No. S159480
New West Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRITISH COLUMBIA/YUKON ASSOCIATION OF DRUG WAR SURVIVORS

PLAINTIFF

AND:

CITY OF ABBOTSFORD

DEFENDANT

AND

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

INTERVENOR

Submissions of the Plaintiff B.C./Yukon Drug War Survivors
July 31, 2015

David Wotherspoon, D.J. Larkin, Robert Cooper and Andrew Crabtree

Counsel for the Plaintiff in No. S159480 and the Defendant Barry Shantz in No. S156820

Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, British Columbia V6C 0A3
Phone: 604 631 3131
Fax: 604 631 3232

Solicitors for the Plaintiff in No. S159480 and the Defendant Barry Shantz in No. S156820

Alison Latimer
Farris, Vaughn, Wills & Murphy LLP
2500 - 700 W Georgia Street
Vancouver, British Columbia V7Y 1B3
Phone: 604 684 9151
Fax: 604 661 9349

Counsel for the British Columbia Civil Liberties Association

James Yadley and Anthony Price
Murdy & McAllister
1055 Dunsmuir Street
Vancouver, British Columbia V7X 1C4
Phone: 604 689 5263
Fax: 604 689 9029

Counsel for Defendant in No. S159480 and the Plaintiff in No. S156830

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I INTRODUCTION

Overview

1. The City of Abbotsford ("City") knows, and has long known, that it has a crisis of homelessness. This has been repeatedly confirmed in Abbotsford since the Fraser Valley homeless counts commenced in 2004. Evidence throughout these proceedings has also confirmed this.

2. The City's current blanket prohibitions do not take into account the differences between developed and undeveloped parks or other public lands. The net effect of the *Parks Bylaw*, the *Street and Traffic Bylaw* and the City's enforcement of the *Good Neighbour Bylaw* on private lands is to create an exhaustive prohibition on Abbotsford's Homeless to shelter themselves and engage in life-sustaining activities. The commonality between the locations where the bylaws are enforced is the presence of Abbotsford's Homeless on them—not the nature of the lands themselves.

3. We have seen in the evidence various high minded principles about the importance of caring for people who find themselves homeless in Abbotsford in documents and committees and protocols such as:

   (a) *Abbotsford Cares*;

   (b) Abbotsford Social Development Advisory Committee ("ASDAC"); and

   (c) The Integrated Services Enforcement Team Protocol ("ISET Protocol") for the closure of homeless encampments.

4. What we have not seen in the evidence is the City acting on those high-minded principles. What we have seen instead is:

   (a) The steady march of homeless people, the "undesirables", from their encampments as they are evicted by the City's bylaw enforcement officers;

   (b) The movement of homeless people from place to place without consideration on behalf of the City regarding where those people might lawfully go;

   (c) Jake Rudolph, the City's senior bureaucrat responsible for homeless issues, defines his mandate as being about the visual impact of homeless people – not about assisting or supporting them in any way;

   (d) The ISET Protocol, requiring, among other things, that there be a place to go for someone evicted from a camp to go, ignored in practice and deleted from the new protocol;

   (e) ASDAC recommendations on ways to improve the plight of homeless citizens, such as a 24 hour, low-barrier drop in centre, ignored by City Council;

(f) City Council turn down the opportunity to build a housing first facility for men, which had broad community support along with funding from the provincial government and land from Abbotsford Community Services, because it was opposed by members of the Abbotsford business community;

(g) Limbing of trees and clearing bushes as a means of deterring homeless camping;

(h) Fish fertilizer spread on at least one homeless camp as a means of deterring homeless camping;

(i) Spreading chicken manure at the camp at the Happy Tree as a means of discouraging camping;

(j) Cutting tents and pepper spraying tents and belongings as a means of sending a message that homeless campers are not welcome.

5. The evidence also demonstrates a concern on the part of the City of Abbotsford about its image. Its communications and public relations person, Katherine Jeffcoat, claims to have contributed the most value, by dollar amount, to issues related to the Jubilee Park encampment. We saw as well references to shifting the message, an act necessary because the true message about the conduct of the City of Abbotsford is that its conduct toward homeless people, a significantly marginalized group of people suffering poverty, as well as mental health and addiction challenges, has been deplorable.

6. We also saw in the evidence that the City can act quickly. Dane Kae Beno's evidence demonstrated this. In about three months, leading up to and overlapping with trial, Ms. Kae Beno has generated a considerable amount of paper suggesting that the City has turned its attention to initiatives that will make the lives of Abbotsford's Homeless better. None of those initiatives have been implemented and no funding has yet been approved. The evidence has not established that any of on the ground benefits referenced by Ms. Kae Beno will be implemented.

Overview of Evidence

7. With those introductory comments, we turn to an overview of the evidence. The evidence in detail is set out later in these submissions.

Abbotsford's Homeless

8. The City of Abbotsford acknowledges it has a population of people who are homeless. The Fraser Valley Regional District's 2014 homeless count identified the number of homeless individuals living in Abbotsford as 151 (Exhibit 5 Tab 141). This number is understood to be an underestimate.

9. Constable Stahl, who cut the tent of Doug Smith and pepper sprayed inside the tent of Denise Eremenko, gave evidence that he had been to over 30 homeless camps in Abbotsford between 2013 and 2014, all of which were occupied at times throughout the

year. Constable Stahl also recorded seeing over 90 different people living in homeless encampments in 2014.

10. Dennis Steel, a volunteer outreach worker with the 5 and 2 Ministries, also gave evidence of attending over approximately three dozen homeless camps on a regular basis. He also stated that the compositions of camps varies frequently, and that finding a particular individual on any given day might entail visiting multiple locations in the City and its vicinity.

11. Only a comparatively small number of the members of Abbotsford's homeless population gave evidence in trial. It would be neither practical nor possible to call everyone, nor is it necessary to do so. The evidence from Abbotsford's homeless community evokes a web of physical and mental illness, addiction, poverty, personal trauma, and systemic racism.

    (a) Rene Labelle began drinking alcohol at age 8 and was injecting cocaine at age 13, having been introduced by his father. Mr. Labelle's lifelong addiction has resulted in the loss of various jobs as well as an inability to access or maintain housing in Abbotsford; this is largely because nearly all of the City's supportive and/or low-income housing options are abstinence-based. He has attempted recovery programs at almost a dozen facilities, some multiples times, but has never completed a program.

    (b) Harvey Clause raised his five children alone and continued to care for his mother into her old age. After his mother passed away, HC became depressed and turned to drugs as a means to self-medicate. At a time when his children were adults, he did not know how to cope with her loss. He has applied unsuccessfully or been cut off of income assistance and disability numerous times. He has had multiple negative experiences with treatment centres and low-income housing in Abbotsford. While living outdoors, he has been subjected to theft, violence, and the displacement tactics of the City.

    (c) Norm Caldwell, an Aboriginal man from the *Tetlit Gwich'in* nation, dropped out of school as a child in order to support his mother, a residential school survivor with an intravenous drug addiction. He began using drugs at about age 5. He was injecting his mother and used leftovers as he did not know what it was. Mr. Caldwell worked as a car mechanic for 20 years. As a result of an allergic reaction to the chemicals in his workplace, however, Mr. Caldwell's experiences chronic, excruciating pain on a daily basis, which required him to stop working. After being cut off his pain medication, Mr. Caldwell turned to heroin as a means to manage the pain.

    (d) The testimonies of other witnesses, such as Nana Tootoosis, are illuminating not only for their content but more importantly for their delivery. Mr. Tootoosis, a Cree man who admitted to hearing voices regularly, relayed his evidence in a way that was tangential and at times unintelligible. That Mr. Tootoosis has obvious mental health issues and does not have a regular doctor or dentist suggests that the City's lack of outreach and supports make some of Abbotsford's most vulnerable populations even more vulnerable.

(e) Roy Roberts is a member of Abbotsford's homeless community who is regularly referred to throughout the proceedings but who did not testify. Mr. Roberts has been evicted 20 to 30 times by Bylaws Enforcement Officer Dwayne Fitzgerald, despite there being no known alternative spaces for Mr. Roberts to occupy. Mr. Roberts is well-known to service providers throughout the City, including Rod Santiago, who testified that he believed Mr. Robert's mental health issues to be "substantial and significant, especially when he is not on medication." Mr. Roberts has been referred to by City employee Reuben Koole as "permanently homeless." He is acknowledged to have a number of characteristics:

(i) He yells and swears at people;

(ii) He throws things out of anger;

(iii) He has been arrested and admitted for a psychiatric assessment;

(iv) He collects and recycles found materials—particularly scrap metals.

12. Cherie Enns' report in "2014 Homelessness, the City of Abbotsford Role & Response, Next Steps" ("Enns Report") corroborates the evidence of Abbotsford's homeless community when it states "[t]he causes of homelessness reflect an intricate interplay between structural factors, systems failures and individuals' circumstances" (Exhibit 5, Tab 145 – ABB004359/8). This notion is reflected too in the oral testimony of psychiatric nurse and Coordinator for Abbotsford's ACT Team, Joan Cooke; she confirmed that the team's clientele is primarily comprised of individuals suffering severe and persistent mental illnesses and coexisting substance abuse disorder.

13. The evidence clearly indicates that Abbotsford's community of homeless people face multiple barriers to accessing shelter and to being housed, including poverty, addictions and physical and mental health issues. While each witness's trajectory to homelessness is unique and poignant in its own right, those trajectories speak to a broader pattern that—in conjunction with structural factors and systems failures, such as the City's lack of outreach, support services, and available, accessible shelter and housing—significantly limits the extent to which homeless persons in Abbotsford can be safely and reliably housed. The City's failure to accommodate its homeless population will be discussed below.

Lack of shelter and affordable housing in Abbotsford

14. The foundation for the Drug War Survivors claim is the right established in *Victoria (City) v Adams*. The factual substrate to the *Adams* jurisprudence is simple: there are more people living homeless in Victoria than there are available shelter spaces. This engages their rights under s. 7 of the *Charter*.

15. The exact number of people living homeless in Abbotsford at any given time is unknown, (and indeed likely unknowable), it unquestionably exceeds the 25 emergency shelter beds currently available in Abbotsford.

16. But the issues in the present case go beyond those in *Adams*; they deal with the systemic efforts of the City of Abbotsford to repeatedly evict and permanently displace members of its homeless community.

17. In order to better understand this issue, it is important first to review evidence demonstrating the lack of available and accessible shelter space in Abbotsford.

18. The City advanced evidence of the various types of housing purportedly available in Abbotsford; that evidence is a red herring and distracts from the real issue, noted by Ms. Beno, Abbotsford's newly recruited Homelessness Coordinator, that there is an immediate and critical need for shelter in Abbotsford.

19. The City led, for example, evidence from Milt Walker of the Kinghaven Treatment Centre. This facility is an abstinence-based intensive treatment centre requiring a referral and treatment-readiness. It is neither shelter nor long-term housing and it does not have a program to assist clients to find housing following treatment. The Kinghaven facility is irrelevant to the issues before the Court. It is not an option available to address the needs of Abbotsford's homeless community.

20. As Mr. Walker acknowledged in cross examination, "In Abbotsford, it is very difficult for us to find transitional housing that respects the needs of the clients and treats them in an honorable and respectful manner."

21. The City also led evidence from Reuben Koole relating to a map that he and other City staff prepared for Council in 2013; the map plots a variety of available housing options in Abbotsford under the heading "Affordable and Supportive Housing in Abbotsford" (Exhibit 45, Tab 4). The majority of those facilities, however, are abstinence-based, many of them are intended for families, and some require a lump sum buy-in payments.

22. As established in cross examination, Mr. Koole had no knowledge of what was actually provided by each of the facilities identified on the map. He did, however, admit that it was not intended to show housing that was available to people then living in Jubilee Park. Rather, it was intended to show the variety of affordable housing types within Abbotsford. He stated in cross-examination: "in preparing the map, we didn't investigate each of the housing facilities."

23. The City also led evidence about Raven's Moon. It is largely abstinence-based, although tolerant of those who slip. More significantly, it is always full or nearly full. This includes in 2014 when the homeless count was done. Given the definition of "homeless" in the 2014 homeless survey, the residents of Raven's Moon were not homeless (Exhibit 5 Tab 141, Page 73 of Appendices). The finding of 151 homeless people in Abbotsford in 2014 is in addition to the Raven's Moon residents.

24. A report by Cherie Enns, consultant to the City on social issues, confirms the lack of shelter and housing in Abbotsford: "The number of shelter beds per 100,000 people in Abbotsford is much lower at approximately 20 beds than the provincial average of 79." She further states that "Abbotsford lacks a comprehensive and coordinated low-no barrier housing first program" (Exhibit 5, Tab 145, – ABB004359/11).

25. The evidence establishes that the only emergency shelter for adults in Abbotsford is the one operated by the Salvation Army on Gladys Avenue, across from the 'Happy Tree.' The Salvation Army has a contract with BC Housing to provide 20 emergency high-barrier shelter spaces, only six of which are designated for women. The Salvation Army funds five more beds itself. Until early 2014, when Nate McCready assumed management of the shelter, clients faced numerous barriers to access, including drug abstinence and sobriety, 6 pm curfew, and temporary bans for minor rule infractions, sometimes of indeterminate lengths. He testified that prior to taking over operations in early 2014, a few weeks before the closure of Jubilee Park, there were on average approximately 37 people banned from the Salvation Army.

26. Evidence further shows that staff at the Salvation Army was not sympathetic to the circumstances of its clients, nor did it demonstrate an awareness of or an aptitude for the complex personalities and behaviours exhibited at the Shelter. The testimonies of Tony Schmidbauer, Dennis Steel and Dwayne Fitzgerald, suggest that the Salvation Army was a willing participant in the chicken manure incident that occurred in June 2013.

27. Mr. McCready, who came on board to run the Salvation Army shelter in early 2014, has transformed the Salvation Army in myriad ways: many of its barriers have been lowered or eliminated, allowing for greater access by those living homeless in Abbotsford. One of the key changes has been the replacement of an abstinence requirement for a behavioural standard: clients are not obligated to be clean and sober (though they are prohibited from using onsite). Instead, they are required to be non-violent and respectful.

28. Since lowering the barriers at the Shelter, it is operating at or close to capacity most of the time. Nate McCready testified that the Salvation Army operates at 124% capacity on average. While this shift has increased the accessibility of the shelter for some, it has, ironically, created barriers for others who do not wish to stay in the shelter with its lower barriers.

29. Several of Drug War Survivors' witnesses testified that violence is not uncommon at the Salvation Army Shelter. Both Rene Labelle and Doug Smith admitted in their oral testimonies to partaking in and at times being burned for such violence. Nate McCready stated that on the Thursday prior to giving testimony, four people were banned for violent behaviour.

30. Colleen Aitken testified that women turned away from the Shelter at night put themselves at risk of violence insofar as there are men who prey on vulnerable women, desperate for a place to sleep. She gave evidence of jumping from a second-story window to escape a man who had offered her a place to sleep after she was denied entry to the Shelter. She stated "it was better to do that than to stay inside. And that's the only way I would have got out of there. And that's quite a choice to have to make."

31. The evidence supports the conclusion that, as was the case in *Adams*, there is insufficient shelter space in Abbotsford to house its homeless population. Drug War Survivors is entitled to an *Adams* type remedy on this basis alone.

Systemic displacement

32. While the City of Abbotsford has not helped its community of homeless people, it has not sat idly by and ignored them. In the words of Bylaw Enforcement Officer Dwayne Fitzgerald, "... I don't think there is a solution to this but we can attempt to make it difficult for them." Mr. Fitzgerald's attitude seems to be the ethos of the City of Abbotsford.

33. For the purpose of this initial factual review, the evidence is organized in two broad categories: Abbotsford's bureaucratic inactivity and its displacement tactics.

Abbotsford's bureaucratic inaction

34. Records disclosed in this litigation demonstrate that as far back as 2006 there was a recognized need for a "housing first" low-barrier men's shelter to help people like NC, NT, and CR get off the street, get stabilized, and ultimately get housed.

35. ASDAC, created in about 2006, was a committee of City Council. ASDAC met monthly until the current Mayor disbanded it in late 2014.

36. Though ASDAC proposed numerous recommendations including a low-barrier shelter, a coordinating role for people discharged from hospitals, and a 24-hour drop-in centre, few recommendations have been implemented by Council. Several of ASDAC's former members served as witness for both parties in these proceedings and each expressed a general dissatisfaction with the failure of City Council to act on its recommendations. DWS witness Ron van Wyk stated that ASDAC deliberated old ideas without making any new progress, such that the committee "died on the vine." City employee Reuben Koole similarly admitted in cross-examination that he was "frustrated" with inaction on ASDAC recommendations.

37. Most significant of ASDAC's rejected recommendations was the repeated lack of action regarding a housing first low-barrier men's facility. ASDAC recognized the need for a housing first approach in 2006 and began making recommendations that such an approach be implemented shortly thereafter. It culminated in ASDAC's recommendation that the City approve a low-barrier, 20-bed project that was to operate at 2408 Montvue Avenue. Despite raising housing first in 2006, and BC Housing committing to provide capital and operating funds in 2008, as well as the fact that Abbotsford Community Services had donated the land on which the facility was to operate, Council voted on February 17 2014 to reject rezoning that would have allowed the project to go ahead. Then-Mayor Bruce Banman cast the deciding vote on a four-four tie, striking down the project.

38. The facility had widespread support from the community of Abbotsford at the public meeting on the night that Council met to discuss the project. Those in favour included the Abbotsford Christian Leaders Network, various Sikh temples, and prominent businesses and corporations such as Prospera Credit Union and Omniproject. Mr. Santiago estimated that 75% of those that spoke about the project spoke in favour of it, many of them wearing green scarves as a symbol of solidarity and support for the facility.

Of the 88 speakers at the public hearing, only 30 spoke against the facility, which is consistent with Mr. Santiago's recollection.

39. Rejection of the proposal was ostensibly in response to concerns from the Downtown Business Association, which opposed the presence of such a facility in the backyard of several downtown businesses. The rezoning was made necessary by Abbotsford's C7 zoning, which prohibits addiction counselling in downtown Abbotsford.

40. While a similar facility is slated to proceed in a different location, its expected date of operation is not until 2016 at the earliest—a full 10 years after ASDAC's initial support for a housing first approach and eight years after the province of BC committed to provide the funding.

41. The City's inactivity can also be linked to a failure to mitigate the harms experienced by its homeless population. Until it was amended in February 2014, for instance, the City's 2005 anti-harm reduction zoning bylaw restricted where and how harm reduction services could be provided within Abbotsford. Drug users were prevented from accessing basic life-saving services such as needle exchanges, safe injection sites, and mobile dispensing vans despite Fraser Health Authority's initial proposal for harm reduction measures in 2010.

42. At this time, the City still does not have a designated needle exchange or a safe injection site, despite the Warm Zone and the 5&2 breaking the City's law in an attempt to provide these services. City staff, however, continually cite concerns regarding the presence of needles, condoms, and other paraphernalia in public parks and grounds but have not taken action to provide safe needle disposal.

43. The City also does not provide garbage clean up to any homeless camps besides the Gladys camp. It does not make public washrooms accessible during evening hours, nor does it put portable washrooms in its parks. Garbage, rats, and excrement, however feature prominently in the City's discussions about problems in the homeless camps.

44. The City employs, as of April 2015, a Homelessness Coordinator (Dena Kae Beno), and a Deputy City Manager (Jake Rudolph) who was given the "special project" of dealing with issues surrounding homelessness. It had a Homelessness Task Force between April and October of 2014, and as of December 2014 has a Homelessness Action Advisory committee.

45. Despite the existence of these positions and projects, the City:

    (a) Does not define homelessness;

    (b) Cannot identify the issues contributing to and affecting homelessness;

    (c) Does not know how many shelter beds are available in Abbotsford at any given time;

(d) Does not have a system in place to house individuals following a camp closure nor does it check to see if housing is available;

(e) Does not have a cleanup protocol;

(f) Does not assess the mental health of homeless occupants in the process of camp evictions; and

(g) Does not provide transportation to the Public Works yard (located approximately 9 km from the Salvation Army) where belongings are stored following camp cleanups. Prior to April 2014, a storage locker for belongings following closures did not exist and storing belongings upon evicting camps was out of the ordinary as recently as April 2014.

Systemic forced evictions

46. Despite the creation of various committees and policies, the barriers faced by Abbotsford's homeless have remained largely unchanged. In fact, it would appear that the City, far from being idle, was taking active steps to make the lives of its homeless community more difficult. We can only speculate now about how the lives of Nana Tootoosis, Norm Caldwell or Roy Roberts might have been improved had the City's efforts been channelled towards eliminating (rather than intensifying) barriers to access.

47. Evidence demonstrates the City's frequent discussion about and implementation of various displacement tactics to move homeless individuals off of both public and private land. Tactics are noted in the proceeding and include:

(a) Spreading chicken manure on a homeless encampment on June 4, 2013;

(b) Spreading fish fertilizer on Gladys Avenue as a deterrent;

(c) Cutting a tent open when the occupant was absent;

(d) Cutting tent straps;

(e) Spraying pepper spray on the interior of two tents;

(f) Clearing sightlines and removing overhead cover by way of removing underbrush and limbing the lower branches of trees in and around encampments;

(g) Blocking the entryways into Lonzo Park with branches and tree trunks;

(h) Enforcing the *Good Neighbour Bylaw* on private lands;

(i) Applying the *Parks Bylaw* to lands not designated as parks; and

(j) Encouraging C.P. Rail staff to increase ticketing of homeless trespassers on C.P. Rail-owned land.

48. Contrary to his evidence in chief, Mr. Fitzgerald was not following the ISET Protocol. As he admitted in cross examination, Mr. Fitzgerald did not wait for direction from the ISET committee before moving to evict people from homeless camps, he did not wait to confirm shelter or housing options were available, he did not wait to confirm transportation for camp occupants to a shelter.

49. Instead, Mr. Fitzgerald's practice was to act unilaterally and independently. He approached camp occupants and verbally requested that they move along. If they failed to comply, Mr. Fitzgerald would return to post eviction notices. He testified to being present when two tents were pepper sprayed. In spite of admitting that his notes were to be full and fair, he failed to record this event. This raises suspicions about the accuracy of his notes and the integrity of his evidence.

50. Mr. Fitzgerald arranged for letters to be sent to property owners requiring that they enforce the *Good Neighbour Bylaw* by removing homeless people from camping on private property. Letters included a threat to undertake certain work on the property at the expense of the property owner if they failed to comply with the demands stipulated. The letter included an attachment on tactics to deter 'squatting', which included cutting back bushes to open up sightlines in order to discourage homeless camping.

51. Mr. Fitzgerald attended the Happy Tree on June 4, 2013, to watch the spreading of chicken manure on the homeless encampment where Norm Zurowski, Nana Tootoosis, and Norm Caldwell had slept the night before. Mr. Zurowski states that Mr. Fitzgerald provided no concrete warning prior to the events, but stated vaguely in the preceding month that bylaws was going to make things "really uncomfortable" for those camped Mr. Steel notes that as he hurried to assist Mr. Caldwell pick up his Mr. Fitzgerald, another officer, and employees of the Salvation Army, including the Director at the time, Andy Kwak, "were just standing there;" there were no efforts to attend to visibly disturbed occupants of the encampment, whose clothing and were soiled.

52. In his s to other City staff, Mr. Fitzgerald refers to the members of Abbotsford's Homele s as "undesirables" and "vagrants." Other City staff were noted to refer to homeless people as "undesirables" as well (Fitzgerald, cross-examination; exhibit 4 tab 106). In an email dated April 2, 2014, City employee Scott Watson stated "by removing the wooden fence and opening the area up, we probably reduced the likelihood of homeless people camping out there quite significantly. The old CPTED principle—the more legitimate users you have the less undesirables there will be." (Exhibit 3, Tab 71

53. Paul Priebe is a City employee whose work relates to buildings, structures and shelters in parks. Despite it not being within his job description, Mr. Priebe located homeless camps, photographed them, and reported them to various City staff members, including Bill Flitton when he was the acting head of bylaw enforcement. Mr. Priebe's actions included attempting to move homeless individuals out of parks during the day.

54. Rather than seek occupants' compliance with City bylaws, it appears that Mr. Priebe was motivated to cleanse City parks of traces of homelessness. Evidence shows that on February 14, 2013, the day that the Dance Mob was to be held in Jubilee Park, Mr. Priebe

contacted bylaws to recommend the removal of Roy Roberts from the park (after he was unsuccessful in moving him along himself). Not only is there a lack of evidence to indicate necessity for such a removal, it would appear that Mr. Roberts was in fact welcomed by the participants and that he had stated he might "dance a jig." (Exhibit 43 Tab 6).

55. There is evidence that Mr. Priebe requested that Harvey Clause move away from a picnic table in a clearing on July 6 2013 "so as not to disturb the park setting" (Exhibit 3 Tab 42). He confirmed during cross-examination that he did so out of a desire to not disturb a picnic shelter and a birthday party taking place in the same park that day, about 25-50 feet away. When asked whether he'd ever asked "a middle-class woman with a baby crying" to move so as not to disturb the peace, Mr. Priebe said not only that he wouldn't do it, but also that he would likely get in trouble if he did.

Effects of displacement on members of Abbotsford's Homeless

56. The evidence establishes the displacement tactics pleaded by Drug War Survivors. The effects of such tactics are myriad and complex. They compound the barriers already experienced by Abbotsford's homeless population and simultaneously inhibit the ability of Abbotsford's service providers to carry out their work in relation to that population.

57. Shane Calder, from Victoria, referred to the difficulties that service providers there face in accessing individuals who are coerced into transience: "If we don't know where someone is, we can't set goals: treatment goals, medication goals, outreach...If we know where someone is for a while, we're better able to access them." This challenge was reflected in the cross-examination of psychiatric nurse and Abbotsford ACT team member Joan Cooke, who said that a level of predictability in terms of clients' locations is key to being able to provide outreach.

58. Holly Wilm testified that displacement negatively impacts one's ability to find housing. She stated in her oral testimony: "we're constantly having to move. We're constantly searching for a place to move to. We had five appointments to go look at places that we couldn't even look at because we had to get everything out [of our campsite], otherwise we lose everything."

59. Pastor Wegenast stated that the result of repeated displacement often leads to the migration of homeless individuals towards more remote, isolated locations as a means to avoid detection. This not only makes supporting people more challenging, but also results in adverse health and safety risks.

60. When Harvey Clause was moved out of Grant Park in 2013, he moved to a more obscure hillside. While he was there he was assaulted by another member of Abbotsford's Homeless. Mr. Clause also testified that following his eviction from beneath the Sumas overpass, he took drugs in order to stay awake throughout the night because he had nowhere to go and was afraid to fall asleep. He ultimately moved to Jubilee Park during the encampment as a safer option.

61. Colleen Aitken gave evidence that she overdosed 13 times over a one-year span. She emphasized that were it not for her visibility and the community around her, no one would have been around to assist her and she would not be alive today.

62. The expert report of Bill MacEwan demonstrates that mortality rates are approximately five times higher among homeless populations in the Downtown Eastside than among the national average, noting that symptoms observed among Abbotsford's homeless are similar to those in the Downtown Eastside. Of both populations, he reported "[t]hey are experiencing psychiatric problems and substance abuse that interferes with their ability to deal with their physical issues that prevents them from attending to their health problems appropriately to prevent them from having ongoing debilitating illnesses and premature death."

63. Dr. Christy Sutherland stated in her expert report that "[a]ddiction, homelessness, mortality, and community functioning are all intricately linked. Both addiction and homelessness are independent risk factors for mortality. The health of individuals and the health of a community can be improved by providing housing and evidence based medical care for those with addiction."

64. Despite the evidence that links homelessness with addiction, poor health and mortality, the City has exacerbated those health risks by virtue of its action and inaction.

65. Evidence also establishes that these effects may be worse for Aboriginal people. The expert report of Yale Belanger shows that Aboriginal people are disproportionately represented among Canada's homeless population. He notes "6.97% of urban Aboriginal people in Canada are considered to be homeless compared with 0.78% of the mainstream population. More than one in fifteen urban Aboriginal people are homeless, compared to one out of 128 non-Aboriginal Canadians."

66. Additionally, Belanger notes that Aboriginal people may experience homelessness differently than others due to generational trauma. He uses the construct "spiritual homelessness" to contextualize Aboriginal homelessness, emphasizing the effects of "separation from traditional land, separation from family and kinship networks, and/or crisis of personal identity whereby an individual's understanding or knowledge of how one relates to country, family and Aboriginal identity systems is confused."

Alternatives and solutions

67. The City's response to the issue of homelessness in Abbotsford appears rooted in the ethos that eliminating the visibility of the problem will make it go away. Jake Rudolph, the City employee responsible for issues relating to homelessness, referred in his oral testimony to homelessness as "a very visible issue." When asked to describe the nature of the problem, he said "people are very visual and see things and they note if people are outdoors in public areas or on streets, gates or sidewalks in the downtown...[T]hat is a problem." (Examination for Discovery, Q356). The City has buried its responsibility to address homelessness meaningfully and contextually beneath a regime of systematic and punitive bylaw enforcement.

68. The City's response is similar to a phenomenon identified by Dr. Nicholas Blomley; in his expert report he notes "a longstanding tendency to conflate homelessness with disorder," noting that "[t]he mere presence of the homeless person constitutes an imagined threat to order and civility (Amster 2008 pp.79-22). However, the disproportionate recourse to regulation may also reflect a generalized anxiety relating to the use of particular public spaces by homeless persons (O'Grady et al 2011; Kennelly and Watt 2011). In other words, an aversion to the visibly destitute is compounded by a deeply seated set of cultural assumption regarding public space, the only site available to homeless people, by definition (Waldron 1991)."

69. The City's tendency to police that visibility by way of punitive bylaw enforcement is, according to Professor Marie-Eve Sylvestre's expert report, "generally ineffective." She clarified in her oral testimony that such enforcement "doesn't end the behaviour that is considered undesirable or considered to be problematic...It is not efficient to stop that behaviour because most of the behaviours being regulated or controlled involve basic needs or survival strategies which are not likely to be deterred by law enforcement.".

70. On June 4 2015, the City of Victoria's Governance and Priorities Committee approved the amended Action Plan for Housing, Supports, and City Services for Homeless People Sheltering in City Parks (Exhibit 7 Tabs 46 to 47). The proposed solutions approved to support Victoria's Homeless include:

    (a) Increasing subsidized housing units;

    (b) Creating micro-housing similar to that of the Portland, Oregon Dignity Village;

    (c) Possibly designating a site for continuous occupation;

    (d) Providing facilities such as portable toilets, potable water, a designated cooking area, sharps bins, and garbage collection; and

    (e) Providing outreach for both social and health services as well as community policing, fire department and ambulance services.

71. Proposals like those approved in Victoria indicate that effective change is possible, as reflected by the Enns Report, which states "possibilities for an Abbotsford 'response' could include emulating initiatives elsewhere in Canada where benevolent investors are offering housing at a discounted cost in collaboration with community agencies or working with BC Housing in the redevelopment of underutilized housing properties" (Exhibit 5 tab 145).

This case is not about positive rights

72. This case is not about positive rights. The questions to be determined are whether the City's current laws and law enforcement practices are a constitutional response to people with no reasonable choice but to engage in life-sustaining activities in public spaces. To the extent that these laws and practices are found unconstitutional, the Court may fashion

a remedy speaks to the constitutionality of the laws and state action and may provide judicial direction as to the requirements of the *Charter* in this context.

73. Although the City may choose to take some positive action in response, whether it be the regulation of the use of public parks, or perhaps the creation of additional shelters or alternative housing, this does not transform what is a challenge to legislation and state action into a claim of positive rights. As found in *Victoria (City) v. Adams*, that a government may take responsive action "could be said to be a feature of all *Charter* cases; governments generally have to take some action to comply with the requirements of the *Charter*, which can involve some expenditures of public funds or legislative action, or both. That kind of responsive action to a finding that a law violates s. 7 does not involve the court in adjudicating positive rights."

Victoria (City) v. Adams, 2008 BCSC 1363 [*Adams BCSC*], aff'd 2009 BCCA 563 [*Adams*] at para. 96

74. To the extent that the new ameliorative measures taken by the City are relevant to this litigation they demonstrate that the City has alternative options to the criminalization of Abbotsford's Homeless and has the power to mitigate any alleged harm to Abbotsford's parks and public spaces. That the City is currently taking a new policy direction, which it is entitled to do, is neither relevant to the rights being adjudicated, nor does it transform this litigation into a quest for positive rights.

75. This case is distinct from *Tanjudjaja v Canada (Attorney General)* in which the plaintiffs made a claim on behalf of both homeless and inadequately housed individuals. In that case the litigation did not target any legislation or specific state action, but rather alleged that the governments of Ontario and Canada have an obligation to implement effective national and provincial strategies to reduce and eventually eliminate homelessness and inadequate housing. The plaintiffs further sought a mandatory order that Canada and Ontario implement effective national and provincial strategies to reduce and eliminate homelessness and inadequate housing.

Tanjudjaja v Canada (Attorney General), 2014 ONCA 852 at para. 14

76. The Ontario Court of Appeal's findings in *Tanjudjaja* must be interpreted in light of the pleadings and remedies sought. It is not that issues of housing are not justiciable, it is that the issues and remedies as framed in *Tanudjaja* treaded well out of the realm of a legal challenge to law or state action and instead directly asked that the Court make orders of pure policy. That is not the case at bar.

77. Much like the Supreme Court of Canada's findings in *Canada (Attorney General) v. Bedford*, Drug War Survivors asks this Court to strike down legislative provisions that infringe the rights of Abbotsford's Homeless under ss. 2, 7 and 15 of the *Charter*. It also asks this Court to find the City's actions were unconstitutional under those same provisions. Drug War Survivors is not requesting that the City put any particular measures in place, only that the City stop applying their bylaws to Abbotsford's Homeless in a way that violates their rights.

Canada (Attorney General) v. Bedford, 2013 SCC 72, [2013] 3 S.C.R. 1101 [*Bedford*] at para. 88

II. FACTS

B.C./Yukon Drug War Survivors

78. Drug War Survivors is a society incorporated under the *Society Act*, R.S.B.C. 1996, c. 433. Many of its over 700 members are drug users or former drug users. Many of its members have no fixed address, nor any predictable safe residence to return to on a daily basis. A number live on the streets or in other places not generally intended for human habitation including public spaces in the City of Abbotsford.

B.C./Yukon Association of Drug War Survivors v. Abbotsford (City), 2014 BCSC 1817 at para. 1

79. Drug War Survivors advocates for the rights of the homeless, asserting rights to housing in Abbotsford and elsewhere and for related support services.

B.C./Yukon Association of Drug War Survivors v. Abbotsford (City) at para. 2

Definition of Abbotsford's Homeless

80. For many years, Abbotsford has had and continues to have a population of people without a fixed address, or a predictable, safe residence to return to on a daily basis, a number of whom live on the streets or in other places not generally intended for human habitation, including in camps in public spaces ("Abbotsford's Homeless").

81. When asked to define homelessness, Pastor Wegenast stated that BC Housing outlines several definitions, the primary one being individuals with no fixed address. He considers as homeless the people camping on Gladys Avenue in Abbotsford or sleeping under Abbotsford's overpasses, in bushes or in cars, as well as people without control over their housing conditions or length of stay at a location. The latter he called "hidden homeless", who include people trading sex for shelter or people who are in transition homes.

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m.)

82. Many homeless people Pastor Wegenast works with struggle with substance abuse, mental illness, physical disabilities and lack of income. It is very common that people have come from arduous upbringings, often including a variety of physical, sexual and emotional abuse as well as substance abuse.

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m.)

83. The City admits that there is no distinction between people who are homeless in Abbotsford and members of Abbotsford's Homeless. The City also admits that it has no policy that defines homelessness. However, Mr. Rudolph defined it as people that are either located in public spaces or perceived to be without permanent residence.

Read-ins, Tab 11, Question 109 and Examination of Jake Rudolph, April 23, 2015, Questions 26 to 28 and 31 to 40

Homelessness in Abbotsford: demographics and background

84. There are at least 151 people who make up Abbotsford's Homeless. This includes persons who are living and sleeping outside, persons who are in emergency shelters, safe houses, and transition houses, and persons who "couch surf" (meaning they sleep at a friend's or family member's place for a night or two or three, and then move on to another place). Of these people, the majority are men aged 30-49, about 32 (~21%) self-identify as Aboriginal, and just over 51% (~76) are living and sleeping outside. Approximately 30% of Abbotsford's Homeless further suffers from "chronic homelessness" (defined as having been homeless for more than one year), a proportion significantly higher than in other municipalities (10-15%) and overall in Canada (15-20%).

85. People become homeless for a variety of different reasons, but one major reason is a lack of housing affordability, which is a combination of inadequate income and unaffordable rent. Other, often concurrent, factors which precipitate homelessness include addictions and family breakdown, abuse, and/or conflict. Once homeless, the experience of homelessness itself serves to aggravate chronic and acute illnesses and concurrent disorders. As such, a "housing first approach" is seen as the best (short- and long-term) strategy for addressing and resolving the interlocking causes and effects of homelessness, taking into account the rights, circumstances, and needs of Abbotsford's Homeless.

86. There has been a longstanding problem of homelessness in Abbotsford.

Exhibit 5, Tab 168, p. 1

87. The Draft 2014 Homelessness Count Summary Report ("Summary Report") was prepared by the Mennonite Central Committee ("MCC") for the Fraser Valley Regional District ("FVRD"), of which the City is a member municipality. The Summary Report was prepared at the request of the City to provide information to the City's Homelessness Task Force ("Task Force"),which was appointed by City Council. It was relied on by the City's Homelessness Task Force.

Agreed Statement of Facts, paras. 29 and 40 to 42; Read-ins, Examination for Discovery of Jake Rudolph, May 15, 2015, Questions 530 to 532; Direct Examination of Ron van Wyk, July 9, 2015 (a.m.); Exhibit 5, Tab 141 Appendix 3 (page references to the Summary Report are references to the Appendices to the Task Force's Homelessness Action Plan)

88. Mr. Koole has relied on information from the homeless counts done by the Mennonite Central Committee for the Fraser Valley Regional District from 2004, 2008, 2011 and 2014.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 45, Tab 1

89. The objectives of the Homeless Survey were to determine whether homelessness in Abbotsford is increasing or decreasing; provide data to support the work by the Fraser Valley Regional District ("FVRD"), the City of Abbotsford and Abbotsford Social Services Sector in addressing housing and homelessness in Abbotsford; increase awareness and understanding of homelessness and the approaches needed to constructively respond, prevent, and reduce it; and inform government, policymakers, and community-based organizations about the extent of local homelessness and the need for continued government investment in social housing and support services in Abbotsford.

Summary Report, Exhibit 45, Tab 1, p. 73; Direct Examination of Ron van Wyk, July 9, 2015 (a.m.)

90. In the context of the Homeless Survey, "homeless persons" was defined as follows:

> [H]omeless persons are defined as persons with no fixed address, with no regular and/or adequate nighttime residence where they can expect to stay for more than 30 days. This includes persons who are in emergency shelters, safe houses, and transition houses. It also includes those who are living outside and "sleeping rough", in reference to people living on the streets with no permanent physical shelter of their own, including people sleeping in parks, nooks and crannies, in bus shelters on sidewalks, under bridges, or in tunnels, vehicles, railway cars, tents, makeshift homes, dumpsters, etc., and those who "couch surf", meaning they sleep at a friend's or family member's place for a night or two or three, then move on to another friend, etc.

Summary Report, Exhibit 45, Tab 1, p. 73

91. While surveys may provide an estimate of the homeless population in a given region at a specific time, they are replete with difficulties, including the likelihood of undercounting and "invisibility" as a coping or survival strategy. Invisibility refers to homeless sub-populations, such as women and children who, due to safety concerns, turn to emergency shelters only after all other alternatives have been exhausted.

Summary Report, Exhibit 45, Tab 1, p. 74

92. Despite such challenges, a number of organizations worked collaboratively to conduct the "Fraser Valley Regional District Homelessness Survey: Abbotsford - 2014" (Homeless Survey), in an attempt to empirically estimate homelessness in Abbotsford. While the methodological approach does not capture each and every homeless person, it does provides an estimate of the number of homelessness people at a point in time.

Summary Report, Exhibit 45, Tab 1, pp. 72-73

93. The Homeless Survey is a 24-hour snapshot survey of people who lived homeless in Abbotsford on March 11 and 12, 2014. It was previously conducted in 2004, 2008, 2011. The methodology used is a point in time prevalence method, which means you determine at a point in time the number of homeless people in a community. It is similar to the

method that is used in the Metro Vancouver process of these counts. In conducting homeless surveys, Dr. van Wyk drew heavily from the 2004 work that was done in Metro Vancouver to develop this methodology. It is also based on work that is done and has been done across North America in terms of developing homeless counts and doing homeless counts.

Summary Report, Exhibit 45, Tab 1, p. 73; Direct Examination of Ron van Wyk, July 9, 2015 (a.m.)

94. In conducting the Homeless Survey, the MCC and Dr. van Wyk use people in the community that can help with the actual survey administration. Typically, since 2004, they would identify a local organization that would be willing to do the local coordination of the count and then they would recruit and train volunteers so they would be familiar with the questionnaire. Then the Survey coordinators and the local organization identify together the places they should visit in the daytime to survey people who live homeless. They also identify the facilities that needed to be visited in the evening where people might stay overnight. This typically would be emergency shelters, safe houses for youth and transition houses for women who flee abuse and violence.

Direct Examination of Ron van Wyk, July 9, 2015 (a.m.)

95. The interviewers were selected based on their experience with the homeless community and empathy for and ease in interacting with such persons, and tasked with conducting the survey on the grounds that shared information was confidential, interviewees would remain anonymous, and interviewees were surveyed only after giving informed consent.

Summary Report, Exhibit 45, Tab 1, p. 74

96. According to the Homeless Survey, Abbotsford's homeless count was 151, an increase from 117 in 2011, but a decrease from 235 in 2008 and 226 in 2004. Ms. Aitken gave evidence that she has approximately 100 friends who live outside. She estimated that maybe 50 or 60 of them are currently living outside "at this end of Abbotsford," with the rest living out on the Clearbrook side.

Summary Report, Exhibit 45, Tab 1, p. 75; Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

97. The Homeless Survey, is an under-count of the number of homeless people in Abbotsford.

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m.); Direct Examination of Ron van Wyk, July 9, 2015 (a.m.)

98. The homeless people surveyed were largely male in the 30-49 year age group who have lived in Abbotsford for 11 years or longer.

Summary Report, Exhibit 45, Tab 1, pp. 83 to 84

99. Those who self-identified as Aboriginal were counted at 32, more than double compared to the survey conducted in 2011.

Summary Report, Exhibit 45, Tab 1, p. 84

100. Just over 51% of those surveyed did not use shelter accommodation or the couches of family or friends. For this segment of the surveyed population, makeshift shelters and other outdoor places were considered home.

Summary Report, Exhibit 45, Tab 1, p. 79

101. The reasons given for not using a transition house or shelter the previous night included, "too many rules; "feels too much like an institution"; "don't like the curfew"; "do not feel safe"; and "turned away".

Summary Report, Exhibit 45, Tab 1, p. 79

102. With respect to which community services are used by the homeless in Abbotsford, meal programs were found to most frequently be used, followed by outreach services, drop-in services, the emergency room and the food bank.

Summary Report, Exhibit 45, Tab 1, p. 86

103. The survey also revealed that a substantial number of the homeless in Abbotsford are experiencing relative long-term or chronic homelessness (*i.e.*, have been homeless for more than one year).

Summary Report, Exhibit 45, Tab 1, p. 76

104. According to the Homeless Survey, such chronic homelessness as a subgroup constitutes about 30% of the homeless population in Abbotsford, whereas in other municipalities it is generally 10-15% of the homeless population in a given locale and overall in Canada, is 15-20%.

Summary Report, Exhibit 45, Tab 1, p. 78

105. The Homeless Survey also found that the homeless in Abbotsford live with mental health and addiction to substance use issues (also referred to as concurrent disorders), which complicate daily existence by preventing access to services and medical care.

Summary Report, Exhibit 45, Tab 1, p. 77

106. The Homeless Survey further noted that living homeless serves to aggravate chronic and acute illnesses:

> According to Hulchanski (2004), homelessness in itself is an "agent of disease". Homeless people are more exposed to and more likely to develop health problems than the general population, as living conditions predispose them to be

particularly at risk of developing ill health. For example, they are at greater risk of being infected with communicable diseases (MacKnee & Mervin, 2002).

Summary Report, Exhibit 45, Tab 1, p. 78

107. Additionally, the experience of homelessness in itself is a source of stress as it entails "poor diet, stress, cold and damp, along with inadequate sleeping arrangements and sanitation and hygiene".

Summary Report, Exhibit 45, Tab 1, p. 78

108. Of those interviewed, slightly more than forty percent (41.7%) claimed that precipitating factors for homelessness related to affordability, more precisely inadequate income and unaffordable rent. Other factors cited include addictions and "family breakdown/abuse/conflict".

Summary Report, Exhibit 45, Tab 1, p. 76

109. Based on its findings, the Homeless Survey states that "[t]he desired outcome of making a break from living homeless cannot be achieved overnight and is dependent on long-term supports." It recommended that the "housing first approach" be embraced in Abbotsford. A housing first approach assumes that all individuals regardless of substance misuse, physical condition, eligibility for income assistance or lifestyle are entitled to a safe place to live and that "addiction recovery is more likely to be successful when secure housing is met".

Summary Report, Exhibit 45, Tab 1, pp. 80 and 82

Abbotsford's Homeless

110. Only some of Abbotsford's Homeless testified at this trial. It would not be practical or possible to have all give evidence. Nor is it necessary. Below is brief a description of some of the people whose rights are in issue in this proceeding. Additional information about each individual is found in the sections that follow this one.

Colleen Aitken

111. Colleen Aitken is 60 and has lived in Abbotsford for approximately 30 years. She has been cyclically homeless for the last 12 years. Prior to becoming homeless, she raised three children and owned three businesses. At the time she gave evidence, she lived in a tent at the Gladys Avenue Camp, across from the MCC.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

112. Ms. Aitken was hit by a car on a crosswalk in May 2014. She wears a leg brace because she experienced a "cave in" after the accident, meaning that all the rods and pins came loose. She is currently waiting to have a knee replacement done. She said she contstantly is in "a lot of pain." As a result of the accident, Ms. Aitken suffered a brain injury and lost the site in her left eye and the hearing in her left ear.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

113. Ms. Aitken estimated that "at best," she could walk approximately four to five blocks before her leg swells up, although this does vary from day-to-day. The pain has had a significant effect on her stress level. She explained that recently, she had a breakdown due to stress build-up and was hospitalized. Following discharge, she was returned to tent at the Gladys Avenue Camp. When living at the Gladys Avenue Camp, she was unable to walk down the street to the Salvation Army due to her knee injury. As a result, she relied on hampers from the food bank or on friends, who would bring her food. S he explained that while the hampers contained some useful food items, many of the contents are canned or require cooking and there are no cooking facilities at the Gladys Avenue Camp.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

114. Ms. Aiken has short-term memory loss. She writes things down in a book to help remind her, but that oftentimes she forgets to look at the book.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

115. Ms. Aitken testified that she is on "very limited pain medicine," and that she has been taking medication "off and on" since the accident. She explained that she has self-medicated to manage her pain. This has included alcohol, Tylenol 3, Flexeril and Valium. She has also taken opiates and heroin. Ms. Aitken has overdosed. She said that "when heroin was being cut with Fentanyl," she overdosed 13 times over a 1-year span. During an overdose, "you drop and hopefully somebody else is around that can call 9-1-1 for you." Luckily, every time she overdosed, someone else was around, including at Jubilee Park; she confirmed that if no one had been around, she would not be alive today.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

116. She has been hospitalized in the past due to a head injury. She had "a bad fall off the steps of this one building where I was actually living in a doorway there." She split the back of her head and had multiple staples put in. She stated that she was discharged at 4:30 am and had to walk back from the hospital to downtown. She said that when she was discharged, she felt dizzy, sick to her stomach and disoriented. She spent the night in the doorway of a business.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

117. Ms. Aitken is currently trying to get back on Social Assistance, which she was cut off from after an accident.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

Norm Caldwell

118. Mr. Caldwell (aged 49) is an Aboriginal man from the Tetlit Gwichi'in First Nation who has lived in Abbotsford for three years. He is currently homeless, living under "a

beautiful tarp" on Gladys Avenue. He has lived on Gladys Avenue nearly the entire three years of being homeless in Abbotsford.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

119. Mr. Caldwell's parents raised him only in his earliest childhood. Following the death of his father, Mr. Caldwell only saw his mother "for a short period of time." Mr. Caldwell said that his mother used "lots" of drugs and that he helped her take them because she needed assistance. He gave evidence that he started using drugs, including heroin, at the age of five, but had "no idea what they were." He testified that he ate the remainders of whatever his mother was using.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

120. Mr. Caldwell stated that his mother went to an Anglican residential school for "her whole young life" until she was kicked out at age 14. Mr. Caldwell was raised with his brother for four years of his life. After his father died, Mr. Caldwell and his brother were placed in separate foster homes.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

121. Mr. Caldwell gave evidence that he experienced racism in school every day and that he was called names every day. He finished up to half of Grade 11 and confirmed that he did well in school. He indicated that he would like to have finished high school.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

122. Mr. Caldwell lived with his daughter since the day she was born. He said that she purchased a home in Abbotsford with her husband and that he lived with her for approximately two years. Mr. Caldwell no longer lives with her due to "a dispute about money." He indicated that his use of opiates while staying with them created tension; he said that his daughter's husband got upset with him.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

123. Mr. Caldwell used to restore vehicles. He began in 1982, but stopped on account of an allergy to the chemicals, which made him sick to his stomach. He described some of his tasks as chopping rust out, making steel panels, welding, auto body painting, etc. He said that he "loved" the work and that he would "definitely" still do it if he could.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

124. Mr. Caldwell gave evidence that his former doctor (a specialist in contagious diseases) cut him off his medication a month prior to his testimony. He said that he no longer sees that doctor and that there is no doctor in town who he can see for pain, despite needing treatment for it. Mr. Caldwell said that he has tried to find a doctor to help him with his pain management. Mr. Caldwell has been on disability for three months. Mr. Caldwell used to see a pain specialist and addictions doctor in 2005 —Dr. Waterloop—to help with his pain. He said that he no longer sees Dr. Waterloop because the only treatment he was

prescribed was Methadone. Mr. Caldwell said that he took himself off of Methadone because it does not work for him and because he wakes up with intense stomach pain when he takes it.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

125. Mr. Caldwell uses opiates to manage his pain; he said that he gets "dope sick" every day. Mr. Caldwell described the symptoms of dope sickness as having no energy, not being able to sit still, having no patience, muscle contractions, and "restless leg syndrome." Mr. Caldwell testified that using opiates allows him to "get up and walk, think." Without them, he said that he has no energy and feels restless. He has never been in treatment. He has tried to detox himself before and indicated when he did, he experienced withdrawal.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

126. Mr. Caldwell said that he sometimes sleeps during the day, but that generally he sleeps "hardly at all."

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

127. Mr. Caldwell stated: "I'd like nothing more than to be fitting into society like I used to, you know. Like I don't care to be living on the side of the road. Holding my head up. You know, I could care less what people think, but it takes its toll on you no matter what you think, you know, and people don't have a clue…I wish they would just leave me alone sometimes."

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

Harvey Clause

128. Harvey Clause is a 54-year-old man who lived in Abbotsford from 2006 until recently when he moved to the Lookout Shelter in North Vancouver and then to Lytton, where he lives with Barry Shantz. He currently pays rent through social services, which amounts to $375 a month.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

129. Mr. Clause used to live in Calgary. As a young child, he had ADHD, had trouble staying in school and did not even finish Grade Seven. He is a single parent and raised his five children. He started using drugs to deal with the death of his mother. After he started using drugs, his children stopped contacting him. He used drugs to hide his real emotions and to feel good.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

130. After the death of his mother in 1999, Mr. Clause made a conscious choice to move to Vancouver and use drugs. He was still hiding the feelings he had about being alone and in his words, "My mother was my only relative and she was all I had." When he moved

to Vancouver, it was his first time really living on the streets. Eventually, he left the East End because he was afraid of the people, the violence and the chaos. Mr. Clause entered treatment at the Union Gospel Mission in 2006, but did not complete the program because he had trouble with journaling due to his poor writing skills.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

131. Upon moving to Abbotsford in 2006, Mr. Clause stayed at a recovery house called Stepping Stone. He paid rent for a time through social services, until he was told he would be given a management position, which led him to drop social services as he thought he would be paid for his work. He was not paid and eventually had to leave. He also lived in an unofficial recovery house run by a man who eventually decided to shut down the house.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

132. Mr. Clause has been on social assistance for a long time but he has been cut off twice. Once, he was cut off because he missed a "Jobwave" appointment after he was beaten in the head with a hockey stick and hospitalized. The attack was over a rental dispute at a house that was being torn down. Afterwards, Mr. Clause had to live outside. When Mr. Clause was not on welfare he would bottle and can for a living. That was how he would feed himself and his cat.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

Rene Labelle

133. Rene Labelle (aged 50) is a member of Abbotsford's Homeless who has lived in the City for approximately 22 years. For seven of those years, he has been homeless. He stated that he would like to find housing. Mr. Labelle ordinarily sleeps at Exhibition Park in Clearbrook—a 50-minute walk from downtown. He no longer uses a tent but instead sleeps in a sleeping bag because "things go missing."

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

134. Mr. Labelle is an alcoholic but not a drug user. He first began drinking at age 8 or 9 and injected cocaine at age 13. He gave evidence that his father used drugs and alcohol in front of him as a child and that his father in fact gave him drugs and alcohol as a child. He gave evidence that if he has not been drinking for an extended period, he experiences stomach pain, sweating and shaking.

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

135. Mr. Labelle stated that has not been employed for the last eight years; he panhandles occasionally. His last job was at Matcon Civil Engineering. Prior to that he worked for Pacific Blasting. Mr. Labelle indicated that he was fired from his position as Blaster because "alcohol and dynamite don't mix."

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

Doug Smith

136. Doug Smith is 50 years old and moved to Abbotsford 5-6 years ago with his then-wife in order to be nearer to her while she entered treatment; both Mr. Smith and his wife at the time were battling cocaine addictions.

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

137. Mr. Smith was jailed at age 13 for car theft. He was charged with aggravated assault and possession of a restricted weapon approximately 20 years ago.

Direct and Cross-examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

138. Mr. Smith began using heroin in jail in 1986. He has tried to detox from heroin three times, but the physical symptoms of detoxing, which include nausea and fever are, according to Mr. Smith, "one of the worst things I've ever had to go through." Mr. Smith has regularly used drugs as a means to self-medicate to "numb the pain" of losing his wife and children. During particularly difficult times, Mr. Smith was using anywhere from four to five "points" of heroin a day; (1ram is equal to 10 points). He states that his use at times has been motivated by suicidal desires.

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

139. Mr. Smith has 4 children, all under the age of 17. He has only ever had brief custody of each of his children. After a lengthy custody battle, his mother adopted his children. Following the adoption, Mr. Smith says that his mother "took off" with his children and he has not had contact with them for an extended period of time. The loss of their children devastated Mr. Smith's relationship with his then-wife. They were both suicidal following the outcome. Their marriage dissolved after Mr. Smith's wife stopped going to treatment and became "controlled by the dope."

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

140. Mr. Smith suffers from Raynaud's disease, a condition that affects the nerve endings in his hands and feet and causes extreme, relatively constant pain. He takes a number of medications to relieve pain symptoms. In 2013, Mr. Smith was taking Gavipenton, Zopiclone and 200 mg of morphine per day for two years on prescriptions from a Dr. West. Mr. Smith states that he was abruptly "cut off" his medications and that he was unable to obtain another doctor in Abbotsford given that he had "dropped" Dr. West. Mr. Smith estimates the cost of his bare minimum medications to be $600 per month, if he were paying for them himself.

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

141. Mr. Smith now sees Dr. Christy Sutherland in Vancouver. Mr. Smith states that Dr. Sutherland's drop-in centre welcomes the homeless community and that he had not seen a facility like it prior. He does not know of any others in Abbotsford's homeless community who use the facility.

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

142. Mr. Smith has been renting a room for the last four months from a couple he knows in Abbotsford. He does not pay rent but instead helps out when necessary. Prior to this, he was living in an apartment across from Jubilee Park. The landlord took Mr. Smith's belongings, told him he could no longer live there and boarded over the door with plywood to prevent entry.

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

Nana Tootoosis

143. Nana Tootoosis is a 35 year old Cree man from Prince Albert, Saskatchewan, who has lived in Abbotsford since 2002. He currently lives homeless in a tent at the Gladys Avenue camp ("Gladys Avenue Camp") at Glady Avenue and Cyril Street. He lives with Norm Caldwell and Roy Roberts and have camped with Mr. Zurowski before at the Happy Tree. Mr. Tootoosis said that he often sleeps during the day.

Direct and Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.)

144. Mr. Tootoosis had trouble in school with listening and spent three or four years living on the street with his mother. When he was growing up, his mother "snapped" and went to a safe house. Mr. Tootoosis does not trust a lot of adults.

Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.)

145. Mr. Tootoosis stated that he has diabetes and that he takes medicine for it. He also has Osteoporosis. Mr. Tootoosis said that his regular doctor "passed [him] on." He stated that he has hit his head and lost consciousness approximately four to six times. He said that one time he did it himself.

Direct and Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.)

Holly Wilm

146. Holly Wilm was born on February 3, 1971. She has lived in Abbotsford for 18 years. She was born in Chilliwack and she identifies as half Aboriginal, specifically as half Niska.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

147. Ms. Wilm lives outside and she has lived outside for about ten years off and on. She has "been inside a few places and usually it doesn't end up working out good and I lose everything I own again anyway." She provided an example of it not working out and her losing. Specifically, at the last place she lived she paid her rent and the guy came into her room the next day and said "you didn't pay the rent, Get out" and took everything she owned. She was subletting so she couldn't do anything about it.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

148. Ms. Wilm is aware of the Gladys Tent Camp. She has not stayed there because she stated she would "feel like I was in a goldfish bowl and I don't like living like that." She would feel too exposed and she prefers the privacy of living on her own with Al, her partner. For example, she prefers the privacy of being in an area that is hidden in the forest.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

149. It is important for Ms. Wilm to have a tent. When she first ended up on the street she had pneumonia for three years pretty much straight because she had no protection from the elements. Ms. Wilm sometimes sleeps during the day. As long as she has a place to set up her tent that is out of sight and out of mind she will sleep there. Otherwise, she cannot sleep. She does not feel safe enough to sleep anyplace else.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

150. Ms. Wilm stated if she had a choice she would absolutely go and live inside. She would do so in a heartbeat. That would only be possible through affordable housing because "there is no way you can get a place in this town" without having roommates. Every time Ms. Wilm had roommates she has lost everything she owned. A lot of people take advantage of that.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

Nick Zurowski

151. Nick Zurowski is an Aboriginal man from the Nlaka'pamux First Nation (Lytton First Nation) who considers himself a watcher and protector of those in need. He is not currently homeless, but has been until recently and maintains close relationships with many in the homeless community in Abbotsford. He admitted that he has hurt people in the past and he has been to prison, but he has changed his ways and now wants to help and protect others out of a love for God. Some of Abbotsford's Homeless come to him and ask him for help. He has spent time with numerous individuals struggling with mental health issues and addictions, taking care of them and ensuring they have access to help when they need it.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

152. Mr. Zurowski drinks alcohol and smokes marijuana. He takes medication (Neproxine) for his knees and back.

Cross-examination of Nick Zurowski, July 6, 2015 (p.m.)

Other members of Abbotsford's Homeless

153. While some of Abbotsford's Homeless testified, there are others who did not, but are examples of the difficulties in housing some homeless people. For example, a number of witnesses spoke about Roy Roberts. Roy Roberts is a homeless man living in Abbotsford. He has severe mental health issues that are exacerbated when he is not on medication. For a period of time, Mr. Roberts was permitted to camp on ACS property

and to use the ACS washroom and staff shower facilities. Mr. Roberts, the City, and ACS worked together to determine an appropriate housing and employment solution for him, but these efforts ultimately fell through and Mr. Roberts continues to be homeless.

Direct Examination of Ron Santiago, July 14, 2015 (p.m.); Read-ins, Examination for Discovery of George Murray, Questions 259 to 271

154. Constable Stahl described Mr. Roberts as someone he has personally had a hard time with. He stated that Mr. Roberts appears to display signs or symptoms of some mental health issues and he knows Mr. Roberts to carry knives. He has seen Mr. Roberts yell, get angry and get agitated. He stated that Mr. Roberts probably swears and he is difficult to speak with at times. Constable Wiens is also familiar with Mr. Roberts and acknowledged he has mental health issues. He has observed that Mr. Roberts is quick to anger and goes off on mumbles that you cannot understand. Constable Wiens recalled an incident on 2394 Essendene in Abbotsford when Mr. Roberts was arrested, acted erratically and swore at the point of his arrest. Mr. Fitzgerald described Mr. Roberts behaving aggressively, including yelling, swearing and throwing things.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.); Direct Examination of Shane Wiens, July 14, 2015 (p.m.); Direct and Cross-examination of Dwayne Fitzgerald, July 20, 2015 (a.m. and p.m.)

155. While the City is aware of Roy Roberts and his difficulties, it has evicted Mr. Roberts many times without thought as to where he might go.

Read-ins, Examination for Discovery of Jake Rudolph, May 15, 2015, Questions 710 to 717; Direct Examination of Bill Flitton, July 16, 2015 (p.m.); Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.); Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Cross-examination of Magda Laljee, July 24, 2015 (p.m.)

156. Other witnesses also spoke about Denise Eremenko. Constable Stahl has observed her yelling and angry, as did Mr. Fitzgerald. Constable Wiens also knows Ms. Eremenko and described her as quick to anger and stated she stirs the pot, yells at people and that her agitation increases when she is yelled at. H has known her for a couple of years and knows that she was housed at different times as he has come across her in different housing, and that she has also lived outside.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.); Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.); Direct Examination of Shane Wiens, July 14, 2015 (p.m.)

157. Mr. Rudolph acknowledged that the literature he has studied indicates that being homeless is connected to an increase in morbidity or death and that there is a link between disability, psychological stress and substance abuse and homelessness. He also noted that the literature he reviewed talks about homeless people coming from broken families and having experience in foster care and group homes and with institutionalisation.

Read-ins, Examination for Discovery of Jake Rudolph, May 15, 2015, Questions 501 to 511, 514 to 517 and 521

Living homeless in Abbotsford

158. When living and sleeping outside, the erection of a temporary or improvised shelter is the only way to ensure a measure of security. At its most basic, this form of shelter provides Abbotsford's Homeless some security for rest from the elements: protection of body and belongings from the wind, the cold, the heat, the rain. Some forms of shelter—for example, a tent—can also provide some security, protection, and privacy from other people, by lessening the chances that they, or their belongings, will be seen as an easy target for violence, vandalism, or theft. Depending on their response to these threats, some of Abbotsford's Homeless prefer to seek and set up shelter out of sight; other of Abbotsford's Homeless prefer to gather together in homeless camps. When Abbotsford's Homeless shelter together, in small groups of two or three or in larger and more stable homeless encampments, this allows them to both "take care of each other", and to gain in the visibility needed for service providers to find them and address their basic needs, from garbage pickup, to accessible washrooms, to the provision of fire extinguishers.

159. Abbotsford's Homeless erect tents, tarps, boxes, blankets or other improvised structures to protect themselves from the elemetns. They sometimes live in proximity to each other. The City has no direct knowledge of why homeless people erect shelters.

Agreed Statement of Facts, pars. 50 to 51; Read-ins, Tab 15, Question 81

160. Some witnesses testified about the importance of tents as a security measure: tents prevent people from watching you and your belongings. Tents serve as protection from the wind, the cold, the heat and the rain. Ms. Aitken described how she did not disassemble her tent every day when she lived at the Gladys Avenue Camp because doing so would exhausting. She also explained that having a tent provides safety, especially from the elements—the wind, the rain and the snow. She said that she feels safer sleeping in a tent than she does staying in shelters.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.); Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

161. Mr. Zurowski testified that tents are important both during the evening and daytime hours. He indicated that there were situations in which he needed to watch out for someone for an extended period of time, where he was unable to take that person to the Salvation Army because they would not be able to obtain adequate sleep there. Having a tent has allowed him to take care of that person and others and to ensure they have food and water. Mr. Zurowski shared his tent with one individual who had not slept in 10 days. He ensured she had a sleeping bag, water, toilet paper and a meal. She slept up to 36 hours.

162. Mr. Zurowski carries multiple sleeping bags, tents, tarps, bedrolls, food, and various sizes and types of clothing in order to assist other people.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

163. Before his last two apartments, Mr. Smith lived outside in Jubilee Park. Throughout this time, the pain stemming from his condition was constant. Mr. Smith regularly stayed awake throughout the night in order to ensure his belongings were not stolen. He was using heroin regularly, which make it difficult to keep track of time and dates.

Direct Examination of Doug Smith, July 14, 2015 (p.m. but before lunch)

164. Mr. Smith had no other residence in which to live during this time. After the Jubilee encampment was shut down by way of legal order, Mr. Smith was not offered alternative housing.

Direct Examination of Doug Smith, July 14, 2015 (p.m. but before lunch)

165. Mr. Labelle stated that during the day, he keeps his belongings in the shrubbery and bushes at Stadium Park. The week before he gave evidence, the police confiscated his sleeping bag after spotting him in the shrubbery and taking him to "the drunk tank." Police did not inform him with respect to reclaiming his sleeping bag and Mr. Labelle stated that he still has not gotten it back.

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

166. Mr. Labelle gave evidence that he always camps alone because he prefers to "keep [his] stuff." He has never stayed at the camp on Gladys Avenue because he finds it "a little too wild." Mr. Labelle stated that he feels safe at Rotary Park. He indicated that members of the Indo Canadian community have become his friends; they know where he stays and visit him regularly, giving him alcohol and money. He said they refer to him as "Lumbo"—meaning "tall."

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

167. Ms. Wilms camps anywhere out of sight. She does that because she does not like living in a goldfish bowl. She now lives with Al, who is her common-law husband and who she has lived with for just over five years.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

168. Mr. Caldwell stated that he generally camps with others, including Nana Tootoosis, Roy Roberts and Nick Zurowski, whom he refers to as family. He camps with those individuals in particular because they take care of each other—he said that living without Nana Tootoosis would be like "losing a brother." He testified that he first met Mr. Tootoosis when they were camping across from the Salvation Army between the tracks, "It was pouring rain. I was laying on a pad, sick as a dog and then he came along and took care of me."

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

169. Mr. Caldwell indicated that when a member of the group is under the weather, each does what he can to make the other comfortable.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

170. In Abbotsford, Mr. Clause used a bike and trailer with two carts to transport himself and his cat around. This was difficult, especially with a large box, tools, cans, bottles, bags, blankets and a big carrier for Buddy, his cat. Both carts together were about 12 feet in length. He described how it would be really hard to pack up and move in the morning because of the cold and because it would be difficult to tie things. Even so, riding his bike with the trailer was easier for Mr. Clause than walking because he has issues with his hip.

Direct Examination of Harvey Clause, July 3, 2015 (p.m.)

171. To stay warm or to get dry, Mr. Clause would go to the McDonalds. There, he would warm his hands in the hand dryer, read the newspaper and hope not to get "kicked out". Other than the McDonalds, he would stay under a picnic covering in a park. Mr. Clause camped without a tent until he was given one by someone in the community. After that he would stay in his tent to warm up rather than go to the McDonald's.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

172. Mr. Main admitted in cross-examination that a camper requested fire extinguishers at the homeless camps and that he delivered this message to the Chief of the Fire Department. The practice of providing fire extinguishers began in May of this year, shortly after five to six fires had occurred at homeless camps in the City.

Cross-examination of Ted Main, July 22, 2015 (p.m.)

Homeless camps in Abbotsford

173. A "homeless camp" includes any place where one or more homeless persons actually seek and/or create shelter in Abbotsford, in the daytime or overnight, temporarily or on a more semi-permanent basis. The "camp" might consist of a piece of plastic on a string or a mattress under an overpass, to a tent or a full-blown shed. The number of Abbotsford's Homeless at any one "camp" might therefore consist of a single person to more than 30 people. Of all the homeless camps or "encampments" in Abbotsford, the Gladys Avenue Camp is one of the largest and most permanent, with the number of people living there at any one time ranging from 5 to about 20. In total, there are probably more than three dozen "homeless camps" in Abbotsford, including in a number of city parks such as Lonzo Park (also known as "Compassion Park"), Century Park, Mill Lake Park, Grant Park, and Rotary Park.

174. Pastor Wegenast has seen about three dozen homeless sites in his travels around Abbotsford working with the 5 and 2 Ministries and Abbotsford Community Services. The locations are on private and public property, including parks and lawns. There are

encampments under overpasses as well, such as under Highway 1. Camps consist of 1 to 30 people.

Cross-examination of Jesse Wegenast, June 29, 2015 (p.m.)

175. As part of his outreach work, Dennis Steel, also with the 5 and 2 Ministries, regularly visits over a dozen homeless camps. In his estimation there are at least a dozen camps occupied at any one time. Of the dozen or so camps that he visits almost every day, the number of people varies from one to five. However, at the Gladys Avenue Camp there are 15 to 20 people. The camps range from a piece of plastic on a string, to a mattress under an overpass, to a full-blown shed.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

176. Outhouses were put in at the Gladys Avenue Camp approximately one year ago. Prior to that, there were no 24-hour-access washrooms available.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

177. In the reports referenced throughout Constable Stahl's testimony he identified a number of camps that he attended, the time and date he went to those locations, and his observations of those locations. He acknowledged checking on Nick Zurowski in the bushes on February 1, 2013 and relied on the accuracy of the information in the General Observance Report ("GOR") to show he attended the camp.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.); Exhibit 6

178. Constable Stahl attended the area behind Save-On and Milestones on April 18, 2013, due to complaints about recurring campsites but did not recall if it was any neatness or safety issue. He identified homeless camps at five additional locations.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.); Exhibit 6

179. Constable Stahl also acknowledged there were homeless camps on: Forest Terrace, behind 7th, behind the south of Fraser Way, across from the Salvation Army where he has been many times, at McCallum/Homeview where he found one person living, in Grant Park where he identified homeless camps and people, on the south side of Highway 1, at West Railway and south of Fraser Way, behind the University of the Fraser Valley, under the power lines, behind 3370 Morrey Avenue next to the tracks where he noted a large amount of garbage spillage over the embankment, at 2771 Emerson Street where he saw just one individual, and at the west end where he found Denise Eremenko.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.); Exhibit 6, Tabs 213 and 214

180. He noted that there is currently only one spot where homeless individuals camp in Grant Park. It has multiple entrances and he has found people there. Constable Stahl has also found homeless people camping at the south end of Highway 1, at Garner Street and Simon Avenue in an underground parking area where there were individuals staying on a

mattress, under Highway 1, and behind ACS where he found Roy Roberts camping. He also found a camp at Gladys Avenue and Cyril Street.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

181. Constable Stahl attended many of the camps on multiple occasions. Sometimes, but not every time, he finds homeless people in those camps.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

182. Constable Stahl acknowledged other camps in addition to those listed above. He acknowledged a camp at Lonzo Park and two other parks and at several locations along Gladys. At these camps, among others, he has seen Roy Roberts, Nana Tootoosis, Norn Caldwell and Owen Yanken. He confirmed that generally the individuals he observed residing in the camps were occupants at some point and not simply just found there.

Direct and Cross-examination of Christoph Stahl, July 10, 2015 (p.m.)

183. His patrols have continued into 2015 and he continues to keep track of those camps. He stated, "there are a lot of homeless camps with homeless people". His General Occurrence Report tracking camps for 2014, indicates upward of 90 different camp occupants.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.); Exhibit 6, Tab 214

184. Mr. Fitzgerald noted an encampment at Oriel Park where he talked to the occupant who was Richard Pope. There was another encampment on Gladys at Cyril in September 2012, which was approximately 50 metres south of the current encampment. The person who was occupying it removed her belongings and left. Mr. Fitzgerald never posted an eviction notice.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

185. Commencing on December 21, 2013, several people erected tents along the west side of Gladys Avenue in Abbotsford adjacent to the intersection of Gladys Avenue and Cyril Street (this is the current Gladys Avenue Camp across from the MCC). In January 2015, there were at least 12 people at this location, but the number of people observed there by the City has varied from 5 to about 20.

Agreed Statement of Facts, para. 46; Direct Examination of Debra Graw, July 16, 2015 (p.m.); Direct Examination of Ted Main, July 22, 2015 (p.m.)

186. Ms. Graw and Mr. Fitzgerald noted attending a camp at the Gladys Avenue Camp on October 30, 2014. Ms. Graw noted 25 people. On other visits, they saw up to 17 people at the camp. Ms. Graw filled out a Call For Service Report regarding this encampment. She also filled out an inspection report of her attendance on November 14, 2014. On that day there were only 5 people in attendance but she was told there were 15 living there. On November 25, 2014, she saw eight people tenting. Mr. Fitzgerald reported that the camp was still there in May of 2015.

Direct Examination of Debra Graw, July 16, 2015 (p.m.); Direct Examination of Dwayne Fitzgerald, July 20, 2015 (p.m.); Exhibit 48, Tab 4, pp. 57 and 252

187. Ms. Aitken gave evidence that approximately 20-25 individuals live at the Gladys Avenue Camp.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

188. In addition to the above encampments, Ms. Graw stated that she dealt with an encampment off of Discovery Trail last summer. Jasmine and Aaron were the people in the encampment.

Direct Examination of Debra Graw, July 16, 2015 (p.m.)

