

CANADA / JUDGMENT

Prince George (City) v. Johnny

2025 BCSC 1556

COURT

Supreme Court of British Columbia

DECIDED

14 August 2025

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2025 BCSC 1556 Prince George (City) v. Johnny

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Prince George (City) v. Johnny,

2025 BCSC 1556

Date: 20250814

Docket: S2564901

Registry: Prince George

Between:

City of Prince George

Plaintiff

And

Belvery Edward Johnny also known as Bel Johnny, Jessica Alec,

Tom Beaudette, Jesse Boake, Quinton Campbell, Constant Lavoie,

Johnnie Macburnie, Jane Doe, John Doe and Other Persons Unknown

Defendants

Corrected Judgment: The text of the Judgement at paragraph 128 was corrected
on August 19, 2025.

Before: The Honourable Justice Elwood

Reasons for Judgment

Counsel for the Plaintiff:

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C. St. Germain

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No other appearances

Place and Dates of Hearing:

Prince George, B.C.

July 2–4, 2025

Place and Date of Judgment:

Prince George, B.C.

August 14, 2025

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INTRODUCTION

- [1] The City of Prince George (the "City") applies under the summary trial rule for a declaration, statutory injunction, and other relief intended to close an encampment on City-owned lands (the "Encampment").
- [2] Prince George is home to a large population of people who do not have 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 public spaces. The most recent public data is from November 2024, when an estimated 206 residents of Prince George were absolutely homeless. Many of these people struggle with complex challenges related to poverty, mental illness, trauma, racism, and addiction. An estimated 75 percent identify as Indigenous; 42 percent have spent time in foster homes or group homes.
- [3] Housing for this vulnerable population is inherently precarious. The combination of a chronic shortage of affordable housing, strict rules governing subsidized housing, and the unique challenges faced by many who are unhoused leads to situations where people who want a safe and warm place to stay either cannot find a space, are ineligible for the available spaces or cannot comply with the rules and find themselves evicted with nowhere else to go.
- [4] The City also finds itself in a difficult position. Many people without a home in Prince George end up camping on City lands; yet the City does not have the funds, expertise or jurisdiction to create housing for them without support from senior levels of government. The City must allocate its own scarce resources to meet the needs of all of its residents. It must enforce its bylaws to maintain public safety and ensure that public spaces can be enjoyed by all members of the public.
- [5] The Encampment was established in the spring of 2021 and expanded to encroach on a number of City-owned road rights-of-way and parcels of land along an undeveloped section of Lower Patricia Boulevard. At its peak in the summer of 2021, the Encampment included at least 70 tent structures.
- [6] The population of the Encampment varies from season to season, but it has been continuously occupied since 2021. The City estimates that there are currently 11 people sheltering in the Encampment. The defendants say there are 18 people. The parties agree that the seven named defendants are current occupants of the Encampment.

- [7] The original defendant, Bel Johnny, began sheltering at the Encampment in the summer of 2021. He has been a continuous occupant since that time. He currently occupies a large area, with numerous tarps and structures. The City alleges that he is operating an illegal bicycle "chop shop", as evidenced by the many bicycle frames and parts in his area. Mr. Johnny has been offered assistance to access shelter or housing. To date, he has said he is not interested in indoor shelter or supportive housing.
- [8] In the fall of 2021, the City commenced proceedings by petition under the style of cause Prince George (City) v. Stewart and brought an application for declarations and an injunction to vacate and clear two encampments, including the Encampment.
- [9] In reasons for judgment indexed at 2021 BCSC 2089 [Stewart], Chief Justice Hinkson dismissed the City's application on the basis that "absent other suitable housing and daytime facilities, the occupants of [the Encampment] must be permitted to stay" at para. 115 (the "Stewart Order" and the "Stewart Conditions").
- [10] During the month of November 2021, the City helped many of the occupants of the Encampment relocate to a supportive housing facility known as the Knights Inn. Following this, the City dismantled tents and cleared possessions from areas of the Encampment which it mistakenly assumed to have been abandoned.
- [11] In January 2022, the City returned to court in a new proceeding commenced as Prince George (City) v. Johnny, seeking an order that the Encampment be closed. It argued that the Stewart Conditions had been fulfilled because there was sufficient housing at the Knights Inn for the Encampment occupants.
- [12] In reasons for judgment indexed at 2022 BCSC 282 [Johnny #1], Justice Coval found that the Stewart Conditions had not been fulfilled, and that the City had breached the Stewart Order:
- [82] Under the Stewart Order, the Lower Patricia encampment was permitted to stay unless and until the City demonstrated available and accessible housing and daytime facilities for its occupants. The City breached the Stewart Order by dismantling much of the encampment without such housing or daytime facilities for many of the occupants. This breach inflicted serious harm on vulnerable people.
- [13] Following Coval J.'s decision, the City re-evaluated and adjusted its course of action. This included a process to compensate occupants who had been harmed by the City's dismantlement of the Encampment. It also included a renewed focus on addressing the Stewart Conditions.
- [14] The Provincial government, the British Columbia Housing Management Commission ("BC Housing") and the City have since made significant investments to create new housing and shelter for unhoused people in Prince George.

