

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Maple Ridge (City) v. Scott*,
2019 BCSC 157

Date: 20190208
Docket: S175088
Registry: Vancouver

Between:

City of Maple Ridge

Plaintiff

And:

**Tracy Scott, Jane Doe, John Doe, and
Other Unknown Persons**

Defendants

Before: The Honourable Mr. Justice Grauer

Reasons for Judgment

Counsel for the Plaintiff:

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John Doe, and Other Unknown Persons:

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Appearing for the Attorney General of Canada on
behalf of the Royal Canadian Mounted Police:

Kyle Friesen

Place and Dates of Hearing:

Vancouver, B.C.
January 14 and 15, 2019

Place and Date of Judgment:

Vancouver, B.C.
February 8, 2019

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1.0 INTRODUCTION

[1] To be homeless is to be desperate; but never more so than in the middle of winter.

[2] To be homeless is also to be perilously at risk, especially in winter. Half of all deaths of homeless persons from hypothermia occur at temperatures above freezing. But unregulated heat brings the risk of fire, and in a homeless camp, that risk threatens all.

[3] Since May 2017, such a camp has been established in Maple Ridge, B.C., unlawfully occupying lands known as the St. Anne Lands. The St. Anne Lands comprise two parcels owned by the defendant City of Maple Ridge, and two parcels owned by the third party British Columbia Transportation and Finance Authority (“BCTFA”). The camp is known to its occupants as Anita Place.

[4] At the end of May 2017, Maple Ridge commenced this action and filed a notice of application for an injunction requiring the occupants of Anita Place to vacate the St. Anne Lands. Maple Ridge has not pursued that application, and it is not before me now.

[5] What is before me is an application for orders permitting Maple Ridge to enter the St. Anne Lands in order to carry out the terms of two orders (the “Fire Safety Orders”) issued concerning fire safety at Anita Place, and prohibiting the occupants from hindering or obstructing Maple Ridge in this regard. So this is not about ending the occupation; it is about fire safety. But the orders sought would undoubtedly have a significant impact on the occupants.

[6] The defendants concede that some aspects of the fire safety order are appropriate. The significant issue in relation to fire safety is a proposed prohibition on in-tent heaters, which at present involve open flames, or the use of propane, or other forms of jury-rigged heat that present a serious risk of fire. The defendants say that Maple Ridge has failed to live up to the obligations from the Consent Order

to provide or approve in-tent heaters, and that depriving the occupants of their current sources of in-tent heat presents an even more dangerous risk than fire.

[7] Even so, no one can deny that fire is a very real risk. On December 30, 2018, a significant fire occurred that caused an occupant to suffer burns, and completely destroyed an improvised structure. The fire was extinguished by the Maple Ridge Fire Department (“MRFD”). Fortunately, the structure was spatially separated from other tents and structures, and the fire did not spread beyond the structure it consumed. That setup is not, however, typical of the tents and structures at Anita Place.

[8] Maple Ridge also seeks orders requiring the occupants to identify themselves in order to verify those who are seeking transition to housing, and prohibiting any who are not from occupying the lands (the “verification orders”). This relief, say the defendants, would constitute a wholly unjustified and unnecessary invasion of privacy and is unrelated to the Maple Ridge’s pleaded case.

[9] Finally, Maple Ridge seeks orders authorizing police officers to assist with enforcement (the “enforcement orders”).

[10] What the occupants of Anita Place need, of course, is appropriate shelter. They agree that the camp should close; Canada is no place for a long-term homeless camp. But adequate shelter is not, at present, available for all who want it. It is not a solution I can order. A satisfactory answer to the problems raised on this application cannot be found in the courts.

2.0 THE ST. ANNE LANDS AND THE PARTIES

[11] The St. Anne Lands comprise four parcels of undeveloped property and portions of unopened road allowance that make up a triangular-shaped area of approximately 0.34 hectares in a primarily residential urban section of the City of Maple Ridge.

[12] Maple Ridge is the registered owner of the two eastern-most parcels while BCTFA is the registered owner of the two western-most parcels.

[13] BCTFA it is a Crown corporation for which the Ministry of Transportation and Infrastructure is responsible. It holds property and other assets for transportation infrastructure purposes, including its two parcels in the St. Anne Lands.

[14] BCTFA granted a license of occupation of its two parcels to Maple Ridge in September 2016. This was to facilitate the Maple Ridge community plan to dedicate the St. Anne Lands to green space and park. Consequently, Maple Ridge is responsible as occupier for the BCTFA parcels as well as for its own parcels as owner. As we shall see, both Maple Ridge and BCTFA are subject to any orders issued under the *Fire Services Act*, RSBC 1996, c 144.