189. There have been a number of camps in Lonzo Park. Ms. Graw referred to a Call For Service Report in December 2014, about Lonzo Park where there was an encampment. She attended the encampment, which belonged to Allan and Holly Wilm. Ms. Wilm has camped at Lonzo Park which is also known as at "Compassion Park",. She figured it was the safest place to go because she is familiar with it. She has stayed there before and she figured she and Al were allowed to stay there because they were allowed before when it was Compassion Park. When she states it "was Compassion Park" she is referring to when it was designated for homeless people in about 2005 or 2006. It was there for about two to three months. It was shut down.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.); Direct Examination of Debra Graw, July 16, 2015 (p.m.); Direct and Cross-examination of Holly Wilm, July 8, 2015 (p.m.); Exhibit 47, Tab 5

190. Ms. Graw also visited another encampment on the upper portion of Lonzo Park on Highway 11 that belonged to the Wilms.

Direct Examination of Debra Graw, July 16, 2015 (p.m.)

191. There have been homeless camps in Century Park in Abbotsford and on Clearbook Road.

Direct Examination of Debra Graw, July 16, 2015 (p.m.); Direct Examination of Navdeep Sidhu, July 17, 2015 (a.m.)

192. There are photos of an encampment in Mill Lake Park in evidence. The encampment belonged to Tina and John.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.); Exhibit 43, Tab 46

193. There was an encampment in Grant Park in the summer of 2013. Harvey Clause, Christine and her boyfriend were staying there.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

194. There was a homeless camp in Gardiner Park in November and December 2014.

Direct Examination of Navdeep Sidhu, July 17, 2015 (a.m.); Exhibit 47, Tab 62

195. Mr. Labelle camps at Rotary Park, a location west of Gladwin Road, identified as No. 12 on the Map at Exhibit 23. It is also known as Exhibition Park.

Direct Examination of Rene Labelle, July 8, 2015 (a.m.); Exhibit 23

196. The location where Ms. Wilm is now camping right by the Keg. She forgets the name of the road. There is a little triangle of land right across the street ("Triangle"). She stated "it's just like a little triangle of land that's in between two roads."

Direct Examination of Holly Wilm, July 8, 2015 (p.m.); Exhibit 23 (No. 6 on the map)

Shelter and homeless services in Abbotsford

Introduction

197. The shelter, housing, and other homeless services available in Abbotsford inadequately address the needs of Abbotsford's Homeless, viewed from either a short-term or long-term perspective. Some successfully escape the nightmarish cycle of homelessness; most do not. Not only are there insufficient emergency shelter spaces, but simply having access to an overnight shelter on a temporary basis does little to guarantee access to (much less successful long-term maintenance of) transitional and/or permanent housing.

198. In addition, there is an extreme lack of necessary daytime services for Abbotsford's Homeless, including indoor spaces to rest or sleep, adequate nutrition and meals, and accessible toilet and shower facilities.

199. Abbotsford's Homeless face numerous barriers, many of which are not within their control, and most of which act to force unacceptable compromises over their dignity and autonomy. Homeless persons with mental and/or physical disabilities, drug or alcohol addictions and/or a history of victimization and abuse face particularly high barriers in accessing any available services or emergency shelter beds, much less competing with others when there are not enough to go around.

200. A no-barrier "Housing First" strategy is the best solution for getting people permanently off the street into permanent and secure housing, but simply having "enough beds" is not sufficient. This must be combined with the resources (including time and persistence) necessary to support the development of relationships of trust between individual homeless persons and service providers in Abbotsford. Only then is it possible that the barriers Abbotsford's Homeless face in accessing secure housing—in having and keeping a home—will actually and permanently be overcome.

Definition of low barrier/housing first

201. A housing first approach assumes that all individuals, regardless of substance misuse, physical condition, eligibility for income assistance or lifestyle, are entitled to a safe place to live and that "addiction recovery is more likely to be successful when secure housing is met".

Summary Report, Exhibit 5, Tab 141, pp. 80 and 82

202. The housing first approach is a flexible service that is comprehensive in providing "access to an array of services (mental health care, substance abuse treatment, housing services, benefits and income support application assistance, educational and vocational services, etc.)", highly integrated, and client-centred in acknowledging an individual's multiple needs as they pertain to homelessness or concurrent disorders. Providing a "50-60 housing facility based on the principles of housing first" would therefore be beneficial to the chronically homeless in Abbotsford.

Summary Report, Exhibit 45, Tab 1, pp. 81 and 91

203. Abbotsford Community Services is a proponent of "housing first", a concept positing that all individuals are deserving of housing first and foremost, and that such housing serves as a jumping-off point for achieving sobriety, mental health and self-care.

Direct Examination of Rod Santiago, July 14, 2015 (p.m.)

204. The meaning of low barrier is similar to housing first. It is providing housing first and foremost and putting no preconditions for people to be able to get housing. People can be housed even if they are still actively using or have an addiction to a substance. There are always some rules but housing first's focus is on providing housing and working from there.

Cross-examination of Ron van Wyk, July 9, 2015 (a.m.)

205. The City has no definition of "low/no barrier housing first".

Read-ins, Tab 9, Question 66

206. B.C. Housing committed funds to provide a low barrier housing first facility in 2008 - although this was no built.

Exhibit 5, Tab 162; Direct Examination of Rod Santiago, July 14, 2015 (p.m.)

What shelter is actually available in Abbotsford?

207. There are three basic types of indoor shelter or housing options available to Abbotsford's Homeless, none of which are funded by the City. They exist on a spectrum from temporary to permanent, low barrier to high barrier and from free to conditional upon the payment of monthly rent: (1) emergency shelter; (2) second stage housing; and (3) market housing. There are no no-barrier housing first options available within Abbotsford at this time.

208. The only emergency shelter for adults available in Abbotsford in run by the Salvation Army within its Centre of Hope on Gladys Avenue. It has 25 beds; 5 of these beds are funded by the Salvation Army and the other 20 are funded through a contract with BC Housing. Sometimes mats are put on the floor to increase the number of spaces, especially in extreme weather conditions, but the average occupancy rate is 124%, and

people are turned away when the shelter is full, which happens regularly. There is also a 30-day limit on the length of stay.

209. Since a change in leadership in January 2014, this shelter has moved from being "high-barrier" to "low-barrier", which means that now less people are being turned away, kicked out, or banned for lack of sobriety or violation of other rules and conditions (rather than lack of space, which continues to be a problem).

210. The only "second stage housing" available in Abbotsford is the George Schmidt Centre, which has 30 single beds for men 19 and older who have committed to long-term recovery from addiction through an abstinence-based program. Individuals stay an average of six to seven months, and beds become available only when a resident chooses to leave.

211. The availability of "market housing"—basically, rental properties—to Abbotsford's Homeless is limited by supply, the monthly amount they receive in income assistance/welfare, by requirements for the payment of application fees, and by other things, such as whether they are actively using drugs or alcohol. Any market housing that is available to those with the limited incomes of Abbotsford's Homeless is often in deplorable condition.

212. Other than market housing, the only other permanent housing option available to Abbotsford's Homeless is through Raven's Moon Housing Society, which houses 70 people in 16 locations for a rent of $450/month. All of Raven's Moon facilities are subject to a sobriety requirement, and are currently without vacancies.

213. There is no one at the City who knows the number of shelter beds available in Abbotsford at any given time. Neither does anyone at the City know how many people are homeless in Abbotsford at any given time.

Read-ins, Examination for Discovery of Jake Rudolph, May 15, 2015, Questions 522 to 525

214. Mr. Rudolph has heard from Pastor Wegenast that there is a problem with Abbotsford's Homeless not being able to access shelter space and housing, but he has not been involved in any discussions about the availability of shelter space within the City.

Read-ins, Examination for Discovery of Jake Rudolph, May 15, 2015, Questions 561 to 566 and 606 to 607

215. The City does not provide any money in terms of housing supplements.

Read-ins, Examination for Discovery of Jake Rudolph, June 26, 2015, Question 817

216. Dena Kae Beno, the City's new Homeless Coordinator, recalls writing a letter for Mayor Braun's signature in which she noted a need to improve access points for those with mental health needs and said that there is an immediate and critical need for shelter in the City. Since Ms. Kae Beno started with the City, she has noted a critical and immediate need for housing services and shelter.

Cross-examination of Dena Kae Beno, July 27, 2015 (p.m.)

Cyrus Centre

217. The Cyrus Centre operates a youth emergency shelter at 2616 Ware Street in Abbotsford. The Cyrus Centre is exclusively for youths, except perhaps in winter.

Agreed Statement of Facts, para. 44; Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.)

Salvation Army Shelter: Centre of Hope

218. The Salvation Army operates an emergency shelter ("Shelter") within its Centre of Hope at 34081 Glady Avenue in Abbotsford.

Agreed Statement of Facts, para. 43

219. The Shelter has 25 beds. The Shelter has a contract with BC Housing to provide 20 beds and the Salvation Army funds the other five. There is no funding received from the City, although there is some tax relief provided. B.C. Housing limits the length of stay at the Shelter to 30 days for any individual.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

220. Besides the Cyrus Centre there is no other emergency shelter in Abbotsford.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

221. Once someone is in the Shelter for the night, they cannot leave and be allowed back in. If they stayed the previous night and are not there by 9:30 p.m. the next night, they lose their bed. People have to leave the Shelter at 7:30 a.m.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

222. On average, the occupancy rate for the Shelter is 124%, based on full being 20 beds. The Shelter does not keep statistics on who gets turned away. People are turned away because the Shelter is full.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

223. If the 12 to 15 people who camp on Gladys Avenue were to show up at the Shelter at once, the Salvation Army would not be able to accommodate them.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

224. The Shelter is currently the only indoor place where Mr. Labelle can sleep. He sleeps there occasionally. He referred to the Shelter in his evidence as "a horror show" based on its clientele of "schizophrenics and druggies." Mr. Labelle has been turned away from the Shelter—as recently as a week prior to his testimony—due to it being at capacity. He

stated that he has been turned away more than 10 times in the last 12 months. He said: "They need a bigger shelter. They don't have enough beds."

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

225. Mr. Tootoosis has gone to the Salvation Army shelter and been turned away because it was full. This has happened to him about ten times. It has happened recently and he has tried to get in this year.

Direct Examination of Nana Tootoosis, July 8, 2015 (a.m.)

226. Ms. Aitken stated that she has been turned away from the Salvation Army due to its being at capacity. She explained that there are only seven beds for women and the rest are for men, "so women are turned away quite often." There have been occasions whereby she decided not to go to the Shelter out of concern for being turned away. She said "being a woman, if you're not there early enough then you're not going to get a bed."

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

227. The Shelter keeps track of how many clients enter the Shelter for the first time ("Unique Client Count") On average there are 94 unique clients per month arriving at the Shelter. Only 23% of the people who stay at the Shelter move into housing, the rest go back to homelessness.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

228. In about January 2014, Mr. McCready took over as director of the Abbotsford Salvation Army's Shelter of Hope. There was also a change in the captain higher up in the ranks. After this change in personnel, Pastor Wegenast's experience in working with the Salvation Army Shelter changed drastically. Prior to this change in leadership his experience was best described as adversarial. For example, he would give someone a ride to the Shelter and ask people working there: "do you have space?" The Shelter would say "who are they and are they sober?" Before 2014, if the person was not sober (meaning not on any illicit substance) they would not be admitted.

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m.); Direct Examination of Nate McCready, June 30, 2015 (p.m.); Exhibits 12 and 13

229. Prior to January 2014, people staying at the Salvation Army Shelter had to be inside the building by approximately 6:00 p.m. for the night. If you left the Shelter after that time it was not unusual to hear of people being banned from the shelter for a period of time afterwards. Sometimes there were bans issued for varying lengths of time: from 10 days up to 6 months. Bans were also issued for disobeying rules, not returning bedding or using drugs or alcohol on the property.

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m.); Direct Examination of Nate McCready, June 30, 2015 (p.m.); Exhibit 5, Tab 172, p. 2

230. Also prior to January 2014, the Shelter required that: 1) clients show valid picture identification and could be subject to a police check; 2) clients not leave after 11:00 p.m.; 3) clients be sober. Furthermore, clients were only allowed to stay in the Shelter for five nights after which they could not return for 30 days.

Exhibit 5, Tab 172, p. 2

231. Mr. Smith has been temporarily barred from the Shelter. One such ban lasted two weeks as a result of Mr. Smith punching someone in the helmet after that individual hit Mr. Smith's ex-girlfriend in the head. Another ban resulted after Shelter staff found Mr. Smith asleep on the Shelter's bathroom floor with a used syringe nearby.

Direct Examination of Doug Smith, July 14, 2015 (p.m. but before lunch)

232. Mr. Labelle indicated that he has been banned many times from the Salvation Army; his lengthiest ban lasted 90 days. He has been banned for drinking, fighting, "throwing food around," pulling fire alarms and stealing fire extinguishers. Mr. Labelle said that he stole the fire extinguisher to bring to the camp across the street, which did not have one. He reported that the Shelter reclaimed the fire extinguisher after discovering it had been removed. His expressed rationale for being violent is based on retaliation: "If somebody spits in your face, you're going to punch him in the head."

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

233. Mr. Tootoosis was kicked out of the Salvation Army a couple of years ago. There was a Committee that did not want him to be in the Salvation Army. He had to see the leader if he wanted to get back in. He stated the leader was a woman and it was not Mr. McCready – then he stated he did not know if it was him. He has been banned from the Salvation Army twice for getting into arguments and breaking a window.

Direct and Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.)

234. Mr. McCready also increased the length of stay policy for the Shelter because it is difficult to find housing and the longer someone can stay inside, the better able they are to stabilise, take medications and transition into housing.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

235. In effect, Mr. McCready has created a low barrier shelter at the Salvation Army now, where as it used to be high barrier. In addition to the sobriety requirement, there were other restrictions prior to January 2014: the intake was at 6:15 p.m. but new clients could come in at 6:30 p.m., which meant that you could lose your bed in a 15-minute window. Also, clients used to have to show identification or be subject to a police check. The fact that people might be subject to a police check meant that some would not use the Shelter. Clients were subject to a search of their pockets, which was repeated every night of their stay. Pets were not allowed at the Shelter. There was no place to store clients' carts and larger belongings.

Direct Examination of Nate McCready, June 30, 2015 (p.m.); Exhibits 12, 13 and 14

236. Since pets have been allowed at the Shelter, 11 people have come in with their pets and of these five were able to find housing with the Salvation Army's help.

Direct Examination of Nate McCready, June 30, 2015 (p.m.); Exhibits 12, 13 and 14

237. Despite the change in the Shelter to a low barrier shelter, there are still obstacles to its use by some of Abbotsford's Homeless. Mr. Zurowski testified that he rarely accessed the Salvation Army emergency shelter when he was homeless because to him, the shelter is too reminiscent of his experience in a prison lock-down facility. He spent almost 20 years in prison and finds that the chain gate, razor barbed wire, sectioned courtyard and bunk beds remind him of his time spent in jail. It took him three attempts just to get past the door because it was "too oppressive." Similarly, Mr. Smith said that the facility reminded him of a "lock down facility". Prior to 2014, he was subject to pat-down searches and has had his harm reduction supplies confiscated.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.); Direct Examination of Doug Smith, July 14, 2015 (p.m. but before lunch)

238. Mr. Caldwell has stayed at the Shelter two or three times. He does not stay there regularly because he does not like "being around a whole pile of people." Every time he has used the Shelter, he has left before the end of the night. He said that he has left the Shelter before when not feeling well. He described having joint pain, muscle pain, and groin pain throughout his body. He said that he gets anxious when he is in the Shelter.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

239. The Salvation Army's outreach work includes trying to help people find housing. There are three "tracks" of people who the Salvation Army works with:

(a) Track One is for someone who comes in and is working poor. They have a job but they have lost their housing. They require less complex case plans and are usually handled by Shelter staff.

(b) Track Two people are a bit more complex. They might need referrals or assistance in navigating income assistance, a housing list etc.

(c) Track Three involves people who the Salvation Army needs to take to appointments, help them to make a connection for housing and advocate with them.

(d) Respite State is when someone comes in and says, "I need a break—I need to sleep, I don't intend to find housing". The Salvation Army staff will sit with them and determine how long they need to stay.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

240. During cross-examination, Mr. Labelle stated that searching for housing while at the Salvation Army was "kind of tough" because the Shelter does not have a client phone.

Cross-examination of Rene Labelle, July 8, 2015 (a.m.)

Extreme Weather Protocol

241. The Extreme Weather Protocol ("EWP") operates on nights where the temperature is at or below 0 degrees Celsius, heavy storms or at the EWP Coordinator's discretion. It may be used between November and March. Mr. McCready is the Coordinator.

Direct Examination of Nate McCready, June 30, 2015 (p.m.); Exhibit 10

242. The Salvation Army will increase its capacity on these nights by 20 and there is extra funding from BC Housing. 5 and 2 Ministries also seeks out secondary sites, which can be very difficult to find in order to expand the number of available indoor spaces for homeless folks. Churches sometimes open their doors. There is no funding from the City.

Cross-examination of Jesse Wegenast, June 29, 2015 (p.m.); Direct Examination of Nate McCready, June 30, 2015 (p.m.)

243. Some people stay away from EWP shelters because of the crowded nature, or because of feeling marginalised or uncomfortable by the church shelters.

Cross-examination of Jesse Wegenast, June 29, 2015 (p.m.)

244. Just this year, the City has developed a Homeless Emergency Action Team ("HEAT") shelter to temporarily respond to extreme weather events. While Exhibit 79, Document 6128, says there are 40 mats and beds for emergency weather at the Salvation Army, what is actually meant is that there are mats and not beds. Ms. Kae Beno understands that 20 are at the Salvation Army and then the other 20 are at other locations. The City has a facility open for use with mats if required. The 100+ beds that are mentioned include the beds that the Salvation Army would provide.

Direct and Cross-examination of Dena Kae Beno, July 27, 2015 (p.m.); Exhibit 79, Document 6128

Second stage housing

245. The George Schmidt Centre ("Centre") is a second stage housing program for adult men. Each person in the Centre has a private bachelor apartment. The requirements for entering the Centre are that the individual has been through a treatment program or they have been about two to three months clean already and they are committed to an abstinence based program. The Centre is for men 19 years of age and over who have committed to long-term recovery. These men are referred, some through the Kinghaven program and others through the Maple Ridge Treatment Centre or through other outpatient clinics. Homeless men could stay at the Centre and so could men with mental illnesses.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

246. There are 30 single beds for men at the Centre. There is no defined end date for a person's stay. Individuals usually stay an average of six to seven months and the Centre has clients that have been there since the Centre re-opened two years ago. The Ministry of Social Development pays for the residents' rent at the Centre and it is also funded by social assistance. Beds become available once a resident chooses to leave.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

247. The Firth Residence is run by the Elizabeth Fry Society. There is a curfew, an abstinence requirement and a no-guests policy. While Ms. Aitken was told they would help her to find a permanent place, "the most they did to help find a place for me was give me a print-out of what was a available, the rentals that were available, which are usually gone by the time they give you the paper."

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

Market housing

248. While there are cases wherein you will encounter people who can access market housing if they just had a subsidy, for the vast majority of homeless people in Pastor Wegenast's experience who are the very visible/chronic/absolute homeless (including those camped on Gladys or other public sites in Abbotsford), it is very difficult to find accessible and appropriate housing for those individuals.

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m.)

249. 5&2 Ministries does not, to Mr. Steel's knowledge, have any housing to offer people and, according to Pastor Wegenast, 5&2 is not in a position take on the responsibility of signing a lease or being responsible for rent.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.); Cross-examination of Jesse Wegenast, June 29, 2015 (p.m.)

250. The Salvation Army has a list of market housing available in Abbotsford, but according to Mr. McCready, many of the listed units are not affordable for the people the Salvation Army works with. Mr. Labelle is familiar with the Salvation Army Shelter list. He stated: "there's nothing really within anybody's price range that's on Social Assistance." He also gave evidence that he has seen ads on the list specifying "no government assisted people."

Direct Examination of Nate McCready, June 30, 2015 (p.m.); Direct Examination of Rene Labelle, July 8, 2015 (a.m.); Exhibit 6, Tab 209

251. Ms. Aitken has tried in the past to get private market rental housing. She testified that doing so is "very hard," given the $610 per month allowance ($365 of which goes towards rent). Once rent and hydro are paid, there is often "nothing left for food or anything else." She has fallen behind on her hydro bill in the past, and she lived at one

point without hydro. Of the experience she said "you might as well be outside in a tent." She noted that oftentimes, finances require living with a roommate, "which can be another nightmare."

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

252. Whether someone is actively using drugs or alcohol will change the types of housing that are appropriate or accessible in Abbotsford. Whether they are on income-assistance or not is also relevant to whether they can be housed. For welfare, the allotment is $610 per month, and for disability, it is $906 per month.

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m.)

253. Housing that costs what those on income assistance can afford to pay is in a "deplorable" state: window panes missing for weeks at a time, huge amounts of black mold build-up and sometimes violence and lewd acts in the hallways. One of the primary property companies, Main Street Property Management, that sometime rents to low income people require a $200 application fee, which many people cannot afford.

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m. and p.m.)

Other permanent housing

254. ACS runs a number of housing facilities. The Sentinel Group Home and Autumn House are both youth facilities with a total of 18 beds in Abbotsford. ACS also runs Christine Lamb House, a 40-bed facility for women and their children, and the George Schmidt Centre a facility for men. None of the housing facilities that ACS runs follow the Housing First approach. The individuals who access their services are required to be clean and sober. These terms are defined by each project's respective funders. There are no Housing First options available in Abbotsford at this time.

Direct and cross-examination of Rod Santiago, July 14, 2015 (p.m.)

255. In terms of permanent housing in Abbotsford, besides market housing, there is also the Raven's Moon Housing Society. They rent houses under the name of the Society and then they rent out rooms to individuals. These houses meet the needs of some people. They have two low-barrier houses but a requirement for all the others is sobriety. That means no alcohol or any illicit substances. Methadone is also not allowed on the premises although it is a maintenance prescription for those with addictions.

Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.)

256. According to Ms. Forbes, Raven's Moon houses people on income assistance or permanent disability assistance. Raven's Moon has had an influx of senior citizens lately with pensions, too. Clients are referred from Salvation Army, Abbotsford Mental health, Abbotsford Hospital and probation and parole systems. Ms. Dillabough does not know how many, but they get referral phone calls every day.

Direct Examination of Sharon Forbes, July 24, 2015 (a.m.); Direct Examination of Jeannette Dillabough, July 24, 2015 (a.m.)

257. Raven's Moon currently houses 70 people. It has 16 furnished locations—12 houses and 4 basement suites. Of the 12 houses, each has 5 bedrooms and some have 6 for emergency intake. Raven's Moon does not own its properties; it rents them. Rent per room is $450 per month. All Raven's Moon houses are located within the City limits. It is approximately a 30 – minute walk to the Salvation Army.

Direct Examination of Sharon Forbes, July 24, 2015 (a.m.)

258. Ms. Forbes stated that in the men's low-barrier house, guests are prohibited. All Raven's Moon facilities are currently without vacancies. There is a sobriety requirement and methadone is now allowed on the premises

Direct Examination of Sharon Forbes, July 24, 2015 (a.m.); Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.)

259. Raven's Moon is not funded by the City or the provincial or federal governments. For $25,000 a year, Raven's Moon can house five chronically homeless people and so the Mennonite Central Committee is sponsoring two homes at this time."

Direct Examination of Sharon Forbes, July 24, 2015 (a.m.)

260. In addition to the Shelter, The Salvation Army operates an independent living facility with 14 suites. It is a two year program and the clients must be clean and sober.

Direct Examination of Nate McCready, June 30, (p.m.)

Treatment and recovery centres

261. While not shelter or housing, there are treatment and recovery centres that provide beds during addiction treatment. Treatment centres are not considered housing by those who provide these services.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

Kinghaven Treatment Centre

262. Kinghaven is not considered housing, as it is a residential treatment centre. Kinghaven offers detox, stabilization and intense resident treatment with beds for adult males. There are 62 beds in total; 4 of these are for detox, 6 are stabilization beds and 52 are intensive treatment beds. The detox beds are operated by Riverside Detox, which is a part of the Fraser Heath Authority. The detox beds are for men who are under the influence of drugs or alcohol and they have the opportunity detox for up to 30 days in the bed. Stabilization beds are for men that may be more chronically addicted for longer periods of time and so is a less intensive program because there is not as much in depth therapy during the day as in other programs. Intensive beds consist of four hours a day of intensive primary group therapy with senior clinicians.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

263. Kinghaven recently expanded its number of beds to 62 and the facility has just been re-opened. The beds were available as of January 2015. A person can stay 30 days in detox, 90 days in stabilization and 70 days in intensive treatment. It is possible for a person to do the stabilization and intensive treatment for a total of 160 days. It is not common but some men do that.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

264. Kinghaven is an abstinence-based treatment centre, but methadone use on a prescription is allowed. Only adult males aged 19 and over are eligible. Men are referred to Kinghaven by a variety of referral services including outpatient clinics, the Salvation Army, other treatment centres, other support recovery houses, doctors and lawyers. The Salvation Army will send a referral and bring a client directly from their facilities in Abbotsford. There are usually about four to six beds available on average. On the morning of Mr. Walker's testimony there were 4 beds available.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

265. Kinghaven has helped clients find housing. They let them know where housing may be available and clinical staff may let individuals into their offices to let then use their computer to look for different places. While they will make housing available by providing individuals with a list of available housing, Kinghave is not a housing program.

Direct and Cross-examination of Milton Walker, July 17, 2015 (a.m.)

266. Kinghaven is located about 9 kilometers from downtown Abbotsford and the Salvation Army. While people are at Kinghaven there is no personal transport. There are only two days a week that visitors are allowed, which occur on weekends and holidays. No personal phones are allowed and only up to two bags of personal belongings may be brought into the Centre. Bicycles are allowed but there is no where to store them at Kinghaven.

Cross-examination of Milton Walker, July 17, 2015 (a.m.)

267. The fee for Kinghaven is often paid by social assistance. Kinghaven does not cover the cost of medication, the residents pay for their own laundry, there is a linen deposit required, residents bring their own toiletries and residents must buy their own cigarettes.

Cross-examination of Milton Walker, July 17, 2015 (a.m.)

268. There is an application to attend Kinghaven and for some of the women's beds at the Peardonville Treatment Centre (see below). The application is 15 pages and it can be filled out by an individual in detox, by a social worker, by a principle worker or by a probation worker. Beyond being five days clean and sober, the application requires that people are able to or willing to participate in the intensive program. Those individuals require a connection to a service provider to fill out the referral and to enter the program.

There is a referral to get into the intensive program and it is the same process. Kinghaven does not control the detox program. The Fraser Health Authority controls it. As such, Mr. Walker does not know how people are referred to that program.

Cross-examination of Milton Walker, July 17, 2015 (a.m.)

269. There is a requirement that people participate in all aspects of Kinghaven's programming including the intensive program and the counseling. If someone yelled, muttered and walked away everyday then the staff would have to determine if that individual is ready for the program. Kinghaven requires journaling. If people have a slip then they work with that individual but if they turn back to alcohol or drugs then whether or not the Centre asks them to leave is considered on an individual basis.

Cross-examination of Milton Walker, July 17, 2015 (a.m.)

270. Mr. Walker is aware of what low-barrier housing is and also of the housing-first approach. Kinghaven does not fit into either of these definitions. He confirmed that it is probably true that in the last year in Abbotsford it is very difficult to find transitional housing that respects the needs of the clients and treats them in an honourable and respectful manner.

Cross-examination of Milton Walker, July 17, 2015 (a.m.)

Peardonville Treatment Centre

271. Kinghaven provides housing for women through the Peardonville Treatment Centre ("Peardonville"). It is an intensive residential centre for adult women and under school-age children of women in treatment. The Centre has 40 beds in total. The types of beds consist of one detox bed, five stabilization beds, eight beds for children and the remainder are for adult women. These beds are similar to those described under Kinghaven, but are focused on women's issues. Women tend to stay in the beds for the same length of time as men.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

272. Adult women who are 19 and older and who have been referred to Kinghaven's services are eligible for Peardonville. The Salvation Army, outpatient clinics, doctors and the Warm Zone (a drop-in place for women) refer women.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

273. Beds at the Peardonville Treatment Centre are available less often than at Kinghaven because the demand for women's beds and a shortage throughout the province has resulted in a waiting list for the Centre.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

274. Homeless women would be allowed to attend Peardonville. Nonetheless, there is a requirement that they have a place lined up to go to when they are finished the program, creating a significant impediment to entry.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

275. About 50% of clients complete the treatment program.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

Recovery houses

276. There are several goals for the City regarding supportive recovery houses. One is to ensure that houses are appropriately maintained and operated by organizations. Another is to mitigate neighborhood concerns. While Mr. Koole stated it is not a City stipulation that people living in these houses be abstinent and that it depends on the rules as set out by each individual facility, Exhibit 41, Tab 19, on page 4, states that in regards to supportive recovery houses that "no alcohol or illicit drugs are permitted on or off the premises." When asked about this statement, Mr. Koole stated at the time this was implemented that was the intent and many houses follow this document. When asked whether as a social planner he is aware those terms could pose problems for some individuals searching for housing, Mr. Koole responded, "I can't speak to that."

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 41, Tab 19, p. 4

277. Mr. Koole prepared a presentation during the Jubilee Park encampment, dated November 19, 2013, which purported to have an affordable housing inventory. Mr. Koole admitted on cross-examination that he knew none of the details of the houses on the map and that it could not be relied on.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 45, Tab 4, p. 13

Use of treatment centres and recovery houses by Abbotsford's Homeless

278. Mr. Labelle stated that he has tried numerous recovery centres in Abbotsford, including Kinghaven, Raven's Moon and Joshua House. Outside of Abbotsford, he has tried Baldy Hughes (Prince George), Miracle Valley, Maple Ridge Treatment Centre, Phoenix, and Creekside (six times). Mr. Labelle testified that he has never finished any of those programs. All of them are abstinence-based. He has left treatment centres—both voluntarily and involuntarily—because of drinking. Mr. Labelle confirmed that abstinence-based treatment programs do not work for him. Mr. Labelle described living at Raven's Moon for a little over one month. He said that other residents were "peeing on the floor and defecating on the floor" and that he "just couldn't handle it." He confirmed that there were no supports in the house to help those people. He has since returned to Raven's Moon to see if there is vacancy.

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

Lack of services for Abbotsford's Homeless

279. In addition to a lack of available temporary overnight beds or other more permanent overnight shelter and housing in Abbotsford, there is also a lack of necessary day-time services for Abbotsford's Homeless, including access to indoor places to sleep or shelter in the daytime, free meals, free shower facilities and residential tenancy services.

280. Ms. Kae Beno acknowledged a critical need for housing, shelter and support services in Abbotsford.

Cross-examination of Dena Kae Beno, July 27, 2015 (p.m.)

281. Ms. Aitken explained that following her most recent hospitalization for a break-down, she was discharged to the Gladys Avenue Camp. She was discharged from the hospital without an address in the past. On one occasion, following an overdose, she was discharged at 6:00 a.m. and had to walk from the hospital back down to 'Five Corners;' she stated that this was "quite a hike—especially after going through that kind of experience." She also described being discharged at 4:30 a.m. after a head injury and having to walk back downtown. dizzy, sick to her stomach and disoriented. She spent the night in the doorway of a business.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

282. Mr. Labelle usually eats lunch at the Salvation Army. On Wednesdays and Saturdays, he has dinner provided by the 5 and 2 Ministries. The 5 & 2 regularly brings lunch to Rene. They have also provided him with camping supplies. There were "not much options for supper." Mr. Labelle showers at the Salvation Army when he can; if he is banned, he uses the City Hall water fountain. The only public shower he gave evidence about was the Clearbrook wave pool, but clarified that admission costs money.

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

283. Mr. Labelle testified that there is nowhere indoors in Abbotsford where he can sleep 24 hours a day; if he needs to sleep during the daytime, he sleeps outside. He said that during the colder months, if he is unable to access the Shelter, he sleeps in a bank where the ATM machines are. Mr. Labelle has requested to sleep in the drunk tank when conditions are cold and wet. On more than one occasion, after being turned away because he "wasn't drunk enough," he "went and got a bottle and drank it in front of the camera 'til they let [him] in." This option was "better than freezing to death."

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

284. Mr. Labelle does not have a regular doctor; when asked where he goes when he needs medical attention, he responded "emergency, I guess."

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

285. There is no day-time shelter space available in Abbotsford.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

286. In 2005 City Council amended its zoning bylaw to prohibit harm reduction activities.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.)

287. Exhibit 63 is a 2010 report to council authored by Mr. Koole. In it, he noted that harm reduction includes needle exchange and mobile needle exchange. Mr. Koole agreed those exchanges were excluded from areas with change in zoning by the City. He also confirmed that under the City's *Harm Reduction Bylaw*, needle disposal would be basically an underground activity and that the same was true of needle exchanges. He admitted there were no comprehensive education programs in relation to needle exchanges and harm reduction. He knows that the 5 and 2 Ministries and the Warm Zone were involved in this underground distribution and that in his opinion they were breaking the bylaw.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 63

288. Mr. Koole authored another report in relation to harm reduction in 2012. This report was entered in as Exhibit 64. The first report is 3 pages and attaches another report as attachment A, which Mr. Koole also authored. He followed his usual method as a social planner by gathering information from community organizations and others and turning them into recommendations for Council. He agreed that at the top of page 3 it stated there is clear evidence of the effectiveness of harm reduction approaches in reducing harm to the community and individuals. He confirmed that includes reducing risk of there being dirty needles not properly disposed of and the spread of infectious disease. He also agreed that the most vulnerable substance users fall through the cracks in trying to access services. He also confirmed that some of those are chronically homeless individuals.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 64

289. Mr. Koole also confirmed his report listed the Fraser Health Authority needs assessment, which is based on Fraser Health Authority data that includes rates of admission to hospitals related to drug use. It lists Abbotsford as one of five communities with the highest level of drug offences in Canada, which it states is related to an abundance of drugs in Abbotsford. He noted Hepatitis C rates in Abbotsford are above the BC and Canadian averages. This was all part of the background to his recommendation to council about harm reduction.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 64, Attachment A, p. 3

290. The *Harm Reduction Bylaw* is no longer in place. Mr. Koole is not aware of any 24 hour, fixed-cite needle exchanges.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 64

291. There is no Residential Tenancy Branch office in Abbotsford. It is in Chilliwack and it is hard to get there.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

Who can and cannot be housed within this spectrum

292. For a number of reasons, homelessness is a cyclical and recurrent problem for many people, even when they gain sporadic or temporary access to shelter and/or housing. Given the above cited reasons—limited availability of temporary and more permanent shelter and housing spaces in Abbotsford, the limited availability of other daytime services, and the many barriers Abbotsford's Homeless face in accessing even those beds and services which are available—many of Abbotsford's Homeless struggle to get off the streets and into long-term permanent housing.

293. Only about 1 in 4 to 1 in 5 (23%) of the people who access emergency shelter in Abbotsford through the Salvation Army move on to securing more permanent housing, and only about 50% of *those* people maintain that housing for more than six months.

294. Some of the barriers which prevent Abbotsford's Homeless from accessing both temporary shelter and permanent housing options include onerous requirements set by those facilities (e.g. sobriety, complete abstinence, participation or success in addiction treatment programs, curfews which prevent night time work opportunities, and prohibitions or restrictions which prevent couples from staying together). Many of Abbotsford's Homeless also lack permanent support services and resources, as well as face individual circumstances which themselves act as barriers, including a criminal record, physical or mental health issues, addictions, and a general distrust of others stemming from a troubled history.

295. For individuals transitioning off the street into market housing, usually very few will remain housed for much longer than six months and that number drops significantly after about a year. Pastor Wegenast provided real examples of this by describing what happened to his friend, Collen Aitken, who was a senior with serious health issues and who he helped house. She was subsequently evicted and as of June 29, 2015, she appeared to be living at the Gladys Avenue homeless camp. Although as is noted above, she has recently been housed at Raven's Moon.

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m. and p.m.)

296. Mr. McCready testified that of the 23% who move from the Shelter to housing, only about 50% of these people maintain that housing for more than six months.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

297. Prior to working with Abbotsford Community Services, Pastor Wegenast conservatively estimated that he worked with approximately 30 people to find housing. After much time and effort he was only able to house about half of those people. Of that half he estimates that five continued to be housed after six months. Some of those who did not remain in

the housing he has not seen again and some have returned to living with no fixed address in Abbotsford.

Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.)

298. A number of Abbotsford's Homeless are engaged in work that has to happen at night. "Binning" is an example of this. People will search through garbage bins to look for goods to sell and to acquire bottles for recycling. It is an activity that occurs largely at night when it is dark and there is no one there to tell them to stop. The same can be said for those involved in the sex trade. Mr. Clause would bike around late evening or early in the morning to bin because there were fewer people watching him in a dumpster, which he described as less embarrassing. e spent hours in the cold and riding without gloves with freezing hands. Mr. Calder confirmed that binning in Victoria occurs usually between 3:00 and 5:00 a.m. and that sex work occurs after dark.

Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.); Direct Examination of Harvey Clause, July 2, 2015 (p.m.); Direct Examination and Cross-examination of Shane Calder, June 30, 2015 (a.m.)

299. Another activity that frequently occurs at night in Victoria after the bars close is panhandling.

Direct Examination of Shane Calder, June 30, 2015 (a.m.)

300. Mr. Labelle indicated that he has left the Shelter during the night voluntarily. He gave evidence that "nobody's sleeping. Everybody's making a ruckus." He stated that he has left the Shelter in the past to drink.

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

301. Ms. Aitken gave evidence that she has not enjoyed her past experiences in shelters. The hours are problematic because they require individuals to be in and out at particular times. She explained that shelter-goers have to pack up their belongings each day and bring them along. She said "basically all you can do is either wander the streets or go hang out in a park...which is...ridiculous, especially if you're not feeling good or you're ill." She explained that recently, due to her injury, she was often sitting out front of the Shelter after leaving in the morning because she could not get around.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

302. Ms. Aitken stated that she has had to work at night in the past to earn income. There also have been times when she missed going to the Shelter due to work.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

303. Ms. Aitken has left the Shelter in the evening in the past as a result of fighting going on inside. There is risk in leaving the shelter at night, especially for women, because "there's a lot of predators out there." She explained that when women leave the Shelter in the evening hours, there are sometimes men who offer them places to stay. As a result

women are often putting themselves in harm's way. She has personally accepted offers to stay with men in order to have a place to sleep at night and this has resulted in a negative experience or "a nightmare." On one occasion, she jumped out of a second story window because "it was better to do that than to stay inside. And that's the only way I would have got out of there. And that's quite a choice to have to make."

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

304. Ms. Aitken would rather sleep in a doorway no matter what the weather is like, rather than go to the Shelter given that sleeping at the Shelter often means sleeping for no more than a couple of hours. She stated that sleeping in the shelter makes for "a very rough day" the following morning—one during which "you're in no shape to be looking for a place."

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

305. Holly Wilm and her partner, Al, try not to stay in a shelter very much because usually both of them cannot get in and they do not let couples stay together. She cannot sleep when she is not with Al. She has tried staying in the Shelter without him but she cannot sleep whatsoever. Ms. Wilms stated sometimes she would be get into the Shelter, but the men's side would be full or vice-versa and there would not be room for the women because they only have six beds for women. If she cannot get in, then Al will not stay there because they do not like to be separated. Ms. Kae Beno stated that for some couples barriers to accessing shelter would be a concern.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.); Cross-examination of Dena Kae Beno, July 27, 2015 (p.m.)

306. Mr. Clause was very attached to his cat, Buddy, who he described as giving him something to care about. During his testimony, he cried about how much his cat meant to him and the fact that it is dead. He did not stay at the Salvation Army Shelter because they did not allow pets and he would not risk losing his cat.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

307. Mr. Roberts, the City, and ACS worked together to determine an appropriate housing and solution for Mr. Roberts. ACS offered to provide a trailer and metal for Mr. Roberts to sort and 5 and 2 Ministries agreed to check in on his health and food. The City was asked to allow the trailer to be at the Compost Site on Ola Valley Road, but appears to have refused to allow this. Mr. Roberts continues to be homeless.

Direct Examination of Rod Santiago, July 14, 2015 (p.m.); Cross-examination of Magda Laljee, July 24, 2015 (p.m.)

308. Regarding her stay at Firth Residence, Ms. Aitken confirmed that the rules and restrictions did not work for her. She stated that she had many issues with the residence and that she would leave for two to three days at a time. She explained that the last time she left for two days, staff collected her belongings—including medical equipment and

kitchen supplies—and dropped them off at the Gladys Avenue Camp without notifying her, despite the fact that she had a phone at the time and could have been reached.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

309. Pastor Wegenast secured Ms. Aitken a space at Lynnhaven Senior's Residence following her accident. She lived there for approximately five months, but that staff were regularly letting themselves in, sitting on the bed and waking her up. When she asked about a policy of 24-hours written notice prior to entry, staff assured her they were only checking in on her. Ms. Aitken informed staff she did not require check-ins and that she had a nurse and housekeeper who visited regularly, but the check-ins continued. When she lived at Lynnhaven, her mail was withheld without her knowledge.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.); Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.)

310. Ms. Aitken had frequent guests when she lived at Lynnhaven, many of whom were homeless. She was "lucky" to have them, given that she was in a wheelchair and her mobility was limited. Friends would ensure that she had water to drink and took care of whatever else needed to be done. Ms. Aitken confirmed that she was ultimately evicted on the grounds that she had too many friends over and also that she had "too much money to be living in a low income"—she clarified that the latter park was false, given that she was on Social Assistance at the time and her rent was being subsidized.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.); Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.)

311. Mr. Zurowski testified about his unsuccessful efforts to obtain permanent housing. He looked at numerous apartments in Abbotsford but due to his criminal record was denied housing. Potential landlords are able to obtain information from the Abbotsford Police Department about potential tenants, including whether or not the potential tenant has a criminal record like Mr. Zurowski.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

312. Nick Zurowski has sought housing through the Salvation Army on numerous occasions, including seeking to develop a housing plan. These efforts were unsuccessful.

Cross-examination of Nick Zurowski, July 6, 2015 (p.m.)

313. Mr. Tootoosis lived in one of the Raven's Moon houses for a while. He left that house recently. because the room was "active" by which he meant "To -- what the mineral in rat poison to burn -- acid -- acid burn. " He said "it's the mineral in rat poison" and that "it's active". That affected him, as it swelled in his glands, he said.

Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.)

314. Ms. Dillabough has known Nana Tootoosis for many years. She knows him from the work she did at the Abbotsford Hospital. He said that he had to leave Raven's Moon

because he said there was rat poison all over the house. She said he absolutely has mental health issues. They kept going down to the camp to get him and they were wondering why he was not coming home. It did not work because he just kept saying there was too much rat poison at the Raven's Moon house. Ms. Dillabough said that there was no rat poison.

Cross-examination of Jeannette Dillabough, July 24, 2015 (a.m.)

315. Mr. Tootoosis has lived in apartments before and he admitted that when he has lived in a house or apartment he feels closed in. When asked whether he would rather not live in the house or apartment because he does not like or trust the neighbours, he responded "It's just conflict for – a conflict. Just conflict between – gossip and stuff."

Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.)

316. Ms. Wilm is looking for housing right now. She and Al constantly have to move and they are constantly searching for a place to move to. They have had five appointments to look at places but they could not look at them because they had to get everything out (of their campsite) otherwise they would lose everything. They have not found anywhere to live yet. Raven's Moon came by and said they were going to be in contact with her, but it has been over a week since they came to talk and when she saw the same woman at the Salvation Army the day before this testimony, the woman did not even acknowledge her. So she is not "holding her breath on that one".

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

317. Ms. Wilm stated she did not have a meeting at City Hall about housing. A meeting was set up with Al and the City's new Homeless Coordinator (Ms. Kae Beno), but Ms. Wilm did not make it to that meeting because she was going to a memorial that day and she forgot about it.

Cross-examination of Holly Wilm, July 8, 2015 (p.m.)

318. Mr. Caldwell said that he has tried to find housing in Abbotsford. He said that a few times he was rejected as a tenant because the landowners' children were scared of him. During cross-examination, he stated that following his eviction from the Mennonite Central Council land, Raven's Moon staff gave him the phone number for a rental unit based on an ad in the newspaper.

Direct and Cross-examination of Norm Caldwell, July 8, 2015 (p.m.)

319. During cross-examination, Mr. Caldwell stated that he "can't make plans any further than five minutes ahead" because he is preoccupied with his pain and drug addiction.

Cross-examination of Norm Caldwell, July 8, 2015 (p.m.)

320. Mr. Caldwell turned down Dennis Steel's housing offer because it would entail living with four to five strangers, all of whom have addictions. He stated "I'd prefer not to live with anybody that drinks. I got no use for alcohol and less use for drugs."

Cross-examination of Norm Caldwell, July 8, 2015 (p.m.)

321. Ms. Forbes stated that many Raven's Moon clients have been homeless due to significant mental illness or disability. She said that they often have difficulty finding a house without an advocate.

Direct and Cross-examination of Sharon Forbes, July 24, 2015 (a.m.)

322. On November 22, 2012, Mr. Koole stated "at best people like Roy need extensive support to address their health issues and maintain housing. They need a permanent place to live, with permanent support services to help them stay housed. There are no sufficient resources from superior levels of government to adequately address this challenge. (There is also the complication that some people 'prefer' to stay outside, although I do not believe this occurs to a great extent. I believe Roy would rather be in a house, but just be left alone.)"

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 3, Tab 6

323. Mr. Koole wrote an e-mail on December 21, 2012 to Ron van Wyk where he stated there are significant challenges to people finding housing. In his testimony he stated that in some circumstances there are situations where people have difficulty finding housing and that he agrees with his statement in the e-mail.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 3, Tab 6, p. 2

<u>What it takes to house and service some of Abbotsford's Homeless</u>

324. The multiple and overlapping barriers to permanent housing faced by Abbotsford's Homeless are significant, but not impossible to overcome. The single most important factor for success is a relationship of trust with a service provider: and the development of this kind of relationship not only requires that the service provider possess certain individual qualities such as compassion, openness, and a lack of judgment, and not only requires other systemic resources and support, but perhaps most crucially, it simply requires human resources: time, effort, and reliability.

325. Mr. Steel does outreach with people with apparent physical disabilities, including a man with one leg, and people displaying symptoms of mental illness, including a man who he has repeatedly observed talking and yelling at an imaginary person. He also works with people who he has observed being admitted to the psychiatric unit in hospital.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)
Cross-examination of Dennis Steel, June 30, 2015 (p.m.)

326. In order to house people, you need to build a relationship with them. Some people it takes a long time to build the necessary relationship because of mental health issues. So with those people Mr. Steel might start by bringing them food. It might take a while just to get people to accept those simple offerings. For example, there was one individual living alone, handicapped, under an overpass who would not accept food from Mr. Steel.

This person said that he did not deserve the food and he asked that it be given to other people who needed it. Mr. Steel went back every day reassuring him that he could trust him. It took a long time to break that barrier—to let him know that Mr. Steel was just there to help and that he was cared about. He is now living indoors, but that took over a year of continually going back to help figure out what the barrier was preventing him from going back indoors.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

327. Virtually everyone he meets refuses outreach the first time he offers assistance and, in reference to the two people Mr. Steel provided as examples of his outreach, he returned repeatedly for a year or to build trust with those individuals.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

328. Mr. McCready also spoke about the need to create relationships in order to help people and that some people are extremely hard to house - including house in shelters - and are a deterrent to others staying in a shelter.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

329. Mr. Santiago, told the Court about "Homeless Joe", who was a homeless man known throughout Abbotsford and considered among Abbotsford's service providers to be "unhouseable". Despite the efforts of many different people, "Homeless Joe" continued to live outside even during the winter, when he experienced severe frostbite in his toes. Ultimately, a housewife named Glenna got to know him as a result of repeated visits and a lot of consistent effort. She began by laundering his clothing with his permission and introduced him to her daughters. She eventually convinced him to accompany her to ACS. On the first visit, Homeless Joe would only speak to ACS staff through the closed car window. Glenna continued to visit and support him over an extended period of time and eventually, Homeless Joe remembered his name: Wayne. As a result of ascertaining his legal identity, ACS was able to get him on old age pension and through that process, Wayne is now housed. He continues to work through his issues, which include mental health issues stemming from the death of his late wife. He continues to visit with Glenna and her family weekly. Wayne's story demonstrates the positive effects that long-term care and intervention can have on 'hard-to-house' individuals.

Direct Examination of Rod Santiago, July 14, 2015 (p.m.)

330. Regarding the Fraser Health Authority's Assertive Community Treatment ("ACT") Team, Ms. Cooke gave evidence that the client assessments process is more difficult when someone is living on the street or in a shelter or "doesn't want anything to do with the ACT Team." An assessment "can take several attempts." She said that during assessment interviews, the goal is to get answers for all asked questions, but that people do not necessarily want to answer all the questions at once. She stated that for that reason, the ACT Team tries to have "short, frequent meetings with persons wherever they are." Regarding individuals at the Gladys Avenue Camp, Ms. Cooke said "sometimes people will talk to us, sometimes they won't." The ACT Team has "a wish list," or a list

of individuals known to the team by way of visits to camps and the Sally Ann, etc. She said that the team tries to slowly start the engagement with this clientele. However, on cross-examination, Ms. Cooke admitted that the ACT Team does not go into the homeless encampments to find new clients.

Direct and Cross-examination of Joan Cooke, July 24, 2015 (a.m.)

331. The ACT Team offers to assist with housing, but to date the ACT Team has only assisted with housing 9-10 clients, of which only two were homeless. In cross-examination, Ms. Cooke said that knowing where people are likely to be is crucial to being able to follow up with clients. She said that a level of predictability in where people will be is helpful.

Direct and Cross-examination of Joan Cooke, July 24, 2015 (a.m.)

332. Part of what the ACT Team does is help people who have trouble accessing services on their own. Ms. Cooke said that some of their clients have traumatic brain injury, histories of trauma, and difficult histories with authorities such as police and government. She agreed that it was not uncommon that the first time the team engages someone, the answer may be a "no" or an "I don't want to talk." The Team's schedule is relatively flexible given that clients have difficulty leading predictable schedules and that things may come up during the day. Ms. Cooke stated that sometimes, when people resist help, it is because of a lack of insight into their own psychiatric conditions. There are also some people who are resistant to engaging when there is a police officer present.

Cross-examination of Joan Cooke, July 24, 2015 (a.m.)

333. Ms. Cooke stated that the ACT Team delivers medication to clients on the street because it is difficult for people to regulate their own medication when they "live rough." She said that people often do not take their medications correctly not just because they are on the street but also because in general they may not be taking their medications correctly.

Cross-examination of Joan Cooke, July 24, 2015 (a.m.)

334. The ACT Team would be "full" in the first two days if it took all the referrals that it received. She later changed her evidence to say that was an "exaggeration", but definitely in a month the ACT Team would be full.

Cross-examination of Joan Cooke, July 24, 2015 (a.m.)

335. The ACT Team in Abbotsford and Mission is similar to existing programs in the Downtown Eastside of Vancouver and in Surrey.

Cross-examination of Joan Cooke, July 24, 2015 (a.m.)

336. Ms. Aitken has been living in a basement suite for the past two weeks. The rent is $650 and includes utilities and furnishings. Raven's Moon helped her to find the location. Because she is not yet on social assistance, Raven's Moon has put money forward in combination with a subsidy from Pastor Wegenast. No one in the past has paid her rent

or damage deposit. It was crucial for her to find housing immediately, given that she is required to be indoors before getting her knee replacement.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

337. Ms. Kae Beno, the Homeless Coordinator, identified the challenge of what to do with those individuals that get kicked out of every service. What is required varies from person to person and so part of the process is determining what each person needs. Ms. Kae Beno is aware of circumstances that show individuals have had problems accessing services and that is part of why she wrote the letter requesting an integrated support worker from the Ministry of Social Development. As such, there is concern that some cannot navigate the system and need support for a variety of reasons. Filling out applications can be a challenge for some. People need access to showers and laundry and bathrooms. Ms. Kae Beno stated that for some couples barriers to accessing shelter would be a concern.

Cross-examination of Dena Kae Beno, July 27, 2015 (p.m.)

338. Homeless people in Abbotsford need more than support in the form of food, clothing, and soup kitchens. It is client choice in treatment decision-making; positive interpersonal relationships between clients and providers; assertive community treatment approaches; supportive housing; and non-restrictive program approaches that will lead to significant improvements in mental health and substance use disorders among the homeless in Abbotsford.

Summary Report, Exhibit 45, Tab 1, p. 91

Value of community

339. Mr. Caldwell stated that he generally camps with others, including Nana Tootoosis, Roy Roberts and Nick Zurowski, whom he refers to as family. He camps with those individuals in particular because they take care of each other—he said that living without Nana Tootoosis would be like "losing a brother." He testified that he first met Mr. Tootoosis when they were camping across from the Salvation Army between the tracks, "It was pouring rain. I was laying on a pad, sick as a dog and then he came along and took care of me."

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

340. Mr. Caldwell indicated that when a member of the group is under the weather, each does what he can to make the other comfortable.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

341. Ms. Aitken testified to overdosing on heroin and the importance of having someone around when that happens. She stated that she has seen individuals overdose at the Gladys Avenue Camp. She said that she helped a man who overdosed there by

"smacking him, trying to bring him around and get his eyes open." Ultimately, she got someone to call 9-1-1.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

342. Ms. Aitken stated that donations are regularly dropped off at the Gladys Avenue Camp. She stores the donations in her tent so that others can help themselves. When a person lives alone and not at a populated camp, they usually do not receive donations.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

343. Ms. Aitken said she used to distribute supplies from a backpack while walking through Abbotsford on foot. The backpack contained harm reduction supplies—syringes, alcohol wipes, waters, condoms, etc. During the winter, she stocked it with gloves, hand warmers and whatever else she thought people might need.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

344. Mr. Steel fears for the safety of homeless people who live alone. In his outreach he has come across people who are unresponsive, for example:

> ...there's a gentleman under the overpass who is hard of hearing. I go up slowly, calling his name. For the longest time he wouldn't accept anything. He accepts food but very rarely accepts water, which scares me. I go just to make sure he's still breathing. I'm afraid one day I'm going to have to call 911 because something has happened.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

345. Ms. Aitken stated she felt safe at Gladys because she "knew everybody there and if there was any type of problems somebody would be around to help." She said that people in the camp and on the street refer to her as "Mom."

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

346. Ms. Aitken gave evidence that living outdoors as a woman "can be scary sometimes." She explained that women must be very cautious and aware of who and what is around them. She explained that she is lucky because she knows so many people who can keep an eye on her. She knows many girls who live on the street, many of whom are involved in sex work. She said that they come to her for help and that she does whatever she can to help them. This includes listening when they need to talk and advising sex workers with regard to "bad dates".

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

347. Ms. Aitken testified that she knows a number of women who have gone missing. She estimated that a few years back, nine women she knew went missing. She said that her roommate and best girlfriend was murdered; the body was found on Gladys Road and the man charged with her murder was also charged with two others at that time.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

348. One time after moving to a new location outdoors, Mr. Clause was attacked inside his tent. After he was attacked, he moved to Jubilee Park where he stayed because he had friends to watch out for him and for his belongings. He described assisting Colleen Aiken who had overdosed and fallen down in her tent by calling 911. Mr. Clause noted that overdoses were common at the Jubilee Park Camp but that residents would check on each other and make sure that everyone was okay.

Direct Examination of Harvey Clause, July 6, 2015 (a.m.)

Conclusion

349. While there exist some homeless services and some accessible shelter and housing spaces in Abbotsford, overall these are clearly inadequate, as many people continue to live and sleep in Abbotsford's streets, parks and other public spaces.

350. There do not exist enough secure overnight beds and living space for all of Abbotsford's Homeless (on either a temporary or more permanent basis), nor do the beds and services available adequately take into account of and address the significant barriers most of Abbotsford's Homeless face in accessing what is available. These are human beings whose fundamental needs and interests are not being served within the current system. Everyone needs somewhere safe to go, somewhere to be, and somewhere to live, even if they are highly impaired by or face external barriers because of mental illness, addiction, brain trauma, life circumstance or otherwise. The barriers faced by Abbotsford's Homeless are significant, but they can be overcome.

Experts

Dr. Gordon William MacEwan

351. Dr. Gordon William MacEwan ("Dr. MacEwan") is a physician, psychiatrist, Fellow of the Royal College of Physicians and Surgeons of Canada; clinical professor and Associate Head for Clinical Affairs of the UBC Department of Psychiatry, Head of the Department of Psychiatry at St. Paul's Hospital and Medical Director of the Mental Health Program at St. Paul's Hospital.

Direct Examination of Gordon William MacEwan, July 10, 2015 (a.m.); Expert Report of Gordon William MacEwan ("MacEwan Report") (Exhibit 26)

352. Dr. MacEwan was qualified as an expert in psychiatric or mental illnesses for the homeless or precariously housed. He provided expert evidence regarding the prevalence of psychiatric illness in populations of people who are homeless and the barriers faced by these populations.

Direct Examination of Gordon William MacEwan, July 10, 2015 (a.m.)

353. Dr. MacEwan's clinical experience includes patients residing in similar conditions to the Abbotsford Homeless with histories of traumatic brain injury, high levels of addiction

and serious psychiatric illness. His focus as a psychiatric consultant is on serious mental illness, particularly schizophrenia in people who reside either in marginal housing in the Downtown Eastside neighbourhood (DTES) or who are homeless. He has found that "there is a high degree of psychiatric illness, traumatic brain injury and substance abuse in this population".

MacEwan Report at 2

354. Dr. MacEwan's work is guided by the principle of outreach, which in his view is "one of the most effective ways to try and access, and treat individuals who are unable to provide themselves with appropriate mental health and healthcare that will improve their overall wellbeing."

MacEwan Report at 1

355. Based on his areas of expertise and having observed and interviewed members of Abbotsford's Homeless on multiple occasions, Dr. MacEwan was able to specifically describe the current circumstances and anticipated health outcomes of Abbotsford's Homeless.

356. In preparing his expert report, Dr. MacEwan was asked the following questions:

(a) Describe the prevalence, type and severity of psychiatric illness, brain injury and substance abuse in populations of people who are homeless.

(b) Do homeless people with psychiatric illness, brain injury and substance abuse face barriers to accessing treatment, support services, shelter and housing? If so, describe those barriers and how they operate.

(c) Can the barriers described in (b) be reduced?

(d) Based on your trips to Abbotsford for the purpose of preparing this opinion, describe the current health and mental health circumstances of Abbotsford's homeless population.

(e) Based on the circumstances you have observed among the homeless population in Abbotsford, what are the anticipated health outcomes of the homeless population in Abbotsford?

(f) Based on your review of publications by Dr. Stephen Hwang, in what ways are Abbotsford's homeless populations similar and different from those studied by Dr. Hwang?

357. In response to the first question regarding the prevalence, type and severity of psychiatric illness, brain injury and substance abuse in populations of people who are homeless, Dr. MacEwan had this to say:

> The degree of psychiatric illness and substance abuse within the subjects who are in these studies as well as my clinical population is severe. The difficulties in

> their day-to-day functioning are extreme. Many of these individuals are not able to maintain basic levels of daily living activities, they are often living in very deteriorated living situations and are often not able to attend to the most basic of their needs including adequate nutrition, healthcare, and safety. In the Hotel Study 70% of the individuals were infected with Hepatitis C and 18% were infected with HIV. Any one of these areas of difficulty, on its own, would be considered very serious for an individual. The fact is that many of these individuals suffer from multi-morbid illness including physical health problems, severe psychiatric problems such as schizophrenia and bipolar disorder, and severe substance abuse which often consumes the person's day-to-day activities in terms of either finding drugs, obtaining money to purchase drugs or using drugs.
>
> MacEwan Report, at 2-3

358. On the question of barriers faced by the homeless population to accessing treatment, support services, shelter and housing, Dr. MacEwan stated that such severe psychiatric illness and substance abuse is detrimental not only for a person's physical health, but their cognitive function as well and appears to invite surroundings of a cyclical nature:

> [T]hese individuals are unable to make appropriate choices in life to help themselves have a better quality of health and wellbeing. This is compounded by living in various situations where they are exposed to further trauma, physical illness, drug abuse and infections. These can all compound upon each other to cause a downward trajectory in a person's overall health and life expectancy.
>
> MacEwan Report, at 3

359. Abuse of substances and stimulants as drugs of choice among this population is an overwhelmingly common occurrence begetting another common occurrence: agitation and extreme behavioural difficulties, which render the individual's ability to assess, understand and properly manage their need for health and mental health care an uphill battle. Still another common occurrence materialises, namely, lack of supported housing:

> Often the person's behaviours as well as disorganization leads them to have to be housed in "low barrier" housing which by definition is a place which has no restrictions regarding the use of substances, is more tolerant of behaviours such as violence and is a much poorer physical setting. This is extremely common in the Downtown Eastside of Vancouver and was exactly the situation I observed in the homeless camps of the homeless people in Abbotsford.
>
> MacEwan Report, at 4

360. In his testimony, Dr. MacEwan noted the high levels of addictions and psychiatric illnesses that homeless people living in the Downtown Eastside and those that are precariously housed experience:

(a) 95% have addiction;

(b) 74% have a major psychiatric illness;

(c) 70% have Hepatitis C; and

(d) 18% have HIV.

Direct Examination of Gordon William MacEwan, July 10, 2015 (a.m.)

361. Dr. MacEwan outlined in his testimony that a psychiatric illness can make a person reluctant to access medical care.

Direct Examination of Gordon William MacEwan, July 10, 2015 (a.m.)

362. Dr. MacEwan visited Abbotsford to interview a number of homeless individuals, which assisted in understanding the current health and mental health circumstances of Abbotsford's Homeless.

Direct Examination of Gordon William MacEwan, July 10, 2015 (a.m.); MacEwan Report

363. The housing situation of certain individuals in Abbotsford at which Dr. MacEwan attended, revealed that "the state of living was chaotic and extremely poor". Individuals were "living in makeshift shelters or tents which were surrounded by garbage and debris strewn all over the camps".

MacEwan Report, at 5

364. Abbotsford Homeless who were interviewed ranged from early 20s to late 50s and spanned lengths of homelessness from three months to more than a decade for others suffering from a traumatic brain injury and heroin dependence.

MacEwan Report, at 5

365. Dr. MacEwan did not seek to provide any specific diagnoses of those individuals, but made a number of clinical observations from his meetings that he was able to make based on various probes that were employed. A number of people exhibited very significant physical problems, such as poor hygiene, malnourishment, and multiple skin conditions, which caused lacerations, rashes, and unattended wounds.

MacEwan Report, at 5

366. Dr. MacEwan noted psychiatric difficulties and substance abuse from opioid and heroin use to methamphetamine and cocaine abuse and severe alcohol addiction in each of the individuals he interviewed. Associated with this were psychiatric symptoms, including extreme vocal and motor outbursts, significant delusions, hallucinations and extreme mood swings and depression.

MacEwan Report, at 5

367. The individuals Dr. MacEwan interviewed had all been under medical care at one point or another, albeit care described as "inadequate in that they often had residual symptoms and these symptoms were a factor in their homelessness". For instance, all had reported traumatic experiences in hospital emergency rooms where they were attended to, not by medical personnel, but by security staff because of behavioural manifestations.

MacEwan Report, at 5

368. One individual reported that he had suffered numerous head injuries in the past, and had attended at Abbotsford Regional Hospital to have a head MRI scan done approximately one year ago, but did not know the results of this scan. He stated that he was reluctant to seek further treatment because he was worried about his belongings being stolen while he was in the hospital.

MacEwan Report, at 5

369. All of the individuals were without a family practitioner or specialist and described having difficulties accessing healthcare or being unable to continue with their prescriptions for medications because they were not able to get them or were not having the appropriate response or side effects to them.

MacEwan Report, at 5

370. People described how they had had very negative experiences with hospitals and medical personnel. There was some access to healthcare at a local Salvation Army shelter which was at times staffed by part-time nurses and some of them had occasional involvement with specific specialists regarding physical or mental health problems.

MacEwan Report, at 5

371. In addition to his clinical opinion and previous involvement in research studies, Dr. MacEwan's answer to the question regarding anticipated health outcomes, both mental and physical, based on his observations and interactions with Abbotsford's Homeless is one of a "downward trajectory".

MacEwan Report, at 6-7

372. The lack of adequate health care for the individuals in question prevents proper assessment, diagnosis and treatment of their conditions and interacts in a negative fashion with the lack of housing, which condemns the Abbotsford Homeless to a life of increased disability, increased rates of morbidity and premature mortality.

MacEwan Report, at 6-7

Dr. Christy Sutherland

373. Dr. Christy Sutherland ("Dr. Sutherland") is a family physician accredited in Canada and the United States. She is the Medical Director of the Bosman Hotel Community, a congregate model housing service for persons with severe mental illness as well as the

Medical Director of the Portland Hotel Society. She is an addiction physician at St. Paul's Hospital, a course director for the UBC Faculty of Medicine's Addiction and Interprofessional Responsibility course, a director of the Rapid Access to Consultive Expertise addiction line, a clinical preceptor for the Goldcorp Addiction Medicine Fellowship and is a clinical preceptor for the Department of Family Medicine at UBC.

Direct Examination of Christy Sutherland, July 3, 2015 (a.m.); Expert Report of Dr. Christy Sutherland ("Sutherland Report"), Exhibit 18

374. From 2010 to 2013, she worked for the Bosman Hotel Community ("Bosman"), a congregate model housing service for persons with severe mental illness, first as a family physician and later as the medical director. As medical director, she oversaw the clinical team at the Bosman Hotel, which included a psychiatrist, nurses and pharmacists. In 2013, Dr. Sutherland was appointed as the medical director of the Portland Hotel Society.

375. In addition, she is an addiction physician with St. Paul's in-patient addiction medicine consult team and does clinical work at certain locations in Vancouver's downtown eastside. Dr. Sutherland provides primary and addiction care to many patients, the majority of whom are homeless and live in Vancouver's downtown eastside. Dr. Sutherland's patients have different kinds of addictions, including opiates and alcohol, with varying levels of severity, including severe addictions.

Direct Examination of Christy Sutherland, July 3, 2015 (a.m.)

376. Dr. Sutherland was qualified as an expert in additions treatment. She provided expert evidence regarding the relationship between addiction to drugs and homelessness.

Direct Examination of Christy Sutherland, July 3, 2015 (a.m.)

377. For her expert report, Dr. Sutherland was asked the following questions:

(a) What is the relationship between addiction to drugs such as heroin, crack cocaine, and methamphetamine, and homelessness?

(b) What is the impact of addiction to drugs, such as heroin, crack cocaine, and methamphetamines, for people who are trying to access treatment, support services, shelter and housing?

(c) Based on your involvement with the At Home/Chez Soi study, what housing and treatment options are most effective in improving housing stability, access to treatment, and social and community functioning of people with addictions and mental illness?

378. In response to the first question regarding addiction and homelessness, addiction and homelessness are highly correlated risk factors. Dr. Sutherland opined that, "[h]omelessness leads to worse outcomes for those with addiction, and addiction contributes to unstable housing and is a barrier to housing." Additionally, both are

independent risk factors for mortality and morbidity. In short, homelessness is a risk factor for addiction and homelessness increases the risk of relapse.

Sutherland Report, at 2 and 3

379. In response to the second question regarding the impact of addiction on people trying to access treatment, Dr. Sutherland provided evidence on the interplay between addiction as a brain disease and homelessness:

> Addiction causes underlying changes to neurocircuitry…evidence demonstrates that drugs of abuse change the structure of the brain as well as the content of brain cells. Thus, the brain's ability to function is impaired.

Sutherland Report, at 4

380. In short, this impairment results in people choosing a drug over something that they need to survive. It creates a drive in the limbic system (the reward centre of the brain) which results in the person having a "drive" to have the drug over something else, which may be necessary for survival or better for their health.

Direct Examination of Christy Sutherland, July 3, 2015 (a.m.)

381. Dr. Sutherland's report goes on to explain the issues as follows:

> Addicted persons often lack the capacity to normally organize thoughts and to make appropriate decisions. These functions are undermined because the drug of abuse has disregulated the reward process of the brain. The drug achieves "salience, meaning the brain prioritizes the drug over the normal reinforcers of food, water, shelter, and relationships. The same brain pathways that have lead [sic] to human survival become dysfunctional, and tell the brain that the drug, rather than food and shelter, is the more important priority (Volkow 2014).
>
> …
>
> Patients are unable to attend work, pay rent, or make appointments due to drug use.
>
> …
>
> As drug use continues, the drug attains greater saliency, and the intrinsic brain rewards of seeking natural reinforcers such as food and sex diminish further (Volkow 2014).
>
> …
>
> These changes explain why an addicted person may want to stop pursuing and using drugs, but are not able to discontinue drug use. They spend money on drugs that should be spent on food or shelter….Most of my patients report that they hate the drug they are addicted to; they feel trapped and want to stop but are unable to

due to the brains ongoing signals that using the drug is necessary for survival. This drive to use is similar to a non-addicted brain's drive to drink water when thirsty in the sense it is impossible to ignore.

Sutherland Report, at 4 to 5

382. Dr. Sutherland testified about the anti-reward system that results from drug use. She stated that drugs make the brain feel euphoric, which the brain understands over time is unnatural. As use continues, the brain starts to react by making people feel miserable when they are not using drugs, which provides the individuals with a negative reinforcement. This increases the individual's need for the drug as they simply cannot feel normal without it.

Direct Examination of Christy Sutherland, July 3, 2015 (a.m.)

383. This can often result in a loss of control. For example, Dr. Sutherland noted that drug use can cause a loss of control over impulsive behaviours. Some of her patients will yell and throw objects at her as they do not have an ability to inhibit this type of behaviour.

Direct Examination of Christy Sutherland, July 3, 2015 (a.m.)

384. Dr. Sutherland testified that most of her patients do not want to use drugs (at some point in time), but this loss of control makes it very difficult for them to stop. They want control but the effects of drug use make that really difficult.

Direct Examination of Christy Sutherland, July 3, 2015 (a.m.)

385. The symptoms of addiction can lead to homelessness, as maintaining housing requires organization, interpersonal interactions, and financial management. All of these skills are undermined by addiction, which is thus a strong risk factor for homelessness. Dr. Sutherland has observed this clinically as most of her patients have experienced homelessness due to their drug use, or the behaviours that stem from drug use. They are unable to organize their thoughts and actions in a constructive way to maintain housing as the drug prevents them from being able to participate in the necessary budgeting, planning, and personal interactions.

Sutherland Report, at 7

386. As a result, Dr. Sutherland is of the view that providing housing and evidence-based medical care for those with addiction are is the way to improve the health of individuals and the health of a community.

Sutherland Report, at 9

387. Supporting this view is Dr. Sutherland's involvement with the At Home/Chez Soi study, a Canada-wide randomized control trial run by the Mental Health Commission of Canada that studied homelessness and mental illness. All participants had mental illnesses; many of them were drug users:

> The At Home/Chez Soi trial provided safe and secure housing to groups in receipt of community treatment, treatment as usual and no treatment at all. When people were treated, Dr. Sutherland saw improvements in her methadone and suboxone patients, more precisely "decreased drug use, increased social engagement and decreased crime".
>
> Sutherland Report, at 12

388. When paired with medications daily and engaging in care with nurses and case managers, Dr. Sutherland saw optimal outcomes in patients with HIV:

> [N]ormal CD4 counts and undetectable viral loads for the majority of the patients throughout the entire project. This means that they were not contributing to the spread of HIV. We were able to start people on HIV medication who were never eligible previous to moving into the bosman due to their untreated mental illness and addiction.
>
> Sutherland Report, at 13

389. Close working relationships with the Vancouver Police Department and the Downtown Community Court and interventions by way of intense case management, including escorting people to their probation officers, led to people attending their court dates and not being jailed for breach of probation. Overall, the At Home/Chez Soi final report told of a decrease in involvement of the study's participants with the criminal justice system.

> Sutherland Report, at 13

390. Furthermore, close relationships with those with mental illness and addiction reduced substance use and antisocial behaviour. When case managers helped those with mental illness and addiction explore new daily routines and pursue positive activities that were not available when they were homeless, including family reunification, employment, gardening, cooking, music groups, and neighbourhood clean-ups, better community members were born.

> Sutherland Report, at 14

391. In response to the third question regarding effective housing and treatment options, the At Home/Chez Soi study demonstrated that "Housing First", an approach whereby individuals are housed without first requiring abstinence from drugs, is an effective approach to treating homelessness and a vehicle with which to engage homeless people with substance use disorder. Housing First led to increased housing stability, decreased emergency room use, increased clinical outpatient visits, increased psychiatric inpatient time, and decreased criminal justice system involvement.

> Sutherland Report, at 11

392. The At Home/Chez Soi study showed that those with substance use disorder were just as easily housed as those without and that participation in medical care was also not a requirement for housing:

> When people relapsed, they did not lose their housing. This allowed me to follow my patients through relapse and remission and build a therapeutic relationship and implementing evidenced based treatments for their addiction. As the years went by, patients became more engaged in health and would maintain our doctor-patient relationship through abstinence and relapse. This allowed for the opportunity to continue engaging patients throughout every stage of their illness rather than losing them to eviction due to worsening addiction.

Sutherland Report, at 11

393. The findings of the At Home/Chez Soi study are highly relevant to the circumstances in the case at bar involving persons in question living with the same set of addictions, mental illnesses, poor community functioning and therefore, the same set of difficulties. The only difference between the subjects of the At Home/Chez Soi study and the Abbotsford Homeless is that the latter have not been afforded the opportunity to achieve the former's outcomes. Dr. Sutherland's expert opinion is that access to medical treatment or housing alone are not enough of an intervention to effectively care for this hard to reach population; integrated housing and supports provide better results.

