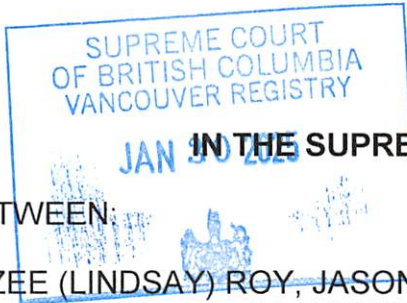


S 250745

No. \_\_\_\_\_  
Vancouver Registry



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ZEE (LINDSAY) ROY, JASON RONDEAU, BRITTANY LITTLEJOHN and BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

PLAINTIFFS

AND:

CITY OF VANCOUVER and VANCOUVER BOARD OF PARKS AND RECREATION

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiffs for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must:

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must:

- (a) a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **CLAIM OF THE PLAINTIFFS**

### **PART 1: STATEMENT OF FACTS**

#### **Overview**

1. In the absence of sufficient, suitable indoor alternatives, thousands of people across Metro Vancouver are forced to rely on outdoor spaces for shelter every day. For those without access to indoor alternatives, the ability to erect and maintain basic shelter, both during the day and at night, is crucial to their survival, their psychological well-being, and their basic human dignity.
2. This is a challenge to certain provisions of the City of Vancouver's *Street and Traffic By-law No. 2849* (the "*Streets Bylaw*") and the Vancouver Board of Parks and Recreation's ("*Park Board*") *Parks Control By-law* (the "*Parks Bylaw*"), which prevent individuals from taking shelter during the day (defined below as the "Impugned Provisions").
3. By prohibiting daytime sheltering, the Impugned Provisions put those forced to shelter outside at risk of serious illness and death, subject them to severe physical and psychological suffering, and strip them of the ability to make fundamental personal decisions about their lives. These impacts disproportionately harm women, trans and non-binary people, and individuals with physical and mental disabilities, compounding the challenges they already face.
4. The severe and discriminatory consequences of the Impugned Provisions cannot be justified in a free and democratic society. The Impugned Provisions are unconstitutional and should be struck down.

## **Parties**

5. The plaintiff Lindsay “Zee” Roy is a former lifeguard and educational assistant who lives in Vancouver, BC.
6. The plaintiff Jason Rondeau is a former electroplater who lives in Vancouver, BC.
7. The plaintiff Brittany Littlejohn is a mother and overdose prevention worker who lives in Vancouver, BC.
8. The plaintiff British Columbia Civil Liberties Association (“BCCLA”) is a non-profit, advocacy group formed in 1962 and incorporated pursuant to British Columbia’s *Societies Act*, S.B.C. 2015, c. 18, with a registered office located at 306 – 268 Keefer Street, Vancouver, BC, V6A 1X5.
9. The defendant, the City of Vancouver (the “City”), is a municipal corporation constituted under the *Vancouver Charter*, S.B.C. 1956, c. 55, with the powers to regulate public spaces, land use, and other activities within its jurisdiction.
10. The defendant, the Park Board, is responsible for the governance, regulation and control of parkland within the City of Vancouver. Under s. 491 of the *Vancouver Charter*, S.B.C. 1956, c. 55, the Park Board has the power to pass bylaws for the control, regulation, protection, and government of city parks.

## **Homelessness in Vancouver**

11. Homelessness is an entrenched and growing problem in the Metro Vancouver area. Numerous factors contribute to the persistence and growth of homelessness in Vancouver, including increasing economic pressures, such as rapidly rising rents and unmet mental health needs.
12. As recorded in periodic homelessness counts since 2005, the number of people experiencing homelessness in the Metro Vancouver region has grown from a low of 2,174 in 2005 to a (so far) all-time high of 4,871 recorded in the 2023 Point-in-Time Homelessness Count (the “2023 PIT Count”).
13. These figures, gathered from point-in-time counts conducted over single 24-hour periods, represent a significant undercount of the true number of individuals experiencing homelessness in the Metro Vancouver area.
14. Homelessness in the Metro Vancouver area disproportionately affects individuals and communities already vulnerable to displacement and marginalization.