[15] British Columbia is involved in this litigation in two capacities. First, it is responsible for BCTFA, owner of two of the St. Anne Lands parcels. Second, it is the level of government that is responsible for providing public benefits for the support of persons such as the occupants of Anita Place, through the Ministry of Municipal Affairs and Housing.

[16] The defendants are the occupants of Anita Place, who have been assisted by the Pivot Legal Society. Three of the occupants are represented in this proceeding by Mr. Wotherspoon, Ms. Ethier and Mr. Mittal, who, in the best traditions of the bar, are acting *pro bono*.

2.0 THE FIRE SAFETY ORDERS

2.1 The Consent Order

[17] As we have seen, Maple Ridge seeks an order permitting it to enter the St. Anne Lands and Anita Place in order to carry out the terms of two orders. The first is a consent court order that was pronounced in this proceeding on November 27, 2017 (the “Consent Order”).

[18] No one would suggest that Anita Place is an orderly, well-kept camp. It is not disputed that it is rife with conditions that are of concern from the perspective of fire

safety. These include tents being pitched too close together, haphazard wooden structures, the lack of clear pathways for escape or for first responders, dangerous electrical wiring, and the presence of propane and gasoline together with open flames.

[19] These risks became of increasing concern as the weather cooled, and in November 2017, Maple Ridge filed an application for injunctive relief requiring the property to be vacated, or alternatively, requiring compliance with fire safety regulations developed by the MRFD in consultation with representatives of some of the defendants.

[20] To its credit, Maple Ridge followed then, and has attempted to do so since, an approach more collaborative than confrontational. It did not pursue its application to evict the occupants. Instead, it negotiated. The result was the Consent Order, by which the parties agreed to a number of terms intended to improve fire safety. That order comprises recitals as well as the operative terms, and incorporates the MRFD's fire safety regulations (I have added the emphasis):

...

AND UPON HEARING A JOINT SUBMISSION on behalf of the Plaintiff and Defendants, whereas:

1. The Defendants and others (the "Occupants") have taken up occupation in an encampment on the lands described below as the St. Anne Lands (the "Encampment").
2. The Maple Ridge Fire Department has issued certain Fire Safety Regulations in respect of the St. Anne Lands and Encampment, as developed in consultation with the Occupants, and as described below.
3. The parties agree that fire safety within the Encampment is of critical importance and best achieved through cooperation and collaboration between the parties.
4. The Occupants are primarily comprised of homeless people, some of whom have mental health, addiction or other disabilities.
5. In order to comply and maintain compliance with the Fire Safety Regulations to the best of their abilities, the Occupants require support and services to be provided at no cost to them, including the following:
 - a) Fire-resistant tents;
 - b) Fire-resistant tarpaulins;
 - c) Cold weather sleeping bags;

- d) Cold weather clothing; and
- e) In-tent heaters, subject to the safety approval by the Maple Ridge Fir Department (not to be unreasonably withheld)

all in sufficient quantities to meet the needs of those Occupants occupying the Encampment as at the date of this Order (the "Life Safety Necessities").

- 6. The City supports the delivery to the Encampment of the Life Safety Necessities.
- 7. Furthermore, in conjunction with Fire Safety Regulation compliance being achieved upon the St. Anne Lands, the City supports the installation upon the St. Anne Lands of a potable water supply and a modular washroom unit.
- 8. The parties agree that the purpose and intention of this Order is to obtain and maintain Fire Safety Regulation compliance upon the St. Anne Lands.

THIS COURT ORDERS:

- 1. The Defendants and all those individuals who have taken up continuous occupation upon the lands ... and who have notice of this Order, shall make best efforts, each according to individual ability, to achieve and maintain upon the St. Anne Lands compliance with the "Maple Ridge Fire Department – Community Health and Safety Notice" which are attached to this Order as Schedule "A" (the "Fire Safety Regulations").
- 2. The Plaintiff, or its agent or contractor, may enter upon the St. Anne Lands and assist the Defendants in bringing the St. Anne Lands into compliance and in maintaining compliance with the Fire Safety Regulations.
- 3. No person having notice of this Order shall hinder, delay, interfere or obstruct any person from performing any provision of this Order.

[Signatures]

Schedule "A"

MAPLE RIDGE FIRE DEPARTMENT

COMMUNITY HEALTH AND SAFETY NOTICE

For the fire safety benefit of all those occupying this encampment, the following regulations have been put in place. This notice to be posted in a conspicuous place within the camp.

