



STAFF REPORT

Title: Homeless Encampments - Recent Legal Precedent

Meeting Date: September 19, 2023

Executive Summary:

A January 27, 2023 ruling in the Ontario Superior Court of Justice in the case of *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, could have significant implications for Canadian municipalities' ability to control homeless encampments on public land.

While the Ontario Superior Court of Justice's rulings are not binding on the Alberta Courts, precedent set in one province is often consulted by courts in other provinces and can be persuasive.

In *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, the Court ruled that a municipal bylaw being used to evict people from a homeless encampment on public property violated the Section 7 of the Charter of Rights, which provides that: "*Everyone has the right to life, liberty and security of the person...*"

At the heart of the Court's decision was the finding that this Charter violation was the result of the municipality having too few accessible shelter beds for the homeless population. The Court ruled that, in order for the eviction to be able to take place under the bylaw without a Charter violation, not only must there be enough beds for the homeless population, but the available beds must be accessible:

"If the available spaces are impractical for homeless individuals, either because the shelters do not accommodate couples, are unable to provide required services, impose rules that cannot be followed due to addictions, or cannot accommodate mental or physical disability, they are not low barrier and accessible to the individuals they are meant to serve." (Paragraphs 92-93)

Administration's summary of the key findings is found in the Background and the complete judgement is attached to this report.

Background:

The Regional Municipality of Waterloo had passed a 2013 bylaw 13-050, *A Bylaw Respecting the Conduct of Persons Entering Upon Buildings, Grounds and Public Transportation Vehicles Owned or Occupied by the Region*. Among other things, the bylaw prohibited the unauthorized creation of any structure on its lands and the



possession, while on the lands, of any dangerous, illegal or flammable goods that can cause injury or damage to the property.

The bylaw allowed for fines and the removal of people contravening the bylaw.

The property in question in this case is a half-acre parcel that was a gravel parking lot bordered by public transit facilities, a commercial shopping development, small businesses and an outreach facility that provides meals to people in need.

There were tentative future plans to use the parking lot as overflow parking which was anticipated as being needed when future construction of a nearby transit hub took place. Once the construction was completed, the parking lot would then be used as dedicated transit customer parking. The need for the parking was not anticipated until late 2024 at the earliest.

The homeless population in Waterloo is thought to have tripled from 2018 to 2021 to a total number of about 1,100. In December of 2021, encampments began to be created on the property without permission. Within six months about 70 temporary shelters were created, housing about 50 people.

Waterloo passed an Encampment Policy that would assist individuals to find safe, sustainable shelters. It stated that eviction from encampments would only take place after all support efforts were exhausted and reasonable notice was given, unless there was a more pressing public safety issue. The region also paid for local security to respond to concerns and monitor access to washrooms at the nearby outreach facility, and eventually provided portable washroom facilities, at a total cost of roughly \$80,000 a month.

Waterloo had funded a planned expansion of emergency shelter beds, expanded a home-based support system assisting at-risk people of finding and keeping a home, funded the operation of a 100-bed shelter, and sought out service providers to implement interim housing programs to assist with the rise in homeless.

The Court found, however, that the existing capacity of emergency shelters was likely less than the demand that would be created by the eviction of the encampment in question. This determination was made in part because some shelters did not allow for couples to coexist, some did not allow for the clients to keep their belongings there for an extended period of time, some shelters required clients to abstain from drugs and alcohol and so would not be used by those with addictions, while others allowed for intoxicated people, which could prevent clients attempting to maintain sobriety from sheltering there.



The case hinged upon Section 7 of the Charter of Rights and Freedoms, which provides:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Ultimately, the Court found that the eviction violated each of Section 7's provisions for the right to life, liberty and security of the person, because there were not a sufficient number of accessible shelter spaces.

The Court rejected the municipality's argument that the eviction was a justified response due to public safety concerns. The Court found that the municipality could have taken steps to reduce the adverse impacts of the encampments including enhancing pest control, providing for earlier and better access to washroom facilities, and providing for public education regarding health and safety issues.

In the Court's decision, Justice M.J. Valente wrote:

"I find that despite the region's past and current impressive efforts to accommodate its homeless population, there are not sufficient shelter spaces..."

Furthermore, I accept that it is simply not a matter of counting the number of spaces. To be of any real value to the homeless population, the space must meet their diverse needs, or in other words, the spaces must truly be accessible. If the available spaces are impractical for homeless individuals, either because the shelters do not accommodate couples, are unable to provide required services, impose rules that cannot be followed due to addictions, or cannot accommodate mental or physical disability, they are not low barrier and accessible to the individuals they are meant to serve." (Paragraphs 92-93)

The Court noted that previous judgements in Canada dealing with homeless encampments limited the right for homeless individuals to construct temporary shelters to the overnight hours. This was an effort to balance the general public's right to use public spaces in question, the Court held that in this case, no such limitation needed to be placed on the encampments, because the Court found that there is a legitimate right to shelter during the day and because the property in question was "...not a park or other space designed with the purpose of being enjoyed by the public at large." (Paragraph 105)

The Court ruled that Waterloo's by-law was not in force insofar as it deprived the homeless population's Section 7 rights, a condition which will continue for as long as the



by-law sought to prevent Encampments on the property in question "...when the number of homeless individuals in the Region exceeded the number of accessible shelter beds." (Paragraph 152)

The Court also declined the municipality's request for injunctive relief so that it may continue to enforce the bylaw while an appeal was filed because the Court found that the municipality had failed to adequately follow its own Encampment Policy. The Court held that the municipality did not use "...all reasonable outreach and support efforts to connect with the Encampment residents and 'address their individual needs on a case-by-case basis by providing access to services, supports and shelter' as the Encampment Policy requires." (Paragraph 143)

Lastly, the court noted that the municipality could apply to the Court to have its ruling terminated should the number of accessible shelter beds meet or exceed the homeless population, in part because of the past actions that Waterloo had taken to "...meet the needs of the homeless population." (Paragraph 153).

Further to the above, it is understood that the City of Edmonton is being sued by an human rights advocacy group whereby alleging that the City's practice of removing homeless camps violates the Charter of Rights and Freedoms.

The following links are news articles relating to the claims:

- <https://www.cbc.ca/news/canada/edmonton/edmonton-lawsuit-encampments-1.6952065>
- <https://edmontonjournal.com/news/local-news/coalition-for-justice-and-human-rights-takes-legal-action-against-city-for-encampment-evictions>

Administration understands that no decision has been made in regards to the City of Edmonton Human rights Challenge.

Alternatives:

This report is presented for the Committee's information.

Recommended Action:

This report is presented for the Committee's information.

Budget Implications (Yes or No):

No.

Submitted by:



City of **Cold Lake**

Kevin Nagoya, Chief Administrative Officer