- [15] In January 2025, BC Housing opened a new low-barrier supportive housing facility on Third Avenue, adjacent to the Encampment (the "Third Avenue Site"). This facility includes 42 private rooms, eight of which are currently being held by BC Housing to potentially support people sheltering at the Encampment, although only three rooms are available for immediate occupation.
- [16] The City now returns to court seeking a structured form of order to enforce its bylaws and close the Encampment. In brief, the City proposes an injunction that will be suspended with respect to the current occupants of the Encampment who apply to BC Housing for supportive housing, to take effect with respect to those individuals only after they are invited by BC Housing to move into an available unit at the Third Avenue Site.
- [17] The City argues that this form of order satisfies the Stewart Conditions and respects the constitutional rights of the defendants and other unhoused residents of Prince George.
- [18] The defendants argue that, as was the case in *Stewart and Johnny #1*, there is simply not enough accessible housing currently available to meet the needs of the occupants of the Encampment, and they must therefore be permitted to stay.
- [19] For the reasons that follow, I have concluded that the City is entitled to an order closing the Encampment to full-time sheltering; however, a provision must be added to provide that a person who is subject to the injunction may apply to the court for a constitutional exemption.

BACKGROUND

City Zoning and Bylaws

- [20] City of Prince George Parks Zoning Bylaw No. 7850, 2007, as amended (the "Zoning Bylaw") zones the location of the Encampment "P1: Parks and Recreation". Permitted uses in zone P1 are "park" and "recreation, outdoor." The Zoning Bylaw provides that "Park does not include a campground". Non-permitted uses, such as camping, are expressly prohibited by s. 1.6.7 of the Zoning Bylaw.
- [21] The City of Prince George Safe Streets Bylaw No. 9209, 2021, as amended (the "Safe Streets Bylaw") prohibits (among other things) erection of shelter on or around pedestrian sidewalks. Sections 2.1 and 3.1 prohibit anyone from obstructing, sitting or lying on a sidewalk or roadway.
- [22] The City of Prince George Parks and Open Space Bylaw No. 7370, 2022, as amended (the "Parks and Open Space Bylaw") prohibits anyone from setting up a tent or other temporary abode on land held by the City as public open space, except in accordance with rules established under the bylaw for "Temporary Overnight Sheltering" (s. 9.1).

- [23] The rules for Temporary Overnight Sheltering were established by the City on May 8, 2023, by amending the Parks and Open Space Bylaw to designate an area within the current location of the Encampment where people experiencing homelessness may lawfully erect temporary overnight shelters between the hours of 7:00 pm and 9:00 am the following morning.
- [24] The combined effect of the City's bylaws is that camping and any other form of sheltering is prohibited on the lands currently occupied by the defendants, except for Temporary Overnight Sheltering in the area designated by the City.

The Stewart Decision

- [25] The respondents in Stewart were known and unknown occupants of two encampments as of October 2021, the Encampment and a second, smaller site on George Street.
- [26] At the time, there were approximately 80 occupants of the two encampments, the vast majority of whom were sheltering in the Encampment. The City's evidence was that there were 81 permanent emergency beds in Prince George, which it argued were sufficient to house the encampment occupants.
- [27] The Chief Justice took judicial notice that Prince George can be very cold in the fall and winter, and that people with nowhere warm to stay must find ways of keeping warm to stay alive (para. 64).
- [28] The Chief Justice accepted the respondents' evidence that substance use disorders, mental health issues, lack of identification, application requirements, and a general lack of bank accounts or records had prevented at least some of the homeless occupants of the encampments from securing alternate housing (paras. 67-68). He also took judicial notice of the impacts of trauma from residential schools on the Indigenous homeless population of Prince George and the encampments (para. 71).
- [29] The Chief Justice acknowledged that because of the lack of appropriate, accessible shelter, or indeed any shelter at all, many people ended up "sleeping rough" on the streets or in parks and could not comply with an injunction against sheltering in the encampments without being in breach of the Safe Streets Bylaw (para. 72). He was also satisfied that the COVID-19 pandemic resulted in the closure of normally accessible shelter spaces and, as a result, many people had nowhere to shelter themselves except outdoors, either in the daytime or the nighttime (para. 73).
- [30] The Chief Justice concluded that he was not satisfied that the emergency shelter beds the City said were available to house the occupants of the encampments were in fact accessible to all of the occupants:

- [74] It is apparent that very few of the emergency shelter beds are low barrier, and it appears that many of the homeless persons in the City are ineligible to stay in at least some of the shelters. While the City contends that the availability of 81 shelter beds in the City is sufficient to house the encampment occupants, I am not satisfied that these shelter spaces are in fact accessible to all of the occupants of the encampments.
- [31] Relying on *Victoria (City) v. Adams*, 2008 BCSC 1363, aff'd 2009 BCCA 563, and *Abbotsford v. Shantz*, 2015 BCSC 1909, Hinkson C.J.B.C. held that the respondents' rights under s. 7 of the Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being schedule B to the Canada Act 1982 (UK), 1982, c. 11 [Charter] would be infringed by the City's bylaws where there was insufficient alternate housing that was sufficiently low barrier and accessible to all of the occupants of the encampments (para. 96).
- [32] The Chief Justice concluded that the City was not entitled to a declaration that the respondents had contravened the Zoning Bylaw:
- [115] The City's application for a declaration that the respondents have contravened the Zoning Bylaw by using the encampments as campgrounds contrary to the permitted zoning is dismissed on the basis that absent other suitable housing and daytime facilities, the occupants of those encampments must be permitted to stay at the encampments.
- [33] On the other hand, the Chief Justice issued an injunction to dismantle and close the George Street encampment, because he found that most of its occupants had migrated to the Encampment and the George Street encampment was no longer necessary (para. 117).

