmed the trial judge’s finding that the bylaw prohibiting overnight shelters in public places was overbroad. The Court recognized “there are a number of less restrictive alternatives that would further the City’s concerns regarding the preservation of urban parks.”¹²² Significantly, the Bylaws declared unconstitutional in *Adams* mirror the bylaws at issue in this proceeding and the Coalition seeks a similar declaration of unconstitutionality.¹²³

95. In *Waterloo v Persons Unknown*, the court understood the animating question of its section 7 analysis to be “whether enforcement of the By-Law will make the [encampment] residents’ already dire predicament worse”¹²⁴, giving effect to the notion of “constrained choice”. The court determined there was limited availability of “low-barrier accessible” shelter beds.¹²⁵ The court recognized encampment displacements in that context violated section 7 because the creation of shelter is critical to individual dignity.¹²⁶

96. In *Prince George (City) v Stewart* the court denied the City’s application to dismantle an encampment. In doing this, the court pointed to the limited availability of low-barrier accessible shelters and recognized the harms associated with displacement.¹²⁷ Furthermore, the court recognized that encampment displacement does necessarily address or reduce the risks associated with encampments, it just relocates the risks.¹²⁸

97. The process for making a decision impacting someone’s section 7 interest must be fair.¹²⁹ Fairness is situation-specific, and requires consideration of both the impugned legislative scheme and the right interest involved.¹³⁰ Here the procedural fairness obligation owed ought to be high

¹²¹ Appendix “B”.

¹²² *Victoria v Adams*, 2009 BCCA 563 (“*Adams*”), at ¶116, Plaintiff’s Authorities, Tab 21.

¹²³ *Adams* at ¶157, Plaintiff’s Authorities, Tab 21.

¹²⁴ *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2023 ONSC 670 (“*Waterloo*”) at ¶107, Plaintiff’s Authorities, Tab 22.

¹²⁵ *Waterloo* at ¶¶92-94, Plaintiff’s Authorities, Tab 22.

¹²⁶ *Waterloo* at ¶101 and ¶104, Plaintiff’s Authorities, Tab 22.

¹²⁷ *Prince George (City) v Stewart*, 2021 BCSC 2089 (“*Prince George*”) at ¶¶69-74, ¶96, Plaintiff’s Authorities, Tab 23.

¹²⁸ *Prince George* at ¶64, Plaintiff’s Authorities, Tab 23.

¹²⁹ *Charkaroui v Canada (Citizenship and Immigration)*, 2007 SCC 9, at ¶22, Plaintiff’s Authorities, Tab 24.

¹³⁰ *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, at ¶115, Plaintiff’s Authorities, Tab 25.

because the severe consequences displacement has. Recognition of a procedural fairness obligation is also consistent with other encampment litigation.¹³¹

98. At minimum, residents should be provided: the Risk Matrix, the initial risk assessment of the encampment, notice when the encampment moves up in risk, consistent and generous notice in advance of displacement, and notice and instruction on how the risks can be remedied before displacement.

99. Ultimately, there is an inherent vulnerability to homelessness: the basic ability to live and exist is always dependent on someone else's permission. By extension, everyday choices that are basic to, and reaffirm, personal autonomy are made under constant scrutiny and the threat of state action. For example, the choice to not sleep on the street depends both on the availability of a suitable shelter bed *and* the ability to return to that shelter bed. Similarly, the ability to engage in unavoidable human functions such as urination or defecation depends on publicly accessible toilets. The City's encampment displacement policy deepens this vulnerability, violating encampment resident's section 7 rights.

4. The Section 8 *Charter* and Personal Property Interference Claims Advanced

100. As part of the City's Encampment Response, City Operations disposes of any personal property left behind after an encampment closure.¹³² City Operations will sometimes begin cleanup while residents are still on site.¹³³ It is up to police or peace officers' discretion to allow someone back on site to collect their items if an encampment closure has already begun.¹³⁴ City Operations and/or EPS seize propane tanks from encampment residents.¹³⁵ The City admits to disposing of 700,000 kg of materials and 963 propane tanks from January 1 – September 30, 2023 alone, though their evidence is that all those materials and tanks were abandoned.¹³⁶

101. The unhoused affiants' evidence is that many of those items were not abandoned, but rather, the City seized them after residents were away from their campsites or unable to pack and carry them after an encampment closure.¹³⁷ Propane tank seizures may also occur outside of the encampment closure process.¹³⁸

102. The seizure and disposal of encampment residents' personal belongings and propane tanks engages their rights under section 8 of the *Charter*. It also constitutes the torts of trespass to chattels

¹³¹ *Bamberger v Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49, ¶¶62-64 and ¶¶71-72, Plaintiff's Authorities, Tab 26.

¹³² Affidavit of Darren Grove, sworn November 7, 2023 ("Grove Affidavit"), at ¶14.

¹³³ Grove Affidavit, Ex. "A" at 16.

¹³⁴ Grove Affidavit, Ex. "A" at 17.

¹³⁵ Grove Affidavit at ¶14; L. Rivard Transcript, page 16 line 16 – page 19 line 5; Wemp Transcript, page 18.

¹³⁶ Grove Affidavit at ¶14.

¹³⁷ Cardinal Affidavit at ¶¶13-14; L. Rivard Affidavit at ¶¶4-6; Wemp Affidavit at ¶¶4-6; Collins Affidavit #1 at ¶55; Scott Affidavit at ¶¶7-8.

¹³⁸ L. Rivard Transcript, page 16 line 16 – page 19 line 5; Wemp Transcript, page 18.

and/or conversion. If any provincial legislation or bylaw authorizes the seizures without compensation, it is of no force or effect under the *Alberta Personal Property Bill of Rights*.¹³⁹

5. The Section 12 Charter Claim Advanced

103. Section 12 of the *Charter* reads:

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

104. The Supreme Court of Canada has recently examined the scope and purpose of section 12 of the *Charter*:¹⁴⁰

section 12's purpose is to prevent the state from inflicting physical or mental pain and suffering through degrading and dehumanizing treatment or punishment. It is meant to protect human dignity and respect the inherent worth of individuals.