15. Indigenous people make up around 2% of Metro Vancouver's census population, but a third of people recorded as experiencing homelessness in 2023. Of these, approximately 64% had lived or generational experience of residential schools.
16. Other marginalized communities are also disproportionately represented among those experiencing homelessness. Of those recorded under the 2023 PiT Count:
  - a) 12% identified as 2SLGBTQI+;
  - b) 38% reported a physical disability;
  - c) 49% reported mental health issues; and
  - d) 31% had been in foster or ministry care.

### ***Emergency Shelter Spaces***

17. The number of people experiencing homelessness in Vancouver exceeds the number of safe, suitable, and accessible indoor emergency shelter spaces to accommodate them.
18. Of the 4,871 people recorded as experiencing homelessness in the Metro Vancouver area in the 2023 PiT Count, approximately half – 2,420 – were found within the City of Vancouver.
19. As of 2023, there were only approximately 1,400 permanent and temporary year-round emergency shelter beds in the City of Vancouver to accommodate this population.
20. Compounding the significant deficit of shelter spaces, access to available spaces is subject to numerous complex and overlapping conditions, including specifications relating to age and gender, limits on possessions, pets, and ability to live with or visit with one's partner, children, and other family. Many spaces are inaccessible for individuals with disabilities, including individuals with substance use disorders, mental illness, and physical mobility impairments.
21. Further, emergency shelter spaces are unsafe for many individuals, including individuals with physical illnesses, histories of trauma and abuse, and complex mental health needs, due to factors such as the risk of violence and theft and the lack of privacy. These risks are heightened for women, trans and non-binary people, who often face sexual harassment, physical violence, and exploitation in emergency shelters, especially where security is insufficient or facilities lack gender-specific or affirming spaces.

22. Because of these barriers, many individuals are only able to access a small portion of the total available shelter spaces, and face many barriers determining which spaces they can safely access.
23. Even for those able to access them, temporary shelter spaces fail to provide stable, consistent, or reliable long-term housing. Shelter stays are subject to time limits, unpredictable rules, and the constant threat of eviction. Without security of tenure, individuals utilizing indoor shelters are repeatedly compelled to return to outdoor sheltering, leaving them periodically dependent on public spaces for refuge.
24. As a result, significant numbers of individuals experiencing homelessness in Vancouver have no choice but to shelter outdoors in the absence of sufficient, stable indoor alternatives.

### ***Sheltering in Parks***

25. Under existing City Bylaws, city parks are the only place where it is possible to shelter legally outdoors in the City of Vancouver. Under the *Streets Bylaw*, sheltering is not permitted on City streets and sidewalks at any time.
26. Sheltering in parks is subject to numerous restrictions. Under the *Parks Bylaw*, sheltering is only permitted within certain areas of City parks, and only between dusk and 8:00 AM. Individuals sheltering overnight in authorized areas are required to pack up their belongings each morning by 8:00 AM.
27. Under the *Parks Bylaw*, the General Manager of the Parks Board (the "General Manager") has the discretion to exempt designated areas within City parks from the general prohibition on daytime sheltering.
28. This power has only been exercised on one occasion. In April 2022, following the decision of Supreme Court of British Columbia in *Bamberger v. Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49, the General Manager designated a single area within CRAB Park in the Downtown Eastside as available for daytime sheltering.
29. Since the designation of CRAB Park as a daytime sheltering area, the General Manager has not designated any additional daytime sheltering areas.
30. In the fall of 2024, the General Manager announced that he intended to rescind the designation of CRAB Park as a daytime sheltering area. CRAB Park was closed to daytime sheltering on November 7, 2024.

31. As of January 2025, there are no designated daytime sheltering areas in any park in the City of Vancouver. As a result, there are presently no public spaces within the City of Vancouver where it is legal to shelter during the day.

