



# **CASE STUDY: PRINCE GEORGE**

## **A HUMAN RIGHTS ANALYSIS OF ENCAMPMENTS IN CANADA**

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The opinions, findings, and conclusions or recommendations expressed in this document are those of the author and do not necessarily reflect the views of the Canadian Human Rights Commission or the Federal Housing Advocate.

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# 1. Introduction

The COVID-19 pandemic brought into sharp focus questions about human rights and the democratic character of public spaces. The most visible expression of this is the growing presence of homeless encampments across Canada. While not new to some Canadian cities, encampments became legal and political flashpoints about human rights and the survival of the country's poorest and most vulnerable people. This case study examines one of the most notable sites of this conflict: Prince George.

In May 2021, the City of Prince George in northern British Columbia adopted a punitive stance against the presence of mostly street involved and unsheltered Indigenous people. This involved plans to enact a "safe streets" bylaw<sup>1</sup> and a council resolution to apply for an injunction to close two homeless encampments. What followed was a fierce legal battle over the human rights of mostly Indigenous homeless people to use public space as a site of shelter.

I start by summarizing the unique character of Prince George, a city destabilized by a housing and poisoned drug crisis—circumstances particularly harmful to Indigenous people. I then examine the legal contest that played out, paying particular attention to the clashing narratives of the City and encampment residents and the specific logics and qualities of the evidence the City advanced. I examine a central question that courts face in adjudicating the human rights of encampment residents: what is meant by "accessible shelter"? I conclude with some general observations about the character of human rights violations in Prince George.<sup>2</sup>

## 2. The City of Prince George, British Columbia

The city of Prince George sits on the unceded traditional territory of the Lheidli T'enneh First Nation (Lheidli T'enneh means, literally, "people of the confluence of the rivers").<sup>3</sup> First Nations have been present on this land for almost 9,000 years.<sup>4</sup> In recent centuries, the convergence of the Nechako and the Fraser rivers made the area instrumental in opening up trade for resource extraction and colonial expansion. Simon Fraser built a trading post in the early 1800s; soon the Hudson Bay Company and the railway followed.<sup>5</sup> The Lheidli T'enneh were forcibly ousted in 1913 when their village site was burned to the ground. They were then relocated to reserves

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<sup>1</sup> The safe streets bylaw (no. 9209, 2021) was adopted at a council meeting on August 30, 2021. <https://bylaws.princegeorge.ca/Modules/bylaws/Bylaw/Details/56fdc741-4852-4ac6-801a-7ee9b3ea7588>  
The author appeared before council on August 30th to argue against the enactment of the bylaw.

<https://princegeorgebc.new.swagit.com/videos/136254>

<sup>2</sup> My great thanks to many kind people in Prince George for their hospitality, knowledge, and guidance in preparing this report. Special thanks to Maybelline John, Phoenix Parr, Amelia Merrick, Melanie Begalka, Darlene Kavka, Michelle McGregor, Andreas Krebs, Tara Joly, Regional Chief Terry Teegee, the BC Assembly of First Nations, "Together We Stand," and the Uniting Northern Drug Users (UNDU) group. Research assistance provided by Cheryl Cheung, Juls Budau, Elliot Fonarev and Ayush Patel.

<sup>3</sup> Lheidli T'enneh First Nation 2018. <https://www.lheidli.ca/>

<sup>4</sup> Lheidli T'enneh First Nation 2018. <https://www.lheidli.ca/about/our-history/>

<sup>5</sup> Ibid.

approximately 20 km away.<sup>6</sup> The former village site became a recreation area called Fort George Park and was renamed to Lheidli T'enneh Memorial Park in 2015.<sup>7</sup>

Sixty years later, forced displacement of Indigenous People occurred again. At the intersection of the Nechako and Fraser rivers, there was once a little settlement called Island Cache, where the poor working class lived—largely non-status First Nations, Métis People, and immigrant families.<sup>8</sup> The settlement became incorporated into the City of Prince George in 1970. The city neglected to implement flood control measures as well as other services Island residents asked to make their community more livable, and a severe flood in 1972 resulted in homes being condemned by the City and bulldozed.<sup>9</sup> The area was then turned into another municipal park. In both situations, displacement was framed as being beneficial for those who were displaced.<sup>10</sup>

Prince George is a city of 74,000 people and its population has one of the country's highest proportion of Indigenous people at 14.5%.<sup>11</sup> Considered the “capital” of northern British Columbia, Prince George is a historic site of confluences, intersections and colonial settlement. The crossing of highways 97 and 16 is situated in the middle of Prince George, making the city a gateway between the southern region of the province and the 54 First Nations communities located throughout the north. Highway 16 west, which runs 724 km to Prince Rupert on the coast, is infamously known as the Highway of Tears.<sup>12</sup> Along or near this highway is where at least 40 women, mostly Indigenous, have disappeared or been murdered since 1969.<sup>13</sup>