105. The provision “protects against the imposition of punishment and treatment that are cruel and unusual because, by their very nature, they are ‘intrinsically incompatible with human dignity.’”¹⁴¹ Dignity in this context “evokes the idea that every person has intrinsic worth and is therefore entitled to respect, irrespective of their actions.”¹⁴² “Respect is owed to every individual, irrespective of their actions.”¹⁴³

106. In the non-penal, civil context, “treatment” for the purposes of section 12 of the *Charter* has only been judicially interpreted five times over the course of the provision’s nearly 40-year history (four times in Alberta courts in injunction applications of this nature: *AC and JF v Alberta*, *TAM v Alberta*, *Moms Stop the Harm v Alberta*, *Black v Alberta*).

107. In *Rodriguez v British Columbia (Attorney General)*,¹⁴⁴ Justice Lamer for the Majority held:¹⁴⁵

that ‘treatment’ within the meaning of s. 12 may include that imposed by the state in contexts other than that of a penal or quasi-penal nature... [t]here must be some more active state process in operation, involving an exercise of state control over the individual, in order for the state action in question, whether it be positive action, inaction or prohibition, to constitute ‘treatment’ under s. 12.

108. A state process that involves the government engaging in some form of positive action or inaction over an individual, or prohibiting them from doing something, is enough to trigger section 12 of the *Charter*. If that positive action (doing something), inaction (not doing something), or prohibition (banning something) is cruel and unusual, in the sense that it is “so excessive as to

¹³⁹ [RSA 2000, c A-31, s 2](#), Plaintiff’s Authorities, Tab 4.

¹⁴⁰ [Quebec \(Attorney General\) v 9147-0732 Québec inc.](#), 2020 SCC 32 at ¶51, Plaintiff’s Authorities, Tab 27.

¹⁴¹ [R v Hills](#), 2023 SCC 2 at ¶36, Plaintiff’s Authorities, Tab 28.

¹⁴² [R v Bissonnette](#), 2022 SCC 23 (“*Bissonnette*”) at ¶59, Plaintiff’s Authorities, Tab 29.

¹⁴³ [Bissonnette](#) at ¶59, Plaintiff’s Authorities, Tab 29.

¹⁴⁴ [1993] 3 SCR 519 (“*Rodriguez*”), Plaintiff’s Authorities, Tab 30.

¹⁴⁵ [Rodriguez](#) at pages 611-612, Plaintiff’s Authorities, Tab 30.

outrage standards of decency” or “grossly disproportionate to what would have been appropriate,” then a section 12 *Charter* breach is made out.

109. However, in *Rodriguez*, the court held that since the appellant was challenging the impacts of a law of general application, in the sense that all individuals in Canada were subject to the same *Criminal Code* provisions against assisted dying, then the prohibition on medically assisted death did not constitute “treatment” for the purposes of section 12 of the *Charter*.¹⁴⁶ There was no special administrative control over the appellant that distinguished her experience from other individuals in Canada. There was no “active state process in operation” to engage her section 12 *Charter* rights to ground a breach.¹⁴⁷

110. In contrast, refugee claimants in *Canadian Doctors for Refugee Care v Canada (Attorney General)*,¹⁴⁸ were found to be subject to an active state process: “those seeking the protection of Canada are under immigration jurisdiction, and as such are effectively under the administrative control of the state.”¹⁴⁹ The state process they are under as foreign nationals seeking legal status in Canada creates a dependency on the state, which affects their rights and interests. This engaged the section 12 *Charter* rights of refugee claimants (emphasis added):¹⁵⁰

in the unusual circumstances of this case, I am prepared to find that the decision of the Governor in Council **to limit or eliminate a benefit previously provided to a discrete minority of poor, vulnerable and disadvantaged individuals coming within the administrative control of the Government of Canada subjects these individuals to “treatment”** for the purposes of section 12 of the Charter.

111. In *Refugee Care*, determining whether a particular form of state conduct constitutes treatment for the purposes of section 12 of the *Charter* was an involved, contextual determination that required significant fact-finding and review by the court.

112. The court ruled in *Refugee Care* that the state treatment in that case rose to the level of being cruel and unusual because forcing vulnerable and marginalized individuals “to beg for life-saving medical treatment” was demeaning, signifying “that their lives are worth less than the lives of others.”¹⁵¹ This outraged the standards of decency and was grossly disproportionate to how refugee claimants should have been treated in the circumstances.

113. Unsheltered Edmontonians living in encampments constitute a discrete minority of poor, vulnerable, and disadvantaged individuals. Encampments are the safest form of shelter they can access, absent which they would be directly exposed to the elements and suffer serious harms. The Encampment Response Framework places them under the administrative control of the City. The

¹⁴⁶ *Rodriguez* at pages 611-612, Plaintiff’s Authorities, Tab 30.

¹⁴⁷ *Rodriguez* at pages 611-612, Plaintiff’s Authorities, Tab 30.

¹⁴⁸ 2014 FC 651 (“*Refugee Care*”), Plaintiff’s Authorities, Tab 31.

¹⁴⁹ *Refugee Care* at ¶585, Plaintiff’s Authorities, Tab 31.

¹⁵⁰ *Refugee Care* at ¶590, Plaintiff’s Authorities, Tab 31.

¹⁵¹ *Refugee Care* at ¶688, Plaintiff’s Authorities, Tab 31.

City decides if an unsheltered individual can retain this protection; it has the jurisdictional authority to close encampments or keep them open.

114. The City closes encampments and displaces residents in circumstances where they have no alternative shelter options. They are removed from the only protections they have from the elements, including during extreme weather events where an individual can suffer grievous bodily injury or death within a short period of being exposed to the elements. They are removed for reasons that range from the number of tents present, the number of individuals living there, and how long the encampment has been operational — reasons that pale in comparison to the harms that they will suffer from the displacement.

115. The Encampment Response Framework is demeaning and degrading. Unsheltered Edmontonians have no place they can legally take shelter. Under the Framework, unsheltered Edmontonians are not legally permitted to stay in encampments and every encampment is closed. There is inadequate emergency shelter space, they are not legally permitted to shelter in transit stations¹⁵², and they have no private property in which to shelter.

116. Encampment closures do not solve homelessness. They displace residents, forcing them to erect new encampments in a new location or being exposed to the elements where they risk suffering serious injury or death. It is cruel and unusual to subject unsheltered Edmontonians to this unending cycle of settlement, enforcement, and displacement.