## **The Plaintiffs**

### **Zee Roy**

32. Ms. Lindsay "Zee" Roy was born in Vancouver. She worked for many years as a lifeguard, support worker, and an educational assistant with the Vancouver School Board supporting children with diverse social and educational needs.
33. In the 2010s, Ms. Roy twice injured her back, once while working as a lifeguard and then as an educational assistant. Her injury developed into a long-term disability that made it impossible for her to continue working in her fields. After experiencing development-related evictions from her housing in both 2021 and 2023, she found herself without an apartment to live in, and has not since been able to find an apartment she can afford.
34. Without access to housing, Ms. Roy has occasionally been able to find accessible indoor shelter space in which to live. However, when indoor space has not been accessible or available to her, she has been forced to live outdoors. To shelter herself from the elements and provide herself and her possessions with safety and privacy, Ms. Roy has set up and lived in a tent in Vancouver's parks and streets.
35. Because of the Impugned Provisions, Ms. Roy has had her tent and other possessions seized by City and Park Board bylaw enforcement on multiple occasions. She has been left without access to a tent, clothing, bedding, medication, food, water, bicycle, and other personal belongings important to her survival, health, mobility, ability to earn income, and dignity.
36. Because of the City and Park Board's enforcement of the Impugned Provisions, Ms. Roy has experienced numerous harms to her life, liberty, and security of the person, including severe sleep deprivation, exposure to extreme cold and wet, exposure to extreme heat in the summer, increased incidence of illness, loss of privacy, and loss of dignity.
37. Ms. Roy continues to have a ruptured disc and two herniated discs in her back, which cause her, among other things, pain and a high risk of spinal cord damage from sudden or strenuous movement, including lifting anything above approximately 5 pounds in weight. Ms. Roy has nerve damage causing numbness,

loss of motor function, and chronic pain, in particular in her feet and legs. Ms. Roy's nerve damage is exacerbated by hot and cold temperatures.

38. Because of the Impugned Provisions, Ms. Roy has on many occasions been compelled to pack up and move the entirety of her possessions, frequently on short notice. She has suffered extreme pain and the risk of spinal cord damage as a result of being forced to move her things, and has lost her possessions in circumstances where she was not physically able to move them because of her disabilities. Her nerve damage has been exacerbated by exposure to cold from loss of her shelter and other essentials, such as the boots she relies on to safely walk when she is suffering from foot numbness.
39. Ms. Roy has the autoimmune conditions psoriasis and psoriatic arthritis, which have led her to experience anaphylaxis and skin rashes. Her skin rashes commonly develop into wounds. The Impugned Provisions have exacerbated her psoriasis and psoriatic arthritis and their consequences by preventing her from setting up a shelter she can access consistently both day and night, and instead forcing her to exist constantly in motion, thereby depriving her of the ability to rest, to prevent her wounds from getting infected, and otherwise care for herself.
40. When Ms. Roy's possessions have been subject to seizure by the City and/or Park Board, officials have at times promised Ms. Roy she could eventually retrieve her possessions through an appropriate process. Despite extensive efforts, she has never had her seized possessions returned.

### ***Jason Rondeau***

41. Mr. Jason Rondeau was born in Barrhead, Alberta. He moved to Vancouver in 2007, and has been living in the city ever since.
42. Mr. Rondeau suffers from a congenital malformation of the intestinal tract and organs. In 2008, shortly after moving to Vancouver, Mr. Rondeau underwent major surgery to his abdomen, which left him subject to recurrent bouts of extreme abdominal pain, particularly during moments of physical exertion. In addition, Mr. Rondeau's condition requires that he have access to a washroom at all times.
43. In addition, Mr. Rondeau suffers chronic bouts of cellulitis, an infection of the legs, which causes recurrent pain and swelling in his legs. As a result of his condition, he has limited mobility in his legs.
44. Mr. Rondeau's physical conditions have severely impaired his ability to work, as well as to afford market housing in Vancouver.