Prince George is a city in crisis: it is at the sharpest end of both the housing and drug overdose crises. A 2019 provincial count showed that the Fraser-Fort George region, which includes Prince George, had the highest rate of homelessness in the province, with 1% of the population experiencing homelessness at some point that year.<sup>14</sup> These findings are corroborated by a housing needs assessment report showing that the city requires almost *double* the current amount of available shelter beds, as well as 131 more supportive housing units, in order to shelter the current homeless population.<sup>15</sup> According to the Community Partners Addressing Homelessness (CPAH) 2021 point-in-time count, the demographics of the Prince George homeless population indicate that the population is highly vulnerable that historically has been very poorly served by government: 68% are Indigenous,<sup>16</sup> 40% are women;<sup>17</sup> and 48% have aged

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<sup>6</sup> Ibid.

<sup>7</sup> City of Prince George 2017.

<sup>8</sup> Evans and Foster 2010:88.

<sup>9</sup> Evans and Krebs 2004.

<sup>10</sup> Evans and Foster 2010:91; Lheidli T'enneh First Nation 2018 <https://www.lheidli.ca/>

<sup>11</sup> Anderson 2019.

<sup>12</sup> Shuvera 2020.

<sup>13</sup> Human Rights Watch 2013:35.

<sup>14</sup> BC Housing 2021:22.

<sup>15</sup> City of Prince George 2021:54.

<sup>16</sup> Community Partners Addressing Homelessness 2021:14.

<sup>17</sup> Community Partners Addressing Homelessness 2021:12.

out of government care.<sup>18</sup> The fact that housing instability increases one’s vulnerability to overdose death<sup>19</sup> makes the situation in Prince George particularly disturbing.

Drug toxicity death rates in the north—an ongoing public health emergency in BC since April 2016—are the highest in the province for the last two years. The overdose death rate in the Northern Health Authority (NHA) is 48 per 100,000, compared to the provincial rate of 38 per 100,000.<sup>20</sup> Indigenous people were 4.8 times more likely to die from toxic drugs than non-Indigenous people.<sup>21</sup> After a drop in 2019, drug toxicity death rates across the province rose again in 2020 because of factors associated with the COVID-19 pandemic: increased isolation, decreased services, and border closures that interrupted the drug supplies.<sup>22</sup> The difficulty of providing overdose prevention services across the vast, low-density rural areas of Northern BC<sup>23</sup> is a significant contributor to these high death rates.

### **3. Court Decision (2021): *Prince George v. Stewart*<sup>24</sup>**

In early summer of 2021, two encampments formed in Prince George. The first encampment, known as The Splits was a city-owned lot nestled between two businesses in the core of the downtown, on George Street. The second, named Moccasin Flats by the Indigenous residents, was on Lower Patricia Boulevard at the edge of the city core, located between a light industrial business area and a residential area called the Miller Addition. By the end of the summer, as many as 50 structures and 80 people resided between the two sites, mostly at Moccasin Flats.<sup>25</sup>

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<sup>18</sup> Community Partners Addressing Homelessness 2021:18.

<sup>19</sup> BC Coroners Service 2022:17.

<sup>20</sup> BC Coroners Service 2022:18.

<sup>21</sup> BC Coroners Service 2022:16.

<sup>22</sup> Ibid.

<sup>23</sup> BC Coroners Service 2022:16.

<sup>24</sup> Prince George (City) v. Stewart, 2021 BCSC 2089. [Stewart]

<sup>25</sup> Stewart at para 9.



Figure 1: Location of The Splits and Moccasin Flats encampments in the west end of the City of Prince George (Earth Google/Maxar Technologies. Camera: 3,660 m 53°55'02"N 122°44'01"W. 570 m. Accessed September 10, 2022).



Figure 2: Detail of the location of the Moccasin Flats encampment on Lower Patricia Blvd (Earth Google/Maxar Technologies. Camera: 1,371 m 53°54'45"N 122°44'03"W. 569 m. Accessed September 10, 2022).

On June 2, 2021, the City passed a resolution that civil injunctive proceedings would be initiated to remove the occupants from both encampments.<sup>26</sup> The hearing for the petition application went ahead on October 6, 2021, in front of the Honourable Chief Justice Hinkson.<sup>27</sup>

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<sup>26</sup> The city sought a final order for a statutory injunction, pursuant to section 274 of the Community Charter, SBC 2003, c.26. The city sought to restrain the contravention of the zoning by-law Bylaw No. 7850 Zoning Bylaw (2007), that is not park use and non-permitted camping. The Splits encampment (George Street) was zoned for a variety of uses that did not include park, recreation or outdoor use. The Moccasin Flats encampment (Lower Patricia Blvd.) site is zoned as “park, recreation and outdoor use” making that encampment a “non-permitted campsite” illegal under s 1.6.7 of the by-law.

