

The Homeless Can Tent Overnight in City Parks

On October 14, 2008 Judge Ross issued reasons for judgment in *Victoria (City) v. Adams*.^[1] Homeless people had been setting up “tent cities” in Victoria’s city parks. In response, the City brought in bylaws which had the effect of banning overnight camping in those parks. People were allowed to sleep in the parks, but they could not shelter themselves. Judge Ross ruled that the bylaws were “of no force and effect insofar and only insofar as they apply to prevent homeless people from erecting temporary shelter.”^[2]

The City had originally applied for a court-ordered injunction forcing the homeless out of its parks at night. The homeless appealed arguing that the bylaws were invalid pursuant to section 7 of the *Charter of Rights and Freedoms*.^[3] Section 7 reads:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

The judge summarized the evidence placed before the courts:

- There are at present more than 1,000 homeless people living in the City;
- There are at present 141 permanent shelter beds in the City, expanded to 326 when the Extreme Weather Protocol is in effect;
- The number of homeless people exceeds the available supply of shelter beds;
- Exposure to the elements without adequate shelter such as a tent tarpaulin or cardboard box is associated with a number of substantial risks to health including the risk of hypothermia, a potentially fatal condition; and
- Adequate shelter for those sleeping outside in the West Coast climate requires both ground insulation and appropriate overhead protection in the form of a tent or tent-like shelter.^[4]

The judge then identified the problem as follows:

In my view, the Defendants do not seek positive benefits in this action and it is therefore not necessary for the Court to consider whether s. 7 includes a positive right to the provision of shelter. The Defendants are not seeking to have the City compelled to provide the homeless with adequate shelter. Rather, the claim is that in the present circumstances, in which the number of homeless people exceeds available shelter space, it is a breach of s. 7 for the City to use its Bylaws to prohibit homeless people from taking steps to provide themselves with adequate shelter.^[5]

The court did not go so far as to say that the homeless had a constitutional right to have shelters built for them. It did hold that if the City did not want the homeless sleeping in doorways or in its parks, it had to provide them with an alternate place to stay. Depriving people of a place to sleep was a breach of fundamental justice.

[1] *Victoria (City) v. Adams*, 2008 BCSC 1363 (CanLII), <http://www.canlii.org/en/bc/bcsc/doc/2008/2008bcsc1363/2008bcsc1363.html>.

[2] *Ibid.* at para. 239.

[3] *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 7.

[4] *Victoria (City)*, *supra* note 1 at para. 69.

[5] *Ibid.* at para. 119.