FIRE & LIFE SAFETY REGULATIONS:

- 1. **Entrance & Exits**
 - Two points of entrance / exit are to be maintained along 223rd Street at all times. Unobstructed width of each to be 2 meters.
 - Exits must be maintained unobstructed and openable without keys or special knowledge at all times.
 - Pathways between occupied areas to be minimum 1 meter wide with no overhead obstructions and kept clear at all times.

2. Tents

- Tent doorway must face a common pathway that leads to an exit.
- Individual tents and associated personal belongings must be separated by a minimum 1 meter fire safety buffer maintained clear at all times.

3. Fence

- Individual tents and associated personal belongings must be kept clear of fences by minimum 1 meter.
- Fence is to be kept clear of all personal belongings.

4. Tarpaulins

- Tarpaulins are limited to the polypropylene variety - no poly vapour barrier permitted — no building material wrap permitted.
- Limit one tarpaulin per tent when draped over top. Multiple tents under a single tarpaulin permitted if the tarpaulin is suspended minimum 1 meter above tents.
- Tarpaulins may be hung vertically from fences to act as "privacy screens". Tarpaulins are not to be otherwise fastened to the fences.

5. Cooking

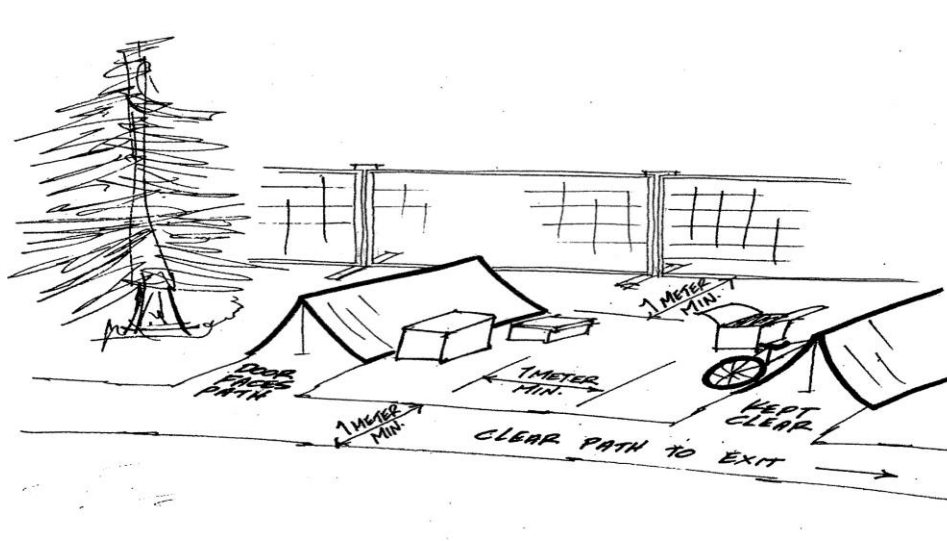
- Limit of one communal camp kitchen utilizing ULC (or equiv.) rated propane appliances only.
- Limit of two 20lb. propane cylinders in the camp at any given time.
- 5lb. ABC fire extinguisher required in close proximity of cooking appliances.

6. Open flame

- No open flames (candles, torches, tiki, etc.) permitted.
- No camp fires permitted.

7. Combustibles/Flammables

- No accumulation of flammable liquids or aerosols permitted on site beyond those reasonably required for personal use (i.e. personal hygiene, etc.).
- No upholstered furniture (couches, chairs) permitted on site.
- Combustible materials must be kept to a minimum and separated from tents wherever possible.
- Cardboard or wooden pallets are not permitted under tents.
- Garbage to be collected and disposed of appropriately on a daily basis.



Fire Regulation Clearances – Explanatory Diagram

[21] The order and its recitals reflect some of the realities that distinguish this case from ordinary injunction applications. One reality is that, as counsel for the defendants observed, the camp occupants are marginalized persons many of whom suffer from mental health issues, medical problems, and addiction. They have no financial resources and limited life skills. Consequently, perfect compliance is an unrealistic expectation. This is reflected in the reference to the obligation of occupants to make “best efforts, each according to individual ability” to achieve compliance, and in the absence of any proceedings for contempt.

[22] A second reality is jurisdictional. Although the St. Anne Lands are in Maple Ridge, it is the province that is responsible for providing housing and social support, although the cooperation of Maple Ridge is essential. This is reflected in the reference to Maple Ridge *supporting* the delivery of the Life Safety Necessities which were contemplated to be provided to the occupants at no cost to them.