Sutherland Report, at 15

Dr. Nicholas Blomley

394. Dr. Nicholas Blomley ("Dr. Blomley") is a Professor of Geography at Simon Fraser University with a broad area of expertise in legal geography.

Direct-examination of Nicholas Blomley, July 13, 2015 (a.m.); Expert report of Dr. Nicholas Blomley ("Blomley Report")

395. Dr. Blomley was qualified as an expert in the field of legal geography. He provided expert evidence regarding the use and effect of bylaws similar to the Impugned Provisions in North America generally, and the use and effect of the Impugned Provisions on Abbotsford's Homeless, specifically.

Direct-examination of Nicholas Blomley, July 13, 2015 (a.m.)

396. Dr. Blomley was asked to describe the following questions:

(a) Describe how regulators have responded to homelessness and the use of public spaces by homeless people.

(b) Evaluate the effects of these regulatory responses.

(c) Evaluate the bylaws and actions as stated in the Statement of Facts and Assumptions, Exhibit # in comparison to those considered in the literature and

provide your opinion with regard to the predictable consequences of the bylaws and actions on individuals subject to them.

397. In response to the first question regarding how regulators have responded to homelessness, Dr. Blomley noted that the increase in visible homelessness and the growing, though misconceived discomfort relating to antisocial behaviours associated with homelessness have fuelled the need to commit time and resources to a solution, namely, the regulation of public space and targeted enforcement of existing laws. Dr. Blomley outlined the "broken windows" theory as one factor in developing policies aimed at regulating such spaces. This theory holds that just as a broken window signals decay and disorder, and thus invites more serious crime, so the panhandler or park-camper should be regulated on the principle that 'the unchecked panhandler is, in effect, the first broken window.

Blomley Report, at 8

398. The premise of the "broken windows" theory is that while it may seem unjust to arrest a single drunk or a single vagrant who has harmed no identifiable person, it is necessary because letting scores of the same run about unchecked could lead to community destruction and may signal the acceptance or tolerance of criminality. The theory motivates decision-makers to act at the first signs of disorder before a downward spiral of urban decay and crime begins, the victims of such reactions by and large being the homeless.

Blomley Report, at 8

399. However, in Dr. Bomley's opinion, action based on the "broken windows" theory has not been effective:

> While overall crime rates dropped, critics have pointed out that crime fell across the U.S., including in cities that did not adopt such policies (O'Grady et al 2011). O'Grady et al (2011), in reviewing the evidence, suggests that broken windows policing is not only ineffective, and based on flawed logic, but that it is also reliant on a form of "social profiling", that threatens equality and justifies punitive forms of police action (see also Harcourt 2001).

Blomley Report, at 8

400. Dr. Blomley reviewed the enactment of new laws that curtail or restrict the activities of homeless people. Rather than having much to do with the nature of the behaviour itself, such regulations indicate an appeal more to aesthetic concerns at beautification and an attempt to ensure that passersby are not disturbed by encounters with homeless people. A few examples illustrate this point:

(a) In Seattle, trespass law has innovated to include "trespass exclusion", which is described as:

> [L]aw that bans a particular person from a designated space, such as public housing, or participating businesses; parks exclusion orders that empower police to remove persons from parks for minor infractions, and ban them from all or some public parks for a year; and exclusion orders, applied as a condition of a probation sentence, that enables judges and probation officers to order those convicted of drug or prostitution offences to stay out of designated 'drug areas' or 'areas of prostitution' (Beckett and Herbert 2008, 2010a 2010b; England 2008).

(b) In Santa Ana, California, city council passed a succession of ordinances in its attempt to remove all vagrants and their paraphernalia.

(c) Throughout Canada, spatial (time, place, and manner) restrictions are imposed through bail orders, community courts or municipal regulation. For instance, a loitering bylaw was introduced in Oshawa, Ontario in 1992, and directed at street youth and other people deemed disorderly.

(d) A crackdown on squeegee kids in Halifax in 2002, using a bylaw regulating the use of signs, and the *Nova Scotia Motor Vehicle Act*, restricting the use of streets by pedestrians.

Blomley Report, at 10 to 13

401. Local authorities have also restructured the physical environment in an effort to restrict usage by homeless people and essentially securitize space. For example, benches are redesigned so that no one falls asleep on them, ventilation grates are moved into streets and municipalities use zoning to preclude the development of affordable housing, transition housing or community-based facilities.

Blomley Report, at 11

402. Furthermore, the movements of homeless people are also subject to the increasing use of closed circuit television more than the rest of the population. All of these measures make inhabiting the streets a feat, particularly given the increasing use of targeted stop and searches are conducted by police and private security companies.

Blomley Report, at 12

403. Other regulations with respect to the lives of homeless people include the use of periodic sweeps of areas, specifically semi-permanent encampments or "tent cities" like some of the ones at issue in this litigation in order to displace homeless people, sometimes destroying their personal property. This tactic has a longstanding history in Canada: a large homeless settlement was disrupted in Vancouver during the Great Depression. More recently, officials in in Ottawa took action to disperse homeless people from certain high-visibility spaces driven by a mindset revealed in freedom of information requests as one perceiving "homeless people and their belongings as synonymous - both are seen as garbage".

Blomley Report, at 12-13

404. Dr. Blomley noted how such targeted areas, while being less than ideal, serve as forms of support for homeless people and provide a sense of community and potential for self-governance.

Blomley Report, at 12

405. Finally, Dr. Blomley noted that there is a tendency to conflate homelessness with disorder. This is based, in part, on preconceived conceptions of what public space ought to be used for – such as streets for transportation and parks for recreation (not sleeping). However, where public spaces are used in a different manner by homeless people, Dr. Blomley noted that "the unsettling quality of public space is perhaps psychological, rather than an accurate appraisal of a threat".

Blomley Report, at 16-17

406. In response to the second question, all human activities require a space in which they can be exercised. These activities include bodily freedoms that most people take for granted, including sleeping and urination. Property rules are a central device through which such actions are regulated. While most people enjoy access to private property, homeless people are forced to live their lives in public space which is not governed by such rules. However, laws that forbid sleeping in public spaces result in the criminalization of life-sustaining acts. These laws, in effect, only impact the lives of the homeless.

Blomley Report at 18-19

407. Dr. Blomley confirmed that what is clear from the literature is that the constellation of effects such regulations have upon homeless people ranging from direct to symbolic to unintended:

> Put thus, the homeless are "comprehensively unfree" (302) under such a regime. As Mitchell notes (1998, 10): "If homeless people can only live in public, and if the things one must do to live are not allowed in public space, then homelessness is not just criminalized; life for homeless people is made impossible."

Blomley Report, at 19

408. With the only space available to homeless people denied by law, homeless people cannot act freely as those with homes and jobs do for their choice is one of staying awake or breaking the law by sleeping in public. Such laws have been condemned as "one of the most callous and tyrannical exercises of power in modern times".

Blomley Report, at 19

409. In addition to preventing these life sustaining activities, homeless people are also disproportionately targeted by other regulations which have equally significant impacts. Given the minimal amount received through social assistance, homeless people are forced to engage in informal methods of income-generating activities, such as panhandling or

binning. Unfamiliar with alternatives, and unable to access other sources of income, homeless people are forced to occupy more visible spaces in order to access resources: "they are consequently more noticeably out of place and thus singled out, facing punitive policy more frequently". As a consequence, homeless people simply cannot do what they must in order to survive without breaking laws. Thus, survival itself is criminalized.

Blomley Report, at 21

410. Dr. Blomley's report provides an example of this criminalization. An increase in ticketing over time was found in an analysis of the enforcement of the Safe Streets legislation governing panhandling and squeegeeing in both Ontario and British Columbia. The evidence revealed repeat ticketing of the same offender under the same provisions with the conclusion that "tickets are not issued for aggressive solicitation, but rather in relation to the survival strategies of homeless persons.

Blomley Report Blomley, at 21

411. Forcing the homeless to quit the only public places they know is the abstract goal of these targeted regulations while continued social marginalization and imperilled security remains the practical reality: Regulations that deny access to such places may prove overly punitive, and because of the vital importance such places serve, may simply set homeless people up to fail. This is exacerbated by the often ambiguous or open-ended nature of such legal regulations.

Blomley Report, at 22

412. There is a symbolic element to the effects of such regulation, too. By viewing and communicating the homeless population as a threat necessitating state action, the chasm between "us" and "them", the housed and the homeless, deepens and becomes an acceptable and appropriate status quo. If legislation and political ordering are allowed to render the poor and marginalized out of public sight, then being out of mind may quickly follow and may result in homeless people failing to be counted as legitimate members of the polity.

Blomley Report, at 23

413. While lawmakers place much emphasis on how visible homelessness makes the public feel and society look, often overlooked are the deep senses of stigma, of being cast aside by society, of exclusion and marginality felt by the homeless. This is not including the side effects of violent and abusive encounters with the police who are out to enforce the regulations, which serve to further alienate homeless people from society and create negative attitudes towards the justice system.

Blomley Report, at 24

414. Finally, Dr. Blomley provided evidence of the unintended consequences of regulation, the first being the intensification of an already vulnerable and insecure condition of homeless people's marginalization:

> O'Grady and Bright (2002) reached similar conclusions in relation to the enforcement of the Ontario Safe Streets Act, one effect of which has been to expel vulnerable populations from areas in which health and social services are more accessible, forcing homeless people into more perilous circumstances.
>
> Blomley Report, at 25

415. The second unintended consequence Dr. Blomley elaborated on is the fact that criminalization of homeless behaviours prevents community reintegration. Incarceration presents challenges for any individual's future as one is at a loss for a job, housing prospects, social and professional networks, and in the process may have become estranged from family. Also, unpaid fines may impede access to a driving licence or a health card in British Columbia. Fines issued under Ontario's *Safe Streets Act* places a heavy burden on homeless individuals already living well below the poverty line, making it difficult to escape and thereby aggravating the very problem the Act is trying to resolve.

Blomley Report at 25

416. Dr. Blomley had this to say about the use and effects of bylaws similar to the Impugned Provisions in North America:

> An already marginalized population may find itself further excluded with the possibilities of social reintegration harder to attain. Health and wellbeing may suffer, as homeless people are pushed further into the shadows, both metaphorically and spatially.
>
> Blomley Report, at 5

Marie-Eve Sylvestre

417. Professor Marie-Eve Sylvestre ("Professor Sylvestre") is a professor at the Civil Law Section

418. of the Faculty of Law, University of Ottawa; Vice-Dean, Research and Communications; lawyer and member of the Quebec bar; member of the Observatory on Social, Racial and Political Profiling with experience in the area of criminal law and fundamental rights; and collaborator to the International Center for Comparative Criminology (ICCC).

Direct Examination of Marie-Eve Sylvestre, July 14, 2015 (a.m.); Expert Report of Marie-Eve Sylvestre ("Sylvestre Report")

419. Dr. Sylvestre's graduate thesis explored the criminalization of homelessness and policing of homeless behavior in Montreal and Rio de Janeiro. Dr. Sylvestre's area of speciality relates to criminal law and the policing and profiling of public spaces, especially for groups who use and occupy public spaces, including the homeless. Dr. Sylvestre was part of a Canada-wide research project that examined the criminalization of homelessness, which included research in British Columbia. She was responsible for

supervising the research and analysing the results from the interviews of various people (including lawyers and judges) who work in the area.

Direct Examination of Marie-Eve Sylvestre, July 14, 2015 (a.m.)

420. Professor Sylvestre was qualified as an expert in regulation of public spaces and homelessness in Canada. She provided expert evidence regarding the targeting and effect of bylaws similar to the Impugned Provisions on homeless individuals as a distinct group.

Direct Examination of Marie-Eve Sylvestre, July 14, 2015 (a.m.)

421. For her expert report, Professor Sylvestre was asked the following questions:

(a) Describe the use of bylaws for controlling the use of public space in the jurisdictions you have researched.

(b) Describe the differential impact of those bylaws on different population segments, in particular on homeless people.

(c) Based on your research, provide your opinion on the efficacy of the Abbotsford bylaws and conduct of Abbotsford in enforcing such bylaws.

(d) Based on the documents and the supplemental Statement of Facts and Assumptions attached in Appendix C, provide your opinion on if, and if so to what extent, the contents of any of these documents reflect any of the discourses you have identified in your doctoral research "Policing Disorder and Criminalizing the Homeless: A Critique of the Justifications for Repression in Montreal and Rio de Janeiro".

422. Professor Sylvestre noted that while seemingly less punitive, the shift from pure criminal law to regulatory law has important consequences on individual rights, a fact demonstrated in local policies of other North American cities:

> ...For instance, Cincinnati and Seattle made it illegal to beg in a parking lot or near an automated teller machine. The cities of new York, San Francisco, Dallas, Santa Ana and Chicago adopted and enforced local ordinances against sleeping or camping in public spaces and loitering. Many of these ordinances have been challenged and declared unconstitutional in the last decades, mostly on grounds of vagueness.

Sylvestre Report, at 12-13

423. Professor Sylvestre provided an overview of the use of bylaws in different Canadian jurisdictions, summarized as follows:

(a) In Ontario, the *Safe Streets Act* targets aggressive panhandling and disorderly behaviour in public spaces while other provincial laws and municipal bylaws are relied on to control the use of public spaces by homeless people, including

sleeping and camping (*e.g.*, the *Highway Traffic Act*, the *Liquor License Act*, the *Trespass to Property Act*, etc.);

(b) In Quebec, local authorities enforce general, open-ended provincial statutes and bylaws, which prohibit a myriad of acts, such as "the use of street furniture for a purpose other than the one which it is intended", sleeping or lying down in a subway station, and dealing with the occupant of a vehicle, to name a few. Also relied on are regulatory changes to land use planning and development bylaws and corresponding architectural modifications to the physical environment; and

(c) In British Columbia, the *Safe Streets Act* eliminates aggressive panhandling and the *Trespass Act* allows property owners to evict people from their property.

Sylvestre Report, at 15-19

424. Professor Sylvestre found the use of these bylaws and statutes to have a disproportionate impact on homeless people. She noted that the use of these bylaws prevents homeless people from resorting to basic survival strategies

Sylvestre Report, at 20-23 and 26-28

425. In every Canadian city, homeless people are sanctioned either for resorting to street survival strategies (such as practicing squeegee or panhandling), or for merely being in public spaces, rather than being punished for causing any particular harm or presenting a specific threat to personal integrity or security.

Sylvestre Report, at 23

426. Another outgrowth of the enforcement of bylaws against the homeless is the connection with criminal offences. Professor Sylvestre refers to research showing that the police in cities such as Montreal and Vancouver use bylaws as pretext offences or as investigation techniques. A homeless person being stopped for a minor bylaw infraction by the authorities presents an opportunity to check his/her identification and run his/her record for any outstanding warrants, violations of bail or probation conditions, which allows for more aggressive forms of enforcement. With this approach by the police, what was at once a stop for a minor bylaw infraction can quickly turn into a more serious violation of a court order.

Sylvestre Report, at 28

427. Professor Sylvestre's evidence shows that the homeless are heavily policed and sanctioned for trying to survive on the streets because of their lack of a private space to do so or for being visible. She describes the legislative responses to homelessness as discriminatory, punitive, costly, inefficient, dangerous, and counterproductive:

> ...They simply serve to produce more homelessness by maintaining homeless people under constant surveillance in public spaces, putting their lives and

security at risk, impeding their street exit process (rehabilitation) and their participation in social and political life...

Sylvestre Report, at 7

428. Professor Sylvestre urges consideration of the context in which homeless people make choices about their fundamental needs and how to survive as there are a number of reasons why, for example, a homeless person would want to sleep in a park. These reasons range from limited or full emergency shelters and non-compliance with specific shelter requirements or feeling safer with friends in the streets or parks and that they can escape from the police easier to caring for pets or staying close to personal belongings, which is difficult to do in shelters.

Sylvestre Report, at 29

429. When understood in this light, bylaw enforcement is not likely to have a significant deterrent effect on homeless people. Punitive practices are not likely to change their most basic needs. As a matter of fact, they will only render them more vulnerable.

Sylvestre Report, at 29

430. Based on Professor Sylvestre's review of the City's documents provided to her, she found that the attitude exhibited by the City fell into four categories of "discourses":

(a) The harm justification which posits that the presence of disorder is harmful in two ways. First, minor disorders can lead to a "spiral of decay" and more serious criminality. Second, disorder generates feelings of insecurity, affects quality of life in communities and creates its own unique harm;

(b) The community consensus justification which examines regulatory and legislative responses as purportedly being done based on what the community wants;

(c) The monstrosity or moral depravity justification by characterizing and referring to individuals on the street as being different from others (i.e. "these" people; such individuals being "undesirable"); and

(d) The choice justification which holds that homeless people have chosen to live on the street and should be held responsible for their choices.

Sylvestre Report, at 33-36

431. Through her studies, Professor Sylvestre has determined that none of these discourses are grounded in empirical evidence and that they do not reflect the reality of homelessness, but rather were based on a lack of information and knowledge and prejudices and stereotypes about homeless people.

Sylvestre Report, at 33-36

Dr. Yale Belanger

432. Dr. Yale Belanger ("Dr. Belanger") is an Adjunct Associate Professor at the Faculty of Health Science, University of Lethbridge. He is also a Regional Advisory Board member with the Alberta Rural Development Network Homelessness Partnering Strategy; a member of the Canadian Homelessness Research Network and the Canadian Observatory on Homelessness; on the editorial board of the Australia Housing and Urban Research Institute; and a partner with the Canadian Alliance to End Homelessness.

Direct Examination of Yale Belanger, July 3, 2015 (a.m.); Expert Report of Yale Belanger ("Belanger Report")

433. Dr. Belanger was qualified as an expert in aboriginal homelessness in Canada. He provided expert evidence regarding the prevalence of Aboriginal people in urban homeless populations and the unique experience of homelessness on Aboriginal people.

Direct Examination of Yale Belanger, July 3, 2015 (a.m.)

434. For his expert report, Dr. Belanger was asked the following questions:

(a) What are the trends relating to the proportional representation of Aboriginal people within the homeless population of Canada as compared to the general population?

(b) What are the pathways to homelessness for Aboriginal people?

(c) What trends can be anticipated in relation to the prevalence of Aboriginal homeless people, their pathways to homelessness and their experience of homelessness?

435. It is generally acknowledged that Aboriginal people are overrepresented among the chronically homeless population. In response to the first question regarding trends relating to proportional representation, at the date of Dr. Belanger's expert report ("Belanger Report"), there were 43,500 urban Aboriginal homeless individuals in Canada.

Belanger Report, at 2

436. Dr. Belanger stated that on any given night, 6.97% of urban Aboriginal people in Canada are considered to be homeless compared to 0.78% of the rest of the population. More than one in 15 urban Aboriginal people are homeless compared to one in 128 non-Aboriginal Canadians

Belanger Report, at 2

437. In relation to the issue of Aboriginal homelessness in British Columbia, Dr. Belanger provided the following evidence:

> West coast trends suggest that Vancouver and its neighboring Fraser Valley Regional District (FVRD) communities fall somewhere in the middle. In Vancouver, for example, the urban Aboriginal homeless rate is 24%. Recently published data indicates that the urban Aboriginal homeless rate for the FVRD is 28.1% (van Wyk & van Wyk, 2011, p. 30). Both of these rates are higher than Toronto's (or Montreal's) average.

Belanger Report, at 4

438. Dr. Belanger stated that the experience of homelessness on Aboriginal people is unique. One need only look at Canadian history and colonial policies to see that the lives of Aboriginal people have been marred by a series of physical and psychological displacements and socio-cultural upheaval. The historic features of colonialism labelling Aboriginal people as uncivilized and attempting to assimilate them to Canadian culture through the *Indian Act* had lasting effects with respect to the collective and intergenerational trauma of territorial displacement and the ills of residential schools past, Aboriginal senses of autonomy and safety, the need for support networks, sexual abuse, substance abuse, dependency, and an overall individual disconnection from community and cultures.

Belanger Report, at 11-14

439. In light of this and in response to the second question about pathways to homelessness, Dr. Belanger cites evidence suggesting the following:

> [H]omeless aboriginal youth need to discover a cultural connection prior to healing and recovery occurring, as disconnection leads to street entry (Baskin, 2007; Brunanski, 2009; Ruttan, Laboucane-Benson, & Munro, 2008).

Belanger Report, at 11

440. Despite being bound by a treaty right to ensure aboriginal people have shelter, the federal government is of the view that a universal entitlement to government-financed housing is considered neither a treaty right nor an Aboriginal right. Housing is thus offered as a matter of social policy whereby support is based on need. However, there is a misalliance in that those drafting Aboriginal housing policy are isolated from the input of Aboriginal people living in impoverished conditions as to the construction and implementation of said policies.

Belanger Report, at 8

441. The same goes for reserve housing, which when combined with high rates of intra-city and reserve-city mobility leads to a decreasing number of housing options in both cities and reserves. Further, urban Aboriginal people struggle with operational programs that are burdensome to navigate as well as government cutbacks, which have put many housing initiatives into jeopardy.

Belanger Report, at 9 to 10

442. The ramifications to the Aboriginal housing issue, including low incomes, landlord racism, social disruption resulting from issues related to overcrowding and addictions, and the ongoing search for more acceptable and affordable accommodations inevitably affect subsequent generations.

Belanger Report at 11

443. Not found in non-Aboriginal experiences, the experience of homelessness on Aboriginal people is also shaped by their embrace of a special relationship to space and personal and collective connections to land. The consequence of this is that constructions of home, mobility, and shelter take on different meanings, which are helpful in understanding both reserve and urban Aboriginal homelessness. This is outlined by Dr. Belanger as follows:

> [S]piritual homelessness, as a state arising from: (a) separation from traditional land, (b) separation from family and kinship networks, or (c) a crisis of personal identity wherein one's understanding or knowledge of how one relates to country, family and Aboriginal identity systems is confused.

Belanger Report, at 6

444. In testimony, Dr. Belanger explained that since Aboriginal people are not living on what they would traditionally call their homeland, they are displaying feelings of dispossession and disjuncture. This psychiatric impact adds a layer of vulnerability to an Aboriginal population that is already vulnerable. Combined with the socioeconomic and policy factors outlined in his report, Dr. Belanger noted the concept of spiritual homelessness creates unique pathways for Aboriginal people to become homeless and helps to explain why Aboriginals are disproportionately represented in the homeless population.

Direct Examination of Yale Belanger, July 3, 2015 (a.m.)

445. Dr. Belanger also noted the impacts that intergenerational trauma and residential schools have on Aboriginal homelessness in Canada. Dr. Belanger noted his research found a direct correlation and impact between residential schools and Aboriginal homelessness. The impacts of residential schools are not confined to those who attended. Dr. Belanger noted the recent Truth and Reconciliation Commission's report noted the cumulative impact over generations that resulted from residential schools could be quite strong. Between 1920 and 1951, Dr. Belanger estimated that approximately 95% of Aboriginal children would have been required to attend a residential school.

Direct Examination of Yale Belanger, July 3, 2015 (a.m.)

446. In response to the final question regarding anticipated trends, Dr. Belanger is of the view that current trends steeped in historical and policy-induced trauma and reflective of individual, social, and economic vulnerabilities resulting in urban Aboriginal homelessness are unlikely to abate and not apt to change into the near future. Dr. Belanger concluded in his testimony that without intervention, Aboriginal homelessness will continue to rise.

Belanger Report, at 14

447. Dr. Belanger explained in his testimony that there is a higher rate of Aboriginal homelessness in Canada as compared to non- Aboriginal. While generally there are difficulties for homeless individuals to exit from this state, Dr. Belanger noted the additional difficulties to be faced by Aboriginals. Aboriginal homeless are not in an equal or similar socioeconomic position as compared to the non-Aboriginal population, which will creates additional barriers to exiting homelessness.

Direct Examination of Yale Belanger, July 3, 2015 (a.m.)

Dr. Shaoyhhua Lu

448. Dr. Lu provided a report in reply to the MacEwan Report. He was qualified as an expert in general psychiatry with a special interest in individuals who have a dual diagnosis in addictions and mental illness.

Expert Report of Shaohua Lu Report ("Lu Report")

449. Dr. Lu's report was limited in scope. He did not evaluate any individuals in Abbotsford. His report was solely focused on outlining the process of a standard psychiatric evaluation and whether Dr. MacEwan's meetings with certain individuals in Abbotsford met this standard and would allow Dr. MacEwan to reach a clinical diagnosis under the DSM-5 classification.

Lu Report, at p. 2

450. It is important to note that Dr. MacEwan did not make any clinical diagnosis in either his affidavit or expert report regarding any of the individuals he met in Abbotsford. The MacEwan Report and testimony were limited to his clinical observations based on those meetings.

MacEwan Report

451. In cross-examination, Dr. Lu outlined that a standard psychiatric evaluation is a lengthy process which can be impacted by a number of factors, including whether the person is able to come back for multiple meetings, the complexity or severity of the individual's problem, and the willingness of the individual to engage in this kind of process.

Cross examination of Shaolua Lu, July 22, 2015

452. Dr. Lu agreed that the willingness of a patient to engage in this kind of an evaluation varies. He outlined that the willingness of a patient to participate in this process could be divided into three categories:

(a) Some patients choose not to participate for their own reasons;

(b) Some patients cannot participate because they have cognitive impairments or they have memory issues, brain disease, or due to medications; and

(c) Some patients will not participate because they mistrust the system. The willingness of these patients to participate may not be so much a choice but rather a result of other conditions or issues.

Cross Examination of Shaolua Lu, July 22, 2015

453. Dr. Lu outlined that where a standard psychiatric evaluation is not possible, a psychiatrist will not be able to make a diagnosis according to DSM-5. However, Dr. Lu noted that a psychiatrist could still make some form of provisional diagnosis of a patient based on a meeting that did not meet the criteria of a standard psychiatric evaluation.

Cross Examination of Shaolua Lu, July 22, 2015

454. Dr. Lu's evidence confirms the ability of Dr. MacEwan to meet with individuals in Abbotsford and make clinical observations about their mental health. Dr. Lu agreed there was value in meeting with a patient even where a standard psychiatric evaluation could not be completed. In such circumstances, the psychiatrist could still assist the patient with their mental health issues.

Cross Examination of Shaolua Lu, July 22, 2015

Dr. Paul Sobey

455. Dr. Sobey was tendered as an expert in addictions medicine. Dr. Sobey's practice is limited to addictions; he is not a psychiatrist and does not deal with or treat mental illnesses. Dr. Sobey provided three expert reports, two of which were in reply.

Dr. Sobey's Main Report

456. Dr. Sobey's Main Report examined certain issues regarding (1) the nature of addiction, (2) the determination of the severity of addiction, (3) the period of impairment of from particular substances and (4) the ability of a person to choose to seek treatment.

Expert Report of Paul Sobey, April 2, 2015 Report ("Main Report")

457. The Main Report was based on the following assumed facts:

(a) Abbotsford had a homeless population; and

(b) An unknown number of that homeless population were addicted to various substances, including alcohol, heroin, methadone, stimulants and marijuana.

458. As outlined in greater detail below, a general issue arising from Dr. Sobey's reports is the applicability of the reports to the particular circumstances facing Abbotsford's Homeless. Dr. Sobey agreed that the Main Report and his reply report to Dr. Sutherland only addressed patients with an addiction and not with other comorbidities, as outlined in the assumed facts for the Main Report.

459. Drug War Survivors submits that the patient population referenced by Dr. Sobey in his reports are neither reflective of Abbotsford's Homeless nor responsive to the multiple barriers facing the Plaintiffs. For example, in cross examination, Dr. Sobey acknowledged that he was not aware if any of Abbotsford's Homeless had mental illnesses or other physical health issues besides their addiction, the length of time they had been addicted to drugs or alcohol, the level of drug or alcohol use on a daily basis, or the treatment options available in Abbotsford.

Cross Examination of Paul Sobey, July 23, 2015

460. The cross-examination of Dr. Sobey confirmed three important facts.

461. First, Dr. Sobey agreed that there was a material number of individuals with addictions who would lack the control to discontinue their drug or alcohol abuse. With these individuals, the nature of their addiction resulted in a loss of control and ability to discontinue drugs and/or alcohol and seek treatment even in circumstances when they wanted to do so. Dr. Sobey's admissions in this regard correspond with the statements made by Dr. Sutherland in her report, which notes the inabilities of certain of her patients to stop using and enter treatment despite having a desire to do so.

Cross Examination of Paul Sobey, July 23, 2015

462. This loss of control in certain individuals was confirmed in a report which Dr. Sobey, as well as Dr. Lu, co-authored. The report, entitled "Stepping Forward - Improving Addiction Care in British Columbia" examined addictions, the continuum of care and levels of access to addiction care in British Columbia and made various policy recommendations. In that report, it was outlined that addiction has three characteristics:

(a) Loss of control;

(b) Use despite the consequences; and

(c) Increased compulsion.

Cross Examination of Paul Sobey, July 23, 2015'; Exhibit 73, p. 12

463. In the Main Report, Dr. Sobey outlined that 2-3% of individuals in his experience lack the ability and control to seek out treatment, while the remaining population would have the requisite control.

Main Report

464. The Stepping Forward report outlined the following statistics:

(a) 130,000 adults met the criteria for a severe addiction or mental illness;

(b) 39,000 were inadequately housed;

(c) 11,750 were absolutely homeless; and

(d) 18,759 adults were at imminent risk of homelessness.

Exhibit 73, p. 53

465. In cross examination, Dr. Sobey explained that the individuals lacking the self-control to obtain treatment had "complex" medical, psychiatric and/or and social issues which resulted in a greater level of impairment. The combination of these factors complicated the treatment of these individuals.

Cross Examination of Paul Sobey, July 23, 2015

466. Second, Dr. Sobey confirmed that individuals with both an addiction and a mental disease will face increased barriers to accessing care and treatment for those diseases. This testimony was consistent with the conclusions in the Stepping Forward report which outlined that considerable overlap exists between addiction and mental illness and that many aspects of addiction care have implications from mental health (p. 8). Dr. Sobey agreed with this statement.

Cross Examination of Paul Sobey, July 23, 2015

467. Third, the treatment of addictions ought to include a housing component. This point was emphasized in the Stepping Forward, which noted the following:

> Although not specifically a medical issue, we cannot discuss the addiction continuum without considering the impact and need for housing. For most people, the homeless addict is the most visible face of BC's addiction problem. Often the problems associated with addiction or mental health impact the ability of a person to find or keep housing.
>
> The current lack of appropriate housing programs for the range of addiction and mental health problems in BC undermines the effectiveness of and the ability to provide medical care and treatment. Housing needs vary, depending on the needs of the individual, which can range from programs facilitating return to work, to addiction-treatment monitoring, to supportive mental health services, to life skills assistance.

Exhibit 73, p. 53

468. In cross examination, Dr. Sobey agreed that this was an accurate statement.

Cross Examination of Paul Sobey, July 23, 2015

Dr. Sobey's Reply Report to the Sutherland Report

469. Dr. Sobey was asked to review and reply to certain statements made by Dr. Sutherland. The comments made by Dr. Sutherland were based on her own practice and patients, which primarily include individuals who are homeless or precariously housed and have multiple morbidities, including addiction and mental illness.

Reply Report to the Sutherland Report ("Sutherland Reply")

470. Dr. Sobey based his comments on the general population. Dr. Sobey acknowledged that he was not familiar with Dr. Sutherland's practice and patient population. As such, the Plaintiffs submit the Sutherland Reply is of limited or no value in examining the validity of the Sutherland Report.

Cross Examination of Paul Sobey, July 23, 2015

471. For example, the first issue examined in the Sutherland Reply is "whether people with addictions are unable to work, pay rent or make appointments due to drug use". Dr. Sutherland's conclusion on this point addressed the difficulties experienced by a particular subgroup of her patient population, which she summarized as follows:

> These brain changes are easily seen in my daily clinical practice. Patients prioritize the drug over their health. Even when a patient comes in to see me with firm intentions to participate in medical care...they often fail to achieve these goals when using drugs interferes. Patients are unable to attend work, pay rent, or make appointments due to drug use.

Sutherland Report, at p. 5

472. Dr. Sobey concluded that people with addictions could work, pay rent and make appointments. However, this conclusion was based on a general patient population that simply had an addiction and not with respect to examining the patient population that was being discussed by Dr. Sutherland. Dr. Sobey agreed that he was not "familiar" with Dr. Sutherland's practice and could not contradict the conclusions in her report.

Cross Examination of Paul Sobey, July 23, 2015

473. Dr. Sobey's conclusion relied on the 2013 National Survey on Drug Use and Health, which was an American study ("NSDUH") that examined substance use and the consequences of such use. The NSDUH is of limited value however as it only examines individuals with addictions and who were housed. It did not provide data on those who were homeless or who had comorbidities, such as mental illness. In short, the NSDUH examines a very different population who lack the multiple barriers experienced by Dr. Sutherland's patients and the Plaintiffs' in this case.

Cross Examination of Paul Sobey, July 23, 2015; Sutherland Report at 3 to 4; Exhibit 74

474. The second issue examined in the Sutherland Reply addressed Dr. Sutherland's comments about the ability of her patient population to discontinue drug use. Dr. Sobey agreed in cross examination that the neurocircuitry changes resulting from drug use over time could explain why an addicted person may want to stop using drugs but may not be able to discontinue drug use even if they wanted to.

Cross Examination of Paul Sobey, July 23, 2015; Sutherland Report at 5 to 6

475. The third issue examined in the Sutherland Reply analysed Dr. Sutherland's conclusions regarding the ability of her patient population to organize "their thoughts and actions in a constructive action way in order to maintain housing...". Dr. Sobey agreed with Dr. Sutherland's comments that symptoms of addiction can lead to homelessness and that addiction was a strong risk for homelessness. Dr. Sobey further agreed that he could not comment on the ability of Dr. Sutherland's patients to budget or organize their thoughts with respect to maintaining housing.

Cross Examination of Paul Sobey, July 23, 2015; Sutherland Report at 6 to 7

Dr. Sobey's Reply Report to the MacEwan Report

476. Drug War Survivors submits that the MacEwan Reply is not a true, response report. The purpose of Dr. Sobey's Reply Report to the MacEwan Report ("MacEwan Reply") was to examine a statement in Dr. MacEwan's report regarding the At Home / Chez Soi Final Report ("At Home Final Report").

477. The MacEwan Reply is simply Dr. Sobey's summary of selected portions of the At Home Final Report, which was not put into evidence. Dr. Sobey does not provide any opinion with respect to the issues addressed in the At Home Final Report, but simply recites certain facts and data contained in the report. Dr. Sobey did not participate in the preparation of the At Home Final Report and did not have any access to the underlying data which informed the report. Dr. Sobey simply reviewed the report and provided his interpretation of the results.

478. Drug War Survivors submits that the MacEwan Reply should be disregarded as there is no basis upon which any weight ought to be given to it.

City of Victoria post-Victoria (City) v. Adams

479. Housing stock in Victoria is far beyond Mr. Calder's clients' income level and for those without stable housing, the shelter system is the main option available to them. The primary barrier to accessing shelter in Victoria is insufficient space. Other barriers include cleanliness, disease outbreak, violence, mixing of people in active drug use with people trying to maintain sobriety.

Direct Examination of Shane Calder, June 30, 2015 (a.m.)

480. Mr. Calder testified that in Victoria since the *Adams* decision, his organisation has been better able to provide outreach services to homeless people with HIV or Hepatitis C. Prior to *Adams*, people were more likely to hide their camps.

Direct Examination of Shane Calder, June 30, 2015 (a.m.)

481. However, as post-*Adams*, the City only has to allow camping between 7:00 p.m. and 7:00 a.m., there is still a negative impact on outreach services. The restriction on camping during the daytime limits the depth of services he can provide as he may be unable to locate someone during the day.

Direct Examination of Shane Calder, June 30, 2015 (a.m.)

482. Mr. Calder testified that homeless people camping in Victoria are roused first thing in the morning and will pack up and either go to "Our Place" for food and shelter, the Rockbay Landing shelter or stay outside using trees for shelter.

Cross examination and Re-examination of Shane Calder, June 30, 2015 (a.m.)

483. For some people who camp regularly, they will have possessions such as tents and sleeping bags, which are heavy and being required to move each day means carrying heavy belongings and possibly having to move long distances to access daytime shelter. A person's ability to make such a move depends on their physical state and weather. Mr. Calder was unaware of any places to store belongings, rather people carry them on their back and bikes or in carts.

Re-examination of Shane Calder, June 30, 2015 (a.m.)

City of Abbotsford and homelessness

Introduction

484. The City is a local government pursuant to the *Community Charter*, S.B.C. 2003, c. 26 and the *Local Government Act*, R.S.B.C. 1996, c. 323.

Agreed Statement of Facts, para. 1

485. The City has the capacity, rights, powers and privileges of a natural person of full capacity, pursuant to ss. 8(1) of the *Community Charter*. Pursuant to ss. 8(2), the City may provide any service that Council considers necessary or desirable, and may do this directly or through another public authority or another person or organization.

Community Charter, ss. 8(1) and (2)

The City's attitude towards homelessness

486. Abbotsford Council has not established a policy on homeless encampments.

Read-ins, Tab 4, Question No. 380 and Tab 7, Questions 52 to 53 and Examination for Discovery of George Murray, February 6, 2015, Questions 434 to 438; Read-ins, Examination for Discovery of Jake Rudolph, May 15, 2015, Questions 380 to 381 and Tab 4, Request 380 to 381

487. Pastor Wegenast has attended numerous meetings with the City regarding homelessness, but the information only seems to be provided to the City; there is no reciprocal exchange of information. There was never anyone at these meetings who was employed by the City to offer any solutions for people to find housing. The tenor of the meetings was "how can we best deal with the eviction at hand." But the burning question that happened at the end of every meeting was "where are people supposed to go" and there was never an answer for that.

Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.)

488. When Mr. Rudolph began working with the City in 2013, Mr. Murray assigned him to deal with issue surrounding homelessness without providing any specific direction. Prior to that, there was no one person at the City responsible overall for issues relating to homelessness, but the primary responsibility was, and is, delegated to the Manager of Bylaw Enforcement.

Read-ins, Examination for Discovery of Jake Rudolph, April 23, 2015, Questions 16 to 25 and May 15, 2015, Questions 250 to 252

489. When Mr. Rudolph began working for the City on October 13, 2013, he was given the responsibility to become aware of and address the issue of homelessness in the City by Mr. Murray without a lot of clear instruction. He was not given a specific mandate for what being responsible for the homeless issue meant. When asked in cross-examiantion, he could not answer how many encampments there have been in Abbotsford since he has started. He has driven by some camps, but never gone into one.

Direct and Cross-examination of Jake Rudolph, July 27, 2015 (a.m.)

490. Mr. Rudolph testified that the City mandate that emerged on homelessness was put through a task force report developed in 2014. The task force established a blue print for the City. In terms of Mr. Rudolph's mandate, however, it remains undefined. His responsibility is to coordinate issues that arise around homelessness. These issues are dealing with complaints or concerns from the public about homelessness, managing the agendas and being the lead staff person for the Homelessness Committee established by City Council and receiving reports from the Bylaw Department regarding enforcement.

Read-ins, Examination for Discovery of Jake Rudolph, May 15, 2015, Questions 253 to 263

491. Mr. Rudolph clarified that when he wrote in a report to Council that homelessness has long been a problem in the City, he meant that the community saw it as a visual problem of people being seen outdoors in public spaces in Abbotsford and related concerns about the impact to businesses. He also meant that it was a societal problem.

Read-ins, Examination for Discovery of Jake Rudolph, May 15, 2015, Questions 349 to 359; Exhibit 5, Tab 168

492. Mr. Fitzgerald at first stated he did not express the view on a number of occasions that people camping homeless are undesirables. However, after reviewing an e-mail he sent to Gordon Ferguson in November 2011, which stated "attended the airport and spoke with Don about homeless camp – saw area where undesirables accessing area". he agreed that was a term he used to refer to homeless from time to time.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.); Exhibits 58; Exhibit 60; Exhibit 4, Tab 106

493. During his testimony, Mr. Fitzgerald at first denied ever saying there is no solution to homeless camps, but then confirmed that he said this when he reviewed Exhibit 59, which is an e-mail he wrote to Scott Schreiber, which states, "as I stated before I don't think there is a solution to this but we can attempt to make it difficult for them."

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.); Exhibit 59

494. In response to a request put to Mr. Murray on his examination for discovery, the City's only evidence to support its view that homeless people live outside in Abbotsford by choice is the following:

> Dwayne Fitzgerald has been advised by a couple named Cynthia and Tyler that they like living outdoors and by "Norm" that he doesn't like the rules associated with living indoors.

Read-ins, Examination for Discovery of George Murray, February 6, 2015, Question 425 and Tab 7, Question 51

495. In contrast, others who testified such as Nana Tootoosis, Holly Wilm and Colleen Aitken said that they would prefer to live inside. Roy Roberts told Mr. Koole that he would prefer to be housed. Mr. Koole confirmed that he wrote that "I believe Roy would rather be housed" in Exhibit 3 at Tab 6. When asked whether he agrees with his statement he stated that, "in the context of this email and that yes I've had conversations with Roy and I understood from other affordable housing advocates that most people would prefer to be housed. I had spoken with Judy Graves from Vancouver who had conducted surveys with people about housing versus staying outside and put together with Roy it would appear he would prefer to be housed." He agreed that there is a statement that says people like Roy need mental support in order to maintain housing. He did not see any reason why that opinion would change.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 3, Tab 6; Direct Examination of Nana Tootoosis, July 8, 2015 (a.m.); Direct Examination of Holly Wilm, July 8, 2015 (p.m.); Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

<u>The purpose of the by-laws</u>

Parks Bylaw

496. According to the City's Amended Notice of Civil Claim and the Preamble to the *Parks Bylaw*, the objective of the *Parks Bylaw* is to regulate the use of Abbotsford's parks and other public places within its jurisdiction.

Amended Notice of Civil Claim at para. 2; *Consolidated Parks Bylaw, 1996*, Bylaw No. 160-96, Preamble; Exhibit 7, Tab 1

497. The Preamble to the *Parks Bylaw* also states that the City holds certain property for pleasure, recreation or community uses of the public.

498. The City has been working on amendments to the *Parks Bylaw* and Mr. Arden is involved in these amendments. He was involved in drafting the amendments to the bylaw found at Exhibit 3, Tab 79. He stated they cut and pasted several changes in this document from the City of Victoria including the definition of "public place" and the definition of "homeless" and "homeless person". They sourced a portion of the prohibition against erecting a structure from the City of Victoria in late 2013 or early 2014. Mr. Arden did not know when the City of Victoria's bylaws came into force.

Direct Examination of James Arden, July 21, 2015 (p.m.); Exhibit 3, Tab 79

499. While Mr. Arden testified that in drafting the City's new revised *Parks Bylaw*, he mimicked the language of the City of Victoria parks bylaw in relation to prohibitions on a "homeless person" placing structures in Abbotsford parks. He did not, however, mimic the language of the exception allowing homeless people to camp overnight.

Exhibit 4, Tab 137

Street and Traffic Bylaw

500. The City has not provided any evidence regarding its purpose in enacting the *Street and Traffic Bylaw*. There is no Preamble or Purpose section in the bylaw.

Consolidated Street and Traffic Bylaw, 2006, Bylaw No. 1536-2006; Exhibit 7, Tab 3

Good Neighbour Bylaw

501. The purpose of the *Good Neighbour Bylaw* is to regulate street nuisances, littering, noise, and property maintenance. It is a consolidation of the following six City bylaws that regulated nuisances, littering, noise, and property maintenance:

(a) Boulevard Maintenance Bylaw No. 3483, 1991;

(b) Dog Manure Removal Bylaw No. 167-96;

(c) Litter Control Bylaw No. 336-97;

(d) Notor Vehicle Noise Avatement Bylaw No. 20-95;

(e) Noise Regulation Bylaw No. 253-96; and

(f) Unsightly Premises Bylaw No. 254-96.

Consolidated Good Neighbour Bylaw, 2003, Bylaw No. 1256-2003; Exhibit 5 Tab 154, pp. 1 to 2

502. The Good Neighbour Bylaw is about cleaning up the property.

Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

How the City enforces the Impugned Provisions

503. The City's Bylaw Services team enforces bylaw violations in Abbotsford and has the discretion to remove homeless camps. The final decision to remove a homeless camp is made by the Manager of Bylaw Enforcement, and the City regularly enforces its bylaws to displace Abbotsford's Homeless after receiving calls from the public. The City has multiple protocols and policies with regard to removing homeless camps – the City's Integrated Services Enforcement Team developed such a protocol which was in effect until late 2013. The City has enforced the *Parks Bylaw*, the *Street and Traffic Bylaw*, and the *Good Neighbour Bylaw* to remove numerous homeless camps.

Bylaw Services Department

504. According to Ms. Laljee, during her tenure Bylaw Services does not actively seek out bylaw contraventions, but they respond to calls for services when the City receives them. A call for service is a call from the public or a complaint or concern from the public with regards to allegations of a bylaw contravention. It can come from other City employees. The City may get them from the Parks crew, Engineering, Planning or from Transportation. Although Ms. Laljee said that in direct examination that Bylaw Officers only respond to complaints, on cross-examination she testified that the City does not only respond to complaints, as they respond sometimes on their own initiatives by Bylaw Officers.

Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

505. Ms. Laljee's Bylaw Enforcement Services team enforces the *Parks Bylaw*. Bylaws Services deal with homeless encampments. Ms. Laljee has sought to have those encampments removed from City land. Ms. Laljee has attended at camps with verbal and written notices of encampments. In her experience, the City has always received voluntary compliance in regards to eviction from encampments. In her time at the City, the City has never issued a particular bylaw notice policy with regards to encampments. She confirmed in cross-examination that they post letters when campers do not comply with verbal warnings.

Direct and Cross-examination of Magda Laljee, July 24, 2015 (p.m.); see for example, Exhibit 48, Tab 13, complaint by City employee Shawn Gurney at pp. 10 to 11

Enforcement against Abbotsford's Homeless - general

506. If a homeless encampment is found on City land, then the Bylaw Officer has discretion over it and the encampment is discussed with the Officer's Manager.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

507. Mr. Fitzgerald agreed that homeless encampments have been a major issue in Abbotsford for a number of years and that he has moved or evicted numerous people since 2007. No one taught him about how to remove people. He has made Mr. Roberts move along 20 to 30 times.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

508. "Amanda" is the computer program used by City Bylaw Officers to record observations and actions taken in enforcing the City's bylaws. Bylaw Officers Dwayne Fitzgerald and Deborah Crosby-Deroche used to record their observations and actions taken in Amanda. Mr. Fitzgerald stated that he has had no training on what to record although it is supposed to be a full and fair account of events.

Read-ins, Tab 12, Questions 124 to 127; Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

509. Bylaw Officers do not receive training on how to keep records of their activities under the current Director of Bylaw Services, Ms. Laljee, and Mr. Flitton was not sure if they did previously. When Mr. Flitton was the acting manager for Bylaw Services, Bylaw Officers did receive training but he is not sure if there was training before that time. The training was about the accuracy of the documents and how to store them so others do not access them. The training was not directly on how to deal with reports for homeless encampments.

Cross-examination of Bill Flitton, July 16, 2015 (p.m.)

510. Starting in 2013, Mr. Fitzgerald received direction from Gordon Ferguson on how to deal with homeless camps. Prior to that time, Mr. Techeral provided directions to him.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

511. The City posts notices seeking to have Abbotsford's Homeless vacate a specific public space. The City also verbally requests Abbotsford's Homeless vacate a specific public space.

Agreed Statement of Facts, paras. 53 to 54; Direct Examination of Debra Graw, July 16, 2015 (p.m.); Exhibit 5, Tabs 176 and 181 to 183

512. The final decision to close a homeless camp is made by the Manager of Bylaw Enforcement. Mr. Murray does not know how that decision is made.

Read-ins, Tab 5, Question 16 and Examination for Discovery of George Murray, February 6, 2015, Question 208; Read-ins, Examination for Discovery of Jake Rudolph, April 23, 2015, Question 101; Direct Examination of Navdeep Sidhu, July 17, 2015 (a.m.)

513. Once it has made a decision to close a homeless camp, the City understands that outreach is provided by the Salvation Army, Ravens Moon, 5 & 2 Ministries and Positive Living Fraser Valley Society, but the City does not attend at the camp when outreach workers are present. The City is not aware of what, if any, health care or social services are provided for more than 24 hours when it closes a homeless camp.

Read-ins, Tab 6, Questions 26 to 27

514. The City does not track how many verbal requests are made to have Abbotsford's Homeless vacate a specific public space.

Read-ins, Tab 11, Question 108

515. The City is not aware of how the welfare of homeless people who are evicted from homeless camps is assessed, including whether the mental health of the occupants is considered.

Read-ins, Tab 6, Question 30 and Examination for Discovery of George Murray, February 6, 2015, Question 278; Cross-examination of Bill Flitton, July 16, 2015 (p.m.); Cross-examination of Navdeep Sidhu, July 17, 2015 (a.m.); Cross-examination of Magda Laljee, July 24, 2015 (p.m.); Exhibit 47, Tab 42; Cross-examination of Jake Rudolph, July 27, 2015 (a.m)

516. The City does not have a protocol for supporting homeless people who are moved out of homeless encampments. It does not have a plan for where homeless people can go when they are moved from an encampment and it does not track where they go when they are moved along through notices or verbal requests. Ms. Aitken testified that no City employees had ever helped her to find housing.

Read-ins, Tab 6, Question 29, Tab 9, Question 68 and Tab 11, Questions 110 and 111; Cross-examination of Bill Flitton, July 16, 2015 (p.m.); Cross-examination of Navdeep Sidhu, July 17, 2015 (a.m.); Cross-examination of Magda Laljee, July 24, 2015 (p.m.); Exhibit 47, Tab 42; Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

517. The City does not know how many times it has moved Roy Roberts from various homeless camps, but Mr. Fitzgerald said in cross-examination that it was at least 20 to 30 times. Roy has had all of his belongings removed from a camp by the City.

Read-ins, Tab 7, Question 47 and Tab 12, Question 122

518. Mr. Steel, when attending a camp that is being displaced, notes that no locations were offered by City Bylaw Services staff as a place for people to go, rather "the impression I often get with I speak to Bylaw Officers is that they have to move from here. It doesn't matter where they go but it can't be here." Similarly, Mr. Fitzgerald testifited that he does not know if anyone he evicts ever has anywhere to go. He just evicts them.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.); Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

519. Before June, 2015, no one from the City had ever tried to help Ms. Wilm find housing. They always said that Raven's Moon would come and talk to her but they never did. They never brought the Salvation Army outreach workers. Instead, the Salvation Army workers would come out to see them on their own. They have been coming to hand out water, but not to discuss housing.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

520. When Mr. Caldwell lived by the Keg, Mr. Steel mediated between him and a City Bylaw Officer. Mr. Caldwell was yelling at the Bylaw Officer, but Mr. Steel intervened. According to Mr. Steel, the bylaw officer was saying that Mr. Caldwell had to move everything right that second, but due to Mr. Caldwell's physical ailments; it is not as easy for him to move. Mr. Steel heard Mr. Caldwell tell the Bylaw Officer that "Dennis is coming back." The Bylaw Officer was Dwayne Fitzgerald.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

521. As a result of Mr. Fitzgerald's insistence that Mr. Caldwell move his camp, he moved to a much more isolated location. Mr. Fitzgerald did not appear to have any plan as to where Mr. Caldwell should go.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

522. Mr. Steel describes another situation in which ultimately, Mr. Caldwell was evicted from another location by City Bylaw Services staff.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

523. The City regularly enforces its bylaws to displace Abbotsford's Homeless when it receives complaints from the public. For example, Mr. Fitzgerald e-mailed Mr. Flitton on November 19, 2013, that there was an increase in public complaints. He remembers there was an increase in complaints, an increase in the number of postings in camps and an increase in Mr. Fitzgerald attending inspections. He had made reference to a couple of mentally unstable drug users. One of them was Roy Roberts, and that Norm Caldwell and Denise Eremenko are also on that list.

Direct Examination of Bill Flitton, July 16, 2015 (p.m.); Cross-examination of Navdeep Sidhu, July 17, 2015 (a.m.); Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.); Exhibit 61

524. Mr. Flitton spoke to an exchange of e-mails involving himself and Donna Jesperson, a former Bylaw Officer with the City. The email exchange occurred in late June/early July of 2014, and was about removing Harvey Clause from Grant Park. Mr. Flitton sent an email to Ms. Jesperson on June 28 with a happy face after she said occupants would get 48 hours notice to move. Mr. Flitton was not given any guidance as to where people were to move along to. In his testimony, Mr. Flitton acknowledged that the City was enforcing the *Parks Bylaw* and that not all Bylaw Officers knew the contents of the Protocol, although all could be called on to enforce it. Mr. Flitton gave instructions that "these people should be removed".

Cross-examination of Bill Flitton, July 16, 2015 (p.m.); Exhibit 3, Tab 38

525. There is a follow up email exchange regarding a complaint about occupants in Grant Park from individuals who booked the park and who were concerned about safety. One tent was relocated and another was no longer a concern. Mr. Priebe, of the City's Building Maintenance Department told someone camping there to move along. Mr. Flitton agreed

that there is no City bylaw that states homeless people cannot be in the park during the day.

Cross-examination of Bill Flitton, July 16, 2015 (p.m.) and Exhibit 3, Tab 42; Direct Examination of Paul Priebe, July 16, 2015 (p.m.) and Exhibit 43, Tab 38

Integrated Services Enforcement Team

526. The Integrated Services Enforcement Team ("ISET") was a group of City staff from different Departments, including the Abbotsford Police Department, that met periodically to discuss a range of matters with interdepartmental interests. It was in existence throughout the relevant time period. ISET had no decision-making power and consisted of representatives of City departments and outside agencies. The participants varied from meeting to meeting and was chaired by a different representative on an annual basis. ISET met once per month. It did not only consider issues relating to camps on public land. It also considered properties, business operations including liquor and tobacco permits, and criminal activity at properties throughout the city. Service providers do not sit on ISET.

Read-ins, Tab 10, Question 101 and Read-ins, Examination for Discovery of Jake Rudolph, April 23, 2015, Questions 97 to 98; Direct and Cross-examination of Reuben Koole, July 21,

527. There was an ISET protocol ("ISET Protocol"), that the City was to follow to deal with homeless encampments on public lands. It was used until late 2013.

Exhibit 41, Tab 5; Read-ins, Examination for Discovery of George Murray, February 6, 2015, Questions 182 to 190; Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

528. The City did not appear to follow the ISET Protocol in practice. For example, in a December 20, 2011 e-mail, concerns were raised by Mr. Koole about Mr. Fitzgerald's failure to follow the ISET protocol. He recalled that the concerns were that notice was not being posted as the protocol states. Mr. Fitzgerald admitted he was not complying with the ISET Protocol. He also acknowledged that there have been a number of times where Roy Roberts had set up a camp and Mr. Fitzgerald just told him to move along without reporting it back to ISET. Also, on December 23 and 24, 2013, he advised residents at the Gladys Avenue Camp that they could not stay there and by doing so he was not in compliance with the ISET Protocol. Mr. Fitzgerald agreed there are numerous examples of people being moved along without being given 48 hours notice. He agreed that some of these people include Roy Roberts, Nick Zurowski, Nana Tootoosis and Homeless Joe.

Direct and Cross-examination of Dwayne Fitzgerald, July 20, 2015 (a.m. and p.m.); Exhibit 3, Tab 5; Exhibit 43, Tab 28; Exhibit 3, Tab 59; Exhibit 4, Tab 132; Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

529. The City involved the Abbotsford Police Department in issues regarding the ISET Protocol. Doug Sage or someone from the Abbotsford Police Department's bike squad would be invited to ISET meetings.

Read-ins, Tab 4, Question 11

530. The City does not know what is meant by "social planning" in the ISET Protocol. The City does not have any outreach workers. The City Manager, George Murray was not aware of who the service providers are that attend the camps pursuant to the ISET Protocol.

Read-ins, Tab 5, Question 18 and Tab 7, Question 57; Examination for Discovery of George Murray, February 6, 2015, Questions 201, 210-212 and 485 to 487

531. The City did not maintain any records on how often the ISET Protocol was utilised. There is also no record kept of when homeless people are moved or evicted from camps without the ISET Protocol being used. The City did not keep a log of the identity of the camp occupants when it closes a camp using the ISET Protocol.

Read-ins, Tab 5, Questions 14 to 15 and 21

532. Besides closing a camp, once the ISET Protocol was under consideration, the only other possible outcome was an extension of the removal date. The same is true for the City's new protocol.

Read-ins, Tab 5, Question 17; Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

The City has had multiple displacement polices

533. In 2008, Mr. Fitzgerald forwarded the homeless removal procedure to Parks staff which includes instructions for removal of trespassers off private lands and cleaning out underbrush to open up sightlines.

Exhibit 3, Tab 1

534. As is described above, there was also the ISET Protocol, which was used until late 2013.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

535. Exhibit 3, Tab 1 is an e-mail from Mr. Fitzgerald to Rick Bacon and Dan Weatherby, who were managers in the City's Parks Department. As of August 21, 2008 (date of this email) there was a policy dealing with homeless camps and also at some point the ISET Protocol was in place so there were two protocols in place in the City at the same time. Mr. Fitzgerald confirmed that it was not his practice that the City would wait to speak to service providers before they posted an eviction notice on a homeless camp.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.); Exhibit 3, Tab 1

536. Mr. Fitzgerald described how there are two eras: one where the ISET Protocol was used and the more recent Protocol. Under the old process, if the Bylaw Officers were on patrol and observed a camp on the side of the road then they could deal with that camp. Now, when they are out on patrol and see a camp they just leave it unless there is a complaint about it.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

537. Bylaw Services has an operating policy with respect to encampments that Ms. Laljee wrote. It came into effect possibly at the end of June or in early July 2014. Council did not approve it. Ms. Laljee worked with with James Arden and Greg Cross from the Parks Department in drafting the policy. When drafting the new policy, she did not review the ISET Protocol that was in place before she joined the City. Despite being tasked with responsibility for homeless issues in the City, Mr. Rudolph is only aware of this new policy broadly. He did not provide any comments on the policy and has not had to approve it. Neither Ms. Laljee nor Mr. Rudolph concerned themselves with the removal of the requirements to ensure that housing was available and to check up on homeless people after removal.

Direct and Cross-examination of Magda Laljee, July 24, 2015 (p.m.); Exhibit 47, Tab 42; Cross-examination of Jake Rudolph, July 27, 2015 (a.m.)

538. There is a place on the form for tracking the details of a complaint. There is also a space for observations. It has a place to note whether there has been compliance or if complaints are unfounded or cancelled. The second form is only used for the Gladys Avenue Camp. It is used by the inspectors when they inspect for safety. Neither form has a place for tracking the health of occupants. The City has not built in a mechanism for recording why people are camping homeless. The officer would put it in the field if they had contacted outreach services, like Raven's Moon, but they do not track the availability of places for the evicted to go. When they evict someone, there is no requirement by a Bylaw Officer to ensure that there is availability of shelter. The new protocol does not require confirmation of the availability of short-term housing or shelter. It does not say to follow up with the occupants regarding their healthcare or services to see how they are doing.

Cross-examination of Magda Laljee, July 24, 2015 (p.m.); Exhibit 47, Tab 42

539. In displacing Abbotsford's Homeless pursuant to the *Parks Bylaw*, the City now has a new protocol, the "Protocol Unauthorized Encampment/Encroachment on City Public Park" ("Protocol"). The Protocol has been in place since 2015.

Read-ins, Tab 1, Question 1 and Read-ins, Examination for Discovery of Jake Rudolph, April 23, 2015, Question 102; Direct and Cross-examination of Navdeep Sidhu, July 17, 2015 (a.m.)

540. The City does not have any specific meaning attached to the term "homeless encampment" in the "Homeless Encampments on Public Lands, Closure, Protocol, Roles & Responsibilities" document.

Read-ins, Tab 5, Question 13 and Examination for Discovery of George Murray, February 6, 2015, Question 201; Exhibit 41, Tab 5

541. Mr. Fitzgerald clarified his reference in his examination-in-chief to a policy change in July 2014 wherein he stated that the City no longer refers to issues as trespass issues. He stated this was not a policy change, but rather that they just now reference bylaws in the

eviction notices, whereas before they did not specifically reference anything in the notices.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

Enforcing the Parks Bylaw

542. The City enforces its *Parks Bylaw* to move people camping in City parks who have set up a tent or other camp structure.

Read-ins, Examination for Discovery of Jake Rudolph, April 23, 2015, Questions 84 to 91 and 93 to 95 and June 26. 2015, Questions 750 to 752; Direct Examination of Debra Graw, July 16, 2015 (p.m.)

543. Non-Bylaw Department staff have enforced the *Parks Bylaw* although doing so is not within their job description.

Read-ins, Examination for Discovery of Jake Rudolph, May 15, 2015, Questions 403 to 410

544. The *Parks Bylaw* began to undergo the amendment process in 2013. A draft of the new bylaw (which has been approved by counsel but not yet adopted) stipulates a maximum $10,000 per day fine for breaching the bylaw.

Cross-examination of Heidi Enns, July 15, 2015 (p.m.)

545. Ms. Wilm recognized a photograph of the notice that was on a tree for them to leave Compassion Park, which was put there by Mr. Fitzgerald. . He told them it was there when he saw them on the road. She saw it the day he put it there. At that time, he did not come to their camp with outreach workers. He only came from their camp to tell them they had to leave. He suggested that they go to the private land behind Save-on-Foods and they went there. They were not there for very long before security guards from Save-On came around and said they had to move.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.); Exhibit 5, Tab 181

546. She recognized another notice that Mr. Fitzgerald put up, which was the last one he put up in Compassion Park after they moved back. He came along and said they had to move again. They were there maybe two weeks. He said they were going to be cutting down dead growth and that was the only reason why they had to leave. They left and ended up by the triangle. She did not see them cutting down the dead growth. They went and looked afterwards and nothing was done except they cut down new growth to block the paths they used to get in. There are also pictures of Ms. Wilm and Al where they used to have their camp. It was one of the two sites they used to camp at in Compassion Park. They had a tent where it was dug into the ground. Their tent was in that location so no one could see them from the road or from anywhere.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.); Exhibit 6, Tab 210

547. There was an encampment in Grant Park in the summer of 2013. Harvey Clause, Christine and her boyfriend were staying there. An eviction notice was posted by the City, outreach was contacted and there was 1 week between when the notice was posted and the camp was cleaned. Mr. Clause picked up his belongings and left the area and Christine did not want to go and threatened crew members so the police were called. Ward Draper from 5 and 2 Ministries arrived and assisted Christine in packing her belongings.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

548. Ms. Sidhu attended Gardiner Park on November 27, 2014 with Ms. Graw. They attended that site again the following week and it appeared that no one had visited so Ms. Sidhu e-mailed the Parks Department to have it cleaned up. Notice was not posted.

Direct Examination of Navdeep Sidhu, July 17, 2015 (a.m.); Exhibit 47, Tab 62

549. Ms. Sidhu discussed another call for service for 33204 Meadowland Avenue, which is a City park called Century. Brayden Hafner was the Bylaw Officer who had conduct of this file. Ms. Sidhu attended on the day of posting, March 13, 2015. She did not know why under the notice there were 10 days given instead of 7.

Direct Examination of Navdeep Sidhu, July 17, 2015 (a.m.)

550. Mr. Fitzgerald discussed photographs he took of an encampment with a structure in Lonzo Park in April, 2011, where he saw individuals named Cynthia and Tyler camping in a log cabin they erected. There was a cleanup after that date, which Mr. Fitzgerald attended and wherein Cynthia and Tyler packed up their belongings and left the area. There were also photographs of another one of their encampments in the same area in Lonzo Park and a notice was posted on that encampment on May 10, 2011. Mr. Fitzgerald has issued two tickets regarding Cynthia and Tyler's encampments. He never saw them after the second eviction in Lonzo Park. On another occasion, he spoke to Denise Eremenko who was camping in a structure there.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m. and p.m.)

551. There was another encampment set up in Lonzo Park in March 2015, which belonged to Allan and Holly. There was a battery with wires running into the tent there and a scarecrow mannequin. Notice was posted on April 21, 2015 and the camp was cleaned up about three to four weeks later. Mr. Fitzgerald also took photos of another one of their camps in Lonzo Park in January 2015. There was a cleanup of this encampment in January 2015.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

552. A call for service was brought to Ms. Sidhu's attention regarding 1801 Clearbrook Road. The document listed several complaints. Ms. Sidhu understood there was a notice posted there but he did not attend on the posting date. There was a cleanup of the encampment, which he attended. The camper was there the day of clean up. He advised Ms. Sidhu and

others attending that he was moving along, they were not sure if he was there the whole time, but it was him and another camper that had been there for a few days. Ms. Sidhu looked inside his bag and he is not sure if it was he, Ms. Graw, or Mr. Fitzgerald who opened his bag. No one advised the camper they were looking inside the bag because it was left there.

Direct and Cross-examination of Navdeep Sidhu, July 17, 2015 (a.m.); Exhibit 48, Tab 17

Enforcing the *Parks Bylaw* in Jubilee Park

553. When the Order to vacate Jubilee Park was posted at the Tent Camp, people did not know where they would move to. When people were evicted from the camp at Jubilee Park, one or two of them found housing, but most of them moved down to the Gladys Avenue Camp and stayed there until July 31, 2014, when they were evicted from that location. Two or three people came to the Salvation Army's Shelter and one took a rent supplement. Mr. Koole recalls housing offers being made by BC Housing in relation to people at Jubilee Park, but he affirmed that these were only in relation to housing supplements to be provided on the basis that housing could be found.

Direct Examination of Steven Fehr, July 16, 2015 (p.m.); Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.); Direct Examination of Nate McCready, June 30, 2015 (p.m.); Cross-examination of Reuben Koole, July 21, 2015 (p.m.)

554. The affordable housing inventory map in Exhibit 45, Tab 4, at page 13 was presented to Council at the time of the Jubilee Park encampment. It is not indicative of the potential houses for those living at Jubilee Park because it was created in a rush and it is not exhaustive. In preparing the map they did not investigate each of the housing facilities. Mr. Koole agreed that some are abstinence based. For instance, Psalm 23 requires a 5-month program to be created. He did not know whether some require $2,000 to buy in. He responded that they are found in Abbotsford and cover a variety of affordable housing types. In developing this, he stated the individuals did not get into availability nor what program applies to which facility.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 45, Tab 4, p. 13

555. Mr. Koole coordinated service providers in relation to the Jubilee Park closure because people needed support, as some of those people have addiction and mental health issues. He gathered that information by speaking to people and relying on service providers who were going door-to-door and tent-to-tent. There was no tracking in terms of how long those people maintained housing. If someone was connected with housing at Elizabeth Fry he does not know if they were able to maintain it.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.)

556. When the City enforced its injunction in Jubilee Park, Mr. Rudolph did not know the number of shelter beds available. He acknowledged that the City does not have a documented inventory of shelter beds available.

Cross-examination of Jake Rudolph, July 27, 2015 (p.m.)

557. Mr. Flitton e-mailed Mr. Fitzgerald on December 21, 2013, when the injunction was being enforced in Jubilee Park to tell people at the Gladys Avenue Camp to move along on the 23 and 24 of December, 2013.

Exhibit 3, Tab 59

Enforcing the Street and Traffic Bylaw

558. The City has enforced its *Street and Traffic Bylaw* to move people camping on its right-of-way near the Happy Tree on Gladys Avenue even though the camp was located on the boulevard and not in the road.

Read-ins, Examination for Discovery of Jake Rudolph, June 26, 2015, Questions 754 to 762 and 766 to 769

559. Greg Cross, Director of the City's Public Works Department, is responsible for dealing with homeless people who camp on streets and rights of way.

Read-ins, Examination for Discovery of Jake Rudolph, April 23, 2015, Questions 115 to 120

560. An eviction happened in 2011 at a homeless camp on City land at South Fraser Way and West Railway. The occupant was Nana Tootoosis. Mr. Fitzgerald also discussed an encampment on South Fraser way for which an eviction notice was posted on September 19, 2014. The occupants were Norman Caldwell, Faith, Steven and Fay.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m. and p.m.)

561. At the end of May 2013, the City posted notices at an encampment of Roy Roberts in a City parking lot. The site was eventually cleaned up. Mr. Roberts was there during the clean-up and he did not want to leave. He said if anyone cleaned up his stuff he would "fucking kill them" so Mr. Fitzgerald called the police. The police arrived and asked Mr. Roberts to leave the area, which he did. Most of Mr. Roberts' belongings were disposed of but Mr. Fitzgerald picked through and left clothes, a shopping cart, and a sleeping bag for him. The City also moved Mr. Roberts along from a camp in a City parking lot in June 2013.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

562. In direct examination, Mr. Fitzgerald said that when he attended an encampment as a first step he would see people, advise them why he was there, ask for their names and advise them that potentially the camp would be closed down. The next step would be to present the information at the monthly Integrated Services Enforcement Team meeting (see below). After this discussion, it would be determined if the camp was to be closed and if the City would contact outreach. After that, they would wait for outreach to tell them if they had made contact with the occupants. If the service providers could not make contact, the City would post a notice to vacate. It gave individuals two to three days. Once the deadline expired bylaws would re-attend the site to confirm if it had been

vacated or not. They would then arrange to have City crews come in and clean up the area.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

563. However, in cross-examination, Mr. Fitzgerald admitted that this description of his procedure for closing camps was evidence about what the ISET Protocol required and was not his actual practice. Numerous examples were reviewed with Mr. Fitzgerald in cross-examination where he did not review the ISET Protocol.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

564. The Abbotsford Police Department is sometimes present when Bylaw Officers attend encampments.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.); Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

Enforcing the Good Neighbour Bylaw

565. Enforcement of bylaws regarding displacement of camping on private property is governed by the *Good Neighbour Bylaw* and not by any Protocol. The City will sometimes send notice to the property owner. The notice requires the property owner to comply with the Good Neighbour Bylaw and they must alleviate the mess on the property. If the property owner does not clean up the mess then the City will eventually come in and clean up the property and they will charge the owner (it seems that this is in a second letter). Neither the first nor the second letters include information about trespass and how to get rid of trespass on a property. The homeowner does not get any advice about the trespass of homeless people because the Good Neighbour Bylaw is about unsightly stuff on property and not about people. This description of the enforcement of the *Good Neighbour Bylaw* was after Ms. Laljee started her position and was therefore after the City was aware of these proceedings.

Cross-examination of Navdeep Sidhu, July 17, 2015 (a.m.)

566. In enforcing the *Good Neighbour Bylaw*, Bylaw Officers have been concerned not only with cleaning up garbage, but also with removing homeless camps and individuals from the property. In some cases, even once the property has been cleaned of garbage, Bylaw Officers continue to contact property owners in regards to homeless individuals on the land. In one particular situation, the Bylaw Officer notes that "All teh [sic] garbage and discarded material has been removed. However the homeless male remains occupying the [sic] area and the covered area. I will be contacting the property rep tomorrow." On ly once the garbage and the homeless individuals are gone is the Bylaw Services file concluded.

Ex 3, Tab 94, p. 4

567. Mr. Fitzgerald has arranged for letters to be sent to property owners regarding removing homeless campers from their property.

Exhibit 4, Tab 117, p. 9 and Tab 129, p. 7; Exhibit 57

568. The *Good Neighbour Bylaw* has been used to require a property owner to remove a homeless camp when there is no indication in the Bylaw Services file that garbage was an issue.

Ex 4, Tab 117

569. According to Ms. Lajee, who started with the City in April 2014, now if someone calls in a concern about an unsightly premise or noise concerns, it is dealt with it under the *Good Neighbour Bylaw*. If someone is calling strictly about an encampment with no impacts that relate to Bylaws then they may inform the property owner but it could be an issue of trespass. They are working on reviewing policy about that right now.

Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

Camp cleanup

570. Some people in Abbotsford appear to have used homeless camps as places to drop their garbage. Mr. Schmidbauer testified that he is sometimes unable to tell what material is there from the campers and what has been dumped there by other members of the public.

Direct Examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.); Direct Examination of Paul Priebe, July 16, 2015 (p.m.); Direct Examination of Colleen Aitken, July 9, 2015 (p.m.); Cross-examination of Jake Rudolph, July 27, 2015 (a.m.)

571. Since January 2014, the City has had a garbage collection service twice a week for the Gladys Avenue Camp, which costs $200 a week.

Cross-examination of Keith Senft, July 15, 2015 (p.m.); Cross-examination of Magda Laljee, July 24, 2015 (p.m.)

572. Mr. Schmidbauer confirmed that he had some safety concerns about cleaning up the camps and he has previously raised them with the City. There was no Workers Compensation Board training for camp cleanups. The City of Vancouver has that training and Mr. Schmidbauer took it six years ago. His crew has not taken that training. The training is about how to deal with homeless people in the downtown area of Vancouver. It includes how to handle needles, how to engage or disengage homeless people and how to conduct yourself. He raised the issue with the City in 2013 that there is a need for training around encampment cleanups. So far, the City has not provided this training. Mr. Schmidbauer has advocated for training on needle disposal. He is in the process of developing a safe work procedure for handling sharps. He has been dealing with camps for eight years and the City has a safe work procedure for handling needles but it is not up to date. He has expressed that no work will be done in homeless encampments until there is a safe works process.

Cross-examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.); Exhibit 67

573. Mr. Schmidbauer sits on the City's Occupational Health and Safety Committee. At a meeting on May 8, 2013, he brought up that there is a procedure on how to evict people, but not on how to cleanup the camps. He agreed that it is fair to say that the lack of training has made it difficult to clean up the encampments.

