

Local Government's Powers Regarding Homeless Encampments

The BC Supreme Court recently issued a decision that impacts local governments' ability to address homeless encampments that pose a fire risk: *Vandenberg v. Vancouver (City) Fire and Rescue Services, 2023 BCSC 2104*. This decision clarifies that when a local government's fire chief determines that a homeless encampment poses a fire risk, before issuing any fire order, the fire chief must perform a proportionate balancing of the fire risk against the encampment occupants' Charter rights and must give notice of the pending order and solicit feedback from the encampment occupants about the impact of the order on their ability to find safe shelter.

Background

In July 2022, a two-block stretch of East Hastings Street in Vancouver (the "City") was the site of a longstanding and growing homeless encampment (the "Hastings Block"). The tents, tarps, and other materials used for shelter created a fire hazard, putting the encampment occupants, the occupants of nearby buildings, and first responders at risk. On July 25, 2022, Vancouver's Fire Chief ordered the City to clear tarps, tents, and other structures from the Hastings Block pursuant to Vancouver's Fire Bylaw (the "Fire Order"). Two occupants who were sheltering in the Hastings Block brought a petition for judicial review and sought an order striking the Fire Order. They asserted that the Fire Order was unreasonable because it was made without considering their section 7 (life, liberty, and security of the person) and section 15 (equality) rights under the Canadian *Charter of Rights and Freedoms* (the "Charter").

Court's Decision

The Court noted that the Fire Order mandated the removal of occupants' tents, tarps, and other structures regardless of whether they were used for daytime or overnight sheltering. As a result, in the absence of viable and accessible indoor shelter, encampment occupants' Charter rights were engaged. Given that the Fire Order engaged the Charter rights of Hastings Block occupants, the Fire Chief was required to engage in a proportionate balancing of her statutory mandate to address fire risks, against the fact that the tarps, tents, and other structures which constituted the fire risk were being used as shelter.

The Court reviewed the record documenting the Fire Chief's decision-making process and concluded that she had engaged in a reasonable proportionate balancing of the Hastings Block occupants' Charter rights and her statutory mandate to address fire hazards. In particular, the Court noted that the Fire Chief had considered the following:

- the Fire Chief had determined that the tarps, tents, and structures on Hastings Block were imminent fire hazards posing a life and safety risk because they were combustible and because they were blocking fire fighter's access to firefighting equipment and blocking emergency egress from the adjacent buildings;
- the Fire Chief knew the occupants of Hastings Block were vulnerable and were sheltering in the tarps, tents, and structures that constituted a fire hazard; and
- the Fire Chief tried to get assistance with re-housing Hastings Block occupants before she made the Fire Order so that the Fire Order would not have the effect of depriving them of shelter, but no assistance was forthcoming.

Next, the Court concluded that the Fire Chief owed a duty of procedural fairness to the occupants of Hastings Block when deciding whether or not to issue the Fire Order. As a result, the Fire Chief was required to notify Hastings Block occupants of the pending Fire Order and provide them with an opportunity to make submissions on how the Fire Order would affect them. The Court concluded that the duty of procedural fairness was not met in this case; Hastings Block occupants were not given sufficient notice or an opportunity to make submissions on the impact of the Fire Order on their ability to find safe shelter.

Takeaways

In the context of this decision, local governments have heightened obligations when attempting to address fire risks in homeless encampments. This decision emphasizes that local governments owe a duty of procedural fairness not just when enforcing a fire order, but when determining whether or not to make such an order. Namely, a local government's fire chief must balance the imminent fire risk caused by tents, tarps, and other structures against the occupants' use of those things as shelter. Where an encampment poses an imminent fire risk, before ordering decampment, fire chiefs should:

- attempt to secure indoor shelter for all encampment occupants prior to issuing any fire order requiring removal of tents, tarps, and other structures;
- meet with local social service agencies to understand the individual needs of encampment occupants;
- partner with local social service agencies to disseminate fire safety information; and
- attempt to mitigate fire risks without decampment (e.g., assisting with removal of propane tanks and providing battery operated lights in exchange for candles).

If a fire order requiring removal of tarps, tents, and other structures is necessary to address encampment fire risks, the fire chief must give notice to encampment occupants and provide them with an opportunity to make submissions about the effect of the fire order on them. Fire chiefs should ensure that their decision-making record clearly reflects this proportionate balancing and all steps taken to protect encampment occupants' Charter rights.

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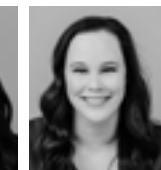
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