[23] Pursuant to those provisions, Maple Ridge has supported and facilitated the provision of fire-resistant tents and tarpaulins, cold weather sleeping bags and clothing, a modular trailer containing an electrically-powered hygiene centre that provides restroom facilities and hot water for washing and showering, and a large

heating tent, heated by propane that is cordoned off. As I understand it, these have been funded by the province and by private charity. There is, of course, also a cold-weather shelter available for overnight occupation in Maple Ridge.

[24] What neither Maple Ridge nor the province has provided are in-tent heaters. According to Maple Ridge, no heaters have been suggested or found that are safe for in-tent use. According to the defendants, Maple Ridge and its fire department have unreasonably withheld approval.

2.2 The *Fire Services Act* orders

[25] The second order Maple Ridge seeks to carry out with the court's assistance is one issued by Acting Fire Commissioner Ron French on October 19, 2018 (the "French order"), pursuant to section 27 of the *Fire Services Act*. In their capacities as owners of the St. Anne Lands, both Maple Ridge and BCTFA are subject to that order.

[26] The French order came about by way of an appeal by the defendants from orders issued by the Local Assistant to the Fire Commissioner ("LAFC"), Ron Exner, to Maple Ridge and to British Columbia under section 22 of the *Fire Services Act* (the "Section 22 Orders"). In considering the appeal, Mr. French said this:

Analysis

...

In considering the appeal I have taken into account that the intent of the original orders was to ensure a reasonable level of fire and life safety in an ad hoc encampment by minimizing the sources of ignition and likelihood of the rapid spread of fire. The time limits for compliance need to be based upon a reasonable time to comply taking into consideration the level and severity of the associated risks.

The original orders required compliance with all actions within 24 hours. This is not considered reasonable for those actions that do not represent an urgent threat to fire and life safety. It was also noted that some parts of the order direct actions to be taken that are beyond the scope and intent of *Fire Services Act* and the British Columbia Fire Code and consequently cannot be upheld (for example: "1(c) all personal items tied to or otherwise hanging on the fence shall be removed, 2(e) Tents must be visible and accessible from the main pathways").

Not all actions set out in the Section 22 Orders are necessary to ensure the Premises do not pose an unacceptable fire safety risk or would endanger life

or property, and accordingly I have decided to modify the order as set out below. The amount of combustible materials and the manner of storage can present a potential fuel load should a fire occur, however the manner of use and compliance with the requirements stated in my order below can mitigate the potential risk to an acceptable level. This should be monitored and assessed on an ongoing basis. It is recognized that when an encampment situation develops there are some restrictions required to minimize the possible sources of ignition and prevent the rapid spread of fire due to overall numbers and crowding of tents and structures. In such situations the requirement to minimize the life safety risk to the collective group outweighs the consideration of individual impacts, which may be more manageable in situations where it involves only a few singular tents in an organized environment. [Emphasis added.]

Decision

After consideration of the photographs of the encampment I find that the premises are in a state of disrepair such that a fire starting in the premise is likely to spread rapidly and endanger life or other property due to the proximity of tents, tarpaulins overlapping any gaps between tents/structures and lack of clear egress from all tents/structures. The Section 22 Orders are hereby modified by rescinding the wording of the actions ordered and replacing it as follows (compliance required within time indicated for each)

YOU ARE HEREBY ORDERED TO:

- 1: Position all tents and structures to maintain a 1 meter clear space on all sides. (7 days)
- 2: Position the entrance of all shelters or tents to face the path of egress. (3 days)
- 3: Ensure all egress routes shall be unimpeded. (24 hours)
- 4: Remove any tarpaulins that extend over more than one shelter or structure. (7 days)
- 5: Restrict the use of open flame; not to be used within 3 meters from combustible materials and do not use under combustible overhangs. (Immediately)
- 6: No storage or use of flammable liquids. (Immediately)
- 7: Restrict the use of propane (and reasonable storage) to a communal area. (3 days)

The work required by this decision shall be completed to the satisfaction of the LAFC having jurisdiction. In the event that you disagree with this decision I refer you to the provisions in section 28 of the *Fire Services Act*.

[27] The French order was not appealed further, nor did the defendants seek judicial review, whether on the basis of *Charter* rights or otherwise. Consequently, it stands as a valid order under the *Fire Services Act* that requires action by all of the parties to this proceeding. That the defendants did not challenge the French order is

not surprising, given their consent to the terms of the Consent Order. Maple Ridge and British Columbia maintain in the circumstances that the position taken by the defendants in resistance to Maple Ridge's application amounts to an impermissible collateral attack on the French order.

