

| Request for Consideration   |   |  |
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| <input checked="" type="checkbox"/> <b>Agenda Item</b><br>(Submitted to Municipal Clerk's Office by Noon at least 5 working days prior to the meeting)  | <input type="checkbox"/> <b>Added Item</b><br>(Submitted to Municipal Clerk's Office by Noon at least one day prior to meeting) | <input type="checkbox"/> <b>Request from the Floor</b><br><input type="checkbox"/> <b>Notice of Motion</b> |
| <b>Council or Committee:</b> Halifax Board of Police Commissioners  |   |  |
| <b>Date of Meeting:</b> June 20, 2022   |   |  |
| <b>Subject:</b> Staff report regarding police enforcement of P-600  |   |  |
| <b>Motion for Committee to Consider:</b>  |   |  |
| <p>That the Chair of the Halifax Board of Police Commissioners (the "Board") direct the Chief Officer of the Halifax Regional Police ("HRP") and recommend that the Chief Superintendent of the Halifax District Royal Canadian Mounted Police ("RCMP") prepare staff reports to be received by the Board at its July meeting. These reports should briefly outline all policies, procedures, and other operational guidance provided to officers regarding the enforcement of subsections 8(1) and 8(2) of Halifax Regional Municipality By-Law P-600 <i>Respecting Municipal Parks</i> ("P-600").</p> |   |  |
| <b>1. Legal authority</b>   |   |  |
| <b>a. HRP</b>   |   |  |
| <p>Under subsection 55(1) of the <i>Police Act</i>, the function of a board is to provide (emphasis added):</p> <ul style="list-style-type: none"><li>(a) civilian governance on behalf of the council in relation to the enforcement of law, the maintenance of law and order and the prevention of crime in the municipality; and</li><li>(b) the administrative direction, organization and policy required to maintain an adequate, effective and efficient police department</li></ul>   |   |  |
| <p>Section 52 reads:</p> <p>On behalf of the board, the board chair or the chair's delegate may give advice or direction, in writing, to the chief officer on any matter within the jurisdiction of the board under this Act, but not to other members of the police department and, for greater certainty, no other member of the board shall give advice or direction to a member of the police department.</p>   |   |  |
| <b>b. RCMP</b>  |   |  |
| <p>Section 68(1) reads:</p> <p>68 (1) The function of an advisory board is to provide advice to the council in relation to the enforcement of law, the maintenance of law and order and the prevention of crime in the municipality, but the advisory board shall not exercise jurisdiction relating to complaints, discipline, personnel conduct or the internal management of the Royal Canadian Mounted Police.</p>  |   |  |
| <p>Section 66 reads:</p> <p>On behalf of the advisory board, the board chair or the chair's delegate may, in accordance with an agreement made pursuant to clause 36(1)(b), give advice in writing to the chief officer, but</p>  |   |  |

not to other members of the police department and, for greater certainty, no other member of the board shall give advice or direction to a member of the police department.

### 1. Background regarding P-600

Subsections 8(1) and 8(2) of P-600 read:

8. (1) Camping is prohibited in a park unless otherwise posted or by permission.

(2) No person shall erect or place in a park anything for the purpose of temporary or permanent accommodation without permission.

A staff report from the Parks and Recreation department dated June 14, 2022, entitled “Homelessness and Designated Locations Approach,” recommends that Halifax Regional Council endorse the report’s proposed criteria and locations in municipal parks for designated camping intended for those experiencing homelessness.<sup>1</sup> Depending on their size, the parks recommended are contemplated as each being able to accommodate between one to five “sites,” each of which would have space for a maximum of four tents for designated camping.

The report outlines a framework for dealing with non-compliance, which could include circumstances in which an individual camps in a non-designated location or site or too many tents being present at a single site. The report notes that “voluntary compliance is always preferred.” However, the report also notes that “[u]ltimately, should someone refuse to engage in conversations and negotiations, and significant efforts have been made to resolve concerns, **HRP may need to be engaged in an involuntary approach to compliance, such as removal of the person from a park space**” (emphasis added).

### 2. Charter considerations regarding the enforcement of P-600

As with many other municipalities across Canada, Halifax Regional Municipality is current facing a significant housing and homelessness crisis.