45. On his arrival in Vancouver, Mr. Rondeau initially found a place at the Balmoral Hotel, before moving to the Stanley Hotel, where he lived until the building was closed for redevelopment in 2018.
46. After being displaced from the Stanley Hotel, Mr. Rondeau moved to the Woodwards Building. After a neighbour complained about him, he was evicted and forced to move to the Grand Union Hotel.
47. Dangerous and unhygienic conditions at his room in the Grand Union Hotel, including extreme heat, as well as chronic infestations of insects, rats, and flies, soon compelled Mr. Rondeau to leave. Mr. Rondeau stayed briefly with his girlfriend, before resorting to sheltering outside.
48. Mr. Rondeau lived outside from 2019 to 2023. During that time, Mr. Rondeau lacked consistent access to safe, suitable, and reliable indoor shelter, forcing him to rely on public spaces outdoors for shelter. Over the course of the four years he was without stable housing, Mr. Rondeau sheltered in a number of different locations, including along Hastings Street, under the Dunsmuir Viaduct, and in Strathcona Park.
49. The enforcement of the Impugned Provisions subjected Mr. Rondeau to significant harms to his life, liberty, and security of the person, including severe sleep deprivation, exposure to extreme cold and wet, exposure to extreme heat in the summer, increased incidence of illness, loss of privacy, and loss of dignity.
50. While he was sheltering outdoors, Mr. Rondeau was forced to pack up his belongings and move on an almost-daily basis. This ongoing process of displacement caused Mr. Rondeau significant physical and psychological strain. Mr. Rondeau repeatedly lost critical items, including tents, clothing, hearing aids, and medication, leaving him without shelter and other belongings necessary for survival, and forcing him to divert considerable time, energy, and money to obtaining replacements.
51. Mr. Rondeau's physical condition considerably impaired his ability to comply with the Impugned Provisions. The daily effort of packing and carrying his belongings led to frequent flare-ups of severe abdominal pain, rendering him unable to move, and at risk of having his belongings confiscated. His limited mobility in his legs further restricted his ability to move his belongings, making each relocation a significant challenge. The physical burden of the daily pack-up process further exacerbated Mr. Rondeau's underlying conditions by subjecting him to repeated displacement, leaving him exposed to the elements, and preventing him from resting during the day.



52. In December 2023, Mr. Rondeau was offered a room at the Stanley Hotel after its reopening. If Mr. Rondeau loses his room again, he has nowhere else he can stay.

***Brittany Littlejohn***

53. Ms. Brittany Littlejohn is a member of the Squamish Nation. She grew up in the Metro Vancouver region.

54. Ms. Littlejohn sheltered in CRAB Park for approximately four years from 2020 to 2024. During that time, she was occasionally able to access alternative shelter, but was unable to find permanent housing that is suitable for her.

55. From May 2022 to June 2024, Ms. Littlejohn lived in the designated daytime sheltering area in CRAB Park in a temporary shelter frequently shared with another resident.

56. Living in the designated daytime sheltering area offered numerous benefits for Ms. Littlejohn. Sheltering at CRAB Park was safer, more secure, and offered a greater sense of community and mutual support than sheltering elsewhere in the city. Having the ability to keep her tent up during the day allowed Ms. Littlejohn to safeguard her essential belongings without fear of confiscation, freeing up time and energy for other priorities. She quickly became a respected member of the community, working as an overdose prevention worker in the park.

57. Having a consistent place to shelter at night was also particularly significant to Ms. Littlejohn as a pregnant person. Ms. Littlejohn gave birth to three of her children in the years she lived in CRAB Park. Access to community, to essential belongings, and to a consistent, predictable place to sleep during the day or night was particularly critical to Ms. Littlejohn's physical and mental wellbeing in those circumstances.

58. In or around June 27, 2024, Ms. Littlejohn left CRAB Park by ambulance to give birth to her youngest child. While she was in the hospital, Parks Board employees removed Ms. Littlejohn's tent, bed, and all of her possessions from the park, including the clothes she had purchased for her newborn. When she returned to the park, she was informed that she was no longer permitted to shelter there. She was given no information on how to retrieve her belongings.

59. After sleeping in the kitchen tent for over a week, Ms. Littlejohn was eventually permitted to shelter in the park in a different location. Her belongings were not returned to her until August 9, 2024, more than a month after they were confiscated.

60. In November 2024, CRAB Park was closed to daytime sheltering. Ms. Littlejohn was not offered permanent housing before the closure. She continued to shelter in CRAB Park, but was subject to targeted enforcement of the daytime sheltering prohibition while doing so.
61. Since the closure of CRAB Park, Ms. Littlejohn has been forced to shelter in a variety of temporary locations. Occasionally, she has been able to access indoor accommodation, but has been unable to find permanent housing suitable to her needs. As a result, she has been forced to continue to rely on outdoor spaces subject to the prohibition on daytime sheltering.