The Johnny #1 Decision

- [34] In October 2021, BC Housing began offering supportive housing at a property in downtown Prince George known as the Knights Inn. In mid-November 2021, many of the occupants of the two encampments relocated to rooms in the Knights Inn. City bylaw officers then dismantled the George Street encampment and those parts of the Encampment they considered to be abandoned.
- [35] Many of the occupants who moved to the Knights Inn had personal belongings destroyed before they were able to collect them. Others, absent from the Encampment on the day of the relocation, lost their shelter and belongings and had nowhere else to live.
- [36] In December 2021, the City applied for an interlocutory injunction to close the Encampment to all forms of sheltering. The City argued that it had satisfied the Stewart Conditions by providing suitable housing and daytime facilities at the Knights Inn. It argued that only one or two occupants remained at the Encampment, and that there were six beds available at the Knights Inn and an additional 38 shelter beds available elsewhere in Prince George to meet their needs.

- [37] Justice Coval found that the Encampment was a "fluid, complex and difficult situation" which had created "serious intrusions" on the neighboring residents and businesses since June 2021 (para. 68). However, in the face of the Stewart Order, Coval J. found, "the City [was not entitled] to dismantle much of the [Encampment] before returning to court to seek an order to do so" (para. 71).
- [38] Justice Coval found that the City "failed in the admittedly difficult task of identifying, as much as reasonably possible, how many people were regularly occupying the camp and how their shelters and belongings should be managed" (para. 72).
- [39] Justice Coval accepted "Mr. Johnny's evidence that, as of December 2021, approximately eight people continued to reside at [the Encampment]" (para. 73). In addition, Coval J. found that numerous people had left the Encampment only because their shelters and belongings were dismantled and destroyed, and they had not been offered alternate housing (para. 74).
- [40] Justice Coval also accepted the respondents' evidence that there were no more available units at the Knights Inn at the time of the application, and little if any low-barrier shelter space anywhere in Prince George (para. 61). He also accepted the respondents' evidence regarding barriers at the shelters and daytime facilities, where homeless people felt unwelcome, disrespected and banned for minor transgressions (para. 67).
- [41] Justice Coval concluded that the available units at the Knights Inn were insufficient to house all the occupants of the Encampment (para. 75), that the City breached the Stewart Order, and that this breach inflicted serious harm on vulnerable people (para. 82).

The Third Avenue Site

- [42] On May 24, 2023, the Province announced that Prince George would be a pilot community for its HEART & HEARTH initiative ("HEART" being "Homeless Encampment Action Response Team" and "HEARTH" being "Homeless Encampment Action Response Temporary Housing"). The HEART & HEARTH initiative is intended to:
- a) Resolve encampments and prevent future homelessness through coordinated outreach efforts to people in encampments to address their needs, and identify housing or shelter needs in the community; and
 - b) Provide funding for the creation of new emergency housing and shelter options with the expectation that municipalities will provide land and fast-track approvals for these new projects to expand shelter capacity for those in need.
- [43] Discussions between the City and the Province (through the Ministry of Housing) resulted in a memorandum of understanding that was signed by the Premier and the Mayor of Prince George in support of the HEART & HEARTH initiatives.

- [44] As part of these initiatives, the City proposed using City-owned lands located at the intersection of London Street and Third Avenue, just north of the Encampment, for a new supportive housing facility to be constructed and operated under the mandate of BC Housing.
- [45] Construction of the Third Avenue Site began in June 2024. The City supported the project through expedited land use approvals and approximately \$500,000 in preparatory site servicing work. Construction was completed in late 2024 and the facility began tenanting and operations in January 2025.
- [46] The Third Avenue Site can accommodate up to 42 residents. Each resident is allocated a private room with a single bed, a storage cabinet and a semi-private washroom shared with the adjoining room. There are laundry facilities, common areas and a commercial kitchen that serves two meals a day. The facility is staffed 24 hours a day, and provides several on-site services, including mental health support and harm reduction supplies such as naloxone kits.
- [47] The facility is constructed out of ATCO trailers. From the photographs in evidence, the bedrooms and common areas appear to be clean and inviting. The kitchen is modern and well-equipped. The outdoor space is tidy and marked off by a low chain-link fence around the perimeter of the property.
- [48] The Third Avenue Site is operated by a private contractor, which requires residents to sign a Transitional Housing Program Agreement. The anticipated length of stay is up to six months, with potential extensions on a case-by-case basis. The monthly rent of \$500 is paid by BC Housing. Residents agree to comply with a number of health and safety "guidelines", a violation of which may result in a termination of their residency. The facility does not have a sobriety or drug abstinence requirement.

BC Housing Assessment and Availability

- [49] BC Housing provides access to supportive housing such as the Third Avenue Site through a "Coordinated Access and Assessment" process across multiple housing sites. Once a person who is interested in housing has signed a "Supportive Housing Registry" form, an outreach worker conducts a "Vulnerability Assessment Tool" interview. BC Housing then seeks to match the person with the most suitable housing.
- [50] Supportive housing facilities such as the Third Avenue Site are intended to support unhoused people with temporary housing while BC Housing matches them with suitable longer-term housing.
- [51] Notably, BC Housing does not require people who are interested in supportive housing to complete an application form on their own; nor does it require them to provide rental references or bank account information.

