



May 19, 2020

**Sent via email**

Mayor Lisa Helps  
Councillor Marianne Alto  
Councillor Sharmarke Dubow  
Councillor Ben Isitt  
Councillor Jeremy Loveday  
Councillor Sarah Potts  
Councillor Charlayne Thornton-Joe  
Councillor Geoff Young

**Re: Sheltering in Victoria City Parks**

Dear Mayor Helps and City Council,

We are writing on behalf of the British Columbia Civil Liberties Association (“BCCLA”) and the Union of BC Indian Chiefs (“UBCIC”) about your city’s approach to enforcing section 16A of the Parks Regulation Bylaw throughout the COVID-19 emergency. Section 16A of the bylaw, hereinafter referred to as the “sheltering in parks prohibition”, requires homeless people to take down temporary shelters in the city’s parks between the hours of 7 am and 7 pm.

As you are aware, the COVID-19 pandemic poses a significant threat to the health, safety and welfare of British Columbians, and “threatens to disproportionately impact the most vulnerable segments of society.”<sup>1</sup> We are deeply concerned about the vulnerability of people with inadequate housing whose wellbeing is threatened not only by the COVID-19 pandemic, but also by the opioid overdose public health emergency that continues to persist. Indigenous people in British Columbia are made disproportionately vulnerable on both fronts, and reconciliation therefore remains a foundational priority in times of crisis.

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<sup>1</sup> Preamble to Ministerial Order 150, [http://www.bclaws.ca/civix/document/id/mo/mo/2020\\_m150](http://www.bclaws.ca/civix/document/id/mo/mo/2020_m150) , May 8, 2020.

We commend your decision announced last month to not take down homeless people's temporary shelters until the provincial government lifts the emergency declaration in relation to the pandemic. Suspending the enforcement of the sheltering in parks prohibition was an obvious measure that needed to be taken to enable people to protect themselves and others from the spread of COVID-19.

We have since discovered that the City has posted an "Important Notice" (the "Notice") in Beacon Hill Park about items and objects that remain subject to removal.<sup>2</sup> While some of the rules in the Notice are reasonable and clear, we are concerned about other aspects of the Notice which could unjustifiably and significantly interfere with a person's ability to protect themselves from environmental and public health risks right now. We have heard from community members and service providers in Victoria that, coupled with the impending decampment at Topaz and Pandora, this notice has created significant confusion about allowable areas to tent in at Beacon Hill Park, sets out unworkable restrictions about maximum tent size and limits on belongings, prohibits tents for life-saving OPS/medical care, and more.

**In the middle of the COVID pandemic and the opioid crisis, we must ask: how is the allowance of seizure of homeless peoples' property and unreasonable restrictions on tenting supposed to facilitate the public health directives of sheltering-in-place? We maintain that in the middle of a human rights and health emergency, policing the pandemic by destroying people's shelters and belongings is actually unjust, unsafe and potentially illegal.**

**For the reasons set out below, we ask you to continue to suspend the enforcement of the sheltering in parks prohibition, and, in accordance with the principles of fundamental justice enshrined in the *Charter*, to clarify or remove rules about when enforcement officers can seize and dispose of the shelters and other property belonging to a homeless person.**

In related matters, we have also called upon your city, the Victoria Police Department, and the provincial government, by way of a letter sent on May 8, 2020 to suspend the enforcement of Ministerial Order 150 which requires the Pandora corridor and Topaz Park encampments ("the encampments") to be evicted by noon on May 20, 2020.

### **Inadequate Housing and Untenable Choices faced by Homeless People**

Homelessness has been on the rise across British Columbia and Canada for decades. Amidst the increase in homelessness, governments have not only failed to prioritize housing needs and engage in reconciliation with Indigenous people in good faith, but have responded through criminalization. Governments, and particularly municipalities, police the survival behaviors that people engage in, as homeless people have no choice but to live in public spaces. This includes ticketing people for sitting on sidewalks, seizing their belongings, and constantly displacing homeless people from any space they occupy.

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<sup>2</sup> <https://twitter.com/BeaconHillFolks/status/1260992327444606977/photo/1>

As highlighted in the National Protocol for Homeless Encampments in Canada, people without homes have no sustainable housing options to protect themselves from profound assaults on their dignity, security and social inclusion:

For example, they may be forced to choose between ‘sleeping rough’ on their own (putting themselves at risk of violence and criminalization), entering an emergency homeless shelter (which may be inaccessible or inappropriate for their needs, or in which their autonomy, dignity, self-reliance, and/or independence may be undermined), or residing in a homeless encampment (in which they may lack access to basic services and face threats to their health).<sup>3</sup>

If the evictions proceed on May 20<sup>th</sup>, people without housing in Victoria will have even fewer choices.