### ***The BCCLA***

62. The objects of the BCCLA include the promotion and defence of civil liberties and human rights in British Columbia and Canada. To that end, the BCCLA prepares position papers, engages in public education, assists individuals to address violations of their rights and takes legal action as a plaintiff and intervenor.
63. The BCCLA has a long-standing engagement in issues of homelessness and housing. The BCCLA participated in the leading cases relating to the eviction of unhoused individuals from public spaces under municipal bylaws, *Abbotsford (City) v. Shantz*, 2015 BCSC 1909 (involving a s. 7 *Charter* challenge to city bylaws that prohibited sleeping or being in a park overnight or erecting a temporary shelter without permit) and *Victoria (City) v. Adams*, 2008 BCSC 1363, 2009 BCCA 563 (involving ss. 7 and 12 *Charter* challenges to a bylaw prohibiting temporary sheltering in parks overnight).
64. In addition to the litigation mentioned above, the BCCLA is actively engaged in research, education, and advocacy with respect to outdoor sheltering and the right to housing, while advocating for increased supports for unhoused people at all levels of government.

### **The Impugned Provisions**

65. The plaintiffs challenge the constitutional validity of ss. 1(p), 11, 11A, 11B(b), and 11B(c), and 13 of the *Parks Bylaw* and ss. 71A and 72(4) of the *Streets Bylaw* (the “**Impugned Provisions**”). Together, the Impugned Provisions prevent unhoused people from sheltering during the day in public spaces, and subject violations of the City and Park Board’s sheltering regulations to the penalty of the confiscation of shelter and other essential belongings.

66. Section 1(p) of the *Parks Bylaw* limits the definition of “temporary shelter” to “a tent or canopy that provides overnight shelter to a person experiencing homelessness and that is capable of being dismantled and moved by one person”.
67. Section 11 of the *Parks Bylaw* imposes a general prohibition on the erection of tents or shelters in City parks at any time.
68. Section 11A of the *Parks Bylaw* limits individuals sheltering in parks to taking up “temporary abode” and requires them to dismantle and move their temporary shelters.
69. Section 11B permits individuals experiencing “homelessness”—defined under the *Parks Bylaw* as “the state of having no access to permanent or temporary housing, accommodation, or shelter”—to erect shelter in City parks despite the general prohibition on sheltering under s. 11.
70. Under s. 11B(b), such shelters may “only be erected from dusk until 8:00am the following day, unless in an area designated by the General Manager as acceptable for temporary daytime shelter.”
71. Under s. 11B(c), such shelters “must be dismantled and moved by 8:00am each day, unless in an area designated by the General Manager as acceptable for temporary daytime shelter.”
72. Under s. 11B(d), such shelters “must not impede public use of, or access to, a park or facility”.
73. Section 13 of the *Parks Bylaw* permits the General Manager, or any person employed by them, to remove any shelter placed in any park in violation of the *Parks Bylaw*, and to hold any items seized until the expense of their removal has been paid.
74. Section 71A of the *Streets Bylaw* prevents individuals from erecting structures on City streets and sidewalks at any time, with no exceptions for those requiring shelter.
75. Under s. 72(4) of the *Streets Bylaw*, the City Engineer or Chief Constable may remove obstructions placed on City streets and sidewalks at the owner’s expense.
76. Together, the Impugned Provisions make it so that there is no legal space in Vancouver in which individuals experiencing homelessness can shelter continuously, without being prevented from sheltering during the day and required to move all their possessions daily.

### ***Effects of the Impugned Provisions***

77. Prolonged periods of unsheltered homelessness have serious adverse impacts on physical health, mental well-being, and personal safety, including, but not limited to:
- a. Exposure to the elements, which can lead to hypothermia, frostbite, dehydration, heatstroke, respiratory illnesses, loss of limbs, infections, and other serious medical conditions;
  - b. Lack of access to basic necessities, such as food, water, washrooms, and medical care;
  - c. Increased risk of assault, theft, and exploitation by others;
  - d. Lack of care;
  - e. Lack of privacy, social stigma and emotional strain;
  - f. Restricted access to services; and
  - g. Inability to secure and store essential belongings.
78. For those without access to indoor alternatives, the ability to erect and maintain basic shelter outdoors, both during the day and at night, is crucial to mitigating these harms. By depriving unhoused people of the ability to shelter during the day, the Impugned Provisions substantially interfere with the ability of unhoused people to avoid the risks inherent in living outdoors.