2.3 Discussion

[28] The application is for interim injunctive relief, and the plaintiff and defendants agree that the appropriate analysis comprises three questions: first, whether the applicant has demonstrated that there is a fair question to be tried; second, whether the applicant will suffer irreparable harm if an injunction is not granted; and third, whether the balance of convenience favours the granting of injunctive relief: *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 347–8; *British Columbia v Adamson*, 2016 BCSC 584 at para 21 [*Adamson*].

[29] British Columbia sought to advance a different test, enunciated by the Court of Appeal in *Maple Ridge (District) v Thornhill Aggregates Ltd*, [1998] BCJ No. 1485 (CA), leave to appeal to SCC refused, [1998] SCCA No. 407. There, it was stated that when a public authority seeks an injunction in respect of an alleged contravention of a public statute (here the *Fire Services Act*), the court should be reluctant to refuse the application on discretionary grounds. In other words, the court should grant the injunction in the absence of exceptional circumstances.

[30] In the context of the cases such as this one, involving the occupation by homeless persons of public lands (which have, unfortunately, become altogether too common), this court has been reluctant to apply the *Thornhill* test rather than the *RJR-MacDonald* test: see, for instance, *Vancouver Board of Parks and Recreation v Mickelson*, 2003 BCSC 1271; *Adamson*; *British Columbia v Adamson*, 2016 BCSC 1245 [*Adamson #2*]; and *Nanaimo (City) v Courtoreille*, 2018 BCSC 1629. This is because there, as here, the law is subject to challenges under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11. I propose to employ the *RJR-MacDonald* test as one that appropriately balances the competing positions.

[31] The first two branches of the *RJR-MacDonald* test are not seriously in dispute. Maple Ridge and BCTFA are subject to the French order, a statutory order that the defendants have not sought to appeal or review. They are both exposed to liability, and the very real risk of irreparable harm should fire occur, quite apart from the damage to the lands otherwise being sustained as a result of their occupation. As was acknowledged by all parties to the Consent Order, “fire safety within the Encampment is of critical importance”. On the evidence, fire safety has not been achieved through cooperation and collaboration between the parties as contemplated by the Consent Order.

[32] The defendants accept that, on the *RJR-McDonald* analysis, it would be appropriate to provide for enforcement of some of the terms sought by Maple Ridge, such as the requirements in the French order relating to the positioning of tents and structures, and egress routes. But, they say, in the absence of the provision of in-tent heaters as contemplated in the Consent Order, they have no choice but to take such steps as they can to be warm and dry. Any fire risk arising, they contend, is outweighed by the risk of hypothermia and the health and safety risks of being forced to live outside of the Anita Place community, which they maintain would be the likely effect of enforcement. Thus the balance of convenience, they argue, favours maintaining things as they are in so far as in-tent heat is concerned.

[33] In these circumstances, the defendants propose that I grant the orders Maple Ridge requests except those that affect their ability to produce heat in their tents or other structures. Those aspects, they submit, should be adjourned until Maple Ridge has lived up to what the defendants characterized as its obligation to provide safe in-tent heating.

[34] When I asked, “But what if a catastrophic fire occurred in the meantime?”, counsel’s response was, “That would be unfortunate”. So the defendants must risk exposure to cold and damp, or they risk fire. As I said, absent practicable housing options, there is no satisfactory answer to this situation.

[35] The defendants submit that Maple Ridge should, in effect, be judicially encouraged to follow a policy of harm reduction, rather than enforcement. Instead, the defendants contend, Maple Ridge has declined to continue negotiations, and through its fire department, has unreasonably withheld approval of means of providing in-tent heat.

[36] On the evidence, however, no safe means of providing in-tent heat have been proposed other than two: a properly installed electrical grid that would allow individual occupants to hook up to power safely; or a central propane-powered heating system that would supply warm air to each tent or structure through ducts. Both proposals are practicable; as Mr. Wotherspoon put it, “all it takes is willingness and money”. But that is the problem. Both proposals involve infrastructure and expenditure well beyond anything contemplated in the Consent Order, and well beyond what it is open to this Court to order. Moreover, while Maple Ridge is responsible for fire safety in the community, it is British Columbia that is ultimately responsible for housing, although the cooperation of Maple Ridge is essential.

[37] Since I cannot order “willingness and money”, the question is whether it would be legally right to suspend the enforcement of steps designed “to minimize the life safety risk to the collective group” pending the proper authorities getting around to doing something to solve this problem—in the hope that nothing “unfortunate” would happen in the meantime. On balance, I do not think it would.