117. The Encampment Response Framework signifies to unhoused Edmontonians that their lives are worth less than complaints regarding the aesthetic appeal of City-owned lands; that it is better for them to be seriously injured or die than be allowed to take the most minimal protection from the elements. The treatment of unsheltered individuals by the City in Edmonton outrages the standard of decency and is grossly disproportionate to how they should be treated in the circumstances.

6. The Section 15 Charter Claim Advanced

118. The overarching goal of section 15 is to protect and promote substantive equality, not simply formal equality.¹⁵³ In other words, the purpose of section 15 is “remedying or preventing discrimination against groups suffering social, political and legal disadvantage in our society”.¹⁵⁴ Thus, a formal equality interpretation of section 15 narrows the equality protections afforded by this section and can “...produce serious inequality”.¹⁵⁵

119. As a result, a purposive interpretation of this section is directed towards a single question: Does the challenged law violate the norm of substantive equality in section 15(1) of the *Charter*?¹⁵⁶

¹⁵² See Giesbrecht Affidavit, Exhibit “A”, Tab S, page 341 for discussion of removing people from ETS facilities.

¹⁵³ *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 (“*Andrews*”), at page 174, Plaintiff’s Authorities, Tab 32; *Fraser v Canada (Attorney General)*, 2020 SCC 28 (“*Fraser*”) at ¶40, Plaintiff’s Authorities, 33.

¹⁵⁴ *R v Turpin*, [1989] 1 SCR 1296 at page 1333, Plaintiff’s Authorities, Tab 34.

¹⁵⁵ *Andrews* at page 164, Plaintiff’s Authorities, Tab 32.

¹⁵⁶ *Quebec (Attorney General) v. A.*, 2013 SCC 5 at ¶325, Plaintiff’s Authorities, Tab 35.

120. Section 15 is engaged here because the majority of Edmonton’s homeless population, and the individuals most likely to experience the greatest degree of harm from displacement, already belong to vulnerable populations – Indigenous peoples, women, gender diverse people, disabled people, and those experiencing substance misuse or mental health issues. For many of these individuals, the state of being homeless is not the only form of marginalization they experience. And for many of these individuals, their present circumstance can be understood as the intergenerational persistence of colonialism or physical, psychological, and economic disparities.¹⁵⁷

121. The analytical approach adopted by the Court under the section 15 *Charter* framework requires a claimant to demonstrate:¹⁵⁸

- a. the impugned law or state action, on its face or in its impact, creates a distinction based on an enumerated or analogous ground; and
- b. that it imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.

122. The focus of this analysis cannot prioritize ‘choice’ or immutability. Discrimination, and the consequences of it, are not inherent to the ‘characteristic’ itself. Discrimination is the result of the social meaning or consequence *ascribed* to a particular characteristic. Thus, the analysis, in part, requires an understanding that the displacement policy reflects a social process – encampment displacement is not an isolated event and does not exist in a silo. Understanding this allows section 15 to be a tool to balance asymmetric relationships of power, exploitation, and domination.

123. Encampment displacement impedes the goals of substantive equality. It fosters indignity and vulnerability in homeless individuals through regulating public space as though their presence is a threat. It reinforces instability by prioritizing an infinite cycle of enforcement and displacement instead of predictability and consistency. Ultimately, Edmonton’s displacement policy perpetuates processes of exclusion by undermining personal autonomy and self-determination.

7. No Section 1 Justification Led, Creates Serious Issue to be Tried

124. The City has the burden to justify the limitation of rights under section 1 of the *Charter* and failed to discharge its duty in by leading no evidence on the purpose, proportionality, and means of the Encampment Response Framework. Cogent and persuasive evidence is required at every stage of the *Oakes* framework and the state’s burden at section 1 cannot be discharged without an evidentiary foundation. None was led by the City. As in *Black*, the failure to adduce evidence to establish a section 1 justification to the *Charter* infringements reinforces that there is a serious issue to be tried.

¹⁵⁷ For example see the Supreme Court of Canada’s comments in [R v Ipeelee](#), 2012 SCC 13 at ¶60, Plaintiff’s Authorities, Tab 36.

¹⁵⁸ [Fraser](#) at ¶50, Plaintiff’s Authorities, Tab 33.

D. Unhoused People in Edmonton Face Immediate, Irreparable Harm if an Injunction is Not Issued

125. Irreparable harm “refers to the nature of the harm suffered rather than its magnitude.”¹⁵⁹ The nature of the harm is to be assessed in a subjective manner; from the perspective of the applicant, acknowledging their unique circumstances.¹⁶⁰ It refers to harm that cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.”¹⁶¹

126. The harms that the City’s Encampment Response causes are irreparable in nature, especially: increased risk of injuries and deaths due to exposure to cold¹⁶² or drug poisoning;¹⁶³ aggravation of pre-existing illness and injury;¹⁶⁴ psychological injuries;¹⁶⁵ loss of essential personal property;¹⁶⁶ and disruption of contact with housing and medical service providers, which can cause serious, downstream harms like loss of opportunities to obtain housing or receive medical treatment.¹⁶⁷

127. The City’s Encampment Response increases the risk of all these irreparable harms by closing encampments without consideration of whether emergency shelter space is available.

E. The Balance of Convenience Strongly Favours Granting an Injunction

1. The Harm to Unhoused Edmontonians is Greater than the Harm to the City

128. An injunction will issue if the applicant can demonstrate that they will suffer greater harm without an injunction relative to the harm the state will endure if one is granted. There is a presumption that the state is acting in the public interest. However, this presumption does not necessarily mean granting an injunction will undermine the public interest. A contextual analysis is required to assess whether the scope and nature of the injunction being sought actually undermines the purported interest being represented. This is especially important here where the action relates to vulnerable groups often excluded from the democratic process that informs this presumption.

129. The evidence established in this application is that people sleep outside in encampments with temporary shelters because there is no other place for them to be. There is a shortage of permanent shelters and emergency shelter space in Edmonton; encampments are the safest option for them in the circumstances. The City, in regulating encampments in Edmonton, clears them and displaces

¹⁵⁹ *RJR-MacDonald* at page 341, Plaintiff’s Authorities, Tab 5.

¹⁶⁰ *AC and JF 2021* at ¶55, Plaintiff’s Authorities, Tab 6.

¹⁶¹ *RJR-MacDonald* at page 341, Plaintiff’s Authorities, Tab 5.