Cross-examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.); Exhibit 67

Recent change in City approach to enforcing its bylaws against Abbotsford's Homeless

574. Ms. Wilm's relationship with the City has changed since June of this year. She explained that, "the last time Dwayne [Fitzgerald] had come to our camp he was goading Al on. Al said he was sick and tired of moving." She explained that Al stated, "What if we don't move?" and that Mr. Fitzgerald responded that, "He said he would take our shit." In response Al said "Well, I'll just shoot you then" to which Mr. Fitzgerald responded, "Well, go get your imaginary guns and shoot me then." This interaction was consistent with Mr. Fitzgerald's description of this interaction. Ms. Wilm did not want to move because they had moved for about two months straight and all they were doing was moving. They could not get into any places because they were too busy moving. They were sick and tired of it so Barry Shantz went and talked to Bylaw Enforcement and the Department took Dwayne off their case. Since then, Magda Laljee has come out herself every time and brought a woman from Raven's Moon one time, who was supposed to look for housing but nothing has happened with that. Ms. Laljee brought the new Homeless Coordinator for the City when she came with the person from Raven's Moon, but Ms. Wilm did not talk to her. Where she is camping now there are two ladies that are staying with them, those are the people whom the Homeless Coordinator talked to. Before that interaction, Ms. Wilm had not seen anyone like that from the City.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.); Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

575. Mr. Fitzgerald tried to apologize by sending coffees and said he found them a place at Steve Simpson's house but Ms. Wilm she would not stay there. Al has had a place there and took Ms. Wilm in when she was sick, but Mr. Simpson said she could not stay and that he had another house they could move into as a couple. When they moved there, they were basically security for the house until somebody else moved in and as soon as the others moved in Ms. Wilm and Al were told they had to leave.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

576. Mr. Rudolph admitted that in June 2014, homeless people were still being moved along by the City.

Cross-examination of Jake Rudolph, July 27, 2015 (a.m.); Exhibit 3, Volume 1, Tab 80

Proactive enforcement on City and private land

577. The City often patrols for potential bylaw infractions of its own accord, particularly as they relate to homeless encampments. This includes stopping people who appear homeless and asking them for identification, and at encampments, conducting weekly site inspections, assessing safety concerns, checking for fire hazards, telling people to clean up their messes, and threatening to or actually giving/ posting a notice of eviction. At the actual evictions, the City is present but does not aid in finding people somewhere to go—at the Gladys Avenue Camp eviction in July of last year the City primarily provided traffic control. The City has also, in the past, posted notices of trespass or eviction at homeless encampments on private lands or those which fall under the province's jurisdiction, on behalf of those owners, although now appears to have an informal policy of encouraging homeless people to move on to unoccupied private land so the City does not have to deal with them.

578. Proactive enforcement refers to situations when the City enforces its bylaws in the absence of a complaint.

Cross-examination of Bill Flitton, July 16, 2015 (p.m.)

579. When Ms. Kae Beno started as the Homeless Coordinator, homeless campers were identified to Ms. Kae Beno by City Bylaw Services staff. The City's Bylaw Officers received a map of locations from the Abbotsford Police Department. Ms. Kae Beno said that the Abbotsford Police Department is providing information to the City about the locations of homeless camps.

Cross-examination of Dena Kae Beno, July 27, 2015 (p.m.)

580. Constable Stahl acknowledged that part of the bike squad's mandate is to look for problems in homeless camps, but later in his testimony he contradicted his answer by stating that the bike squad's mandate does not involve going into homeless camps. He does not believe the bike squad's mandate involves cutting or pepper spraying tents. The mandate specifically states that police are to build relationships with those individuals, but it does not specifically state to go and check camps. He noted that there was a written mandate put out in regards to homeless camps after the chicken manure incident but this is a different mandate than the bike squad mandate he was referencing above.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

581. Constable Stahl described the list in Exhibit 6, Tab 215 at page 30 as a list of individuals he has come across who have at one time or another been in the homeless camps. He was not sure why those listed in the section as "of interest" were said to be "of interest".

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.); Exhibit 6, Tab 215, p. 30

582. Ms. Wilms did not have any interactions with Bylaw Services or the police until the last couple of years when she began camping outside. She had no idea whatsoever that they did anything like that. In the last couple of years she has had interactions with them and

all of a sudden they would threaten to give them notice. She was confused and did not understand what was going on to begin with. She has camped where she is camping now twice before, for months at a time, and Bylaw Enforcement never came to see her once. Now they come to see her.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

583. The 2011 Homeless Count Report states in relation to the decrease in homeless people in Abbotsford between 2008 and 2011 that "Another factor specifically in Abbotsford that could have played a role in the reduction of the number of homeless people interviewed relates to the Abbotsford police's newly implemented crime prevention policy, coupled with enforcement by the city's by-law department that prevents homeless camps from being erected and "taking root.""

Exhibit 45, Tab 1, p. 404

584. In doing his outreach work, when Mr. Steel is not obviously identifiable as a member of the 5 and 2 Ministries, the police often stop him, take his identification and ask why he is there. He notes that the demeanour of the officers changes once he produces identification, in particular his military identification.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

585. Mr. Caldwell said that police are always coming to the Gladys Avenue Camp. He said "before June 4th, it was pretty brutal," and described a typical interaction: "you hear a car pull up, doors slam and then yelling 'get the fuck out of the tent. Let me see your fucking hands now.'" He went on to say that police would not provide reasons for their requests. He said that he was asked for identification, but not arrested.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

586. Since Ms. Laljee began working for the City, in about April 2014, if the call for service to Bylaw Services is on a private property what the City does depends on the circumstances. If someone calls in a concern about an unsightly premise or noise concerns, it is dealt with it under the *Good Neighbour Bylaw*. If someone is calling strictly about an encampment with no impacts that relate to Bylaws then they may inform the property owner but it could be an issue of trespass. They are working on reviewing policy about that right now.

Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

587. The City's new Protocol is not engaged if the encampment is on private land. Ms. Sidhu has observed people and encampments on private land. She had a file when she was on the east side where there was a call for service in regards to a property on Oxford with people staying there who frequented the Gladys Avenue Camp. The call for service in regards to the residents on Oxford was for violations under the *Good Neighbours Bylaw* for unsightly presence and conducting cleanup. The occupants who were evicted helped with the cleanup by loading garbage and debris onto trucks.

Direct Examination of Navdeep Sidhu, July 17, 2015 (a.m.)

588. Encampments are sometimes on Highways land. The Protocol is not used for these, as it is only for City land. Highways is land treated the same as private property.

Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

589. Up until the end of 2013, if Mr. Fitzgerald's role regarding encampments on provincial highways was to go in and post notices on behalf of the Ministry of Highways. Mr. Ferguson, the City's Manager of Bylaws, told Mr. Fitzgerald to do this. The City no longer posts notice on their behalf or on any private property.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

590. Ms. Laljee is familiar with the overpass at Highway One and Riverside. That is on Highways land. Exhibit 48, Tab 6, documents an e-mail exchange between Ms. Laljee and Doug Wilson from the Ministry of Transportation to do with the cleanup of Highways land. The email is specifically about reiterating that the City does not deal with the eviction of people off private lands because it is not within their jurisdiction. There is also a note in the first paragraph that the Bylaw Officers are willing to assist.

Direct Examination of Magda Laljee, July 24, 2015 (p.m.); Exhibit 48, Tab 6

591. Mr. Steel has helped Norm Caldwell move his camp many times. He provided examples of this, including from July of 2014. Mr. Caldwell estimated that he has been told to move his camp 15 to 20 times in the 3 years that he has been homeless in Abbotsford. When asked what he does after being told to move he said "I don't know. Wait 'til the last minute. I don't know what to do. Feel invaded. You know, feel belittled and such. It's embarrassing." He said that when he is evicted he moves to "some other place." He has lived in multiple locations along Gladys Avenue.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.); Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

592. The May 2, 2011, Bylaw Services print screens entered by Mr. Fitzgerald state that upon attending a property at 2485 Montrose Avenue to follow up on the condition of the accumulation of garbage in a parking lot, he noted that all the garbage had been removed: "however the homeless male remains occupying teh (sic) area and covered area. I will be contacting the property rep tomorrow." Mr Fitzgerald re-attended the property multiple times to "confirm that the male is gone" as well as ensuring garbage was cleaned up.

Exhibit 3, Tab 94, p. 4

593. Constable Stahl noted attending the area south of Milestones and when it was put to him that he did not see any safety issues there as there were none noted, he simply stated I am documenting what I found at the campsites. The same report stated that on February 25, 2013, the police attended and did a minor clean up. When asked whether it is part of his job to assess whether camps are clean or messy, Constable Stahl stated it is his job to

attend to camps and assess safety concerns if things are lying around, as "it may be a safety concern." He did not recall whether the minor cleanup required in this situation was a safety concern.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

594. In his testimony, Constable Stahl acknowledged that in his report he referenced a camp that looked very messy and told the homeless individuals to clean it up, but also stated it is not his mandate to tell people whether their camps are tidy.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

595. Mr. Flitton provided an example of a complaint he dealt within 2013 regarding a site at Montview and MacDougall, which is adjacent to the ACS. The complaint was from an owner of a business to the north of the property about people occupying a triangular shaped property on the east side of Montview. In response, Mr. Flitton and Bylaw Officers attended the property. Mr. Flitton also met with business people who occupied the building to right on the north side to understand their concerns and to try to explain to them what options they had to try and compel the owner of the property to deal with the complaint issue as a result of occupants. Subsequently, he had meeting at the ACS, as this was on their property, along with Dwayne Fitzgerald and Reuben Koole.

Direct and Cross-examination of Bill Flitton, July 16, 2015 (p.m.)

596. Mr. Smith has been ordered to vacate private land pursuant to by-laws. This occurred at his camp behind the Save-On Foods in Abbotsford in 2013. Following numerous requests to vacate by By-law Enforcement Officers, the fire Marshall visited the same camp to check for fire hazards. During this visit, Mr. Smith was told that he did not have to leave. Ultimately, however, he left upon request by the private landowner.

Direct Examination of Doug Smith, July 14 2015 (p.m. but before lunch)

597. Mr. Koole attended an ISET meeting in March 2013, where he remembers discussing issues around squatters taking up residence, which was identified as a nuisance residence. He confirmed that the church in those minutes was not equipped for those with mental health issues because those working at churches are not trained to deal with those matters. He agreed it says Bylaw Services is always on the lookout for nuisance houses. Some of those houses might have squatters in them and they might have people removed.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 62

598. In an e-mail from Mr. Flitton to Mr. Murray, dated July 16, 2013, Mr. Flitton refers to a "looming problem" at the Gladys Avenue Camp. The solution he was looking at then was to dismantle the camp if things got out of control. He recalled being advised in this context that the medical and mental health of campers was deteriorating and that they were living in filth worse than chicken manure. Although he contacted Fraser Health who inspected it, he did not ask any doctor to go to the site to check on the health of the people because the Salvation Army had a nurse who went to the camp on a regular basis

and he left that to them. His sole job was to move them on and to evict them from the camp.

Cross-examination of Bill Flitton, July 16, 2015 (p.m.); Exhibit 43, Tab 44

599. Mr, Schmidbauer said he was hoping CP Rail and BC Southern Rail would be posting more no trespassing signs at the Gladys Avenue Camp. He admitted that he was actually hoping CP Rail would patrol in several areas to clear out homeless people. He confirmed that CP Rail and BC Southern Rail would come to the ISET meetings and that they were encouraged to give tickets and charge fines and conduct patrols.

Cross-examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.)

600. There was an encampment on BC Hydro land in September of 2013 and the City posted a notice of eviction Mr. Fitzgerald recalls a cleanup carried out by the City and Mr. Caldwell was present at the cleanup. Mr. Fitzgerald saw two women yelling behind the camp. One was Denise Eremenko. The City was involved in facilitating meetings with BC Hydro, service providers and others regarding the eviction.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.); Exhibit 43, Tab 50; Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

601. On July 31, 2014, people were evicted from the Gladys Avenue Camp by BC Hydro and Southern Rail. The City was involved in facilitating that eviction. Pastor Wegenast was at the camp with a van the night before until approximately 1:00 a.m. helping people move their personal belongings. Those belongings were moved to a new set of bushes somewhere else at the request of the individuals there because they did not want to lose them.

Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.); Read-ins, Examination for Discovery of Jake Rudolph, May 15, 2015, Questions 593 to 596

602. Notice of eviction had been provided and on the day of eviction there were a number of service providers helping out, handing out water, trying to find places for people to live. Pastor Wegenast describes it as a sad occasion. People who were evicted moved to camp at other locations in the City such as on Sumas Way under the overpass and some were able to "couch surf". The City came and went pretty quickly, primarily providing traffic control.

Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.); Cross-examination of Jesse Wegenast, June 29, 2015 (p.m.)

603. Nine people were housed following the eviction at the Gladys Avenue Camp with assistance from B.C. Housing and the Ministry of Social Development at the request and proposal for an increased subsidy by Pastor Wegemast and Nate McCready of the Salvation Army.

Cross-examination of Jesse Wegenast, June 29, 2015 (p.m.)

604. Ms. Laljee is familiar with the Gladys Avenue Camp. It is still there. Bylaw Service's role in respect to that encampment included conducting weekly site inspections. Bylaw Officers conduct weekly site inspections with the Abbotsford Fire Department and facilitate the cleanup of combustibles and garbage through their contractor.

Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

605. Ms. Wilm and Al have been told to leave the Triangle. She was told, to begin with, by Mr. Fitzgerald about a month or a month and a half ago. He did not tell her why she needed to leave. He just said that people called and said they were there and that they would have to leave. He said he wanted them to go across the road where there is an old gas station but that the ground is still contaminated or the underground tanks are still there. He wanted them to move over there, behind on the contaminated ground. She went over there and looked at it and stated there is no way that you could even think about setting up a tent in there. He said he wanted them to go there because it is privately owned and he did not want to have to deal with them.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

606. Ms. Wilm has also been asked to leave privately owned land. That was just before she and Al moved to the Triangle. She stated that someone (she was not sure if it was Dwayne or the property owner at this point) told them to go camp at that place because they were in Compassion Park and if they were on private land then he would not have to deal with them.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

607. An eviction notices was posted by Mr. Fitzgerald at another encampment that belonged to Allan and Holly.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (p.m.); Exhibit 48, Tab 24

608. Abbotsford's Homeless have camped on property owned by the MCC and where its building on Gladys Avenue now sits. The City notified the MCC before construction started that there were complaints of people on their property and said that the MCC needed to address that issue. The City informed the MCC that they had a certain amount of time to address the situation. If they failed to do that then the City would take steps to have people removed and they would bill the MCC for the cost. The MCC eventually complied. It was not a good experience and Dr. van Wyk did not think that the MCC did a good job in how they handled that situation.

Direct Examination of Ron van Wyk, July 9, 2015 (a.m.)

<u>Further examples of displacement of little camps, including without using the ISET Protocol</u>

609. In addition to the evidence already cited, there were a number of further examples of the City's displacement of small encampments, in relation to which the City did not always follow the ISET Protocol.

Direct and Cross-examination of Dwayne Fitzgerald, July 20, 2015 (a.m. and p.m.); Exhibit 3, Tab 5; Exhibit 43, Tab 28; Exhibit 3, Tab 59; Exhibit 4, Tab 132; Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

610. Mr. Zurowski spoke about how he has been asked to move camp at least a few dozen times by City staff. Dwayne Fitzgerald is usually the Bylaw Officer he interacts with. Mr. Fitzgerald has told Mr. Zurowski to move, but has never told him where he might go.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

611. According to Mr. Zurowski, being told to move is demanding, taking into account his health and mobility issues. It is mentally straining as well, because he has to figure out the next move: where to go; where might be safe. As Abbotsford continues to grow there are even less spots; this is frustrating and discouraging.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

612. Mr. Zurowski has personally seen no camping and no trespassing signs in places he once camped. One place is on what is now called Sumas Way, just north of South Fraser Way [Compassion Park]. Other places include Gladys Avenue, Riverside, along the railway tracks and alongside the highway.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

613. Mr. Clause described being moved from Grant Park and having to leave behind personal belongings because he was running out of time after an eviction notice. Methamphetamines provided him with the energy to keep going in such situations because they made it possible for him to be more concentrated and less stressed. Oftentimes, Mr. Clause would have to move from camp to camp on little sleep. He described frequently having nowhere to go and riding around for days until he found an appropriate place to camp. When using methamphetamines, Mr. Clause could continue without sleep for three, five, or six days at a time.

Direct Examination of Harvey Clause, July 3, 2015 (p.m.)

614. On November 16, 2013, Mr. Priebe from the City's Building Maintenance Department asked Harvey Clause, who was camping at Winfield Park to move on. He did not report this to Bylaw Enforcement. While he was not part of Bylaw Enforcement, the Integrated Services Team and was not tasked to, and did not, apply the ISET Protocol, he did ask campers to move along.

Direct and Cross-examination of Paul Priebe, July 16, 2015 (p.m.) and July 17, 2015 (a.m.)

615. There was an encampment that was five kilometers south of the Salvation Army on the south side of the TransCanada Highway just before the Sumas border crossing. Mr. Fitzgerald did not post a notice but spoke to the occupants who agreed to pack and leave, and they did. He has not seen them since.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

616. In 2013, Mr. Koole drafted a corporate response for the City relating to encampments because the city was getting complaints from the public about homeless camps. Mr. Koole was shown an e-mail at Exhibit 7 at Tab 3 and confirmed that one of the complaints he was asked to respond to was on page 2 of that email, which stated, "dozens of homeless camps have been destroyed in the last..."

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 7, Tab 3, p. 2

617. People sometimes camp in bushes as opposed to the side of the road because visibility of camps can be detrimental to how long a camp can exist. People will move to more and more secluded areas in hopes of being able to set up camp for a longer time.

Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.)

Chicken manure incident

618. On June 4, 2013, the City distributed chicken manure on land adjacent to the Gladys Avenue Camp at a location known as the "Happy Tree".

Agreed Statement of Facts, para. 55

619. Exhibit 43, Tab 11 is e-mail correspondence between Mr. Fitzgerald and Mr. Ferguson with a photo attached showing an encampment under the Happy Tree where the chicken manure was spread. Mr. Fitzgerald stated that the tree was a problem and by this he meant that it was a problem because the size of the tree was acting as a form of shelter for the encampment.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

620. It was not Mr. Fitzgerald's decision to spread chicken manure on Gladys Avenue on June 4, 2013. He was involved in discussions about doing this, but he was not there when the decision was made. Gordon Ferguson, Deb Low and Andy Wok from the Salvation Army were also in attendance at the meetings. Mr. Fitzgerald observed 10-15 encampments there. He also observed people sitting under the tree and hanging around. On the day before June 4, 2013 he saw Nick Zurowski, Norm Caldwell and Nana Tootoosis in that location. He saw them sleeping there in the day but not in the evenings.

Direct and Cross-examination of Dwayne Fitzgerald, July 20, 2015

621. The City admits that it did not document who was at the Gladys Avenue Camp when it spread chicken manure on the Happy Tree.

Read-ins, Tab 7, Question 48

622. On the morning of June 4, 2013, Mr. Zurowski was sleeping near the Happy Tree at the Gladys Avenue Camp with and Norm Caldwell and Nana Tootoosis. He had been camping there since about April or May 2013. He was awakened by the noise of trucks and people shouting at him, saying "better move." As he tried to get up, the individuals began shoveling chicken manure around the Happy Tree, although they were claiming it

was pig manure. Mr. Zurowski recognised Dwayne Fitzgerald, a Mr. Cross (the person in charge of City Garbage) and an Abbotsford Police Department officer.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

623. According to Mr. Zurowski, the truck carrying the manure was a flat-bed city truck with 2 feet by 10 feet rails. People were throwing manure out of the truck as Mr. Zurowski and others were packing their things. They had to walk through the chicken manure to get to their carts.

Cross-examination of Nick Zurowski, July 6, 2015 (p.m.)

624. On June 4, 2013, Mr. Steel was doing his regular bike patrol outreach work. On these patrols, he wears a backpack and carries a bag of supplies such as water, granola bars and harm reduction supplies. Riding his bike, he visits the camps. The first camp he visited was the one on Gladys Avenue that day was across from the Salvation Army near the "Happy Tree". He arrived there between 10:00 and 11:00 a.m. He knew people would be there because they were there the night before so he came back with water and other supplies he was hoping they could use. The people he saw the night before were Nick Zurowski, Nana Tootoosis, Norm Caldwell and a number of other people visiting them. Nick, Nana and Norm had all their stuff there and were sleeping there. Norm had his blankets there. Nana, Norm and Nick were around each other a lot because that way they could watch each other's back and help each other out.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

625. In his words, this is what he saw when he arrived at the camp:

> ...There were uniformed officers there, a dump truck. I rode up to Norm—he was in a state of panic, flailing, trying to gather his stuff. I kept asking what I could do. He didn't know what to do. He was in a panic state. His arms were flailing and he was trying to dig through the bramble. I had to walk through the manure the guy was throwing off the dump truck. Nana was just sitting there in a daze off to the side. I asked what I could do and I couldn't understand why no one else was helping. Nana seemed to be in shock...
>
> There looked to be a city worker in the back of the dump truck. He was shoveling out the last of the manure... He was standing; he had a shovel and was shoveling it out.
>
> ...I was more focused on Norm—I could see that there was manure everywhere. I was worried about Norm and all his stuff which was now lost and covered in manure. He was wondering how he'd ever sleep there again.
>
> ...His belongings were right in it. He had a spot near the happy tree. The manure was spread all around where they were...his tools, his bedding, his clothes were all covered.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

626. Nothing in the cross-examination of Mr. Steel called into question the accuracy of his statement.

627. Mr. Steel described an area approximately 20 by 20 feet being covered with manure. He observed Nick there as well. There were two uniformed officers at the front of the truck just standing there, one of whom was a police officer.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

628. As a result of the chicken manure being spread around the Happy Tree, Mr. Zurowski's bedding, clothing and food were dirtied. The smell of ammonia also made it difficult for him to breathe due to pre-existing lung and breathing complications. He had to throw out his belongings as a result of the manure, including food and clothing.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

629. Mr. Caldwell recalled being present at the Happy Tree on June 4 2013. He was "laying under the tree" and that Mr. Tootoosis and Mr. Zurowski were also present. Mr. Caldwell and the other campers had received no warning prior to the incident. On the morning of the incident, "they told us they were going to throw pig manure all over the place." He said that he witnessed men shoveling manure, but that he was not paying close attention to their actions given that he was "really mad" and walked away. He said that at the time, he "was in a lot of pain."

Direct and Cross-examination of Norm Caldwell, July 8, 2015 (p.m.)

630. During cross-examination, Mr. Caldwell stated Dwayne Fitzgerald and some individuals from the Salvation Army were present. Mr. Caldwell stated that what he could not carry, he put in the bushes. His belongings in the bushes were thrown out.

Cross-examination of Norm Caldwell, July 8, 2015 (p.m.)

631. Mr. Tootoosis was camping at the Happy Tree with Mr. Zurowski on the date that chicken manure was spread around the Happy Tree. He stated that they received a warning longer than a day before. At the time he did not have a tent. Mr. Tootoosis, who has diabetes and is vulnerable to infections in his feet, got a foot infection from the chicken manure.

Direct and Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.)

632. According to Mr. Fitzgerald, prior to June 4, 2013, he indicated to Nick Zurowski, Nana Tootoosis and Norm Caldwell that some work would be taking place at the Happy Tree, but did not indicate that things could get uncomfortable for them. Mr. Fitzgerald was present when the manure was spread; he arrived between 8:30 a.m. and 9:00 a.m. Norm Caldwell, Nick Zurowski and Nana Tootoosis were there and Mr. Fitzgerald did not say anything to them. He advised them that work was taking place that evening and that they needed to pack up their stuff and leave the area. He did not advise them that chicken

manure would be used. Approximately, 1.5 to 2 hours after he arrived, the chicken manure arrived on site. Mr. Fitzgerald remembers the chicken manure arriving on the scene in a smaller City dump truck. He says the chicken manure was dumped out of the box of the truck and slid to the land in the area where it was to be spread. It was approximately 10-15 feet from the Happy Tree. The truck was on the scene for approximately a half hour to 45 minutes. After the manure was dumped, crews spread it on the site with shovels and rakes. He did not see it touch any of the belongings of the occupants. Mr. Fitzgerald left the site between 11:30 and noon.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

633. Mr. Fitzgerald agreed that it is possible his memory of the morning events when the chicken manure was spread may be off. He stated it is possible that the person there from 5 and 2 Ministries was Mr. Steele and not Pastor Wegenast as he said in direct examination. He also confirmed it was possible that Norm Caldwell was in the area when the chicken manure was spread and not across the street. He did not take photos of the incident and he did not record the incident in Amanda. He stated this is because the Bylaw Manager was going to record the information, as Mr. Fitzgerald was heading out to a conference. He agreed it is the job of the Bylaw Officer attending to record the information in Amanda and he did not do that.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

634. Mr. Schmidbauer observed the incident on June 4, 2013, in which City members spread chicken manure on the Gladys Avenue Camp. He arrived at the site at approximately 8:30 a.m. When he arrived, he did not know that manure would be spread that day. He saw Dwayne Fitzgerald when he arrived along with a person from the Salvation Army and the Abbotsford Police Department. He also saw people standing around the Happy Tree cleaning their belongings and packing them up. He saw Nick Zurowski and Norm Caldwell.

Direct Examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.)

635. The manure was dumped to the ground by a hydraulic system in the truck that lifts to dump out materials from the back. It was dumped on the area without asphalt in close proximity to the tree. It was spread by a couple of men, one with a shovel and one with a pitchfork. City Parks Department staff spread it. While the manure was being spread, Nick Zurowski stayed relatively close within about 10 meters of the location with his cart on the west side of the road, which was the same side as the tree but about 10 meters down.

Direct Examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.)

636. Mr. Schmidbauer left the site between 10:30 and 11:00 a.m. that morning and went to the Public Works Yard where he spoke with his director and made arrangements to cleanup the manure. He did this because he did not think that spreading it was a good idea to begin with. The reason for this was that he wouldn't have wanted it dumped on his property. Mr. Schmidbauer was there for the cleanup of the manure on June 6.

Direct Examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.)

637. The Happy Tree across from the Salvation Army is on a mix of City and private property. The chicken manure was placed on both City and private property. Mr. Fitzgerald does not recall whether they had permission from the owners. Mr. Fitzgerald recalled a suggestion that rubble be placed around the Happy Tree as a means of discouraging people from camping. He also recalled saying the Happy Tree was a problem and should be cut down.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

638. The decision to spread chicken manure around the Happy Tree was made by a group of City staff, which included Mr. Fitzgerald and ultimately authorised by the Director of Parks, James Arden.

Examination for Discovery of George Murray, February 6, 2015, Question 388; Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.); Exhibit 43, Tab 26

639. Mr. Arden was aware of the Happy Tree[1] out by Gladys Avenue. It came up in his meetings on Monday mornings. The General Manager at that time was Mark Taylor. In June 2013, Eric Fong, the City's Urban Forester, phoned Mr. Arden about the Happy Tree. He was at the site dealing with several issues related to the area. They were cleaning up the site and did not want people going back onto it. Mr. Arden's staff was receiving pressure to cut down trees including the Happy Tree. His staff was resistant to cut down the tree and he agreed. They had a discussion with other members at the site and then came up with the idea to spread chicken manure on the site. Mr. Arden thought cutting down the tree was the wrong approach, but that spreading chicken manure would be a good short-term strategy.

Direct Examination of James Arden, July 21, 2015 (p.m.)

640. Mr. Arden eventually communicated about this in writing by asking Eric Fong to send his request to Mr. Arden via e-mail. This email exchange is in Exhibit 3 at Tab 15 and it took place on June 3, 2013. In the e-mail, Mr. Arden stated, "I am okay with giving this a try" in regards to spreading the chicken manure "in order to address the ongoing issue". He stated in his testimony that the "ongoing issue" was the prostitution in and around the site and that they were sending people to clean up used condoms, needles and excrement. However, Mr. Arden confirmed he did not go to the Happy Tree so when referring to prostitution and condoms he had no personal knowledge. He confirmed there was no reference to prostitution in the e-mail in Exhibit 3, Tab 15 in which he supported spreading chicken manure.

Direct and Cross-examination of James Arden, July 21, 2015 (p.m.); Exhibit 3, Tab 15

641. Mr. Arden says he gave Mr. Fong the go ahead and he did not discuss this with anyone else or seek additional help in providing that permission. The City had used chicken

[1] Note: Mr. Arden referred to the Happy Tree as the "Honey Tree" in his testimony.

manure in the past for horticulture beds. He did not think the request from Mr. Fong to use chicken manure was unusual. Port Coquitlam had used manure in the past in to deal with homeless encampments. Mr. Arden did not have any concerns about using the chicken manure at the Happy Tree. It was presented to him that the City had moved the people out and were trying to prevent them from coming back. He was not party to any discussions regarding any alternatives to manure or tree cutting.

Direct Examination of James Arden, July 21, 2015 (p.m.); Exhibit 3, Tab 15

642. When Mr. Arden approved the use of manure he believed the Salvation Army was in agreement. This as important to him because, according to him, one of the issues was people were running back and forth across the street between the Shelter and the Happy Tree. It was presented to Mr. Arden that the Salvation Army had safety concerns related to people running across the road or lying on it. This was not seen in the documents.

Direct Examination of James Arden, July 21, 2015 (p.m.)

643. Mr. Arden stated he was taking the health of the citizens of Abbotsford into consideration when he endorsed the spreading of chicken manure on the homeless encampment. When asked how he took into account the health of citizens of Abbotsford when he agreed to the spreading of chicken manure on a homeless encampment, Mr. Arden responded "they were sleeping on the curb, putting their head on the curb." He judged the effect of the manure on people's health that day by talking to Eric Fong. Mr. Arden said he saw people running across the road when he drove past that area on a different day. He did not see people lying on the roadway that day.

Cross-examination of James Arden, July 21, 2015 (p.m.)

644. There was an immediate backlash by the public following the spreading of chicken manure. Mr. Arden defended his decision in an e-mail exchange with Mr. Murray saying a temporary solution was a better strategy than removing a healthy tree and Mr. Arden confirmed in his testimony that he still holds that view. After speaking with Eric Fong, Mr. Arden thought that was the best option. Mr. Arden continues to support this decision.

Cross-examination of James Arden, July 21, 2015 (p.m.)

Tent cutting and pepper spraying

645. Constable Wiens and Constable Stahl admitted to cutting the tents of Abbotsford's Homeless. Constable Wiens reported doing this on one occasion, and stated that he cut the tent to encourage the occupant to "move along." Constable Stahl reported cutting multiple tents and pepper spraying tents, again to encourage the occupants to move. Doug Smith, an owner of a tent that was cut, reported that this worsened his relationship with police.

February 2013

646. Constable Wiens admitted that in or about February 2013, he cut straps on a tent north of McLure St. so the tent would collapse. The tent was located along the railroad tracks and just west of Highway 11. He noted the tent ran parallel to that location. Constables Karen Burridge and Christoph Stahl were with Constable Wiens when he cut the tent straps.

Direct Examination of Shane Wiens, July 10, 2015 (p.m.)

647. The tent belonged to Brian Bushweed. When they arrived they say Mr. Bushweed was leaving the camp and he started to run when he saw them. Constable Wiens did not talk to Mr. Bushweed after he started to run and he has not had any interaction with him since. Constable Wiens said in cross-examination that Mr. Bushweed was not fearful or shy, but did not have an explanation as to why he ran.

Direct and Cross-examination of Shane Wiens, July 10, 2015 (p.m.)

648. When asked why he cut the tent straps, Constable Wiens stated he was there prior to that day, possibly on two or three occasions, and he spoke to Mr. Bushweed whose camp was in extreme disrepair. Specifically, he stated there were human feces all over the camp, and that he located several needles placed in the ground with the needles facing upwards. He told Mr. Bushweed that he needed to keep his camp cleaner, as it was attracting rats because of the feces. When the Constable returned, the camp was still there and it had gotten worse. Constable Wiens looked inside the tent and there was an open flame from a propane burner stove so he turned it off. To encourage Mr. Bushweed to move along, Constable Wiens cut the straps to cause the tent to collapse.

Direct Examination of Shane Wiens, July 10, 2015 (p.m.)

649. Constable Wiens could not remember if Mr. Bushweed moved along after he cut the straps. He did not recall where he wanted him to move along. When asked whether there was somewhere for Mr. Bushweed to go that Constable Wiens knew of he responded "not that I know of". He described Mr. Bushweed as being in poor health. He could not recall if he gave any thought at that time about how cutting the straps of the tent would affect Mr. Bushweed other than getting him to move along.

Direct Examination of Shane Wiens, July 10, 2015 (p.m.)

650. At the time he cut the tent straps he had not been given any instructions on how to deal with homeless people, but he has been given instructions since this time.

Direct Examination of Shane Wiens, July 10, 2015 (p.m.)

651. Constable Wiens did not fill out a police report in which he indicated that he cut the straps on Mr. Bushweed's tent and he did not recall why he did not fill out such a report. He confirmed Exhibit 38 is a document that contained the applicable Abbotsford Police Department policy on reporting damage to property. He said it is fair to say he did not

comply with this policy because he was not aware of it. He claims he did not have any training in this policy.

Direct Examination of Shane Wiens, July 10, 2015 (p.m.); Exhibit 38

April 24, 2013

652. Constable Stahl admitted that he was involved in cutting tent straps and pepper spraying tents of some of Abbotsford's Homeless. This took place behind the Milestones and across from the Save-on-Foods. Constable Karen Burridge was with him when this took place but he did not observe her cutting tents, cutting tent straps or pepper spraying tents.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

653. On April 24, 2013, Constable Stahl attended the area behind the Milestones on April 24, 2013, with Constable Burridge and Dwayne Fitzgerald to check on several homeless camps to determine if they were on private or City property. Constable Stahl had attended that area in the recent past and had noticed that a tent that was in disrepair and appeared unoccupied; it was wide open and seemed to be sagging or falling apart. On April 24, 2013 the tent was closed and it had a lock on the zipper to the entrance. This was the first time Constable Stahl had ever seen a lock on the zipper and he claims he was concerned what or who might be inside due to the nature of individuals living outdoors. He did not know to whom the tent belonged. He cut an approximately 4 to 6 inch "L shape" along bottom right hand corner of the zipper seam near the door to look inside the tent. He looked inside the tent and left the area.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

654. He did not have a warrant to enter any of the tents. He acknowledged that the tent door was locked from the outside and the fly was closed. He stated that he could not see into the tent. Constable Stahl did not have any safety concerns with this tent. He described the tent as beige in colour and stated it was approximately a 4 to 6 person tent. It was located in a wooded area and he did not see any weapons or knives.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

655. Constable Stahl acknowledged in cross-examination by Counsel for the City, that Doug Smith made a complaint that his tent was cut.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.); Direct Examination of Doug Smith, July 14 2015 (p.m., but before lunch)

656. After cutting the tent, Constable Stahl, Constable Burridge and Dwayne Fitzgerald attended another homeless campsite that had three tents. This campsite was located to the south of the first site and was also behind the Milestones. Two of the tents appeared to be occupied but there was no one inside them at the time. Constable Stahl employed pepper spray into the two tents and left the area. He did not recall if he announced his presence at either location.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

657. Constable Stahl testified that he suspected one of the pepper sprayed tents was Denise Eremenko's tent. He sprayed the tent because they had dealt with her on previous locations at other campsites, which were large and had a lot of garbage around them. The neighborhoods and areas surrounding those sites had received numerous complaints from citizens of people going into their backyards. They had also received numerous complaints from the neighbourhood backing onto Milestones. Constable Stahl stated that he pepper sprayed the tents to encourage Ms. Eremenko to change locations and "to encourage her to find a more suitable location." He does not know if he gave any thought to what effect this would have on the owners of the tents.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

658. Mr. Fitzgerald recalled the Abbotsford Police Department cutting a tent and pepper spraying tents. His discussion with the Abbotsford Police Department ahead of this was just about who was in the area and where. He was not there when the tent was cut, just when the tents were sprayed. He did not discuss whether it should be in his report, but he did not include it in his entry in Amanda He does not know why he did not include that in his report.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

659. Constable Stahl also remembers a call on June 12, 2013 where there were claims that the Abbotsford police had been cutting tents, cutting tents straps, and pepper spraying tents.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

660. Prior to the chicken manure incident on June 4, 2013, Constable Stahl did not receive any instructions on how to deal with homeless camps. He believes the Abbotsford Police Department has a policy about when it is appropriate to deploy pepper spray but did not know if the policy includes pepper spraying people's belongings to deter them from camping. He could not recall whether he was familiar with the policy at the time he pepper sprayed the belongings. He understands pepper spray is sanctioned in the use of force. He gave the example of using pepper spray with a dog that is being aggressive.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

661. He did not fill out a report that described his actions in cutting the tent or pepper spraying the other two tents. He did not know why he did not fill out a report. He did not know whether there is an Abbotsford Police Department policy requiring officers who destroy property to complete a report. He is familiar with the completion of general occurrence reports.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.); Exhibit 6, Tab 213, p. 17

662. Correctional Standards held an investigation regarding Constable Stahl's cutting the tent and pepper spraying the other two tents and he was disciplined.

Re-examination of Christoph Stahl, July 10, 2015 (p.m.)

663. As is noted above, it was Mr. Smith's tent that was slashed by Constable Stahl when Mr. Smith was living behind the Save-On Foods in Abbotsford. Mr. Smith filed a complaint. He states that even though the cuts were duct taped and stitched closed afterwards, the vandalism "opened the door" to other intruders. He states "it became a free-for-all." Following the incident, Mr. Smith's relationship with the police worsened. He explains that he already had an issue with authority and that this exacerbated that issue.

Direct Examination of Doug Smith, July 14 2015 (p.m., but before lunch)

Confiscation or disposal of belongings

664. The City treats the unattended belongings of Abbotsford's Homeless as though they are garbage, and has disposed of people's tools, medication, clothing, shelter and tents, sleeping bags, knives, pipes, rain gear, recycling, bicycles, wallets and identification, along with the containers used to store these things in, such as shopping carts and garbage bags. Abbotsford's Homeless cannot always carry all their belongings with them wherever they go, and sometimes must leave their belongings unattended or at encampments in order to do things like search for housing or eat lunch at the Salvation Army. Since 2014, the City has begun storing some belongings in a secure storage locker for 20-30 days before throwing them out, presumably so that their owners have time to claim them. However, that storage locker is located about 10-12 kilometers from the Salvation Army, and there is no bus that goes there.

665. After homeless people are evicted from a camp by the City, Pastor Wegenast witnessed City staff taking people's belongings and putting them in a dumpster.

Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.)

666. Mr. Fitzgerald talked about the City disposing of most of Roy Roberts' belongings after an eviction from a City parking lot.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

667. Mr. Zurowski testified that the Abbotsford Police Department confiscated the tools he once used to carry out his profession as a joiner. He said that this occurred during his housing search, when he left his cart with people at Jubilee Park. When he returned to Jubilee Park, he was told by two individuals there that Abbotsford Police Department officers who were not wearing nametags removed his cart because he was not present. The loss of tools was a major setback for Mr. Zurowski in terms of his ability to work: the tools are required to build furniture.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

668. Mr. Zurowski has also had his anti-inflammatory medication confiscated by the police during a roadside search. As a result of having his medication confiscated, Mr. Zurowski

experienced inflammation to the extent that he was not able to stand up straight (he has a degenerative disease and has broken both knees).

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

669. Mr. Zurowski has had his carts on Gladys Avenue thrown out by the City several times, sometimes when he has left his camp to attend lunch at the Salvation Army. It is his experience that the Salvation Army does not want carts on their property, and so he has had to leave belongings unattended in order to eat, which sometimes means losing his belongings. He has seen his belongings being put into a garbage truck and has on more than one occasion climbed into the truck to retrieve his belongings. This occurred at the Happy Tree and at Cherry Tree Park. In his carts were tools, clothing and shelter.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

670. Mr. Zurowski's attempts to document his experiences have been frustrated by the fact that his belongings are taken from him, including notepads.

Cross-examination of Nick Zurowski, July 6, 2015 (p.m.)

671. Mr. Smith regularly sees the carts and belongings of homeless people getting discarded by the City. He has seen this happen to Nick Zurowski, Nana Tootoosis, Norm Caldwell and Denise Eremenko. In those situations, Mr. Smith testifies that he reclaims the items by getting into the truck and removing the items. He notes that in the eyes of the City "it's all garbage piled up in garbage bags", but that in actuality, the bags are filled with personal belongings. Garbage bags serve as storage containers for many of Abbotsford's Homeless because they are waterproof and there are limited other options.

Direct Examination of Doug Smith, July 14 2015 (p.m., but before lunch)

672. Mr. Smith has had his personal belongings confiscated by the Abbotsford Police Department in the process of being stopped by police on more than one occasion. He has lost knives and pipes. He has not received paperwork for the confiscations.

Direct Examination of Doug Smith, July 14 2015 (p.m., but before lunch)

673. Mr. Flitton described an email to Magda Laljee in June 2014 saying the City does not wish to store materials and the preference is for people to move on and things to be thrown out. This position was based on his previous experiences of people moving on who took things with them and what was left behind was not considered to be their belongings.

Cross-examination of Bill Flitton, July 16, 2015 (p.m.)

674. According to Mr. Fitzgerald, if the occupants were at a camp for the clean-up after they had been evicted, then the Bylaw Officers would work with them to pack up and remove what was needed. If there was no occupant at the camp, the City would dispose of most materials, although the tent and bedding might be set aside.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

675. Possessions are stored about 10-12 kilometers from the Salvation Army. There is no bus that goes there.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.); Cross-examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.)

676. Mr. Priebe has seen encampments and claims it is his role to report them to the City's Bylaw Enforcement Department. He loads up discarded materials and takes them to the dump. Materials are dumped from pickup trucks whereas camps have orderliness and a sense of ownership.

Direct Examination of Paul Priebe, July 16, 2015 (p.m.)

677. Mr. Schmidbauer is involved in the storage of materials from encampments around the City. This storing of belonging began in September 2014 and is in a secure storage locker at the Public Works Yard on Kings Road. Materials are brought there monthly and also after encampments are cleaned up. There has been material disposed of from the locker. Mr. Schmidbauer notes that the limitation time is a minimum of 20 days, which differed from Dwayne Fitzgerald's testimony of 30 days. Mr. Schmidbauer receives word from the Bylaw Officer when the storage time has elapsed and they can dispose of the materials.

Direct Examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.)

678. Mr. Labelle stated that during the day, he keeps his belongings in the shrubbery and bushes at Stadium Park. Just last week, the police confiscated his sleeping bag after spotting him in the shrubbery and taking him to "the drunk tank." Police did not inform him with respect to reclaiming his sleeping bag and Mr. Labelle stated that he still has not gotten it back.

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

679. Mr. Caldwell said he recycles for income. He testified that the City has taken his recycling away from him before—nearly every time he has been evicted from an encampment. He said that this affects his ability to acquire income.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

680. Mr. Caldwell stated that in the process of evictions, he has witnessed the City throwing out many of his belongings, including clothing, sleeping bags, sleeping gear, rain gear, tools, bicycles, and his wallet and identification. He described the process whereby City staff throw out individuals' belongings as "a race," with the City "grabbing things as fast as they can." There is a difference between items that he allows the City to throw away—garbage—and items that he wants to keep—belongings. He said that sometimes his belongings are thrown out if he does not act "fast enough." Describing the process,

he said "you can only carry so much...there's only one of you and three or four of them...so you lose things. Lose your possessions."

Re-examination of Norm Caldwell, July 8, 2015 (p.m.)

681. Mr. Caldwell said that he lived on land owned by the Mennonite Central Committee for at least six months. When he and his friend Tom were asked to leave, they lost approximately 90% of what they owned.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

682. Mr. Rudolph recalled that in 2014 a contractor took belongings he was not authorized to take and disposed of them - these belongings included a tent belonging to Roy Roberts.

Cross-examination of Jake Rudolph, July 27, 2015 (a.m.)

Brush clearing and landscaping

683. The City has considered and established landscape features in an attempt to prevent the establishment of homeless camps. Vegetation, trees and brush have been trimmed or cleared to expose camp locations to the elements or block paths to certain areas.

684. Because of complaints from residents in the Gladys Avenue area and concerns expressed by BC Hydro and Southern Railway about potential hazards in relation to rail operations, the City considered landscape features that would prevent the establishment of encampments of homeless people.

Read-ins, Tab 2, Question 3; Read-ins, Examination for Discovery of Jake Rudolph, April 23, 2015, Questions 157 to 158

685. Finding a place to camp has become harder because old camps go through large cleanups: excavators are brought in to tear the vegetation and trees are trimmed so that campers are left exposed to the elements like the rain and the hot sun.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

686. Constable Stahl relied on Exhibit 6, for the fact that brush was cleared away by the police.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.); Exhibit 6, Tab 213, p. 16, second paragraph

687. The document, "Crime Prevention Through Environmental Design" is a policy document endorsed by City Council on November 4, 2013

Read-ins, Examination for Discovery of George Murray, March 20, 2015, Question 887 and Tab 10, Question 97

688. An e-mail from Scott Watson April 2, 2014 states "by removing the wooden fence and opening the area up, we probably reduced the likelihood of homeless people camping out there quite significantly. The old CPTED principle—the more legitimate users you have the less undesirables there will be."

Exhibit 3, Tab 71

689. Ms. Sidhu did not recall whether he proposed to Mr. Ferguson in March 2011 a method of dealing with homeless camps, which was to trim up some trees so the camp was not in a hidden location. After being shown an email she sent to Mr. Ferguson to that effect Ms. Sidhu confirmed her written statement.

Cross-examination of Navdeep Sidhu, July 17, 2015 (a.m.); Exhibit 56

690. Mr. Fitzgerald acknowledged that there have been a number of occasions where brush has been cut around homeless camps to open up the sightlines. He could not recall if the City encourages homeowners to do this. Tab 112 of Exhibit 4 has references to cutting away brush to discourage people from camping. When this was put to him, Mr. Fitzgerald agreed that trimming had taken place to discourage homeless people from camping. He agreed that this is a practice of the City.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.); Exhibit 4, Tab 112

691. In an e-mail chain at Exhibit 43, Tab 24, Mr. Schmidbauer responded to a suggestion from Gordon Ferguson to cut down the Happy Tree by saying that the best thing to do is to clear out the branches in order to really expose the people in the area and to do the same thing over by South Fraser Way.

Cross-examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.); Exhibit 43, Tab 24

692. Exhibit 6, Tab 210, includes pictures of the entrance to where Holly Wilm and Al were camping in Compassion Park. There used to be a little hill that you went in and up, right where all the branches in the photo were laid and there's a little indent. The City put the trees across and they brought all the branches, everything, in there to make it so that you cannot get across at all. It was actually the entrance into Compassion Park. The third picture includes a big pile on the other part of the pathway that goes into where they camped. It was not like that when they lived there and now you cannot get around it easily, and Ms. Wilm stated "You're going to sprain your ankle or something if you try to get in that way." Ms. Wilm has tried getting around it and she "got around it just to get out of there," but she went in a different way because there was no way she could get over that without twisting her ankle. You could not get a bike or a cart in there.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.); Exhibit 6, Tab 210

693. Additional photographs in Exhibit 6, Tab 210, showed two logs from trees the City cut down on the path in Compassion Park. The trees were not cut down when Ms. WIlm lived there. There is another picture of a tree was there when Ms. Wilm lived in that

location and the City cut it down. She stated that was the extent of the cutting that they were doing that Mr. Fitzgerald was talking about – cutting down all the small trees and blocking the path.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.); Exhibit 6, Tab 210

694. Ms. Wilm and Al have seen people from the public trying to access the area that is now blocked. When they were going into their camp one-day a woman was walking her dog and asked, "Isn't this supposed to be a public park?" She could not take her dog in that area.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

695. Mr. Rudolph recalled a cleanup that occurred at a homeless camp on King Road. When asked if there was concern about the garbage and whether the City put boulders there so individuals could not camp under the bridge, Mr. Rudolph stated that he thought they were concerned about the structural integrity of the facility, but this is contradicted in City document, Exhibit 48, Tab 6, p. 3.

Cross-examination of Jake Rudolph, July 27, 2015 (a.m.); Exhibit 48, Tab 6, p. 3

Fish fertilizer

696. There is evidence that the City applied fish fertilizer to homeless encampments.

697. The City cannot determine who made its decision to use fish fertilizer under the tree at the Gladys Avenue Camp as a deterrent for people congregating under the tree canopy. Mr. Koole confirmed that this was done.

Read-ins, Tab 11, Question 105; Cross-examination of Reuben Koole, July 21, 2015 (p.m.)

698. Mr. Fitzgerald could not recall fish fertilizer being spread on homeless camps as a means to discourage camping, but he did recall that this was raised at an ISET meeting. He did now know what the final decision was on that matter.

Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

699. Mr. Koole did not know if fish fertilizer was used at Lonzo Park, but he did know there was discussion regarding Dan Weatherby using fish fertilizer in that region. He stated that he spoke out against its use sometimes because he did not feel think this was following the ISET Protocol.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.)

City inaction regarding homelessness

700. There have been multiple attempts to address homelessness in Abbotsford, including through the City's Abbotsford Social Development Advisory Committee, which had an objective to improve shelter provision in Abbotsford, through documents outlining

recommendations and ideas for City involvement to support homelessness, through proposals for shelters and housing facilities, and through the development of a Homelessness Task Force. To date, none of these attempts have been effective – this is due to the City's inaction.

Abbotsford Social Development Advisory Committee

701. The City established the Abbotsford Social Development Advisory Committee ("ASDAC") in about 2006 or 2007. The Committee ceased to exist in November 2014. It was to advise the City on issues of social development, which included a goal of the committee was to improve the system of shelter provision in Abbotsford.

Direct Examination of Rod Santiago, July 14, 2015 (p.m.); Direct Examination of Reuben Koole, July 21, 2015 (a.m.); Exhibit 45, Tab 1, p. 155 (ASDAC Terms of Reference); Direct Examination of Ron van Wyk, July 8, 2015 (p.m.)

702. Dr. Van Wyk was involved with ASDAC and was its chair for two years. There was great excitement amongst service providers when ASDAC was established and they had high hopes for it. Some of the service providers on the ASDAC committee included the Salvation Army, Abbotsford Community Services and the United Way of the Fraser Valley School District. The Abbotsford Police was also on the committee along with a representative from the Abbotsford Youth Commission, someone who represented the seniors' population and an individual who was there to bring up the issue of diversity in the community. Someone from the business sector was involved, along with a City councilor and the Mayor who was *ex officio* on all Council committees. There was also support staff including the social planner who was Reuben Koole, and before him, Judy Newman.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.)

703. ASDAC had a role to advise the City on issues of social development, and it had terms of reference. Quite a bit of time with ASDAC went into the issue of affordable housing or the lack of affordable housing and the issue of homelessness in Abbotsford. Quite a bit of time was spent on it because it was and continues to be a pressing issue in Abbotsford.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.)

704. In the first year there was a lot of excitement around ASDAC and its recommendations were taken to council and Dr. van Wyk believes most of the recommendations of ASDAC in the first two years, if not a little bit more, were approved. But that did not continue. There are cases where recommendations that were made were either not communicated to Council or Council did not take them into account. There were also recommendations were not acted upon by the City.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.)

705. ASDAC spent quite a bit of time working on developing a homeless strategy or response to homelessness with various action steps and goals. These were never implemented or

acted upon. ASDAC created a shelter working group, which made seven primary recommendations that were delivered to Mayor and City Council. The recommendations included a low- to no-barrier drop-in centre for men, a stronger discharge protocol for vulnerable populations being released from hospitals and police stations and the 2008 ACS proposal for supportive housing. None of the recommendations have been implemented to date.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.); Direct Examination of Rod Santiago, July 14, 2015 (p.m.); Exhibit 7, Tab 15

706. There was real excitement about ASDAC. As a social agency it was seen as a very positive step, but over the last few years ASDAC died on the vine. Meetings of ASDAC were not called for the last year and a half and then when a new Council came into place after the last election, ASDAC was formally dissolved. Prior to that, for about a year, if not a year and a half or two years, ASDAC's activity and role diminished and became a source of frustration for those on ASDAC. They were concerned they were giving their time and having no effect.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.)

707. Dr. van Wyk was asked if he could point to anything tangible that happened within the City of Abbotsford as a result of the efforts of ASDAC and he stated that early on in ASDAC's life a camp closure protocol recommended to the City, but the City did not use it. He also thought that ADSAC provided tangible results in supporting the creation of the Christine Lamb facility for low-income single mothers, as well as the creation of the George Smith Centre on King Road.

Direct and Cross-examination of Ron van Wyk, July 8, 2015 (p.m.)

708. Dr. van Wyk told the court about a reference in minutes of the ASDAC committee regarding the housing first initiative, which was recognized years ago by practitioners and professionals working in the area of homelessness as an approach that gives good results and has been tested. In 2006, those involved in this conversation in Abbotsford had started to advocate for this approach as something that needed to be introduced, as it is a proven evidence based approach to reduce homelessness. From the minutes, the presentation was received and this was part of the discourse at ASDAC, which advocated for it with service providers. Housing first was adopted as a recommendation by the Homelessness Task Force (see below) in 2014 although it was originally raised in 2006.

Direct Examination of Ron van Wyk, July 9, 2015 (a.m.); Exhibit 7, Tab 4, p. 5

709. Dr. Van Wyk was taken to recommendations of ASDAC on September 8, 2008, which under "new business" references a homeless working group. He recalled making the comment at that meeting, which read in the minutes as "R. Van Wyk noted there was a perception that homelessness has fallen off of the ASDAC agenda. He felt that homelessness is being addressed but the chronically homeless sub group is still outstanding in this regard." He had the impression, due to his interaction with people that are on the front lines and homeless, that up to that point they could not point to anything

tangible and practical to resolve the needs of people living chronically homeless in their community. He felt that it was time for ASDAC to be reminded that homelessness is an important aspect that they would have to deal with and that should receive attention. He had become frustrated that this had not happened.

Direct Examination of Ron van Wyk, July 9, 2015 (a.m.); Exhibit 7, Tab 9

710. ASDAC worked on developing a homelessness action plan, but nothing came of this, as the needs of the chronically homeless have not been met in Abbotsford despite the fact that ASDAC came up with a plan. From his recollection, the homeless action plan that was developed by ASDAC must have gone to City Council, but he can see no evidence that it has been implemented to the extent that it has made a difference to people living chronically homeless in Abbotsford.

Direct Examination of Ron van Wyk, July 9, 2015 (a.m.)

711. The ASDAC shelter working group was a further response to the issue of finding ways to be effective and caring towards those that are chronically homeless. ASDAC formed this working group and spent quite a few meetings working through it trying to come up with recommendations, which were eventually made. To Dr. van Wyk's knowledge, the City has not done anything with these recommendations, which gave rise to frustration on Dr. van Wyk's part that he expressed at ASDAC.

Direct Examination of Ron van Wyk, July 9, 2015 (a.m.); Exhibit 7, Tabs 14, 15 and 16

712. Mr. Koole affirmed that ASDAC provided critical insight regarding gaps and provides input. He confirmed that council chose not implement many of the recommendations of ASDAC. He also confirmed that he has given feedback to City staff that members of ASDAC were close to walking away due to a lack of action. He stated he also was frustrated.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.)

Need for a sobering centre

713. There is no sobering centre currently in Abbotsford. There were conversations at the City about a sobering centre back in 2008, which would have been an alternative to spending the night outside or in the emergency room. Dr. van Wyk recalls a recommendation by ASDAC about a sobering centre.

Cross-Examination of Milton Walker, July 17, 2015 (a.m.); Direct Examination of Ron van Wyk, July 8, 2015 (p.m.) and July 9, 2015 (a.m.); Exhibit 7

714. There is a difference between a sobering centre and a detox facility. A sobering centre is meant to provide a place where people can go and are not restrained such as in the emergency ward or when police deal with them. It is less institutional and would be a kinder way to work with people and to provide services and support. If someone goes to detox, then they have to be clean and sober.

Re-examination of Ron van Wyk, July 9, 2015 (a.m.)

Abbotsford Cares

715. Mr. Koole discussed the "Abbotsford Cares" document, which is a report from 2006 developed by the then-social planner. It documents the involvement of social development and planning in Abbotsford. It described the history and development of four recommendations for how the City could be better involved in issues of homelessness. The City has implemented three of those recommendations: 1, 3 and 4. The first recommendation was for ASDAC. Recommendation 3, the affordable housing plan, was implemented in 2011, but prior to that there was an affordable housing action plan. Recommendation 3, the affordable housing plan, was implemented in 2011, but prior to that there was an affordable housing action plan.

Direct Examination of Reuben Koole, July 21, 2015 (a.m.); Exhibit 45, Tab 4

716. The Abbotsford Cares document, is one of the guiding policies for social issues. Mr. Koole said that one of his roles was to implement areas of the Abbotsford Cares policy. He agreed that page 19 of that document indicates that local governments have expanded and they have jurisdiction to deal with aspects of community wellbeing. When asked in cross-examination whether that includes wellbeing in relation to homelessness, Mr. Koole responded, "it could be interpreted that way I suppose". He agreed that the document states, "More importantly... perpetuates downloading on local governments in relation to senior level of government not providing funding or support for social innovation strategies". He agreed it could be one source of local inaction.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 45, Tab 1

717. In Abbotsford Cares, under "Opportunities for City Involvement" the document states "Support efforts to provide daytime shelter services" including "rest".

Exhibit 45 Tab 1, p. 77

718. In Abbotsford Cares, under the heading, "Tensions between competing priorities, the Exhibit states: "Perhaps more importantly, however, is the perception that engaging in social issues perpetuates the "downloading" on local governments. Many local governments feel that senior levels of government are unfairly abdicating their responsibility to levels of governments ill-equipped to respond to escalating social pressures." Mr. Koole agreed that this can be a source of local government inaction.

Exhibit 45, Tab 1, p. 21

719. Also, in the Abbotsford Cares document, under the heading, "Community priority: Affordable and Accessible Housing", the Exhibit states "The interdependence between housing and health care, social services, and criminal justice systems is well-established. People that do not have safe, affordable, and secure shelter have more health problems than the general population, experience social problems that are exacerbated by their lack of shelter, and are more likely to be involved in criminal activity than the general public."

Exhibit 45, Tab 1, p. 33

720. The City has also acknowledged that, "The provision of beds or housing units is generally an inadequate response to housing and homelessness on its own. Providing diverse support services along the continuum is also essential."

Exhibit 45, Tab 1, p. 35

Affordable Housing Plan

721. The Affordable Housing Action Plan was a document prepared in 2007 to summarize the City's involvement in affordable housing issues. It was a one-page document containing a variety of ideas on how the City could be involved. It was not a particular implementation plan that had a commitment. There was a staff report providing background.

Direct Examination of Reuben Koole, July 21, 2015 (a.m.); Exhibit 45, Tab 4

722. Mr. Koole confirmed that the chart in Exhibit 45 at Tab 1, page 114, which looks broadly at affordability and affordable housing in Abbotsford is targeted at people who make a base income of $20,000. The document suggested that supportive housing is most needed in Abbotsford and Mr. Koole confirmed it suggests that 56 units must be available per year. The City has not been keeping track of whether that many units have been made available.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 45, Tab 1, p. 144

ACS facility proposal: 2008

723. In 2008, ACS won the request for proposals to build a third housing initiative with the remaining $2.4 million (provided by BC Housing). The initiative was designed to be a low-barrier, 20-bed facility for men on 2408 Montvue Avenue, which is an Abbotsford property owned by ACS.

Direct Examination of Rod Santiago, July 14, 2015 (p.m.); Read-ins, Examination for Discovery of Jake Rudolph, May 15, 2015, Questions 650 to 659

724. The initiative was opposed by Abbotsford's Downtown Business Association on the basis that the property was on a C-7 zoning plan, which prohibits the use of "negative establishments." It did, however, receive significant support from the Abbotsford community: the Abbotsford Christian Leaders Network—a group of churches in the community—along with various Sikh temples spoke to the merits of the project. Mayor-

in-council received over 120 letters of support, including from businesses such as Prospera and Omniproject. On the evening of the public meeting, members of the community stood up and spoke predominantly in support of the project. Ultimately the project was rejected on a 5-4 council vote.

Direct Examination of Rod Santiago, July 14, 2015 (p.m.)

725. Despite the rejection of the facility, the process has encouraged dialogue throughout the community and brought 'Housing First' into social consciousness more broadly.

Direct Examination of Rod Santiago, July 14, 2015 (p.m.)

ACS facility proposals: 2014

726. Mr. Rudolph recalled there being a proposal to construct a low-barrier men's shelter that would involve the Abbotsford Community Services in 2014. It required rezoning. Exhibit 7, Tab 28 includes the record of the vote in relation to the ACS proposal. Mr. Rudolph was in attendance. The mayor was the last speaker and the matter was put to a vote. There were eight members of Council in attendance and the outcome was a four to four tie. It was defeated on a tie vote.

Direct Examination of Jake Rudolph, July 27, 2015 (a.m.); Exhibit 7, Tab 38

727. In 2014, the same mayor and council who rejected the 2008 facility passed a decision to make eight pieces of City-owned property available for an alternate site for a similar proposal to the 2008 one. The Province then agreed to make funding available for a Housing First initiative with ACS as its proponent. The facility will provide beds for 20 men. The timeline for completion is still unknown—the original goal to finish by November 2015 is no longer achievable.

Direct Examination of Rod Santiago, July 14, 2015 (p.m.); Direct Examination of Jake Rudolph, July 27, 2015 (a.m.)

Dignity Village

728. Mr. Flitton also recalled an email from September 26, 2013, that he sent to Mr. Murray and Mr. Rudolph entitled "Homeless solutions." He had done some research on the Internet and had some ideas for how to assist with Abbotsford's Homeless. In the e-mail he offers some ideas he thought might have been able to help homelessness itself but not specifically the City. These were ideas that the City could maybe try or that it could assist with. One was a designated homeless site. There was no follow-up discussion after he sent the e-mail. Mr. Rudolph was crossed on the point and he confirmed that there were no discussions of the homeless solutions.

Cross-examination of Bill Flitton, July 16, 2015 (p.m.)

729. Jake Rudolph told Mr. McCready that there would be no Dignity Village in the City.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

730. However, Mr. Rudolph had no recollection of Barry Shantz coming to him in early 2014 and suggesting proposals like Portland, Oregon's Dignity Village for Abbotsford, even when shown Exhibit 5, Tabs 177 and 178, of which 178 is an e-mail exchange between Mr. Rudolph and Mike Archer at Abbotsford Today dated Jan 7 2014, and of which Tab 177 is called "plans for a shelter park". Mr. Rudolph stated he had conversations with others during at this time but he had no recollection of seeing these emails.

Cross-examination of Jake Rudolph, July 27, 2015 (a.m.)

Homelessness Task Force

731. Dr. van Wyk described the City's Homelessness Task Force ("Task Force"). It was created as a response to the bad press and outcry in the community regarding the chicken manure incident and was meant to provide recommendations for the City. It did most of its work in 2014 and made recommendations that were unanimously approved by Council. Council approved the Task Force's "The Abbotsford Homeless: An Homelessness Action Plan" and it is now in the process of being acted upon. The City has created what is now called a homelessness Action Advisory Committee that is supposed to recommend or advise Council regarding the implementation of this task force recommendation.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.); Exhibit 5, Tab 141

732. Appendix 1 of Exhibit 5, Tab 141, page 6 has the Task Force's terms of reference. The purpose of the Task Force is found on page 7 and it states, "The housing first task force will offer a number of innovative recommendations based on research that will enable the City of Abbotsford to better address the homelessness issue facing the City." Dr. Van Wyk said that is not a fair description of what the Task Force did but rather it was a fair description of what the Task Force's purpose was and what they hoped to achieve. Dr. Van Wyk expressed his frustration about ASDAC and with the Task Force at one of the Task Force meetings. He said that he told the task force, "How many times more do we have to march around this mountain?" He said that he also referenced his work with ASDAC, the decade of research it did on homelessness, and the lack of affordable housing and need for affordable housing in the Fraser Valley.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.); Exhibit 5, Tab 141 and Exhibit 47, Tab 16

733. Dr. van Wyk stated that no one on the Task Force ever expressed the view that there was not a problem with homelessness in Abbotsford or that there are sufficient shelters and housing to accommodate all of Abbotsford's homeless.

Direct Examination of Ron van Wyk, July 9, 2015 (a.m.)

734. There were two working groups formed by the Task Force. One dealt with the issue of looking at how they could create a center point of connection with people who live homeless so that they could be connected with services. It would be a welcoming, safe place where homeless people could come and be connected, find support, could rest, or

could find a little bit of community. From there, relationships could be built up and they could work with people and hopefully over time find housing options for them, depending on where they are in their process of their life at that time. The other working group looked at longer term housing solutions, a fuller spectrum of housing options for people living homeless and took a look at the working group in Medicine Hat, Alberta, and its success in addressing homelessness in that community. The action plan was drafted by Cherie Enns, who was a consultant with the City.

Direct Examination of Ron van Wyk, July 9, 2015 (a.m.)

735. The Task Force developed a Homelessness Action Plan, which was adopted by City Council.

Direct Examination of Jake Rudoloph, July 27, 2015 (a.m.); Exhibit 3, Tab 141; Direct Examination of Dena Kae Beno, July 27, 2015 (p.m.)

736. Dr. van Wyk stated that the 2014 Fraser Valley Regional District Homelessness Survey findings, conclusions and recommendations are on page 69 of Exhibit 5, Tab 141. This was some of the research that the Task Force relied on. It was put together on a request of the Task Force; the work on this was fast tracked because the Task Force needed it.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.) and July 9, 2015 (a.m.); Exhibit 5, Tab 151, p. 69

737. Dr. van Wyk spoke about the recommendations of Task Force. Number one was to "facilitate a housing first approach." In 2014, the City embraced the idea of housing first and saw the value of it. After the recommendations of the report were adopted by the City, the Task Force was disbanded. The City then created the Homelessness Action Advisory Committee ("Advisory Committee"), which was put in place early this year. Dr. van Wyk is currently on that committee representing the MCC. The first meeting was in April 2015. Dr. van Wyk thinks there is a timeline for the Task Force recommendations to be implemented. As of the date of his testimony, the advisory committee has been formed, a City Homelessness Coordinator had been appointed and the Advisory Committee had three meetings. At the last meeting, which was two weeks or so prior, they agreed on two working groups.

Direct Examination of Ron van Wyk, July 9, 2015 (a.m.); Exhibit 7, Tabs 32 and 33

738. The City then created the Homelessness Action Advisory Committee ("Advisory Committee"), which was put in place early this year. Dr. van Wyk is currently on that committee representing the MCC. The first meeting was in April 2015. Dr. van Wyk thinks there is a timeline for the Task Force recommendations to be implemented. So far, the advisory committee has been formed, a City Homelessness Coordinator has been appointed and the Advisory Committee has had three meetings. At the last meeting, which was two weeks or so ago, they agreed on two working groups.

Direct Examination of Ron van Wyk, July 9, 2015 (a.m.);

739. In response to the Task Force's recommendation to facilitate a housing first approach, the City hired a Homeless Coordinator, Dena Kae Beno. Ms. Kae Beno does not provide direct outreach. She has made three visits to encampment locations identified by the City on City-owned lands. She only speaks to people who approach her.

Direct Examination of Jake Rudolph, July 27, 2015 (a.m.); Direct Examination of Dena Kae Beno, July 27, 2015 (p.m.)

Other

740. In 2013, Mr. Koole drafted a corporate response for the City relating to encampments because the city was getting complaints from the public about homeless camps. He admitted that in his draft corporate response there is nothing that addresses the immediate health and safety and wellbeing of people who are located within the encampments.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Exhibit 3, Tab 10

741. Also in 2013, Mr. Koole spoke at a City Council meeting on affordable housing and homelessness in Abbotsford. That meeting arose because homelessness was a particular issue at the time and this was also at the same time that the BC Housing affordable housing project was happening.

Direct Examination of Reuben Koole, July 21, 2015 (a.m.)

742. A report by Cherie Enns, "2014 Homelessness, the City of Abbotsford Role & Response, Next Steps", was put to Mr. Rudolph in cross-examination. Conclusions in this report include:

(a) "The causes of homelessness reflect an intricate interplay between structural factors, systems failures and individuals circumstances."

(b) "On an individual level, several circumstances may lead to homelessness, including" loss of employment; family break up' family violence' onset of mental and/or other debilitating illnesses; substance use by oneself or family members' a history of physical, sexual or emotional abuse; and, involvement in the child welfare system. Research also shows that those suffering from medical conditions, physical disability, addiction or mental illness are more likely to end up homeless than those who are not."

(c) "Non-quantifiable social and individual costs of homelessness include deteriorating physical and mental wellbeing, as well as increased chances of an early death in the case of long-lasting homelessness."

(d) "The causes of visible homelessness in Abbotsford are comparable to the causes of visible homelessness in the downtown eastside (DTES) of Vancouver. However, Abbotsford lacks the support, shelter and transition options that are available in the DTES"

(e) "The number of shelter beds per 100,000 people in Abbotsford is much lower at approximately 20 beds than the provincial average of 79"

(f) "Abbotsford lacks a comprehensive and coordinated low/no barrier housing first program"

(g) "Ensuring access to affordable social housing is a least expensive solution to homelessness for the government. Research shows that it is cheaper and more cost effective to provide people who experience homelessness with the housing and supports they need, rather than providing them with emergency services. For example, a provincial study of homeless people with substance use and mental health issues found that one homeless person costs the public system more than $55,000 per year, whereas the provision of adequate housing and supports would cost $37,000 per year."

Exhibit 5, Tab 145

743. Cherie Enns plays a number of roles. She works in planning projects for the City, she teaches at the University of the Fraser Valley, she is on the City's Task Force and she has some social planning work with the City.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.); Direct Examination of Ron van Wyk, July 8, 2015 (p.m.); Cross-examination of Jake Rudolph, July 27, 2015 (a.m.)

744. Dena Kae Beno was hired April 27, 2015, to be the City's Homeless Coordinator, two months before the start of this trial. Work that is starting to be implemented by her, includes the Ministry of Social Development outreach worker, a Homeless Emergency Action Team shelter to respond to temporary extreme weather occurrences and outreach coordination teams. These have all been in place in other jurisdictions where Ms. Kae Beno has worked, but, are not in place in Abbotsford. Funding has not been approved.

Direct and Cross-examination of Dena Kae Beno, July 27, 2015 (p.m.)

City park land

745. Heidi Enns said that Abbotsford has 2,534 acres of parks, some developed and some undeveloped. It also has other City owned land not designed as parks.

Cross-examination of Heidi Enns, July 15, 2015 (a.m.)

746. In reference to a map of Abbotsford's parks, Mr. Watson stated that the City has not created any parks since the map's most recent rendition (October 2013). He stated that the City has acquired lands for park use since then, but that no parks have been designated. The City recently acquired a small neighborhood park across from Eugene Reimer School in West Abbotsford.

Direct Examination of Scott Watson, July 22, 2015 (p.m.); Exhibit 68

747. Mr. Watson stated that the City has four park classifications: neighborhood parks, community parks, City-wide parks, and open spaces. A neighborhood park is one used by local residents and is usually associated with an elementary school catchment. Ordinarily they are within 500 meters of a residence and feature playgrounds, seating areas and grassy spaces. Jubilee Park is currently classified as a neighborhood park, though it was previously classified as a community park. Community parks provide service larger areas and are generally associated with a secondary school catchment. Typical features include soccer fields and nature areas. City-wide parks tend to be destinations—they feature activities and host events. Pacific Centre and Exhibition Park are both City-wide parks and contain features like libraries, art galleries, city stations, ball diamonds, etc. Open spaces are usually undeveloped areas. They are often forested with ravines, creeks and steep cliffs.

Direct Examination of Scott Watson, July 22, 2015 (p.m.)

748. Mr. Watson testified that the City land at Fraser and Riverside, where Holly Wilm and Al live and which is known as the "Triangle" is not designated as park land. However, in her testimony, Ms. Laljee contradicted this and said that the Triangle is considered to be a park because under the definition of the *Parks Bylaw* any land under the custody and jurisdiction of the City is Parks land. It could also fall under the Streets and Traffic Bylaw though.

Direct Examination of Scott Watson, July 22, 2015 (p.m.); Exhibit 23; Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

City park permitting

749. If people want to use outside areas in Abbotsford's parks in the daytime, or camp overnight in the parks, they must apply for a discretionary permit from the City. This can be done online, by phone, by mail, or in person, and the person booking must have a valid credit card. Private bookings in the parks during the daytime cost $15/hour, and commercial bookings cost $35/hour. Insurance must also be obtained. There is a $10 charge per vehicle or tent each night for overnight camping. In considering whether to exercise its discretion to grant the permit, Abbotsford considers the dates, number of people, whether that site has already been booked, whether the space is appropriate, and whether the facilities are large enough, and whether the proposed use might cause damage to the park. Unsurprisingly, Abbotsford is not aware of any request by a homeless person to book one of the park spaces (which require a request for a specific site and set timeframe), and cannot point to an appropriate facility where a homeless person could camp after making a booking.

750. Ms. Enns administers the *Parks Bylaw*. Under s. 17 of the *Parks Bylaw*, she has jurisdiction to receive applications to take up temporary abode or camp overnight in a park. Ms. Enns has exercised this discretion in the past, but has not always approved the applications.

Direct Examination of Heidi Enns, July 15, 2015 (a.m.); Direct Examination of Carla Soltis, July 15, 2015 (a.m.); Exhibit 41, Tab 6

751. If someone wants to use the outside areas in the parks they must get a permit from the City. The spaces booked mainly include picnic shelters but there are also some other areas available. The goal of the booking system is to make sure there are no user conflicts so that two groups do not show up at same time and are unable to use the area they planned. The record of bookings enables maintenance to be scheduled.