<sup>27</sup> Counsel for the Petitioner City of Prince George [the City] T. J. De Souza and J. McKay; Counsel for the Respondents Sheldon Stewart, Crystal Arndt, Brandon Deeg, Jane Doe, and other Unknown Persons [the encampment residents] D. Kavka and M. Begalka.



The city portrayed their injunction application as being a compassionate approach, in particular with regard to First Nations encampment residents. The City's Manager of bylaw services deposed in part that:

The concern was over the disproportionate number of occupants at the Properties who were largely First Nations. Given that the issue of Residential Schools and the burial of First Nations children was of deep concern, Council was very sensitive to the approach taken on the Tent Cities. As such, on June 28, 2021, Council instructed City Staff to work closely with BC Housing and other support agencies to ensure a compassionate approach that would approximate a timeline for more housing with a Court order.<sup>28</sup>

The City's case for an injunction hinged upon two arguments. First, the City claimed that there were 81 shelter beds available and if residents *really* wanted shelter, they need not be at the encampments. For the City, this argument was a simple math solution that matched unhoused bodies with vacant beds. Secondly, the City submitted that by *choosing* to stay at the encampments and to not use available shelter, residents were causing a range of public harms and nuisances: an increase in crime and property theft, shoplifting, drug use, prostitution, discarded needles, loitering, public defecation, vandalism, garbage, and an increased fire risk. This has led to residents having a "general fear over their own safety."<sup>29</sup> It is notable that many of these very same harms were used as justification as to why the Safe Streets Bylaw was needed—and are routinely evoked across Canada as reasons why encampments should be torn down.

In contrast, the affidavit evidence of 13 encampment residents of their first-hand experiences provided powerful evidence of the realities of being homeless in Prince George and of the barriers and challenges in securing housing and shelter. The affiants also spoke about how the Safe Streets Bylaw was so restrictive that it made the encampment a safe haven from punitive and harmful bylaw enforcement actions.

In his judgment issued October 22, 2021, Chief Justice Hinkson denied the City's application, finding that, "Absent other suitable housing and daytime facilities, the occupants of those encampments must be permitted to stay at the encampments."<sup>30</sup> Chief Justice Hinkson found that the evidence for the claims made by the City about the harms caused by the encampment was "scant at best."<sup>31</sup> In ruling most of the City evidence about these harms as inadmissible hearsay, Justice Hinson declined to view the camp (and the presence of unsheltered people) as "criminogenic"—meaning an inherent site of crime and disorder.

Significantly, Chief Justice Hinkson declined to reduce the question of available shelter beds to a math exercise. He weighed heavily the lived experiences of encampment residents, stating, "I find that alternate housing options proposed by the City are not sufficiently low barrier and

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<sup>28</sup> Stewart at para 16.

<sup>29</sup> Ibid. at paras 23-26.

<sup>30</sup> Ibid. at para 115.

<sup>31</sup> Ibid. at para 43.

accessible to all of the occupants of the encampments.”<sup>32</sup> In other words, the City must prove not just that a shelter bed exists on paper, but that it is accessible in a way that takes into account the complexity of homelessness, including the particular challenges Indigenous people face with regard to colonization.<sup>33</sup> In doing so, Chief Justice Hinkson confirmed that the encampment was a crucial survival space, given the lack and quality of accessible shelter in Prince George.

Noting that many of the The Splits encampment residents had already moved to Moccasin Flats, Chief Justice Hinkson ordered the closure of The Splits, with the expectation that they could move to Moccasin Flats for shelter.



Figure 3: A Moccasin Flats encampment resident marks their legal victory in Stewart.

The city announced that they would appeal the *Stewart* decision to address “what the City believes to be errors in law” within the reasons for the judgment,<sup>34</sup> and noted that “the City has been working closely with BC Housing and is informed that housing and emergency shelter space is available now.”<sup>35</sup> On November 4, the City announced that they had closed down the The Splits encampment as directed by the Hinkson order.

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<sup>32</sup> Ibid. at para 96.

<sup>33</sup> Chief Justice Hinkson took judicial notice of “the impacts of trauma from residential schools on the Indigenous homeless population of the city and occupants of the encampments.” *Stewart* at para 71. Citing *R v. Ipeelee*, 2012 SCC 13 at para. 60, Chief Hinkson wrote “courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide...” *Stewart* at para. 70.

<sup>34</sup> “City Legal Action to remove Encampment.” Press Release, City of Prince George. November 5, 2021. <https://news.princegeorge.ca/en/news/city-legal-action-to-remove-encampment.aspx>

<sup>35</sup> Ibid.

## 4. The Demolition at Moccasin Flats

On November 17, 2021, at around 10 a.m., city workers and BC Housing officials arrived at Moccasin Flats with heavy equipment, including two front-loading, skid-steer bobcats. Two hours later, most of the camp had been destroyed, with only five structures left. What had not been razed into the ground in piles was loaded into trucks and disposed of. Advocates for the encampment residents rushed to the scene to document what was happening and collect statutory declarations from encampment residents in the area. The shelter illustrated in Figure 3 was also destroyed.