### ***The need for daytime shelter***

79. Without daytime shelter, unhoused individuals are vulnerable to serious harm or death from prolonged exposure to the elements. Repeated exposure increases the likelihood of weather-related illnesses, such as heatstroke or hypothermia, and can lead to serious illness and death.
80. The lack of access to daytime shelter also prevents unhoused individuals from performing essential daily activities such as eating, grooming, or resting in privacy during the day. The deprivation of the ability to access a space of privacy intensifies feelings of vulnerability and exposure while increasing the risk of severe mental health challenges, particularly for those with conditions such as anxiety or PTSD. Further, without the ability to shelter during the day, unhoused people are

deprived of the ability to engage in many activities, such as undressing or using drugs, which are legal if performed in private, but prohibited in public spaces.

*Effects on overnight sheltering*

81. In addition, the prohibition on daytime shelter undermines the ability of unhoused individuals to shelter legally overnight.
82. For many, the daily requirement to pack up and move their shelter and belongings makes it difficult or impossible to engage in overnight sheltering. Many individuals, including elderly people and people with physical and mental disabilities, are not capable of complying with the prohibition on daytime sheltering, and as a consequence, their shelter and possessions are subject to seizure for violating the Impugned Provisions. Without the ability to comply with the Impugned Provisions and carry their possessions during the day, they will not have access to them at night.
83. For those physically capable of packing up their belongings each morning, the ban on daytime shelter makes overnight sheltering more challenging, dangerous, and psychologically distressing. In particular, the prohibition on daytime shelter:
  - a. Forces individuals to move constantly, disrupting attempts to establish a safe or stable sheltering location, and severing connections with community, medical, and service providers;
  - b. Exposes individuals to frequent displacement while ill or injured, preventing them from obtaining the rest required to recover from illness and infection;
  - c. Exacerbates feelings of instability, anxiety, and despair, making it harder to focus on other survival tasks or efforts to transition out of homelessness;
  - d. Limits the time and energy available for seeking work, accessing social services, or addressing other needs like food and hygiene;
  - e. Increases the risk that shelter and other belongings may be damaged, lost, or confiscated during the daily pack-up process;
  - f. Increases the risk of loss or theft in absence of suitable and accessible storage during the day;

- g. Limits individuals to the use of lightweight, temporary materials that offer inadequate protection against severe weather conditions such as rain, snow, and extreme temperatures; and
- h. Drastically limits the number and kind of belongings that unhoused individuals can possess and use for warmth, health, personal care, safety and comfort.

*Harms of enforcement*

- 84. The enforcement of the Impugned Provisions through daily street sweeps and decampments exacerbates the harms inherent in the prohibition on daytime shelter, and subjects unsheltered people to significant violence and mistreatment, including, but not limited to:
  - a. Verbal abuse;
  - b. Physical violence;
  - c. Arbitrary and inconsistent application of bylaws and rules;
  - d. A lack of procedural fairness in the enforcement of the Impugned Provisions;
  - e. Destruction of property; and
  - f. Humiliation and psychological trauma.
- 85. Belongings seized under the Impugned Provisions are frequently damaged or destroyed in the process of removal. Shelters and belongings deemed too soiled to store are routinely disposed of without the possibility of retrieval. Even in the event that retrieval is possible, retrieving intact belongings is a complex and time-consuming process, leaving individuals without access to essential belongings for extended periods of time.
- 86. The seizure and destruction of essential belongings increases the risk of serious psychological hardship, physical injury, and death, including by exposing unhoused individuals to:
  - a. the loss or confiscation of items necessary for protection from the elements, increasing the risk of life-threatening conditions including hypothermia and heat-related illness;

- b. the loss or confiscation of prescriptions, mobility devices, and other medical essentials; and
  - c. the loss or confiscation of items of personal significance.
- 87. To avoid the violent enforcement of the Impugned Provisions against them, many individuals are driven to engage in risky or dangerous behaviours, including:
  - a. Sheltering in more isolated locations, increasing the risk of injury or death from fire, illness or overdose;
  - b. Sheltering away from the safety of known community, increasing the risk of theft and assault; and
  - c. Sheltering in unpredictable locations, thereby limiting their ability to access and be accessed by medical care and other service providers.

