

Hamilton

MANAGING ENCAMPMENTS: CITY PERMITTED TO ENFORCE PARKS BY-LAW FOLLOWING *POFF V. CITY OF HAMILTON*, 2021 ONSC 7224

Canada Day

October 22, 2022

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OVERVIEW



1. The Problem



2. Enforcement Approaches



3. A ‘Made in Hamilton’ Approach



4. Legal Context: *Poff v. City of Hamilton*



5. Lessons Learned



6. Next Steps

HAMILTON, ONTARIO

- Single-Tier Municipality
- Population of ~600,000
- 60km west of Toronto
- 15 Councillors
- Waterfall Capital of the World





THE PROBLEM

Hamilton is a medium sized City with limited resources and is experiencing large scale homelessness and encampments.

Like other mid-sized cities, Hamilton is now being tasked with managing a complex human crisis that has historically been limited to major cities.

Existing resources, processes and services were not adequate to manage the scope, scale and severity of the problem.

SCOPE & SCALE



Entire City parks became home to tents, possessions and property of people experiencing homelessness.

Encampments encompassed city blocks, including parking lots and the road allowance.



SCOPE & SCALE





Encampments grew near public trails and throughout the City in suburban areas.

The Problem & Challenges → Enforcement Approaches → A 'Made in Hamilton' Approach → Legal Context → Lessons Learned → Next Steps

SCOPE & SCALE





Encampments grew in sophistication.
Showers, kitchens, music stages and sheds were erected.

The Problem & Challenges → Enforcement Approaches → A 'Made in Hamilton' Approach → Legal Context → Lessons Learned → Next Steps

SCOPE & SCALE





Territoriality and the 'ownership' of public areas by those living in encampments began to grow.

The Problem & Challenges → Enforcement Approaches → A 'Made in Hamilton' Approach → Legal Context → Lessons Learned → Next Steps

SCOPE & SCALE





The volume of garbage grew in and around encampments on public and private property.

The Problem & Challenges → Enforcement Approaches → A 'Made in Hamilton' Approach → Legal Context → Lessons Learned → Next Steps

SCOPE & SCALE





Truck loads of garbage were removed from encampment sites daily.

The Problem & Challenges → Enforcement Approaches → A 'Made in Hamilton' Approach → Legal Context → Lessons Learned → Next Steps

COMPLEXITY



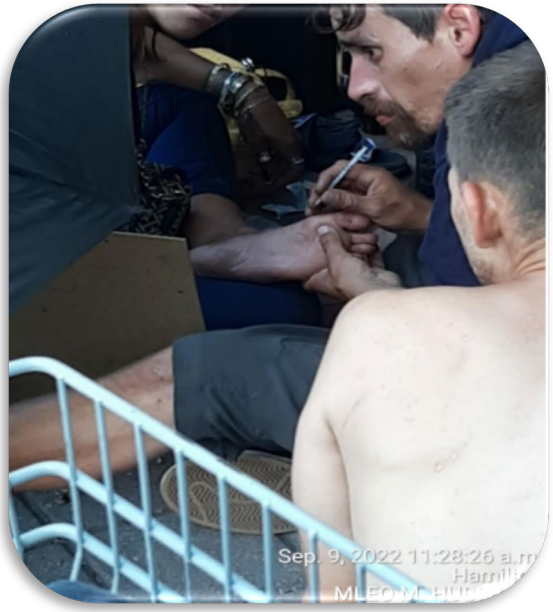
Wildlife animals were kept as pets at encampment sites.



SEVERITY

Encampments became a hub for drug use and the sale and exchange of illicit substances.





Hamilton saw a marked increase in intravenous drug use.

