

# While some cities clear homeless encampments, others are granting a 'right to shelter'

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At the end of June, the US Supreme Court [upheld an Oregon city's ban](#) on outdoor camping. The court's decision means that people experiencing homelessness can be arrested, ticketed and fined for sleeping outside, even when there are no [alternatives](#).

The [case](#) centered on the city of Grants Pass where, in 2019, a class action lawsuit was brought against the municipal authorities for fining and jailing people who were sheltering outdoors in tents. A judge found that enforcing such a ban would amount to "cruel and unusual punishment," but this was overturned once it reached the Supreme Court.

Estimates from the US suggest that around [653,000](#) people experience homelessness on any given night. In Canada, the number is around [32,000](#). The US rate per capita is about 1.5 times that of Canada, though this varies widely across different cities and regions. Makeshift tent encampments providing basic spaces of shelter and safety have been established across North America, acting as stark visual reminders of growing housing crises.

As a result, the question of whether authorities should be allowed to ban people from sleeping in [public spaces](#) is rising up the political agenda.

Growing [homelessness](#) numbers and the appearance of small collections of tents in [London](#), as well as an [asylum seeker encampment](#) in Dublin, are bellwethers for how this phenomenon [could emerge elsewhere](#).

City authorities enacting bans cite concerns for [public and personal safety](#) and the erosion of public access to the pavements and parks on which the camps are set up.

But academics and advocates have pointed out that the encampments are often the result of overcrowding in local shelter systems. For many

people, there is simply no alternative.

Municipal crackdowns can be particularly violent yet remain ineffective. They force people to disperse from a space of relative security with no thought for where they might end up.

The "[street sweeps](#)" cause people to lose their belongings and to disperse across the city, severing connections to social networks and services. This happens again and again, as people set up camp elsewhere. The instability this causes has been shown to increase the risk of infectious disease, substance use overdose, and serious [physical and mental health](#) conditions.

Courts are now frequently being called upon to mediate and clarify the conditions under which people are allowed to set up shelter. I have been researching these tensions in British Columbia, [Canada](#), where over the past 25 years, 24 sheltering cases have been brought to the courts.

As with *Grants Pass v Johnson*, many of these cases draw on arguments that center on the [human rights](#) of those experiencing homelessness. Historically, courts have overwhelmingly [ruled](#) to clear encampments. However, recent developments have signaled a shift in this trend and the growing recognition of a "right to shelter."

## **The right to shelter**

This right, newly [emerging](#) in British Columbia, builds on a precedent set in the 2009 case [Victoria \(City\) v Adams](#). The court found that, in cases where there is inadequate indoor shelter available, people should be able to set up shelter outdoors. Since this decision, four subsequent [cases](#) have drawn on and built upon this principle.

Research shows that being able to shelter in public space can be critical

for the [dignity](#) and [lives](#) of people experiencing homelessness. A 2022 [decision](#) meant that people sheltering at the [Crab Park encampment](#) in Vancouver could remain in the waterfront park. The relative security of having a permitted location has allowed charities and support networks to set up, providing [food](#) and other basics as well as harm-reduction resources such as addiction support, and linking people to local housing support.

This decision broadened the scope of the right to shelter, expanding the definition of "inadequate indoor shelter" from solely concerning the number of beds free, to a broader consideration of whether these beds are genuinely available and suitable.

Some municipal authorities have sought to bypass, or simply [ignore](#), these decisions. Local residents in Vancouver have argued that the Crab Park encampment stops others from accessing that section of the park and so it should be [closed](#).

The city seems to be [following](#) a similar logic. By clearing encampments, authorities are testing and revealing the limits of the law as a tool to protect the rights of people experiencing homelessness.

Despite this, these "right to shelter" court decisions remain important because they shift our legal understanding of the role of public space. Public spaces are now becoming an important part of the provision of emergency shelter and the [housing continuum](#) (the range of housing options available in the city). Society is being forced to radically reconsider what, and who, public space is really for.

[Researchers](#) have long recognized that a "public" designation does not guarantee open and equal [access to space](#). Throughout history, there have been countless examples of different groups of people being excluded from public space based on racist and discriminatory stereotypes.

If we know that public space is never truly public, is it such a leap to recognize that providing shelter for society's most vulnerable, and frequently most punished, is a legitimate use of public space? If more courts accept this and move in the direction of granting a "right to [shelter](#)," it could [rewrite the story](#) of homelessness and housing around the world.

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