*Disproportionate impact*

- 88. The ban on daytime sheltering disproportionately impacts individuals with physical and mental disabilities.
- 89. People with disabilities face heightened challenges in complying with the Impugned Provisions, including the physical strain of packing and carrying their belongings, as well as difficulties understanding or adhering to the rules. For those unable to pack up their belongings each morning, the daytime shelter ban effectively operates as a ban on sheltering at any time, severely exacerbating the risk of serious injury, illness, or death from sheltering outside.
- 90. Additionally, individuals with physical and mental disabilities are disproportionately harmed by the Impugned Provisions, which subject them to increased stress, trauma, and physical hardship. These effects exacerbate underlying physical medical conditions, as well as mental health conditions like anxiety, PTSD, and schizophrenia, which require a stable and predictable environment for effective management.
- 91. The Impugned Provisions also disproportionately impact women, and trans and non-binary people, who are at heightened risk of physical and sexual violence while sheltering outdoors, and who face additional barriers accessing safe and suitable indoor alternatives. Without the ability to establish or maintain daytime shelter, woman and trans and non-binary people are placed at greater risk of harm, including harassment, assault, and other forms of gender-based violence.

**Part 2: RELIEF SOUGHT**

1. A declaration that the Impugned Provisions unjustifiably infringe s. 7 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the "*Constitution Act, 1982*") and are, to that extent, of no force and effect;
2. A declaration that the Impugned Provisions unjustifiably infringe s. 12 of the *Charter*, and are, to that extent, of no force and effect;
3. A declaration that the Impugned Provisions unjustifiably infringe s. 15(1) of the *Charter*, and are, to that extent, of no force and effect;
4. Costs, including special costs and applicable taxes on those costs;
5. Such further and other relief as this Honourable Court deems meet and just, including the retention of supervisory jurisdiction under s. 24(1) of the *Charter*.

**Part 3: LEGAL BASIS**

**Section 7 of the *Charter***

1. Section 7 of the *Charter* states as follows:
  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.
2. The Impugned Provisions engage and infringe the right to life, liberty, and security of the person under s. 7.
3. The Impugned Provisions engage the right to life by imposing a risk of serious injury or death on unhoused people, by, *inter alia*:
  - a. preventing unhoused individuals from protecting themselves from the elements during the day;
  - b. preventing or impairing individuals from protecting themselves from the elements during the night; and
  - c. increasing the risk of the loss of shelter and other belongings necessary for survival.



4. The right to liberty is engaged and infringed by state-imposed interference with the right of the individual to a protected sphere of autonomy over decisions of fundamental importance. The prohibition on daytime sheltering engages the right to liberty by interfering with the ability of unhoused people to make life-sustaining decisions with agency and self-determination, including, but not limited to:
  - a. their ability to choose to shelter themselves from the elements;
  - b. their ability to choose a stable dwelling place and community;
  - c. their ability to choose with whom to shelter; and
  - d. their ability to create and access a space of privacy.
  
5. The right to security of the person is engaged by state-imposed conditions that impair a person's physical and mental health and cause severe psychological harm. The Impugned Provisions cause significant physical, mental, and psychological harm, including, but not limited to, exposing unhoused people to:
  - a. the constant threat of enforcement and the loss of essential belongings;
  - b. arbitrary enforcement;
  - c. repeated displacement;
  - d. repeated seizure and destruction of belongings;
  - e. the inability to maintain stable sheltering locations; and
  - f. loss of connection with essential services.

### ***Principles of Fundamental Justice***

6. The impacts of the Impugned Provisions on unhoused persons are not rationally connected to the objectives of the *Streets Bylaw* and the *Parks Bylaw* and the Impugned Provisions are therefore arbitrary.
  
7. The prohibition on daytime sheltering is overbroad by prohibiting more conduct than is necessary to achieve the state objective. A blanket prohibition on daytime sheltering captures conduct that bears no connection with the law's objective. Compelling people to pack up and relocate daily, without providing adequate indoor or outdoor alternatives, simply pushes them to occupy other public spaces, often at significant risk to their safety and well-being.