- [52] Initially, the City took the position that there were a number of housing options available to the occupants of the Encampment: 44 units at the Knights Inn, 96 units at the North Star Inn, 50 units at First Avenue Health & Housing Facilities, and 42 units at the Third Avenue Site.
- [53] Alan Huggett, a retired social worker who is assisting residents of the Encampment, deposed that, based on his inquiries in mid-June 2025, he could only confirm two vacancies from this list, both at the Third Avenue Site.
- [54] In a responsive affidavit filed following Mr. Huggett's inquiries, Christopher Wetmore, the Coordinated Access and Assessment Manager for BC Housing, deposed that there were, as of June 25, 2025, 16 units available to the occupants of the Encampment: eight at the Third Avenue Site, and eight at the North Star (or "VSSH"). Mr. Huggett confirmed that Knights Inn is in the process of being closed.
- [55] The evidence on this application concerned the Third Avenue Site only. The City did not provide any evidence of the accommodations or services at VSSH, or the rules at that facility. The City accordingly limited its arguments to the Third Avenue Site.
- [56] As of June 25, 2025, there were 34 residents at the Third Avenue Site. According to the most recent information provided by Mr. Wetmore, there were as of June 25, eight unallocated units in various states of readiness:
- a) Two units were being held to provide temporary accommodation for residents of the North Star facility while their units were renovated;
 - b) Two units were under renovation by the operator;
 - c) One unit was recently vacated, with an update pending on its availability; and
 - d) Three units were vacant and unallocated.
- [57] According to Mr. Wetmore, this availability is subject to change at any time.

The Order Proposed by the City

- [58] The premise of the City's summary trial application is that the Third Avenue Site provides suitable housing to fulfill the Stewart Conditions and justify an order to enforce the City bylaws and close the Encampment to full-time sheltering.
- [59] The City took the position in its pleadings that the scope of the Stewart Order was limited to the occupants of the Encampment on the date the order was pronounced, such that the Stewart Conditions would be fulfilled once accessible housing is offered to Mr. Johnny, the only known remaining occupant from that date.

- [60] However, the City recognizes that unhoused people who took up shelter in the Encampment after the Stewart Order was pronounced will also be affected by the order it seeks. In this regard, the City says that it is committed to seeing that all those in the Encampment as of the date this application was heard (July 2, 2025) are offered accessible housing.
- [61] This is an appropriate concession by the City. The purpose of the Stewart Order would not be fulfilled simply by offering housing to Mr. Johnny.
- [62] In Johnny #1, Coval J. found that the Stewart Order requires that the occupants of the Encampment be permitted to stay "unless and until the City demonstrate[s] available and accessible housing and daytime facilities for its occupants" (para. 82; emphasis added).
- [63] In other words, the Stewart Order necessarily has a forward-looking perspective: the occupants whose interests must be considered are those who are sheltering in the Encampment when the City applies to enforce the bylaws on the basis there is sufficient suitable housing and daytime facilities for them.
- [64] The City also recognizes that the population of the Encampment varies and may not be accurately represented by the most recent count by BC Housing of 11 people on June 25, 2025 (or as of the date of the defendants' affidavit evidence that there are 18 occupants of the Encampment).
- [65] The number of available housing units is also not a fixed variable. As discussed, the City initially relied on dozens of units at multiple sites without regard to current availability, then revised that number to 16 units at two sites, and then further revised the number to eight units at the Third Avenue Site, of which only three were available for immediate occupancy on June 25th, and five may become available, but at an unknown date.
- [66] With these considerations in mind, the City modified the relief it sought in the original pleadings. The City says that the order it now proposes is designed to avoid the elusive task of determining exactly how many people rely on the Encampment for shelter and whether there is enough suitable housing and daytime facilities for them.
- [67] The full draft of the order sought by the City is attached as Schedule A to these reasons for judgment. The proposed order has four main components:
- a) A declaration that the Third Avenue Site constitutes "suitable housing and daytime facilities" within the meaning of the Stewart Order;
 - b) An order enjoining the defendants and all other persons having notice of the order from maintaining an encampment on defined City lands;
 - c) An order that any occupant continuously encamped in the Encampment from July 2, 2025, to the date of the order, including the named defendants (the "Remaining Occupants") who wishes to obtain housing must provide their information to BC Housing within seven days;

- d) An order that the effective date of the injunction with respect to the Remaining Occupants will be seven days following the date on which that person either:
 - i. refuses to make an application to BC Housing for access to shelter or housing; or
 - ii. refuses or fails to accept an offer of shelter at the Third Avenue Site.
- [68] The City says the intent of this order is to avoid requiring decampment for any occupant of the Encampment as of the date of the summary trial hearing until accessible housing is available to that person (or they decline to engage with BC Housing for the purpose of obtaining access to such housing).
- [69] The defendants argue that, based on the City's own evidence, there are not enough units available at the Third Avenue Site to satisfy the Stewart Conditions: there are seven named defendants, and at least 11 occupants of the Encampment, while there are only three available units. The defendants argue that projected future availability at the Third Avenue Site does not satisfy the Stewart Conditions and cannot justify an injunction closing the Encampment.
- [70] Further, while acknowledging that the Third Avenue Site addresses many of the specific barriers identified by the Chief Justice in Stewart, the defendants argue that the facility cannot be broadly declared as "suitable" because some of the features of the facility make it inaccessible to at least some of the occupants of the Encampment.