Direct Examination of Carla Soltis, July 15, 2015 (a.m.)

752. People also must go through the City for approval for overnight camping in parks. This is done online, by phone, by mail or in person. The most common reason to deny a booking request is if someone else has a facility booked, which occurs frequently in the summer. Requests are also denied when the space is not appropriate and where the facilities are not deemed large enough.

Direct Examination of Carla Soltis, July 15, 2015 (a.m.)

753. The fee to book a park during the day time is $15 per hour unless it is a commercial booking which is $35 an hour. Insurance must also be obtained. The schedule of fees for the public, which describes insurance, is in exhibit 47, tab 60. Insurance for birthday parties costs $1 if there are 1-50 children, and if there are 51-100 children it is $15. There is a $10 charge per tent or vehicle each night for overnight camping. The City receives camping requests by event organizers.

Direct Examination of Carla Soltis, July 15, 2015 (a.m.); Exhibit 47, Tab 60

754. Ms. Soltis described the bookings in Jubilee Park from September 1, 2012 until March 13, 2014. 5 and 2 Ministries booked the Jubilee Park parking lot to serve dinners on Saturday nights and there was an outdoor concert in July 2014, which about 250 people attended. This is an annual event.

Direct Examination of Carla Soltis, July 15, 2015 (a.m.)

755. The booking system has stayed the same for many years. To book a City park, you must have a valid credit card. In reviewing applications to book park areas, the following is considered: the availability of the requested location; whether it is an appropriate space; dates; and the number of people. If the individual requesting a booking does not have a set timeframe then they cannot make a booking. If there is no information about a specific park then it is impossible to make a booking. There is no risk assessment for anyone who books the park.

Cross-examination of Carla Soltis, July 15, 2015 (a.m.)

756. Ms. Soltis could not point to an appropriate facility for where a homeless person could camp in a park after making a booking. She testified that damage to the park is a consideration when determining whether to approve a booking, but she was not aware if homeless people cause damage to parks. She was not aware of any request to book a City

park by a homeless person. The park at the intersection of Riverside and South Fraser Way cannot be booked.

Cross-examination of Carla Soltis, July 15, 2015 (a.m.)

City fund

757. At the end of the last fiscal year, the City had a surplus of $21 million.

Cross examination of Bill Flitton, July 16, 2015 (p.m.)

758. The City's 2015 financial plan proposed a tax increase of minus 0.15%, although Council was seeking to achieve a 0% increase in taxes. The City's plan was to reduce the burden on taxpayers and property owners. The director's initiative is to critically review all spending and build financial reserves.

Cross-examination of Jake Rudolph, July 27, 2015 (a.m.)

III. ISSUES

759. The questions in issue in this proceeding are:

(a) Do the Impugned Provisions violate the *Charter* 2, 7 and/or 15 rights of Abbotsford's Homeless?

(b) Do the Displacement Tactics violate the *Charter* 2, 7 and/or 15 rights of Abbotsford's Homeless?

(c) If the answers to either (a) or (b) above, is yes, then are any of these violations saved under s. 1 of the *Charter*?

(d) If the answers to either (a) or (b) above, is yes and the answer to (c) is no, then what are the appropriate remedies?

IV. ARGUMENT

Introduction

760. The Drug War Survivors submit that the Impugned Provisions and the Displacement Tactics violate ss. 2(c), 2(d), 7, and 15 of the *Charter*, and that those violations are not saved or justified under s. 1.

761. The s. 7 rights of Abbotsford's Homeless—their rights to life, liberty, and security of the person—have been deprived by Abbotsford in a manner that is not in accordance with any principle of fundamental justice. Abbotsford's Homeless have a constitutionally protected right to obtain the basic necessities of life. The Impugned Provisions and Displacement Tactics are arbitrary, overbroad, and grossly disproportionate in effect, as they function to continually displace Abbotsford's Homeless from public spaces, and thereby prevent them from obtaining the basic necessities of life including survival

shelter, rest and sleep, community and family, access to safer living spaces, and freedom from the risks and effects of exposure and sleep deprivation.

762. Further, and in addition, the Impugned Provisions and the Displacement Tactics violate s. 15 by discriminating against Abbotsford's Homeless. The Impugned Bylaws, by preventing Abbotsford's Homeless from obtaining the basic necessities of life in public spaces, impose a disproportionate and discriminatory burden on homeless persons who have disabilities, who are Aboriginal, and/or who are impacted by a synthesis of factors leading to their homelessness, including their disabilities, racial backgrounds, and their economic and social status. The Displacement Tactics have a direct, discriminatory impact on Abbotsford's Homeless because they are targeted while they are outside in public spaces, and on the basis of their personal characteristics which have led them to be outside.

763. Further, and in addition, the Impugned Provisions and Displacement Tactics violate Abbotsford's fundamental freedoms under ss. 2(c) and 2(d). The freedom of peaceful assembly in s. 2(c) is a direct protection and guarantee of access to and use of the most visible and accessible of all public spaces: the shared physical geography and infrastructure. These are the public parks, squares, sidewalks, roadways, bridges, and buildings around which public life in our towns and cities is built. The freedom of association in s. 2(d) protects the choice to join with others, in spaces both public and private, recognizing the empowerment that comes from joining together in community and in pursuit of common goals. In this case, taken together, the Impugned Provisions and Displacement Tactics violate Abbotsford's Homeless' s. 2(c) and 2(d) rights by attempting to decrease their public visibility, by targeting them specifically when they join together for solidarity and community in encampments, and by restricting or prohibiting their right to engage in necessary and legitimate non-violent activities in public spaces which they cannot perform elsewhere, having little to no property rights of their own.

764. The combination of all of these violations show that Abbotsford's Homeless' *Charter* rights and freedoms have been and continue to be breached, time and time again, in a manner that no society which takes constitutional rights seriously can possibly condone. The clear pattern of disregard for and violation of their rights and freedoms must be stopped. The protection of these freedoms by this court will fundamentally protect and advance the dignity and autonomy of Abbotsford's Homeless, by safeguarding the only means realistically available to them to ensure they can obtain the necessities of life, and further, by recognizing that even the most vulnerable among us are entitled to a measure of autonomy, empowerment, safety, and security, not only but *especially* when faced with the most dire of life circumstances. The homeless are not merely a "social problem" which governments are free to deal with through whatever policies they see fit, but rather actual persons whose activity and dignity and freedom of at stake every day of their lives.

Legislative framework

City's delegated authority under the *Community Charter*

765. The City is authorized to regulate, prohibit and impose requirements in relation to public places pursuant to sections 8(3) and 62 of the *Community Charter*, S.B.C. 2003, c. 26, which provide:

Fundamental Powers

8(3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:

(a) municipal services;

(b) public places;

(c) trees;

(d) firecrackers, fireworks and explosives;

(e) bows and arrows, knives and other weapons not referred to in subsection (5);

(f) cemeteries, crematoriums, columbariums and mausoleums and the interment or other disposition of the dead;

(g) the health, safety or protection of persons or property in relation to matters referred to in section 63 [protection of persons and property];

(h) the protection and enhancement of the well-being of its community in relation to the matters referred to in section 64 [nuisances, disturbances and other objectionable situations];

(i) public health;

(j) protection of the natural environment;

(k) animals;

(l) buildings and other structures;

(m) the removal of soil and the deposit of soil or other material.

...

Public place powers

62 The authority under section 8 (3) (b) *[spheres of authority — public places]* includes the authority in relation to persons, property, things and activities that are in, on or near public places.

The Impugned Provisions

766. Pursuant to the *Community Charter*, the City of Abbotsford has enacted three bylaws, which are at issue in this proceeding:

(a) Sections 2, 10, 13, 14 and 17 of the *Consolidated Parks Bylaw, 1996*, Bylaw No. 160-96, which for any park, or other public space under the jurisdiction of the City, ("City Space") prohibits sleeping or being present overnight, erecting any form of shelter from the elements, gathering and meeting or obstructing any other person from the free use and enjoyment of City Space:

2. INTERPRETATION

...

"Park" includes public parks, playgrounds, driveways, boulevards, beaches, swimming pools, community centres, golf courses, play fields, linear parks, including hiking, biking and riding trails, buildings, and other public places under the custody, care, management, and jurisdiction of the Council;

10. PARADES/ASSEMBLIES

No person shall in any park:

(a) take part in any procession, march, drill, performance, ceremony, concern,

gathering, or meeting;

(b) make a public address or demonstration, or do any other thing likely to cause a

public gather or attract public attention; or

(c) operate any amplifying system or loud speaker

without the prior written permission of the Council. In determining whether to grant its permission, Council may consider the matters set out in Section 30.

13. GENERAL PROHIBITION

No person shall:

(a) obstruct the free use and enjoyment of any park by any other person; or

(b) violate any Bylaw, rule, regulation, posted notice, or command of the Council or a person in control of, or maintaining or supervising, any park.

In addition to any other penalty under this Bylaw, any person who violates this Section may be removed from the park.

14. ERECTING STRUCTURES

No person shall erect, construct, or build, or cause to be erected, constructed, or built, in or on any park any tent, building, shelter, pavilion, or other construction whatsoever without the prior written permission of the Council. In determining whether to grants its permission, Council may consider the matters set out in Section 30.

17. CURFEW/CAMPING (B/L 969-2000)

No person shall: (B/L 1923-2010)

(a) enter, occupy, or be present in any park at any time between one hour after sunset on one day and one hour before sunrise the following day, with the exception of any of the outdoor park facilities with lights listed in Schedule "D" of this Bylaw while such facility is open for use and the lights operating; or (B/L 1923-2010)

(b) take up temporary abode or camp overnight in or on any parts of a park without the prior permission of the General Manager. In determining whether to grant permission, the General Manager may consider the following:

(i) the impact such activity will have on other members of the public;

(ii) the impact such activity will have on the environment and around the subject

park;

(iii) public safety issues; and

(iv) the nature, duration, and size of the activity.

(b) Sub-sections 2.7(d) and (e) of the *Good Neighbour By-law, 2003*, Bylaw No. 1256-2003 prohibit erecting any form of shelter from the elements and sleeping in a vehicle in any public place:

2.7 No Person shall:

...

(d) camp or erect a tent or other camping facilities on a Highway or Other

Public Place;

(e) sleep in any vehicle located on a Highway or Other Public Place;

SCHEDULE "A"

In this Bylaw, unless the context otherwise requires:

...

"Highway or Other Public Place" includes every street, road, land, boulevard, sidewalk, lane, bridge, viaduct and any other way open to public use and. any park, building, conveyance, private place or passageway to which the public has, or is permitted to have access or is invited.

(c) Sub-sections 2.1(d), (h) and (j) of the *Street and Traffic Bylaw, 2006*, Bylaw No. 1536-2006, which prohibit creating any obstruction to the flow of Motor Vehicle, cycle or pedestrian traffic on a Highway and prohibit any chattel or ware of any nature, or any object from being placed on a Highway:

2.1 No person shall:

...

(d) place, construct or maintain a loading platform, skids, rails, mechanical devices, buildings, signs, or any other structure or thing, on a Highway;

...

(h) obstruct or in any way create an obstruction to the flow of Motor Vehicle, cycle or pedestrian traffic on a Highway;

...

(j) place or permit to be placed any fuel, lumber, earth, topsoil, sand, gravel, rocks, merchandise, chattel or ware of any nature, or any object on a Highway;

or carry out any other temporary or permanent Highway Use, unless that person first:

(i) makes application for, and obtains from the City, a Permit under this Bylaw for the proposed Highway Use.

The *Charter* rights in issue

767. The *Charter* states:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms:

...

(c) freedom of peaceful assembly; and

(d) freedom of association.

7. 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.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (84)

Section 7

Introduction

768. Abbotsford's Homeless have the right to access the basic necessities of life and exist in public spaces. The Impugned Provisions andr Displacement Tactics violate Abbotsford's Homeless' s. 7 rights because the effect is to continually displace Abbotsford's Homeless from public spaces and thereby prevent them from obtaining the basic necessities of life including, survival shelter, rest and sleep, community and family, access to safer living spaces and freedom from the risks and effects of exposure, sleep deprivation. The Impugned Provisions and Displacement Tactics are not a rational means to achieve the City's purposes regarding its bylaws.

769. A s. 7 *Charter* claim requires the following two-step analysis to determine whether legislation or other state action infringes a s. 7 right:

(1) Is there an infringement of the right to life, liberty and or security of the person?

(2) If so, is the infringement contrary to the principles of fundamental justice?

770. In order to demonstrate a violation of s. 7, it must first be established that the law interferes with, or deprives Abbotsford's Homeless, of their life, liberty or security of the person. It must then be shown that the deprivation is not in accordance with principles of fundamental justice.

Carter v. Canada (Attorney General), [2015] 1 S.C.R. 331 [*Carter*] at para. 55

Life, liberty and security of the person

Life

771. The right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly.

Carter at para 62

Liberty

772. Concerns about autonomy and quality of life are treated as liberty and security of the person issues as underlying both of these rights is a concern for the protection of individual autonomy and dignity. Liberty protects "the right to make fundamental personal choices free from state interference".

Carter at paras. 62 and 64; *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307 [*Blencoe*] at para. 54

773. Furthermore, a person's s. 7 liberty interest is engaged when there are statutory duties to not loiter in or be near certain areas such as school grounds, playgrounds, public parks and bathing areas.

R. v. Heywood, [1994] 3 S.C.R. 761

774. The evidence was that the Impugned Provisions and Displacement Tactics prohibit Abbotsford's Homeless from existing in certain public places. Abbotsford's Homeless are continually forced by the City to move from public space to public space in Abbotsford and are also continually evicted from private and provincial property, with the aid of the City. Moreover, as in *Heywood*, pursuant to the Impugned Provisions, Abbotsford's Homeless's liberty interest is engaged.

775. The issue of liberty will be argued by Ms.Latimer on behalf of the British Columbia Civil Liberties Association.

Security of the person

776. Security of the person encompasses "a notion of personal autonomy involving...control over one's bodily integrity free from state interference".

Carter at para. 64 and references cited therein

777. State-induced serious psychological pain and stress is a breach of an individual's right to security of the person.

Chaoulli v. Quebec (Attorney General), 2005 SCC 35, [2005] 1 S.C.R. 791 [*Chaoulli*]; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46; *Blencoe*; *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309 [*Inglis*] at paras. 395 and 397; *R. v. Morgentaler*, [1988] 1 S.C.R. 30 at 55 to 56 and 60

778. Furthermore, a risk to health is a violation of a person's s. 7 security of the person right.

R. v. Morgentaler at 60; *Bedford*

779. The standard against which an allegation of engagement of a s. 7 life, liberty or security of the person interest in relation to a law or government action is evaluated is that of "sufficient causal connection", having regard to the context of the case. There needs to be "a "sufficient causal connection between the state-caused [effect] and the prejudice suffered by the [claimant]". Laws or actions do not have to be the only or dominant cause of the prejudice suffered by Abbotsford's Homeless to engage their s. 7 rights.

Bedford at paras. 75, 76 and 78; *Blencoe* at para. 60

Principles of fundamental justice

780. Principles of fundamental justice are found in the basic tenets of our legal system. The principles are "fundamental" in the sense that they have general acceptance among reasonable people. The three most oft-cited principles of fundamental justice are arbitrariness, overbreadth and gross disproportionality. These three principles are intended to address the situation where a law is inadequately connected to its objective or in some sense goes too far in seeking to attain that objective.

Re B.C. Motor Vehicle Act, [1985] 2 S.C.R. 486 at 503; *Bedford* at para. 107

781. In *Bedford*, the Court held that arbitrariness, overbreadth and gross disproportionality are directed against two different evils. On the one hand, the norms of arbitrariness and overbreadth address the absence of a connection between the infringement of rights and what the law seeks to achieve. Gross disproportionality on the other hand, ensures that even where the impact on the s. 7 interest is connected to the purpose of the law, this impact cannot be so severe that it violates our fundamental norms.

Bedford at paras. 108 to 109

782. Arbitrariness, overbreadth and gross disproportionality all compare the rights infringements caused by the law or actions with the objective of the law or actions and not their effectiveness. The inquiry does not consider how well the law achieves its object or how much of the population the law benefits; there is no consideration of ancillary benefits to the general population. Furthermore, a grossly disproportionate, overbroad or arbitrary effect on only one person is sufficient to establish a breach of s. 7. The balancing of an individual versus society's interest within the s. 7 analysis is only relevant when elucidating a principle of fundamental justice.

Bedford at para. 123; *R. v. Malmo-Levine; R. v. Caine*, 2003 SCC 74, [2003] 3 SCR 571 at para. 98

783. The overarching s. 7 theme is that laws run afoul of our basic values when the means by which the state seeks to attain its objective is fundamentally flawed, in the sense of being arbitrary, overbroad, or having effects that are grossly disproportionate to the legislative

goal: "To deprive citizens of life, liberty, or security of the person by laws that violate these norms is not in accordance with the principles of fundamental justice".

Bedford at para. 105

Arbitrariness

784. Arbitrariness describes the situation where there is no real connection on the facts between the effect and the object of the law or actions. For example, in *Canada (Attorney General) v. PHS Community Services Society*, the Supreme Court found that the Minister of Health's decision not to extend a safe injection site's exemption from drug possession laws was arbitrary. The purpose of drug possession laws was the protection of health and public safety, and the services provided by the safe injection site actually contributed to these objectives. Thus, the effect of not extending the exemption was contrary to the objectives of the drug possession laws.

Bedford at paras. 98 to 99; *Chaoulli* at para. 131; *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134 [*PHS*]

785. As the Court held in *Bedford*:

> Arbitrariness asks whether there is a direct connection between the purpose of the law and the impugned effect on the individual, in the sense that the effect on the individual bears some relation to the law's purpose. There must be a rational connection between the object of the measure that causes the s. 7 deprivation, and the limits it imposes on life, liberty, or security of the person (Stewart, at p. 136). A law that imposes limits on these interests in a way that bears no connection to its objective arbitrarily impinges on those interests. Thus, in *Chaoulli*, the law was arbitrary because the prohibition of private health insurance was held to be unrelated to the objective of protecting the public health system.

Bedford at para. 111

786. An arbitrary law is not capable of fulfilling its objectives. The more serious the impingement on the person's liberty and security, the more clear must be the connection. "Where an individual's life may be at stake, the reasonable person would expect a clear connection, in theory and in fact, between the measure that puts life at risk and the legislative goals".

Carter at para. 83; *Chaoulli* at para. 131

Overbreadth

787. An overbroad law is a law that is broader than necessary to accomplish its purpose. The overbreadth inquiry asks whether a law that takes away rights in a way that generally supports the object of the law, goes too far by denying the rights of some individuals in a way that bears no relation to the object.

788. In *Heywood*, the accused challenged a vagrancy law that prohibited offenders convicted of listed offences from "loitering" in public parks. The majority of the Court found that the law, which aimed to protect children from sexual predators, was overbroad; insofar as the law applied to offenders who did not constitute a danger to children, and insofar as it applied to parks where children were unlikely to be present, it was unrelated to its objective. The focus is not on broad social impacts, but on the impact of the measure on the individuals whose life, liberty or security of the person is trammelled.

R. v. Heywood; *R. v. Demers*, 2004 SCC 46, [2004] 2 S.C.R. 489; *Bedford* at paras. 101 and 112 to 113; *Carter* at para. 85

789. A law is overbroad where it is so broad in scope that it includes *some* conduct that bears no relation to its purpose. In other words, overbreadth occurs where a law is *arbitrary in part*. When there is no rational connection between the purpose(s) of the law and some, but not all of its impacts, the law is overbroad whether it is inconsistent with its objective or is unnecessary in its effects.

Bedford at paras. 112 and 119; *R. v. Morgentaler*; *Chaoulli*

790. In *Bedford*, the Court stated as follows:

> Overbreadth allows courts to recognize that the law is rational in some cases, but that it overreaches in its effect in others. Despite this recognition of the scope of the law as a whole, the focus remains on the individual and whether the effect on the individual is rationally connected to the law's purpose. For example, where a law is drawn broadly and targets some conduct that bears no relation to its purpose in order to make enforcement more practical, there is still no connection between the purpose of the law and its effect on the specific individual. Enforcement practicality may be a justification for an overbroad law, to be analyzed under s. 1 of the *Charter* .

Bedford at para. 113

791. As with arbitrariness, government actions may be overbroad such that they constitute a violation of s. 7.

Inglis; *PHS*

Gross disproportionality

792. This principle is infringed if the impact of the restriction on the individual's life, liberty or security of the person is grossly disproportionate to the object of the measure. As with overbreadth, the focus is not on the impact of the measure on society or the public, which are matters for s. 1, but on its impact on the rights of the claimant.

Carter at para. 89

793. As is noted above, gross disproportionality targets the situation where the effect of a law or government action is so grossly disproportionate to its purposes that these effects

cannot be rationally supported. When the effect of a law is grossly disproportionate to the state's objective, the law violates our basic values and s. 7. In *PHS*, the Minister's refusal to exempt the safe injection site from drug possession laws was not in accordance with the principles of fundamental justice because the effect of denying health services and increasing the risk of death and disease of injection drug users was grossly disproportionate to the objectives of the drug possession laws, namely public health and safety.

Bedford at paras. 103 and 120; *PHS* at para. 104; see also *R. v. Malmo-Levine*

794. The inquiry compares the law's purpose, "taken at face value" with its negative effects on the rights of the claimants and asks if this is completely out of sync with the object of the law. Gross disproportionality does not consider the beneficial effects of the law for society. The negative effect on the individual is weighed against the purpose of the law and not against any societal benefit that might flow from the law.

Carter at para. 89; *Bedford* at paras. 121 and 125; *R. v. Malmo-Levine* at para. 181

795. Gross disproportionality is also not a "numbers game". The analysis is not concerned with the number of people who experience grossly disproportionate effects as an effect on one person is enough to violate the norm.

Bedford at para. 122

796. As with arbitrariness and overbreadth, government actions may be grossly disproportionate such that they constitute a violation of s. 7.

Inglis

Victoria (City) v. Adams and this case

797. Drug War Survivors submits that Abbotsford's Homeless have a *Charter* right to exist and obtain the basic necessities of life, including survival shelter, rest and sleep, community and family, access to safe living spaces and freedom from the risks and effects of exposure, sleep deprivation and displacement. While this case shares some fundamental similarities to the successful *Charter* challenge in *Victoria (City) v. Adams*, it is different in several important respects.

Adams

798. In *Adams*, the claimants, homeless people living Victoria, were prohibited by the city's *Parks Regulation Bylaw* and the *Street and Traffic Bylaw* from erecting temporary shelter on public property. The trial judge found that by preventing the claimants from erecting temporary overnight shelter in public spaces, Victoria had violated their s. 7 rights. The Court of Appeal upheld the trial judge's finding that there was a violation of the claimants' s. 7 rights, however, it varied the declaration to refer only to the *Parks Regulation Bylaw* and to say that homeless people have the right to cover themselves

with temporary overhead shelter while sleeping overnight in parks and only when there are not enough shelter spaces available to accommodate all of Victoria's homeless.

Adams at paras. 159 and 166

799. Compared to *Adams*, however, the Impugned Provisions and the Displacement Tactics are more draconian as the effect is an absolute prohibition, preventing Abbotsford's Homeless from camping in any public space during the day or night, no matter whether Shelter space is available or not.

800. While *Adams* is applicable to the case at bar, due to the nature of the record and issues before the court in *Adams*, the s. 7 claim in the present case differs in three key respects from *Adams*.

801. First, Drug War Survivors submits that the content of the Abbotsford's Homeless' s. 7 rights includes a right to erecting temporary, non-obstructing, shelter during the day as well as at night, on undeveloped City parks land.

802. Second, Drug War Survivors submits that Abbotsford's Homeless have the right to erect temporary shelter, which is non-obstructing, in City managed public spaces and not just City parks.

803. Drug War Survivors acknowledges that these rights are subject to the City reasonably ensuring that it can balance the needs of all park users and protect ecologically sensitive areas.

804. Third, in *Adams*, the court did not consider what it means for shelter spaces to be "available". The evidence was that the physical number of beds available were simply too few to accommodate all of the homeless in Victoria and this was the only finding required in order to support the s. 7 claim in that case. While Drug War Survivors submits that this is also the situation in Abbotsford, it also further submits that available shelter means shelter that is accessible shelter. For many of Abbotsford's Homeless, available shelter is that which is low barrier or low threshold shelter, designed to limit the personal, service and structural barriers to shelter that prevent Abbotsford's Homeless from being housed on any given night. In fact for the most chronically homeless, emergency shelter may not be accessible at all, requiring that housing first supportive housing options be available to those people, which are options that are lacking in Abbotsford.

805. Finally, Drug War Survivors challenges the actions of the City as well as the Impugned Provisions.

The evidence in this case establishes a section 7 violation as was found in Adams

806. *Adams* establishes that municipal bylaws that impair homeless people's ability to provide themselves with shelter that affords adequate protection from the elements, in circumstances where there is no practicable shelter alternative, exposes homeless people to a risk of serious harm, including death and that the risk of this harm is an interference

with a homeless person's rights to life, liberty and security of the person. As the Court of Appeal stated, the homeless represent some of the most vulnerable and marginalised members of our society and allegations of the above nature involve one of the most basic and fundamental human rights guaranteed by our *Constitution*: the right to life, liberty and security of the person.

Adams at paras. 75 and 110

807. As was held in *Adams*, Drug War Survivors submits that homeless people in Abbotsford have the s. 7 right to temporary shelter while sleeping overnight in the City's parks when there are not enough shelter spaces available to accommodate all of Abbotsford's homeless. Such a right has not been accorded to them despite the fact that shelter spaces are insufficient and as such, Abbotsford's Homeless' s. 7 rights have been violated.

808. The Impugned Provisions and the Displacement Tactics do not allow Abbotsford's Homeless to set up shelter, or even be in City park land, between sundown and sun-up. Despite the fact that the uncontradicted evidence from service providers and members of Abbotsford's Homeless was that shelter spaces are insufficient in Abbotsford. The only emergency shelter space available regularly in Abbotsford are the 25 beds at the Salvation Army's Centre of Hope Shelter. The 2014 Homeless Survey recorded 151 homeless people found in Abbotsford on the day the count was done.

809. Mr. McCready stated that the Shelter's occupancy rate is 124% and even if only the 12 to 15 people living at the Gladys Avenue Camp were to show up at the Shelter, the Shelter would not be able to accommodate them. Mr. Labelle, Mr. Tootoosis and Ms. Aitken both spoke about being turned away repeatedly by the Shelter because of a lack of bed space. Moreover, prior to January 2014, when Mr. McCready transformed the Shelter into a lower barrier shelter, the Shelter was a high barrier shelter and therefore not accessible by many of Abbotsford's Homeless because of their personal barriers.

810. Furthermore, the evidence indicates that the shelter and housing available other than the limited spaces provided by the Salvation Army's Shelter are not accessible to many of Abbotsford's Homeless. Recovery centres, treatment houses, second stage housing, market housing and other permanent housing in Abbotsford are not in fact <u>available</u> to many of Abbotsford's Homeless as this housing does not adequately take into account and address the significant barriers most of these individuals face in accessing shelter, whether temporary or permanent. Their fundamental needs and interests are not being served within the current system.

<u>The evidence in this case also establishes additional s. 7 *Charter* violations</u>

Do the Impugned Provisions and the Displacement Tactics engage the right to life, liberty or security of the person?

811. As is described below, the Impugned Provisions and the Displacement Tactics engage Abbotsford's Homeless' rights to life, liberty and security of the person. Liberty will be addressed by Ms. Latimer of the British Columbia Civil Liberties Association ("BCCLA") and Drug War Survivors relies on the BCCLA's submissions in this regard.

Life

812. The evidence in this proceeding shows that the Impugned Provisions and Displacement Tactics create a real risk of death as well as infringe the liberty and security of the person of Abbotsford's Homeless.

813. The spreading of chicken manure on the Happy Tree affected the health of Mr. Zurowski and Mr. Tatootis, the latter who is prone to infections from his diabetes, developing a foot infection. Cutting and pepper spraying tents, as well as the confiscation of belongings made it harder for some of Abbotsford's Homeless to shelter themselves from the weather. Furthermore, continual displacement results in homeless people being unable to find each other, which the evidence indicates some consider important for their safety and health. In particular, Mr. Clause described feeling safer amongst people in Jubilee Park after he was attacked at a smaller camp. The impact of this can be severe. For example, Ms. Aitken testified about how she has overdosed a number of times and needed emergency medical attention and how she has needed to call 9-1-1 for others who have overdosed.

814. Dr. MacEwan interviewed a number of Abbotsford's Homeless to assess their physical and mental health. His clinical opinion was that the anticipated health outcomes for Abbotsford's Homeless, both mental and physical, was one of a "downward trajectory".

MacEwan Report, at 6-7

815. Furthermore, continual displacement made it more difficult for service providers to find Abbotsford's Homeless, in particular health care providers. Dr. MacEwan opined that the lack of adequate health care for the members of Abbotsford's Homeless that he interviewed prevented proper assessment, diagnosis and treatment of their conditions and interacts in a negative fashion condemning them to a life of increased disability, increased rates of morbidity and premature mortality.

MacEwan Report, at 6-7

Security of the person

816. There is a sufficient causal connection between the City's enforcement of the Impugned Provisions and/or the Displacement Tactics and the impact on Abbotsford's Homeless, to engage their security of the person right.

817. The evidence indicates that continual displacement of the Abbotsford's Homeless causes them serious psychological pain and stress. It also creates a risk to their health. For example, Ms. Wilms, Mr. Caldwell and Mr. Clause all spoke about the negative impact on their sense of wellbeing due to being continually displaced and evicted. Mr. Steel, a volunteer with 5 and 2 Ministries also described how he fears for the safety of Abbotsford's Homeless when they are driven further from site and into locations where they are not easily found. Service providers expressed concern about how displacement of Abbotsford's Homeless makes it hard to find them to provide services. Shane Calder described the same experience in Victoria even with the benefit of *Adams*.

818. Activities such as having chicken manure dumped on your sleeping area, having your tent cut or pepper sprayed, repeatedly losing all or some of your possessions, never knowing if you will be allowed to sleep or stay in a particular location and having access to your sleeping place obstructed or having it made public and unsheltered by tree and brush cutting all cause serious psychological pain and stress to Abbotsford's Homeless, as well as a risk to health.

819. The present case is strikingly similar to the circumstances in *Canada (Attorney General) v. Bedford*, in which the Supreme Court found that prohibitions that impose dangerous conditions on prostitution, a risky but legal activity, negatively impacted or limited the applicants' security of the person and engaged their s. 7 rights. Similarly, homelessness is a risky, but legal activity and enforcement of the Impugned Provisions and the Displacement Tactics heighten the risks that Abbotsford's Homeless face.

Bedford at para. 60

<u>The Impugned Provisions and the Displacement Tactics do not respect the principles of fundamental justice</u>

820. The Impugned Provisions and Displacement Tactics violate Abbotsford's Homeless' s. 7 rights because the effect is to continually displace Abbotsford's Homeless from public spaces and thereby prevent them from obtaining the basic necessities of life including, survival shelter, rest and sleep, community and family, access to safer living spaces and freedom from the risks and effects of exposure, sleep deprivation and lack of access to services. Neither the Impugned Provisions nor the Displacement Tactics respect principles of fundamental justice as they are arbitrary, overbroad and gross disproportionate.

The objects of the Impugned Provisions and the Displacement Tactics

821. Very little evidence was lead regarding the objects of the Impugned Provisions. The City did not provide any evidence regarding its purpose in enacting the *Street and Traffic Bylaw*. There is no Preamble or Purpose section in the bylaw.

822. According to the City's evidence, the objective of the *Parks Bylaw* is to regulate the use of Abbotsford's parks and other public places within its jurisdiction. The Preamble to the *Parks Bylaw* also states that the City holds certain property for pleasure, recreation or community uses of the public.

823. The purpose of the *Good Neighbour Bylaw* is to regulate street nuisances, littering, noise, and property maintenance. Ms. Laljee testified that the *Good Neighbour Bylaw* is about cleaning up private property.

Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

824. One object of the Displacement Tactics was to enforce the City's bylaws and to that extent the objectives of the Displacement Tactics are that of the Impugned Provisions. At trial, there was also some evidence that the Displacement Tactics are additionally used to

respond to complaints from the public, discourage homelessness and prevent garbage from accumulating.

Arbitrariness

825. The Impugned Provisions in the *Parks Bylaw* and *Street and Traffic Bylaw* and the Displacement Tactics are arbitrary as enforced against Abbotsford's Homeless and are therefore not in accordance with this principle of fundamental justice.

826. As is noted above, the more serious the impingement on the person's liberty and security, the more clear must be the connection between the law and its purpose. Here the impingements to liberty and security are severe and there is also a limit on Abbotsford's Homeless' right to life.

Chaoulli at para. 131

827. The only evidence of the objects of the Impugned Provisions was that the *Parks Bylaw* is intended to hold such property for pleasure, recreation or community uses and that the *Good Neighbour Bylaw* is about keeping private property clean. There was no evidence lead about the purpose of the *Street and Traffic Bylaw*. The Displacement Tactics may also be an implementation of the following City objectives: responding to complaints from the public, discouraging homelessness and preventing the accumulation of garbage.

828. The Impugned Provisions in the *Parks Bylaw* and *Street and Traffic Bylaw* and the Displacement Tactics are arbitrary because their objects are not rationally connected to their effects. The law is clear that in determining arbitrariness, the question is whether the effect of the law or action is rationally connected to the object or purpose of the law or action. Also, laws or actions cannot survive the arbitrariness review under s. 7 because one argues that they are rationally connected to a reasonable apprehension of harm rather than actual harm.

Bedford at paras. 98 to 100

829. There is no rational connection between holding Parks land for the pleasure, recreation or community use of all of Abbotsford's citizens and absolute evictions of Abbotsford's Homeless from any City land. First, Abbotsford's Homeless are part of the citizenry, for who the City holds its parks property. Second, the City provided no evidence that homeless camps in general, no matter whether one person or 20, in developed parks or in undeveloped parks, result in the City not being able to balance the needs of all of its parks users. Instead, the City's evidence showed that Mr. Priebe asked Mr. Clause to move along from a park shelter so as to not disturb the park setting during a birthday party when Mr. Clause's camp was located 50 feet from that location. Mr. Fitzgerald also admitted that nothing prohibits homeless from being in the park during the day.

Cross-examination of Paul Priebe, July 16, 2015 (p.m.); Cross-examination of Dwayne Fitzgerald, July 20, 2015 (p.m.)

830. Regarding the Displacement Tactics, where the objects are co-extensive with the *Parks* and *Street and Traffic Bylaws*, the same argument applies. Where the objects might be broader and include responding to public complaints, discouraging homelessness and preventing the accumulation of garbage, these objects are also not rationally connected to the effects of the Displacement Tactics.

831. The overwhelming expert and lay evidence was that the Displacement Tactics do not discourage homelessness. They simply move people from one location to another.

832. Regarding garbage accumulation, this depends on the size of camp and the individuals concerned. For some camps, garbage was present, but the evidence also indicated that the public was dumping garbage. Therefore, displacing all of Abbotsford's Homeless is not rationally connected to preventing garbage from accumulating.

833. While the Displacement Tactics may respond to some public complaints, the evidence indicates that the response was a temporary one at best and certainly, dumping chicken manure on the Happy Tree, cutting and pepper spraying tents and obstructing park usage for all people cannot be rationally connected to this objective.

834. Given the seriousness of the infringement at issue in this proceeding, the connection between the City's objects in enforcing the Impugned Provisions of the *Parks* and *Street and Traffic Bylaws* and engaging in the Displacement Tactics, is not sufficient to prevent a finding of arbitrariness. In other words, the Impugned Provisions and the Displacement Tactics are arbitrary.

Overbreadth

835. The Impugned Provisions and Displacement Tactics are overbroad as enforced against Abbotsford's Homeless.

836. In *Adams BCSC*, the Court applied *R. v. Heywood*'s test for overbreadth and the Court of Appeal agreed. The analysis is whether the means chosen by the state in relation to its purpose are necessary to achieve the state objective? If the State, in pursuing a legitimate objective, uses means which are broader than is necessary to accomplish that objective, the principles of fundamental justice will be violated because the individual's rights will have been limited for no reason. The effect of overbreadth is that in some applications the law is arbitrary or disproportionate.

Adams at paras. 112 to 116; *R. v. Heywood* at 792 to 793

837. As is described above, the only evidence of the objects of the Impugned Provisions was that the *Parks Bylaw* is intended to hold such property for pleasure, recreation or community uses and that the *Good Neighbour Bylaw* is about keeping private property clean. There was no evidence lead about the purpose of the *Street and Traffic Bylaw*. The Displacement Tactics may also be an implementation of the following City objectives: responding to complaints from the public, discouraging homelessness and preventing the accumulation of garbage.

838. For any of the possible above objectives, the evidence was that the means necessary to achieve them - the Impugned Provisions and the Displacement Tactics - are much broader than necessary to accomplish them.

839. Analogous to the situation in *Adams*, where a total ban on erecting temporary overnight shelter in City parks was overbroad, the City's absolute ban on homeless camps, evidenced by the application of the Impugned Provisions and the Displacement Tactics is overbroad and not in accordance with this principle of fundamental justice. As Madam Justice Ross put it in *Adams BCSC*:

> The AGBC asserts that the Bylaws are effective for their purpose. However, as is evident from the analysis of Justice La Forest in *Godbout*, that is no answer to the question of whether the infringement is contrary to the principles of fundamental justice. The AGBC asserts that no less restrictive alternative would be effective. However, I am not persuaded that is the case. Indeed it seems to me that there are any number of less restrictive alternatives that would further the City's concerns; for example, requiring the overhead protection to be taken down every morning, and creating certain zones in sensitive park regions where sleeping was not permitted.
>
> ...
>
> The submissions of the AGBC and the City suffer from a number of difficulties. First, they are premised on the notion that the issue is a choice between the Bylaws' absolute ban on the erection of overhead shelter on the one hand and chaos on the other...
>
> The problem is that this is a false dichotomy. The Defendants do not suggest that all laws should be suspended with respect to homeless people in parks. Moreover, the Defendants do not suggest that there can be no regulation with respect to the shelter that homeless people create in public spaces. They did not submit that the City is precluded from regulating what kind of shelter can be created, how long it can stay in one place or what kinds of activities can be engaged in by the homeless people who sleep in the shelters. The issue is much more specific: that being the complete prohibition on taking a temporary abode including overhead protection.
>
> The next difficulty is that the AGBC and the City focus their submissions on the problems they allege to be associated with tent cities. However, it is conceded that the Bylaws are not limited to a prohibition of tent cities; they go much farther and prohibit any form of erected shelter, even a cardboard box that is removed in the morning. Therefore, to the extent to which the purpose of the Bylaws is to prohibit tent cities, they are clearly overbroad.
>
> The submissions of the AGBC and the City suggest that without the Bylaws the numbers of people sleeping in parks will grow, thereby increasing the problems associated with homelessness. This submission is based in part on the evidence that some of the homeless people preferred to sleep in the tent city rather than go

> to a shelter. However, I agree with the submission of the Defendants that the fact that some people choose to live outside rather than go to shelters, which are often full, does not mean that the prohibition on shelter does not have an adverse effect on the life, liberty and security of the person.
>
> There are not enough shelter spaces available to accommodate all of the City's homeless; some people will be sleeping outside. Those people need to be able to create some shelter. If there were sufficient spaces in shelters for the City's homeless, and the homeless chose not to utilize them, the case would be different and more difficult. The court would then have to examine the reasons why homeless people chose not to use those shelters. If the shelters were truly unsafe, it might be that it would still be an infringement of s. 7 to require the homeless to attend at shelters or sleep outside without their own shelter. However, if the shelters were safe alternatives, it may not be a breach of s. 7 for the homeless to be required to make that choice. That, however, is not the case here, where there is a significant shortfall of shelter spaces.
>
> There is simply no evidence that people would flock to sleep in the parks once they were allowed to cover themselves at night with cardboard boxes or tarps. Moreover, that is not an inference that I am prepared to draw. It seems to me to be unlikely in the extreme and contrary to the evidence of the complex causes of homelessness to suggest that such a change would result in an increase in the number of persons sleeping in public places.

Adams BCSC at paras. 185 to 192

840. Like in *Adams*, there are a number of less restrictive alternatives that would further the City of Abbotsford's concerns.

Adams BCSC at paras. 185 to 192

Gross disproportionality

841. Gross disproportionality describes state actions or legislative responses to a problem that are so extreme as to be disproportionate to any legitimate government interest.

PHS at para. 133

842. The effects of the Impugned Provisions and or the Displacement Tactics are grossly disproportionate. The effects implicate concerns of human dignity and personal security. Regulating park space for all of Abbotsford's citizens, who include Abbotsford's Homeless, and preventing aesthetic nuisances may be legitimate objectives, but they cannot trump a risk of serious harm and even death.

843. The only evidence of the objects of the Impugned Provisions was that the *Parks Bylaw* is intended to hold such property for pleasure, recreation or community uses and that the *Good Neighbour Bylaw* is about keeping private property clean. There was no evidence lead about the purpose of the *Street and Traffic Bylaw*. The Displacement Tactics may

also be an implementation of the following City objectives: responding to complaints from the public, discouraging homelessness and preventing the accumulation of garbage.

844. The overwhelming evidence at trial from all witnesses - Abbotsford's Homeless, service providers like 5 and 2 Ministries, City staff and the police themselves - was that the City constantly, continually and without any knowledge of where it is that people are to go, are moved from place to place.

845. The evidence indicates that continual displacement of the Abbotsford's Homeless causes these individuals serious psychological pain and stress and creates a risk to their health. Ms. Wilms, Mr. Caldwell and Mr. Clause all both spoke about the negative impact on their sense of wellbeing due to being continually displaced and evicted. Mr. Steel described how he fears for the safety of Abbotsford's Homeless when they are driven further from site and into locations where they are not easily found. Other service providers expressed concern about how displacement of Abbotsford's Homeless makes it hard to find them to provide services, including health care.

846. Having chicken manure dumped on your sleeping area, having your tent cut or pepper sprayed, repeatedly losing all or some of your possessions, never knowing if you will be allowed to sleep or stay in a particular location and having access to your sleeping place obstructed or having it made public and unsheltered by tree and brush cutting all cause serious psychological pain and stress to Abbotsford's Homeless, as well as a risk to health.

847. The spreading of chicken manure on the Happy Tree affected the health of Mr. Zurowski and Mr. Tootootis, the latter who is prone to infections from his diabetes, developed a foot infection. Cutting and pepper spraying tents, as well as the confiscation of belongings made it harder for some of Abbotsford's Homeless to shelter themselves from the weather. Continual displacement results in homeless people being unable to find each other, which the evidence indicates some consider important for their safety and health. The impact of this can be severe. For example, Ms. Aitken testified about how she has overdosed a number of times and needed emergency medical attention and how she has needed to call 9-1-1 for others who have overdosed.

848. Due to the City's Impugned Provisions and Displacement Tactics, people sometimes camp in bushes as opposed to the side of the road in order to avoid being seen. As Pastor Wegenast put it, "People will move to more and more secluded areas in hopes of being able to set up camp for a longer time".

Direct Examination of Jesse Wegenast, June 29, 2015 (p.m.)

849. The effect of the Impugned Provisions and the Displacement Tactics is isolation for many of Abbotsford's Homeless, a situation that some find to cause them to be unsafe. Colleen Aitken spoke forcefully about how much safer she feels living in the Gladys Avenue Camp community; especially as a woman on the street.

850. An analogy can be drawn between the relationship of Abbotsford's Homeless to the state (City and Abbotsford Police Department) in this proceeding and sex trade workers and police in Vancouver's Downtown Eastside:

> Marginalization is closely related to the condition of endangerment and vulnerability to predation, creating the climate in which the missing and murdered women were forsaken. Three overarching social and economic trends contribute to the women's marginalization: retrenchment of social assistance programs, the ongoing effects of colonialism, and the criminal regulation of prostitution and related law enforcement strategies.

The Hon. Wally T. Oppal, Q.C., Forsaken: The Report of the Missing Women Commission of Inquiry (Victoria: Missing Women Commission of Inquiry, 2012) ("Oppal Report"), Executive Summary at p. 12

851. This effect of the Impugned Provisions and the Displacement Tactics on Abbotsford's Homeless, along with the harms they cause is reminiscent of what Mr. Oppal had to say about Vancouver's missing women:

> The relationship between police and sex trade workers is generally marked by distrust, so they tend to under-report crimes of violence. There is a clear correlation between law enforcement strategies of displacement and containment of the survival sex trade to under-populated and unsafe areas in the period leading up to and during the reference period and violence against the vulnerable women. This was an unintentional but foreseeable result.
>
> ...
>
> I heard unequivocal testimony that the VPD's prostitution law enforcement strategies put women engaged in the survival sex trade at increased risk of violence, including serial predation. I reviewed and made findings of fact pertaining to this evidence in Volume I. Responding to pressure from residents, business owners and municipal politicians who could not tolerate the nuisances created by the street-level sex trade, the VPD pursued a strategy of containing the women into more remote and unsafe parts of downtown Vancouver. Through this strategy, the sex trade was displaced but not eliminated. One can understand the concerns of the residents, but the women became the unwitting victims of this law enforcement strategy. The unintended consequence was that police created a space for the survival sex trade to exist where the women were violated, often with impunity.
>
> ...However, the VPD was systemically blind to the impact this enforcement strategy had upon the women.

Oppal Report, Executive Summary, pp. 15 to 16, 66 to 68

852. The effects of the Impugned Provisions and or the Displacement Tactics are grossly disproportionate. The City's objectives of regulating parks, cleaning up private property,

responding to public complaints, discouraging homelessness and preventing garbage accumulation are grossly disproportionate to the myriad of harmful effects imposed on Abbotsford's Homeless as a result.

853. The effect of denying Abbotsford's Homeless access to public spaces is grossly disproportionate to any benefit that the City might derive from furthering its objectives is particularly striking when there is copious evidence of proven benefits to Abbotsford's Homeless in providing shelter:

> ...Insite saves lives. Its benefits have been proven. There has been no discernable negative impact on the public safety and health objectives of Canada during its eight years of operation. The effect of denying the services of Insite to the population it serves is grossly disproportionate to any benefit that Canada might derive from presenting a uniform stance on the possession of narcotics.
>
> *PHS* at para. 133

The right to obtain the basic necessities of life is a foundational principle

854. The right to obtain the basic necessities of life is a foundational principle underlying the guarantees of s. 7 of life, liberty and security of the person. The Court in *Adams* cited Martha Jackman in this regard:

> ...[A] person who lacks the basic means of subsistence has a tenuous hold on the most basic of constitutionally guaranteed human rights, the right to life, to liberty, and to personal security. Most, if not all, of the rights and freedoms set out in the Charter presuppose a person who has moved beyond the basic struggle for existence. The Charter accords rights which can only be fully enjoyed by people who are fed, are clothed, are sheltered, have access to necessary health care, to education, and to a minimum level of income. As the United Church's brief to the Special Joint Committee declared: "Other rights are hollow without these rights".
>
> *Adams* at para. 75

855. Support for the primacy of the right to obtain the basic necessities of life can be found in our common law, international instruments and decisions from other jurisdictions.

International instruments

856. The *Charter* should in general be presumed to provide protection at least as great as is found in the international human rights documents ratified by Canada. This principle was recently reaffirmed by the Supreme Court of Canada in *Divito v. Canada (Public Safety and Emergency Preparedness)*:

> Canada's international obligations and relevant principles of international law are also instructive in defining the right: *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038; *United States v. Burns*, 2001 SCC 7 (CanLII), 2001 SCC 7, [2001] 1 S.C.R. 283; *Canadian Foundation*

for Children, Youth and the Law v. Canada (Attorney General), 2004 SCC 4 (CanLII), 2004 SCC 4, [2004] 1 S.C.R. 76; *R. v. Hape*, 2007 SCC 26 (CanLII), 2007 SCC 26, [2007] 2 S.C.R. 292. In *Reference re Public Service Employee Relations Act (Alta.)*, 1987 CanLII 88 (SCC), [1987] 1 S.C.R. 313, Dickson C.J., dissenting, described the template for considering the international legal context as follows:

> The content of Canada's international human rights obligations is, in my view, an important indicia of the meaning of "the full benefit of the *Charter*'s protection". I believe that the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified. [p. 349]

More recently, in *Health Services and Support — Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 (CanLII), 2007 SCC 27, [2007] 2 S.C.R. 391, McLachlin C.J. and LeBel J. confirmed that, "the *Charter* should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified" (para.70). This helps frame the interpretive scope of s. 6(1).

Divito v. Canada (Public Safety and Emergency Preparedness), 2013 SCC 47 at paras. 22 and 23

857. While international agreements, that have not been implemented by domestic legislation cannot be enforced in Canadian courts, as is set out above, they are relevant as interpretive aids with respect to the meaning and scope of the claimant's *Charter* rights. On numerous occasions the Supreme Court has confirmed the informative value of international human rights norms to the interpretation of s. 7.

See for example, L'Heureux-Dubé J. in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 70

858. Canada is a party to several international human rights instruments which recognize the basic necessities of life as a fundamental right. *The Universal Declaration of Human Rights*, Article 25(1) states:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The Universal Declaration of Human Rights, GA Rs. 217(III), U.N. GAOR, (3d) Sess., Supp. No. 13, U.N. Doc. A/810 (1948) 71

859. The *Universal Declaration of Human Rights* is "a common standard of achievement for all peoples and all nations" and states that:

> ...every individual and every organ of society...shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

860. Similarly, Article 11.1 of the International Covenant on Economic, Social, and Cultural Rights ("Covenant") declares:

> The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

International Covenant on Economic, Social, and Cultural Rights, 16 December 1966, 999 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360

861. Under Article 2(1) of the Covenant, each State Party undertakes to "take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". States must, at a minimum, show that they are making every possible effort, within available resources, to better protect and promote the right to adequate housing. There is an immediate obligation to take steps to fulfill this right. If a State adopts a measure that weakens the protection of the right to adequate housing, it will have to demonstrate that it carefully weighed all the options, considered the overall impact of the measure on all human rights, and fully used all its available resources.

862. The United Nations has determined that all persons should possess a degree of security of housing tenure that guarantees legal protection against forced eviction and that forced eviction constitutes a gross violation of human rights. The United Nations affirmed that security of tenure takes a variety of forms, including informal settlements, such as occupation of land or property. In its General Comment No. 4 on Article 11.1 of the Covenant, the Committee on Economic, Social and Cultural Rights recognized:

> [T]hat instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

Adams BCSC at para. 89, citing Committee on Economic, Social and Cultural Rights 6th session, U.N. Doc. E/1992/23, annex III (1991) at para. 18

863. The Committee on Economic, Social and Cultural Rights also stressed that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security,

peace, and dignity. The right to housing "should be ensured to all persons irrespective of income or access to economic resources".

864. In its General Comment 20, the Committee on Economic, Social and Cultural Rights noted that "place of residence" and "economic and social status" are prohibited grounds for discrimination, implied in the phrase "other status" in Article 2 of the Covenant. Thus, measures which discriminate against individuals because they live in a situation of poverty may amount to a contravention of the principle of non-discrimination. A discriminatory intent is not a necessary element of discrimination—any measure with the purpose or effect of nullifying or impairing the equal enjoyment of human rights violates States' human rights obligations.

Committee on Economic, Social and Cultural Rights 42nd session, U.N. Doc. E/C.12/GC/20, (2 July 2009 at paras. 10, 12, 34 and 35

865. There are also a wide variety of other international covenants and declarations that establish the different international law dimensions of the right to adequate housing and enshrine it as a fundamental principle of international law.

866. The United Nations Conference on Human Settlements (Habitat II), 3-14 June, 1996, which produced the Habitat Agenda, addressed "adequate shelter for all" as a theme of global importance. Article 3 of the Habitat Agenda states:

> ...access to safe and healthy shelter and basic services is essential to a person's physical, psychological, social and economic well-being and should be a fundamental part of our urgent actions for the more than one billion people without decent living conditions. Our objective is to achieve adequate shelter for all.

Adams BCSC at para. 91, citing Habitat Agenda, U.N. Doc. A/Conf. 165/14 (June 14, 1996), Article 3

867. Furthermore, the Habitat Agenda recognizes at Article 11 that "inadequate shelter and homelessness are growing plights in many countries, threatening standards of health, security and even life itself." The commitment of the state parties is outlined in Article 39:

> We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments. In this context, we recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. We commit ourselves to the goal of improving living and working conditions on an equitable and sustainable basis, so that everyone will have adequate shelter that is healthy, safe, secure, accessible and affordable and that includes basic services, facilities and amenities, and will enjoy freedom from discrimination in housing and legal security of tenure. We shall implement and promote this objective in a manner fully consistent with human rights standards...

Adams BCSC at para. 92, citing Habitat Agenda, Article 11

868. In the Human Rights Committee of the UN reporting on the U.S.'s fourth periodic report on its implementation of the *International Covenant on Civil and Political Rights*, stated in part regarding the criminalisation of homeless people for engaging in everyday activities:

> Criminalization of homelessness
>
> 1. While appreciating the steps taken by federal and some state and local authorities to address homelessness, the Committee is concerned about reports of criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas, etc. The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman or degrading treatment (arts. 2, 7, 9, 17 and 26).
>
> The State party should engage with state and local authorities to:
>
> (a) Abolish the laws and policies criminalizing homelessness at state and local levels;
>
> (b) Ensure close cooperation among all relevant stakeholders, including social, health, law enforcement and justice professionals at all levels, to intensify efforts to find solutions for the homeless, in accordance with human rights standards; and
>
> (c) Offer incentives for decriminalization and the implementation of such solutions, including by providing continued financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize the homeless.

Human Rights Committee, *Concluding observations on the fourth periodic report of the United States of America*, adopted at its 110th session, CCPR/C/USA/CO/4 (23 April 2014) at para. 19

869. Furthermore, our federal government has expressed the view that s. 7 of the *Charter* must be interpreted in a manner consistent with Canada's obligations under the *Covenant* to not deprive persons of the basic necessities of life. In response to a question from the Committee arising from the report, the federal government assured the Committee that:

> While the guarantee of security of the person under section 7 of the *Charter* might not lead to a right to a certain type of social assistance, it ensured that persons were not deprived of the basic necessities of life.

Adams BCSC at para. 98, citing Committee on Economic, Social, and Cultural Rights: Summary Record of the 5th Meeting, ESC, 8th Sess., 5th Mtg., U.N. Doc. E/C.12/1993/SR.5 (25 May 1993)

870. This position was re-asserted in 1998. When the Committee asked whether the answer given in 1993 was still the position of all Canadian governments, the federal government gave the following answer at Question 53:

> The Supreme Court of Canada has stated that section 7 of the *Charter* may be interpreted to include the rights protected under the *Covenant* (see decision of *Slaight Communications v. Davidson* 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038). The Supreme Court has also held section 7 as guaranteeing that people are not to be deprived of basic necessities (see decision of *Irwin Toy v. A. -G. Québec*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927). The Government of Canada is bound by these interpretations of section 7 of the *Charter*.

Adams BCSC at para. 99, citing Government of Canada "Federal Responses", Review of Canada's Third Report on the Implementation of the International Covenant on Economic, Social, and Cultural Rights (November 1998)

871. The Human Rights Council has commented on the vital importance of securing legal protections for homeless persons. Following his Mission to Canada in October 2007, the Special Rapporteur on Adequate Housing wrote in his Report that:

> Given the absence of explicit provisions in Canadian law guaranteeing the right to adequate housing, the interpretation of the open-ended provisions of the Canadian Charter of Rights and Freedoms is critical for giving domestic effect to this right in Canada. Denial of the right to adequate housing to marginalized, disadvantaged groups in Canada clearly assaults fundamental rights in the Canadian Charter of Rights and Freedoms, even if the Charter does not explicitly refer to adequate housing.

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Kothari, A/HRC/10/7/Add.3 (17 February 2009) [Report of the Special Rapporteur] at para. 29

872. In his recommendations, the Special Rapporteur wrote that "the legal recognition of the right to adequate housing is an essential first step for any State to implement the human rights to adequate housing of the people under its protection".

Report of the Special Rapporteur at para. 88

873. The Special Rapporteur on the human right to safe drinking water and sanitation has expressed concern at the increasing criminalization of homelessness in American cities, and in particular the criminalization of biological necessities. In her report after the Mission to the United States of America, she points out that "Local statutes which prohibit public urination and defecation, "while facially constitutional to protect public health, are often discriminatory in their effects". This discrimination occurs because such statutes are enforced against homeless persons who often have no access to public restrooms and are given no alternatives. The Report goes on to say:

> Because evacuation of the bowels and bladder is a necessary biological function and because denial of opportunities to do so in a lawful and dignified manner can both compromise human dignity and cause suffering, such denial could, in some cases (e.g., where it results from deliberate actions or clear neglect) amount to cruel, inhumane or degrading treatment.

Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, A/HRC/18/33/Add.4 (2 August 2011) at paras. 56 and 58

Case law from other jurisdictions

874. Courts in various international jurisdictions have considered the challenges of homelessness and human rights protection. The following is a non-exhaustive review of the approaches these courts have taken.

South Africa

875. In *Government of the Republic of South Africa and Others v. Grootboom and Others*, the homeless plaintiffs, discouraged at the long wait for subsidized low-cost housing from their municipality, had moved out of an informal squatter settlement where conditions were intolerable and erected shelters on private land. The plaintiffs were then forcibly evicted from their new shelters by the municipality. The Court employed international law to elucidate the meaning of the Constitution of South Africa, which provides for "the right to have access to adequate housing" and imposes an obligation on the state to take "reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right". After a careful consideration of Articles 11.1 and 2.1 of the Covenant, as well as considering general comments by the United Nations Committee on Economic, Social and Cultural Rights, the Court found that the Constitution imposes a negative obligation on the state to desist from preventing or impairing the right to access to adequate housing. The Court found it "fundamental to an evaluation of the reasonableness of state action that account be taken of the inherent dignity of human beings", and emphasized that "human beings are required to be treated as human beings". Justice Yacoob stated that:

> There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights...

Government of the Republic of South Africa and Others v. Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46 (4 October 2000) (*Grootboom*) at paras. 83 and 24; see also *Satrose Ayuma and Others v. The Registered Trustees of the Kenya Railway Staff Benefits Scheme and Others* (High Court Petition No. 65 of 2010)

Kenya

876. In *Susan Waithera Kariuki v. The Town Clerk, Nairobi City Council*, the High Court of Kenya relied on leading decisions from the South African Constitutional Court, such as *Grootboom*, to hold that forced evictions in circumstances where people were rendered homeless because no alternative accommodation was provided by local government violated the right to housing. Similar to South Africa, the Constitution of Kenya provides for the right to "accessible and adequate housing, and to reasonable standards of sanitation". The Court held that the state had a positive obligation under the Constitution to ensure, "within its available resources", that reasonable housing was available to its

citizens. To fulfil this obligation, the government needed to demonstrate that they had put in place a policy that "responds reasonably to the needs of the most desperate"—with "reasonableness" depending on criteria set out in *Grootboom*.

Susan Waithera Kariuki v. The Town Clerk, Nairobi City Council, High Court of Kenya, Nairobi, Petition 66 of 2010 (2011) KLR 1.

877. In another case involving forced evictions, the High Court of Kenya found that the eviction in question was not only in violation of the plaintiffs' fundamental right to accessible and adequate housing as guaranteed in the Constitution, but also "rendered the petitioners vulnerable to other human rights violations". The eviction rendered the plaintiffs "unable to provide for themselves", and "grossly undermined their right to be treated with dignity and respect".

Ibrahim Osman v. The Minister of State for Provincial Administration and Others, High Court of Kenya, Embu, Constitutional Petition 2 of 2011 (unreported).

African Commission on Human and Peoples' Rights

878. In *Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria* an implied right to housing was found to be the combined effect of Article 4 (the right to life), Article 14 (the right to property), Article 16 (the right to health), Article 18(1) (the right to a family life) and Article 24 (the right of peoples to a 'general satisfactory environment favourable to their development') of the African Charter on Human and Peoples' Rights. African Commission on Human and Peoples' Rights also found in the same decision that the implied right to adequate housing encompasses protection against forced evictions.

Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria, (2001) AHRLR 60 (ACHPR 2001) at para. 63

Europe

879. Courts in Europe have considered forced evictions, municipal "cleaning operations" and the criminalization of "unauthorised camping" in the context of the Roma community.

880. In *Buckley v. The United Kingdom*, the plaintiff, a member of the Roma community, brought a claim that the designation system under the *Caravan Sites Act 1968* and the criminalization of "unauthorized camping" under the *Criminal Justice and Public Order Act 1994* "discriminated against Gypsies by preventing them from pursuing their traditional lifestyle". She alleged violations of her interest under Articles 8 (Right to respect for private and family life) and 14 (Prohibition of discrimination) of the European Convention on Human Rights. The European Court of Human Rights found that Article 8 was applicable to the case, but held on the facts that proper regard had been had to the plaintiff's situation—the regulatory framework contained adequate procedural safeguards to protect her interest, and the reasons relied on by the responsible planning authorities were relevant and sufficient to "justify the resultant interference with the exercise by the applicant of her right to respect for her home".

Case of Buckley v. The United Kingdom (Application no. 20348/92), ECHR, Strasbourg (29 September 1996) at paras. 47, 84

881. In another case, the European Human Rights Committee considered the demolition of the plaintiffs' shed and prevention of construction of a new shelter. The Committee held this act to amount to a violation of various articles of the *International Covenant on Civil and Political Rights*. Article 17 prohibits arbitrary interference with a person's privacy, family, home, or correspondence; Article 23 enshrines the protection of the family; and Article 27 enshrines the rights of minorities. The Committee also declared that the case was admissible for a possible violation of Article 7, the prohibition of torture and cruel, inhuman, or degrading treatment. In an appended Individual Opinion, Committee member Mr. Fabian Omar Salvioli remarked that this recognition "reflects the trend in contemporary international human rights law away from the fictitious and artificial division of rights into "categories" and towards the view that all human rights are universal and interdependent".

International Covenant on Civil and Political Rights; *Georgopoulos et al. v. Greece*, CCPR/C/99/D/1799/2008 (29 July 2010), and Appendix at paras. 1 to 4;

See also cases *ERRC v. France, Collective Complaint* No.51/2008; *ERRC v. Greece, Collective Complaint* No.15/2003; and *ERRC v. Portugal, Collective Complaint* No.61/2010, in which the European Roma Rights Centre filed collective complaints against nations under the revised European Social Charter. In all of these decisions, the European Committee of Social Rights found violations of either Article 31 (the right to housing), Article 16 (the right of the family to social, legal and economic protection) or both

United States

882. In the United States, courts have found that it is cruel and unusual punishment to penalize people for engaging in necessary, life-sustaining conduct in public spaces when shelter or housing is unavailable; and that prohibiting a "necessity of life", such as sleeping, infringes on homeless persons' freedom of travel or movement.

883. The U.S. Court of Appeals for the Fifth Circuit, in a case involving a constitutional challenge by state inmates regarding cruel and unusual punishment, held that denying inmates the basic necessities of life did constitute cruel and unusual punishment. The basic necessities reasonably included adequate food, clothing, shelter, sanitation and necessary medical attention.

Newman v. Alabama, 1977 U.S. App. LEXIS 11545

884. In *Jones v City of L.A.*, the Ninth Circuit Court of Appeals held that "Los Angeles encroached upon Appellants' Eighth Amendment protections [against excessive bail, excessive fines, and cruel and unusual punishment] by criminalizing the unavoidable act of sitting, lying, or sleeping at night while being involuntarily homeless."

Jones v. City of L.A., 444 F.3d 1118, 1132 (9th Cir. 2006), *vacated as moot*, 505 F.3d 1006 (9th Cir. 2007) [*Jones*]

See also *Anderson v. City of Portland*, C. No. 08-1447-AA, 2009 WL 23865 (D. Or. July 31, 2009), in which the court held that the homeless plaintiffs adequately stated equal protection and Eighth Amendment claims, because "the City's enforcement of the anti-camping and temporary structure ordinances criminalizes them for being homeless and engaging in the involuntary and innocent conduct of sleeping on public property"

885. In *Pottinger v. City of Miami*, The United States District Court for the Southern District of Florida held that "the city's practice of arresting homeless individuals for harmless life sustaining activities that they are forced to perform in public is unconstitutional".

Pottinger v. City of Miami, 810 F. Supp. 1551, 1564 (S.D. Fla. 1992) [*Pottinger*]

886. In these cases, the courts recognized that when available shelter space is inadequate, homelessness is an involuntary condition—people without access to housing have no choice but perform necessary activities such as sleeping and eating in public spaces. In this context, the courts found that the criminalization of homelessness violates homeless persons' rights under the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution, as well as analogous rights in state law. Other U.S. courts, however, have resisted this line of argument, being reluctant to extend constitutional protection to involuntary acts derivative of status. The District Court in *Lehr v. City of Sacramento* rejected the plaintiffs' Eighth Amendment claim, declaring that a decision in their favour would "set precedent for an onslaught of challenges to criminal convictions by those who seek to rely on the involuntariness of their actions".

Pottinger; *Jones*; *Lehr v. City of Sacramento*, 623 F. Supp.2d 1218 (E.D. Cal. 2009)

887. U.S. courts have also found that sweeps of homeless camps, and the consequent confiscation and destruction of property, violate due process and protections against unreasonable search and seizure. In *Kincaid v. City of Fresno*, the United States District Court, E.D. California found that sweeps of encampments and subsequent destruction of property of homeless individuals by the City of Fresno violated the Fourth Amendment.

Kincaid v. City of Fresno, No. 1:06-cv-1445, 2006 WL 3542732 (E.D. Cal. Dec.8, 2006)

Canada

888. The right to the basic necessities of life has been recognised by Parliament. Pursuant to s. 215 of the *Criminal Code*, a parent, foster parent, guardian or head of a family has the legal duty to provide the necessaries of life for a child under the age of 16 years. A legal duty that is subject to prosecution under the *Criminal Code* is a legal principle with sufficient precision to be applied in different fact situations.

Criminal Code, R.S.C. 1985, c. C-46, s. 215

889. Further, in the family law context, the basic of necessities of life have been described a number of times. These descriptions provide that the basic necessities of life include food, shelter, clothing, heat and utilities.

Scarborough v. Scarborough, [1987] B.C.J. No. 2246 (S.C.) at 2; *Starr v. Starr*, [2008] O.J. No. 6042 (S.C.J.) at para. 48; *New Brunswick (Minister of Human Resources Development) v. Bureau*, [1997] N.B.J. No. 599 (Q.B.) at para. 7; *AL v. CC*, 2011 ABQB 819 at para. 154

890. In *Canadian Centre for Torture Victims (Toronto) Inc. v. Regional Assessment Commissioner, Region No. 9*, in relation to a tax assessment, the court defined the basic necessities of life as food, shelter and clothing. The same court provided the same definition in relation to an application for a discharge from bankruptcy.

Canadian Centre for Torture Victims (Toronto) Inc. v. Regional Assessment Commissioner, Region No. 9, 1998 CanLII 14626 (ON SC); *Plamondon (Re)*, 2012 ONSC 1379 (CanLII) at para. 39

891. Based on the foregoing, the right to exist and obtain the basic necessities of life is a foundational principle underlying the *Charter*'s s. 7 guarantees.

There is no justification under section 1

892. It is difficult to justify a s. 7 violation. The rights protected are fundamental and not "easily overridden by competing social interests". And it is hard to justify a law that runs afoul of the principles of fundamental justice and is thus inherently flawed.

Carter at para. 95, citing *B.C. Motor Vehicle Reference* at p. 518; *Charkaoui* at para. 66; *Bedford* at paras. 96 and 129; *Adams BCSC* at para. 197

893. Under s. 1, the City bears the burden of showing that a law that breaches an individual's rights can be justified having regard to the City's goal. Drug War Survivors submits that the City has not done so.

894. If the City can establish that their goals with the Impugned Provisions and the Displacement Tactics are pressing and substantial, the analysis turns to an evaluation of proportionality. The rational connection branch of the s. 1 analysis asks whether the law was a rational means for the legislature to pursue its objective. Minimal impairment asks whether the legislature could have designed a law that infringes rights to a lesser extent; it considers the legislature's reasonable alternatives. At the final stage of the s. 1 analysis, the court is required to weigh the negative impact of the law on people's rights against the beneficial impact of the law in terms of achieving its goal for the greater public good. The impacts are judged both qualitatively and quantitatively.

Bedford at para. 126

No pressing and substantial goals

895. Because the question is whether the broader public interest justifies the infringement of individual rights, the law's goal must be pressing and substantial.

Bedford at para. 126

896. Here, in relation to the Impugned Provisions, the limit is prescribed by law. The Displacement Tactics are not prescribed by law. In any event, Drug War Survivors submits that the Impugned Provisions of the *Street and Traffic Bylaw* and the Displacement Tactics do not have pressing and substantial objectives. The City provided no evidence about the objectives of either of these.

897. The next question is whether the City has demonstrated that the prohibition is proportionate. Drug War Survivors submits that it has not.

No rational connection

898. The measures adopted must be rationally connected to the objectives. On the City's own evidence, the objective of the *Parks Bylaw* is to regulate parks for all users. There can be no rational connection to this objective and the continual displacement of Abbotsford's Homeless as Abbotsford's Homeless are also park users.

899. The City's evidence regarding the displacement of Abbotsford's Homeless from private property pursuant to the *Good Neighbour Bylaw* was that it wanted to keep private property cleaned up. This goal is not rationally connected to displacing people from private property because the City only has to make property owners keep their property clean and to do so it does not need to evict people. The evidence, however, shows that even once properties were cleaned, at times Bylaw Services nonetheless sought to have homeless people removed from private property.

900. No objective was provided regarding the *Street and Traffic Bylaw*. As such, there can be no rational connection established between it and the measures adopted by the City.

901. Further, similar to what the Court found in *Adams*, what the City identified as the "real urban problems" that come with homeless encampments – drug use and sales, public elimination of bodily waste, vandalism, litter, crimes by and against homeless people – are not matters that are related to allowing Abbotsford's Homeless to exist in public spaces without threat of constant displacement. Rather, these are matters related to the presence of a population of homeless people and the services available for that population. In that respect, the Impugned Provisions and the Displacement Tactics are not rationally connected to the objective.

Adams BCSC at para. 204

No minimal impairment

902. With respect to minimal impairment, the question is whether the limit on the right is reasonably tailored to the objective. The inquiry asks whether there are less harmful means of achieving the legislative goal. The burden is on the City to show the absence of less drastic means of achieving the objective in a "real and substantial manner". The deprivation of the *Charter* right must be confined to what is reasonably necessary to achieve the state's object.

Carter at para. 102

903. The City's application of the Impugned Provisions and use of the Displacement Tactics applies to all public and private land, not just developed parks or even just all parks. Even on the City's own admissions, there are more minimally impairing ways to balance the needs of its citizens to use public space. The City lead evidence of a variety of more minimally impairing options:

(a) A permitting process. While the permitting process currently in place is not in fact one that can be utilised by Abbotsford's Homeless, it does indicate that the City could have a system in place to ensure oversight of its land, allow Abbotsford's Homeless to be somewhere and thereby balance the needs of all public space users.

(b) Allowing extensions of time for an eviction on an *ad hoc* basis. While not providing any predictability or consistency, the City's practice of granting occasional extensions indicates that there is no need for a complete prohibition on either overnight shelter or encampments, depending on location.

(c) Treating different lands differently. The City lead evidence that it holds both developed and undeveloped parks as well as City lands not held or designated as parks. The nature, purpose and use of these various lands is not identical, neither must they be treated identically in relation to encampments. The complete prohibition on structures and encampments does not take into account these differences.

904. More minimally impairing would have been for the City to follow its own policies regarding displacement, including the ISET Protocol. The evidence was that the City failed to do so numerous times.

905. Surely there is a more minimally impairing way to deal with Abbotsford's Homeless than violating their s. 8 *Charter* rights by cutting and pepper spraying their tents without a warrant or reasonable grounds to enter into, look inside or damage the tents of Mr. Smith and two other homeless individuals.

R. v. Colet, [1981] 1 S.C.R. 2 at para. 10

906. Finally, should the eviction of an encampment be necessary, a more minimally impairing would be a system by which Abbotsford's Homeless could ask for a review of their displacement. The City has no such system. In *Sivia v. British Columbia (Superintendent of Motor Vehicles)*, the court determined that certain portions of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, violated s. 8 of the *Charter* because the legislation did not provide for an adequate system of review.

Sivia v. British Columbia (Superintendent of Motor Vehicles), 2011 BCSC 1639

907. To the extent that Abbotsford has refused regular garbage pick-up at homeless encampments, for several years, prohibited needle exchange and resisted the development of low-barrier housing and services, it has caused and perpetuated much of the disorder that it now uses to justify the impugned legislative scheme. The fact that Abbotsford has

just recently ended the prohibition on harm reduction, started providing garbage pick-up at one encampment and is instituting programs related to the needs of the homeless population is further evidence that the disorder complained of by the City is related to the City's own decisions and was within the City's power to mitigate.

Disproportionate impact

908. The final stage of the *Oakes* analysis weights the impact of the law on protected rights against the beneficial effect of the law in terms of the greater public good.

Carter at para. 122

909. Regarding proportionality, Drug War Survivors relies on its submissions above regarding the grossly disproportionate effect of the Impugned Provisions and or the Displacement Tactics. Given the importance of the *Charter* rights in issue, the City's objectives, for the greater public good of regulating parks, cleaning up private property, responding to public complaints, discouraging homelessness and preventing garbage accumulation are disproportionate to the myriad of deleterious effects imposed on Abbotsford's Homeless as a result.