¹⁶² Dong Transcript, page 21 lines 15-24; Talbot Transcript, page 51 line 11 to page 52 line 6; Collins Transcript, page 58 line 13 to page 59 line 7; McGee Transcript, page 28 lines 9-18, page 39 line 8 – page 40 line 25.

¹⁶³ Dong Affidavit #1 at ¶14; Dong Affidavit #2 at ¶3(v); Sereda Affidavit at ¶17.

¹⁶⁴ Sereda Affidavit at ¶¶16-17; Wemp Transcript, page 32 lines 11-20.

¹⁶⁵ Collins Affidavit #1 at ¶¶53-54; L. Rivard Affidavit at ¶7; Shirt-Yellowbird Affidavit at ¶7, ¶12; Bell Transcript, page 14 lines 9-22, page 16 lines 11-20.

¹⁶⁶ Cardinal Affidavit at ¶¶13-14; L. Rivard Affidavit at ¶¶4-6; Wemp Affidavit at ¶¶4-6; Collins Affidavit #1 at ¶55; Scott Affidavit at ¶¶7-8.

¹⁶⁷ McGee Transcript, page 24 line 18 to page 25 line 4; Scott Affidavit at ¶ 7; Sereda Affidavit at ¶ 16; Collins Transcript, page 49 lines 5-23.

residents despite there being no alternative shelter spaces for them to go to, and even in weather events where short-term exposure to the elements can cause grievous bodily injury or death.

130. The Encampment Response Framework causes encampment residents to be outside, exposed to the elements without adequate protections. It denies them the safest sheltering option in the circumstances, the ability to take reasonable precautions. It leads them to suffer significant injuries including hypothermia, frost bite, dehydration, and a variety of other harms. It also increases their risk of death. Death rates and frost-bite amputation among the unsheltered houseless population have soared in the years since encampments have grown and the City has proceeded with its response to them.

131. Encampments are the safest options that houseless people have in Edmonton to protect themselves while sleeping outside. Preventing that option takes away the only reasonable means for them to avoid harm in the circumstances. The harms unhoused people face through the Encampment Response Framework are significant, potentially even fatal, impacting the most marginalized and vulnerable in society.

132. The scope of the injunctive relief the Coalition seeks minimally impairs the public interest presumption that attaches to the Encampment Response Framework. The proposed injunction would allow the City to retain its ability to close encampments but limit it to when there are safer shelter alternatives for residents. It would prioritize the safety of encampment residents, while maintaining the City's flexibility in dealing with a matter that is firmly within its jurisdictional sphere. In fact, what the Coalition applies for is more in line with the public interest presumption and the stated intentions behind the Encampment Response Framework than how it is structured and implemented in practice.

2. The Injunctive Relief Sought Strengthens the Public Interest

133. The Coalition does not seek the wholesale abandonment of the Encampment Response Framework or for the City to be permanently enjoined from clearing encampments. Rather, the injunctive remedy sought is to limit encampment closures to

- a. circumstances where there are adequate alternative emergency shelter spaces for encampment residents; and
- b. restricting the closure of encampments when extreme weather hazards are present in a manner that prioritizes the safety and security of encampment residents, in accordance with the City's stated approach to the policies and practices that undergird this aspect of the Encampment Response Framework.

134. The scope of the injunctive relief sought is to ensure that encampments are closed only in circumstances where there are safer alternatives for encampment residents. If an encampment is safer for its residents than the alternative shelter options, it should be allowed to exist, unless there are overarching public health and safety concerns that render the site unsuitable for continued habitation. That does not mean that there should be no encampment closures, but that thresholds and

basis for closing encampments should reflect public health standards. This is a minimal limitation on the Encampment Response Framework and one that is more consistent with the City policies that inform its practices.

135. There is ample caselaw across jurisdictions that establish that clearing encampments without safer shelter alternatives for the unhoused increases their risk of injury and death, and that this practice breaches the *Charter* rights of encampment residents. Limiting encampment closures to when there is adequate alternative emergency shelter space for residents eradicates this risk. It ensures that while this action is being litigated that no encampment resident will suffer grievous injury or die because of being evicted from an encampment without first securing safer alternative shelter.

136. The City is working to open more emergency shelter space. It is optimistic that by the time that this hearing is held, there will be enough accessible shelter space to fully accommodate the unsheltered Edmontonians. The Coalition supports the City in its efforts. However, if adequate spaces do not open, a limitation on encampment closures in this context serves as a safeguard that preserves both the City and the Coalition's objective — and the public interest — that the closure of an encampment will not place residents at greater risk of injury or death. And if the City's efforts are successful in securing additional accessible shelter spaces, this criterion will not restrict it in its ability to close encampments.

137. The Extreme Weather Policy is intended “to safeguard the health and lives” of vulnerable Edmontonians, including the unhoused who live outside and in encampments. Draft guidelines on how clearances should be approached in this context further establish that protection of human health ought to be the City's priority. However, when the Extreme Weather Protocol is in effect, only high-risk encampments can be removed when the temperature drops to -20 Celsius for three consecutive days. The expert medical evidence led by both parties establishes that these thresholds do not reflect when cold weather-related injuries can occur.¹⁶⁸ Rather, the thresholds reflect internal administrative processes within the City.

138. Encampment clearances and displacements can occur without the provision of adequate alternative shelter spaces, and for reasons that do not rise to the level of seriousness that warrant exposing individuals to temperatures that are likely to kill them without adequate shelter or protections. Even when the Extreme Weather Protocol is in effect, the City is able to close an encampment if 7 residents are present in an encampment, if the encampment comprises more than 8 structures (tents, lean-tos, traps, etc.), or if it has been present for 26+ days. The presence of one of these factors is sufficient to close an encampment at freezing temperatures and without first ensuring that residents have adequate alternative shelter space.

139. The only purpose of the Extreme Weather Policy in the encampment closure context is to safeguard the health and lives of unhoused Edmontonians. To permit clearances to occur in

¹⁶⁸ Dong Transcript, page 21 lines 15-24; Talbot Transcript, page 51 line 11 to page 52 line 6; Collins Transcript, page 58 line 13 to page 59 line 7; McGee Transcript, page 28 lines 9-18, page 39 line 8 to page 40 line 25; Dong Affidavit #2 at ¶5.

temperatures that will substantially increase the risk of grievous injury or death on the basis of the number of tents or residents present in an encampment, or how long it has been active, does not achieve this purpose. In fact, it deviates from it, and authorizes practices that create the very harms that the policy was intended to prevent.