ANALYSIS

- [71] I would frame the issues on this application as follows:
- a) Is the order sought by the City suitable for summary trial?
 - b) Does the order sought satisfy the "availability" aspect of the Stewart Conditions?
 - c) How should the "accessibility" aspect of the Stewart Conditions be assessed by the Court?
 - d) Does the Third Avenue Site satisfy the "accessibility" condition?
 - e) Is the City entitled to the relief it seeks?

[72] I will address each of these issues in turn.

Is the Relief Sought by the City Suitable for Summary Trial?

- [73] The parties agree the issues are suitable for summary trial. Nonetheless, Rule 9-7 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 makes the presiding judge a gatekeeper. Subrule (15) provides that judgment should not be given on a summary trial application if the court is unable, on the evidence, to find the necessary facts or if it would be unjust to do so: *Main Acquisitions Consultants Inc. v. Yuen*, 2022 BCCA 249, at para. 89.

- [74] The court must be able to resolve any material disputes in the evidence on the critical issues. A summary trial judge cannot "simply choose between one affidavit and another": *Cory v. Cory*, 2016 BCCA 409 at para. 10. However, conflicts in the evidence do not necessarily mean the issues are unsuitable for a summary trial: *PHS Community Services Society v. Canada (Attorney General)*, 2010 BCCA 15 at para. 182.
- [75] In this case, the only real conflict in the evidence is the number of people who are currently sheltering at the Encampment. I cannot resolve that conflict; however, I agree with the City that it is not necessary to determine exactly how many people are sheltering in the Encampment for the purposes of determining whether to grant the order that the City proposes.
- [76] I can find the facts necessary to assess the availability and accessibility of the housing at the Third Avenue Site of the purposes of the relief sought by the City. On the other hand, as discussed below, I am unable to find the facts necessary to declare that the Third Avenue Site is accessible to everyone against whom the injunction may apply. With that one caveat, I conclude that it is just to decide the issues raised by the parties on a summary trial application.
- [77] The public interest favours a just, speedy and inexpensive resolution of these proceedings. The Encampment has persisted in violation of several City bylaws for more than four years. The City and the Province have spent significant public resources in an effort to fulfill the Stewart Conditions. In addition, the defendants lack the resources to participate fully in a conventional trial.
- [78] Accordingly, I agree with the parties that the relief sought by the City is suitable for summary trial.

Does the Order Satisfy the "Availability" Condition?

- [79] I find that the order proposed by the City satisfies the "availability" condition of the Stewart Order.
- [80] It would not be in the public interest to require the City to wait until the number of immediately available units at the Third Avenue Site equals or exceeds the number of occupants at the Encampment.
- [81] Given the pressing need for supportive housing in Prince George, the parties cannot, and should not, hold units vacant and reserved for occupants of the Encampment while the City applies to enforce the bylaws, the Court reserves its judgment and the City enforces the order.
- [82] While there are currently fewer units immediately available than the known number of occupants, the injunction will not take effect with respect to the current occupants until they are offered a space at the Third Avenue Site.

- [83] BC Housing says it will give the occupants of the Encampment priority consideration for the Third Avenue Site. If they apply for supportive housing, the current occupants will be offered the next available unit provided they meet the tenancy requirements and they are willing to abide by the site tenancy criteria.
- [84] In my view, this fulfills the purpose of the "availability" condition of the Stewart Order--that is, to allow the Encampment to remain until alternate housing is available for its occupants.
- [85] I agree with the defendants that the City should not be granted an injunction based on hypothetical future availability of suitable housing. However, I am persuaded that the City's current proposal is realistic, and that the Court can expect sufficient housing to become available at the Third Avenue Site so as to justify moving forward with the City's plan to close the Encampment, subject to a determination on the "accessibility" requirement.
- [86] Much has changed since the City failed to persuade the Chief Justice and Coval J. that there was sufficient available housing in 2021. The HEART & HEARTH initiative, the memorandum of understanding between the Province and the City and the construction of the Third Avenue Site all reflect tangible progress and concerted efforts by government to address the needs of the occupants of the Encampment. The relief that the City now seeks is better tailored to address the availability issue. The current proposal, based on a purpose-built facility and commitments from BC Housing, is more reliable than the general statements in the City's evidence in 2021 about the projected availability of housing units.

How Should "Accessibility" be Assessed?

- [87] The concept of "accessibility" as it relates to suitable housing and facilities for the occupants of the Encampment must take its meaning from the s. 7 Charter rights that informed the decision by the Chief Justice not to grant the relief the City sought in Stewart.
- [88] The Chief Justice referred to Adams and Shantz.
- [89] In Adams, the trial judge and the Court of Appeal recognized that a blanket prohibition on temporary overnight sheltering violates the s. 7 Charter rights of people experiencing homelessness when there are inadequate available alternatives to sheltering in public spaces. The courts in Adams left open the question of whether the shelter spaces that were available in Victoria satisfied s. 7, focusing solely on the quantitative shortfall rather than the suitability of the available options. The Court of Appeal noted the narrow scope of the trial judgment, quoting the following passage by the judge:

[73]

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.