[38] On the facts, there can be no doubt (as the defendants recognized, and indeed acknowledged in the Consent Order) that the risks are real and serious. I do not propose to review all of the voluminous evidence in detail, but find it useful to refer briefly to the evidence of Michael Van Dop, Deputy Fire Chief of the MRFD who conducted fire safety inspections and site visits, and Douglas Armour, Assistant Fire Chief of the MRFD, who also attended on site visits. They observed electrical tempering at the hygiene trailer with shoddy wiring and exposed electrical terminals; accumulation of wooden items that are combustible throughout the encampment; shanty-style structures; tents pitched one on top of the other, frequently covered by overlapping tarps; improvised gas appliances; propane tanks; the use of wooden

pallets notwithstanding plastic pallets being made available; and passageways cluttered with debris, hindering both egress, and access for first responders. I do not doubt for a moment their assessment that the resulting risk of fire and its rapid spread is untenable.

[39] There can also be no doubt that there has been a considerable amount of resistance among some members of the Anita Place community to attempts by Maple Ridge employees to enforce the terms of the Consent Order already in place.

[40] This is not, regrettably, a unique situation. A very helpful review of the “tent city cases” in British Columbia was undertaken by Mr. Justice Branch in *Saanich (District) v Brett*, 2018 BCSC 1648 at paras 43–79.

[41] I refer in particular to two recent decisions, *Courtoreille* and *Brett*, both from 2018.

[42] In *Courtoreille*, Mr. Justice Skolrood heard an injunction from Nanaimo aimed at closing down and removing a “tent city” that had been erected on lands located in downtown Nanaimo. Foremost among the concerns raised by Nanaimo were those relating to fire safety. Among the key factors that, in Skolrood J’s view, tipped the balance of convenience in favour of granting the injunction was the significant risk of fire.

[43] In *Brett*, Branch J discussed the material risk of fire as a result of the conditions of the encampment, noting that alleged failures on the part of the fire department to provide fire extinguishers or training (there are four fire extinguishers at Anita Place) did not materially decrease the considerable weight that he attributed to the fire safety concerns. In the result, he granted an interim injunction requiring the park to be restored to a safe state, and limiting occupation to nighttime use.

[44] The stark but unsurprising reality is that in all these cases, non-compliance with fire safety orders has been the rule, not the exception. That is also the case at Anita Place.

[45] Before me, the defendant put forward a considerable amount of material demonstrating a number of important points. These include the sorry history of homelessness in Maple Ridge, the threats and indignities suffered by the homeless as a result of abuse and enmity from some residents, the absence of sufficient shelter spaces in Maple Ridge for all of its homeless, and the consequences of disruption without a viable alternative.

[46] On behalf of the residents of Anita Place, the Pivot Legal Society has called upon government actors “to approach tent cities from a public health perspective which does not prioritize fire safety over other critical health and safety concerns at encampments”, concluding:

Anita Place is the only viable, secure option for many people who face multiple barriers to stable housing in Ridge Meadows. It is in this context that some residents are engaging in activities aimed at protecting their own lives. In keeping with the above open letter, the residents of Anita Place would like to work with the City and the Province collaboratively to find solutions that actually meet their health and safety needs.

[47] The very real difficulty is that steps taken by individuals to protect their own lives put more than their own lives at risk. They put at risk life and limb of the community as a whole. This is the risk that is, to Maple Ridge, the MRFD and Acting Fire Commissioner French, unacceptable.

[48] Given the availability of a heating tent, communal cooking, hot water washing facilities, and cold weather shelter space within Maple Ridge, I must agree. A solution that fully meets the health and safety needs of the occupants of Anita Place may take some time, but the risk of catastrophic injury and loss of life is too great to ignore in the meantime. The balance of convenience favours the granting of the injunction in relation to the Fire Safety Orders.

[49] With respect to the terms, a question arises in relation to Maple Ridge’s request for authority to remove any building, structure or recreational vehicle located or constructed upon the St. Anne Lands, and prohibiting any person from constructing buildings or structures contrary to a Stop Work Order, or occupying any

building or structure is contrary to a Do Not Occupy Order, as sought in paragraphs 1(f) and 3 of part 1 of Maple Ridge's notice of application.

[50] Neither the Consent Order nor the French order directly addresses the question of improvised wood-framed structures as a risk, nor do they prohibit them. The defendants maintain that such structures are, in fact, safer than tents, and as there is nothing about them in the Fire Safety Orders, there is no reason to grant this term of the injunction.