140. For this reason, the Coalition proposes that the Extreme Weather Protocol should come into effect when the temperature reaches 0° or -10° Celsius, regardless of the length of time, and closures of high-risk encampments should only occur if allowing the encampment to continue will cause greater harm than closing it. Based on the City's risk assessment framework that sets out the current factors that permit it to close a high-risk encampment in similar circumstances, the following risk factors would reach this threshold:

- a. significant risk of injury or death in an encampment due to uncontrolled fire or improper fuel use or storage;
- b. significant risk of injury or death in an encampment due to the presence of biohazards or disease outbreaks;
- c. significant risk of injury or death in an encampment due to the presence of violence;
or
- d. the encampment is located within 100 metres of a playground or school or obstructing an LRT corridor, major traffic corridor, or route designated for emergency vehicles

141. Only the presence of any of these factors, along with the availability of accessible shelter space for encampment residents, would permit the City to close an encampment and displace its residents at extreme temperatures. This limitation would strengthen the policy that is the basis of the practice and ensure that encampment residents are only displaced if there are safer alternatives.

142. A definitive notice policy would also mitigate against the harms that flow from an encampment closure. The City acknowledges that under the Encampment Response Framework it must provide notice of an encampment closure, but there are no set deadlines on when notice is to be provided and in what form and to whom. Requiring written notice to be provided at least 48 hours prior to a clearance to encampment residents would allow them to take the steps necessary to relocate, and if the same notice is provided to the social agencies serving this population, including shelters, they could better prepare for the influx of displaced encampment residents and ensure their needs can be accommodated. The notice would contain the reasons for the imminent encampment closure, and what steps, if any, residents can take to address the underlying issue, which if done, would prevent the closure.

143. Notice can also cause encampment residents to address any issues that lead to a risk assessment that requires an immediate closure. A defined notice requirement can allow engagement between encampment residents and the City to ensure that any concerns with an encampment are mitigated in a proactive manner. This would serve the interests of the City and encampment residents.

144. The harms what will be inflicted on houseless Edmontonians will far exceed any harm that will occur to the City if the minor modifications to its Encampment Response Framework proposed are implemented. The scope of the injunction sought in fact aids and better achieves the purpose behind the Encampment Response Framework. The City will be permitted to continue to regulate encampments, but in a manner that preserves the health and well-being of an extremely vulnerable population.

F. Remedy

145. The Coalition seeks the following interlocutory injunctive relief:¹⁶⁹

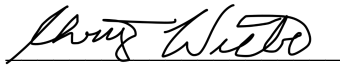
The City is enjoined from closing active encampments on City-owned land:

1. when there is no available emergency shelter space that the encampment occupants are able and eligible to access;
2. without first posting written notice on all encampment structures at least 48 hours prior to closure that includes the bylaw that the encampment allegedly violates, date and time of closure, risk factors identified in the encampment, and a description of steps the encampment occupants must take to address the risk to avoid closure (the “**Enhanced Written Notice**”). This applies to encampments believed to be abandoned, and the Enhanced Written Notice must also be provided to Bissell Centre, Boyle Street Community Services, Mustard Seed, and Hope Mission. When the encampment occupant addresses the risks identified in the Enhanced Written Notice prior to the scheduled closure, the Respondent is enjoined from closing that encampment;
3. On days when the temperature reaches 0° or -10° Celsius or colder with the windchill, 29 ° Celsius with nighttime lows of 14 ° Celsius or higher, or when the air quality index score reaches 7 or higher, unless one or more of the following risk factors are present:
 - a. significant risk of injury or death due to uncontrolled fire or improper fuel use or storage;
 - b. significant risk of injury or death due to the presence of biohazards or disease outbreaks;
 - c. significant risk of injury or death due to the presence of violence;
 - d. the encampment is located within 100 metres of a playground or school, obstructing an LRT or major traffic corridor, or route designated for emergency vehicles.

¹⁶⁹ Appendix “A” — Proposed Encampment Closure Framework.

146. This Court has the authority to grant this remedy, or craft any that it determines fit in the circumstances, based on section 24(1) of the *Charter*, and section 52 of *the Constitution Act, 1982*, section 13(2) of the Judicature Act, or the common law, as a court of inherent jurisdiction.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 11th DAY OF DECEMBER 2023.

A handwritten signature in cursive script, appearing to read "Chris Wiebe", is written over a horizontal line.

Counsel for the Plaintiff

Chris Wiebe

Avnish Nanda

PART V: TABLE OF AUTHORITIES

Legislation	Cited At
1. City of Edmonton, <i>Parkland Bylaw 2202</i>	¶21
2. City of Edmonton, <i>Traffic Bylaw 5590</i>	¶¶21-22
3. <u>Canadian Charter of Rights and Freedoms</u> , Part I of the <i>Constitution Act</i> , 1982, being Schedule B to the <i>Canada Act 1982 (UK)</i> , 1982, c 11	¶75
4. <u>Alberta Personal Property Bill of Rights</u> , RSA 2000, c A-31	¶102
Jurisprudence	Cited At
5. <u>RJR-MacDonald Inc v Canada (Attorney General)</u> , [1994] 1 SCR 311	¶52, ¶56, ¶65, ¶72, ¶125
6. <u>AC and JF v Alberta</u> , 2021 ABCA 24	¶¶53-55, ¶57, ¶65, ¶125
7. <u>Moms Stop the Harm Society v Alberta</u> , 2022 ABQB 24	¶57
8. <u>AC and JF v Alberta</u> , 2020 ABCA 251	¶58, ¶66
9. <u>Moms Stop the Harm Society v Alberta</u> , 2022 ABCA 35	¶60
10. <u>Black v Alberta</u> , 2023 ABKB 123	¶62
11. <u>Lubicon Lake Band v Norcen Energy Resources Ltd</u> , 1985 ABCA 12	¶63
12. <u>Harper v Canada (Attorney General)</u> , 2000 SCC 57	¶¶64-66
13. <u>Mounted Police Association of Ontario v. Canada (Attorney General)</u> , 2015 SCC 1	¶77, ¶79, ¶83
14. <u>Abbotsford (City) v. Shantz</u> , 2015 BCSC 1909	¶81
15. <u>Reference re Public Service Employee Relations Act (Alta.)</u> , [1987] 1 S.C.R. 313	¶83
16. <u>Carter v Canada (Attorney General)</u> , 2015 SCC 5	¶86, ¶88
17. <u>Chaoulli v. Quebec (Attorney General)</u> , 2005 SCC 35	¶86
18. <u>Blencoe v British Columbia (Human Rights Commission)</u> , 2000 SCC 44	¶87
19. <u>Godbout v Longueuil (City)</u> , [1997] 3 SCR 844	¶87
20. <u>New Brunswick (Minister of Health and Community Services) v G(J)</u> , [1999] 3 SCR 46	¶88
21. <u>Victoria v Adams</u> , 2009 BCCA 563	¶94
22. <u>The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained</u> , 2023 ONSC 670	¶95
23. <u>Prince George (City) v Stewart</u> , 2021 BCSC 2089	¶96
24. <u>Charkaoui v Canada (Citizenship and Immigration)</u> , 2007 SCC 9	¶97
25. <u>Suresh v Canada (Minister of Citizenship and Immigration)</u> , 2002 SCC 1	¶97
26. <u>Bamberger v Vancouver (Board of Parks and Recreation)</u> , 2022 BCSC 49	¶97
27. <u>Quebec (Attorney General) v 9147-0732 Québec inc.</u> , 2020 SCC 32	¶104