*Figure 4: A front-loading bobcat operated by City of Prince George staff loads debris from demolished shelters into city trucks. Still image (at 46 seconds) from video Exhibit B, The 7th Affidavit of Michelle McGregor, File number iMG\_9670\_MOV Dec 7, 2021. File No. 2160169, Prince George Registry.*

The next day, the City celebrated the success of their activities at Moccasin Flats in a press release entitled “City working closely with partners to ensure health and safety.”<sup>36</sup> This operation, according to the City, supported BC Housing’s efforts to move 14 occupants from Moccasin Flats. “With the permission of each of the occupants, staff removed the structures after the occupants departed, for the safety and wellbeing of the remaining occupants.”<sup>37</sup> City staff then “removed the vacated structures and their contents to remove the risk of fire.”<sup>38</sup>

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<sup>36</sup> “City working closely with partners to ensure public health and safety.” Press Release. Posted November 18<sup>th</sup>. City of Prince George. <https://news.princegeorge.ca/en/news/city-working-closely-with-partners-to-ensure-public-health-and-safety.aspx>

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.



*Figure 5: Materials from destroyed shelters left in a pile by city staff at the Moccasin Flats encampment on November 17th. Exhibit D, The 1st Affidavit of Michelle McGregor, Nov 28, 2021. File 2160169, Prince George Registry.*

Remarkably, the City portrayed this demolition action as further complying with the *Stewart* decision, just as they had closed The Splits encampment two weeks earlier. In a statement circulated to the media the same day, BC housing appeared to distance itself from the actions of the City.<sup>39</sup>

In a media interview, Darlene Kavka, a lawyer with the BC First Nations Justice Council who represented the encampment residents in court, characterized the City as acting with “brutality” and being in contempt of the Hinkson court order currently in place.<sup>40</sup> Kavka stated:

When I was there earlier today, and there were a group of advocates also there to see what’s going on, there were people rummaging through those piles of debris trying to find their things, some of whom said they have not been offered any housing and they have not consented to anything.<sup>41</sup>

On December 6, 2021, the City applied for an interlocutory injunction that would again seek the dismantlement of the Moccasin Flats encampment. The application was novel in the way that it

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<sup>39</sup> “BC Housing’s role is to provide shelter and housing for people. We have not been involved with any machinery or removal of items from the camp, and any questions about the site should be directed to the City.” Public Statement, Media Relations and Issues Management, BC Housing. November 18<sup>th</sup>. Circulated to media by email.

<sup>40</sup> PGC <https://www.cbc.ca/news/canada/british-columbia/city-demolishes-pg-homeless-camp-1.6253328>

<sup>41</sup> PGC <https://www.princegeorgecitizen.com/local-news/more-clean-up-expected-at-moccasin-flats-once-remaining-residents-relocated-city-spokesperson-says-4804273>

was essentially seeking the same relief that was denied in the *Stewart* application, and to which the City itself had an appeal pending.<sup>42</sup>

## 5. Court Decision (2022): Prince George v. Johnny<sup>43</sup>

“This comes down to one person,” stated the City in their opening submissions on December 14<sup>th</sup>, in arguing for a second injunction to close down the Moccasin Flats encampment.<sup>44</sup> The city was referring to the one person now living in the encampment after the demolition, named as the respondent Johnny. For the City, the fact that now only a single person lived at the encampment was evidence that everyone else who had been there had found accessible shelter. Why should the harm caused by the encampment continue because this single person refuses to take up this available housing?

The outcome of the three-day hearing would in large part revolve around the legality of the City’s activities at Moccasin Flats on November 17<sup>th</sup> and the interpretation of what was read as the “Hinkson condition”: “absent other suitable housing and daytime facilities, the occupants of those encampments must be permitted to stay at the encampments.”<sup>45</sup>

The city submitted that a primary motivation for obtaining an injunction was concern and compassion for the encampment residents: the use of heavy equipment and the dismantling of shelters on November 17<sup>th</sup> was part of “a rescue operation.”<sup>46</sup> BC Housing had recently purchased the Knights Inn Motel in downtown Prince George, and was converting it into a 42-room, transitional, low-barrier, supportive housing project. The city stated they had been working with BC Housing for weeks prior to November 17<sup>th</sup> to help encampment residents through the process of getting them into these units. In doing so BC housing and city bylaw services kept track of what shelters were or would be abandoned by those taking up the Knights Inn units. On November 17<sup>th</sup>, BC Housing moved those who wanted to leave Moccasin Flats and into the Knights Inn. The city was simply assisting in this “housing effort” and was there to “clean up”<sup>47</sup> the site and dismantle shelters deemed abandoned after suitable housing had been found for the occupants.