8. The gravity of the infringements on the *Charter* rights of unhoused individuals subjected to daily displacement and loss of their belongings are grossly disproportionate to the legislative purpose of the impugned Bylaws.
9. The Impugned Provisions grant arbitrary and unconstrained powers of enforcement, contrary to constitutional standards of procedural fairness.

### **Section 12 of the Charter**

10. Section 12 of the *Charter* states as follows:

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

11. The prohibition on daytime sheltering constitutes government treatment by permitting city officials to enforce an administrative structure that leads to active control over unhoused individuals through:

- a. violent displacement and decampment;
  - b. arbitrary and unpredictable enforcement;
  - c. seizure, impound, and destruction of survival belongings and other personal belongings;
  - d. issuance of fines for non-compliance; and
  - e. charging of impound retrieval fees.

12. Bylaws that permit city officials to displace individuals with no alternative but to shelter outside, and remove, seize, and destroy shelter and other belongings that are required to sustain life are cruel and unusual by their very nature.

13. Bylaws that permit city officials to displace individuals with no alternative but to shelter outside, and remove, seize, and destroy personal belongings of unhoused persons are cruel and unusual by being grossly disproportionate to the nature and circumstances of the offence of sheltering in public in the absence of suitable alternatives.

### **Section 15(1) of the Charter**

14. Section 15(1) of the *Charter* states as follows:

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.
15. The Impugned Bylaws infringe the right to equality under s. 15(1) by imposing physically and psychologically onerous requirements on people with physical and/or mental disabilities, and the increased danger and risk of gender-based violence on women, and trans and non-binary people.
16. The prohibition on daytime sheltering creates a distinction in its impact on people with physical and/or mental disabilities.
17. The prohibition of daytime sheltering also creates a distinction in its impact on women, and trans and non-binary people.
18. The Impugned Bylaws impose these burdens in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.
19. The prohibition on daytime sheltering perpetuates economic disadvantage already faced by people with disabilities through fines and the loss of belongings, reinforces social exclusion of people with disabilities who face disproportionate barriers to accessing social programs, and exacerbates physical harms associated with having a disability and living unsheltered.
20. The prohibition on daytime sheltering exacerbates the disadvantages already faced by women and trans and non-binary people by subjecting them to a greater risk of gender-based violence and harm, and perpetuating their exclusion from, and lack of access to, safe spaces in which to shelter.

**Section 1 of the Charter**

21. Section 1 of the *Charter* reads as follows:
  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.
22. The said infringements of ss. 7, 12, and 15(1) cannot be justified pursuant to s. 1, the burden of proof of which lies on the Defendants.

Plaintiffs' address for service:

**JFK Law LLP**  
260, 200 Granville Street  
Vancouver, BC, V6C 1S4

Attention: **Tim Dickson**

[tdickson@jfkllaw.ca](mailto:tdickson@jfkllaw.ca)

**Arvay Finlay LLP**  
1512 - 808 Nelson Street  
Box 12149 Nelson Square,  
Vancouver, BC, V6Z 2H2

Attention: **Julia Riddle**

[jriddle@arvayfinlay.ca](mailto:jriddle@arvayfinlay.ca)

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC  
V6Z 2E1

Dated: January 29, 2025

**BC First Nations Justice Council**  
510 Beatty St.  
Vancouver, BC, V6B 2L3

Attention: **Alexander Kirby**

[alexander.kirby@bcfnjc.com](mailto:alexander.kirby@bcfnjc.com)



Signature of lawyer for plaintiffs  
**Tim Dickson, Alexander Kirby  
and Julia Riddle**

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be

used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

## Appendix

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for declaratory relief concerning the unconstitutionality of provisions of the City of Vancouver's Street and Traffic By-law No. 2849 and the Parks Control By-law, which prevent individuals from taking shelter on City-owned land during the day.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

### Part 4:

The claim concerns:

- The City of Vancouver's *Street and Traffic By-law No. 2849*; and
- The Vancouver Board of Parks and Recreation's *Parks Control By-law*.