Conclusion

910. In summary, the Impugned Provisions and the Displacement Tactics violate s. 7 of the *Charter* and are not saved by s. 1. The Impugned Provisions and the Displacement Tactics infringe the life, liberty and security of the person rights of Abbotsford's Homeless in a manner that is arbitrary, overbroad and grossly disproportionate. The City has unconstitutionally prevented Abbotsford's Homeless from obtaining the basic necessities of life.

Section 15

Introduction

911. The Impugned Provisions and the Displacement Tactics discriminate against Abbotsford's Homeless, perpetuating and exacerbating substantive inequality and thus violating s. 15 equality guarantees. The Impugned Provisions impose a disproportionate and discriminatory burden on homeless persons who have disabilities, who are Aboriginal, and/or who are impacted by a synthesis of these factors, including homelessness itself. The Displacement Tactics have a direct, discriminatory impact on Abbotsford's Homeless because they are targeted while as a discrete minority of homeless people in public spaces, and on the basis of their personal characteristics which have led them to be unhoused.

Section 15 Test

912. The test to establish a breach of s. 15 has been through multiple iterations and formulations, however, it has never strayed far from the foundation laid in *Andrews v. Law Society of British Columbia* and *Law v. Canada (Minister of Employment and*

Immigration). The current two part framework for s. 15 used by courts today is as set out by the Court in *R v. Kapp*:

> (1) Does the law create a distinction based on an enumerated or analogous ground?
>
> (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?

R. v. Kapp, [2008] 2 SCR 483 [*Kapp*] at para. 17, citing *Andrews v. Law Society of British Columbia*, [1989] S.C.J. No. 6 [*Andrews*] and *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 [*Law*]

913. The second step of the test is key to the analysis and must not be eliminated or marginalized by preliminary barriers such as a search for a mirror comparator group. While comparison is a part of the equality analysis, it is comparison in aid of assessing and defending substantive equality - not one which stands in the way of equality guarantees.

Withler at para. 56

The Role of Comparison in the Equality Analysis

Withler - Moving from comparison to equality

914. The central issue to be determined in any s. 15 equality case is whether the impugned laws or state actions violate the norm of substantive equality. Prior focus on a comparator group approach has led, in the past, to a formal "treat likes alike" analysis, which detracts from the focus of s. 15 - substantive equality.

Withler at paras. 2, 55

915. In 2011 Chief Justice McLachlin and Justice Abella, for the Supreme Court, establish that a mirror comparator group can be detrimental to the pursuit of substantive equality and is not to be the focus of a claim under s. 15:

> To resolve this appeal, we must consider comparison and the role of "mirror" comparator groups under s. 15(1), an issue that divided the courts below. In our view, the central issue in this and other s. 15(1) cases is whether the impugned law violates the animating norm of s. 15(1), substantive equality: [*Andrews*]. To determine whether the law violates this norm, the matter must be considered in the full context of the case, including the law's real impacts on the claimants and members of the group to which they belong. The central s. 15(1) concern is substantive, not formal, equality. A formal equality analysis based on mirror comparator groups can be detrimental to the analysis. Care must be taken to avoid converting the inquiry into substantive equality into a formalistic and arbitrary search for the "proper" comparator group. At the end of the day there is only one

question: Does the challenged law violate the norm of substantive equality in s. 15(1) of the *Charter*?

Withler at para. 2

916. The rejection of the comparator group analysis does not mean that comparisons are irrelevant to s. 15. Chief Justice McLachlin and Justice Abella, in *Withler*, affirm the two part test for s. 15 as set out in *Kapp* and note that comparison may be helpful in analysing both branches of this test.

Withler at para. 61

917. With regard to the first branch, whether the law creates a distinction based on an enumerated or analogous ground, Chief Justice McLachlin and Justice Abella make the following remarks:

> It is unnecessary to pinpoint a particular group that precisely corresponds to the claimant group except for the personal characteristic or characteristics alleged to ground the discrimination. Provided that the claimant establishes a distinction based on one or more enumerated or analogous grounds, the claim should proceed to the second step of the analysis. This provides the flexibility required to accommodate claims based on intersecting grounds of discrimination. It also avoids the problem of eliminating claims at the outset because no precisely corresponding group can be posited.

Withler at para. 63

918. Chief Justice McLachlin and Justice Abella also comment on the nature of comparison with regard to the second branch of the test, whether the distinction creates a disadvantage by perpetuating prejudice or stereotyping:

> The analysis at the second step is an inquiry into whether the law works substantive inequality, by perpetuating disadvantage or prejudice, or by stereotyping in a way that does not correspond to actual characteristics or circumstances. At this step, comparison may bolster the contextual understanding of a claimant's place within a legislative scheme and society at large, and thus help to determine whether the impugned law or decision perpetuates disadvantage or stereotyping. The probative value of comparative evidence, viewed in this contextual sense, will depend on the circumstances. ...

Withler at para. 65

919. This analysis requires a full consideration of the actual impact of an impugned law, "taking full account of social, political, economic and historical factors concerning the group.

Withler at para. 39

920. Underlying the Supreme Court's analysis is the bedrock of the principles established in *Andrews*. *Andrews* was the first Supreme Court of Canada case to adjudicate s. 15 of the

Charter, affirming the central purpose of s. 15 – to protect the concept of "substantive equality."

921. Though substantive equality may be aspirational, it is central to the equality guarantee. Justice McIntyre (Dissenting in part) sets out two points in *Andrews* which are central to an understanding of substantive equality, and which are equally applicable today:

> 1) Substantive equality is broader than the concept of formal equality, or, as Justice McIntyre describes it, the "similarly situated approach." This is because substantive equality mandates that individuals or groups, in certain circumstances, must be treated differently in order to achieve equality.
>
> 2) Substantive equality requires that courts use a flexible approach which takes into account the individual circumstances of each discrimination claim, including the context and purpose of the law and its effect on the those to whom it applies or excludes from application – this flexible approach also applies when analysing the grounds that these claims are based on.

Andrews at 163-183

Comparator group analysis – evolution and critique

922. There is no doubt that, on some level, comparison is integral to understanding equality – Justice McIntyre notes in *Andrews* that equality:

> ...is a comparative concept, the condition of which may only be attained by comparison with the condition of others in the social and political setting in which the question arises.

Andrews at 164

923. However, the ways in which courts have utilized comparison has changed over time – during one period, the concept of the "comparator group" was central to an equality analysis under s. 15. .

924. Ten years after *Andrews*, Justice Iacobucci in *Law* reiterated the importance of comparison as intrinsic to equality and introduced comparator groups as a means through which equality claims were to be assessed.

Law at paras. 57 and 88

925. Five years after *L*aw the Court in *Hodge v. Canada*, created the notion of a "mirror" comparator group:

> The appropriate comparator group is the one which mirrors the characteristics of the claimant (or claimant group) relevant to the benefit or advantage sought except that the statutory definition includes a personal characteristic that is offensive to the *Charter* or omits a personal characteristic in a way that is offensive to the *Charter.*

Hodge v. Canada, 2004 SCC 65, [2004] 3 SCR 357 [*Hodge*]

926. Even at that time Justice Binnie, for the Court, recognized the difficulty posed by the comparator group analysis:

> As is evident, a misidentification of the proper comparator group at the outset can doom the outcome of the whole s. 15(1) analysis. In fact, the seemingly straightforward selection of a comparator group has proved to be the Achilles' heel in a variety of recent cases...The correctness of the "comparator group" contended for by a claimant has thus been an important battleground in much of the s. 15(1) jurisprudence and, in my view, this issue is also at the forefront of the present appeal.

Hodge at para. 18

927. *Auton v. British Columbia (AG)*, decided the same year as *Hodge*, exemplifies this difficulty. The claimants provided two possible comparator groups in their arguments, only to have both comparator groups rejected by Chief Justice McLachlin, for the Court. Chief Justice McLachlin emphasized the importance of the mirror comparator group as set out in *Hodge* and substituted a different, much narrower, comparator group for those of the claimants.

Auton v. British Columbia (AG), 2004 SCC 78 [*Auton*]

928. The choice of such a narrow comparator group, and the insistence that the members of the comparator group be like the claimants in all ways, save for the characteristic connected to the ground, has faced considerable criticism for its drive towards formal equality and away from the essential purpose of the equality guarantee:

> ...the comparator group analysis in *Auton* affirms the re-emergence of an approach to equality rights that focuses on those "similarly-situated[.]" This approach had been condemned by the Supreme Court, as well as by equality scholars, as resulting in formal equality (treating likes alike and therefore justifying treating unalikes differently). Further, the Supreme Court had consistently emphasized that its approach to section 15 is concerned with substantive equality. Yet in *Auton*, McLachlin C.J. invokes the language of "mirrors" (repeated and affirmed in *Hodge*) and insists that the comparator must be like the claimants *in all ways*. The contextual analysis, which would consider unfairness in a more nuanced and sophisticated way, is lost, in favour of an analysis that says that the claimants must find a group to whom they could belong *but for* the personal characteristic that separates them. "But for" means formal equality. The comparator group that McLachlin C.J. created for the children in *Auton* is so specific as to be almost comical, further evidence that a formal equality test is employed. One of the most compelling problems of a formal equality model is the specificity it engenders in comparing one small element or characteristic of the claim to the similarly situated group.

Gilbert and Majury at 121

929. Furthermore, the application of the comparator group analysis has proven uniquely challenging where multiple grounds for discrimination intersect. For example, both the claimants and the Ontario Court of Appeal in *Falkiner v. Ontario (Ministry of Community and Social Services)* had difficulty formulating a comparator group analysis in a way that avoided categorizing the discrimination claim so as to segregate one ground from another. Such an analysis, which parses one ground from another, does not allow for a consideration that is reflective of a claimant's lived reality or circumstances.

Falkiner v. Ontario (Ministry of Community and Social Services) [2002] O.J. No. 1771 [*Falkiner*]

930. In *Falkiner*, the claimants were unmarried mothers receiving income assistance benefits, and who began living in relationships with men. They were then classified by the Ontario government as the 'spouses' of the men they were living with, and found to be ineligible for income assistance benefits on this basis. The claimants challenged their ineligibility for benefits, arguing that the Ontario government discriminated against them as single mothers receiving income assistance on the grounds of sex, family status, and their status as income assistance recipients.

931. The claimants proposed, and Justice Laskin agreed, that the three grounds be treated separately within the legal analysis, with separate comparator groups for each. Rather than looking at the claim as a whole by analysing the synthesis of the grounds, Justice Laskin divided the claim by ground and formulated three separate comparator groups for each of these divisions. Daphne Gilbert and Diana Majury note the difficulty that this creates:

> The principal critique of the comparative approach adopted in *Falkiner* is that it is a non-intersectional analysis of an intersectional claim. Justice Laskin's approach requires that the claimants be dissected into specific characteristics, each to be examined separately and in isolation, and then pasted back together for a final conclusion. Described as interlocking, the claimants' characteristics are nonetheless treated as severable and unrelated. The claimants are not treated as whole people and the interactive nature of the sites of oppression is rendered invisible, even negated. Although in *Falkiner*, this dissection does not defeat the claim, there will be cases where the claimant does fall through the cracks on each of the separate analyses. (no paragraph number)

Daphne Gilbert and Diana Majury, "Critical comparisons: The Supreme Court of Canada Dooms Section 15" (2006) 24 Windsor Y.B. Access Just. 111 [Gilbert and Majury] at 121

932. These cases betray the fundamental defect in a comparator group analysis, whether applied to a single "mirror" comparator, or broadened to include multiple comparators as in *Falkiner*. This comparator group test is eliminates most of the substantive element of the equality analysis and forces a court into a formal equality paradigm. To turn back to Justice McIntyre's quote from Kerans J.A. in *Andrews*, through comparator groups, "subtleties are found to justify a finding of dissimilarity which reduces the test to a categorization game."

Andrews at 168

Withler – the Court moves away from comparator groups

933. It is in the context of decisions, such as *Hodge*, *Auton* and *Falkiner* that the Supreme Court has revaluated the nature of comparison in the s. 15 analysis and reaffirmed the supremacy of the pursuit of substantive equatliy. In coming to this point, the Court outlined the myriad difficulties posed by the comparator group analysis and, drawing on the core principles of s. 15, moved away from comparator groups and back to a substantive equality analysis.

934. Chief Justice McLachlin and Justice Abella identified four specific concerns with using a comparator group analysis when assessing possible violations of substantive equality:

(a) The "definition of the comparator group" may determine the outcome without a full analysis of whether discrimination has actually occurred: "as a result, factors going to discrimination – whether the distinction creates a disadvantage or perpetuates prejudice or stereotyping – may be eliminated or marginalized."

Withler at para. 56

(b) The second concern connects with the first: a "focus on a precisely corresponding, or 'like' comparator group, becomes a search for sameness, rather than a search for disadvantage". This obscures the real issue of whether "the law disadvantages the claimant or perpetuates a stigmatized view of the claimant."

Withler at para. 57

(c) Third, as mentioned above in relation to *Falkiner*, comparator group analysis is unhelpful where claimants allege multiple interwoven grounds of discrimination as it fails to account for the nuanced experience of discrimination, which may be discernable only in reference to the conflux of factors.

Withler at para 58

(d) Fourth, finding a comparator group unfairly burdens claimants for two reasons:

> First, finding a mirror group may be impossible, as the essence of an individual's or group's equality claim may be that, in light of their distinct needs and circumstances, no one is like them for the purposes of comparison. As Margot Young warns:
>
> If there is no counterpart in the experience or profile of those closer to the centre, the marginalization and dispossession of our most unequal will be missed. These cases will seem simple individual instances of personal failure, oddity or happenstance.

> ("Blissed Out: Section 15 at Twenty", in Sheila McIntyre and Sanda Rodgers, eds., Diminishing Returns: Inequality and the Canadian Charter of Rights and Freedoms (2006), 45, at p. 63)
>
> Second, it may be difficult to decide what characteristics must be "mirrored". Rational people may differ on what characteristics are relevant, as this case illustrates. The concern with claimants spending time and money in a pre-trial search for the appropriate comparator group is exacerbated by the possibility that trial judges may or may not accept the claimant's choice, and compounded by the fact that appeal courts may adopt a different comparator group later in the proceedings. When the appropriate comparator group is redefined by a court, the claimant may be unable to establish his or her claim because the record was created in anticipation of comparison with a different group.

Withler at para. 59

Relevance of comparisons to s. 15 analysis post-Withler

935. Subsequent to *Withler*, courts have continued to analyse s. 15 without the use of comparator groups – this is shown by the two most recent Supreme Court of Canada cases on s. 15, *Quebec (Attorney General) v. A.*, and *Kahkewistahaw First Nation v. Taypotat*, as well as the British Columbia Supreme Court case, *Inglis*, and the Federal Court case of *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445, affirmed *Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75.

Quebec (Attorney General) v. A, 2013 SCC 5 [*Quebec v. A*]; *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30 [*Kahkewistahaw*]; *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445 [*Canadian Human Rights Commission 1*] aff'd in *Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75 [*Canadian Human Rights Commission 2*]

936. In 2013, the Supreme Court in *Quebec v. A*, divided on whether a breach of s. 15 had been established. Justice Abella, writing for the majority in finding a breach of s. 15, makes no mention of comparator groups in holding that the claimants had established a distinction pursuant to the first part of the test:

> The first step in s. 15(1) is to identify the distinction at issue and determine whether it is based on an enumerated or analogous ground. This is easily demonstrated in this case. The exclusion of *de facto* spouses from the economic protections for formal spousal unions is a distinction based on marital status, an analogous ground.

Quebec v. A at para. 348

937. More recently, in December 2013, the BCSC in *Inglis*, which challenged the cancellation of the mother-baby prison program, followed *Withler* and *Quebec v. A.* in finding "due to

the multiple and intersecting grounds at issue in the present case, a comparator approach is not appropriate and, following *Withler*, no longer required." The claimants argued discrimination on the basis sex, family status, and race. They claimed race, not because all of the mothers who had been involved in the program were Aboriginal, but because a disproportionate number of incarcerated mothers were. Here, because not all of the claimants were like each other, finding a comparator group that is, to, quote Chief Justice McLachlan in *Auton* "like the claimants in all ways save for characteristics relating to the alleged ground of discrimination" may have been impossible. Ultimately, the claimants in *Inglis* were not subjected to a comparator group analysis and succeeded with their claim.

Inglis at para. 558, *Auton* at para. 55

938. Specifically in relation to Aboriginal people, the Federal Court in *Canadian Human Rights Commission 1*, affirmed by the Federal Court of Appeal, observed the difficulties with comparator groups within the context of judicially reviewing a decision of the Canadian Human Rights Tribunal. Aboriginal people, the Federal Court found, are the only people who are identified by race for legal purposes and are thus set apart from other Canadians. Combined with the finding that "First Nations people are amongst the most disadvantaged and marginalized members of our society", the court found that their unique legal position may place them:

> ... in the "no man's land" envisaged by Professor Young, where there may be no counterpart to the experience or profile of those marginalized and dispossessed individuals or groups who are seeking the vindication of their rights through the legal process.

Canadian Human Rights Commission 1 at paras. 332 to 336

939. In affirming *Canadian Human Rights Commission 1*, the Federal Court of Appeal confirmed the reduced role of comparator groups in the equality analysis stating:

- In *Moore v. British Columbia (Education)*, 2012 SCC 61, the Supreme Court reiterated that the existence of a comparator group does not determine or define the presence of discrimination, but rather, at best, is just useful evidence. It added that insistence on a mirror comparator group would return us to formalism, rather than substantive equality, and "risks perpetuating the very disadvantage and exclusion from mainstream society the [*Human Rights*] *Code* is intended to remedy" (at paragraphs 30-31). The focus of the inquiry is not on comparator groups but "whether there is discrimination, period" (at paragraph 60).

- In [*Quebec v. A*] at paragraph 346, the Supreme Court has reaffirmed that "a mirror comparator group analysis may fail to capture substantive equality, may become a search for sameness, may shortcut the second stage of the substantive equality analysis, and may be difficult to apply": *Withler* [...] at paragraph 60. The Supreme Court went so far as to cast doubt on the authority of *Nova Scotia (Attorney General) v. Walsh*, 2002 SCC 83 [...], an earlier caser in which an

unduly influential or determinative role was given to the existence of a comparator group – similar to what the Tribunal did here.

...

Canadian Human Rights Commission 2 at para. 18

940. In summary, a review of equality jurisprudence establishes the following four propositions with respect to s. 15:

(a) Section 15 guarantees substantive equality, not merely formal equality. Substantive equality is the central issue to be determined in any s. 15 case and is the essence of the equality guarantee;

(b) Claimants must demonstrate that the law creates a distinction based on an enumerated or analogous ground, and proof of the adverse impact of the law on a claimant group is sufficient to establish that distinction;

(c) Claimants must also demonstrate that the distinction creates a substantive inequality, by perpetuating disadvantage or prejudice or by stereotyping the claimant; and

(d) A comparator group analysis is not required, however, comparisons of various kinds may be helpful in answering both prongs of the *Withler* test.

Substantive equality and the intersection of multiple grounds of discrimination

941. The key to establishing this claim is to appreciate the intersection of the barriers faced by Abbotsford's Homeless. While these will vary from person to person, there are important intersections between disability, addiction and Aboriginal ancestry that have driven people towards, and for some, perpetuated their state of homelessness. It is the confluence of those factors together with the fact of the person's homeless status that underpins this claim.

942. Substantive equality mandates that courts recognize claims for discrimination which are based on multiple grounds. This does not only mean that courts consider the discrete impacts on an individual or group which may result from each respective ground separately, but also the impact of the interaction or intersection between these grounds.

943. Further, it may be the case that the discriminatory conduct at issue may only be fully appreciated when considering this intersection – the intersection creates the context upon which the discrimination claim is based. Margot Young, law professor, notes this when she observes that "individual identity is multiple, fractured and infinite. This means not simply that the world is diverse (which, of course, it is marvellously), but also that individuals map onto this diversity in varied, shifting and numerous ways.". As such, she goes on to state that:

...the oppression that the most marginalized in society experience is a tangle. To pull on one string, to focus on only one aspect of the disempowerment, is

> impossible. Different features of the overall experience are knotted together and the jumble is uniquely and singularly created by those mutually entwined knots, twists, and threadings.

M. Young, "Social Justice and the Charter: Comparison and Choice" (2013) 50 Osgoode Hall L.J. 669-698 [Young] at paras. 10 and 13

944. Courts have recognized that grounds of discrimination can intersect when interpreting s. 15. Justice Iacobucci notes in *Law v. Canada (Minister of Employment and Immigration)*, that "[t]here is no reason in principle…why a discrimination claim positing an intersection of grounds cannot be understood as analogous to, or as a synthesis of, the grounds listed in s. 15(1)."

Law at para. 94

945. Justice L'Heureux-Dubé, in her reasons for the minority in *Canada (Attorney General) v. Mossop* also states:

> [C]ategories of discrimination may overlap, and […] individuals may suffer historical exclusion on the basis of both race and gender, age and physical handicap, or some other combination. The situation of individuals who confront multiple grounds of disadvantage is particularly complex. Categorizing such discrimination as primarily racially oriented, or primarily gender-oriented, misconceives the reality of discrimination as it is experienced by individuals.

Canada (Attorney General) v. Mossop [1993] 1 SCR 554 at para. 153, cited to Young at para. 23

Intersectionality and analogous grounds of discrimination

946. Courts must recognize the infinite variety of contexts that discrimination claims may be based on in order to avoid a "mechanical" approach to the equality analysis. Full consideration of these contexts also requires courts to interpret the grounds for discrimination flexibly. Justice Wilson, in her majority reasons in *Andrews*, states this when writing about the inclusion of analogous grounds for discrimination:

> I believe also that it is important to note that the range of discrete and insular minorities has changed and will continue to change with changing political and social circumstances…It can be anticipated that the discrete and insular minorities of tomorrow will include groups not recognized as such today. It is consistent with the constitutional status of s. 15 that it be interpreted with sufficient flexibility to ensure the "unremitting protection" of equality rights in the years to come.

Andrews at 152-153

947. Justices McLachlin (as she then was) and Basterache set out the current framework for identifying an analogous ground in *Cobiere v. Canada (Minister of Indian and Northern Affairs)* finding the following factors relevant:

(a) Does the proposed analogous ground serve as the basis for stereotypical decisions made not on the basis of merit but on the basis of a personal characteristic that is:

(i) immutable, like race; or,

(ii) constructively immutable, like religion.

(b) Does the legislation or state action adversely impact:

(i) a discrete and insular minority; or,

(ii) A group that has been historically discriminated against..

Cobiere v. Canada (Minister of Indian and Northern Affairs), [1999] 2 SCR 203 [*Corbiere*] at para. 13

948. More recently, in *Falkiner*, Justice Laskin of the Ontario Court of Appeal followed *Corbiere* finding that receipt of social assistance is an analogous ground for discrimination for the purposes of s. 15, while recognizing the challenge of establishing an analogous ground. In moving through these challenges, it must be consistently kept in mind that the fundamental question to be answered is whether recognition of the analogous ground would further the purpose of the s. 15 protection of human dignity:

> ...I consider that the respondents have been subjected to differential treatment on the analogous ground of receipt of social assistance. Recognizing receipt of social assistance as an analogous ground of discrimination is controversial primarily because of concerns about singling out the economically disadvantaged for Charter protection, about immutability, and about lack of homogeneity.

Falkiner at para. 84

949. The key factors leading to the recognition of social assistance as an analogous ground, which are highly relevant to this case, are:

> First, the main question in deciding whether a ground of discrimination should be recognized as analogous is whether its recognition would further the purpose of s. 15, the protection of human dignity. See [*Corbiere*] The nature of the group and Canadian society's treatment of that group must be considered. Relevant factors arguing for recognition include the group's historical disadvantage, lack of political power and vulnerability to having its interests disregarded. See [*Law*] and [*Andrews*].
>
> ...
>
> Second, although the receipt of social assistance reflects economic disadvantage, which alone does not justify protection under s. 15, economic disadvantage often co-exists with other forms of disadvantage. That is the case here. The economic disadvantage suffered by social assistance recipients is only one feature of and may in part result from their historical disadvantage and vulnerability.

> Third, immutability in the sense of a characteristic that cannot be changed – race is an example – is not a requirement for recognizing an analogous ground. The Supreme Court of Canada has taken a more expansive view of "immutability". A characteristic that is difficult to change, that the government has no legitimate interest in expecting us to change, that can be changed only at great personal cost or that can be changed only after a significant period of time may be recognized as an analogous ground. See [*Corbiere*; *Granovsky*; *Andrews*;]. Receipt of social assistance is a characteristic that is difficult to change, at least for a significant period of time. It fits with the expansive and flexible concept of immutability developed in the cases.
>
> Finally, homogeneity has never been a requirement for recognizing an analogous ground. Thus, though some recipients of social assistance may be more disadvantaged than others, mere disproportionate disadvantage borne by one or more sub-sets of a group does not militate against recognizing membership in that group as an analogous ground. [Emphasis added]

Falkiner at paras. 85-91

Application to the facts

Who are the claimants and what is their claim?

950. Abbotsford's Homeless are being discriminated against in two ways:

(a) Through the Impugned Provisions, which have a disproportionate impact on Abbotsford's Homeless by preventing them from fairly accessing public; and

(b) Through the Displacement Tactics, which directly discriminate against Abbotsford's Homeless by targeting them while they are in public spaces.

951. They are being discriminated against on the basis of the following grounds:

(a) Disability;

(b) Race – the evidence establishes that a disproportionate number of Abbotsford's Homeless are Aboriginal and that their experience of homelessness may be unique as a result of their cultural history; and,

(c) An analogous ground consisting of the intersection of the grounds of disability and race with the state of being homeless.

Does the law create a distinction based on an enumerated or analogous ground?

952. In light of the recent jurisprudence of the Supreme Court of Canada, set out above, no comparator group is necessary in order to establish a distinction in this case. This is especially apparent when considering the specific circumstances of Abbotsford's Homeless, namely, that their discrimination is being alleged as occurring on the basis of multiple, intersecting grounds, that a disproportionate number of Abbotsford's Homeless

are Aboriginal, and that Abbotsford's Homeless are not a homogeneous group – not all of them share the same type of disability, for instance, or the same race.

953. The circumstances of Abbotsford's Homeless represents a situation where, to cite *Withler* again, "finding a mirror group may be impossible as the essence [of the group's] equality claim may be that, in light of their distinct needs and circumstances, no one is like them for the purposes of comparison." Margot Young's warning, as cited in *Withler*, is equally applicable here:

> If there is no counterpart in the experience or profile of those closer to the centre, the marginalization and dispossession of our most unequal will be missed. These cases will seem individual instances of personal failure, oddity or happenstance.
>
> ("Blissed Out: Section 15 at Twenty", in Sheila McIntyre and Sandra Rodgers, eds., *Diminishing Returns: Inequality and the Canadian Charter of Rights and Freedoms* (2006), 45, at p. 63)

Withler at para. 59

954. Drug War Survivors notes that in this case, the distinction is occurring through an adverse impact on Abbotsford's Homeless of ostensibly neutral bylaws (the Impugned Provisions), as well as through direct actions (the Displacement Tactics). As such, Chief Justice McLachlin's and Justice Abella's comments, in *Withler*, on how to identify a distinction under s. 15 are relevant:

> In some cases, identifying the distinction will be relatively straightforward, because a law will, on its face, make a distinction on the basis of an enumerated or analogous ground (direct discrimination). [...] In other cases, establishing the distinction will be more difficult, because what is alleged is indirect discrimination: that although the law purports to treat everyone the same, it has a disproportionately negative impact on a group or individual that can be identified by factors relating to enumerated or analogous grounds. [...] In that kind of case, the claimant will have more work to do at the first step. Historical or sociological disadvantage may assist in demonstrating that the law imposes a burden or denies a benefit to the claimant that is not imposed on or denied to others. The focus will be on the effect of the law and the situation of the claimant group.

Withler at para. 64

955. In addition, the claimant group in this case – Abbotsford's Homeless – is not homogenous. The evidence does not establish that all of them deal with the exactly the same disabilities, and not all of them are Aboriginal – their individual stories show that they experience homelessness in different ways. However, this does not mean that there is no distinction drawn on an enumerated or analogous ground. In Quebec v. A, Justice Abella, citing *Janzen v. Platy Enterprises Ltd.*, clearly stated that heterogeneity within the claimant group does not defeat a claim of discrimination:

> ...discrimination does not require uniform treatment of all members of a particular group. It is sufficient that ascribing to an individual a group characteristic is one factor in the treatment of that individual. If a finding of discrimination required that every individual in the affected group be treated identically, legislative protection against discrimination would be of little or no value.. It is rare that a discriminatory action is so bluntly expressed as to treat all members of the relevant group identically. In nearly every instance of discrimination the discriminatory action is composed of various ingredients with the result that some members of the pertinent group are not adversely affected, at least in a direct sense, by the discriminatory action. To deny a finding of discrimination in the circumstances of this appeal is to deny the existence of discrimination in any situation where discriminatory practices are less than perfectly inclusive. It is to argue, for example, that an employer who will only hire a woman if she has twice the qualifications required of a man is not guilty of sex discrimination if, despite this policy, the employer nevertheless manages to hire some women.

Quebec v. A at para. 354, citing *Janzen v. Platy Enterprises*, [1989] 1 S.C.R. 1252 at 1288-1289

956. What is clear on the evidence is that Abbotsford's Homeless are not treated with the same regard given other citizens. By way of one example, Mr. Clause, while sitting on a park bench with his cat Buddy, was asked to move along so as not to disturb the peaceful park setting. The City employee who moved Mr. Clause admitted, however, that he would never ask "a middle-class woman with a baby crying" to move so as not to disturb the peace. Not only would he not do that, he admitted that he would likely get in trouble if he did.

957. Keeping this in mind, Drug War Survivors will now specifically address each of the grounds of discrimination at issue in this case in order to argue that both the Impugned Provisions and the Displacement Tactics create a distinction on the basis of these grounds.

Disability

958. As Drug War Survivors will summarize, the evidence in this case establishes that most, if not all, of Abbotsford's Homeless have mental and/or physical disabilities. This is especially the case when taking into account the evidence showing that a number of Abbotsford's Homeless suffer from addictions – courts have considered addiction to be a medical condition, or a component of disability, for example in *PHS*.

PHS at para. 27

959. In addition, as will also be discussed in more detail, the evidence in this case establishes that for a number of Abbotsford's Homeless, their disabilities effectively prevent them from accessing any shelter or housing in Abbotsford – the existing shelter and housing options in Abbotsford do not accommodate these disabilities. Considering this, the Impugned Provisions and Displacement Tactics not only create a distinction by impacting a disproportionate number of persons with disabilities, but also by specifically impacting

or targeting a group of people whose disabilities often leave them with no option other than to use public spaces to access the basic necessities of life.

960. Before turning to the evidence on the nature of the disabilities at issue in this case, we first highlight two relevant points made by Justice Binnie, for the Court, in *Granovsky v. Canada (Minister of Employment and Immigration)* on the ground of disability in s. 15. First, Justice Binnie comments on the unique nature of the ground of disability – it is not immutable in the same sense as other grounds, and it is extremely diverse:

> Some of the grounds listed in s. 15 are clearly immutable, such as ethnic origin. A disability may be, but is not necessarily, immutable, in the sense of not being subject to change. As this case shows, disabilities may be acquired in the course of life, and may grow more severe or less severe as time goes on. Disabilities are certainly not 'immutable' in the secondary sense of "[n]ot varying in different cases" (*New Shorter Oxford English Dictionary* (1993), vol. 1, p. 1317). Unlike gender or ethnic origin, which generally stamp each member of the class with a singular characteristic, disabilities vary in type, intensity and duration across the full range of personal physical or mental characteristics[.] ...
>
> The concept of disability must therefore accommodate a multiplicity of impairments both physical and mental, overlaid on a range of functional limitations, real or perceived, interwoven with recognition that in many important aspects of life the so-called "disabled individual may not be impaired or limited in any way at all. An appreciation of the common humanity that people with disabilities share with everyone else, and a belief that the qualities and aspirations we share are more important than our differences, are two of the driving forces of s. 15(1) equality rights.

Granovsky v. Canada (Minister of Employment and Immigration), [2000] 1 SCR 703 [*Granovksy*] at paras. 27 and 29

961. Second, Justice Binnie comments on the role of the state in addressing the difficulties that persons with disabilities may deal with:

> The *Charter* is not a magic wand that can eliminate physical or mental impairments, nor is it expected to create the illusion of doing so. Nor can it alleviate or eliminate the functional limitations truly created by the impairment. What s. 15 of the *Charter* can do, and it is a role of immense importance, is address the way in which the state responds to people with disabilities. Section 15(1) ensures that governments may not, intentionally or through a failure of appropriate accommodation, stigmatize the underlying physical or mental impairment, or attribute functional limitations to the individual that the underlying physical or mental impairment does not entail, or fail to recognize the added burdens which persons with disabilities may encounter in achieving self-fulfilment in a world relentlessly oriented to the able-bodied.
>
> It is therefore useful to keep distinct the component of disability that may be said to be located in an individual, namely the aspects of physical or mental

> impairment, and functional limitation, and on the other hand the other component, namely, the socially constructed handicap that is not located in the individual at all but in the society in which the individual is obliged to go about his or her everyday tasks. [Emphasis added]

Granovsky at paras. 33-34

962. Considering this, Drug War Survivors will now turn to the relevant evidence. Dr. MacEwan interviewed a number of Abbotsford's Homeless in order to assess their physical and mental health, and has opined on the medical conditions of populations of people who are homeless, referring to previous studies he was involved with. He notes the high level of wide ranging disability impacting homeless populations:

> The degree of psychiatric illness and substance abuse within the subjects who are in these studies as well as my clinical population is severe. The difficulties in their day-to-day functioning are extreme. Many of these individuals are not able to maintain basic levels of daily living activities, they are often living in very deteriorated living situations and are often not able to attend to the most basic of their needs including adequate nutrition, healthcare, and safety.

MacEwan Report at 3

963. Dr. MacEwan also states that, based on his own observations of members of Abbotsford's Homeless, all of the individuals he encountered are dealing with physical or mental health conditions:

> The common element of the presentation of these individuals is that every single one of them was experiencing psychiatric difficulties and also was experiencing substance abuse. The range of diagnoses of individuals ranged from a severe anxiety disorder along with major depression and bipolar disorder as well as schizophrenia, traumatic brain injury and Tourette's Syndrome. These individuals had all been in care at one point or another for their psychiatric problems. They were able to describe how the care had been inadequate in that they often had residual symptoms and these symptoms were a factor in their homelessness. All of them were experiencing ongoing psychiatric symptoms ranging from extreme vocal and motor outbursts of a person with Tourette's to significant delusions and hallucinations of a person with psychosis of schizophrenia as well as the extreme mood swings and depression for the individuals with mood disorder. All of the individuals affirmed experiencing substance abuse ranging from opioid and heroin use to methamphetamine and cocaine abuse and severe alcohol addiction.

MacEwan Report at 5

964. Dr. MacEwan also comments on the difficulty with providing adequate supports to accommodate the types of disabilities that Abbotsford's Homeless deal with:

> Based on these observations and documents, I am of the opinion that the homeless people in Abbotsford are experiencing a high degree of psychiatric illness,

> physical problems and substance abuse. In my opinion these conditions are not adequately attended to because our health system does not adequately engage their mental health and health problems due to the extreme behavioural problems that are often present. This prevents proper assessment, diagnosis and treatment of their conditions.
>
> MacEwan Report at 6

965. The experiences of Nana Tootoosis and Norm Caldwell are two examples, among many, which speak to this difficulty – they are both outside, living in public spaces, because they have no other option. Mr. Tootoosis was once housed in Raven's Moon, but needed to leave because he felt the room was "active," and that he was being affected by what he perceived to be rat poison all over the house. Ms. Dillabough, based on her observations of Mr. Tootoosis, believes that he "absolutely has mental health issues."

> Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.); Cross-examination of Jeannette Dillabough, July 24, 2015 (a.m.)

966. Mr. Caldwell has said that he has attempted to find housing in Abbotsford, but has been unsuccessful because landowners' children were scared of him, because he has difficulty making plans due to his pain and drug addiction, and because he has had to turn down housing that entailed living with other tenants with addictions.

> Cross-examination of Norm Caldwell, July 8, 2015 (p.m.)

967. Both Mr. Tootoosis and Mr. Caldwell have also been unable to stay at the Salvation Army Shelter, despite repeated attempts. Mr. Tootoosis reported that he was banned from the Salvation Army repeatedly in the past, and that despite this, he has attempted to access the Shelter numerous times and has been turned away because it was full.

> Direct Examination of Nana Tootoosis, July 8, 2015 (a.m.)

968. Mr. Caldwell stated that he has stayed at the Shelter two or three times but has always left before the end of the night because he does not like "being around a whole pile of people," or because he was not feeling well due to pain and anxiety.

> Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

969. According to Dennis Steel, Nate McCready, and Rod Santiago extensive outreach work is required in order to house individuals with the types of conditions that Abbotsford's Homeless often deal with. Both Mr. Steel and Mr. McCready gave submissions about the need to create relationships with the homeless individuals they are trying to house – it sometimes takes multiple encounters with an individual in order to build that type of relationship.

> Direct Examination of Dennis Steel, June 30, 2015 (a.m.); Direct Examination of Nate McCready, June 30, 2015 (p.m.)

970. Rather than attempting to provide accommodations for the disabilities of Abbotsford's Homeless, the Impugned Provisions and Displacement Tactics do the opposite. They do not account for these disabilities, and, to the contrary, exacerbate them by restricting access of Abbotsford's Homeless to public spaces and moving them along and thus undermining and sense of stability – this is especially true considering that due to the lack of accommodation of their disabilities, Abbotsford's Homeless often have no choice except to remain outside in public spaces. The Impugned Provisions and the Displacement Tactics thus create a distinction on the basis of disabilities. Further, the evidence shows that actions such as the tent cutting and pepper spraying, spreading of chicken manure, and more general efforts to continually evict Abbotsford's Homeless have a detrimental impact on their health, again exacerbating their disabilities. Mr. Tootoosis and Mr. Caldwell gave evidence about the way in which the spreading of chicken manure on their camp impacted their health – for Mr. Tootoosis, this resulted in an infected foot.

Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.); Cross-examination of Norm Caldwell, July 8, 2015 (p.m.)

Race – a disproportionate number of Abbotsford's Homeless are Aboriginal

971. The Impugned Provisions and Displacement Tactics also create a distinction by impacting a disproportionate number of people who are Aboriginal – this is especially apparent when considering the historical context surrounding the circumstances of Aboriginal individuals who are homeless. The court in *Inglis* cites *R. v. Ipeelee*, 2012 SCC 13 to note that "courts must take judicial notice of systemic and background factors affecting Aboriginal people in society [...]:

> ...To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples...

Inglis at para. 578, citing *R. v. Ipeelee*, 2012 SCC 13 at para. 60

972. According to the last Homeless Survey in Abbotsford, 32 individuals self-identified as Aboriginal, out of a total homeless count of 151. According to Dr. Yale Belanger, a disproportionate number of homeless individuals in Canada are Aboriginal:

> Currently it is estimated that 6.97% of urban Aboriginal people in Canada are considered to be homeless on any one night, compared with 0.78% of the mainstream population, which amounts to roughly one in 15 urban Aboriginal people compared to one out of 128 non-Aboriginal Canadians. This means that Urban Aboriginal people are eight times more likely to be or to become homeless than non-Aboriginal urban individuals. The 2011 Fraser Valley Regional District Homeless Census demonstrates similar trends: 28.1% of the homeless community identifies as Aboriginal. This estimate must be considered low for several

> reasons[,] the key reason being that we frequently enumerate only those that would be considered visibly homeless
>
> Summary Report at 75, 84; Belanger Report at 20 to 21

973. Dr. Yale Belanger also provided submissions on the historical and sociological contexts impacting Aboriginal homelessness. He noted that Aboriginal individuals have unique experiences of homelessness for multiple reasons, including intergenerational trauma caused by territorial displacement, racism, residential schools, inadequate housing supports for Aboriginal individuals and government attempts to assimilate Aboriginal peoples through the *Indian Act*. He also states his opinion that considering these factors, the high rates of Aboriginal homelessness are likely to continue in future, and this is partly due to government laws and actions such as the Impugned Provisions and Displacement Tactics:

Analogous ground – the intersection of homelessness with disability and/or race

974. In order to fully appreciate the effects of the Impugned Provisions and Displacement Tactics on Abbotsford's Homeless, one must take into account the intersectionality of the alleged grounds and their homelessness itself. Drug War Survivors submits that the Impugned Provisions and Displacement Tactics create a distinction on the basis of an analogous ground – the intersection of homelessness with disability and/or race based on the *Corbiere* test as set out by Justices McLachlin (as she then was) and Basterache:

> What then are the criteria by which we identify a ground of distinction as analogous? The obvious answer is that we look for grounds of distinction that are analogous or like the grounds enumerated in s. 15 – race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. It seems to us that what these grounds have in common is the fact that they often serve as the basis for stereotypical decisions made not on the basis of merit but on the basis of a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity. This suggests that the thrust of identification of analogous grounds at the second stage of the *Law* analysis is to reveal grounds based on characteristics that we cannot change or that the government has no legitimate interest in expecting us to change to receive equal treatment under the law. To put it another way, s. 15 targets the denial of equal treatment on grounds that are actually immutable, like race, or constructively immutable, like religion. Other factors identified in the cases as associated with the enumerated and analogous grounds, like the fact that the decision adversely impacts on a discrete and insular minority or a group that has been historically discriminated against, may be seen to flow from the central concept of immutable or constructively immutable personal characteristics, which too often have served as illegitimate and demeaning proxies for merit-based decision making.
>
> *Cobiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 [*Corbiere*] at para. 13

975. In this case, the intersection of being homeless, combined with mental and physical disability as well as Aboriginal heritage, is an analogous ground for the reasons described above in *Falkiner*. To turn back to Margot Young's description of individual identity as a "tangle," the identities of Abbotsford's Homeless are best described by the ways in which their homelessness, disabilities, and racial backgrounds interact to create the circumstances in which they live – these different features of their experiences, to quote Margot Young, "are knotted together and the jumble is uniquely and singularly created by those mutually entwined knots, twists, and threadings."

Young at para. 13

976. More specifically, there are contexts related to having disabilities and being Aboriginal which connect with the state of being homeless in a way that renders this type of homelessness constructively immutable, and a part of individual identity. This type of homeless is not homogenous, and does not have to be so – it encompasses a wide range of circumstances and may be as diverse as the ground of disability. However, it is also difficult to change in the same sense that disability is as described by Justice Binnie above in Granovsky: it "may be acquired in the course of life, and may grow more severe or less severe as time goes on."

Granovsky at para. 33

977. Abbotsford's Homeless, on the basis of their state of being homeless, their disabilities, and their racial backgrounds, are clearly some of the most marginalized and vulnerable members of our society. Compounding this, the evidence in this case shows that the disabilities and racial backgrounds of Abbotsford's Homeless can intersect with their homelessness to entrench that homelessness, making it even more difficult for them to become housed. This cycle, where their homelessness is perpetuated without extensive supports, renders their homelessness constructively immutable.

978. Dr. Christie Sutherland describes an example of this in the context of persons with addictions:

> Addiction is a unique illness for the reason that symptoms of the illness undermine its own treatment. Addiction and homelessness are closely connected, and addiction is a risk factor for homelessness (Palepu 2013, Palepu 2010, Shelton, Chamberlain, Cheng, Grinman, Ibabe). Both addiction and homelessness are independent predictors of morbidity and mortality (Palepu 2013, Morrison, Padgett). Drug use is associated with people becoming homeless at a younger age and remaining homeless for a longer period (Grinman). Substance use disorders are also prevalent among homeless individuals, and range from between 29 to 75% (Palepu 2013).
>
> For people who are homeless, substance use "has been associate with lower treatment retention, high rates of posttreatment relapse, premature mortality, and longer periods of homelessness" (Palepu 2013). Substance use makes accessing housing and support services more challenging. A Canadian study showed that there is a large unmet need for clinical care for people with mental illness and

addiction, with less than half of the people in the study accessing treatment for their illness each year (Urbanoski)

Substance use increases the risk of homelessness through various mechanisms. Some risk factors are related to the intrinsic brain changes that occur from addiction and other factors arise from the social aspects of addiction such as economic instability and isolation (Grinman).

It is challenging to engage people with addiction and homelessness in treatment for their illness (Ibabe). As discussed above, the brain changes caused by addiction lead to disorganization, deregulation of the motivation system, and profound dysphoria (Koob 2008). These symptoms make it challenging to engage substance users in treatment.

Lack of housing is one of the barriers to addiction treatment. People who are homeless have a "lack of social supports most people rely on to sustain themselves". This phenomenon is also called disaffiliation, which hinders the involvement of persons with addiction with substance use treatment (Zerger 2012). Lack of social support is also a barrier to accessing treatment for addiction (Zerger 2002). According to Zerger: "stable housing is one of the most important factors contributing to successful abstinence from drug use" (Zerger 2012).

...

The geographic instability of homelessness is another barrier to accessing care for addiction (Zerger 2002). They have difficulty come to a specific site, and outreach teams have a challenge in locating their patients.

Homelessness is a barrier to engaging in addiction treatment, and in turn untreated addiction is a barrier to gaining safe and secure housing. Those with substance use disorders require treatment services that include outreach, cultural competence, and evidenced based care.

Sutherland Report at 9-10

979. The "spiritual homelessness" that Dr. Belanger describes forms another aspect of this compounding cycle of homelessness for Aboriginal individuals:

4.22 The urban Aboriginal homeless experience is unique from non-Aboriginal experiences due in part to diverse issues that will be discussed in more detail below (see this discussion starting section 4.31). Menzies (2005) for one has recommended that both scholars and front-line workers develop an improved understanding of Aboriginal homelessness that does not rely exclusively on the physicality of the term relative to actual shelter. He thusly posits a new definition: "the resultant condition of individuals being displaced from critical community social structures and lacking in stable housing" (ibid., 8).

> 4.23 Menzies was hinting at what Christensen (2013, p. 809) would subsequently appraise as our disinclination to acknowledge "the cultural context of home and its meaning" despite our attention directed at "the central role of place in shaping geographies of home." Indigenous peoples embrace a unique relationship to space that is grounded by centuries (or more) of social, spiritual and economic interface with landscapes described as points of creation (Carlson, 2010).
>
> 4.24 Understanding this fundamental connection permits us to "begin to understand the profound sense of rootlessness that may come about when a relationship to place, both collectively and individually formed, becomes fragmented or fractured" (Christensen, 2013, p. 809). As a form of homelessness it is not confined specifically to living absent physical shelter but rather reflects the combined impact resulting from a series of physical and psychological displacements described in the Keys Young Report (1998) examining homelessness among Australian Aboriginal and Torres Strait Islanders as 'spiritual homelessness'.
>
> 4.25 Memmott and Chambers (2008) have described *spiritual homelessness*, as a state arising from: (a) separation from traditional land, (b) separation from family and kinship networks, or (c) a crisis of personal identity wherein one's understanding or knowledge of how one relates to country, family and Aboriginal identity systems is confused. Research participants in that study conveyed common experiences ranging from poor physical and mental health, experiencing violence and crime, racism and intergenerational homelessness, and facing insecure housing (Memmott & Chambers 2008).
>
> Belanger Report at paras. 4.22 to 4.25

980. To summarize, the characteristics of having disabilities or being Aboriginal connect to specific contexts which compound the state of being homeless and make this type of homelessness even more difficult to alter, to the extent that this type of homelessness forms an analogous ground. The circumstances of Abbotford's Homeless are best described through this analogous ground – their homelessness interacts with the other factors in their lives, namely the contexts related to disability and Aboriginal heritage, to render them even more vulnerable.

Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?

981. Drug War Survivors submits that the differential treatment in this case is discriminatory because it does not have regard to, and in fact exacerbates, the societal disadvantage and prejudice suffered by Abbotsford's Homeless by virtue of their homelessness, their disabilities, their Aboriginal backgrounds in many cases, and the intersection of all of these factors. The Impugned Provisions and Displacement Tactics restrict the access of Abbotsford's Homeless to public spaces and targets them on the basis of their use of public spaces. This prevents them from accessing the necessities of life and adversely impacts their health, well-being and dignity.

982. Further, as described below, the evidence in this case shows that the City ignored the vulnerability of Abbotsford's Homeless, instead undertaking actions such as spreading chicken manure and cutting and pepper spraying tents in order to enforce the Impugned Provisions. These actions not only impose further disadvantage on the already dire situations of members of Abbotsford's Homeless, but also show that the City's actions are connected to prejudice and stereotypes about homeless individuals.

983. In *Withler*, Chief Justice McLachlin and Justice Abella provide guidance on how to assess whether a distinction is discriminatory pursuant to the second branch of the two step test for equality:

> The particular contextual factors relevant to the substantive equality inquiry at the second step will vary with the nature of the case. A rigid template risks consideration of irrelevant matters on the one hand, or overlooking relevant considerations on the other: *Kapp*. Factors such as those developed in *Law* – pre-existing disadvantage, correspondence with actual characteristics, impact on other groups, and the nature of the interest affected – may be helpful. However, they need not be expressly canvassed in every case in order to fully and properly determine whether a particular distinction is discriminatory (see Ermineskin Indian Band; A.C. v. Manitob; Hutterian Brethren). Just as there will be cases where each and every factor need not be canvassed, so too will there be cases where factors not contemplated in *Law* will be pertinent to the analysis. At the end of the day, all factors that are relevant to the analysis should be considered.
>
> *Withler* at para. 66

984. In *Quebec v. A.*, Justice Abella, writing for the majority with regard to the s. 15 analysis, held that while prejudice and stereotyping help the court to identify whether the norm of substantive equality has been breached, they are not discrete elements of the analysis that claimants must prove:

> We must be careful not to treat *Kapp* and *Withler* as establishing an additional requirement on s. 15 claimants to prove that a distinction will perpetuate prejudicial or stereotypical attitudes towards them. Such an approach improperly focuses on whether a discriminatory attitude exists, not a discriminatory impact, contrary to *Andrews*, *Kapp*, and *Withler*[.]
>
> *Quebec v. A.* at para. 327

985. As discussed above in *Withler*, the *Law* factors remain relevant and may be instructive in uncovering discrimination – these factors are:

(a) pre-existing disadvantage of the claimant group;

(b) correspondence, or the relationship between the grounds of discrimination and the claimant's characteristics or circumstances;

(c) whether the impugned law has ameliorative purposes or effects; and

(d) the nature of the interest affected.

Law at paras. 62-75

986. These factors assist with the contextual inquiry of whether or not there is discrimination, even though they may not be exhaustive or be fully relevant in every case, many of them are illustrative of the discrimination in this case.

Pre-existing disadvantage

987. According to *Law*, courts have consistently recognized that pre-existing disadvantage is possibly the most compelling factor favouring a conclusion that differential treatment is truly discriminatory. Pre-existing disadvantage is relevant because:

> ...to the extent that the claimant is already subject to unfair circumstances or treatment in society by virtue of personal characteristics or circumstances, persons like him or her have often not been given equal concern, respect, and consideration. It is logical to conclude that, in most cases, further differential treatment will contribute to the perpetuation or promotion of their unfair social characterization, and will have a more severe impact upon them, since they are already vulnerable.

Law at para. 63

988. The claimants in this case – Abbotsford's Homeless – have clearly suffered historical disadvantage. In fact, they are amongst society's most vulnerable and marginalized individuals. They are exactly the type of people that the equality guarantee most aims to protect: marginalized persons who have been disregarded and misunderstood in Canadian society. The equality guarantee serves to prevent governments from purposely or unintentionally placing obstacles in their way and denying them equal protection and benefit in Canadian society.

Adams at para. 100

989. Homelessness is a characteristic that is connected with significant historical stigma. As Professor Sylvestre notes:

> The regulation of homeless people and disorderly behaviour in public spaces shows remarkable historical continuity. State and local governments have long turned to different legal norms, such as criminal laws, provincial statutes and by-laws governing the use of public spaces, and have relied on policing strategies, to control how public spaces, such as parks, public places and streets, are used by vagrants, peddlers and travellers in Western countries. Moreover, while the discriminatory impact on homeless people of current bylaws governing public spaces dates back to policy and legislative changes that began to occur in the early 1990s, patterns of discrimination towards homeless people have a much longer history.

Sylvestre Report at 8.

990. Professor Blomley also comments in his expert report both on the stigma faced by persons who are homeless, and on the ways that government regulations and actions akin to the Impugned Provisions and Displacement Tactics can exacerbate this stigma:

> As is noted above, a disproportionate number of Abbotsford's Homeless have disabilities and/or are Aboriginal. Drug War Survivors has already provided some detail above on the historical contexts relating to disability and Aboriginal heritage, and as noted above, courts have also recognized these contexts, for instance by taking judicial notice of the specific circumstances faced by Aboriginal persons.
>
> While lawmakers place much emphasis on how visible homelessness makes the public feel and society look, often overlooked are the deep senses of stigma, of being cast aside by society, of exclusion and marginality felt by the homeless. This is not including the side effects of violent and abusive encounters with the police who are out to enforce the regulations, which serve to further alienate homeless people from society and create negative attitudes towards the justice system.

Blomley Report at 24

991. The evidence from and about individual members of Abbotsford's Homeless provide specific examples of the pre-existing disadvantage that these individuals face. For instance, Norm Caldwell, who is an Aboriginal man from the Tetlit Gwichi'in First Nation, stated that his parents raised him only in his earliest childhood, that his father died when he was very young, that his mother, a residential school survivor, regularly used drugs and that he himself began using these drugs, including heroin, at the age of five. Mr. Caldwell spent considerable time in foster care, separated from his sibling.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

992. Mr. Caldwell also gave information about his current health, stating that there is no doctor in Abbotsford who he can see for his pain, despite needing treatment for it. He also described getting "dope sick" every day, stating that these symptoms include having no patience, muscle contractions, and 'restless leg syndrome.' Mr. Caldwell then stated that he would prefer to "be fitting into society like [he] used to."

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

993. Nana Tootoosis is a Cree man from Saskatchewan, who lives outside near Mr. Caldwell. He stated that he has diabetes and osteoporosis. He also stated that he has hit his head and lost consciousness approximately four to six times, and on one occasion, this was self-inflicted.

Direct Examination of Nana Tootoosis, July 8, 2015 (a.m.)

994. The testimony of Mr. Tootoosis and that of a service provider who has known him for years indicated that he has severe mental health issues.

Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.); Cross-examination of Jeannette Dillabough, July 24, 2015 (p.m.)

995. Nick Zurowski is an Aboriginal man from the Nlaka'pamux First Nation. He stated that he has spent time with numerous individuals struggling with mental health and addictions, taking care of them and ensuring they have access to help when they need it.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

996. Mr. Zurowski drinks alcohol and smokes marijuana. He takes medication (Nexoprine) for his knees and back. He has been denied housing in the past due to his criminal record.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

997. The City spread chicken manure on the camp where Mr. Caldwell, Mr. Tootoosis, and Mr. Zurowski were staying. There is no indication in the evidence that the City considered their health or mental health or asked these men, at the time they spread the chicken manure, if they had any other place to go, or if they needed any assistance.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.); Direct and Cross-examination of Norm Caldwell, July 8, 2015; Direct and Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.); Direct Examination of Dennis Steel, June 30, 2015 (a.m.); Direct Examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.)

998. Relevant to these stories of pre-existing disadvantage are the pathways to homelessness, as described by Dr. Belanger, which are encountered by Aboriginal homeless individuals:

> 5.4 Pathways to homelessness are complex individual societal and systemic forces. Canada's colonial history must be factored in, specifically what I describe in this report as colonial policies aimed at legislatively eliminating (or, in the case of residential schools, culturally eradicating) Aboriginal peoples. Colonial and later federal officials targeted housing for alteration. Early and in retrospect difficient reserve housing policies led to profound reserve housing shortages. This in turn compelled many individuals to abandon the reserves and to move to the cities wit hthe hopes of securing better housing. Aboriginal urban emigres found municipal populations hostile to their presence (despite advocating for the Aboriginal need to urbanize) and a lack of federal programming available to aid in their transition.
>
> 5.5 Increasing Aboriginal urbanization resulted in growing urban Aboriginal homelessness rates. Individual pathways to homelessness traceable to bureaucratic neglect have been identified that include: 1) the *Indian Act*, 2) jurisdictional and coordination issues, 3) residential schools, 4) child welfare, 5) social marginalization and isolation, along with systemic discrimination and

stigmatization within their own reserve communities, and 6) individual 'ruptures' or impacts/ traumas.

5.6 Based on my reading of the existing literature and the research I have conducted during the last decade it is apparent that urban Aboriginal homelessness is propelled by the impacts of territorial displacement, high risk factors such as systemic barriers to employment and education, discrimination/racism, and pathologies such as substance abuse.

5.7 Anticipating future urban Aboriginal homeless trends is further based on my reading of what has become accepted academic, political and front-line reasoning. That is, urban Aboriginal housing risk and homelessness will maintain current levels and are primed to increase due to:

1) ongoing urban Aboriginal poverty
2) rates of low personal income
3) a visible lack of work opportunities
4) the decline in public assistance
5) the structure and administration of government support
6) the lack of affordable housing
7) addiction disorders
8) domestic violence
9) mental illness
10) wider policy developments such as the closure of psychiatric facilities.

5.8 All of these issues in one way or another negatively influence Abbotsford's urban Aboriginal population. An additional factor has been identified that demands future research to help determine precisely how best to respond: intergenerational trauma resulting from but not exclusive to residential schools, in addition to substandard colonial/federal policies that encourage reserve residents to emigrate to cities abounding with landlords reluctant to rent to Aboriginal people.

Belanger Report at paras. 5.4 to 5.8

999. There is no reliable evidence that the City has taken these circumstances into account when enforcing the Impugned Provisions, even when they may have been aware that the people they were impacting were dealing with conditions such as mental illness. Rather, their actions served to exacerbate the situations of individuals who are already severely marginalized.

Direct and Cross-examination of James Arden, July 21, 2015 (p.m.)

1000. Professor Sylvestre provides insight in her expert report on how these actions connect to stigma surrounding homelessness:

The City of Abbotsford bylaw officer, Dwane Fitzgerald, consistently refers to homeless people as "these" people (e.g. June 2, 2011) and as them being

> "undesirable" (eg.g. November 30, 2011; May 19, 2011). In one email dated June 2, 2011, he suggests that he wants "to make it difficult for them", hoping that the area be "less desirable". These discourses as well as the fact that chicken manure was spread around the [Happy] tree near the Salvation Army Building in June 2013 as confirmed in an email dated June 3 2013 and the comment from the [City] that they were glad they "had it for free and could avoid cutting a healthy tree", shows the kind of stigmatization faced by homeless people.
>
> Sylvestre Report at 36

Correspondence

1001. The Impugned Provisions and the Displacement Tactics do not correspond with the needs and circumstances of Abbotsford's Homeless – rather, as repeatedly detailed above, the Impugned Provisions and Displacement Tactics fail to take into account these needs, and exacerbate the hardships that Abbotsford's Homeless face. As stated above with regard to the spreading of chicken manure, there is no evidence that the City asked members of Abbotsford's Homeless if they had anywhere to go before they were displaced.

1002. The lack of correspondence with the circumstances of Abbotsford's Homeless is apparent when considering the arguments that the City has put forward in order to justify the Impugned Provisions and the Displacement Tactics, namely, that Abbotsford's Homeless may pose safety or disruption issues preventing other members of Abbotsford communities from accessing public spaces, and that Abbotsford's Homeless are homeless by choice and must be deterred from remaining outside. Both of these arguments are addressed by Professor Sylvestre in her expert report as not reflecting the reality of the circumstances impacting Abbotsford's Homeless.

> Sylvestre Report at 33-36

1003. Professor Sylvestre notes that any safety concerns the City may have is connected to a specific belief, namely:

> Law enforcement and repression is justified because the disorder and antisocial behaviour attributed to homeless people is potentially harmful at two levels: it is likely to lead to more serious crimes, and it causes its own harm since it is perceived as a threat to citizens' quality of life, security and peace ("the harm justification")...
>
> Sylvestre Report at 33

1004. She goes on to review evidence in this case indicating that this belief is false or exaggerated:

> ...For instance, in the minutes of the 2004 public hearing, several people raise concerns about increase[s] in various crimes, including theft, break-ins, robberies, in the community when opposing an amendment to establish an emergency shelter, but they did not present any specific evidence that such criminal activity

> is or was attributed to homeless people. Actual complaints about specific events that occurred in the neighbourhood instead refer to the mere presence of homeless people in public spaces as opposed to any specific threatening act or behaviour, or crime. Most residents seem to have experienced "feelings of insecurity" related to the presence of camps, tents, recycled items, garbage or homeless indviduals as opposed to being the actual victims of crime[.] ... The comments collected in the context of public hearings in 2004 and 2014 reveal similar concerns: nuisance, fire hazard, drug use, theft, camping, loitering. However, I have not found a single complaint to the city referring to violent behaviour by homeless people. As such, these seem to be largely based on perceptions and representations of insecurity, disorder, threat or danger rather than actual threat or danger. This is not to say that disorder per se is harmless and does not present a certain level of individual and social nuisance (e.g. littering, noise, drug use, fire hazard, needles, etc.), which needs to be addressed. However, this points to the fact that the harmful aspects of disorder may often have been exaggerated.
>
> Sylvester Report at 33-34

1005. With regard to a belief that Abbotsford's Homeless are homeless by choice, Professor Sylvestre makes the following statements:

> Finally, the documents reveal that the city law enforcement and several residents believe that homeless people have chosen the streets as a life style and should be held responsible for their choices. Some residents for instance refer to the fact that the Salvation Army offers various services, but that people "do not want help to rehabilitate". Others speak about their drug addiction as a "habit" they are not ready to support. Several email exchanges from bylaw enforcement officers also refer to the need to deter them from camping or loitering in the problematic areas.
>
> Understanding homelessness as a choice is a simplistic explanation – one that does not take into consideration how human actions and conditions are socially constructed as well as embedded in social structures, constraints, and interactions. Creating a dichotomy between choice and constraint is misleading, as it does not correspond to lived experience. Ethnographic studies are replete with stories showing the complexity of homeless people's choices: some relate having been thrown out of their families due to alcohol or drug problems, others report having voluntarily given up on entering the formal economy due to either a lack of cultural capital or skills, or simply because of racism, and others amdit to having decided to quit a job or a community to preserve their integrity or to resist physical, sexual, or institutional violence.
>
> Sylvestre Report at 36

1006. Justice Abella, in *Quebec v. A*, cites multiple cases to emphasize that whether or not claimants make choices has no relevance to whether they are facing discrimination:

> ... this Court has repeatedly rejected arguments that choice protects a distinction from a finding of discrimination. In *Brooks v. Canada Safeway Ltd.*, 1989 CanLII

96 (SCC), [1989] 1 S.C.R. 1219, the employer argued that a different amount of compensation for women who took time off from work while pregnant was not discriminatory because "pregnancy is a voluntary state and, like other forms of voluntary leave, it should not be compensated" (p. 1236). Dickson C.J. refused to accept that pregnancy was a choice, noting that an emphasis on choice would be "against one of the purposes of anti-discrimination legislation . . . the removal of unfair disadvantages which have been imposed on individuals or groups in society" (p. 1238). In other words, not only was pregnancy not a "true choice", but choice was irrelevant to the question of discrimination.

In *Lavoie v. Canada*, 2002 SCC 23 (CanLII), [2002] 1 S.C.R. 769, the Court was faced with a question of discrimination on the grounds of citizenship. The claimants challenged a provision of the Public Service Employment Act, R.S.C. 1985, c. P-33, that gave the Public Service Commission the discretion to prefer Canadian citizens in open competitions for employment. Bastarache J., for the majority, expressly rejected the argument, relied on by Arbour J. in her separate reasons, that the claimants could have chosen to obtain Canadian citizenship. In their own reasons, which agreed with Bastarache J. on this point, McLachlin C.J. and L'Heureux-Dubé J. were even clearer in rejecting choice as justifying discriminatory treatment:

> . . . the fact that a person could avoid discrimination by modifying his or her behaviour does not negate the discriminatory effect. If it were otherwise, an employer who denied women employment in his factory on the ground that he did not wish to establish female changing facilities could contend that the real cause of the discriminatory effect is the woman's "choice" not to use men's changing facilities. The very act of forcing some people to make such a choice violates human dignity, and is therefore inherently discriminatory. The law of discrimination thus far has not required applicants to demonstrate that they could not have avoided the discriminatory effect in order to establish a denial of equality under s. 15(1). [para. 5]

Quebec v. A at paras. 336-337

1007. In this case, the evidence indicates that Abbotsford's Homeless, when considering the contexts behind their homelessness, are not making a choice to remain outside. There are multiple examples in the evidence of repeated, unsuccessful attempts to find housing or access emergency shelter. The evidence also shows that rather than attempting to understand their circumstances – that Abbotsford's Homeless are vulnerable and facing extreme difficulty – the City based its Displacement Tactics on a false stereotype that homeless individuals are outside by choice, and that further adverse treatment will alter their choices so that they move out of public spaces. This ignores the reality – that many of Abbotsford's Homeless have nowhere else to go other than to stay in public space.

Ameliorative effects

1008. Drug War Survivors submits that this third factor has no relevance in these proceedings. The Impugned Provisions and Displacement Tactics are not ameliorative.

The nature of the interest affected

1009. This final *Law* factor is largely addressed in submissions above, including with respect to s. 7 of the *Charter*. The nature of the interest affected in this case is severe and fundamental – the basic ability of Abbotsford's Homeless to access the necessities of life is in issue. As Professor Sylvestre notes

> Sheltered homeless people rely on public spaces, from the moment the shelter requires them to leave in the morning, to the first line-up in front of the community health clinic, food bank, or soup kitchen, to the employment centre or a community organization to get social support, and then back to the final line-up in front of the shelter in the evening. Public spaces are even more important in the case of unsheltered homeless people. Their lack of or limited access to emergency shelters as well as their general lack of private spaces means that they rely on public spaces for basically everything…
>
> Sylvestre Report 20

1010. For Abbotsford's Homeless, the Impugned Provisions and Displacement Tactics impact their ability to exist at a basic level – they must use public spaces to access basic needs, but the Impugned Provisions and Displacement Tactics prevent this access.

Alternative Comparator Groups

1011. In the alternative, that this Court finds that comparator groups are necessary in order to establish a distinction pursuant to the two-part equality test, Drug War Survivors posits two possibilities: homeless persons without disabilities, and residents of Abbotsford who are securely housed.

Homeless persons without disabilities

1012. As the evidence shows that the majority, if not all, of Abbotsford's Homeless have disabilities, homeless persons without disabilities are a mirror comparator group as described in *Hodge*. They are similar to Abbotsford's Homeless in all ways except for the ground of disability.

1013. Drug War Survivors has noted the cycle of homelessness above which causes the condition of homelessness to be exacerbated by disability and vice versa. This cycle imposes additional barriers on Abbotsford's Homeless to becoming housed, such that their homelessness becomes entrenched.

1014. Homeless persons without disabilities would not face these same barriers, as they would not have the same types of medical conditions, including addictions. They may be able to access housing that requires sobriety, for instance. They may also not face the same types

of stigma from landlords in finding housing to rent. They, unlike members of Abbotsford's Homeless, may be able to develop a plan to become housed and retain that housing.

1015. As such, they are not impacted by the Impugned Provisions and Displacement Tactics in the same way that Abbotsford's Homeless are – they may not be as reliant on public spaces.

Residents of Abbotsford who are housed

1016. To reiterate, Drug War Survivors is arguing that the intersection of homelessness, disability, and race forms an analogous ground for discrimination in this case. Homelessness is an intrinsic part of this ground, and as such, residents of Abbotsford who are housed forms a mirror comparator group in relation to this ground. Residents of Abbotsford who are housed are similar to Abbotsford's Homeless except for the analogous ground. Another option for this type of comparator group is residents of Abbotsford with disabilities who are housed – again, these individuals are similar to Abbotsford's Homeless except with regard to an essential component of the analogous ground.

1017. In this case, because these individuals are housed, they are clearly not reliant on public spaces and are not impacted by the Impugned Provisions and Displacement Tactics in the same way that Abbotsford's Homeless are. Unlike Abbotsford's Homeless, these individuals have another place to go.

Conclusion

1018. For all of the reasons as cited above, the Impugned Provisions and Displacement Tactics violate the s. 15 rights of Abbotsford's Homeless by discriminating against them on the basis of disability, race, and the intersection of these grounds with homelessness.

1019. While equality jurisprudence has moved away from considering human dignity as a central component of s. 15 analysis, Justice Iacobucci's statement regarding human dignity is relevant here:

> Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits. It is enhanced by laws which are sensitive to the needs, capacities, and merits of different individuals, taking into account the context underlying their differences. Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society. Human dignity within the meaning of the equality guarantee does not relate to the status or position of an individual in society per se, but rather concerns the manner in which a person legitimately feels when confronted with a particular

law. Does the law treat him or her unfairly, taking into account all of the circumstances regarding the individuals affected and excluded by the law?

Law at para. 884

1020. The Impugned Provisions and the City's actions in this case through the Displacement Tactics directly impact the human dignity of Abbotsford's Homeless. The evidence clearly indicates that the actions of the City have not been sensitive to the context of the ways in which Abbotsford's Homeless have relied on public spaces to survive. On the contrary, these actions repeatedly devalue and ignore these contexts through false assumptions that Abbotsford's Homeless are choosing to remain outside, and that by enforcing the Impugned Provisions, Abbotsford's Homeless will find places other than public spaces to move to when they have been unable to do so in the past. Ultimately, the evidence is that many members of Abbotsford's Homeless would like to find secure housing. However, the City, through the Impugned Provisions and Displacement Tactics, has imposed an additional barrier on Abbotsford's Homeless which prevents them from doing so.

No justification under s. 1

1021. Drug War Survivors' earlier submissions with regard to s. 7 and s. 1 of the *Charter* are equally applicable here, with regard to s. 15 and s. 1. There is no pressing and substantive objective to the Impugned Provisions and Displacement Tactics, no rational connection, no minimal impairment, and the Impugned Provisions and Displacement Tactics have a grossly disproportionate effect on the lives of Abbotsford's Homeless.

1022. This is especially apparent when considering the lack of correspondence between the Impugned Provisions and the Displacement Tactics with the circumstances and characteristics of Abbotsford's Homeless. As repeatedly stated above, the City's actions indicate that it has not taken into account the actual circumstances in which Abbotsford's Homeless are living.

Section 2

Introduction to the fundamental freedoms

1023. Since the *Charter of Rights and Freedoms* came into force in 1982, both the freedom of association (outside the labour context), and particularly the freedom of peaceful assembly, have been among the least invoked of all the enumerated freedoms, but this belies their fundamental importance in the daily lives of Canadians. The freedom of peaceful assembly protects all citizens' access to and use of all public spaces, including for purposes and activities which are in tension with, offensive, annoying, or challenging to dominant or majority norms; the freedom of association further protects our choice to gather together formally or informally, in solidarity, community, and in pursuit of other common goals. The Supreme Court of Canada has affirmed that the broad protection of these freedoms is particularly important to the most vulnerable, disempowered, and disenfranchised groups in our society, a category within which Abbotsford's Homeless unfortunately fall.

The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 [the "*Charter*"].

1024. Constitutional freedoms function somewhat differently than constitutional rights. Taken together, the fundamental freedoms enshrined in s. 2 of the *Charter* function to create and protect spaces within which one can pursue one's own ends free from governmental interference, individually and in community with others. They are spaces of personal choice, autonomy, and possibility. Unlike the other rights in the *Charter*, they are primarily concerned with citizens' choices, rather than those of the government. That these freedoms have been specifically designated as "fundamental" within the text of the *Charter* is not simply a matter of happenstance or rhetorical flourish: they provide the foundation from which the other enumerated rights derive their purpose and meaning. At the core of the recognition and affirmation of universal freedom lies a notion of the universal equality and worth of all human lives: we value autonomy because it is a cornerstone of human dignity. From the hand we have been dealt, the journey towards self-fulfillment would not be possible without the freedom to make our own life decisions. We learn and grow from both the good and the bad. This understanding of human nature is what makes the reality and ideals of democratic governance possible.

1025. The fundamental freedoms recognize and protect the most necessary and universal of human values: the autonomy, dignity, and capacity of every human being to control the path of her own life within our broader societal structure. The personal choices the fundamental freedoms protect range from the most mundane and basic requirements for human survival to the loftiest pursuit of ultimate meaning and purpose. These freedoms—as suggested by the use of the word "freedom" rather than "right"—are *a priori*: they do not depend on the legal or political system for recognition or approval, but rather are the spaces around which such systems are built. Once a freely chosen activity (or range of activities) is judicially recognized as falling within the protection of s. 2, it then becomes a "right" (with a corresponding "duty" on the state to, at minimum, recognize and not interfere with its free exercise) which can only be limited by law, regulation, or state action that is reasonable, proportional, and demonstrably justifiable.

1026. Any state regulation of these spaces of autonomy, choice, and possibility is presumptively a limitation of fundamental freedom, and to be legitimate must therefore be justified with reference to advancement of the purpose of the freedoms, their fundamental nature, and the broader social and public good. Expansive protection of the spaces of freedom is fundamental to the existence and flourishing of any free and democratic society.

1027. As such, one major purpose for the protection of the fundamental freedoms is to guarantee access to and use of public spaces—to the physical, geographic, expressive, discursive, and communicative spaces—which are the visible manifestation of the existence of a free and democratic society. The *freedom of peaceful assembly* is a direct protection and guarantee of access to and use of the most visible and accessible of all public spaces: the shared physical geography and infrastructure. These are the public parks, squares, sidewalks, roadways, bridges, and buildings around which public life in our towns and cities is built. The *freedom of association* protects the choice to join with others, in spaces both public and private, recognizing the empowerment that comes from

joining together in community and in pursuit of common goals. In combination, the freedoms of association and peaceful assembly protect the visible manifestation of democracy: free and open access to and use of public space for everyone.