28. [R v Hills](#), 2023 SCC 2 ¶105
29. [R v Bissonnette](#), 2022 SCC 23 ¶105
30. [Rodriguez v British Columbia \(Attorney General\)](#), [1993] 3 SCR 519 ¶107, ¶109
31. [Canadian Doctors for Refugee Care v Canada \(Attorney General\)](#), 2014 FC 651 ¶110, ¶112
32. [Andrews v Law Society of British Columbia](#), [1989] 1 SCR 143 ¶118
33. [Fraser v Canada \(Attorney General\)](#), 2020 SCC 28 ¶118, ¶121
34. [R v Turpin](#), [1989] 1 SCR 1296 ¶118
35. [Quebec \(Attorney General\) v. A](#), 2013 SCC 5 ¶119
36. [R v Ipeelee](#), 2012 SCC 13 ¶120

APPENDIX “A”

Encampment Closure Matrix

Encampment closures can only occur if there is an available emergency shelter space that the encampment residents are able and eligible to access.

At least 48 hours written notice must be provided to encampment occupants prior to closure that includes the date and time of closure, the risk factors identified in the encampment, and a description of steps encampment occupants can take to address the risks ("Written Notice"). Encampments will not be closed where the risks identified in the Written Notice are substantially addressed prior to the scheduled closure. Written Notice must also be provided to abandoned encampments. Any increase in risk classification must also be provided to encampment residents, along with the grounds for an elevation in risk classification. Notice of any increase in risk classification should be provided to encampment residents as well as the risks identified in the encampment. Notice of the date, time, and approximate location of encampment closures should also be provided to Bissell Centre, Boyle Street Community Services, Mustard Seed, and Hope Mission at least 48 hours prior to closure.

	Housing Focused Response		Accelerated Response	Weather Hazard Response
Encampment Risk Matrix	<p>Low Risk Observe and monitor, engage outreach services, respond to community concerns, close when resources allow.</p>	<p>Moderate Risk Close when resources and the situation allow, engage outreach services, aim is to prevent any single factor from reaching high risk status.</p>	<p>High Risk Close the encampment within 1-3 days per the recommended procedures for an encampment of this size and scope.</p>	<p>Activated at: - 0° with windchill or colder - 29° for daytime temperatures with nighttime lows of 14° or higher - Air quality index of 7 or higher</p>
Governing Body	Encampment Response Team		Joint Operations Committee	
Risk Factors				
What are the risks of injury, death and/or property damage due to fire?	No signs of use of fire or fire related appliances (i.e fire pits, stoves). Adequately spaced (minimum 2m) away from other tents/structures, businesses or residences. Propane tanks located outside of the structure are secured in a well ventilated area.	Fire pits or stoves present outside of the structure. Encampment is at least 2m away from residences, businesses or other encampments, so that the danger of fire spread is minimized. Propane tanks are located outside of the structure and are in poor condition (i.e. worn regulator hose, expired collar stamps).	Evidence of recent or present fires in an uncontrolled manner or with potential to spread outside of the intended area. Fires inside of the structure. Structures attached or close proximity (within 2m) to other encampment structures, businesses or residences. Fires or evidence of recent fires during a fire ban OR fire conditions that required intervention to control (EFRS or others). Propane tanks located within the structure.	Significant risk of injury or death due to uncontrolled fire or improper fuel use or storage.
What are the risks of injury and death due to extreme weather?	Occupant(s) have suitable means to provide themselves with warmth/cooling /hydration and access to a phone for help or are in proximity to available assistance.	Occupant(s) have suitable means to provide themselves with warmth/cooling/hydration and are in proximity to available assistance.	Occupant(s) are unable to protect themselves from the elements.	
What are the risks of injury and death due to drug use?	Narcan/Naloxone is present. Ability to phone for help or proximity to help is available. Needles or drug paraphernalia is stored safely.	Narcan/Naloxone is present. Proximity to help is present. Used discarded needles not safely stored.	Drug poisoning at the encampment. Insufficient or no Narcan/Naloxone present. No way to call for assistance or proximity to help. Large amounts of needles posing a risk to the public or maintenance staff.	
What are the risks of injury and death due to gang violence?	No evidence of gang activity observed or reported.	No evidence of gang activity observed or reported.	Identified gang members, gang signs/colours present.	
What are the risks of injury and death due to carbon monoxide poisoning?	No open flames or propane tanks inside structure.	No open flames or propane tanks inside structure.	Propane tanks/open flames in structure.	
What are the risks of injury and death due to observed or investigated physical violence, including weapons?	Presence of tools such as carpentry hammers, wood axes etc. not designed for use as weapons, no evidence or reports of assaults.	Presence of items modified for use as weapons /blades designed as weapons, observations of injuries such as bruises, cuts on occupants, reports of assaults.	Presence of prohibited weapons (i.e. bear spray), firearms and/or observed physical threats/ violence including with the use of weapons/tools.	Significant risk of injury or death due to the presence of violence.
What public health and/or sanitation risks are present?	Encampment is fairly clean, waste is disposed of in a reasonable manner by encampment occupants(s). Small amounts of garbage, limited discarded needles or other drug paraphernalia may be present. Minor sanitation issues are present.	Encampment contains biohazards (substances/ items that pose infectious danger/risk to humans, the environment or animals, e.i. used condoms, feces etc.) and other waste. Amounts of garbage located outside structures potentially limits access to site, presence of discarded needles or other drug paraphernalia. Detrimental health and sanitation issues are present but not overwhelming.	Adverse effects on wildlife, unable to navigate entry and exit of encampment without exposing person(s) to biohazards and other waste or affecting the response of emergency services or occupant to leave encampment safely in an emergency. Significant number of discarded needles, drug paraphernalia and/or biohazardous waste. Significant sanitation and health concerns present.	Significant risk of injury or death due to the presence of biohazards or disease outbreaks.
Describe the location in terms of environmental degradation.	Low to no observable environmental degradation, no signs of cutting down trees or modifying Parkland. No signs of forest fires correlating to encampment.	Modification of parkland is present, but does not create safety or bank stability risks. Small amount of tree cutting or damage. No signs of forest fires correlating to encampment.	Modification of parkland that creates safety risks to the public, encampment occupant or bank instability. Signs of forest fires that correlate to the encampment. Moderate to large amounts of tree damage. Hazardous materials discarded onto parkland from encampment.	
What are the risks of injury, death or property damage due to criminal activity?	No noticeable impact on crime in the vicinity of the encampment.	EPS suspects criminal activity related to the encampment. Property present in the encampment may be stolen.	EPS confirms criminal activity related to the encampment and/or stolen property confirmed present in encampment.	
Describe the location in terms of proximity to local residents, businesses, community facilities, events or infrastructure.	On public land, minimal effect on local residents and/or businesses as the encampment is a minimum of 200m away.	On public land, impacting multiple local residents and/or businesses as the encampment is a minimum of 100m away.	Location affects minors or other vulnerable populations (located in playgrounds, schools, sports fields, etc.) and/or impedes the use of sidewalks, paths or streets. Interference with sanctioned events or municipal infrastructure (i.e. major traffic corridors, LRT corridor).	The encampment is located within 100m of a playground or school or obstructing an LRT corridor, major traffic corridor or route designated for emergency vehicles.
How many encamped persons are present?	1-2	3-5	6+	
How many structures (including tents, lean-tos, tarps, etc...) are present?	1-2	3-7	8+	
Has this location previously been used for encampments?	No	1-3 times in previous 12 months	4+ times in previous 12 months	
How long has the encampment been in place based on the time of initial reporting to 311?	7 days or less	8 days to 25 days	26 days or greater	