[51] Maple Ridge observes that the structures did not exist at the time of the Consent Order, and have proliferated only recently (although this is debatable). The City submits that they are "dangerous, pose fire risks, and are structurally unsound and pose a risk of collapse". It was one such structure that burned in the fire on December 30, 2018. Maple Ridge points out that the structures are technically in violation of the Consent Order/Fire Safety Regulation prohibition against combustible materials, and expose the City to liability as owner and occupier of the property should a person become injured as a consequence of a fire or collapse of such a structure.

[52] I am sensitive to Maple Ridge's concerns in this regard, but it seems to me that this aspect of its application proceeded on the basis of the need to enforce existing orders, rather than a general enforcement of the City's full potential claim. In particular, I note the discussion of Acting Fire Commissioner French in arriving at his Order. The Acting Fire Commissioner carefully balanced the risks in order to determine what was necessary to ensure that the premises did not pose an unacceptable fire safety risk. That is a very similar balancing process to what I am obliged to undertake.

[53] In achieving this balance, Acting Fire Commissioner French did not prohibit wood-framed structures, but rather made orders designed to prevent the rapid spread of fire and endangerment of life due to blocked passages and excessive proximity of tents/structures. Thus, for instance, he ordered that all "tents and structures" were to maintain a one meter clear space on all sides and face the path

of egress, and that all paths of egress were to be unimpeded. In these circumstances, it seems to me that if appropriate separation is achieved as directed in the two orders, and in-tent/in-structure sources of heating are removed, then the risk diminishes considerably.

[54] Accordingly, I grant the injunction to the extent of ordering compliance with the Fire Safety Orders, comprising the Consent Order/Fire Safety Regulations and the French order. I do not include the terms sought by Maple Ridge in paragraph 1(f) and 3 of part 1 of Maple Ridge’s notice of application. Those terms are not necessary to achieve compliance with the Fire Safety Orders.

[55] I do include the balance of paragraph 1, and paragraph 2.

[56] My decision not to grant the relief requested in paragraphs 1(f) and 3 relating to improvised wood-framed structures must not be taken as endorsing their construction, which would appear to be contrary to, amongst other things, Maple Ridge’s Building Bylaw and the BC Building Code. Rather, it is based on a balancing of interests in the context of an injunction application founded upon the need to enforce the existing Fire Safety Orders in the face of homeless persons exposed to winter.

3.0 THE VERIFICATION ORDERS

[57] Under this heading, Maple Ridge seeks an order requiring any of the occupants who seek transition to housing to identify themselves to a representative of the City by producing government-issued photo identification, or by agreeing to be photographed, and providing a full legal name. Such information is proposed to be used and retained solely for the purpose of verifying the identity of such individuals. These “verified occupants” are also to identify their specific campsite locations.

[58] Maple Ridge further seeks an order requiring any persons who are not “verified occupants” to vacate Anita Place, and enjoining them from occupying any portion of the St. Anne Lands without authority from Maple Ridge.

[59] The object is to ensure that Maple Ridge is able to obtain a verifiable count of actual occupants in order to work towards housing for those who require it, and to exclude those who do not wish to be housed from unlawful occupation of the St. Anne Lands.

[60] Similar relief was granted without discussion by Chief Justice Hinkson in *Adamson #2*, and by Skolrood J in *Courtoreille*.

[61] The defendants object that this aspect of the order constitutes an unnecessary and unjustified invasion of their privacy and dignity rights. They point out that Maple Ridge says it has no obligation to provide housing, yet maintains that it is necessary to identify individuals. They say, further, that the proposed process is impracticable given the high rate of turnover at Anita Place.

[62] In my view, the terms are appropriate.

[63] While Maple Ridge has no obligation to provide housing, it is obliged to cooperate in and facilitate the provision of housing by the province, and is responsible for zoning and other relevant aspects. I accept at face value Maple Ridge's assurance that it requires, and will use, the information to assist the province and BC Housing in placing the occupants into housing, and to work towards the closing of the encampment, which all agree is ultimately necessary.

[64] Moreover, I accept Maple Ridge's assertion that having the information will not only assist in identifying the scope of the need for housing, but will also allow the encampment to be scaled back, and the property cleaned of refuse and hazards following the transition of individuals into housing.

[65] As to the privacy and dignity rights of the defendants, the fact remains that they are occupying land either owned by, or licensed to, Maple Ridge. It does not seem to me to be an unfair requirement that, so long as they do so, they disclose their identities to Maple Ridge. Again, I take at face value Maple Ridge's assurance that it will use the information only for the purposes described.

[66] Balancing, then, the purposes for which Maple Ridge proposes to use the information with the impact upon the privacy and dignity rights of the defendants, I conclude that the balance favours Maple Ridge. This is not a survival issue, but a process issue—one that should assist in moving towards a housing solution.