[Emphasis by the Court of Appeal]

- [90] In *Shantz*, the Chief Justice held that, to provide an adequate alternative that satisfies s. 7 of the Charter, the available shelter spaces must be accessible to the homeless people who are sheltering outdoors: *Shantz* at paras. 80-84. The Chief Justice applied the same requirement in *Stewart* at paras. 65, 68, 74 and 96.
- [91] The City argues that "accessible" in this context means a safe alternative to sleeping outdoors that an individual is eligible to enter, meaning they are not barred for reasons of age, gender, active addiction, or having previously been banned from shelters as the result of a breach of shelter policy.
- [92] "Accessible" also means low barrier, in the sense that facilities with rules with which homeless people cannot comply are not accessible to them. In *Shantz*, the Chief Justice held that:
- [82] Given the personal circumstances of the City's homeless, the shelter spaces that are presently available to others in the City are impractical for many of the City's homeless. They simply cannot abide by the rules required in many of the facilities that I have discussed above, and lack the means to pay the required rents at others. While some of those who are amongst the City's homeless have declined available shelter, I am satisfied that at the present time there is insufficient accessible shelter space in the City to house all of the City's homeless persons.

[Emphasis added.]

- [93] In *Stewart*, the Chief Justice referred to several specific barriers that contributed to the lack of accessible housing alternatives in Prince George at that time, including rent, abstinence rules, identification and bank account requirements.
- [94] Jurisprudence since *Stewart* also establishes that accessible housing is housing that is responsive to the needs and challenges of the homeless population it is meant to serve. Discussing the concept of accessibility in the context of a judicial review in *Bamberger v. Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49, Justice Kirchner said:
- [123] There is no evidence to suggest the General Manager turned her mind to the specific needs of those sheltering in the Park or whether the available shelter spaces were suitable to their needs. As recognized by the jurisprudence since *Adams*, the suitability of available shelter spaces, in addition to the number of available spaces, is relevant to the constitutional right of sheltering in a public park: *Adamson* at para. 82; *Stewart* at paras. 65, 67-68, 74.
- [124] The experiences of those sheltering at CRAB Park illustrate some of the specific needs of the individuals and the challenges they have faced while trying to find suitable indoor accommodation.

[95] A similar point was made by the Court in *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670:

[93] Furthermore, I accept that it is simply not a matter of counting the number of spaces. To be of any real value to the homeless population, the space must meet their diverse needs, or in other words, the spaces must be truly accessible. If the available spaces are impractical for homeless individuals, either because the shelters do not accommodate couples, are unable to provide required services, impose rules that cannot be followed due to addictions, or cannot accommodate mental or physical disability, they are not low barrier and accessible to the individuals they are meant to serve.

[Emphasis added.]

[96] Where the housing options are not truly accessible to the homeless population they are meant to serve, the net affect reduces the number of "available" spaces. As noted in *Waterloo*:

[72] Having considered all of these accessibility factors, I find that, separately and cumulatively, they have the net effect of reducing the number of beds that would otherwise be available in the Region.

[97] In my view, therefore, the proper "accessibility" inquiry in this case must include an evidence-based assessment of whether the Third Avenue Site adequately responds to the needs and challenges of the occupants of the Encampment, and not simply whether they are eligible to reside at the facility.

[98] I also agree with the defendants that accessibility cannot be determined based solely on the positive features of the Third Avenue Site; accessibility must also be assessed based on how those features will function in practice for the individuals against whom the City intends to enforce the injunction.

[99] That said, accessibility must be approached at a certain level of generality. The accessibility of the Third Avenue Site cannot be judged based on the individual needs or subjective impressions of every occupant of the Encampment. Justice Carter of the Ontario Superior Court grappled with this issue in *The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662 [Kingston]:

[129] How would a court ever be able to determine whether there were sufficient accessible shelter spaces in a municipality? It would need to know the needs of each and every homeless person in a region - for example whether they were part of a couple, had a disability, or were suffering from an addiction. It would then be required to determine how many shelter spaces fit those particular needs, keeping in mind that those needs could potentially change on a daily basis. This exercise is not only impractical; it is for all intents and purposes impossible.

[131] In other words, there is not one type of shelter that can be built that would be truly "accessible" to the entire homeless population.

[Emphasis added.]

[100] Requiring an individualized assessment of the needs and challenges faced by each occupant of the Encampment would risk elevating the Stewart Conditions to a constitutional right to accessible housing and a positive obligation on the City to provide housing for a diverse range of disadvantaged people. This point was also made by the Court in Kingston:

[132] In addition, such a declaration would essentially place the focus on creating more shelter beds. It is far from clear based on the evidence before me that this is the only, or even most appropriate, solution to the problem. As noted by the Court of Appeal in Adams, it is not just sufficient shelter beds but also appropriate designated areas outside of parks to accommodate the homeless that might affect the constitutionality of the By-law. The point being is that the City should be entitled to choose amongst various options in crafting a response to this court's finding of unconstitutionality

[101] On the other hand, it must be remembered that the combined effect of the City's bylaws is that, once the injunction takes effect, there will be nowhere in Prince George where a homeless person can lawfully erect shelter from the elements, store their possessions or even rest during the day.

[102] Even if the Third Avenue Site generally provides a suitable alternative to the Encampment, there may be homeless people who, exceptionally, because of mental illness or past trauma, truly cannot access the facility.

[103] Temporary overnight sheltering in accordance with the City bylaws does not provide an adequate alternative for homeless people who truly cannot access the Third Avenue Site. The Stewart Conditions expressly include "suitable daytime facilities", which temporary overnight sheltering does not provide.

