



Council Member Motion

For the Governance and Priorities Committee meeting of November 5, 2015

Date: October 30, 2015

From: Councillor Ben Isitt and Councillor Jeremy Loveday

Subject: Consistency of Parks Regulation Bylaw and *Canadian Charter of Rights and Freedoms*

BACKGROUND:

The BC Supreme Court recently ruled in the case of *Abbotsford (City) v. Shantz*, 2015 BCSC 1909, that the City of Abbotsford's bylaws (ss. 14 and 15 of the Consolidated Parks Bylaw, and subsection 2.7(d) of the Good Neighbour Bylaw) which prohibit Abbotsford's homeless from sleeping or being in a City park overnight or erecting a temporary shelter without permits are unconstitutional.

Honourable Chief Justice Hinkson found that the bylaws violate the liberty and security of the person rights of homeless people in Abbotsford, as protected by s. 7 of the *Canadian Charter of Rights and Freedoms*. The ruling allows people to erect shelters and sleep in the City's public spaces and parks between the hours of 7:00 p.m. and 9:00 a.m. This decision means that homeless people can no longer be evicted from public spaces and parks during those hours.

The Court found that Abbotsford's bylaws interfere with the fundamentally important personal decision to shelter one's self in circumstances where there is no practicable alternative shelter. (para 188) The Court found that the bylaws that deny the City's homeless overnight access to public spaces and prevent them from erecting temporary shelters without permits are overbroad. The Court also concluded that the "constant movement of the homeless exacerbated their already vulnerable positions, as it inhibited the ability of the service providers who endeavoured to help the City's homeless to actually locate them and provide help. I thus find that the evidence supports a finding that the Impugned Bylaws have had a serious effect on the psychological or physical integrity of the City's homeless." (para 209)

On this basis, the Court concluded that the bylaws effects are grossly disproportionate to any benefit that the City might derive from furthering its objectives. Further, the Chief Justice Hinkson said, "I am satisfied that the evidence led by DWS establishes that continual displacement of the City's homeless causes them impaired sleep and serious psychological pain and stress and creates a risk to their health." (para 219) The Court's decision is effective immediately.

This report therefore proposes that Council directs staff to review City of Victoria Parks Regulation Bylaw 07-059 in light of the recent *Shantz* decision and recommend any amendments deemed advisable to ensure the City bylaw is constitutional and does not unreasonably infringe on the rights of people who are homeless.

RECOMMENDATION:

THAT Council direct staff to review City of Victoria Parks Regulation Bylaw 07-059 in light of the recent BC Supreme Court decision in *Abbotsford (City) v. Shantz*, 2015 BCSC 1909, and recommend any amendments deemed advisable to ensure the City bylaw is constitutional and does not unreasonably infringe on the rights of people who are homeless.

Respectfully submitted,



Councillor Ben Isitt



Councillor Jeremy Loveday

Attachments:

Legal brief from the PIVOT Legal Society
Abbotsford (City) v. Shantz, 2015 BCSC 1909
City of Victoria Parks Regulation Bylaw 07-059