4.0 THE ENFORCEMENT ORDERS

[67] Maple Ridge seeks police enforcement clauses, authorizing any police officer to arrest and remove any person who the police officer has reasonable and probable grounds to believe is contravening or knowingly has contravened the provisions of the order following these reasons for judgment, providing such police officer retains his or her operational discretion as to whether or not to arrest or remove any person pursuant to the court order. The proposed terms would further authorize any police officer who does arrest a person to release that person if satisfied that the person will no longer contravene the order; to release that person upon that person giving a written undertaking to abide by the court order; to bring such person before the court where that person refuses to give a written undertaking; or detain such person until such time they can be brought before the court.

[68] The need for police enforcement is clear on the evidence. Maple Ridge has made many attempts to achieve compliance with the Consent Order and the French order. These have proved unsuccessful because of less than full cooperation by the occupants, the actions of some occupants to frustrate Maple Ridge's efforts, and the inability to resolve the root problem of inadequate shelter. That is why the fire safety risks still exist notwithstanding the defendants' acknowledgement that "fire safety within the Encampment is of critical importance". It is time now to deal with that risk, and hopefully, for Maple Ridge and of British Columbia to address also the risks of homelessness and hypothermia that will continue.

[69] The enforcement orders sought by Maple Ridge are not at all unusual. The defendants nevertheless maintain that they are too vague, give too much discretion to the police, and follow a punishment approach, referring to the opinions expressed by Miloon Kothari, an expert in housing and homelessness from New Delhi, India.

[70] But I see the form of the relief sought as having a different goal: relieving the police of the necessity of arresting persons in all circumstances. The discretion sought, in other words, tends to reduce the risk of arrest and punishment, rather than increase it.

[71] The real problem with enforcement arises as a result of the submissions made at the end of the hearing, without supporting affidavit material, by counsel for the Attorney General of Canada, representing the RCMP.

[72] It is, of course, always helpful to the court to hear from police representatives about the practical effects of the orders sought. In this case, counsel for the RCMP wished to put before the court information indicating that the police required more than the powers sought by Maple Ridge if they were to be expected to be able to enforce the orders Maple Ridge requested. In particular, RCMP counsel advised that successful enforcement will require an exclusion zone during Maple Ridge's remediation efforts. Counsel accordingly proposed modifying term 2 of the order sought by Maple Ridge. That term, which I have granted, reads:

2. An injunction enjoining the defendants, and all those who have taken up occupancy of the St. Anne Lands, from hindering, obstructing or preventing the City of Maple Ridge ... from entering upon the St. Anne Lands and carrying out the terms of this Order.

[73] To this, counsel for the RCMP would add:

While the City of Maple Ridge is carrying out the terms of this Order, the defendants, and all those who have taken up occupancy of the St. Anne Lands, must remove themselves and all personal property from the St. Anne Lands and not return until the City of Maple Ridge has remediated the property to the standards required by the Fire Safety Act and this Order.

[74] Counsel for the RCMP submits that his proposed new sentence:

reflects the "clean-up and return" nature of the Order. It is not a termination order for a homeless camp on public property, but a fire safety management order with rules that we are all subject to.

[75] Counsel for the defendants quite properly objected to this proposal, noting that it was based on purported facts and propositions that were not in evidence, and

was brought without any notice to the defendants. Moreover, the order I am making is not of a “clean-up and return” nature. It is an order permitting Maple Ridge to take steps to ensure fire safety, not to clear the camp. Accordingly, I decline to add the proposed sentence at this time.

[76] If it should prove to be the case that the order I am making cannot be fully implemented without additional enforcement terms, Maple Ridge will have to return to seek them on full and proper notice to the defendants. For now, I grant Maple Ridge the police enforcement terms it requested in its notice of application, which do not oblige the police to do anything, but rather authorize them to take certain steps as outlined above.

5.0 CONCLUSION

[77] For the reasons set out above, I grant Maple Ridge the relief it seeks in paragraph 1 excluding subparagraph (f), and in paragraphs 2, 4, 5, 6, 7 and 8. I decline to grant the relief sought in paragraphs 1(f) and 3. I also decline to add at this time the requirement sought by the RCMP that the camp be cleared while the contemplated steps are taken.

[78] It is now much colder than when this matter was argued. To risk freezing or burning is a choice no one should have to make. It is to be hoped that Maple Ridge and British Columbia will work together urgently to bring an end to the need for Anita Place.

[79] The parties are at liberty to apply.