[104] Suitable daytime facilities are not only a concern during the harsh winters in Prince George, as found by the Chief Justice in Stewart. The potential lack of basic shelter during the day is an important consideration year-round. Extreme daytime heat during the summer is also dangerous for people experiencing homelessness. Those who have no other accessible option must be allowed to rest and shelter themselves.

[105] For these reasons, I find that it would not be just, on this summary trial application, to determine in a final way that the Third Avenue Site is accessible to all of the occupants of the Encampment.

[106] Accordingly, the terms of the injunction cannot be absolute. There must be a process for occupants of the Encampment who truly cannot access the Third Avenue Site to be exempted from the order. However, for the reasons discussed, any such exemption must be limited to exceptional circumstances.

Does the Third Avenue Site Satisfy the "Accessibility" Condition?

[107] I find that the Third Avenue Site generally satisfies the "accessibility" component of the Stewart Conditions

[108] The Third Avenue Site is a purpose-built supportive transitional housing facility, specifically designed to be accessible to the occupants of the Encampment. It is accurately described by the City as a "safe landing space"--a comfortable place where the occupants of the Encampment will find shelter, support and community while BC Housing works with them to identify longer-term housing solutions.

[109] Some of the features of the Third Avenue Site described above bear repeating in the context of the accessibility analysis. Those features include:

- a) Private rooms, each containing a bed, cabinet and wash basin, and access to a washroom shared only with the adjoining room;
- b) A large, attractive communal gathering area, including a dining area and TV lounge, which is open 24 hours a day;
- c) Two meals per day prepared in a modern on-site commercial kitchen;
- d) 24-hour staffing with a minimum of three staff members on site at all times;
- e) A secure environment, with internal and perimeter security features;
- f) Low barrier access, meaning no sobriety or drug abstinence requirement; and
- g) On-site personal support services, including healthcare and community service referrals, wellness checks, life skills training, mental health supports, and harm reduction supplies.

[110] The Third Avenue Site and the current policies of BC Housing resolve all of the specific barriers identified by the Chief Justice in Stewart: there is no rent payable by the residents; there are no abstinence rules; and there are no identification or bank account requirements.

[111] The defendants raise several concerns with the Third Avenue Site. Many of these concerns arise from their lived experiences, including time spent in group homes, incarceration, and emergency shelters, as well as their mental health and struggles with sobriety. From this evidence, the defendants argue that the Third Avenue Site cannot be broadly declared as "suitable" because the following features make it inaccessible to some of the occupants of the Encampment:

- a) Lack of private space, including the small size of the bedrooms and the fact that the common areas must be shared with 41 other residents;
- b) Lack of storage space for personal belongings; Mr. Johnny, for example, requires space for his tools and other belongings;
- c) A rules-based and authority-based environment; some of the defendants have a distrust of authority figures and deep anxiety around security and monitoring conditions;
- d) Restrictions on being placed as a couple;
- e) Policy limiting pets; and
- f) Policy permitting drug-use.

[112] I agree with the defendants that the Court should not issue a general declaration that the Third Avenue Site is suitable for everyone. However, I am not persuaded by the defendants that the factors they identify, either individually or collectively, render the Third Avenue Site inaccessible to the general population of the Encampment.

[113] Lack of private space. In my view, the Third Avenue Site provides appropriate privacy and dignity for its residents. Shelters and most housing facilities are communal by nature and cannot offer the same privacy as market-based housing. The bedrooms and bathrooms in the Third Avenue Site are private, with locking doors. The bedrooms are small, but no smaller than a modest hotel room. Residents with concerns about living in close proximity with other people can expect support from the staff and the on-site services.

[114] Notably, the Third Avenue Site is not intended to provide long-term housing. Rather, it is intended to be the first step in transitioning from outdoor shelter to independent housing, where the defendants will enjoy a greater degree of privacy.

[115] Exceptionally, there may be homeless people who because of serious mental illness simply cannot live in communal housing. These people may be dangerous to others or themselves in a communal environment. However, this is a separate concern from a preference for a larger bedroom or more personal space.

[116] I am not in a position to make findings on the evidence as to whether any of the defendants are by reason of mental illness unable to live at the Third Avenue Site. That assessment is best done by a BC Housing outreach worker using the "Vulnerability Assessment Tool" discussed above, subject to limited review by a judge on a proper evidentiary record. I will return to this point below.

- [117] Lack of storage space. There is some storage space in each of the bedrooms. I am told that the cabinets in the bedrooms can be locked. There may not be enough space for all the personal belongings of all the occupants of the Encampment, especially Mr. Johnny. However, any housing facility must prioritize safety, including fire safety, over storage of personal possessions. This prioritization ensures that the facility remains functional and safe, and therefore accessible.
- [118] I am told that the City has offered to store Mr. Johnny's tools for up to a year while he resides at the Third Avenue Site and looks for a longer-term solution that can more fully accommodate his storage needs. I am not persuaded that the facility is inaccessible to Mr. Johnny because of his tools or his belongings.
- [119] Rules-based environment. The rules at the Third Avenue Site are objectively necessary and reasonable to ensure a safe environment for the staff and residents. They include:
- a) A strict prohibition on any form of violence;
 - b) Cleanliness requirements for the residential units, with monthly cleanliness checks of each unit;
 - c) A requirement that residents respect the staff and other residents; and
 - d) A requirement for residents to comply with fire safety rules.
- [120] Some of the defendants may benefit psychologically from a lower-security environment; however, rules such as these are not a barrier to accessible housing. Without rules, there can be no supportive housing for anyone.
- [121] Exceptionally, there may be homeless people who because of serious mental illness cannot comply with even the most basic rules. Regrettably, those individuals may not be able to live in any form of supportive housing.
- [122] As discussed, I am not in a position to make findings of this nature on the evidence. As stated, the initial assessment is best done by a BC Housing outreach worker, subject to limited review by a judge on a proper evidentiary record.
- [123] Restrictions on couples. There is no rule that residents cannot be placed as couples at the Third Avenue Site. The bedrooms are single occupancy; but there is no rule against inviting another resident into one's room. I am told that efforts are made to find adjoining rooms for couples.
- [124] That said, guests are not permitted on the property, including in the bedrooms. Visitor restrictions exist at most supportive housing facilities to maintain safety and control within the facility. Non-registered visitors can pose security risks and strain limited resources. I note that the restriction on visitors is "subject to change with Program Management discretion", meaning that it may be possible for spouses or partners to visit with approval.