The city argued that this was not a law enforcement operation, but rather one done by parks staff who were well within their rights to maintain and keep clean an area zoned for public park use. And while “mistakes do happen”<sup>48</sup> in this kind of operation, the City believed they had satisfied the Hinkson condition and were thus entitled to dismantle and dispose of abandoned shelters. A crucial piece of logic that the City relied on in coming to this conclusion was that, for

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<sup>42</sup> In an unusual move, the appeals court announced that the Justices would travel to Prince George to hear the appeal.

<sup>43</sup> *Prince George (City) v. Johnny*, 2022 BCSC 282 [Johnny]

<sup>44</sup> Chambers Transcript *Johnny*, December 14, pages 38-39, lines 47-01.

<sup>45</sup> *Stewart* at para 115.

<sup>46</sup> Chambers Transcript *Johnny*, December 14, page 16, line 13.

<sup>47</sup> Chambers Transcript *Johnny*, December 16, page 45, lines 45-46.

<sup>48</sup> Chambers Transcript *Johnny*, December 14, page 14, lines 7-8.

the purpose of *Stewart*, only the residents who remained at the camp *after* November 17<sup>th</sup> demolition should be viewed as “occupants.”

In response, the encampment residents marshalled robust first-hand evidence that damaged the City narrative of what happened on November 17<sup>th</sup>. This included depositions from more than 15 encampment residents and their advocates and more than 40 images and video recordings attached as exhibits, many of which were taken on November 17<sup>th</sup>. The encampment residents submitted that this demolition was a law enforcement operation led by bylaw officers that involved the reckless and indiscriminate destruction of the shelter and property of people living there. Residents who were away that morning came back to find everything they owned destroyed, their shelter gone. While some 14 residents did agree to be housed by BC Housing that day, many had to leave belongings behind to be destroyed. As in *Stewart*, the voices of Indigenous encampment residents provided powerful rebuttals to the claim that the City acted in their interests:

I had a tent and tarp and inside were my belongings, like my clothes, my phone and a few gifts that were given to me. Moccasin Flats was my primary [residence]. I did not live anywhere else. In mid-November I went out to get something to eat. I believe I got an income assistance cheque that day and when I came back my stuff was destroyed. I did not give consent for my belongings to be destroyed and did not give verbal consent for my belongings to be destroyed. I currently do not have housing. I’m staying on the streets. I would not go back to Moccasin Flats because I am worried this will happen again. I am scared this will happen again.<sup>49</sup>

I was at income assistance getting my check and was not there when they destroyed my home. When I got back, all my things were gone and destroyed. I had a tent, clothing, hygiene products, personal belongings, jewelry, a necklace with my brothers’ ashes. I did not see Bylaw officers when I got back but there were a lot of people there trying to salvage their belongings, I was never given any notice that this was going to happen. Currently I am just roaming the streets. I have been kicked out of most shelters for ridiculous reasons and cannot go there. I feel traumatized that once again that this has happened to me. I need to restart again. I am so sick and tired of being told that I cannot go anywhere. I cannot get a job because I don’t have a place to stay, and I [c]annot get a place to stay without a job. I also suffer from ... health ... issues...<sup>50</sup>

I want the court and this City to know we are people and we exist. We just want to survive and be treated like human beings. What was done to us was very hurtful.<sup>51</sup>

In the face of this evidence, the City further weakened their position by claiming they had fulfilled the condition set by Chief Justice Hinkson, but, when pressed, they could not clearly

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<sup>49</sup> Exhibit F, paras. 4-7, 4<sup>th</sup> Affidavit of Michelle McGregor, Dec 3, 2021. File No. PRG-S-S-2159834, Prince George Registry

<sup>50</sup> Exhibit H, paras. 15-17, 4<sup>th</sup> Affidavit of Michelle McGregor, Dec 3, 2021 File No. PRG-S-S-2159834 Prince George Registry

<sup>51</sup> Exhibit G, para. 16, 4<sup>th</sup> Affidavit of Michelle McGregor, Dec 3, 2021 File No. PRG-S-S-2159834, Prince George Registry

articulate the meaning of an “occupant.” When asked how the City viewed an “occupant,” the City repeatedly invoked “a process initiated by city bylaw and BC housing” to identify abandoned shelters, but could not provide evidence of the character of that process.