1028. These protections extend equally to everyone in Canada, regardless of personal circumstance, and are particularly important for those without access to private space in which they can also pursue their own ends. Indeed, for those who do not otherwise have access to private spaces—like Abbotsford's Homeless—these protections literally guarantee a lawful existence:

> Everything that is done has to be done somewhere. No one is free to perform an action unless there is somewhere he is free to perform it. Since we are embodied beings, we always have a location. Moreover, though everyone has to be somewhere, a person cannot always choose any location he likes. Some locations are physically inaccessible. And, physical inaccessibility aside, there are some places one is simply not allowed to be.

Jeremy Waldron, "Homelessness and the Issue of Freedom" (1991) 39 UCLA Law Rev 295 [Homelessness and the Issue of Freedom] at 296

1029. Freedom and space are inextricably linked by the reality of our embodied lives. The fundamental freedoms, including the freedoms of peaceful assembly and association, recognize and affirm that no human being will be denied the space—including the literal physical space—necessary for the pursuit of both basic and higher-level human needs and activities within our society. Abbotsford's regulation of its public spaces, as manifested in the Impugned Provisions and Displacement Tactics, denies these freedoms to Abbotsford's Homeless: the people whose lives literally depend on them. Jeremy Waldron incisively summarizes the consequence of this type of regulation as "one of the most callous and tyrannical exercises of power in modern times":

> What is emerging—and it is not just a matter of fantasy—is a state of affairs in which a million or more citizens have no place to perform elementary human activities like urinating, washing, sleeping, cooking, eating, and standing around. Legislators voted for by people who own private places in which they can do all these things are increasingly deciding to make public places available only for activities other than these primal human tasks. The streets and subways, they say, are for commuting from home to office. They are not for sleeping; sleeping is something one does at home. The parks are for recreations like walking and informal ball-games, things for which one's own yard is a little too confined. Parks are not for cooking or urinating; again, these are things one does at home. Since the public and the private are complementary, the activities performed in public are to be the complement of those appropriately performed in private. This complementarity works fine for those who have the benefit of both sorts of places. However, it is disastrous for those who must live their whole lives on common land. If I am right about this, it is one of the most callous and tyrannical exercises of power in modern times by a (comparatively) rich and complacent majority against a minority of their less fortunate fellow human beings.

Homelessness and the Issue of Freedom at 301-2

1030. We are a society's whose fundamental constitutional values include the recognition of the equal worth, freedom, dignity, and autonomy of all. We can do better.

The fundamental freedoms

1031. The fundamental freedoms are found together in s. 2 of the *Charter*:

> 2. Everyone has the following fundamental freedoms:
>
> (a) freedom of conscience and religion;
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
> (c) freedom of peaceful assembly; and
> (d) freedom of association.

1032. It is clear from the Canadian text that, unlike under the American Constitution,[2] the freedom of association s. 2(d) is an enumerated freedom separate and apart from the freedom of peaceful assembly in s. 2(c),[3] and that neither are simply derivative of the other freedoms.[4] One might be forgiven for thinking that the content of the freedoms set out in s. 2 of the *Charter*, and the freedoms of association and assembly more particularly, have little in common, given the atomistic approach the courts have generally taken in the past towards s. 2. The courts tend to focus on one freedom at a time, while sometimes acknowledging that the freedoms can and do intersect. In many cases, there exist no neat divisions between the various enumerated freedoms, and though one may be obviously central to the core of a claim of limitation or infringement, the other freedoms can be—and indeed often are—engaged as well: as such, "[f]undamental freedoms tend to travel together, so that violations or abrogations of them have usually engaged several at the same time."

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[2] As is noted in *Reference Re Public Service Employee Relations Act (Alta)*, [1987] 1 SCR 313 at 345, "freedom of association is not explicitly protected in the United States Constitution, as it is in the *Charter*. Instead, it has been implied by the judiciary as a necessary derivative of the First Amendment's protection of freedom of speech, "the right of the people to peaceably assemble," and freedom to petition. See, e.g., *Healy v. James*, 408 U.S. 169 (1972); *Baird v. State Bar of Arizona*, 401 U.S. 1 (1971); *NAACP v. Button*, 371 U.S. 415 (1963); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

[3] Regard for legislative history supports this interpretation. In the Proposed Constitutional Resolution of October 1980, the "freedom of peaceful assembly and of association" were joined together under what was then s. 2(c). The present wording and separate numbering were substituted in an amendment made by the Special Joint Committee on January 22, 1981.

[4] See *Mounted Police* at paras 48-49: "Freedom of association, like the other s. 2 freedoms — freedom of expression, conscience and religion, and peaceful assembly — protects rights fundamental to Canada's liberal democratic society. Freedom of association is not derivative of these other rights. It stands as an independent right with independent content, essential to the development and maintenance of the vibrant civil society upon which our democracy rests."

Mounted Police Association of Ontario v Canada (Attorney General), 2015 SCC 1 [*Mounted Police*] at paras 48-49

Irwin Cotler, "Freedom of Assembly, Association, Conscience and Religion" in The Canadian Charter of Rights and Freedoms: Commentary, ed Walter S Tarnopolsky & Gérald-A Beaudoin (Toronto: Carswell, 1982) at 133 (noting the "organic" nature of fundamental freedoms)

1033. Some activities clearly engage multiple freedoms. In Canadian jurisprudence, the freedom of expression in s. 2(b) has been given a particularly broad scope, with the word "expression" covering any non-violent activity that "attempts to convey meaning".[5] For example, protest activity, whether by anti-abortion activists,[6] unions,[7] G8 and G20 protesters, or others, can potentially engage all four enumerated freedoms, though courts usually focus on the "expressive" elements in determining the scope of the protection. As noted above, this may well be because those "expressive" elements have been given a broad definition and thus the broadest protection in the jurisprudence: if a law limiting protest activity can survive a claim of infringement under s. 2(b), it is unlikely to fail under one of the other subsections.

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[5] For this reason, almost all s 2(b) claims are found to be *prima facie* violations, with the outcome turning on justification (or not) under s 1. See Patrick J Monahan & Byron Shaw, *Essentials of Canadian Law: Constitutional Law*, 4th ed (Toronto: Irwin Law, 2013) at 453: "[a]s a result of the expansive definition of 'expression' and the inclusion of 'individual self-fulfilment' as a purpose worthy of *Charter* protection, almost all claims under s 2(b) will be made out at the first stage of the analysis, and it will fall to the government to justify the limitation under section 1."

[6] See, for example, *Spratt* (upholding the constitutionality of legislation creating safe "access zones" around abortion clinics, noting that while it infringed the anti-abortion protesters' s. 2(b) freedom of expression (as conceded by the Crown), those infringements were justified under s. 1); and *Lewis* (a case by which the trial judge in *Spratt* felt bound), in which Madam Justice Saunders had found the same provisions were a limitation under s. 2(b) but were ultimately justified under s. 1. In considering arguments by the anti-abortion protestors that the "access zones" infringed not only their freedom of expression, but also their freedom of peaceful assembly and of association, Saunders J noted that the legislation's "essential character" was to "to enjoin protesters, individually and in groups, from expressing disapproval on abortion issues within the access zone" and thus that the freedoms of peaceful assembly and association were either already contained within the protection of freedom of expression, or were "secondary" to it (at paras 72-77). See also *Ontario (Attorney General) v Dieleman* (1994), 20 OR (3d) 229, 117 DLR (4th) 449 (ON SC) [*Dieleman*], upholding an interlocutory injunction enjoining picketing and other expressive activity outside hospitals, clinics offering abortion services, and outside doctors' homes and offices, as limiting both the protestors' freedoms of assembly and expression, but justified under s 1 in the case of clinics, offices and residences (though not hospitals).

[7] The Court in *BCFT* found that the definition of "strike" in s 1 of *Labour Relations Code*, RSBC 1996, c 244, to the extent that it captures strikes by unions aimed at protesting government rather than to employer action, infringes the freedom of expression under s 2(b), but is justified under s 1. The Court found there was no infringement of the freedom of assembly under s 2(c) because "any s. 2(c) issue of infringement is subsumed under the issues related to the right of free expression under s. 2(b)" (at para 39), and no infringement of the freedom of association under s 2(d) because "[t]he associative dimension of the BCTF protest, as distinct from its s. 2(b) expressive dimension is directed at an interference with free collective bargaining" the claims of which were more properly addressed elsewhere (at paras 40-43).

R v Spratt, 2008 BCCA 340 [*Spratt*]; *R v Lewis*, 139 DLR (4th) 480, [1997] 1 WWR 496 (BC SC) [*Lewi*"]; *British Columbia Teachers' Federation v British Columbia Public School Employers' Assn*, 2009 BCCA 39 [*BCFT (CA)*]

1034. But laws can limit human activities in different ways, and can be problematic for reasons unrelated or secondary to the individual "expression of meaning". For example, a law which allows an individual to protest freely on any matter he or she sees fit, but prohibits protest activity to the extent that it is engaged in by two or more people, is not concerned with the expression or communication of meaning *per se*. The "protest message", in content or in form, does not change simply because more than one person is expressing it. The limitation is therefore not directed at the expression of the message, but rather at the effects of association both between the individuals and between their ideas, with a view to undermining the collective 'strength in numbers' which is the hallmark of the freedom of association. Similarly, a law which allows individuals or groups to protest freely on the internet and in virtual space, but which prohibits any kind of protest activity taking place in a physical public location is primarily and most directly concerned with the regulation of physical public spaces, and not with expressive content. As such, that form of regulation infringes first and foremost the freedom of peaceful assembly, although it may have a secondary effect of limiting the freedoms of expression and association as well. Thus, it is important to have a clear understanding of what is problematic about the particular means and/or effect(s) of the regulation adopted by the government:

> The dividing line ... relates to what precisely is at issue: section 2(b) freedom of expression concerns the actual or attempted conveyance of meaning, section 2(c) freedom of assembly concerns the physical dimensions of assembling for protest or other constitutionally pertinent reasons and section 2(d) freedom of association concerns the non-physical organizational dimensions of the association of individuals.

Guy Régimbald & Dwight Newman, *The Law of the Canadian Constitution* (Markham: Lexis Nexis, 2013) [Régimbald & Newman] at 605

1035. In the past, there has been some confusion as to the appropriate way in which the freedoms enumerated in s. 2 of the *Charter* ought to be construed by the courts, leading them to be interpreted somewhat restrictively. The Supreme Court of Canada has recently affirmed that courts must interpret the fundamental freedoms, like all *Charter* rights, purposively, generously, and contextually, by:

> having regard to 'the larger objects of the *Charter* ..., to the language chosen to articulate the ... freedom, to the historical origins of the concepts enshrined, and where applicable, to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the *Charter'*.

Mounted Police at para 30 (commenting on an earlier "restrictive approach to freedom of association") and para 47

1036. The Court went on to note that this interpretive approach "is consistent with the approach to other basic rights connected with human activities and needs." For example, the scope

of the freedom of religion "is derived from its history and the range of activities to which it applies -- holding, proclaiming and transmitting beliefs in the bosom of a secular state", while the scope of the freedom of expression "is defined by the different forms it takes and the different interests it protects -- including, notably, 'the quest for truth, self-fulfillment, and an embracing marketplace of ideas'". This led the Court to conclude that "[a]n activity-based contextual approach is equally essential for freedom of association .... [which], like the other s. 2 freedoms -- freedom of expression, conscience and religion, and peaceful assembly -- protects rights fundamental to Canada's liberal democratic society."

Mounted Police at para 48

1037. Clearly, the larger objects of the *Charter*, the language of the provision, and a historical understanding of the concepts enshrined are relevant to the appropriate understanding and scope of an enumerated right or freedom. That regard must also be had to the "meaning and purpose of the other specific rights and freedoms with which [the provision] is associated within the text of the *Charter*" is especially pertinent in the context of s. 2. All of the fundamental freedoms are clearly associated within the text of the *Charter* by virtue of their inclusion in a single section. As such, in interpreting a specific freedom, regard must be had to both (1) its relationship with the other enumerated freedoms, including its distinctive nature—what sets it apart from the other freedoms—and (2) how the courts' articulation of the meaning and purpose of the other freedoms might inform the proper meaning, purpose, and scope of the freedom in question. This would seem to be particularly important with regards to those fundamental constitutional freedoms—like the freedom of association and of peaceful assembly—which remain comparatively underdeveloped in the jurisprudence.

Mounted Police at para 47

Section 2(c) - Freedom of peaceful assembly

1038. The freedom of peaceful assembly in s. 2(c) of the Charter, like the other enumerated freedoms in s. 2, is explicitly recognized as a "fundamental" liberty, a designation which indicates it is both a central concern of free and democratic societies, and that it ought to be construed as widely as possible:

> [T]he basic problem is one of compromise between public order and convenience on the one hand and individual liberty on the other. Throughout the analysis of this problem, however, there is assumed as a general proposition that a broad right of peaceable assembly is a vital element in the maintenance of the democratic process.

M.G. Abernathy, *The Right of Assembly and Association*, 2d ed (U of South Carolina Press, 1981) at 4

1039. Notwithstanding its importance in a free and democratic society, there is almost no case law on the nature or scope of the freedom of peaceful assembly in Canada. This trial therefore presents an opportunity for the court to affirm its fundamental importance, to articulate the proper interpretive approach to s. 2(c), and to begin to flesh out the

constitutional protection of our free access to and use of the shared physical public spaces which fall under municipal jurisdiction.

1040. The "public spaces" protected by the freedom of peaceful assembly are a certain kind of property: collective common property. Collective property is fundamentally distinct from private property:

> If a place is governed by a collective property rule, then there is no private person in the position of owner. Instead, the use of collective property is determined by people, usually officials, acting in the name of the whole community.
>
> Common property may be regarded as a sub-class of collective property. A place is common property if part of the point of putting it under collective control is to allow anyone in the society to make use of it without having to secure the permission of anybody else. Not all collective property is like this: places like military firing ranges, nationalized factories, and government offices are off-limits to members of the general public unless they have special permission or a legitimate purpose for being there. They are held as collective property for purposes other than making them available for public use. However, examples of common property spring fairly readily to mind: they include streets, sidewalks, subways, city parks, national parks, and wilderness areas. These places are held in the name of the whole society in order to make them fairly accessible to everyone. As we shall see, they are by no means unregulated as to the nature or time of their use. Still, they are relatively open at most times to a fairly indeterminate range of uses by anyone. In the broadest terms, they are places where anyone may be.

Homelessness and the Issue of Freedom at 297-98

1041. The freedom of peaceful assembly protects access to and use of public places for particular purposes, generally understood in relation to activities, like demonstration and protest, which by definition implicitly cannot be conducted in private places. The issue of homelessness intersects with the freedom of peaceful assembly, and the structuring of the physical landscape into private and public property, as a matter of definition:

> A person who is homeless is, obviously enough, a person who has no home. One way of describing the plight of a homeless individual might be to say that there is no place governed by a private property rule where he is allowed to be.
>
> ....
>
> For the most part the homeless are excluded from all of the places governed by private property rules, whereas the rest of us are, in the same sense, excluded from all but one (or maybe all but a few) of those places. That is another way of saying that each of us has at least one place to be in a country composed of private places, whereas the homeless person has none.

Homelessness and the Issue of Freedom at 299-300

1042. In our system of property rules, the homeless, without any private property rights, are only "allowed to be" in public places:

> The homeless are allowed to be—provided they are on the streets, in the parks, or under the bridges. Some of them are allowed to crowd together into publicly provided "shelters" after dark (though these are dangerous places and there are not nearly enough shelters for all of them). But in the daytime and, for many of them, all through the night, wandering in public places is their only option. When all else is privately owned, the sidewalks are their salvation.

Homelessness and the Issue of Freedom at 300-301

1043. Because, for homeless people, none of their activities can be conducted "in private", the freedom of peaceful assembly must be understood to protect a wider range of their activities on and uses of shared public space than might be the case in a society in which homelessness does not exist.

A purposive, generous and contextual approach

1044. In parallel to the approach to s. 2(d) mandated by the Supreme Court of Canada in Mounted Police with regards to the freedom of association, an alleged infringement of the freedom of peaceful assembly would also appear to require a purposive, generous, and contextual approach. As the Court noted, "[t]his interpretative approach to freedom of association is consistent with the approach to other basic rights connected with human activities and needs." More specifically, this kind of approach to the interpretation of s. 2(c) requires that the purposes underlying the freedom be articulated, at both a broad level of abstraction, and more specifically in light of the concrete purpose of the freedom as understood with reference to its history and context:

> The purposes underlying Charter rights and freedoms may be framed at varying levels of abstraction. At the broadest level, a purposive interpretation must be consistent with the 'larger objects of the Charter', including 'basic beliefs about human worth and dignity' and the maintenance of 'a free and democratic political system' ... At the same time, however, while Charter rights and freedoms should be given a broad and liberal interpretation, a purposive analysis also requires courts to consider the most concrete purpose or set of purposes that underlies the right or freedom in question, based on its history and full context.

Mounted Police at paras 48, 50

The content of section 2(c) protection

1045. Historically, the freedom of peaceful assembly has been at the heart of some of the most important social movements in North American history: "antebellum abolitionism, women's suffrage in the nineteenth and twentieth centuries, the labor movement in the Progressive Era and after the New Deal, and the Civil Rights movement. Claims of assembly stood against the ideological tyranny that exploded during the first Red Scare in the years surrounding the First World War and the second Red Scare of 1950s'

McCarthyism." Since the enactment of the Charter in 1982, however, it seems as though the freedom of peaceful assembly has all but disappeared from our democratic fabric.

John D Inazu, "The Forgotten Freedom of Assembly" (2010) 84 Tulane Law Rev 566 [The Forgotten Freedom of Assembly] at 566

1046. As noted above, there is almost no case law on the nature or scope of the constitutional freedom of peaceful assembly in Canada. This is particularly because the type of 'activity' with which it is so readily associated—the physical gathering together of people in protest, to gain power and attention through the expression of a common view to a wider audience—has found broad protection under the freedom of expression in s. 2(b). It is telling that one of the most widely quoted descriptions of the freedom of assembly arose more than twenty years ago, in the dissenting reasons of a judge of the Federal Court of Appeal, with regards to a denial of Canadian citizenship as a result of a refusal to swear an oath to the Queen:

> There is scant case law on the guarantee of freedom of peaceful assembly. However, what little there is would appear to indicate that freedom of peaceful assembly is geared towards protecting the physical gathering together of people. Nothing in the oath or affirmation prevents the appellant from assembling with others. In my opinion, paragraph 2(c) of the Charter was not intended to protect the objects of an assembly that is organized to foster freedom of thought, belief, opinion or expression, or freedom of association, for that would be protected independently. The portion of the appellant's declaration relating to the freedom of peaceful assembly should, therefore, be struck out.

Roach v Canada (Minister of State for Multiculturalism and Citizenship), [1994] FCJ No 33, [1994] 2 FC 406 (CA), per Linden JA at para 69 [emphasis added]

1047. This "description" raises more questions than it clears up. Physical spaces are clearly important. What more might be protected by the freedom of assembly other than the mere "physical gathering" of people is unclear, since all related "assembly activities" would under this definition also seem to foster freedom of expression and/or association:

> One might, with good reason, contend that the right of assembly has been subsumed into the rights of speech and association and that these two rights provide adequate protection for the people gathered. On this account, contemporary free speech doctrine protects the "most pristine and classic form" of assembly—the occasional gathering of temporary duration that often takes the form of a protest, parade, or demonstration. Meanwhile, the judicially recognized right of association shelters forms of assembly that extend across time and place-groups like clubs, churches, and social organizations. .... Nevertheless ... something is lost when assembly is dichotomously construed as either a moment of expression (when it is viewed as speech) or an expressionless group (when it is viewed as association).

"The Forgotten Freedom of Assembly" at 566-67 [citations omitted]

1048. Any rights which are integral to the exercise of a freedom of peaceful assembly in political protest—a right of access to and use of public spaces in the first place, for example—are generally taken for granted by the courts in the s. 2(b) analysis, implicitly if at all. As one academic writes, "think about the everyday freedom to walk down the street in a democratic society. This is such a commonplace freedom that the vast majority of us, political scientists included, do not stop to think about it."

John R Parkinson, Democracy and Public Space: The Physical Sites of Democratic Performance (Oxford: Oxford UP, 2012) [Democracy and Public Space] at 3

1049. Perhaps this is, at least in part, because these basic rights of access and use of public space are so fundamental to our understanding of a free and democratic society—we may think it uncontroversial that "democracy requires physical space for its performance"—that the existence of this freedom is trite law that need not be recited. Or, alternatively, it may be that in Abbotsford, as "in a great many cities that freedom is rather more limited than appearances suggest and ... democratic values require." This is particularly true when such freedoms are considered from the perspective of a homeless person rather than from the privileged perspective of, for example, a business person, politician, doctor, or lawyer who also enjoys extensive private property rights.

Democracy and Public Space at 4, 3

1050. The physical and geographic "public spaces" most regularly accessed by the citizens of Canada—the streets, parks, and other spaces where we live our daily lives—exist at the local level, and are therefore largely regulated by municipal governments across Canada. The democratic use of these public spaces is not limited to political expression and protest, although that kind of use is certainly central and extremely important.

1051. Clearly, people access, gather in, and use physical public spaces for reasons other than just to communicate with or express themselves to others, through protest or otherwise: "[o]ne of the things that make life in cities more or less pleasant is the presence of public facilities: space to sit and space to run; libraries; trains, buses and trams; and park benches, drinking fountains, and clean public toilets."

"The City as Representative Space" in Democracy and Public Space at 173

1052. The historical rise of the creation of public parks in towns and cities is indicative of the varied democratic purposes that public spaces can provide for citizens, from increased visibility to escape from the public eye:

> From eighteenth-century London when the public parks movement began, parks were places where people from a surprisingly broad spectrum of society could walk and if not exactly encounter each other in conversation, at least be seen and acknowledged as fellow citizens. This was part of their purpose. These days parks in Western cities are less likely to be used for such encounter purposes, although that depends on the nature of the park and the aims of the person using it. While they can be, and often are, places for celebrations, performances and public claim-making, more often they are treated as places to escape, places to watch people

but not to be obtruded upon, places where the norm of public disattendability takes primacy over engagement and visibility.

Democracy and Public Space at 181 [emphasis added]

1053. As such, it is clear that the desired use of parks by dominant segments of society may be in tension, or even conflict with the desired use of those spaces by 'others'. This is particularly true when there exist groups in society who have limited or no private spaces in which to conduct necessary and intimate activities:

> They can also be places where 'others' go to escape supervision and control, either for private encounters, or just to rest, or to represent and express themselves when no other avenues exist. To the degree that such spaces are used by 'others' – gay men cruising, homeless people sheltering, domestic workers picnicking, the politically radical mobilizing and expressing – to that degree do they become shunned by mainstream society."

Democracy and Public Space at 181 [citations omitted]

1054. However, the freedom of peaceful assembly does not protect only mainstream society, and a historical and purposive understanding of the freedom in fact reveals that its central concern is in fact the protection of the vulnerable, disempowered, and disenfranchised. To the extent that a constitutional balancing of conflicting interests or uses is necessary, priority must be given to those non-violent activities which by definition have no other venue: either because by definition they require public visibility and confrontation (political protest, mobilization, and expression) or because the people engaging in those activities cannot engage in them elsewhere, because they lack access to most or all private spaces where they could otherwise take place (the necessary and life-sustaining activities of the homeless being the absolutely clearest example).

1055. If the freedom of peaceful assembly were completely derivative of and dependent on the freedom of expression and association, then all individual and collective activities taking place in public spaces which are not intended to convey meaning to others (particularly political meaning or protest)—for example, the use of public roadways and sidewalks for transportation, a jog around the lake for exercise, a picnic in the park with family, the observation of a city council meeting—would apparently enjoy no constitutional protection, and could be restricted or prohibited at the whim of any particular government. This is surely as wrong in law as it is incompatible with our notions of the purpose of free and democratic government.

1056. Just as the freedom of peaceful assembly cannot be derivative of the freedom of expression, neither is it derivative of the freedom of association, although clearly the two often overlap in many ways. In ordinary usage, the word "assembly" itself seems to imply a large gathering of people who are associated in some way. This may be what the the Supreme Court of Canada meant when it said in obiter (in the context of affirming that the s. 2 guarantees extend to groups as well as individuals) that "[t]he right of peaceful assembly is, by definition, a group activity incapable of individual performance." Of course, the Court in that case was dealing directly with the freedom of

association, not the freedom of peaceful assembly, and so was focused on affirming collective manifestations of rights. As the Court goes on to state, "[r]ecognizing group or collective rights complements rather than undercuts individual rights, as the examples just cited demonstrate. It is not a question of either individual rights or collective rights. Both are essential for full Charter protection." But even if one accepts that in its core meaning, the freedom of peaceful assembly protects protest activity in public spaces, and that protect activity is generally conducted in groups, it would clearly be absurd if the lone protester had no right of access and use of public space under s. 2(c), while two, or five, or more protesters would.

Mounted Police at paras 64, 65

1057. All of this is simply to say that the freedom of peaceful assembly in s. 2(c) clearly has, and must have, content independent of both the freedom of expression in s. 2(b) and the freedom of association in s. 2(d):

> The dividing line ... relates to what precisely is at issue: section 2(b) freedom of expression concerns the actual or attempted conveyance of meaning, section 2(c) freedom of assembly concerns the physical dimensions of assembling for protest or other constitutionally pertinent reasons and section 2(d) freedom of association concerns the non-physical organizational dimensions of the association of individuals.

Régimbald & Newman at 605

1058. Section s. 2(c), like s. 2(d), "stands as an independent right with independent content, essential to the development and maintenance of the vibrant civil society upon which our democracy rests."

Mounted Police at para 49

1059. What constitutes a "public space" for the purposes of the s. 2(c) freedom of peaceful assembly? In Montréal (City) v. 2952-1366 Québec Inc, the Supreme Court of Canada addressed potential limits on the protection of constitutional freedoms in public spaces, albeit in relation to the freedom of expression under s. 2(b) rather than the freedom of peaceful assembly in s. 2(c). At issue was a bylaw which provided that "the following noises, where they can be heard from the outside, are specifically prohibited: (1) noise produced by sound equipment, whether it is inside a building or installed or used outside". A business operating a club featuring female dancers in downtown Montréal set up, in the entrance to its establishment, a loudspeaker that amplified the music and commentary accompanying the show under way inside so that passers-by would hear them. The Court held that the bylaw was an infringement of the s. 2(b) freedom of expression (although ultimately upheld the bylaw under s. 1, with Binnie J dissenting on that point).

Montréal (City) v 2952-1366 Québec Inc, [2005] 3 SCR 141, 2005 SCC 62 [*Montréal v Québec Inc*]

1060. Of particular interest here, the Court clarified the test for the application of s. 2(b) to public property: the basic question is whether the exercise of the freedom in the particular public place conflicts with the purposes and values that freedom is intended to serve. Regard should be had for the historical or actual function of the place, as well as other relevant aspects: if the historical function is as a place of public discourse (like the streets), "it is unlikely that protecting expression [there] undermines the values underlying the freedom." Considering the actual function of the place, regard must be had for the activities which take place there, and the extent to which the general public has a right of access ("[i]s the space in fact essentially private, despite being government-owned, or is it public?"): "[i]s the function of the space — the activity going on there — compatible with open public expression? Or is the activity one that requires privacy and limited access?" Ultimately, however, the basic question "will always be whether [exercise of the freedom] in the place at issue would undermine the values the guarantee is designed to promote".

Montréal v Québec Inc at paras 75, 76, 77

1061. However, the right to be heard in a public place is distinct from the right to simply be. It is submitted that s. 2(c) deals more specifically with the question of whether there is, and ought to be, a right of access to and use of the public space in the first place. This question cannot be answered solely by reference to the historical and actual access to and use of that specific place, which, though relevant, may have served to undermine rather than to promote the values, activities, and purposes s. 2(c) is intended to protect, given that one purpose of the freedom of peaceful assembly is to protect direct and visible confrontation with public officials, even if (or especially when) it creates some disruption and discomfort. Physical location is thus more central to the protections in s. 2(c) than those in s. 2(b), and any limitations on a right of access to or use of government-owned property under s. 2(c) should not be considered limitations of the freedom itself, but rather must be justified (if at all) under s. 1.

1062. In summary, s. 2(c), viewed purposively and in light of its history and full context, protects the freedom to be in, access, use, and enjoy all public spaces for any and all non-violent activities and purposes. This includes, but is not limited to: (a) a general right to public visibility and engagement with the public sphere—to be seen and be acknowledged as fellow citizens, (b) a right to protest, demonstration, and other confrontational activities, including those which are offensive or contrary to majoritarian norms, and (c) a right to engage in those necessary or legitimate activities which have no other venue for their performance, or which cannot reasonably be limited to performance in private spaces.

Application of section 2(c) to the facts in this case

1063. In this case, taken together, the Impugned Provisions and Displacement Tactics violate Abbotsford's Homeless' s. 2(c) rights by attempting to decrease their public visibility, and by restricting or prohibiting their right to engage in necessary and legitimate non-violent activities in public spaces which they cannot perform elsewhere, having little to no property rights of their own. The homeless, too, are our fellow citizens, and deserve to be seen and acknowledged as such. Their presence in Abbotsford's public spaces, with

their belongings throughout the day, and in and under shelters overnight, is not a matter of inconvenience, but one of necessity. Any law which functionally prohibits any citizen, much less the most disadvantaged and disempowered of all citizens, from accessing and using public and common property, is an abuse of the democratic power citizens entrust to their governments. Public spaces in Canada are held for the benefit of all, not just for the benefit of those who wield the most political power.

The Impugned Provisions violate section 2(c)

1064. Abbotsford's various Impugned Provisions, separately and taken together, were clearly passed without regard for a generous protection of fundamental freedoms, and particularly without regard to the freedom of peaceful assembly under s. 2(c) of the *Charter*.

1065. Perhaps the most egregious example is found in s. 10 of the *Parks Bylaw*. . Section 10 is a direct and clear infringement of s. 2(c), in both purpose and effect—and certainly contrary to a broad and generous approach to the fundamental freedom of peaceful assembly—as it restrains any and all gatherings of people, of any kind and for whatever purpose, in all public spaces in Abbotsford:

> 10. PARADES/ASSEMBLIES
>
> No person shall in any park:
>
> (a) take part in any procession, march, drill, performance, ceremony, concern, gathering, or meeting;
>
> (b) make a public address or demonstration, or do any other thing likely to cause a public gather or attract public attention; or
>
> (c) operate any amplifying system or loud speaker
>
> without the prior written permission of the Council. In determining whether to grant its permission, Council may consider the matters set out in Section 30.

1066. This restriction could hardly be more infringing of the freedom of peaceful assembly of all of Abbotsford's citizens than if it had been explicitly drafted to abrogate that freedom. Not only does it have the purpose and effect of restraining any and all "protest" activities in any public space in Abbotsford—which are the central concern of the broad protection offered by s. 2(c)—but it goes much further than that, restraining, at its extremes, all manner of completely innocuous activity: the gathering of a group of friends for a picnic (taking part in a gathering in a park); the singing of a beautiful and enthralling song (doing something likely to attract public attention in a park); a children's game of follow-the-leader (taking part in a procession in a park); and listening to a classical song on an iPod without headphones (operating an amplifying system in a park). It borders on absurd to argue that people are not free to engage in these activities in Abbotsford's parks: nonetheless, that is the consequence of applying the plain and ordinary meaning of the provision.

1067. Section 10 is, of course, not an absolute prohibition: any and all of these activities can theoretically be engaged in "lawfully" after applying for and receiving prior written permission from the Council (or other designated official). While there may be certain situations in which it would be reasonable and justifiable to compel the citizens of Abbotsford to give notice prior to exercising their constitutional rights protected by the freedom of peaceful assembly, it is not reasonable or justifiable to require that they apply for and receive written permission to do so. The exercise of the freedom of peaceful assembly does not, and cannot, depend on governmental approval or permission. By its very definition, it protects direct confrontation and condemnation of majoritarian norms: "[t]he mere fact that politicians dislike it so much says that it matters; the people should be able to confront their leaders and make them uncomfortable; politicians should be forced to deal with the physical manifestation of the distress that people feel over their actions."

Democracy and Public Space at 161

1068. This is also true of discomfort with the visible manifestation of the sometimes dire life circumstances of their citizens. Abbotsford may prefer not to see, but Abbotsford's Homeless have a right to be seen. If Abbotsford prefers not to be confronted with the visible manifestation of homelessness in the City, then it ought to make sure everyone has a home to return to. What it *cannot* do is pass bylaws which in purpose or effect attempt to empower, in relation to Abbotsford's public spaces, the City's prioritization of the interests and wishes of some of its citizens over the rights and freedoms of others. The City may not wish to use its powers to ameliorate the circumstances of its most vulnerable citizens—they are unlikely to have enough political democratic power to lobby or hold the City accountable within the democratic process—but at minimum Abbotsford cannot use those powers to infringe their most basic freedoms and rights.

1069. For the average property owner, a restriction on the erection of shelter in public spaces, or on camping overnight in public parks, will have little to no effect on their own desired activities in those spaces. These are freedoms that mean little to them, and so a restriction or even outright prohibition of those freedoms might appear unproblematic and even acceptable (they may, for example, really appreciate the lack of noise and unobstructed views that come with parks devoid of people—whether sheltering, or sleeping, or otherwise). After all, who would want to take shelter or sleep in a park when there are buildings so much better suited for those purposes? For the average homeless person, the reasons *why* you might "want" to do those things are painfully, obviously clear. The restriction or absolute prohibition is extremely problematic, not because they would not *also* prefer to take shelter and sleep in buildings which are much better suited for those purposes, but because of the rules of private property they are not *allowed* to. And, as human beings, we must take shelter and sleep somewhere. The shift in perspective is everything.

1070. For example, s. 14 of the *Parks Bylaw* prohibits the erection of any shelter in a park, however temporary, without prior permission. Section 17 of the *Parks Bylaw* purports to regulate overnight camping in Abbotsford's public parks, but actually prohibits anyone from being (or more to the point, sleeping) in any park at night for any reason without prior permission. No explicit consideration is given as to *why* someone might be in a

park and need to take shelter (and when that might indeed be a legitimate reason to allow it), or *why* someone might want or need to be in a park overnight (for example, to sleep). Nor is there any consideration of circumstances in which it might be onerous, difficult, or impossible to seek prior permission to do those things. If there was, then the provisions would have internal limits, and would only prohibit harmful activities and uses, and would recognize that applying for and receiving prior permission is not always necessary or indeed possible. But since the Impugned Provisions took only the interests of the average property owner into account before they were drafted and passed—and not the interests, freedoms, and rights of all of Abbotsford's citizens—they reflect that limited perspective.

The Problem of Prior Restraint

1071. Beyond being potentially unnecessary, onerous, difficult, or impossible in fact, a requirement to seek prior permission is, in itself, an extreme limitation on a fundamental freedom. All of the Impugned Provisions which require that Abbotsford's citizens receive prior written permission before accessing, using, being in, or engaging in activities in Abbotsford's public spaces act as a "prior restraint" on the exercise of their fundamental freedoms, and particularly their s. 2(c) and 2(d) rights. In American, English, and Canadian courts, "prior restraints" are, constitutionally-speaking, extremely problematic limits on fundamental freedoms. A "prior restraint" is as a kind of pre-emptive censorship, restriction, or prohibition on the exercise of a freedom whose purpose is to prevent problematic or illegitimate activities from taking place in the first place, as compared to laws that punish or provide some other remedy against actual harms that have been determined to have occurred in fact.

1072. As Justice Rand eloquently stated,

> Strictly speaking, civil rights arise from positive law; but freedom of speech, religion and the inviolability of the person, are original freedoms which are at once the necessary attributes and modes of self-expression of human beings and the primary conditions of their community life within a legal order. It is in the circumscription of these liberties by the creation of civil rights in persons who may be injured by their exercise, and by the sanctions of public law, that the positive law operates. What we realize is the residue inside that periphery. Their significant relation to our law lies in this, that under its principles to which there are only minor exceptions, there is no prior or antecedent restraint placed upon them: the penalties, civil or criminal, attach to results which their exercise may bring about, and apply as consequential incidents.
>
> Cited in *Dieleman* at para 110

1073. Examples of *modes* of prior "restraint" include physical force, censorship, judicial injunctions, and administrative licensing schemes.

Thomas R Litwack, "The Doctrine of Prior Restraint" (1977) 12:3 Harvard CR-CL Law Rev 519 [Litwick on Prior Restraint] at 523

1074. The doctrine of "prior restraint" has a long history in the United States, where it is generally found to be an unreasonable limit on the freedom of expression protected by the First Amendment. Canadian courts have also referred to its importance in understanding the fundamental freedoms in s. 2 (and particularly the freedom of expression). There is no universal rule against prior restraints, but Canadian courts "have demanded that prior restraint only be used where necessary to vindicate the societal interests at stake." As the Supreme Court of Canada has noted, "[t]here are very good reasons for the traditional reticence of English, American, and Canadian courts to impose prior restraints", including that "[t]he long history of prior restraint reveals over and over again that the personal and institutional forces inherent in the system nearly always end in a stupid, unnecessary, and extreme suppression."

Little Sisters Book and Art Emporium v Canada (Minister of Justice), [2000] 2 SCR 1120, 2000 SCC 69 [Little Sisters] at para 235, 236 per Iacobucci J (dissenting in part); Thomas Emerson, "The Doctrine of Prior Restraint" (1955), 20 L & Contemp Probs 648 [Emerson on Prior Restraint] at 659, cited in *Little Sisters* at para 236

1075. Any prior restraint of a fundamental freedom—be it of expression, of the media, of peaceful assembly, or of association—is constitutionally problematic, and constitutes a *prima facie* infringement of that freedom which must be justified, if at all, under s. 1 of the *Charter*. For example, in his Commentaries on the Laws of England (4th ed. 1770), Book IV, at 151-52, Blackstone equates prior restraints with the death of free speech:

> The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. ... Thus the will of individuals is still left free; the abuse only of that free will is the object of legal punishment.

1076. As cited in *Little Sisters* at para 234 per Iacobucci J (dissenting in part) [italics in original; underlining added in Little Sisters]

> There is no absolute prohibition on the use of prior restraints in Canada, but the law requires that they be used sparingly, and only when absolutely necessary. As Iacobucci J summarizes the stance of Canadian courts on the matter, "[i]n short, a prior restraint was permitted only when it was necessary, and when it was as narrowly tailored as possible."
>
> *Little Sisters* at para 235 per Iacobucci J (dissenting in part)

1077. Prior restraints of fundamental freedoms are, by their very nature, the kind of limitations that are prima facie infringements, and must be justified under s. 1 of the *Charter*, if at all. The Impugned Provisions therefore, by reason of their systematic prior restraint of the freedoms of all of Abbotsford's citizens generally, and their disproportionate restraint of Abbotsford's Homeless' freedoms in particular, violate both s. 2(c) and s. 2(d).

The Displacement Tactics violate s. 2(c)

1078. Abbotsford, like all other municipalities, is a creature of statute, and therefore any actions or decisions taken by Abbotsford or its delegates which fall outside of its empowering legislation are unlawful and *ultra vires* for a lack of jurisdiction. Further, actions taken according to unconstitutional bylaws are themselves unconstitutional. To the extent that Abbotsford's discretionary decisions and actions fall within the scope of duly enacted and valid legislation (including Abbotsford's bylaws), they remain subject to constitutional oversight and review. The Displacement Tactics might be taken to have been empowered by Abbotsford according to the governing legislation, bylaws, and resolutions, but that does not mean that the nature and scope of that discretionary power escapes the scrutiny of the *Charter*. Indeed, the Displacement Tactics are simply evidence of the Impugned Provisions in action.

1079. The Displacement Tactics were, in both purpose and effect, an attempt to eradicate homelessness by making homeless people invisible (or as invisible as possible), which strikes at the very core of the guarantee of the freedom of peaceful assembly (and the freedom of association). The protections provided by the freedom of assembly are premised on the notion that the visibility of an individual or group in public is itself a means of empowerment, towards engaging the attention of the public and those who hold political power. And more simply, it fundamentally guarantees that everyone will have space where they are allowed to be. The Displacement Tactics were unconstitutional, unjustifiable, and inhumane, and not the least because they were taken with no regard for Abbotsford's Homeless' rights to use and access public spaces in the first place, something guaranteed to them by s. 2(c).

Section 2(d) – Freedom of association

1080. The jurisprudence on the freedom of association under s. 2(d) of the Charter has developed mainly in relation to workers' associations, trade unions, and labour relations more generally, as is clear from the leading Supreme Court of Canada cases: *Mounted Police*, *Fraser* and *Health Services*. As a result, constitutional challenges to government legislation and action under s. 2(d) outside the labour context are rare.

Mounted Police; *Ontario (Attorney General) v Fraser*, 2011 SCC 20 [*Fraser*]; *Health Services and Support — Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27 [*Health Services*]

1081. That said, the Supreme Court of Canada has acknowledged that political associations and some limited forms of commercial association also fall within the protection of s. 2(d). In the labour context or otherwise, the Court has reiterated that "[s]ection 2(d) will be infringed where the State precludes activity because of its associational nature, thereby discouraging the collective pursuit of common goals ... It is only the associational aspect of the activity, not the activity itself, which is protected [under s. 2(d)]".

Libman v Quebec (Attorney General), [1997] 3 SCR 569 [*Libman*]; *Black v Law Society of Alberta*, [1989] 1 SCR 591 [*Black v Law Society of Alberta*]; *Harper v Canada (Attorney*

General), [2004] 1 SCR 827, 2004 SCC 33 [*Harper v Canada*], at para 125 [emphasis in original]

1082. In the past, the scope of s. 2(d) had been limited by a narrow conception of the freedom of association based on the primacy of individual rights, which protected only the bare formation of the association and the collective exercise of individual freedoms: "[i]f the right asserted is not found in the Charter for the individual, it cannot be implied for the group merely by the fact of association." This narrow approach to all of the fundamental freedoms has now been rejected by the Supreme Court of Canada, in favour of a purposive, generous, and contextual approach: "after an initial period of reluctance to embrace the full import of the freedom of association guarantee ... the jurisprudence has evolved to affirm a generous approach to that guarantee."

Reference Re Public Service Employee Relations Act (Alta), [1987] 1 SCR 313 [*Alberta Reference*], per McIntyre J, concurring, at 398-99; *Mounted Police* at para 46

A purposive, generous and contextual approach to section 2(d)

1083. The Supreme Court of Canada, in *Mounted Police*, recently affirmed that a fundamental purpose of the freedom of association is to protect and empower vulnerable and marginalized groups:

> The guarantee functions to protect individuals against more powerful entities. By banding together in the pursuit of common goals, individuals are able to prevent more powerful entities from thwarting their legitimate goals and desires. In this way, the guarantee of freedom of association empowers vulnerable groups and helps them work to right imbalances in society. It protects marginalized groups and makes possible a more equal society.

Mounted Police at para 58

1084. *The purposive* approach, first articulated by Dickson CJ in his dissenting reasons in the Alberta Reference and now adopted by the majority in Mounted Police, "defines the content of s. 2(d) by reference to the purpose of the guarantee of freedom of association: '... to recognize the profoundly social nature of human endeavours and to protect the individual from state-enforced isolation in the pursuit of his or her ends'".

Alberta Reference at 365-66; *Mounted Police* at para 54

1085. The broad protections afforded by the freedom of association under s. 2(d) relate to three classes of activities, ranging from specific to more general: (1) the right to join with others and form associations; (2) the right to join with others in the pursuit of other constitutional rights and freedoms; and (3) the right to join with others in order to meet on more equal terms the power and strength of other groups or entities.

Mounted Police at para 51

1086. The protections therefore range from the "bare right to belong to or form an association", such that "[t]he state would thus be prohibited from interfering with individuals meeting or forming associations" to protection of "not only the right to associate, but also the right to associational activity that specifically relates to other constitutional freedoms". The broadest protection extends to any 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".

Mounted Police at paras 52, 53, 54

Application of section 2(d) to the facts of this case

1087. The evidence at trial reveals that many of Abbotsford's Homeless have come together from time-to-time to live in small groups in public spaces to increase their safety and security, the security of their possessions and pets, and to gain stability from living in a community of individuals in similar circumstances. An additional beneficial effect of these freely chosen associations is that service providers are more easily able to locate the very people who most need their help, when that help is most needed.

1088. Like all Canadians, Abbotsford's Homeless are entitled, should they choose, to the benefits and security of communal living, even if, for them, it happens in less than ideal circumstances. This is not to say that recognizing their fundamental freedom to associate by gathering together in public spaces is a complete response or solution to the larger problem. The constitutional guarantees of the *Charter* are not satisfied when Abbotsford stops trying to displace them and simply leaves homeless people and homeless encampments alone. These kinds of associational freedoms will be fully satisfied when every person in Abbotsford has a home, neighbourhood, and community to live in and return to at night. But, until that happens, Abbotsford's Homeless are entitled to the benefits of whatever community they can create given the reality of their situation:

> People remain agents, with ideas and initiatives of their own, even when they are poor. Indeed, since they are on their own, in a situation of danger, without any place of safety, they must often be more resourceful, spend more time working out how to live, thinking things through much more carefully, taking much less for granted, than the comfortable autonomous agent that we imagine in a family with a house and a job in an office or university. And—when they are allowed to—the poor do find ways of using their initiative to rise to these challenges. They have to; if they do not, they die.
>
> Even the most desperately needy are not always paralyzed by want. There are certain things they are physically capable of doing for themselves. Sometimes they find shelter by occupying an empty house or sleeping in a sheltered spot. They gather food from various places, they light a fire to cook it, and they sit down in a park to eat. They may urinate behind bushes, and wash their clothes in a fountain. Their physical condition is certainly not comfortable, but they are capable of acting in ways that make things a little more bearable for themselves.

Homelessness and the Issue of Freedom at 303-304

1089. One does not have to accept homelessness itself is a "choice", or an inevitable consequence of "bad choices", in order to accept that a completely rational and reasonable response to the reality of finding oneself without a home to return to—whether for one night or for thousands, and for whatever reason—is to shelter together and to seek comfort and security in a community of individuals who find themselves in similar circumstances.

1090. Abbotsford, however, not only does not recognize the freedom of association of its homeless population, it actively seeks to reduce or eliminate these associative benefits without providing a reasonable alternative or solution. The evidence also reveals that homeless people are specifically and disproportionately targeted through policing and the use of bylaw enforcement tactics, *precisely when they gather together* in public spaces for shelter, safety, security, and stability. In this way, Abbotsford's Homeless are being disproportionately targeted by Abbotsford with regard to their subsistence activity, "*because of its associational nature*".

Harper v Canada at para 125 [emphasis in original]

1091. The benefits to Abbotsford's Homeless gained through association of this sort come with an increase in their public visibility. In our public spaces, a single homeless person on the street may be next to invisible; it is much more difficult to turn a blind eye to a homeless encampment. This heightened visibility signals both the fact and scope of homelessness in a way that the existence of a single homeless person in a park or on the street never can. Abbotsford may well wish that its homeless population could be out of sight, and so out of mind. It may dislike being reminded, publicly and visibly, of the fact and scale of its past failures to reduce and eliminate the problem of homelessness. But the problem of "homelessness" is not reduced simply because it is made less visible, or because homeless people are dispersed or forced to move to a less desirable or visible public space. Simply reducing the visibility of a "political problem" is not a solution, and certainly not one which passes constitutional muster. This cannot be more obvious than it is here, where the "political problem" is the existence in public spaces of human beings with no other place to go.

1092. As the Supreme Court of Canada affirms, "[s]ection 2(d) will be infringed where the State precludes activity *because of its associational nature*, thereby discouraging the collective pursuit of common goals". Abbotsford's Homeless have a constitutional right to gather together for shelter, safety, security, and stability—and Abbotsford has infringed and continues to infringe their freedom of association every time they use their powers to disperse and displace, rather than to ensure effective access to safe living spaces, and eventually a home, neighbourhood, and community for all its citizens to return to.

Harper v Canada at para 125 [emphasis in original]

The Impugned Provisions and Displacement Tactics violate s. 2(d)

1093. The same issues canvassed above with respect to the problem of prior restraints on constitutional freedoms—that some of the activities which are restricted by the Impugned

Provisions would be "permissible" if only Abbotsford's Homeless applied for and received permission from Abbotsford to engage in them—apply with respect to the freedom of association under s. 2(d) and the rights it entails. One is not free to engage in an associational activity if one needs prior permission in order to do so. The prior permission requirements in the Impugned Provisions violate Abbotsford's Homeless' associative freedoms under s. 2(d) as well as their freedom of peaceful assembly under s. 2(c) and their right to liberty under s. 7.

1094. Further, the Displacement Tactics—the means by which Abbotsford has actually enforced its Impugned Provisions—show that Abbotsford's discretionary powers under the Impugned Provisions, far from saving the Impugned Provisions from an unconstitutional effect, have only further compounded their unconstitutionality.

1095. To deny Abbotsford's Homeless the freedom to peacefully exist, sleep, take shelter, and to join together in public spaces is to essentially deny them access to the benefits of neighbourhood and community which for most other Canadians are simply built into the structure and proximity of their private homes and spaces. The decision to gather together in this form of human community is protected under s. 2(d) for all those for who freely choose it; surely those protections apply at least with similar force for those who "choose" it as an immediate means of physical survival.

Relationship with section 7

1096. There is an inextricable connection between the protection of individual life, liberty, and security of the person in s. 7, and the individual and collective freedoms protected by s. 2. The Supreme Court of Canada has adopted a broad view of the liberty interest protected by s. 7, as one which extends beyond a physical liberty which is only engaged in penal proceedings:

> The liberty interest protected by s. 7 of the Charter is no longer restricted to the mere freedom from physical restraint .... "liberty" is engaged where state compulsions or prohibitions affect important and fundamental life choices ... In our free and democratic society, individuals are entitled to make decisions of fundamental importance free from state interference.
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> *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 49, per Bastarache J for the majority [emphasis added]

1097. Indeed, the word "liberty" is synonymous with the word "freedom", such that s. 2 can be understood as a protecting a broad range of decisions and activities, including but not limited to those protected by the individual s. 7 right to liberty: s. 2 enumerates the categories of specific kinds of activities citizens must be allowed to freely engage in, if the overall constitutional structure is one of a free and democratic society, while s. 7 provides more explicit protection for those activities and decisions which are of fundamental importance to the embodied individual.

1098. To the extent that personal decisions of basic and fundamental importance are at issue, there would thus seem to be significant overlap between the protection of personal or

individual autonomy in both s. 7 and s. 2 of the Charter. Indeed, the British Columbia Court of Appeal in Victoria v Adams recognized that a municipal bylaw prohibiting the erection of temporary overhead shelters in public parks engaged homeless persons' s. 7 liberty interests because it amounted to "a significant interference with their dignity and independence."

Adams at para 109

1099. Of course, notions of human dignity and independence are also central to the protections under s. 2. Where infringements of liberty interests extend beyond the single embodied individual to the infringement of freedoms on a more abstract, collective, or systemic level, s. 2 provides protection for those activities without placing a burden on the claimants to demonstrate that they personally amount to "fundamental life choices". The difference between the two sections in this context then appears to be one of degree: if fundamental personal choices are being limited or abrogated by state action, the burden of justification for that infringement placed on the government is much higher, and ordinarily cannot be overridden by competing social interests—which is why a majority of the Supreme Court of Canada has never found an infringement of s. 7 to be justified under s. 1.

1100. Both s. 7 and s. 2 of the *Charter* also engage and protect privacy interests, separate from the expectation of privacy protected specifically in relation to search and seizure in s. 8. Privacy interests might be conceived as a sub-set of the broader protections afforded by the right to liberty and the fundamental freedoms. Freedom involves not only the ability to make decisions and engage in activities free from state interference, but in some instances also the ability to do those things, or to simply be, outside of the watchful gaze of the state or the public.

Cheskes v Ontario (Attorney General) (2007), 87 OR (3d) 581, 288 DLR (4th) 449 (ON SC)

1101. When, as here, the regulation of physical public space is at issue, the benefits and burdens of public visibility come more sharply into focus—and as visibility increases, privacy decreases. Increased public visibility can be a powerful political tool for minority and disempowered individuals and groups, as is demonstrated by the values underlying explicit protection of the freedom of peaceful assembly, association, and expression. But unlike for the rest of us, public visibility is not a "choice" for homeless people, political or otherwise, as they have no escape to the privacy of their "own" space. The homeless seem to suffer the burden of visibility and a lack of privacy without also enjoying the benefits. To be homeless is to be always in the public eye, and yet hardly visible. It is to always be subject to the watchful and judgmental gaze of others, who would generally prefer not to see. Ironically, this may also largely be the wish of the homeless themselves, who would generally prefer not to be seen. But they do not have this choice. Homeless people lack the private space, and the privacy rights implicitly protected by private property, which are necessary conditions for human flourishing and self-fulfilment.

1102. Arguably, though they also engage the concerns protected by s. 2, all of the claims being made in this case—that Abbotsford's Homeless have the constitutionally-protected

freedom and right to access, use, and exist in Abbotsford's public spaces, and to engage in life-sustaining activities in those spaces including by erecting temporary shelters to protect them from the elements and enjoying the benefits of community by gathering together in homeless encampments—are "decisions of fundamental importance" which fall within the protection of s. 7:

> On the whole, the actions specified by Bills of Rights are not what are at stake in the issue of homelessness. Certainly there would be an uproar if an ordinance was passed making it an offense to pray in the subway or to pass one's time there in political debate. There has been some concern in America about the restriction of free speech in public and quasi-public places (since it is arguable that the whole point of free speech is that it take place in the public realm). However, the actions that are being closed off to the homeless are, for the most part, not significant in this high-minded sense. They are significant in another way: they are actions basic to the sustenance of a decent or healthy life, in some cases basic to the sustenance of life itself. There may not seem anything particularly autonomous or self-assertive or civically republican or ethically ennobling about sleeping or cooking or urinating. You will not find them listed in any Charter. However, that does not mean it is a matter of slight concern when people are prohibited from performing such actions, a concern analogous to that aroused by a traffic regulation or the introduction of a commercial standard.
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> ....
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> [W]e need to understand that any restriction on the performance of these basic acts has the feature of being not only uncomfortable and degrading, but more or less literally unbearable for the people concerned. People need sleep, for example, not just in the sense that sleep is necessary for health, but also in the sense that they will eventually fall asleep or drop from exhaustion if it is denied them. People simply cannot bear a lack of sleep, and they will do themselves a great deal of damage trying to bear it. The same, obviously, is true of bodily functions like urinating and defecating. These are things that people simply have to do; any attempt voluntarily to refrain from doing them is at once painful, dangerous, and finally impossible. That our social system might in effect deny them the right to do these things, by prohibiting their being done in each and every place, ought to be a matter of the gravest concern.

Homelessness and the Issue of Freedom at 320-21 [citations omitted; emphasis in original]

1103. The Impugned Provisions and Displacement Tactics have severely infringed Abbotsford's Homeless' right to life, liberty, and security of the person. By systematically marginalizing and displacing Abbotsford's Homeless, limiting their access to Survival Shelter, destroying property used for shelter and survival and breaking up their community groups, Abbotsford has increased and continues to increase Abbotsford's Homeless' risk of mortality, morbidity, disability, psychological stress, substance abuse, and victimization by property theft and violent crime. Given these effects, it is difficult to imagine that what is at issue is anything other than the most "fundamental life choices" a human being can make in society. Given these effects, it is

also clear that the Impugned Provisions and Displacement Tactics are neither in accordance with the principles of fundamental justice, nor justifiable with reference to competing social interests under s. 1.

Relationship with section 15

1104. None of the Impugned Provisions draw explicit distinctions between groups of citizens: indeed, taken together, they unjustifiably infringe the constitutional freedoms of all citizens in Abbotsford, and not just those of Abbotsford's Homeless. But they certainly have a discriminatory effect on Abbotsford's Homeless:

> Such ordinances have and are known and even intended to have a specific effect on the homeless which is different from the effect they have on the rest of us. We are all familiar with the dictum of Anatole France: "[L]a majestueuse égalité des lois ... interdit au riche comme au pauvre de coucher sous les ponts ...." ["The law in its majestic equality forbids the rich as well as the poor from sleeping under the bridges."] We might adapt it to the present point, noting that the new rules in the subway will prohibit anyone from sleeping or lying down in the cars and stations, whether they are rich or poor, homeless or housed. They will be phrased with majestic impartiality, and indeed their drafters know that they would be struck down immediately by the courts if they were formulated specifically to target those who have no homes. Still everyone is perfectly well aware of the point of passing these ordinances, and any attempt to defend them on the basis of their generality is quite disingenuous. Their point is to make sleeping in the subways off limits to those who have nowhere else to sleep.
>
> Homelessness and the Issue of Freedom at 313 [citations omitted]

1105. In addition, the application and enforcement of the already unconstitutional Impugned Provisions, through the exercise of various governmental powers manifested in the Displacement Tactics, discriminates specifically against Abbotsford's Homeless. The general application of Impugned Provisions may not explicitly target Abbotsford's Homeless, though that is their specific effect. The Displacement Tactics are evidence of this effect in action. They are targeted for Bylaw enforcement and displacement within public spaces because their visible existence is perceived as a threat to public order, in a way that the visible existence of other groups of citizens is not.

1106. The unjustifiable infringement of Abbotsford's Homeless' freedoms of peaceful assembly and association affects their person autonomy, liberty, dignity, and security of the person in a way that the same infringement of other citizens' freedoms does not. The vulnerable, disenfranchised, and disempowered are those human beings to whom these freedoms are most essential:

> Historically, those most easily ignored and disempowered as individuals have staked so much on freedom of association precisely because association was the means by which they could gain a voice in society. As Dickson C.J. put it in the Alberta Reference:

> Freedom of association is most essential in those circumstances where the individual is liable to be prejudiced by the actions of some larger and more powerful entity, like the government or an employer. Association has always been the means through which political, cultural and racial minorities, religious groups and workers have sought to attain their purposes and fulfil their aspirations; it has enabled 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.

Mounted Police at para 57 [emphasis added in Mounted Police]

1107. Abbotsford's Homeless' freedoms of peaceful assembly and association—and their ability and right to exercise them in public spaces—are thus particularly affected by the differentiated and discriminatory enforcement of the overbroad and unconstitutional Bylaws, in a manner that violates s. 15. This is both an important consideration under the balancing exercise required by s. 1, and "is an important factor in determining the appropriate remedy".

Little Sisters at para 202, per Iacobucci J (dissenting in part, though not on this point)

No Justification under Section 1

1108. Drug War Survivors concedes that certain kinds of regulation of public spaces, which by definition limit citizens' fundamental freedoms, are necessary and justifiable, though only when those regulations have a pressing and substantial objective, the means of regulation are rationally connected to that objective and are minimally impairing of those freedoms, and there is overall proportionality between the benefits and the burdens of the effects of those regulations. However, Abbotsford has failed to discharge the burden which rests on it to show that either the Impugned Provisions or Displacement Tactics satisfy these requirements.

R v Oakes, [1986] 1 SCR 103 [*Oakes*]

1109. Individually and taken together, the Impugned Provisions fail to satisfy the requirements of the *Oakes* test under s. 1 of the *Charter*. In short, the Impugned Provisions do almost nothing to accommodate Abbotsford's Homeless' freedoms and rights at stake in this trial.

1110. What are the pressing and substantial objectives of the Impugned Provisions? Abbotsford has provided little to no evidence of the purpose or objectives of the various Impugned Provisions in the *Parks Bylaw*, the *Street and Traffic Bylaw* or the *Good Neighbour Bylaw*, much less indicated why they are pressing and substantial.

1111. Even if one makes some logical inferences as to the possible general objectives of the Impugned Provisions, the violation is not saved by s. 1.

1112. The *Parks Bylaw* is likely intended to promote the public use and enjoyment of public spaces while protecting the environment; the *Street and Traffic Bylaw* is likely intended to promote public order and to limit obstructions on the free movement of people and vehicles in Abbotsford; the *Good Neighbour Bylaw* is likely intended to minimize public and private nuisances through the regulation of noise, littering, and property maintenance. These are, generally speaking, all legitimate objectives for which a municipal government can justifiably and reasonably enact bylaws, although the means by which they do so must still be rational, minimally impairing, and proportionate.

1113. At the level of each of the Impugned Provisions, however, it is not clear that the enactment of their particular form is meant to achieve a different pressing and substantial objective. For example, how does the general prohibition in s. 10 of the Parks Bylaw (coupled with a requirement for prior permission) against the core activities protected by the freedom of peaceful assembly and freedom of association generally promote the use and enjoyment of public space by the public, or protect the environment? If s. 10 is not directed at advancing this general objective, then what more specific objective does it have? Are there other harms it is seeking to prevent? Given the absence of evidence on the point, we can only guess, on this and all of the Impugned Provisions. It is against only the most general of objectives of the bylaws as a whole that the infringements of Abbotsford's Homeless' freedoms and rights must be weighed, as Abbotsford has failed to discharge the burden placed on it to justify more specific objectives within the regulatory scheme that are also pressing and substantial.

1114. There does not exist a rational connection between these general objectives and the means by which Abbotsford seeks to implement them in the Impugned Provisions. While extreme restrictions on the free access to and use of public spaces in Abbotsford may be rationally connected to the promotion of public order and the use and enjoyment of public spaces by some of the public users], the means of regulation of these spaces as manifested in the Impugned Provisions only seem to promote the use and enjoyment of public spaces by certain users of Abbotsford's public spaces, not all: the use and enjoyment of public spaces by Abbotsford's Homeless is denied rather than advanced by the Impugned Provisions. Underinclusiveness of this sort is itself a sign of a lack of a rational connection, such that "[i]f there is an intention to ameliorate the position of a group, it cannot be considered entirely rational to assist only a portion of that group. A more rationally connected means to the end would be to assist the entire group, as that is the very objective which is sought."

1115. The Impugned Provisions are not minimally impairing, when viewed from the perspective of ss. 2(c) or (d), or at all. As discussed above, the means of regulation of its public spaces chosen by Abbotsford in most of its Impugned Provisions is one of "prior restraint": most activities engaged in by Abbotsford's Homeless are generally prohibited, including their very presence in public spaces at night, absent a discretionary permit or written permission from a City official allowing them to take place at a designated time, place, and generally for a limited duration. This is a substantially complete rather than minimal impairment of their ss. 2(c) and 2(d) freedoms, as there is almost nothing they are left free to do without prior permission. All of the activities subject to a "prior restraint" are considered enforceable municipal offences when conducted without prior

permission, without exception. There is no nuanced drafting of particular provisions in order to ensure that the restrictions they impose on all those to whom they apply go no further than necessary to achieve the stated objective, much less to ensure that they restrict access to and use of public spaces by Abbotsford's Homeless as little as reasonably required. In all conceivable aspects, the Impugned Provisions are overbroad, and therefore cannot satisfy the requirement of minimal impairment.

1116. The Impugned Provisions also have a disproportionate rather than proportionate effect. The final stage of the Oakes analysis weighs the deleterious impact of the law on protected rights and freedoms against the beneficial effect of the law in terms of the greater public good. The Impugned Provisions substantially and disproportionately infringe Abbotsford's Homeless' s. 2 freedoms (and ss. 7 and 15 rights) when compared to their effects on other of Abbotsford's citizens. When the burden of a regulatory scheme falls substantially on only a small, vulnerable, and disempowered sub-group, and severely restricts their constitutional rights and freedoms without also substantially advancing the constitutional rights and freedoms of the larger group, that regulatory scheme cannot be said to reflect a proportionate balancing of the rights and interests in issue.

Carter at para. 122

1117. Further, the Displacement Tactics are also not justified under s. 1. The Displacement Tactics—the means by which Abbotsford has actually enforced its Impugned Provisions—show that Abbotsford's general discretionary powers under the Impugned Provisions, far from saving the Impugned Provisions from having an unconstitutional effect, have only further compounded their unconstitutionality. The discretionary application and enforcement of the Impugned Provisions vis a vis Abbotsford's Homeless has had a discriminatory, arbitrary, and disproportionate effect.

1118. The Displacement Tactics, while also potentially failing to be "prescribed by law" as that phrase is understood in s. 1, do not have a legitimate objective, much less one that is pressing and substantial, and therefore fail at the first step of the Oakes test. Their purpose and objective is to disperse and displace the homeless people who exist in Abbotsford's public spaces with a view to reducing both their public visibility and the impact of their presence on public property. The objective of the Displacement Tactics is thus itself in violation of ss. 2(c) and (d) of the Charter (as well as s. 7 and s. 15): no law is reasonable and demonstrably justifiable if its very purpose or objective is to limit Charter rights and freedoms. Any attempted justification of the Displacement Tactics under s. 1 therefore fails immediately, as being neither "prescribed by law" nor having a "legitimate objective".

Greater Vancouver Transportation Authority v Canadian Federation of Students, [2009] 2 SCR 295, 2009 SCC 31 [*Vancouver Transport Authority*]

1119. Proceeding through the steps of the *Oakes* test only strengthens this conclusion. While it might be said that there exists a "rational connection" between the objective and the means chosen—Abbotsford has been quite successful at infringing the s. 2(c) and (d) constitutional freedoms of Abbotsford's Homeless through use of the Displacement

Tactics—it cannot be said that those actions are in any way "minimally impairing" or "proportionate" in their effects. In brief, the Displacement Tactics lack any demonstrable justification which might show they are reasonable limits on Abbotsford's Homeless' s. 2(c) freedom of peaceful assembly and s. 2(d) freedom of association.

Conclusion on section 2(c) and section 2(d) of the *Charter*

1120. The most basic freedoms and rights of Abbotsford's Homeless are at stake in this litigation. With respect to ss. 2(c) and 2(d) of the *Charter*, their freedoms have been unreasonably and unjustifiably infringed. Homeless people, like all other persons, are entitled to protection of their personal autonomy, access to and use of public space, and collective activity and community, rights which are fundamental to ss. 2(c) and 2(d) of the *Charter*, (but which may also manifest themselves in other subsections of section 2), as well as in combination with other *Charter* rights, and particularly the right to liberty and security of the person in s. 7).

1121. The combination of all of these violations show that Abbotsford's Homeless' *Charter* rights and freedoms have been and continue to be breached, time and time again, in a manner that no society which takes constitutional rights seriously can possibly condone. The clear pattern of disregard for and violation of their rights and freedoms must be stopped. When applied to any one individual homeless person at any one time, the Impugned Provisions and the Displacement Tactics are inhumane, unjustified, and unconstitutional—but they are outrageous, and strike at the very core of our fundamental principles of justice when they are intentionally directed towards the suppression and elimination of the homeless as an undesirable visible group, and homeless encampments as an undesirable form of association or community. The protection of these freedoms by this court will fundamentally protect and advance the dignity and autonomy of Abbotsford's Homeless, by safeguarding the only means realistically available to them to ensure some empowerment, safety, and security when faced with the most dire of circumstances. The homeless are not merely a "social problem" which governments are free to deal with through whatever policies they see fit, but rather actual persons "whose activity and dignity and freedom of at stake" every day of their lives.

1122. Ultimately, the lesson that the fundamental freedoms teach us is that all persons, regardless of circumstance, must be treated as autonomous agents rather than simply as means to some end. When one is struggling just to survive and acquire the basic necessities of life in a society that would prefer you simply disappear, broad protection of one's autonomy may seem to be a hollow right. But when viewed as a further protection of one's dignity, and a recognition that even the homeless have some control over their circumstance and future, we see that these kinds of freedoms protect the very foundations of a democratic—and human—society:

> Lack of freedom is not all there is to the nightmare of homelessness. There is also the cold, the hunger, the disease and lack of medical treatment, the danger, the beatings, the loneliness, and the shame and despair that may come from being unable to care for oneself, one's child, or a friend. ...

> But there are good reasons to pay attention to the issue of freedom. ... Homelessness is partly about property and law, and freedom provides the connecting term that makes those categories relevant. By considering not only what a person is allowed to do, but where he is allowed to do it, we can see a system of property for what it is: rules that provide freedom and prosperity for some by imposing restrictions on others. So long as everyone enjoys some of the benefits as well as some of the restrictions, that correlativity is bearable. It ceases to be so when there is a class of persons who bear all of the restrictions and nothing else, a class of persons for whom property is nothing but a way of limiting their freedom.
>
> Perhaps the strongest argument for thinking about homelessness as an issue of freedom is that it forces us to see people in need as agents. Destitution is not necessarily passive; and public provision is not always a way of compounding passivity. By focusing on what we allow people to do to satisfy their own basic needs on their own initiative, and by scrutinizing the legal obstacles that we place in their way (the doors we lock, the ordinances we enforce, and the night-sticks we raise), we get a better sense that what we are dealing with here is not just "the problem of homelessness," but a million or more persons whose activity and dignity and freedom are at stake.
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> Homelessness and the Issue of Freedom at 323-24 [emphasis in original]

Choice

1123. The members of Abbotsford's Homeless belong to a marginalized population whose circumstances are largely forged by trajectories that cannot fairly be considered deliberate or personally elected.

1124. In *Bedford*, the Court unanimously rejected the defendant's argument that prostitutes "choose" to engage in inherently risky activities and can therefore avoid both the inherent risk of the activity and any increased risk that the laws impose simply by choosing not to engage in the activity. The Court expressly disagreed with the notion that choice—and not the law—constituted the real cause of injury to prostitutes in Canada and held:

> First, while some prostitutes may fit the description of persons who freely choose (or at one time chose) to engage in the risky economic activity of prostitution, many prostitutes have no meaningful choice but to do so. Ms. Bedford herself stated that she initially prostituted herself "to make enough money to at least feed myself" (cross-examination of Ms. Bedford, J.A.R., vol. 2, at p. 92). As the application judge found, street prostitutes, with some exceptions, are a particularly marginalized population (paras. 458 and 472). Whether because of financial desperation, drug addictions, mental illness, or compulsion from pimps, they often have little choice but to sell their bodies for money. Realistically, while they may retain some minimal power of choice — what the Attorney General of Canada called "constrained choice" (transcript, at p. 22) — these are not people who can be said to be truly "choosing" a risky line of business (see *PHS*, at paras. 97-101).

Bedford at para 86

1125. It is similarly simplistic to assert that members of Abbotsford's Homeless community are living outside, or in the other places they find themselves, as a result of personal choice. Such an assertion does not do justice to the complexity of homelessness and, at the same time, the evidence given by witnesses from both Drug War Survivors and the City—experts, service providers, and members of the homeless community itself. Dr. Belanger, for instance, reported that "reasons for [Aboriginal] homelessness" include poverty and low income, lack of work opportunities, a decline in public assistance, the structure and administration of government support, a lack of affordable housing, addiction disorders, domestic violence, mental illness, and wider policy developments such as the closure of psychiatric facilities.

1126. In speaking about the genesis of their circumstances, nearly all of Abbotsford's Homeless who came to court gave evidence relating to some combination of financial desperation, drug addiction,[8] mental illness, physical disability, institutional trauma and distrust, physical or emotional abuse and family breakdown.

1127. Norm Caldwell testified that he began ingesting heroin at the age of five in the presence of his mother, who was a residential school survivor who battled an opiate addiction throughout Mr. Caldwell's childhood. He injected his mother when she was not able to do so herself and stated that he "had no idea" what drugs were when he first began using them.

1128. Nana Tootoosis first became homeless as a child with his mother. He hears voices regularly and indicated he left Raven's Moon due to the presence of rat poison and minerals within the living space. His evidence—tangential and largely incoherent—revealed his obvious barriers to accessing systems of housing and service on his own accord and without psychiatric support.

1129. Rene Labelle gave evidence of drinking alcohol at age 8 and injecting cocaine at age 13. He said that his father was not only present on these occasions but in fact introduced him to and provided him with the drugs and alcohol.

1130. Each of these individuals makes choices every day, but they are choices within the limited spectrum of options available to them. They express a sense of personal agency – a normal and natural assertion for any person as agency is an integral aspect of human dignity. In the context of individuals like Mr. Caldwell, Mr. Tootoosis and Mr. Labelle, however, arguing that they are freely choosing their fates is problematic insofar as it fails to consider whether they had meaningful choices available to them as children, as a result of mental illness or in the context of the many other challenges they face. As the majority of our witnesses testified, one's homeless identity is the result of a layered

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[8] In *PHS Community Services Society v Canada (Attorney General)*, 2011 SCC 44 at para 101, the Court did not dispute the trial judge's finding of fact that addiction is an illness. The trial judge relied on the definition of addiction created be the Canadian Society of Addiction Medicine: "A primary, chronic disease, characterized by impaired control over the use of a psychoactive substance and/or behavior…"

trajectory—one that cannot be distilled into a single instance of choosing now to be homeless. When the City denies adequate and appropriate resources to homeless people, it denies compassion and support to the mentally ill, the physically disabled, the substance dependent, the traumatized, the colonized, and the systemically abused.

1131. The notion of "choice" among Abbotsford's homeless population is further compromised by the constrained alternatives available to them. As Professor Marie-Eve Sylvestre confirmed in her testimony, living homeless "involves a choice, as do all human behaviors, but it's a choice embedded in context...for homeless people, the possibilities are limited, so they have to make a choice within constraints."

Cross Examination of Marie-Eve Sylvestre, July 14, 2015 (a.m.)

1132. Testimony throughout this proceeding illustrated the fallacy of the attribution of choice to decisions made when circumstances present people such as Abbotsford's Homeless.

1133. Pastor Wegenast, for instance, gave evidence that many of Abbotsford's Homeless previously did not use the Salvation Army Shelter because of the abstinence requirement. He stated many members of that population are unable to remain in Abbotsford's treatment centres due to the same requirements. Substance addiction constitutes a disease in the DSM V. As such, a chemically dependent individual's decision to sleep outdoors, when shelter options require abstinence cannot be attributed to choice.

