



Abbotsford (City) v. Shantz, 2015 BCSC 1909

Background

In the case of B.C./Yukon Association of Drug War Survivors (DWS) v. Abbotsford, homeless people challenged three City of Abbotsford bylaws that have been used to displace the homeless population from public spaces throughout the city.

DJ Larkin, of Pivot Legal Society, and David Wotherspoon, of Fasken Martineau, represented DWS in the court action. They argued that the City's actions in displacing homeless people violates their rights under section 2(c) and 2(d) (assembly and association), section 7 (right to life, liberty, and security of the person), and section 15 (equality) of the *Canadian Charter of Rights and Freedoms*.

During the six-week trial that began on June 29, 2015, the Court heard from several homeless Abbotsford residents who detailed how municipal bylaws have been enforced to displace people sheltering in public spaces despite the fact that many have no other options for shelter. Testimonies describe how homeless campers have had tents pepper sprayed by police, had chicken manure dumped on their camp, and been subjected to countless other displacement tactics that put their lives at risk.

Many of the homeless campers are Aboriginal, and nearly all of the homeless campers have live with addiction, mental health issues and/or physical disabilities. By failing to provide safe housing options and health services, and by targeting homeless people based on their use of public spaces, DWS argued that the City of Abbotsford's bylaws and actions discriminate against the homeless campers on the basis of disability and Aboriginal heritage, and violate their right to equal protection and benefit of the law.

The Decision

On October 21, 2015, the Honourable Chief Justice Hinkson of the BC Supreme Court rendered his decision.

The Chief Justice ruled that 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. He 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 Court 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.