An exchange between Justice Coval and the City is illustrative of the City’s elusive interpretation of an “occupant”:

Justice Coval:

But I’m not—I’m not asking you about what BC Housing decided. I am asking you about the meaning of “occupant” for the purposes of Stewart. If someone has got a tent there and a sleeping bag and their possessions and they’re spending—maybe they’re only spending three or four nights a week there, do you—do you concede they are an occupant of Lower Patricia for the purposes of Stewart?<sup>52</sup>

The City:

I hadn’t—I hadn’t gone into much thought about that, so I—I—I don’t want to make a quick judgment, but I want to answer your question thoroughly, and I think it is an important question. ...<sup>53</sup> I think it becomes more complex when looking at the precondition set out in 115 of Stewart. ...<sup>54</sup> I think it is a difficult number to get to. ...<sup>55</sup> It speaks about occupants, which is obviously the word we’re trying to define. ...<sup>56</sup>

Justice Coval:

Why did—why did the City allow this demolition to occur without first going to the court to ensure that it had satisfied Stewart, particularly given, as you say, that occupant is—is a difficult concept?<sup>57</sup> ... So it seems like the City just went in and demolished without any concern about whether they really had satisfied Stewart. <sup>58</sup>

The city disagreed with the characterization of their activities at Moccasin Flats on November 17th as a “demolition,” and they again fell back on a procedural response, referring to, “people who had been housed or items that had been deemed to be abandoned through a process as reported by BC housing and bylaw.”<sup>59</sup> The city could not provide any specific evidence what the “process” was or how it was actually determined that a shelter had been abandoned, a point the City itself conceded.

In asking why the City did not go back to court to secure an order, Justice Coval mirrored a central point of the encampment residents’ argument, one that objected to the very legitimacy

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<sup>52</sup> Chambers Transcript *Johnny*, Dec 16, page 38, lines 38-46.

<sup>53</sup> *Ibid.* pages 38-39, lines 47-6.

<sup>54</sup> *Ibid.* page 39, lines 8-10.

<sup>55</sup> *Ibid.* lines 15-16.

<sup>56</sup> *Ibid.* lines 30-31.

<sup>57</sup> *Ibid.* page 40, lines 6-11.

<sup>58</sup> *Ibid.* lines 15-18.

<sup>59</sup> *Ibid.* lines 29-32.

of the injunction application itself. Encampment residents argued that the action was an abuse of process, a collateral attack, or an issue estoppel.<sup>60</sup> Simply put, the application was a collateral attack on *Stewart*, an attempt to have a second go at trying to close the encampment down, after it was denied the first time—with an appeal pending. Should the City be granted an injunction, the encampment residents argued, it would only be as a result of the illegal enforcement activities by the City.<sup>61</sup>



Figure 6: City of Prince George bylaw officers at Moccasin Flats on the morning of November 17th. Photo by Amelia Merrick. Reproduced with permission.

The city was appearing to apply for an injunction to carry out the activity of dismantling the encampment, which they had for the most part already carried on November 17<sup>th</sup>. The encampment residents argued that to grant an injunction under these circumstances would be to set a precedent for other municipalities to “act first and beg forgiveness later.”<sup>62</sup>

On February 23<sup>rd</sup>, Mr. Justice Coval dismissed the City’s injunction application, stating: “The City breached the *Stewart* order by dismantling much of the encampment without such housing and daytime facilities for its occupants. *This breach inflicted serious harm on vulnerable people.*”<sup>63</sup> While accepting the “compelling” evidence of the negative impact of the encampment on local

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<sup>60</sup> As the Supreme Court of Canada established in *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44.

<sup>61</sup>This is particularly true in the case of Prince George bylaw officers, who are limited in their enforcement activities by section 274 of the *Community Charter* to issuing fines or notices. They must apply to a court for any other actions. *Community Charter* [SBC] Chapter 26.

<sup>62</sup> *Chambers Transcript Johnny, Dec 16, page 27, line 30.*

<sup>63</sup> Johnny at para 82. [my emphasis]



residents and businesses, that alone did not entitle “the City to dismantle much of the Lower Patricia [Moccasin Flats] encampment before returning to court to seek an order to do so.”<sup>64</sup>

Justice Coval characterized the City’s position that the events of November 17<sup>th</sup> were a housing and not a bylaw enforcement operation, as “untenable.”<sup>65</sup> He also found the City’s argument that, in determining if the Hinkson condition had been met, that it was “unreasonable ... to ignore those who were evicted, in breach of the Order, without their belongings or any offer of housing.”<sup>66</sup> Justice Coval gave considerable weight to the affidavit evidence of encampment residents, concluding that the November 17<sup>th</sup> demolition has made at least nine people homeless, including eight people who lived at the encampment on the 17<sup>th</sup>.<sup>67</sup>

## 6. Retreat and Apology

On March 24, 2022, a dramatic turn in the City’s position took place. The City announced that they had withdrawn their appeal of *Stewart*, which was due to be heard in a special sitting of the appeals court on April 3<sup>rd</sup>.<sup>68</sup> In a second press release, they acknowledged the *Johnny* judgment and went on to state, “The City of Prince George sincerely apologizes to all those who experienced trauma from our actions.”<sup>69</sup>

In withdrawing the appeal, the City sought to reassure the residents of the Miller Addition subdivision that they would address “their safety and security concerns.” The city detailed how they would continue to “take steps to regulate the use of its parks and public spaces” and be “mindful not only of the protected right for homeless individuals to take temporary overnight shelter, but also the City’s ability to regulate places where temporary overnight sheltering may not occur.”<sup>70</sup>

The statement suggests not just the continued use of the Safe Streets Bylaw, but an expanded role in how it is enforced in relation to safety concerns about the encampment. The city highlights a number of ongoing initiatives that include an increased number of bylaw officers and foot patrols, increased hours of bylaw service enforcement, and the addition of dedicated downtown RCMP officers. The city also committed to hiring two city outreach workers, to

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<sup>64</sup> Ibid at para 71.

