

COURT FILE NUMBER 2303 15571
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF COALITION FOR JUSTICE AND HUMAN RIGHTS, LTD.
DEFENDANT CITY OF EDMONTON
INTERVENOR CHIEF OF POLICE OF THE EDMONTON POLICE SERVICE
DOCUMENT AMENDED AMENDED APPLICATION
ADDRESS FOR SERVICE AND CONTACT **ENGEL LAW OFFICE**
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NOTICE TO RESPONDENT: CITY OF EDMONTON

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: **Thursday, January 11, 2024**

Time: **10:00 AM**

Where: **Edmonton Law Courts**

Before whom: **Justice of the Court of King's Bench of Alberta**

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicants seek the following in relief:

- a. The Coalition seeks the following interlocutory injunctive relief pursuant to section 24(1) of the Charter, section 52 of the Constitution Act, 1982, section 13(2) of the Judicature Act, or the common law:

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 risks 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.
- b. an Order abridging the time and service of this application;
 - c. costs, including special costs, full indemnity costs, and advanced costs, and applicable taxes on those costs; and

- d. such further and other relief deemed appropriate by this Honourable Court, including other forms of injunctive relief.

Grounds for making this application:

2. From 2021 to present, the number of people who are unhoused in Edmonton increased dramatically. From 2021 to 2022, the number of unhoused people rose 39% from 1,820 to 2,537. From 2022 to 2023, that number rose 23% to 3,112. Safe, accessible shelter space in Edmonton, which was already insufficient prior to the increase, has become even more scarce.
3. Unable to access housing or shelter, hundreds of Edmontonians stay outside, unsheltered every night. Some walk all night to stay warm. Some stay in makeshift shelters like tents, tee-pees, or lean-tos, which are commonly called “encampments.” People who stay in encampments often use propane-powered stoves and burners to stay warm and cook food.
4. Some people who stay in encampments prefer to stay together in groups, which can provide benefits including increased safety in numbers, increased visibility to service providers, shared resources, a sense of belonging, informal governance and dispute resolution practices, and other benefits to living in community.
5. There are encampments all over Edmonton, but they are concentrated in central areas like Boyle-McCauley, or in the North Saskatchewan River Valley and connected ravines. Encampments typically occupy land owned by the Respondent City of Edmonton (“**City of Edmonton**”), including:
 - a. parks;
 - b. empty lots and parking lots in the Boyle-McCauley area;
 - c. the grass that runs parallel to the bike path and the Edmonton Transit Service Light Rail Transit Line between Mary Burlie Park (10465 97 St) and 66 Street;
 - d. The “LIVINGbridge” pedestrian bridge over 97 Street near Mary Burlie Park;
 - e. sidewalks;
 - f. boulevards; and
 - g. streets.
6. Despite knowing there is inadequate housing and shelter space to meet all Edmontonians’ needs, the City of Edmonton regularly displaces encampments. When unsheltered people are displaced, they usually have no reasonable alternative accommodation, so they move their encampment to another location - usually another location in Boyle-McCauley or in the River Valley. It often does not take long before the City of Edmonton displaces them again.
7. The City of Edmonton displaces encampments from City-owned land pursuant to a regulatory regime that arises from the operation of the Parkland Bylaw 2202, Traffic Bylaw 5590, and the *Trespass to Premises Act*, RSA 2000 c T-7 (collectively referred to as the

“**Regulatory Regime**”). Based on this regulatory regime, the City of Edmonton developed the following approach to authorizing and conducting encampment displacements (“**Encampment Policy**”):

- a. the City of Edmonton receives complaints about encampments via a phone call to 311 or in writing through the 311 smartphone application;
 - b. City Peace Officers and/or EPS Officers attend the site to investigate and determine the level of “risk” that the encampment poses. Depending on the risk level, the attending Officers will determine a timeline for displacing the encampment and disposing of displaced peoples’ property.
 - c. The next steps in the encampment displacement process depend on whether Officers classify the encampment as “inactive”, “low risk”, “high risk”, or “extreme risk”:
 - i. If the Officers determine the encampment is “inactive”, they ask City park rangers and City operations to dispose of any property as soon as possible.
 - ii. If the Officers determine the encampment is “low risk”, they set a date for displacing the encampment within a few weeks, notify nearby community agencies to attend and provide services to the people staying in the encampment, and give the people notice of the upcoming displacement. On the scheduled displacement date, Officers attend to ensure that the displaced people move away from the location. City Operations and/or Park Rangers attend to remove displaced peoples’ property.
 - iii. If the Officers determine the encampment is “high risk” or “extreme risk”, they accelerate the displacement process so that it is complete within three days of their initial investigation.
8. There is no consideration given under the Regulatory Regime to whether there is adequate shelter space to transition encampment residents into following a displacement. In recent years, displacements have occurred without the availability of adequate alternative shelter or housing options for encampment residents. City of Edmonton encampment displacements routinely force residents to brave extreme elements without adequate shelter or other necessary protections, and as a result, many have been seriously injured or died.
9. Encampment displacements are an ineffective and irrational means to accomplish any legitimate policy purpose, and they cause unjustifiable and disproportionate harm to displaced peoples’ well-being and liberty. Given the inadequate shelter available to accommodate all Edmontonians who are unsheltered, the City of Edmonton’s displacement of encampments from City of Edmonton-owned land breaches displaced Edmontonians’ rights under the following sections of the *Charter of Rights and Freedoms* (“**Charter**”):
- a. under section 2 (c) and (d), by violating their freedoms of peaceful assembly and association;