An ongoing challenge facing many municipalities concerns the extent to which they are able to enforce municipal by-law prohibitions against camping and erecting structures in public parks in circumstances where people are “sleeping rough.” As a result, a body of case law has developed from across the country dealing with precisely this issue.

#### a. Summary of relevant case law

In *Victoria (City) v Adams*, a group of homeless people erected overhead shelter in the form of tents, tarps and cardboard boxes at a local park in the City of Victoria.<sup>2</sup> The City sought a permanent injunction (legal order requiring the homeless to refrain from erecting shelters) and declaration that such structures contravened the Park Regulation Bylaw and Streets and Traffic Bylaw. The City had a documented shortfall of spaces in homeless shelters (i.e., there was a greater number of homeless people than shelter beds available).

The defendants argued the bylaws were unconstitutional, infringing “the right to life, liberty and security of the person” under section 7 of the *Canadian Charter of Rights and Freedoms*. The trial court found the prohibition of temporary overhead shelter in parks to be unconstitutional where there was a lack of alternative shelter space.

With respect to security of the person, the Court stated:

**In the present case, Victoria does not have sufficient shelter spaces for the homeless. Large numbers of homeless people are therefore left to shelter themselves on public property. The city has prohibited the erection of temporary shelter in the form of overhead protection, thereby exposing the homeless to a risk of significant health problems or even death.** As in *Parker*, the state action by means of a sanction has deprived the homeless of access to the shelter required for adequate protection from the elements. As in

<sup>1</sup> <https://www.halifax.ca/sites/default/files/documents/city-hall/legislation-by-laws/By-law%20P-600.pdf>

<sup>2</sup> *Victoria (City) v. Adams*, 2008 BCSC 1363

*Morgentaler*, the homeless person is left to choose between a breach of the Bylaws in order to obtain adequate shelter or inadequate shelter exposing him or her to increased risks to significant health problems or even death.<sup>3</sup>

On appeal, the British Columbia Court of Appeal unanimously upheld the trial decision with only minor changes, however, it allowed that the City can re-apply to British Columbia Supreme Court to terminate the part of the order which directly dealt with erection of shelters if the City can demonstrate that there are sufficient resources to shelter the homeless.<sup>4</sup>

In *Abbotsford (City) v Shantz*, the British Columbia/Yukon Association of Drug War Survivors ("DWS") challenged the constitutionality of the City's Consolidated Parks Bylaw, Consolidated Street and Traffic Bylaw and Good Neighbour Bylaw, which prohibited overnight sleeping in City parks without a permit and erecting shelter in public places.<sup>5</sup>

The Supreme Court of British Columbia concluded that the Bylaws unjustifiably violate homeless persons' section 7 rights to life, liberty and security of the person. By denying the City's homeless overnight access to public spaces without permits and by preventing them from erecting temporary shelters without permits, the Bylaws were overbroad, grossly disproportionate and not minimally impairing. Ultimately, the court declared the Bylaws to be of no force and effect to the extent that "they apply to the City's homeless and prohibit sleeping or being in a park overnight or erecting a temporary shelter without permits."<sup>6</sup> The declaration was limited to overnight stays between 7 p.m. and 9 a.m.

Notably, where *Adams* engaged in a mathematical comparison of the number of shelter beds and the resulting shortfall when compared to the number of homeless individuals, *Shantz* took a more nuanced approach and discussed the type of beds available and the various barriers people face to accessing those beds (e.g., prohibitions against using drugs or alcohol on-site) before concluding that there were "insufficient viable and accessible options."<sup>7</sup>

In *Black et al v City of Toronto*, fourteen applicants sought an injunction that would prevent the City from enforcing the *City of Toronto Municipal Code* as it related to camping in parks for the duration of the pandemic.<sup>8</sup> The judge did not grant the application and found that the applicants did not establish that there was inadequate shelter space available that necessitated sleeping in parks.