### **Daily Displacement Causes Physical and Psychological Harm**

Government actions pushing homeless people to the margins of society are detrimental even outside of public health emergencies such as the COVID-19 pandemic and the opioid overdoses. As the Court accepted in the case of *Abbotsford (City) v. Shantz*, "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." These health and safety risks include "impaired sleep and serious psychological pain and stress."<sup>4</sup>

We want to draw your attention to a growing number of public health organizations and advocates calling on government actors to stop displacing homeless people for the duration of the COVID-19 pandemic:

- Guidance from: **U.S. Department of Health & Human Services** (via the Center for Disease Control):

“If individual housing options are not available, allow people who are living unsheltered or in encampments to remain where they are.”<sup>5</sup>

- Statement from: **National Law Centre on Homelessness and Poverty** (USA):

“Alternatively, while encampments are not a long-term solution, preserving individuals’ ability to sleep in private tents instead of mass facilities through repealing—or at least

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<sup>3</sup>UN Special Rapporteur on the Right to Housing, [A National Protocol for Homeless Encampments in Canada](#), April 30, 2020 at paragraph 13.

<sup>4</sup> *Abbotsford (City) v. Shantz*, 2015 BCSC 1909 at paras. 213 and 219.

<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>

pausing enforcement of—ordinances banning camping or sleeping in public would ensure people can more safely shelter in place, maintain social distancing, and reduce sleep deprivation. Encampments should be provided with preventative solutions—like mobile toilets, sanitation stations, and trash bins—to further reduce harm.”<sup>6</sup>

### **Need to Reduce the Potential for Shelter and other Property Seizures**

Enforcing the sheltering in parks prohibition in the context of the declaration of emergency and the decampment order would contribute to the ongoing oppression of some of the most vulnerable members of the Victoria community. We are grateful that you have already decided that Bylaw Officers and Police Constables should not be issuing violation tickets of \$100 to homeless people who shelter in place between the prohibited hours. Issuing fines to people who cannot afford housing is not only fruitless and absurd, but also cruel in that it would further contribute to their over-policing and under-protection.

We think that it is unconscionable to have enforcement officers threaten the already vulnerable security of people sheltering in parks. We stress that the use of force to displace homeless people during the provincial emergency is unacceptable.

The Notice posted in parks concerns us because some of the rules lack the necessary clarity. This ambiguity enables one troubling aspect of the sheltering in parks prohibition to persist throughout the COVID-19 emergency: enforcement officers continue to have wide discretion to impound and dispose of temporary shelters and other possessions of homeless people.

More specifically, we are concerned about the following language in the Notice:

- Rule A.3. provides that anything unsanitary can be removed and disposed of, and an “unwholesome substance or matter” is cited as an example. What does this mean?
- Rule B.1. says that any tent or structure can be removed and disposed of if it “is abandoned or remains unoccupied after being tagged by a Bylaw Officer.” Does any length of time need to pass between the structure being tagged and the structure being removed? Or can a Bylaw Officer tag a tent and then immediately remove it?
- Rule B.4. provides that any secondary structure that is not occupied by a person is subject to removal and disposal. Why can’t homeless people have a secondary structure to protect their possessions from the elements, especially given rule B.2. which imposes a maximum surface space of 100 ft for a structure “together with all other materials and things”? What if the person has a small tent and can’t fit all of their belongings in it?
- Rule B.6. is very broad in that it allows for any tent or structure to be removed if it “has been placed in such a way or location that damage has been caused to sensitive ecosystem areas, playing fields or structures or other park infrastructure.” This does not make it clear

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<sup>6</sup> <https://nlchp.org/housing-is-the-next-step-to-mitigating-coronavirus/>

to a person where they can set up their shelter without being at risk of losing it together.  
Are sensitive ecosystem areas well marked in the parks?

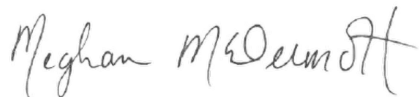
We also note that there is an even greater risk of homeless people losing their tents or other sheltering materials permanently if facing enforcement actions because of COVID-19. As the Notice states, “impounded items are more likely to be disposed of as hazardous waste rather than stored.”<sup>7</sup>

### **No Seizures and Disposal without Clear and Justifiable Rules**

A crucial aspect of the rule of law is that the law must be knowable. That is, the boundaries of the law must be sufficiently specified so that they are known in advance of the government's use of coercive power. The Notice is incredibly vague and lacking in precision, which offends the principles of fundamental justice. As upheld in consistent Supreme Court of Canada *Charter*-related decisions, the doctrine of vagueness is intended to limit the enforcement discretion of state officials as well as to ensure fair notice.<sup>8</sup>

We call upon your city to update the rules in the Notices so that the law governing tent/shelter seizures is both justified and knowable, thereby reducing the risk that homeless people will have their temporary shelters and other personal property removed and disposed of. Otherwise, the enforcement of the Notice will only threaten the health and safety of people attempting to shelter in parks, and exacerbate their ongoing criminalization in our community.

Sincerely,



Meghan McDermott  
Senior Staff Counsel, BC Civil Liberties Association



Grand Chief Stewart Phillip  
President



Chief Don Tom  
Vice President, UBCIC



Kukpi7 Judy Wilson  
Secretary-Treasurer

On behalf of the Union of BC Indian Chiefs

Cc: Honourable Adrian Dix, Minister of Health  
Chief Constable Del Manak, Victoria Police Department

<sup>7</sup> See footnote 1.

<sup>8</sup> *Canadian Foundation for Children, Youth and the Law v. Canada; R. v. Nova Scotia Pharmaceutical Society.*