APPENDIX “B”

Case	Description	Section 7	Section 15	Injunction test application	Relief granted
<i>Victoria v Adams</i> , 2008 BCSC 1363	This was a trial of a counterclaim brought by unhoused people in Victoria that alleged the City of Victor's bylaw prohibition on erecting temporary structures in public parks breaches their rights under s 7 of the <i>Charter</i> .	Many unhoused people had no choice but to stay outside. The prohibition on them erecting structures to shelter from the elements created additional health risks, including exposure to hypothermia (para 142) and interfered with their life, liberty, and security of the person. The prohibition was arbitrary and overbroad and inconsistent with the principles of fundamental justice. (para 194)	Not discussed.	Not discussed.	Declaration that the bylaw prohibitions: (a) violated section 7 and were not justified under section 1; (b) were of no force and effect insofar as they apply to prevent homeless people from erecting temporary shelter. (para 239)
<i>Victoria v Adams</i> , 2009 BCCA 563	The City of Victoria appealed the trial decision in 2008 BCSC 1363.	Did not interfere with the trial judge's conclusions. Disagreed that the bylaw prohibition was arbitrary, but that did not affect the appeal outcome. BCCA varied the wording of the order. (paras 10-11).	Not discussed.	Not discussed.	Varied the trial order to a declaration that: (a) the bylaw prohibitions violate section 7 and are not saved by section 1; (b) the bylaw prohibitions are of no force and effect insofar as they apply to prevent homeless people from erecting temporary overnight shelter in parks when the number of homeless people exceeds the number of available shelter beds in Victoria; (c) the BCSC may terminate this declaration on application by the City and upon being satisfied that the bylaw prohibitions no longer violate section 7 of the <i>Charter</i> . (para 166)
<i>Abbotsford v Shantz</i> , 2015 BCSC 1909	Two separate applications that the Court heard together: (1) the City of Abbotsford applied for a permanent injunction against an encampment in Jubilee Park and for damages against an encampment organizer; (2) A public interest standing litigant sought declarations that the City's bylaws breached unhoused peoples' rights under ss 2, 7, and 15 of the <i>Charter</i> .	BCSC found a section 7 breach. Found the bylaws to be overbroad with reference to the <i>Adams BCSC</i> decision. Bylaws were also grossly disproportionate based on findings that displacement causes impaired sleep, psychological pain, and health risks (para 219); there were insufficient viable and accessible sheltering options for all Abbotsford's unhoused people (para 222);	s	Not discussed.	BCSC: (1) declined to grant the City a permanent injunction against the residents of Jubilee Park; (2) dismissed the City's claim for damages against Shantz; (3) declared pursuant to s 52 of the <i>Constitution Act, 1982</i> , that the bylaw prohibitions breached section 7 of the <i>Charter</i> and were not saved by section 1. The declaration was limited to between 7am-9pm.
<i>Black v City of Toronto</i> , 2020 ONSC 6398	14 unhoused applicants and two organizations applied for an injunction against encampment displacements while the COVID-19 pandemic was ongoing. Claimed ss 7, 12, and 15 <i>Charter</i> breaches.	The City conceded a serious issue to be tried under section 7. Displacements cause anxiety, physical and psychological distress, and health risks (paras 45-46). Noted that unhoused people were at greater risk of COVID-10 (para 55).	ONSC found a serious issue to be tried under section 15 because of the prevalence of people with disabilities and Indigenous peoples, and because Queer and Trans people faced additional barriers to accessing shelter (paras 60-61)	Serious Issue: established. Irreparable harm: established. Balance of Convenience: favours City because shelter space available (para 131), City addressed COVID transmission concerns; encampments created fire risks, criminal activity, and complaints (paras 104-18), and the applicants did not tailor their injunction at all. (para 144)	Application dismissed.