- [125] Restrictions on pets. Pets are important to many people, including Mr. Johnny. Most, if not all, supportive housing facilities have policies on pets. Large or dangerous pets may jeopardize a safe and accessible environment. The policy at the Third Avenue Site is that "Applicants with a pet will be considered for housing on a case-by-case, pending an assessment of health and safety, resident engagement and suitability of the site". This is a reasonable policy in my view, and not a barrier to accessible housing for Mr. Johnny or other pet owners.
- [126] Policy permitting drug-use. As discussed, the Third Avenue Site does not have a sobriety or drug abstinence requirement. For some, this may not be conducive to maintaining their own sobriety. One of the defendants is concerned that open use at the Third Avenue Site may cause him to relapse into addiction. While this is a valid concern, it must be weighed against the importance of providing accessible housing for as many people as possible. No facility can fully address the needs of every potential resident. For those who struggle with addiction, the Third Avenue Site offers better security, access to services and harm reduction than the Encampment.
- [127] I conclude that the Third Avenue Site adequately responds to the needs and challenges of the occupants of the Encampment, recognizing that there may be exceptional circumstances in which a homeless person with a serious mental illness simply cannot live indoors in a communal setting and therefore cannot access this facility.
- [128] I am not persuaded by the affidavit evidence that any of the defendants fall within this exception; however, I would not rule out the possibility that exceptional circumstances could be shown following an assessment by a BC Housing outreach worker.

Is the City Entitled to the Relief it Seeks?

- [129] The City relies on s. 274(1) of the Community Charter, S.B.C. 2003, c. 26, pursuant to which it may seek an order to restrain contravention of a bylaw.
- [130] In *Mission (City) v. Obasohan*, 2023 BCSC 1919, Justice Coval observed that "to obtain a permanent statutory injunction, the local government must prove, on a balance of probabilities, a breach of the relevant bylaw " (para. 48).
- [131] In this case, the continuous occupation of City lands by the defendants as an encampment is a clear breach of the relevant provisions of the Parks and Open Space Bylaw and the Zoning Bylaw which prohibit camping and sheltering activity.
- [132] I have found that the Stewart Conditions are met with the current proposal by the City. Accordingly, I find that the City is entitled to the relief it seeks, as described above and set out in detail in the draft order attached as Schedule A.
- [133] I have also found that the injunction against daytime sheltering must be subject to limited judicial review for exceptional circumstances.

- [134] Accordingly, there must be a term added to the order that a Remaining Occupant who is subject to the injunction may apply to the court for an order that they be exempted on the basis of exceptional circumstances that make the Third Avenue Site inaccessible to them.
- [135] The parameters of the judicial review will need to be defined, if and when the issue arises. My view (which is not binding on the judge who hears any such application) is that the grounds for review should be limited to serious mental illness that effectively prevents a Remaining Occupant from living indoors in a communal setting.
- [136] I would not grant the declaration sought by the City, which is that the Third Avenue Site constitutes "suitable housing and daytime facilities within the meaning of the Stewart Order".
- [137] A declaration is not a mere observation or comment by the court on how it views a situation. Rather, a declaration is a binding order establishing a right, power, duty or status. A declaration is a discretionary remedy. A court will generally not grant the remedy unless it considers that it will have practical effect and resolve an extant legal dispute between the parties. *The Friends of Fairy Creek Society v. Canada (Attorney General)*, 2024 BCSC 1630 at para. 31.
- [138] The declaration sought by the City would be a finding concerning the suitability of the Third Avenue Site at a particular point in time. The facts on which this decision would be based may change. For example, the eligibility requirements, quality of accommodations, or the rules of the facility may change. A declaration may also have unintended consequences beyond the current application. For example, it may mean that people who for whatever reason decline a room at the Third Avenue Site are no longer "homeless" in law. Fundamentally, in my view, the declaration sought by the City is unnecessary to resolve the legal dispute between the parties.

CONCLUSION

- [139] There will be an order on the terms set out in the draft attached as Schedule A, with two changes:
- a) The declaration in para. 1 will be removed; and
 - b) There will be a term added that a Remaining Occupant of the Encampment who is subject to the injunction may apply to the court for an order that they are exempted from the injunction.
- [140] As stated in the draft order, there will be no costs awarded to the City for these proceedings.
- [141] I am grateful to counsel for their helpful written and oral submissions.

"Elwood J."

Schedule A

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