<sup>65</sup> Ibid. at para 78.

<sup>66</sup> Ibid. at para 77.

<sup>67</sup> Ibid. at paras. 73 and 74.

<sup>68</sup> “Statement on appeal of encampment injunction decisions.” Press Release. City of Prince George. March 24, 2022. <https://news.princegeorge.ca/en/news/statement-on-appeal-of-encampment-injunction-decisions.aspx>

<sup>69</sup> “City Apologizes for causing harm to Vulnerable Citizens”. Press Release. City of Prince George. March 24, 2022. <https://news.princegeorge.ca/en/news/city-apologizes-for-causing-harm-to-vulnerable-citizens.aspx>

<sup>70</sup> “City Apologizes for causing harm to Vulnerable Citizens”. Press Release. City of Prince George. March 24, 2022.

providing funding for needle disposal, washrooms, and storage facilities, and to helping facilitate funding for the hiring of peer mentors by non-profit agencies.<sup>71</sup>

It is unclear why the City withdrew the appeal. However, on March 20, 2022, the British Columbia Assembly of First Nations (BCAFN) held a press conference<sup>72</sup> releasing the results of two reports done on the new Safe Streets Bylaw. The first was commissioned by the BCAFN,<sup>73</sup> and the second was done by this author.<sup>74</sup> Both reports presented a damning picture of the activities of bylaw officers since the enactment of the bylaw eight months earlier—including the fact that the word “squatters” was routinely used to describe unsheltered people that came into contact with bylaw enforcement.<sup>75</sup>

It is difficult to ascertain what, if any, impact the reports had in the decision to abandon the appeal. Certainly, the City faced prolonged and negative media coverage<sup>76</sup> in the days after the news conference for their treatment of unsheltered people, and the evidence in the reports added to the weight of evidence in both *Stewart* and *Johnny* that the encampments provided shelter and security *from a bylaw* that practically outlawed unsheltered people from existing in public space.

Moccasin Flats remains, for the time being, the only court protected encampment in Canada. In April, there was a community cleanup at the camp. In the piles of razed shelters left by the City, volunteers found some belongings of those who had been displaced by the City demolition.<sup>77</sup>

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<sup>71</sup> Ibid.

<sup>72</sup> <https://www.bcafn.ca/homelessness>

<sup>73</sup> “Experiences with Bylaw in Prince George”, British Columbia Assembly of First Nations. March 21, 2022. Nine Pages. <https://www.bcafn.ca/sites/default/files/docs/reports-presentations/BCAFN%20Experiences%20With%20Bylaw%20in%20Prince%20George%203.21.2022.pdf>

<sup>74</sup> “Move On: The First Ninety-Nine Days of the of Prince George Safe Streets Bylaw”. Joe Hermer. 16 pages. <https://www.bcafn.ca/sites/default/files/docs/reports-presentations/march%2020%20final%20MOVE%20ON%20PG%20Bylaw%20report%20Hermer.pdf>

<sup>75</sup> Ibid. pages 6-7.

<sup>76</sup> CBC News. “Prince George safe streets bylaw slammed in studies investigating its effect on homeless” CBC News, March 21, 2022. <https://www.cbc.ca/news/canada/british-columbia/prince-george-safe-streets-bylaw-slammed-1.6392719>

Mansukhani, Hiren. “Prince George’s Safe Streets Bylaw is used to harass the unhoused, reports find” Prince George Post, March 22, 2022. <https://www.princegeorgepost.com/news/local-news/prince-georges-safe-streets-bylaw-is-used-to-harass-the-unhoused-reports-find>

Narine, Shari. “Colonial violence perpetrated under Prince George safe street bylaw among leaders’ concerns.” Windspeaker.com, March 23, 2022. <https://windspeaker.com/news/windspeaker-news/colonial-violence-perpetrated-under-prince-george-safe-street-bylaw-among>

Peterson, Hanna. “Prince George Safe Streets bylaw increases suffering of unhoused people, reports find.” Prince George Citizen. March 21, 2022. <https://www.princegeorgecitizen.com/local-news/reports-find-Citizen>

<sup>77</sup> “The word from Moccasin Flats – an irregular newsletter from the “No Scumbags Club” to keep you informed about the activities around Moccasin Flats.” Handout. May-June 2020

Former encampment residents are now involved in an informal process to claim damages from the City for their property that had been taken and destroyed.<sup>78</sup>

## 7. Conclusion

The actions of the City of Prince George with regard to homeless encampments—and their general policing and social control approach that included the safe streets bylaw—amount to a gross violation of the principles embedded in international human rights law.