<p><i>Poff v Hamilton</i>, 2021 ONSC 7224</p>	<p>A group of unhoused people in Hamilton applied to enjoin the City from evicting people from encampments. Claimed evictions violated section 7 of the <i>Charter</i>.</p>	<p>Found a serious issue to be tried under section 7.</p>	<p>Not discussed.</p>	<p>Serious Issue: established. Irreparable harm: not established. City had provided sufficient, safe shelter spaces (para 104). All the applicants either received shelter or were offered it and declined (para 123). Four of five applicants were not in encampments at the time of the application (para 123). Declined to consider the harms to homeless Hamiltonians at large, only the applicants (paras 125, 141). Balance of Convenience: favoured the City, because of adequate shelter space (para 240), the City was housing people (para 240); COVID protocols in shelters; not convinced of harms of eviction (para 179); convinced of encampment safety risks (paras 191-210).</p>	<p>Application dismissed.</p>
<p><i>Prince George v Stewart</i>, 2021 BCSC 2089</p>	<p>City applied for declarations that people in encampments in two locations were trespassing and contravening bylaws, and for a permanent injunction. One encampment was on a green space, the other was on a vacant lot. Between the two there were 50 tents with 80 occupants.</p>	<p>BCSC does not do a section 7 analysis, but compares the other BC encampment section 7 <i>Charter</i> cases with the following characteristics in Prince George: the harms of encampments (paras 24-53); relocating residents just relocates the risks associated with encampments (para 64); the benefits of encampments (paras 75-94); the shelters in Prince George had large numbers of vacancies (para 66); shelters were not accessible, because they were not low barrier (para 74); unhoused people face risks of frostbite (para 77); it gets very cold in Prince George (para 64); 79% of homeless people in Prince George are Indigenous, whose intergenerational trauma the Court must consider (para 69)</p>	<p>Not discussed.</p>	<p>Not discussed.</p>	<p>Application dismissed with respect to one location and allowed in part with respect to the second.</p>
<p><i>Prince George v Johnny</i>, 2022 BCSC 282</p>	<p>After <i>Prince George v Stewart</i>, the City of PG housed 48 encampment residents in a hotel (para 33) and closed the encampment. It applied for an injunction on the basis that it had satisfied the Court's requirements in <i>Prince George v Stewart</i>.</p>	<p>Not discussed.</p>	<p>Not discussed.</p>	<p>Irreparable harm & balance of convenience: did not favour the City because the City had not identified the number of encampment residents did not have a solution for managing their property, and the only four available shelter spaces were not accessible (paras 62-82).</p>	<p>City's application dismissed</p>

<p><i>Waterloo v Persons Unknown</i>, 2023 ONSC 670</p>	<p>Waterloo applied for a declaration that an encampment breached a bylaw, and for an injunction under <i>Municipal Act</i>, s 440.</p>	<p>Finds the bylaw breaches section 7. Considers the harms of encampment displacements (para 54) vs. the benefits of encampments (para 55), the reasons why there aren't enough shelter beds (paras 63, 65-66, 94), and the reasons why the shelter beds available are insufficient (paras 68-71). Finds the section protects the right to shelter 24/7 (not just overnight) (para 105). Life, liberty, security of person all engaged. Finds the total ban on sheltering when there are no accessible alternatives is overbroad, and grossly disproportionate (paras 112-119).</p>	<p>Agrees with Justice Lederer's reasoning in <i>Tanudjaja</i>, 2013 ONSC 5410. No section 15 breach.</p>	<p>The injunction test applied isn't the <i>RJR-MacDonald</i> test, it's a lower <i>Municipal Act</i>, s 440 test. The Region need not establish irreparable harm or balance of convenience. The Region only needed to establish a strong <i>prima facie</i> case on a balance of probabilities that there is a breach of statute. The Court finds that the Region has met this standard but declines to declare a breach.</p>	<p>The Region's applications for declaration and injunction are dismissed. ONSC declares that the bylaw violates section 7 of the <i>Charter</i> in that it deprives the residents life, liberty, and security of the person not in accordance with principles of fundamental justice and not saved by section 1.</p>
<p><i>Kingston v Doe</i>, 2023 ONSC 6662</p>	<p>Kingston applied for an injunction under <i>Municipal Act</i>, s 440 to force encampment residents to leave Belle Park.</p>	<p>Section 7 violation, but limited to overnight sheltering. Not enough shelter space in Kingston was conceded. Right to life engaged by increased risk of death (para 47), liberty engaged by state compulsions (para 48), and security of person engaged by threats to physical and psychological integrity (para 49). Not arbitrary not overbroad, but grossly disproportionate (paras 86-87).</p>	<p>Declines to decide on section 15 when section 7 violation already made out.</p>	<p>Applies the lower <i>Municipal Act</i>, s 440 test.</p>	<p>Concludes that the bylaw was unconstitutional and reads in an exception allowing overnight sheltering, but grants the injunction as against daytime sheltering (Para 137).</p>
<p><i>Church of Saint Stephen et al v Toronto</i>, 2023 ONSC 6566</p>	<p>A church and an unhoused person applied for an interlocutory injunction pending a hearing on the merits to challenge a City bylaw that prohibited encampments on City land on the basis that it violated section 7 of the <i>Charter</i>.</p>	<p>Not considered in depth because serious issue to be tried conceded. There were insufficient shelter spaces in Toronto for all unhoused people. 275 turned away every night (para 5). However, all the people in the encampment had been offered indefinite stays in hotel rooms (para 18).</p>	<p>Not discussed.</p>	<p>Serious Issue: conceded. Irreparable harm: No irreparable harm. Court acknowledged health harms of displacements, but the City offered hotel rooms to residents (para 30). Balance of convenience: Favoured the City. Court considered the safety risks of the encampment, especially fire risks (paras 36-38). Given the fire risks of the particular encampment, and the minimal harm to residents because of the hotel rooms offered, the balance of convenience favoured the City.</p>	<p>Application dismissed.</p>