- b. under section 7, by depriving them their rights to life, liberty, and security of their persons in a manner that is overbroad and grossly disproportionate;
 - c. under section 12, by subjecting them to cruel and unusual punishment, and,
 - d. under section 15, by depriving them their right to equality without discrimination based on race, Indigeneity, disability, gender, sexual orientation, religion, and the intersection of those identities, and
 - e. cannot be justified under section 1 of the *Charter*.
10. Encampment displacements cause irreparable harm to displaced people including decreased ability to provide for their basic needs; loss of contact with essential supports, like family, friends, harm reduction outreach workers, housing first workers, social workers, health care providers, or mutual aid/community outreach volunteers; loss of property; sleep deprivation, increased exposure to extreme weather; mental anguish, stress, anxiety, and trauma; worsening physical and mental health and an increased risk of death.
 11. When the City of Edmonton displaces encampments, its employees, contractors, agents, and/or delegates, without lawful authority to do so, remove and dispose of displaced peoples' belongings, including: any propane tanks or stoves; any property that displaced people were unable to pack and take with them; and any property in an encampment that someone is not present to claim, pack, and take with them. The City of Edmonton or the Edmonton Police Service will occasionally render peoples' tents unusable by slashing them or taking their tent poles. All such unlawful interference with displaced peoples' property constitutes the torts of conversion and/or trespass to chattels and breaches of displaced peoples' section 8 *Charter* rights.
 12. In the alternative, if the employees, contractors, agents and/or delegates of the City of Edmonton are authorized by any City bylaw or the provincial legislation to remove and dispose of the displaced people's belongings, the bylaw and/or legislation breaches displaced peoples' section 8 *Charter* rights and violates section 2 of the *Alberta Personal Property Bill of Rights* as there is no process in place for the determination and payment of compensation.
 13. The Regulatory Regime and Encampment Policy breach the rights of encampment residents in Edmonton at sections 2, 7, 8, 12, and 15 of the *Charter of Rights and Freedoms*, and cannot be saved pursuant to section 1.
 14. The Coalition seeks an interlocutory injunction pursuant to section 24(1) of the *Charter*, section 52 of the *Constitution Act, 1982*, section 13(2) of the *Judicature Act*, or the common law as a court of inherent jurisdiction that permits the City to continue to respond to encampments, but in a manner that better preserves the health and well-being of encampment residents.
 15. Unhoused individuals in Edmonton who reside in encampments will suffer irreparable harm if an injunction is not granted immediately, including being forced to endure extreme winter conditions without shelter and other protections, which may lead to serious injury or death.

16. The balance of convenience favours granting an injunction in the circumstance.

Material or evidence to be relied on:

17. Affidavit of Sam Mason, affirmed August 25, 2023.
18. Affidavit of Devyn Ens, sworn September 15, 2023.
19. Supplemental Affidavit of Devyn Ens, sworn November 29, 2023.
20. Affidavit of Lisa Wemp, affirmed July 13, 2023.
21. Affidavit of Lauren Rivard, affirmed July 13, 2023.
22. Affidavit of Raymond Neal Shirt-Yellowbird, affirmed July 13, 2023.
23. Affidavit of Joshua Bell, affirmed July 13, 2023.
24. Affidavit of Asia Rivard, affirmed August 18, 2023.
25. Affidavit of Tristan Scott, affirmed August 18, 2023.
26. Affidavit of Tristan Seneca, affirmed August 18, 2023.
27. Affidavit of Russell Francis Cardinal, affirmed August 23, 2023.
28. Affidavit of Pamela Souter, affirmed August 25, 2023.
29. Affidavit of Dean Gladue, affirmed August 25, 2023.
30. Affidavit of Dr. Damian Collins, affirmed August 29, 2023.
31. Affidavit #2 of Dr. Damian Collins, affirmed November 29, 2023.
32. Affidavit of Dr. Sandy Dong, affirmed September 15, 2023.
33. Supplemental Affidavit of Dr. Sandy Dong, affirmed November 29, 2023.
34. Affidavit of Dr. Andrea Sereda, affirmed September 5, 2023.
35. Affidavit of Dr. Kaitlin Schwan, sworn September 21, 2023.
36. Affidavit of Andy Kennedy, sworn November 29, 2023.
37. Affidavit of Benjamin Hertwig, sworn November 23, 2023.
38. Affidavit of Celine Chuang, sworn November 23, 2023.
39. Affidavit of Omar Mouallem, affirmed November 29, 2023.
40. Affidavit of Judith Gale, affirmed November 23, 2023.
41. The transcripts from questioning on the affidavits outline above, along with any answers to undertakings provided, and the affidavits tendered by the Defendant and Intervenor, along with the transcripts from questioning on the affidavits and any answers to undertakings provided in relation to the questioning conducted on the affidavits tendered by the Defendant and Intervenor for this application.

Applicable rules:

42. *Alberta Rules of Court.*

Applicable Acts and regulations:

43. *Judicature Act.*

44. *Charter of Rights and Freedoms.*

45. Alberta Personal Property Bill of Rights.

Any irregularity complained of or objection relied on:

46. None.

How the application is proposed to be heard or considered:

47. Oral and written submissions made by both parties on an expedited basis.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicants a reasonable time before the application is to be heard or considered.