### Human rights concerns:

Drawing on Farha and Schwan (2020),<sup>79</sup> the violations include:

- 1) The residents of the Prince George encampments were never seriously viewed as rights holders. The City favoured, rather than avoided, “criminalizing, penalizing or obstructing the presence of encampments and their residents.”<sup>80</sup>
- 2) The city engaged in practically no meaningful engagement with encampment residents in a way that respected their autonomy and dignity. Indeed, the City disregarded the views of residents expressed explicitly in *Stewart* and worked to undermine these voices with the November 17, 2021, demolition and with the subsequent injunction petition.
- 3) The demolition of November 17, 2021, at Moccasin Flats was a harsh example of a planned forced eviction that was perversely presented as a humanitarian effort to provide shelter and housing to mostly Indigenous residents.
- 4) In the face of empirical evidence that documented the lack of sufficient and accessible housing, the City ignored any viable alternative to this forced eviction.
- 5) While some residents of the Moccasin Flats encampment were relocated to shelter and housing in a way that was human rights compliant, the majority were not. This included a process of relocation that failed to be fully consensual in that residents did not have control of their belongings and property and were not being consulted regarding the timing or nature of the relocation.
- 6) While a minor effort was made to provide for the basic needs of residents in the encampment, these efforts fell well short of a minimum standard that would be in compliance with international law. In particular, this included the lack of social supports and of services and resources to support harm reduction as well as the refusal to provide fresh potable water.
- 7) The overall activities of the City demonstrated an almost complete lack of rights-based outcomes that preserved the dignity of encampment residents. The November 17, 2021,

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<sup>78</sup> Peterson, Hanna. 2022. “Volunteers recover lost birth certificate while cleaning Moccasin Flats.” *Prince George Citizen*, April 11.

<https://www.princegeorgecitizen.com/local-news/volunteers-recover-lost-birth-certificate-while-cleaning-moccasin-flats-5255687>

Scace, Matt. 2022. “With return of Moccasin Flats ‘likely,’ clean-up efforts uncover lost personal belongings.” *Prince George Post*, April 11.

<https://www.princegeorgepost.com/news/local-news/with-return-of-moccasin-flats-encampment-likely-clean-up-efforts-uncover-lost-personal-belongings>

<sup>79</sup> Farha and Schwan 2020.

<sup>80</sup> *Ibid.* page 2.

demolition represented a backward step that violated the core principles of a human rights approach.

- 8) The city not only demonstrated a reckless disregard for the distinct rights of Indigenous Peoples in Northern British Columbia, but also participated in a direct continuation of colonial violence and displacement.

## Ongoing dispossession

The demolition of Moccasin Flats can be viewed as part of a historically continuous effort to displace and disentitle Indigenous People from their own territory. Figure 1 illustrates this colonial geography: Moccasin Flats is less than 1 km north of the original community of the Lheidli T'enneh, which was burned to the ground in 1913, the site now memorialized by a municipal park. To the northeast of Moccasin Flats is Island Cache, a mixed community bulldozed in 1972 under the authority of zoning law. Like Moccasin Flats, these violent efforts were carried out against the interests of the Indigenous and marginalized people living in these areas.

The name given to the Lower Patricia encampment by Indigenous residents, Moccasin Flats, holds special meaning for Indigenous Peoples in Western Canada—a meaning that evokes the continued violence towards their communities.

On May 14, 1981, police and bylaw officers in the Alberta Town of Fort McMurray forcibly removed Métis families from their homes in their long-established community on the Syne River called Moccasin Flats.<sup>81</sup> Bulldozers had previously been used to flatten Métis homes and forcibly evict families.<sup>82</sup> These forced evictions marked the end of a long five-year campaign to raze the Métis community. As historians Hereward Longley and Tara Joly documented, the town of Fort McMurray collaborated with the oil company Syncrude to destroy this community so housing could be built for oil workers.<sup>83</sup> While there are some important legal and historical differences between the Fort McMurray community and Prince George encampment, they both have been victimized by what Jordan Ranger-Strauss has called “municipal colonialism,”<sup>84</sup> a process used “to remove Indigenous people that were seen as having no rightful place in the modern city.”<sup>85</sup>

What Longley and Joly conclude in their case study of Fort McMurray is also an accurate description of what has happened in Prince George fifty years later: “By calling the Moccasin Flats residents ‘squatters,’ the Town used property law to justify their eviction and ignored their Indigenous identity, history, and rights.”<sup>86</sup>

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<sup>81</sup> Hereward and Joly 2018 page 72.

<sup>82</sup> Ibid. page 65.

<sup>83</sup> Hereward and Joly 2018.

<sup>84</sup> Stranger-Ross 2008.

<sup>85</sup> Hereward and Joly 2018 page 6.

<sup>86</sup> Hereward and Joly 2018 page 7.

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