

10 October 2024

City of Kelowna
City Manager
1435 Water Street
Kelowna, BC V1Y 1J4

Via fax: 250-862-3399

To Mr. Doug Gilchrist:

Re: City of Kelowna's Decision to Forcibly Evict Sheltering Site Residents

The BC Civil Liberties Association (the “BCCLA”) is a non-partisan non-profit organization with a mandate to promote, defend, sustain, and extend human rights and civil liberties in British Columbia and throughout Canada. We have recently received deeply concerning community reports relating to a forced eviction of residents of the designated outdoor sheltering site at the intersection of Richter Street and the Rail Trail (the “Sheltering Site”). Forcible decampment, where government authorities evict residents from their shelters and seize their belongings, are on their face violations of domestic and international human rights law. They fly in the face of the *Canadian Charter of Rights and Freedoms*¹ (the “Charter”), the *National Housing Strategy Act*² principles, and the housing-first, preventative approach called for in the Journey Home Strategy introduced by the City of Kelowna (the “City”) in 2018.³ Actions in the nature of forcible decampment are accordingly gravely concerning to the BCCLA.

In the spirit of democracy, transparency, and accountability for human rights, we write to inquire about the City’s decision-making process regarding the Sheltering Site decampment initiative that commenced on 9 October 2024 (the “Decision”) and the grounds for the Decision. It is our understanding that the City has yet to make any public statements about the Decision or the resulting forcible decampment.

Sheltering Site Residents’ Human and Charter Rights

The *Charter* takes precedence over all other Canadian legislation, including City bylaws. The courts have repeatedly recognized that the *Charter*’s section 7 guarantee of life, liberty and security of the person protects the human right to shelter and have therefore held that people have the right to set up temporary shelter where there are insufficient alternatives.⁴ We note that the City’s online Shelter Dashboard disclosed

¹ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

² SC 2019, c 29, s 313.

³ Alina Turner et al., “Kelowna’s Journey Home Strategy Community Report”, (2018, last visited 10 October 2024), online: *City of Kelowna* <www.kelowna.ca/sites/files/1/docs/community/Journey-Home/journeyhome_communityreport_web.pdf>.

⁴ See, e.g., *Victoria (City) v Adams*, 2009 BCCA 563 [Adams], *Abbotsford (City) v Shantz*, 2015 BCSC 1909 [Shantz], *Prince George (City) v Stewart*, 2021 BCSC 2089 [Stewart], and *Bamberger v Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49 [Bamberger].

only 9 available shelter beds on 9 October 2024, of which 5 were restricted to persons aged between 19 and 24 years.⁵

These alternative shelters must, in order to be legally sufficient, be accessible to individual people. There are many reasons why available shelter might not be accessible to an individual person -- for example, age, gender, family status, or disability needs. Alternative shelter must be responsive to the specific issues faced by individuals experiencing homelessness.⁶ Therefore, “it is not just the number of available indoor sheltering spaces that frames the right but also whether those spaces are truly accessible to those sheltering in parks.”⁷

Politicians at all levels of government have acknowledged that Canada is suffering from a housing crisis. Disparate access to affordable housing has only worsened since the Covid-19 pandemic and the soaring cost of living. As a result of economic and political decisions beyond their control, people have been experiencing homelessness in record numbers across Canada. Given the current housing crisis, until there is adequate and accessible shelter or accommodation for people experiencing homelessness, evicting people who set up temporary shelter, whether at night or during the day, violates their section 7 right to life, liberty and security of the person. That violation cannot be justified under section 1 of the *Charter*.⁸

Procedural and Democratic Concerns

We would like to know if the Decision was brought before the Mayor and Council as a motion subject to discussion during a public meeting pursuant to the Council Procedure Bylaw No. 9200. We note that the agendas and minutes for both the 7 October 2024 and 8 October 2024 Regular Council Meetings disclose no relevant items.

We would also like to know how and in what fashion the Decision was made, including who provided the authorization for the decampment and the way it was carried out. As you may be aware, in March 2023 the Ombudsman Toronto released their Investigation Report on that city’s similar forcible decampments.⁹ The Ombudsman found that:

The City [of Toronto] owes a particularly high duty of fairness to those living in encampments...the City chose expediency over the needs of the individual: its focus on enforcement meant that it discounted the experiences of and impact on individuals in encampments. As a result, the City caused undue confusion and harm.

The overall result was significant unfairness in how the City planned, engaged stakeholders, and communicated about the encampment clearings. The City showed a lack of commitment to honouring its pledge to a human rights approach and to serving this vulnerable population with the dignity and respect they deserve.¹⁰

In the BCCLA’s view, the City of Kelowna owes no less a duty of fairness to vulnerable Sheltering Site residents than did the City of Toronto to its own encampment residents. It does not appear to the BCCLA,

⁵ City of Kelowna, “Outdoor Overnight Sheltering in Designated Sites” (last visited 9 October 2024), online: <www.kelowna.ca/our-community/social-wellness/outdoor-overnight-sheltering>

⁶ See e.g., *Bamberger*, supra note 4 at paras 121-124.

⁷ *Ibid* at para 15, emphasis original.

⁸ *Adams*, supra note 4, at para 10.

⁹ Ombudsman Toronto, “Investigation into the City’s Clearing of Encampments” (24 March 2023), online: <<https://www.ombudsmantoronto.ca/investigative-report/investigation-into-the-citys-clearing-of-encampments-in-summer-2021/>>.

¹⁰ *Ibid* at page 2.

based on the information available to us, that the residents of the Sheltering Site were afforded any procedural fairness in respect of the Decision, including, at minimum, proper notice and a right to be heard.

In summary, our questions are as follows:

1. Why and on what legal authority did the City choose to proceed at this time, when the weather has begun to chill for the coming winter?
2. What notice, if any, was provided to Sheltering Site residents, and when?
3. In what manner, if at all, were the human and constitutional rights of Sheltering Site residents and the availability of alternative shelter taken into account?
4. When, if at all, was the Decision considered by the Mayor and Council?
5. What opportunity, if any, did the public have to made submissions in respect of the Decision?
6. In what manner, if at all, was the City's duty of procedural fairness to Sheltering Site residents considered?
7. Are the deliberations of the City with respect to the Decision a matter of public record? If not, why not?

As this is a matter of considerable public interest, we request that you respond to our questions at your earliest convenience.

Sincerely,



Aislin M. Jackson
Policy Staff Counsel

CC: Mayor Thomas J. Dyas and City Council via email (mayorandcouncil@kelowna.ca)