However, in declining the injunction application, Schabas J. noted that:

To be clear, in dismissing the motion I am not directing the City to enforce its by-laws and to remove encampments in City parks. That will be up to the City. It must be recognized, as it was in argument, that the situation is evolving. My decision is based on evidence that dates from the summer months when the incidence of COVID-19 was low, the weather was warm and the City had specific concerns about particular group encampments. By that time the City had also taken significant steps to respond to the COVID-19 threat in the shelter system after the "first wave" in the spring. It is now October and the incidence of COVID-19 has risen in what is described as a "second wave". **As is the case in non-pandemic times, the City will have to consider how and when to enforce its by-law having regard to the continued availability of safe shelter spaces and the impact of the encampments on the parks and the public.**<sup>9</sup>

#### b. Application to HRM

As the staff report notes:

**There are approximately 200 shelter beds in Halifax and, as of May 31, 2022, 616 people on the By Name List who are currently in need of housing.** This number is generally

<sup>3</sup> *Ibid* at para 153 (emphasis added).

<sup>4</sup> *Victoria (City) v. Adams*, 2009 BCCA 563.

<sup>5</sup> *Abbotsford (City) v. Shantz*, 2015 BCSC 1909

<sup>6</sup> *Ibid* at para 279.

<sup>7</sup> *Ibid* at para 222.

<sup>8</sup> *Black et al. v. City of Toronto*, 2020 ONSC 6398.

<sup>9</sup> *Ibid* at para 8.

considered to be an under-representation of the number of persons in the municipality who are struggling to find safe and affordable housing (emphasis added).

The staff report argues that the four locations identified “would allow 30+ people to sleep rough in the community,” which is “more than the number of persons currently identified by staff as sleeping rough in municipal parks.” The report concedes that the April 2022 Point in Time Count identified 91 people as being “unsheltered in tents, encampments on public land and places unfit for permanent human habitation” many are not sheltering in a park space,<sup>10</sup> but maintains that many of these people “are not sheltering in a park space.”

This rationale for only allowing “30+ people” to shelter in parks is concerning. Amongst other issues, it fails to account for the possibility that the number of people sheltering in parks may increase, especially in the warmer summer months. As a result, though the enforcement approach outlined in the staff report is focused primarily on voluntarily compliance, it undoubtedly increases the risk for involuntary, police-led compliance as well to remove individuals from parks across the municipality. This by-law enforcement will in turn engage—and risks infringing—the *Charter*-protected life, liberty, and security of the person interests of such persons.

### 3. Rationale

As Shabas J. noted in *Black*, “the City will have to consider how and when to enforce its by-law [prohibiting camping in parks] having regard to the continued availability of safe shelter spaces and the impact of the encampments on the parks and the public.” This guidance applies to the HRM in the same manner as it does to Toronto.

In light of the above, the Board has the responsibility to ensure that any enforcement action taken by the HRP and RCMP pursuant to P-600 is constitutional and that there is an adequate policy framework in place to inform officer discretion in this regard. In particular, this policy framework must ensure HRM staff take steps to ensure that there are sufficient alternative “viable and accessible options” for sheltering before any enforcement action occurs.

Doing so is in keeping with a number of the Board’s duties, including:

- The Board’s duty under 55(3)(d) to “ensure that police services are delivered in a manner consistent with community values, needs and expectations,” and
- The Board’s duty under 55(3)(i) to “ensure the department is managed by the chief officer according to best practices and operates effectively and efficiently”

As a first step, it would be advantageous for the HRP and RCMP to each prepare a staff report outlining all policies, procedures, and other operational guidance provided to officers regarding the enforcement of subsections 8(1) and 8(2) of P-600. This information is essential for informing the Board’s work moving forward on this matter.

Where this is a rapidly evolving issue and the number of people sheltering in parks has the potential to increase over the summer, it would be ideal if the HRP and RCMP could prepare these reports ahead of the Board’s next meeting in July, or at the earliest possible date thereafter.

**Outcome Sought:** Noted above

Commissioner Harry Critchley

Submitted June 15, 2022

<sup>10</sup> [https://downtownhalifax.ca/sites/default/files/2022\\_pit\\_count\\_for\\_hrm\\_-\\_presentation.pdf](https://downtownhalifax.ca/sites/default/files/2022_pit_count_for_hrm_-_presentation.pdf)