1134. In *PHS Community Services Society v Canada (Attorney General)*, the Court stated:

> The ability to make some choices, whether with the aid of Insite or otherwise, does not negate the trial judge's findings on the record before him that addiction is a disease in which the central feature is impaired control over the use of the addictive substance

PHS at para 101

1135. Mr. Labelle described the experience of being denied access to the Shelter during the winter either as a result of a lack of vacancy or of being barred. Explaining his 'decision' to inebriate himself in front of the camera outside the police department drunk tank so as to be apprehended and detained inside, he stated "it's better than freezing to death."

1136. Colleen Aitken described the process of being turned away from the City's only emergency shelter when it was full. When the only other options are to sleep outdoors—in isolation or among other camp occupants –or to get into a car and accept the accommodation provided by a potentially dangerous john, choice is illusory.

1137. The real issue of choice relates to those choices made by the City and the effects that they have on its population of homeless people. Evidence establishes that the City has engaged in the systemic displacement of its homeless population at the same time that it has denied them any sort of meaningful support or alternative; the City has then complained about the visible consequences of its own choices. In particular, there is

evidence that establishes the City's concern about homeless persons is their visibility in public spaces, but there is also evidence that:

(a) The City has chosen to repeatedly evict homeless persons from encampments on public land while failing to assist those persons to locate shelter or alternative housing;

(b) The City has actively displaced Roy Roberts between 20 and 30 times;

(c) The City has ignored affordable housing initiatives as recently as February 2014, when it turned down ACS' proposal for a 20-bed low-barrier housing project for homeless or near-homeless men living in Abbotsford;

(d) The City does not employ outreach workers nor does it fund the outreach services that exist in Abbotsford such as Raven's Moon, the Warm Zone, and the 5&2 Ministries;

(e) The City rejected ASDAC's repeated recommendation for a 24-hour drop-in centre;

(f) The City does not provide a coordinating role for people discharged from hospitals so that patients, such as Colleen Aitken, can be supported on discharge;

(g) The City rejected ACS' proposed comprehensive plan for Roy Roberts, which entailed putting a trailer on City-owned land, employment coordination with ACS, and regular outreach by 5&2 Ministries;

(h) The City has chosen to fund things like the Abbotsford Heat hockey team at a cost in excess of $5 million; and,

(i) The City has chosen to maintain a surplus in excess of $20 million at the end of 2014.

1138. The City has also made repeated reference to garbage and a lack of sanitation in the homeless encampments as justification for its evictions, however:

(a) The City fails to provide garbage pick up to any homeless individuals besides those living at the Gladys encampment, despite providing regular garbage pick-up for those of its citizens who are housed;

(b) The City limits the public's access to public washroom facilities during evening hours and winter months and fails to install portable washroom facilities in many of its parks and public grounds; and

(c) The City does not provide free public showering facilities.

1139. Moreover, the City has cited the importance of public safety in relation to its complaints about homeless people and encampments. However:

(a) The City does not consider the mental health of occupants when evicting them from public property;

(b) The City does not have a fixed needle exchange or a safe injection site and until February 2014, maintained an anti-harm reduction zoning bylaw that prevented the Fraser Health Authority from establishing its recommended harm reduction services in Abbotsford; and,

(c) The City does not provide homeless persons or encampments with fire blankets and did not begin supplying fire extinguishers until May 2015. These were provided only at the Gladys camp and only after 5-6 fires at various camps had already occurred. In addition, they were provided only after a camper suggested it to the fire department.

1140. The evidence establishes that, in effect, the City is more than prohibiting homeless people from camping on public property. It is prohibiting the very existence of homeless persons. It is carrying out that prohibition by way of rules, regulations and actions designed to make homeless peoples' lives more difficult.

1141. In *Bedford*, the Court held:

> ...even accepting that there are those who freely choose to engage in prostitution, it must be remembered that prostitution — the exchange of sex for money — is not illegal. The causal question is whether the impugned laws make this lawful activity more dangerous. An analogy could be drawn to a law preventing a cyclist from wearing a helmet. That the cyclist chooses to ride her bike does not diminish the causal role of the law in making that activity riskier. The challenged laws relating to prostitution are no different.

Bedford at para 87

1142. The Impugned Provisions relating to homelessness in Abbotsford make a similarly lawful act similarly more dangerous. The City has a duty to not only refrain legislating in a way that endangers the health and safety of its citizens, but also to act in a way that respects the barriers faced by its citizens in accessing shelter, health and safety resources. This cannot amount to a regime whereby homeless individuals are expected to "choose" between (a) trying to access shelter and housing that is full or rejects them due to their financial situation, mental health issues or addiction; and (b) remaining homeless without access to basic necessities or the liberty to seek out the basic necessities for themselves.

1143. The City's reliance on such a dichotomy is rooted in a belief that a single decision lies between being housed and being homeless. That "decision", insofar as it is asserted to be willful, is a fallacy.

1144. It cannot be said that the members of Abbotsford's Homeless community are choosing to live homeless given their life trajectories. Indeed it is the City's actions that have resulted in a situation more visible and more hazardous than necessary to both homeless individuals and the public.

Remedies sought

Introduction

1145. In seeking remedies that require the City to have regard to the *Charter* rights of Abbotsford's Homeless, Drug War Survivors is not seeking to impose any positive obligations on the City. Rather, it is trying to ensure that the City behaves constitutionally. While the City may have no obligation to provide housing or services to Abbotsford's Homeless, , the City does have an obligation to respect the guarantees of freedom of assembly, freedom of association, life, liberty, security of the person and equality of all of its citizens, including Abbotsford's Homeless.

1146. Further, Drug War Survivors seek declaratory relief with direction as to the content of the rights of Abbotsford's Homeless and submit that the Court may impose any timeline or conditions deemed appropriate and just in the circumstance. Drug War Surviviors does not seek an unconstrained right to use public space, only the recognition of the rights of people who require those spaces for the necessities of life and a balancing of those rights with the interests of other users of those public spaces.

1147. The *Charter* provides the following remedial sections under which relief is sought:

> **24.** (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances; and,
>
> **52.** (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Remedies sought

1148. On behalf of Abbotsford's Homeless, Drug War Survivors seeks:

(a) A declaration pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, that the rights of Abbotsford's Homeless to exist and obtain basic necessities of life, including:

(i) warmth and adequate protection from the elements, including Survival Shelter;

(ii) rest and sleep;

(iii) community and family connection;

(iv) effective access to safe living spaces;

(v) freedom from physical, mental and psychological health risks and effects of exposure to the elements, sleep deprivation, chronic threatened or actual

displacement and the isolation and vulnerability related to such displacement;

are each aspects of life, liberty and security of the person guaranteed by s. 7 of the *Charter*;

(b) In addition and in the alternative, a declaration pursuant to s. 24(1) of the *Charter* that Impugned Provisions and/or the actions of Abbotsford in enforcing the bylaws and in engaging in the Displacement Tactics, constitutes discrimination under s. 15 of the *Charter*, based on mental disability, physical disability, race, national original, ethnic origin, colour and/or homelessness;

(c) In addition and in the alternative, a declaration pursuant to s. 24(1) of the *Charter* that the rights of Abbotsford's Homeless to peacefully assemble and associate, including in publics paces, are aspects of the freedom of association and assembly secured by sections 2(c) and 2(d) of the *Charter*;

(d) A declaration pursuant to s. 52 of the *Constitution Act, 1982*, that the Impugned Provisions are of no force or effect to the extent that they are applied to Abbotsford's Homeless as they violate sections 2, 7 and 15 of the *Charter*;

(e) In addition and in the alternative, a declaration pursuant to s. 24(1) of the *Charter* that the actions of Abbotsford in enforcing the bylaws and engaging in the Displacement Tactics are unconstitutional as they breach sections 2, 7 and 15 of the *Charter*;

(f) Special costs; and

(g) Such other and further relief as to this Court may seem just.

1149. While it is not the case that the court may dictate to government the form and substance of policy and procedure, it is for the court to make clear the elements of the rights and freedoms that must be reflected in the laws, policies, decisions and actions of governments and state actors. The court may direct the City to legislate and to administer its legislation and policy in a manner consistent with the requirements of the *Charter*. What those requirements are should be dictated by the Court and, in this instance, the content of the rights of Abbotsford's Homeless should be declared by the Court as a legal Constitutional minimum standard to guide the City of Abbotsford going forward.

Inglis at para. 657

Section 24(1) remedy

The Court can and should make a declaration of the rights of Abbotsford's Homeless

1150. At a constitutional minimum, the protection of the lives, liberty and security of Abbotsford's Homeless require that they have a right to obtain the necessities of life:

(a) warmth and adequate protection from the elements, including Survival Shelter;

(b) rest and sleep;

(c) community and family connection;

(d) effective access to safe living spaces;

(e) freedom from physical, mental and psychological health risks and effects of exposure to the elements, sleep deprivation, chronic threatened or actual displacement and the isolation and vulnerability related to such displacement.

1151. As is described above, the right to the basic necessities of life is a foundational s. 7 principle and based on international instruments and domestic and international case law, at an absolute minimum includes food, shelter, clothing, heat and utilities, although Drug War Survivors submits it also includes the ability to rest and sleep, make and maintain community connection and be safe from physical, emotional and mental harm.

1152. Such declaratory relief is consistent with the flexibility afforded by s. 24(1) to ensure an appropriate and just remedy. Further, it informs the other s. 24(1) and s. 52 relief sought and provides guidance to the City in fashioning new laws and policies, giving the remedies sought substance and meaning. In *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, the Supreme Court held:

> Finally, it must be remembered that s. 24 is part of a constitutional scheme for the vindication of fundamental rights and freedoms enshrined in the *Charter* . As such, s. 24, because of its broad language and the myriad of roles it may play in cases, should be allowed to evolve to meet the challenges and circumstances of those cases. That evolution may require novel and creative features when compared to traditional and historical remedial practice because tradition and history cannot be barriers to what reasoned and compelling notions of appropriate and just remedies demand. In short, the judicial approach to remedies must remain flexible and responsive to the needs of a given case.
>
> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62 at para. 59

1153. Section 24(1) is a vital and remedial provision of the *Charter* and its interpretation thus commands a broad and purposive approach, which accords with its purpose. In *R. v. 974649 Ontario Inc.*, the Supreme Court further held that:

> ...most importantly, the language of this provision appears to confer the widest possible discretion on a court to craft remedies for violations of *Charter* rights. In *Mills*, McIntyre J. observed at p. 965 that "[i]t is difficult to imagine language which could give the court a wider and less fettered discretion". This broad remedial mandate for s. 24(1) should not be frustrated by a "[n]arrow and technical" reading of the provision (see *Law Society of Upper Canada v. Skapinker*, [1984] 1 S.C.R. 357, at p. 366).
>
> The second proposition flows from the first: s. 24 must be interpreted in a way that achieves its purpose of upholding *Charter* rights by providing effective

remedies for their breach. If the Court's past decisions concerning s. 24(1) can be reduced to a single theme, it is that s. 24(1) must be interpreted in a manner that provides a full, effective and meaningful remedy for *Charter* violations: *Mills*, *supra*, at pp. 881-82 (per Lamer J.), p. 953 (per McIntyre J.); *Mooring*, *supra*, at paras. 50-52 (per Major J.). As Lamer J. observed in *Mills*, s. 24(1) "establishes the right to a remedy as the foundation stone for the effective enforcement of *Charter* rights" (p. 881). Through the provision of an enforcement mechanism, s. 24(1) "above all else ensures that the *Charter* will be a vibrant and vigorous instrument for the protection of the rights and freedoms of Canadians" (p. 881).

Section 24(1)'s interpretation necessarily resonates across all *Charter* rights, since a right, no matter how expansive in theory, is only as meaningful as the remedy provided for its breach. From the outset, this Court has characterized the purpose of s. 24(1) as the provision of a "direct remedy" (*Mills*, *supra*, p. 953, per McIntyre J.). As Lamer J. stated in *Mills*, "[a] remedy must be easily available and constitutional rights should not be 'smothered in procedural delays and difficulties'" (p. 882). Anything less would undermine the role of s. 24(1) as a cornerstone upon which the rights and freedoms guaranteed by the *Charter* are founded, and a critical means by which they are realized and preserved.

...

As McIntyre J. cautioned in *Mills*, *supra*, at p. 953, the *Charter* was not intended to "turn the Canadian legal system upside down". The task facing the court is to interpret s. 24(1) in a manner that provides direct access to *Charter* remedies while respecting, so far as possible, "the existing jurisdictional scheme of the courts": *Mills*, at p. 953 (per McIntyre J.); see also the comments of La Forest J. (at p. 971) and Lamer J. (at p. 882) in the same case; and *Weber*, *supra*, at para. 63...

In summary, the task of the court in interpreting s. 24 of the *Charter* is to achieve a broad, purposive interpretation that facilitates direct access to appropriate and just *Charter* remedies under ss. 24(1) and (2), while respecting the structure and practice of the existing court system and the exclusive role of Parliament and the legislatures in prescribing the jurisdiction of courts and tribunals...

R. v. 974649 Ontario Inc., 2001 SCC 81 at paras. 18 to 24

1154. Section 24(1) confers on judges a wide discretion to grant appropriate remedies in response to *Charter* violations. A s. 24(1) declaration is one of the prime remedies targeted at ensuring future compliance with the *Charter*. It allows a reviewing court to signal to government what is required to comply with the *Charter* while allowing government an opportunity to select the precise means of compliance. This allows courts to respect the role of the executive and the legislature.

Roach 2013 at 479, 490 and 515

1155. The form and substance of the declaration of right sought is in keeping with international legal standards. As detailed above, international law serves as an important interpretative aid to *Charter* analysis. *Charter* protections, in general, are presumed to provide protection at least as great as is found in the international human rights documents ratified by Canada, including:

(a) The *Universal Declaration of Human Rights*, Article 25(1) which declares the right to a standard of living adequate for the health and well-being, including food, clothing, housing and medical care and necessary social services; and

(b) The *International Covenant on Economic, Social, and Cultural Rights* which recognizes the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions and requires that States Parties take appropriate steps to ensure the realization of this right.

1156. The declaration sought, unlike the *International Covenant on Economic, Social, and Cultural Rights*, does not go so far as to place on government any obligation to act, but merely recognizes the most basic aspects of human survival, upon which many of Abbotsford's Homeless have a tenuous grasp at best. It remains for the City of Abbotsford to determine whether or not to play any role in the realization of those rights.

1157. The declaration of rights sought is an incremental and logical remedial step from the relief granted in *Adams*. The *Adams* remedy is more limited than the remedies sought here, not because the Court cannot grant the broader remedies sought, but rather because the remedy in *Adams* reflects the limited formulation of the issue that the Court was asked to consider.

Adams at para. 1

1158. A careful analysis of *Adams,* however, demonstrates that all that flows from *Adams* is predicated on the right to engage in "essential, life-sustaining acts", such as those proposed in the declaration sought. The right to shelter oneself, it goes without saying, was found to be necessary to both life and health. That right is necessarily predicated on the right to sleep and rest, the necessity of which was implicit and went unchallenged in the *Adams* analysis. The trial Court decision specifically found that the City cannot manage its land in a way that interferes with a homeless citizen's ability to keep themselves safe and warm – a finding not challenged on appeal. The declaration of rights sought here flows from the essential subtext in *Adams*. Though not stated explicitly, it is essential that if one has the right to sleep and shelter oneself, one must be able to do so in a relatively safe place, otherwise those rights are hollow.

Adams at paras. 4, 24, 25, 28, 38, 100

1159. *Adams* did not address the right to community and family connections; however, there was evidence in *Adams*, as there is here, of the need to have access to community and family, which are fundamental aspects of the freedoms of association and assembly.

Adams at para. 119

1160. The City, while aware of the *Adams* decision, chose not to follow suit in changing its bylaws. Furthermore, it engaged in behaviours that have caused direct harm to the rights DWS seeks to protect. In the absence of clear declaratory relief stating the content of the rights of Abbotsford's Homeless, there will remain a lack of direction to the City, which to this point has led to decisions such as using manure as a "better" alternative to cutting down a tree – an action defended by the City to this day. The lack of any consideration of alternatives that would actually protect the rights of the homeless men in that encampment is itself indicative of the need for the declaration sought.

1161. While the City has changed some of its practices since this litigation commenced, those changes do not bring Abbotsford into compliance with *Adams* and there is no assurance that these measures will continue. Just as the Court may not order Abbotsford to undertake any particular measure, neither can the Court order that these particular initiatives not be discontinued. The current display of political will, therefore, has no bearing on the rights analysis at hand. The fact that these initiatives have only commenced after the litigation began, many of them in 2015, is reason unto itself to make the declaration of rights sought. The City may chose at any point to change it's course of action and policy, it should however have direction from the Court as to the requirements of the *Charter* in doing so.

The s. 24(1) remedies sought are appropriate and necessary

1162. Drug War Survivors should be granted a s. 24(1) remedy for unconstitutional state actions. Section 24(1) is both a statutory standing provision and, most importantly, a remedy provision of broad discretion, which is in keeping with the Supreme Court's broad and purposive approach to *Charter* interpretation and remedies as detailed above.

Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violation Society, 2012 SCC 45 [*DESWUAVS*] at para. 44; Kent Roach, "Enforcement of the *Charter* - Subsections 24(1) and 52(1)", (2013), 62 S.C.L.R. (2d) 473 [Roach 2013] at 479

1163. A strict reading of the wording of s. 24(1) is not appropriate or in keeping with the s.24(1) jurisprudence and commentary. This wording has been interpreted broadly to include corporate entities and may be available before a violation occurs. As Professor Roach states, "constitutional remedies raise a host of complex theoretical issues that cannot be decided through a textual analysis of either subsection 24(1) or 52(1)".

R. v. Big M Drug Mart, [1985] 1 SCR 295; Roach 2013 at 476 to 477

1164. While s. 52(1) of the *Charter* provides remedies for unconstitutional laws, s. 24(1) provides remedies for governmental acts that violate the *Charter*. In *R. v. Ferguson*, the Supreme Court explained that when s. 24(1) is read in context, it is apparent that the intent of the framers of the Constitution was for it to function primarily as a remedy for unconstitutional government acts under the authority of legal regimes that are accepted as fully constitutional, *i.e.*, where s. 52(1) does not apply. It is possible, however, for

litigants to seek both a ss. 52(1) and 24(1) remedy for an unconstitutional law and governmental acts under that law.

R. v. Ferguson, 2008 SCC 6 at paras. 35, 60 - 64; *R. v. 974649 Ontario Inc.* at paras. 14

1165. On appeal from the dismissal of the City's application to strike in this proceeding, Harris J.A. held that:

> I am not persuaded that the case law clearly establishes a court cannot grant a s. 24(1) remedy in favour of persons who are not themselves parties to the action. The case law does not firmly decide that s.24(1) remedies may only be claimed and enforced by individuals.
>
> Although not definitively decided, it appears to me to be possible to read of *Canada v. (Attorney General) v. PHS Community Services Society v. Canada (Attorney General)*, 2010 BCSC 15 (CanLII), 2010 BCSC 15 (the Insite case), and *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309 (CanLII), for example, as opening the door to granting a s. 24(1) remedy to an entity or a person in effect on behalf of others affected by the unconstitutional state conduct. In *PHS*, the Portland Hotel Society, the operator of the Insite facility and the two individual plaintiffs both advanced a s. 24(1) claim and received a remedy on behalf of those users of the facility and its employees whose constitutional rights had been infringed. In *Inglis*, individual plaintiffs who were mothers in prison with children sought and received s. 24(1) relief in relation to the cancellation of a prison programme affecting all mothers with children at that facility. I do not think these cases can be distinguished away by observing that the remedy was granted because it stood to benefit only other similarly situated persons.

British Columbia/Yukon Association of Drug War Survivors v. Abbotsford (City), 2015 BCCA 142 at paras. 17-18

1166. While DWS agrees that historically, the predominant, but not exclusive, focus of s. 24(1) has been on individual remedies, the section has not strictly been used as an individual remedy. This approach is in keeping with the generous and purposive interpretation of s. 24(1) repeatedly referenced by the Supreme Court and recently reiterated by the Court of Appeal in this matter. Further examples of this purposive approach include *R. v. Demers* in which the Supreme Court struck down provisions of the *Criminal Code* pursuant to s. 52(1) of the *Charter*. These provisions provided that people, like the accused, who were permanently unfit and could never stand trial were subject to indefinite appearances at a Review Board and to the exercise of its powers. Although it granted the s. 52(1) remedy sought, in keeping with the flexible and purposive application of s. 24(1), the Supreme Court also awarded a prospective remedy under s. 24(1) in relation to <u>any</u> permanently unfit accused - not just the particular accused. If Parliament did not amend the invalid legislation within one year, those permanently unfit to stand trial who did not pose a significant threat to the safety of the public could ask for a stay of proceedings. In other words the remedy was not an individual remedy.

R. v. Demers, 2004 SCC 46 at paras. 63 to 64

1167. There is no principled basis upon which a litigant with public interest standing must necessarily be foreclosed from relief for state action under s. 24(1). This is certainly true in circumstances where, as here, DWS is made-up of individuals who have had their *Charter* rights infringed. As stated in the standing decision in this matter, DWS is the only viable entity by which to challenge the City's actions; a finding reflective of the Court of Appeal in *Adams*, which acknowledged that due to the extremely limited means of the litigants requiring a multiplicity of proceedings does not provide a reasonable remedy. One must not lose sight of the fact that s. 24(1) is a provision that exists to provide a remedy.

Adams at para. 146

Section 52 remedy

1168. The Impugned Provisions, in their current form, have led to an indiscriminate application of those bylaws to Abbotsford's Homeless without consideration of their rights nor to the individual nature of various public spaces utilized by Abbotsford's Homeless.

1169. In the circumstance, declaring that the impugned provisions are of no force or effect to the extent that they are applied to Abbotsford's Homeless provides a narrow and focused remedy for the infringements of their rights, much like the remedy granted in *Adams*. Taking into consideration the content of the above declaration of rights, this remedy provides the City the freedom and direction required to craft new bylaws, should the City choose to do so.

Adams at paras. 164-166

1170. The blanket prohibitions that currently exist do not take into account the differences between developed and undeveloped parks or factor in whether or not a given area requires protection from all members of the public due to a particular environmental sensitivity. Further, the evidence demonstrates that the City adopts the view that the *Parks Bylaw* applies to all "public places under the custody, care, management, and jurisdiction of the Council." The application of the *Parks Bylaw* has not been restricted to lands identified as or held as park land, rather it has been applied more broadly to lands such as the "Triangle" patch of land near the intersection of South Fraser Way and Riverside Road. The commonality between the locations where the bylaw is enforced is the presence of Abbotsford's Homeless, not the nature of the lands themselves.

Parks Bylaw s. 2 "Park", Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

1171. Coupled with the *Street and Traffic Bylaw* and the City's enforcement of the *Good Neighbour Bylaw* on private lands - resulting ultimately in the removal of homeless encampments from private lands - the prohibition on Abbotsford's Homeless ability to shelter and engage in life sustaining activities is essentially exhaustive.

1172. A more minimally impairing approach is one that acknowledges the fundamental need to engage in essential life sustaining activities – sleeping, resting, sheltering, keeping warm, and securing safe spaces including places to eat, drink, go to the bathroom and wash – while balancing the impact of those essential activities with their potential impacts on public spaces.

1173. In keeping with *Adams*, allowing Abbotsford's Homeless to set up a shelter overnight in a developed park while taking it down during the day would reasonably balance these interests in those particular spaces. The evidence shows, however, that there is a legitimate need for people to shelter and rest during the day and no indoor shelter in which to do so. A more minimally impairing response to balancing that need with the interests of other users of developed parks would be to allow overnight shelters to be erected between 7:00 or 8:00 p.m. until 9:00 or 10:00 a.m. the following day, taking into consideration the unique characteristics of a given park such as whether it is directly adjacent to a school or contains areas designated as environmentally sensitive.

1174. Further, the evidence demonstrates the need for more than overnight shelter to protect oneself from the elements during the day, sleep during the day, work during the evening and to allow Abbotsford's Homeless some consistency of location in aid of their safety, need for rest and sleep, community connections and their ability to maintain adequate shelter and contact with outreach workers and service providers.

1175. Evidence was presented at trial regarding what has been done by the City of Victoria since *Adams*. While there has been some improvement in the ability of service providers to reach homeless clients and now people may erect shelter at night, the fact tht shelter must be disassembled and moved each day, still has a negative impact on outreach services. The restriction on camping during the daytime limits the depth of services that can be provided as people cannot be found during the day.

Direct Examination of Shane Calder, June 30, 2015 (a.m.)

1176. Some people who camp regularly have possessions such as tents and sleeping bags, which are heavy and being required to move each day means carrying heavy belongings and possibly having to move long distances to access daytime shelter. A person's ability to make such a move depends on their physical state and weather. Mr. Calder was unaware of any places to store belongings, rather people carry them on their back and bikes or in carts.

Direct Examination of Shane Calder, June 30, 2015 (a.m.)

1177. Therefore, distinguishing non-developed parks and other public spaces from developed parks would allow the City to legislate areas where more than overnight camping is permitted. A balanced and minimally impairing approach would take into consideration the proximity of such spaces to services for Abbotsford's Homeless and whether certain areas should be designated as environmentally sensitive, while ensuring that space exists in which Abbotsford's Homeless can sleep, rest, shelter, stay warm, eat, wash and excrete. Whether such areas may be occupied on a consistent or rotating basis must be determined in consideration of each unique area.

1178. In the face of the significant breaches of the constitutional rights of Abbotsford's Homeless and their current untenable living conditions, DWS submits that the bylaws be read down effective the date of the decision and that Lonzo Park and/or the Triangle or another appropriate piece of land be designated for more than overnight camping commencing in 3 months from the date of the decision. This gives the City the intervening time to determine if or how to regulate this use of space and determine what role they may choose to play in ensuring the safety of the encampment and balancing the rights and interests of all citizens.

1179. In redrafting laws that would meet minimum constitutional standards, the evidence shows that Abbotsford's Homeless require a level of choice. The survival strategies of Abbotsford's Homeless are not homogeneous – some people feel safer in community and near services, others find isolation and distance to be a safer option. The remedies proposed will ensure that any new bylaws meet Constitutional muster and will ensure that Abbotsford's Homeless have places where they can lawfully be.

1180. As was found by the Court of Appeal in *Adams*, so too the remedies sought in this matter do not intrude into the policy decisions of elected officials, rather the remedies sought leave open for the City to consider alternative solutions to the identified problems and to determine the best manner in which to deal with them in the context of the City's legislative policies.

Adams para. 10

1181. *Adams* left it open to the City of Victoria to return to court with evidence that the need to shelter oneself in public spaces no longer existed and thus the bylaws no longer violated the rights of the homeless. Likewise, this Court could make that option available to the City of Abbotsford; however, any such evidence would have to take into consideration the equality interests at play including the effect of disability, addiction and race on the ability to accept outreach or access shelter or housing and the reality of people being banned from services as a result of such barriers.

Adams para. 166

City is liable for the Abbotsford Police Department's actions

1182. Drug War Survivors submits that the City is the proper defendant with respect to the portion of the pleadings referencing the Abbotsford Police Department. The City is directly liable for any *Charter* breaches of the Abbotsford Police Department in relation to enforcement of the City's bylaws against Abbotsford's Homeless. The City also vicariously liable for *Charter* breaches by the Abbotsford Police Department regarding actions taken to displace Abbotsford's Homeless.

1183. DWS is seeking a s. 24(1) remedy in relation to the City for its actions and for the Abbotsford Police Department's actions. The Abbotsford Police Department's actions were unconstitutional because the impugned bylaws are unconstitutional. They were also unconstitutional because the bylaws were enforced in an unconstitutional manner (for

example, spraying pepper spray into the tents and belongings of some of Abbotsford's homeless or slashing their tents and belongings).

1184. Drug War Survivors submits that the law is now settled that municipalities may be liable for *Charter* breaches committed by its police officers. In *Vancouver (City) v. Ward*, the plaintiff sued the City of Vancouver and the Province for *Charter* damages based on a strip search conducted by provincial corrections officers and a search and seizure of his car by the Vancouver Police Department. The Court found that the plaintiff's s. 8 *Charter* rights were violated when he was strip searched and when his car was searched and seized. After a lengthy discussion of s. 24(1) and constitutional damages as a remedy, the Court held the Plaintiff was entitled to a s. 24(1) remedy and ordered the Province to pay *Charter* damages for the breaches committed its corrections officers and made a declaration against the City for the unreasonable search and seizure. In *Ward*, the Court recognises that *Charter* damages under s. 24(1) should be sought against the state and not against private officials.

Ward at paras. 61 to 79; see also *Mason v. Turner*, 2014 BCSC 211 at para. 125; *Young v. Ewatski* at paras. 65-68

1185. The City states that, "there is no statute which renders the City responsible under s. 24(1) of the *Charter* for the actions of the APD". This is incorrect. There is a statute, it is the *Charter*.

1186. The City relies on a number of cases that hold that a municipality is only statutorily liable under the *Police Act* for the tortious acts of its police force and is not liable at common law. DWS submits that the City cannot extend this proposition to say that a municipality is not responsible for *Charter* breaches. Nothing in the case law cited or s. 20 of the *Police Act* indicate that a municipality's liability is so limited.

Henry v. British Columbia, 2014 BCSC 1018; *Ribeiro v. Vancouver*, 2005 BCSC 395; *R.G. v. Vancouver Police Board*, 2012 BCSC 30; *Young v. Ewatski*; *Police Act*, R.S.B.C. 1996, c. 367, s. 20

1187. The City is not in the same position as the Chief of Police was in *Young v. Ewatski*. In that case, the Chief of Police, Mr. Ewatski, was liable in tort for his officers' actions pursuant to Manitoba's *The Provincial Police Act*. However, he was not as an individual liable for *Charter* damages under s. 24(1) as the Court of Appeal held, following *Ward*, that a s. 24(1) claim must be advanced against the state and not an individual. In the case at bar, the City is the state. Merely because it is also statutorily required under the *Police Act* to be tortuously liable for its police force does not put it in the same position as an individual like Mr. Ewatski.

Young v. Ewatski at para. 74

1188. Further, provincial legislation and common law principles relating to tortious liability of a municipality for its police force cannot displace a claimant's right to an appropriate *Charter* remedy for a constitutional violation. This is entirely distinguishable from whether a claim for compensation by way of *Charter* damages was statute-barred by the

former *Limitation Act*'s limitation period for damages in respect of injury to person or property.

Foote v. Canada (Attorney General), 2012 BCSC 177 at para. 30, relying on *Bush v. City of Vancouver et al.*, 2006 BCSC 1207 at

1189. The policy justification, recognised in *Henry v. British Columbia* as to why the *Police Act* prevents a municipality from having direct control over its police, is intended to ensure a just and impartial carrying out of the duties of the police free from any improper influence. This rationale is not relevant to, and is not undermined by, the principle recognised in *Ward* that a municipality - the state - is liable for *Charter* breaches committed by its police force. And, there is good basis for the *Ward* principle: apportioning liability differently between police tort and *Charter* breaches, possibly claimed on the same factual basis, creates unnecessary and unprincipled procedural barriers to litigants (often unrepresented) when for tort and *Charter* claims the state is responsible. It would also result generally in administrative inefficiencies and a waste of judicial resources as both municipalities and police boards would be required to retain separate counsel to defend against actions brought in tort and on constitutional grounds even though ultimately, pursuant to the *Police Act*, the City would be required to pay the police board's costs and any damages awarded against it.

Henry v. British Columbia at paras. 32 to 33; *Police Act*, s. 15

1190. Contrary to what the City asserts, there is an important reason to make the City responsible for any unconstitutional actions of its police department: there must be an effective or - to use the language of s. 24(1) - an appropriate and just remedy for those whose *Charter* rights have been breached. "To create a right without a remedy is antithetical to one of the purposes of the *Charter* which surely is to allow courts to fashion remedies when constitutional infringements occur".

Nelles v. Ontario, [1989] 2 S.C.R. 170 at 196

1191. Further, British Columbia municipalities with municipal police forces are statutorily liable for the torts committed by their police officers. Unlike for municipalities in Saskatchewan, B.C. municipalities are not equivalent to insurers, but are jointly and severally liable. Through the *Police Act*, the Province could have imposed a duty to defend and indemnify on municipalities, but it did not do so. The Province could also have imposed statutory liability on municipal police boards or police chiefs instead of its municipalities, but it did not do so.

Police Act, R.S.B.C. 1996, c. 367, s. 20(1)(a)

1192. The City has provided no basis why statutorily imposing state liability on municipalities for a municipal police department's torts is in anyway undermined by imposing liability on a municipality for its police department's *Charter* breaches. Indeed, if a municipality can be liable for its police department's torts, without trespassing on the principle of police independence from its related municipality, surely the same is true if the municipality is liable for its police department's *Charter* breaches? No evidence has

been tendered that would support the assertion that if municipalities are responsible for the *Charter* breaches of their respective municipal police forces, that this would somehow be disruptive to the statutory framework and its underlying policy.

1193. Finally, on appeal from the motion to strike brought in this proceeding, the Court of Appeal has held that the City may be vicariously liable for the conduct in issue:

> The first is that it is not obvious to me that the City may not be vicariously liable under the relevant legislation for the conduct in issue. I accept the proposition, as did the Chief Justice, that the statutory scheme makes a municipality liable for the torts of police officers…On one reading of the decision in *Vancouver (City) v. Ward*, 2010 SCC 27, the City of Vancouver was vicariously liable for the unconstitutional conduct of its police officers because that conduct amounted to a constitutional tort. Here declarations are being sought in relation to conduct that might be similarly categorized.
>
> *Drug War Survivors* at paras. 22 to 23

Conclusion

1194. The law as it currently stands holds that, for municipal police forces, the state party responsible is the associated municipality. There can be no question that the state must be held accountable for police action that breaches *Charter* rights. There is no principled basis upon which to find otherwise and to accede to the City's proposal risks creating a legal fiction whereby plaintiffs may be denied a just and appropriate remedy.

V. CONCLUSION

1195. For the forgoing reasons, Drug War Survivors submits that the City violated ss. 2, 7 and 15 of the *Charter*. These violations are not saved by s. 1.

All of which is respectfully submitted this 30th day of July, 2015.

David Wotherspoon

DJ Larkin

APPENDIX - SUMMARY OF WITNESSES

Abbotsford's Homeless

Colleen Aitken

1196. Colleen Aitken is 60 and has lived in Abbotsford for approximately 30 years. She has been cyclically homeless for the last 12 years. Prior to becoming homeless, she raised three children and owned three businesses. Most recently, she lived in a tent at the Gladys Avenue Camp.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

1197. Ms. Aitken was hit by a car on a crosswalk approximately one year ago in May 2014. She wears a leg brace because she experienced a "cave in" after the accident, meaning that all the rods and pins came loose. She is currently waiting to have a knee replacement done. She said she is in "a lot of pain." As a result of the accident, Ms. Aitken suffered a brain injury and lost the site in her left eye and the hearing in her left ear.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

1198. Ms. Aitken estimated that "at best," she could walk approximately four to five blocks before her leg swells up, although this does vary from day-to-day. The pain has had a significant effect on her stress level. She explained that recently, she had a breakdown due to stress build-up and was hospitalized. Following discharge, she was returned to tent at the Gladys Avenue Camp. When living at the Gladys Avenue Camp, she was unable to walk down the street to the Salvation Army due to her knee injury. As a result, she relied on hampers from the food bank or on friends, who would bring her food. S he explained that while the hampers contained some useful food items, many of the contents are canned or require cooking and there are no cooking facilities at the Gladys Avenue Camp.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

1199. Ms. Aiken has short-term memory loss. She writes things down in a book to help remind her, but that oftentimes she forgets to look at the book.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

1200. Ms. Aitken testified that she is on "very limited pain medicine," and that she has been taking medication "off and on" since the accident. She explained that she has self-medicated to manage her pain. This has included alcohol, Tylenol 3, Flexeril and Valium. She has also taken opiates and heroin. Ms. Aitken has overdosed. She said that "when heroin was being cut with Fentanyl," she overdosed 13 times over a 1-year span. During an overdose, "you drop and hopefully somebody else is around that can call 9-1-1 for you." Luckily, every time she overdosed, someone else was around, including at Jubilee Park; she confirmed that if no one had been around, she would not be alive today.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

1201. She has been hospitalized in the past due to a head injury. She had "a bad fall off the steps of this one building where I was actually living in a doorway there." She split the back of her head and had multiple staples put in. She stated that she was discharged at 4:30 am and had to walk back from the hospital to downtown. She said that when she was discharged, she felt dizzy, sick to her stomach and disoriented. She spent the night in the doorway of a business.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

1202. Ms. Aitken is currently trying to get back on Social Assistance, which she was cut off from after an accident.

Direct Examination of Colleen Aitken, July 9, 2015 (p.m.)

Norm Caldwell

1203. Mr. Caldwell (aged 49) is an Aboriginal man from the Tetlit Gwichi'in Nation who has lived in Abbotsford for three years. He is currently homeless, living under "a beautiful tarp" on Gladys Avenue. He has lived on Gladys Avenue nearly the entire three years of being homeless in Abbotsford.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

1204. Mr. Caldwell's parents raised him only in his earliest childhood. Following the death of his father, Mr. Caldwell only saw his mother "for a short period of time." Mr. Caldwell said that his mother used "lots" of drugs and that he helped her take them because she needed assistance. He gave evidence that he started using drugs, including heroin, at the age of five, but had "no idea what they were." He testified that he ate the remainders of whatever his mother was using.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

1205. Mr. Caldwell stated that his mother went to an Anglican residential school for "her whole young life" until she was kicked out at age 14. Mr. Caldwell was raised with his brother for four years of his life. After his father died, Mr. Caldwell and his brother were placed in separate foster homes.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

1206. Mr. Caldwell gave evidence that he experienced racism in school every day and that he was called names every day. He finished up to half of Grade 11 and confirmed that he did well in school. He indicated that he would like to have finished high school.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

1207. Mr. Caldwell lived with his daughter since the day she was born. He said that she purchased a home in Abbotsford with her husband and that he lived with her for

approximately two years. Mr. Caldwell no longer lives with her due to "a dispute about money." He indicated that his use of opiates while staying with them created tension; he said that his daughter's husband got upset with him.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

1208. Mr. Caldwell used to restore vehicles. He began in 1982, but stopped on account of an allergy to the chemicals, which made him sick to his stomach. He described some of his tasks as chopping rust out, making steel panels, welding, auto body painting, etc. He said that he "loved" the work and that he would "definitely" still do it if he could.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

1209. Mr. Caldwell gave evidence that his former doctor (a specialist in contagious diseases) cut him off his medication a month prior to his testimony. He said that he no longer sees that doctor and that there is no doctor in town who he can see for pain, despite needing treatment for it. Mr. Caldwell said that he has tried to find a doctor to help him with his pain management. Mr. Caldwell has been on disability for three months. Mr. Caldwell used to see a pain specialist and addictions doctor in 2005 —Dr. Waterloop—to help with his pain. He said that he no longer sees Dr. Waterloop because the only treatment he was prescribed was Methadone. Mr. Caldwell said that he took himself off of Methadone because it does not work for him and because he wakes up with intense stomach pain when he takes it.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

1210. Mr. Caldwell uses opiates to manage his pain; he said that he gets "dope sick" every day. Mr. Caldwell described the symptoms of dope sickness as having no energy, not being able to sit still, having no patience, muscle contractions, and "restless leg syndrome." Mr. Caldwell testified that using opiates allows him to "get up and walk, think." Without them, he said that he has no energy and feels restless. He has never been in treatment. He has tried to detox himself before and indicated when he did, he experienced withdrawal.

Direct Examination of Norm Caldwell, July 8, 2015 (p.m.)

Harvey Clause

1211. Harvey Clause is a 54-year-old man who lived in Abbotsford from 2006 until recently when he moved to the Lookout Shelter in North Vancouver and then to Lytton, where he lives with Barry Shantz. He currently pays rent through social services, which amounts to $375 a month.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

1212. Mr. Clause used to live in Calgary. As a young child, he had ADHD, had trouble staying in school and did not even finish Grade Seven. He is a single parent and raised his five children. He started using drugs to deal with the death of his mother. After he started

using drugs, his children stopped contacting him. He used drugs to hide his real emotions and to feel good.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

1213. After the death of his mother in 1999, Mr. Clause made a conscious choice to move to Vancouver and use drugs. He was still hiding the feelings he had about being alone and in his words, "My mother was my only relative and she was all I had." When he moved to Vancouver, it was his first time really living on the streets. Eventually, he left the East End because he was afraid of the people, the violence and the chaos. Mr. Clause entered treatment at the Union Gospel Mission in 2006, but did not complete the program because he had trouble with journaling due to his poor writing skills.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

1214. Upon moving to Abbotsford in 2006, Mr. Clause stayed at a recovery house called Stepping Stone. He paid rent for a time through social services, until he was told he would be given a management position, which led him to drop social services as he thought he would be paid for his work. He was not paid and eventually had to leave. He also lived in an unofficial recovery house run by a man who eventually decided to shut down the house.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

1215. Mr. Clause has been on social assistance for a long time but he has been cut off twice. Once, he was cut off because he missed a "Jobwave" appointment after he was beaten in the head with a hockey stick and hospitalized. The attack was over a rental dispute at a house that was being torn down. Afterwards, Mr. Clause had to live outside. When Mr. Clause was not on welfare he would bottle and can for a living. That was how he would feed himself and his cat.

Direct Examination of Harvey Clause, July 2, 2015 (p.m.)

Rene Labelle

1216. Rene Labelle (aged 50) is a member of Abbotsford's Homeless who has lived in the City for approximately 22 years. For seven of those years, he has been homeless. He stated that he would like to find housing. Mr. Labelle ordinarily sleeps at Exhibition Park in Clearbrook—a 50-minute walk from downtown. He no longer uses a tent but instead sleeps in a sleeping bag because "things go missing."

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

1217. Mr. Labelle is an alcoholic but not a drug user. He first began drinking at age 8 or 9 and injected cocaine at age 13. He gave evidence that his father used drugs and alcohol in front of him as a child and that his father in fact gave him drugs and alcohol as a child. that he has left the Shelter voluntarily during the night in order to drink. He gave

evidence that if he has not been drinking for an extended period, he experiences stomach pain, sweating and shaking.

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

1218. Mr. Labelle stated that has not been employed for the last eight years; he panhandles occasionally. His last job was at Matcon Civil Engineering. Prior to that he worked for Pacific Blasting. Mr. Labelle indicated that he was fired from his position as Blaster because "alcohol and dynamite don't mix."

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

1219. Mr. Labelle helps Positive Living pick up used hypodermic needles once a week.

Direct Examination of Rene Labelle, July 8, 2015 (a.m.)

Doug Smith

1220. Doug Smith is 50 years old and moved to Abbotsford 5-6 years ago with his then-wife in order to be nearer to her while she entered treatment; both Mr. Smith and his wife at the time were battling cocaine addictions.

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

1221. Mr. Smith was jailed at age 13 for car theft. He was charged with aggravated assault and possession of a restricted weapon approximately 20 years ago. Since then he has been issued only an obstruction charge that has since been dropped. The possession of a restricted weapon charge occurred in 2015. The trial was dropped; the case was not stayed.

Direct and Cross-examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

1222. Mr. Smith has 4 children, all under the age of 17. He has only ever had brief custody of each of his children. After a lengthy custody battle, his mother adopted his children. Following the adoption, Mr. Smith says that his mother "took off" with his children and he has not had contact with them for an extended period of time. The loss of their children devastated Mr. Smith's relationship with his then-wife. They were both suicidal following the outcome. Their marriage dissolved after Mr. Smith's wife stopped going to treatment and became "controlled by the dope."

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

1223. Mr. Smith began using heroin in jail in 1986. He has tried to detox from heroin three times, but the physical symptoms of detoxing, which include nausea and fever are, according to Mr. Smith, "one of the worst things I've ever had to go through." Mr. Smith has regularly used drugs as a means to self-medicate to "numb the pain" of losing his wife and children. During particularly difficult times, Mr. Smith was using anywhere from four to five "points" of heroin a day; (1gram is equal to 10 points). He states that his use at times has been motivated by suicidal desires.

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

1224. Mr. Smith suffers from Raynaud's disease, a condition that affects the nerve endings in his hands and feet and causes extreme, relatively constant pain. He takes a number of medications to relieve pain symptoms. In 2013, Mr. Smith was taking Gavipenton, Zopiclone and 200 mg of morphine per day for two years on prescriptions from a Dr. West. Mr. Smith states that he was abruptly "cut off" his medications and that he was unable to obtain another doctor in Abbotsford given that he had "dropped" Dr. West. Mr. Smith estimates the cost of his bare minimum medications to be 600$ per month, if he were paying for them himself.

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

1225. Mr. Smith now sees Dr. Christy Sutherland in Vancouver. Mr. Smith states that Dr. Sutherland's drop-in centre welcomes the homeless community and that he had not seen a facility like it prior. He does not know of any others in Abbotsford's homeless community who use the facility.

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

1226. Mr. Smith has been renting a room for the last four months from a couple he knows in Abbotsford. He does not pay rent but instead helps out when necessary. Prior to this, he was living in an apartment across from Jubilee Park. The landlord took Mr. Smith's belongings, told him he could no longer live there and boarded over the door with plywood to prevent entry.

Direct Examination of Doug Smith, July 14, 2015 (p.m., but before lunch)

Nana Tootoosis

1227. Nana Tootoosis is a 35 year old Cree man from Prince Albert, Saskatchewan, who has lived in Abbotsford since 2002. He currently lives homeless in a tent at the Gladys Avenue Camp. He lives with Norm Caldwell and Roy Roberts and has camped with Mr. Zurowski before at the Happy Tree. Mr. Tootoosis said that he often sleeps during the day.

Direct and Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.)

1228. Mr. Tootoosis had trouble in school with listening and spent three or four years living on the street with his mother. When he was growing up, his mother "snapped" and went to a safe house. Mr. Tootoosis does not trust a lot of adults.

Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.)

1229. Mr. Tootoosis stated that he has diabetes and that he takes medicine for it. He also has Osteoporosis. Mr. Tootoosis said that his regular doctor "passed [him] on." He stated that he has hit his head and lost consciousness approximately four to six times. He said that one time he did it himself.

Direct and Cross-examination of Nana Tootoosis, July 8, 2015 (a.m.)

Holly Wilm

1230. Holly Wilm was born on February 3, 1971. She has lived in Abbotsford for 18 years. She was born in Chilliwack and she identifies as half Aboriginal, specifically as half Niska.

1231. Ms. Wilm lives outside and she has lived outside for about ten years off and on. She has "been inside a few places and usually it doesn't end up working out good and I lose everything I own again anyway." She provided an example of it not working out and her losing. Specifically, at the last place she lived she paid her rent and the guy came into her room the next day and said "you didn't pay the rent, Get out" and took everything she owned. She was subletting so she couldn't do anything about it.

Direct Examination of Holly Wilm, July 8, 2015 (p.m.)

Nick Zurowski

1232. Nick Zurowski is an Aboriginal man from the Nlaka'pamux First Nation (Lytton First Nation) who considers himself a watcher and protector of those in need. He is not currently homeless, but has been until recently and maintains close relationships with many in the homeless community in Abbotsford. He admitted that he has hurt people in the past and he has been to prison, but he has changed his ways and now wants to help and protect others out of a love for God. Some of Abbotsford's Homeless come to him and ask him for help. He has spent time with numerous individuals struggling with mental health issues and addictions, taking care of them and ensuring they have access to help when they need it.

Direct Examination of Nick Zurowski, July 6, 2015 (p.m.)

1233. Mr. Zurowski drinks alcohol and smokes marijuana. He takes medication (Neproxine) for his knees and back.

Cross-examination of Nick Zurowski, July 6, 2015 (p.m.)

Service providers and related witnesses

Shane Calder

1234. Shane Calder is a social worker who has worked in Toronto and Victoria and currently works at AIDS Vancouver Island. He has been with that organisation since 2008. AIDS Vancouver Island works with people that have HIV or Hepatitis C or who are at significant risk of either of those illnesses. The work Mr. Calder does involves counseling, addiction prevention, harm reduction, disability applications and housing. He also supports people as they go through their treatments and help them adhere to their medication regiments.

Direct Examination of Shane Calder, June 30, 2015 (a.m.)

1235. His client demographic is largely men between 30 and 45 years of age, many of whom are Aboriginal. The clients accessing Mr. Calder's services during morning hours tend to be housed, while those accessing evening services tend to be unhoused and on fixed income. Sex workers and people who come into regular contact with emergency mental health services are also represented within his client group.

Direct Examination of Shane Calder, June 30, 2015 (a.m.)

Joan Cooke

1236. Joan Cooke has worked for the Fraser Health Authority as a psychiatric nurse since 1995. In mid-February 2015, she became the Coordinator for the Assertive Community Treatment ("ACT") Team for Abbotsford and Mission. Ms. Cooke stated that she was the first hire with Abbotsford's ACT Team—she helped establish it and assisted with all the planning, hiring and interviewing. The ACT Team is "a mental health team that provides assertive outreach or intensive outreach for people with serious and persistent mental illness that have complex needs that interfere with their functioning."

Direct Examination of Joan Cooke, July 24, 2015 (a.m.)

1237. Ms. Cooke described her responsibilities in relation to ACT as the following: developing the program; interviewing all the applicants; assisting the hiring process; interviewing and meeting with referrals; organizing the day and the staff coordinator; educating staff; and hands-on work such as assisting with medications, giving injections, doing home visits, driving individuals places and searching for housing.

Direct Examination of Joan Cooke, July 24, 2015 (a.m.)

Jeannette Dillabough and Sharon Forbes

1238. Sharon Forbes and Jeannette Dillabough are the co-founders and co-executive directors of Raven's Moon Resource Society. Raven's Moon is a non-profit charitable organization that provides supportive housing for people living in Abbotsford. She stated that most of the people in their houses are homeless or come from homelessness. Raven's Moon has been in operation for over six years—since 2009.

Direct Examination of Sharon Forbes, July 24, 2015 (a.m.); Direct Examination of Jeannette Dillabough, July 24, 2015 (a.m.)

1239. Ms. Forbes is an addictions counselor. Prior to founding Raven's Moon, Ms. Forbes was working in the Abbotsford community helping people. She was doing outreach and working at a drop-in centre for street-engaged women. She said that women were telling her that landlords would not rent to them; they were desperate to get off the streets and wanted Ms. Forbes to rent a house so that they could live in it, and she agreed.

Direct Examination of Sharon Forbes, July 24, 2015 (a.m.)

Nate McCready

1240. Nate McCready is the Community Director for Abbotsford's Salvation Army. He has been in this position since 2014. Prior to that he was the Manager of the Lookout Society's shelter on Yukon Street in Vancouver. The shelter is a minimal barrier shelter. There are no rules on sobriety and no sign-in required. Pets are also allowed, as are couples.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

1241. At the Salvation Army, Mr. McCready oversees all of the programming. There are programs related to outreach, nurses, the Centre of Hope Shelter, a store and an emergency disaster truck.

Direct Examination of Nate McCready, June 30, 2015 (p.m.)

Rod Santiago

1242. Rod Santiago is the executive director of Abbotsford Community Services ("ACS") is a multi-service agency that serves the Abbotsford community, particularly those members of the community who are marginalized and/or homeless or near-homeless. ACS provides services such as a food bank, early childhood care, a legal advocacy program, a youth resources centre, an addictions centre and "Abbotsford Connect", a program that brings together service providers throughout the City of Abbotsford to provide free services to individuals who might otherwise have difficulty accessing them.

Direct Examination of Rod Santiago, July 14, 2015 (p.m.)

1243. ACS employs over 380 staff, has over 1000 volunteers and services approximately 40000 members of the Abbotsford community each year. Services are provided to individuals of all ages, including and especially those who are marginalized; services include a food bank, early childhood care, a legal advocacy program, a youth resources centre, an addictions centre and housing facilities. ACS began providing rental subsidies in March of 2015.

Direct Examination of Rod Santiago, July 14, 2015 (p.m.)

Dennis Steel

1244. Dennis Steel is member of the Canadian Armed Forces and is certified in both standard and combat First Aid. He volunteers with the 5 and 2 Ministries between deployments and has been volunteering full-time since 2012. He is primarily an outreach worker but he also helps out with weekly dinners at Jubilee Park and does pick-ups of clothing donations to deliver to Abbotsford's Homeless.

Direct Examination of Dennis Steel, June 30, 2015 (a.m.)

Ron van Wyk

1245. Dr. Ron van Wyk is currently the Director of Human Resources and Thrift Enterprises with the Mennonite Central Council of British Columbia ("MCC"). He has held that

position since around 2006. He has a Bachelor's degree in social work from the University of South Africa, an honours degree in sociology from the University of the Free State in South Africa, a Masters of Social Science *cum laude* from the University of the Free State in South Africa and a doctorate in philosophy from the University of Port Elizabeth in South Africa, which is now known as the Nelson Mandela Metropolitan University. He worked as a professor for about 14 years in South Africa at both the graduate and undergraduate level in sociology courses. Specifically he taught an introductory course to sociology, courses in research methodology, social sciences methodology courses, and courses in social problems that dealt with issues of poverty and marginalization. He has taught courses in social theory, in the sociology of development, and in political sociology. He moved to Canada in 1999.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.)

1246. At the MCC, Dr. van Wyk is currently part of the municipal team of MCC BC responsible for oversight of the program work the MCC carries out in British Columbia, which is about nine years of programming. He is also responsible for the MCC's ten thrift shops and their operations as well as for overseeing human resources. The MCC also does work for the Fraser Valley Regional District that goes back to 2004. They carried out the first research study on homelessness in the Fraser Valley that was done with funding from the University Office Canada out of Ottawa and after that they started working more closely in 2008 with the Fraser Valley Regional District and its planning department to do the tri-annual homeless surveys or counts in the Fraser Valley, which involved the communities of Abbotsford, Mission, Chilliwack, Agassiz, the Boston Bar, Harrison and Hope. They carry that out at the same time Metro Vancouver carries out their tri-annual homeless surveys or counts.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.)

1247. Dr. van Wyk oversees programs that deal with sponsoring refugees to come to Canada, works with child poverty projects in Surrey and Vancouver, and supports women who experience violence and abuse in relationships. The MCC also runs a rental assistance project that involves a little bit of outreach to homeless people and they do volunteer engagement work. There is also a program involving trading. It provides service opportunities for international young people to come to North America and for North Americans to go and serve for a year or two overseas in low income or developing countries.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.)

1248. Part of the homeless work they do involves providing a meal once a month. They hope to do it more if they can mobilize some of their supporting churches to be involved. They have partnered with the Lifeline Outreach Society to provide the meal and they have also partnered with Raven's Moon to sponsor some of the houses that they run for people who need accommodation. The MCC offers a meal on Sunday morning for people living in the homeless camp across from the MCC facility in Abbotsford. They also provide those individuals with water when it is hot outside and they work with people who are ready to find accommodation, and they connect those individuals with Raven's Moon, 5 and 2

Ministeries, and others. They work collaboratively in that respect with Salvation Army outreach workers. The MCC has volunteers that assist with these various programs. They have about a thousand volunteers across their system that work to assist the MCC in some of the work it carries out, including volunteers that assist them with meal preparation and serving a meal on a Sunday afternoon.

Direct Examination of Ron van Wyk, July 8, 2015 (p.m.)

1249. Ron van Wyk was a member of the City's Homelessness Task Force.

Agreed Statement of Facts, para. 30.

Milton Walker

1250. Milton Walker is the Executive Director of King Haven Treatment Centre ("Kinghaven") and Peardonville Housing Society. The Society operate two residential addiction treatment centres and the Valley House. Mr. Walker oversees budget policy development, supervises 65 staff members and talks to clients. He has been the Executive Director for 11 years and before that he answered telephones, has been a cook and a counsellor for the residents of King Haven and the Deputy Executive Director. Before he was employed at King Haven, he was unemployed and living in various boarding houses in Vancouver. He was a resident and client at King Haven for 35 days when he was 43 years old.

Direct Examination of Milton Walker, July 17, 2015 (a.m.)

Jesse Wegenast

1251. 5&2 Ministries is a Christian ministry that operates on the principle of "love thy neighbour". This means pursuing justice on a number of levels including advocating for access to basic necessities such as housing, food and water and doing what they can to assist people with their expressed needs. 5&2 does not have an office and is based mostly out of Jubilee Park. It derives its name from the proverb describing the miracles by which Jesus fed 5,000 men with 5 loaves of bread and 2 fish. As Pastor Jesse Wegenast puts it, the underlying value of the 5&2 Ministries is to "do what you can with what you've got".

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m.)

1252. Pastor Wegenast is an ordained minister and works with the 5 and 2 Ministries, as a service and harm reduction coordinator. He also works with the Abbotsford Community Services as a homeless outreach workers and administers rental subsidies provided by B.C. Housing. Pastor Wegenast has worked almost full-time with the 5 and 2 Ministries since 2008.

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m.)

1253. Pastor Weganast generally leaves home around 7:00 to 7:30 a.m. and will often get home from his last outreach with 5&2 Ministries between 10:30 and 11:00 p.m. While his days

vary, he spends much of his time at policy meetings, serving on committees like the Aboriginal Integrated Health Team, making rounds to camps or residences where people are camped or housed, distributing food as it comes in, providing medical care and addressing people's needs as they arise.

Direct Examination of Jesse Wegenast, June 29, 2015 (a.m.)

City of Abbotsford

James Arden

1254. James Arden is employed by the City of Abbotsford as the Director of Parks Services and has held that position for just over two years. He started that position as Acting Director on April 1, 2013, and ceased being the Acting Director at the end of June 2013. As Director, Mr. Arden's role includes oversight of the Parks Services Division, oversight of various bylaws, as well as oversight regarding maintenance and horticulture. Managers also report to him and he writes reports to council.

Direct Examination of James Arden, July 21, 2015 (p.m.)

1255. Previously, Mr. Arden was the Manager of Facilities and Maintenance where he dealt with people who appeared homeless. In one facility, there was an underground parking lot with emergency stairwells where people would hang out or sleep or take up the space and so they would go engage with them and move them out of those spaces. They would move them out by talking to them and by having crews come in for cleanup and making sure those individuals moved out.

Direct Examination of James Arden, July 21, 2015 (p.m.)

Heidi Enns

1256. Heidi Enns has been employed by the City of Abbotsford as the General Manager of Parks, Recreation and Culture for three years. Her position entails responsibility for the administration, development, planning, organization, maintenance and overall oversight of parks, recreation and culture services. (This includes sports fields, playgrounds, open spaces, and lakes). She reports to the City Manager, George Murray.

Direct Examination of Heidi Enns, July 15, 2015 (a.m.)

1257. There are three employees who report directly to Ms. Enns: They are Carla Soltis (The Administrative Manager), James Arden (Director of Park Services) and Allyson Friesen (Director of Recreation and Culture).

Direct Examination of Heidi Enns, July 15, 2015 (a.m.)

1258. Under the administration of her Department, there are 157 parks, various open green spaces, 2 lakes, a golf course, 66 arenas, 2 indoor swimming pools, 1 outdoor swimming pool, 4 cemeteries, art galleries and museums, and a sports and entertainment facility—the Abbotsford Center. Exhibition Park—a multi-sport park—is among those 157 Parks.

Direct Examination of Heidi Enns, July 15, 2015 (a.m.)

Dwayne Fiztgerald

1259. Dwayne. Fitzgerald is employed by the City of Abbotsford and has been a Bylaw Enforcement Officer since February 2007. Before that, he was a bylaw enforcement officer for the City of North Vancouver for five years and a security guard for a security company. He has received training at the Justice Institute of British Columbia in bylaw enforcement education, levels 1 and 2.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

1260. As a Bylaw Enforcement Officer he decides when to enforce simple day-to-day parking violations, but discusses more complicated matters with his Manager. He is directed to do what he does by his Manager. He is designated as a bylaw officer for the east side of Abbotsford, but he has attended on the west side when that side was short staffed in the past. Abbotsford has not always been divided east-west and that changed in mid-2014.

Direct Examination of Dwayne Fitzgerald, July 20, 2015 (a.m.)

1261. Mr. Fitzgerald has had no specific training for dealing with homelessness.

Read-ins, Tab 9, Question 70

Bill Flitton

1262. Bill Flitton is a City Clerk and Corporate Officer for the City. He has held that position since August 2006. Before that he was the Manager of Corporate Planning for the City, which he did for two and half years, and before that he was an assistant in the City for about 10 years. As a corporate officer he ensures accurate records of Council meetings are kept, provides access to records as per legislative requirements, ensures the certified copies of documents and keeps the corporate seal. He certifies copies by asking staff to provide photocopies with certification and he adds his signature.

Direct Examination of Bill Flitton, July 16, 2015 (p.m.)

1263. He is involved in bylaw enforcement on behalf of the City and reports to Jake Rudolph. The Deputy City Clerk and the Director of Bylaw Services report to Mr. Flitton. Magda Laljee is the Director of Bylaw Services and she manages the functions of the bylaw officers themselves as well as clerks. Prior to Magda Laljuee, Gordon Ferguson was the Director of Bylaw Services. He ceased working for the City in late July 2013. During the period of transition, Mr. Flitton was asked by the City Manager to temporarily take over as the Acting Manager of Bylaw Enforcement.

Direct Examination of Bill Flitton, July 16, 2015 (p.m.)

1264. During his time as the Acting Manager of Bylaw Enforcement, Mr. Flitton dealt with the Gladys Avenue Camp. The issue of camping in Gladys was first brought to his attention in July 2013. At the time Mr. Flitton commenced his position as the Acting Manager of

Bylaw Enforcement in 2013, his previous experience with the City in bylaw enforcement included reporting to the Direct of Bylaw Services. At that time, he did not deal with issues related to camping on City property.

Direct Examination of Bill Flitton, July 16, 2015 (p.m.)

1265. Mr. Flitton has had no specific training for dealing with homelessness.

Read-ins, Tab 9, Question 72

Debra Graw

1266. Debra Graw is a Bylaw Enforcement Officer for the City of Abbotsford. She has held that position since September 2013. From 2007 to September 2013 she was the records management clerk for the City, a fire clerk and a bylaw clerk. She has had training as a Bylaw Enforcement Officer. Specifically, she took two courses at the Justice Institute in B.C., level one and level two bylaw training. This training took a total of 10 weeks.

Direct Examination of Debra Graw, July 16, 2015 (p.m.)

1267. She works on the west side of Abbotsford as a Bylaw Enforcement Officer and she has had experience with encampments. The dividing line between the west and the east side is Gladwin Road. Ms. Graw spends approximately a quarter of her time as a Bylaw Enforcement Officer dealing with encampments. She does not make decisions about what to do with encampments on City lands. The Manager of Bylaw Services, Madga Laljee, makes those decisions.

Direct Examination of Debra Graw, July 16, 2015 (p.m.)

Dena Kae Beno

1268. Dena Kay Beno is employed by the City of Abbotsford as the Homelessness Coordinator. She started that position on April 27, 2015.

Direct Examination of Dena Kae Beno, July 27, 2015 (p.m.)

1269. Previously, Ms. Beno was involved in the Timok Housing Authority from 1991-1995, which was an agency of housing developments in the United States. In that role, she oversaw affordable housing programs. From 1995-1997 she oversaw licensing for a company. She also worked as a marketing coordinator in Canada. Before that she worked with a consolidation of companies in BC and oversaw project management activities and developed a behavior-based safety program. She also worked with Metro Vancouver on homelessness portfolios and then began as the Housing Coordinator in Richmond where she worked to support the Housing Manager in Metro Vancouver. She oversaw the City of Richmond's affordable housing strategy that dealt with everything from street homelessness to affordable housing. Ms. Beno co-facilitated the Richmond action plan, which is a group of various levels of government and stakeholders in the City.

Direct Examination of Dena Kae Beno, July 27, 2015 (p.m.)

1270. For the City of Abbotsford, Ms. Beno's primary role as the Homelessness Coordinator is to oversee and implement the Homelessness Action Plan was established by the Homelessness Task Force. Since April 27, 2015, she has been tasked with implementing the plan through its strategic objectives by working with various community stakeholders to develop actions related to supporting homeless people's access to housing or support. Ms. Beno also works as a staff liaison to support the actions and objectives of the Homelessness Action Advisory Committee (HAAC) and attends meeting. She does not provide direct outreach.

Direct Examination of Dena Kae Beno, July 27, 2015 (p.m.)

Reuben Koole

1271. Reuben Koole is the Senior Planner in Community Planning for the City of Abbotsford. He has held that position since 2013. He works with other City departments to determine where people will live and work in the City in the future. Before he was a city planner, Mr. Koole was a social planner with the City where he worked with a number of community agencies and talked about challenges or issues in social development in Abbotsford. He also worked with other departments and made recommendations to Council about ways that the City could be better involved in issues of homelessness. When he was a social planner, his responsibilities included policy development, liaising with the City and external stakeholders, City liaison with the Abbotsford Social Development Advisory Committee and social agencies and attending Integrated Services Enforcement Team meetings.

Direct Examination of Reuben Koole, July 21, 2015 (a.m.); Read-ins, Tab 7, Question 56 and Tab 9, Question 69

1272. As part of his job, Mr. Koole reviews reports of the City. Since he became Senior Planner in 2013 he has been involved in issues related to homelessness mostly in relation to Jubilee Park in the latter part of 2013.

Direct Examination of Reuben Koole, July 21, 2015 (a.m.)

1273. Mr. Koole is not a social scientist but is trained in social planning. He acts as a liaison to City Council and builds recommendations to Council. He helps craft City policy based on those recommendations. The City looks to him to bring them information that they need to build policy. He incorporates information from agencies, so he works with contractors and members of council. Since he moved on to his role of City Planner, no one fills the role of Social Planner. He is unaware of anyone filling it on a contract basis.

Cross-examination of Reuben Koole, July 21, 2015 (p.m.)

1274. The only training regarding homeless issues he has received was through a workshop on the topic organised by the City of Vancouver.

Read-ins, Tab 7, Question 56 and Tab 9, Question 69

Magda Laljee

1275. Magda Laljee is the Manager of Bylaw Services for the City. She started that position on April 7, 2014. Bylaw Services investigate alleged bylaw contraventions and try to resolve complaints through education. As the Manager of Bylaw Services, Ms. Laljee manages the bylaw divisions for the city of Abbotsford; deals with human resources and labour relations matters with staffing; develops protocols, policies and sometimes bylaws; reviews bylaws; amends bylaws; sets work standards and procedures for her team; writes reports; and gives presentations to City councilors. Ms. Laljee reports to Bill Flitton.

Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

1276. The City has seven Bylaw Officers and they now report to the assistant manager who was hired on July 15, 2015, but before that they reported to Ms. Laljee. Before Ms. Laljee worked as the Manager of Bylaw Services she was the Supervisor of Community Bylaws for the City of Richmond for five years. That job was pretty comparable to her current job.

Direct Examination of Magda Laljee, July 24, 2015 (p.m.)

Ted Main

1277. Mr. Main has been employed with the City of Abbotsford Fire Prevention Department for 11 years. His job involves daily inspections of buildings and public grounds for bylaw violations as well as providing education related to fire safety in companies and schools.

Direct Examination of Ted Main, July 22, 2015 (p.m.)

George Murray

1278. George Murray became City Manager on February 4, 2013. His responsibilities as City Manager include, Chief Administrative Officer, being the sole City employee who works for Council; leading a team of senior managers who run the administrative and operations and provide recommendations to Council on public policy

Read-ins, Examination for Discovery of George Murray, Q10, p. 3, ll. 1-8; Q3, p. 1, ll. 20-24

Paul Priebe

1279. Paul Priebe is employed by the City as a supervisor who oversees building maintenance. He oversees the maintenance of parks, buildings. structures and shelters. He notes that if it is not green it is under his purview.

Direct Examination of Paul Priebe, July 16, 2015 (p.m.)

1280. Mr. Priebe is not tasked with anything specifically related to encampments. He was not part of the Integrated Services Enforcement Team. In Direct Examination he testified that he reports homeless camps he sees only to Bylaw Enforcement and not to the police, but in Cross-examination he admitted that he has called police when he has found homeless people sleeping in City parks, even during the daytime. He takes photographs of encampments although this is not part of his job. He was instructed to take these photographs by Dan Weatherby, who is his manager.

Cross-examination of Paul Priebe, July 17, 2015 (a.m.); Exhibits 54 and 44 at Tab 55

Jake Rudolph

1281. Jake Rudolph is Deputy City Manager and has been with the City since October 13, 2013. As Deputy City Manager he is responsible for a number of City departments, including: Technology, Finance, Legislative Services, Real Estate, Economic Development, as well as other major issues and projects as assigned by the City Manager, including the newly created Homeless Coordinator position. Mr. Rudolph reports to George Murray and to City Council. He has responsibility for homelessness.

Read-ins, Examination for Discovery of Jake Rudolph, April 23, 2015, Questions 11 to 15; Direct Examination of Jake Rudolph, July 27, 2015 (a.m.)

1282. He has a Bachelor of Arts from St. Mary's University, a Masters of Urban and Rural Planning from Dalhousie and a Masters of Business Administration from the University of Northern BC. In 1981, he worked in Edmonton as a planner and then returned to Nova Scotia as a senior planner for a year and a half. In 1988, he went to Fredericton to be an Assistant Director of Planning and then moved up to Assistant City Manager. He left Fredericton and went to the City of Maple Ridge for three years. Then he spent three years in Pitt Meadows as Chief Administrative Officer in 2001 and continued there until he came to Abbotsford in 2013. In Pitt Meadows he had overall responsibility for all operations with the City. The population there was 180,000. The population in Abbotsford is 140,000.

Direct Examination of Jake Rudolph, July 27, 2015 (a.m.)

1283. Mr. Rudolph has had no specific training for dealing with homelessness.

Read-ins, Tab 9, Question 71 and Read-ins, Examination for Discovery of Jake Rudolph, May

Anthony Earl Wayne Schmidbauer

1284. Anthony Earl Wayne Schmidbauer is the Sanitation Manager for the City. He has held that position for five years. His job involves curbside collection for the City and roadside cleaning, which includes cleaning up roadside litter and garbage left by the side of the road. Prior to this position he was the City's Supervisor for the Roads and Sanitation Department and before that he was on the City's Asphalt Pavement Group.

Direct Examination of Anthony Earl Wayne Schmidbauer, July 22, 2015 (a.m.)

Navdeep Sidhu

1285. Navdeep Sidhu is an employed by the City of Abbotsford as a Bylaw Enforcement Officer. She has held this position since 2007. She has received bylaw level 1 and 2 training at the Justice Institute of B.C., which consisted of two weeks of training at each level. Ms. Sidhu has had involvement with homeless encampments as a Bylaw Enforcement Officer. She did not have much involvement until 2013 and she became involved around the time of Jubilee Park. Since the fall of 2013 she has only spent about 5-10% of his time on encampments. When she is not working on encampment-related files she deals with issues involving poverty, traffic, commercial trucks and secondary sweeps.

Direct Examination of Navdeep Sidhu, July 17, 2015 (a.m.)

1286. Bylaw officers cover different zones on the east and west side of Gladwin Road. Ms. Sidhu's side is the west side. Lansdowne Park is on the east side. She is aware of encampments on the east side and acknowledged an encampment on Gladwin on the east side.

Direct Examination of Navdeep Sidhu, July 17, 2015 (a.m.)

Keith Senft

1287. Keith Senft was the City's Manager of Parks and Projects from February 2008 until he retired on August 31, 2014. Before February 2008, he worked in the Parks Department at the City as a tradesperson. He carried on that position from 2000 to 2008. As a Manager Mr. Senft was involved in construction relating to parks over the years including trails and buildings. He was involved in work in Jubilee Park in 2013, as his Department was scheduled to replace the old playground.

Direct Examination of Keith Senft, July 15, 2015 (p.m.)

Carla Soltis

1288. Carla Soltis is the Manager of Administration and the Matsqui Centennial Auditorium for the City. She oversees park bookings and has held this position for 24 years, but was to retire on July 16, 2015. Before working for the City, she was Crown Counsel for Corrections Canada. She reports to Heidi Enns in the City's Parks Department. She is also an executive assistant to the City Manager for whom she processes documents, correspondence, committee meetings and takes notes.

Direct Examination of Carla Soltis, July 15, 2015 (a.m.)

15, 2015, Question 494

Scott Watson

1289. Scott Watson has been a Parks Planner with the City since 2008; he designs parks, works with the planning department to acquire parks, determines where park space is required and is involved with general park infrastructure. He is a registered landscape architect.

Direct Examination of Scott Watson, July 22, 2015 (p.m.)

Abbotsford Police Department witnesses

Steven Fehr

1290. Constable Steven Fehr has been with the Abbotsford Police Department for ten years. For the past two years he has been a collision reconstructionist. He attended Jubilee Park on December 14 and 15, 2013, to keep the peace.

Direct Examination of Steven Fehr, July 16, 2015 (p.m.)

Christoph Stahl

1291. Constable Christoph Stahl is a member of the Abbotsford Police Department and has been since 2008. He joined the police bike squad on January 1, 2013 and is currently a member of that squad.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

1292. The bike squad makes an effort to patrol areas that are not frequented by police cars, and areas that patrol cars cannot access such as parks and green belts. It also works to create relationships and to enforce the law. It works with individuals that are in the drug trade or are in the downtown core of Abbotsford. This work involves patrolling homeless camps.

Direct Examination of Christoph Stahl, July 10, 2015 (p.m.)

Shane Wiens

1293. Constable Shane Wiens is a member of the Abbotsford Police Department and has been a member since 2007. He was a member of the bike squad in 2013 but he is not currently a member.

Direct Examination of Shane Wiens, July 10, 2015 (p.m.)