SEVERITY



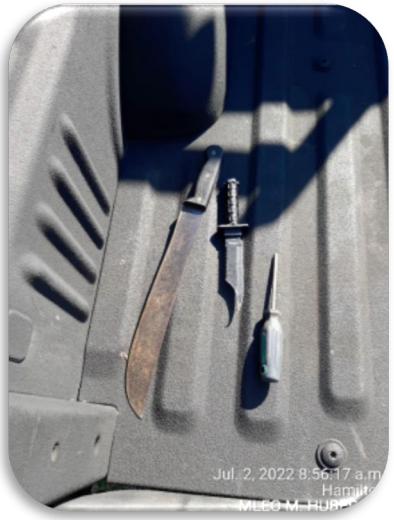
Intravenous drug use became more visible near schools and playgrounds.



Intravenous drug use became more visible during daytime hours.

SEVERITY





Hamilton saw an increase in the presence of weapons.







SEVERITY

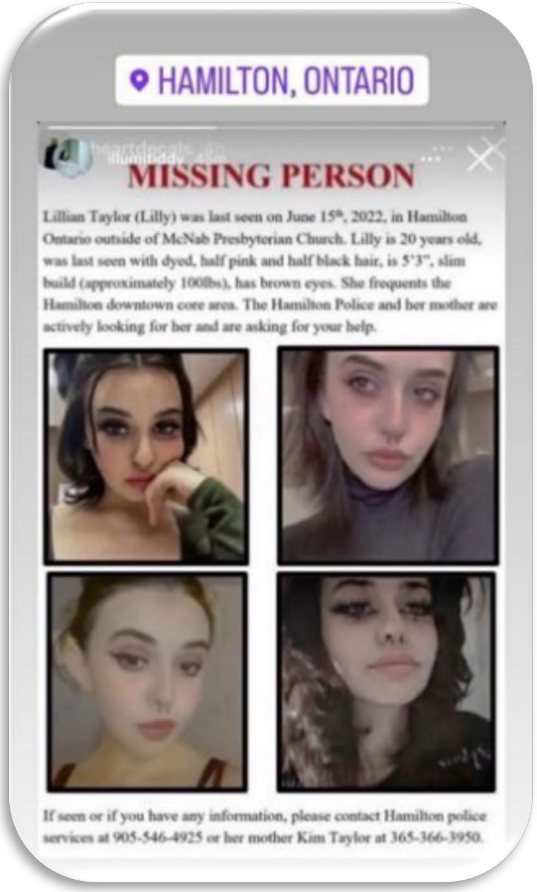






Many weapons were created from household items that people from encampments would acquire over time.

SEVERITY



Missing person. 20 years old.

VIEWS OF STAKEHOLDERS

HAMILTON ENCAMPMENT SUPPORT NETWORK





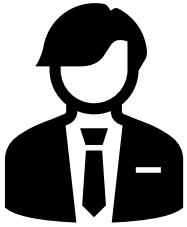
Housing advocates vocal in supporting encampments.

VIEWS OF STAKEHOLDERS

"The truth of the matter is encampment residents are also peaceful, law-abiding citizens that are dealing with a complex set of circumstances"



"You don't respond to a system in crisis with enforcement”





ENFORCEMENT APPROACHES

- Continuum of Enforcement Approaches
- Hamilton's Encampment Protocol
- Emergency Services Impacts
- Explosion

CONTINUUM OF APPROACHES



Active Enforcement

Passive Enforcement

Law and Order:

- Clearing an Encampment with No Support

Enforcement with Supports:

- Clearing an Encampment with Support

Acceptance:

- Formally Sanction Encampment Site

Hamilton's Initial Approach

ENFORCEMENT APPROACHES



Law and Order:

- **Clearing an Encampment with No Support**

- Enforcement led
- Short notice of clearing provided if at all
- No shelter services/referrals provided
- Regulatory or physical barriers introduced to secure the site and prevent new encampment from forming
- No temporary storage options

ENFORCEMENT APPROACHES



Encampments with Supports:

- **Clearing an encampment while providing housing, legal, monetary and health supports**

- Outreach led
- Notice of clearing provided in advance
- Shelter services/referrals are provided
- Temporary storage options available
- Encampment cleaned following clearing

ENFORCEMENT APPROACHES



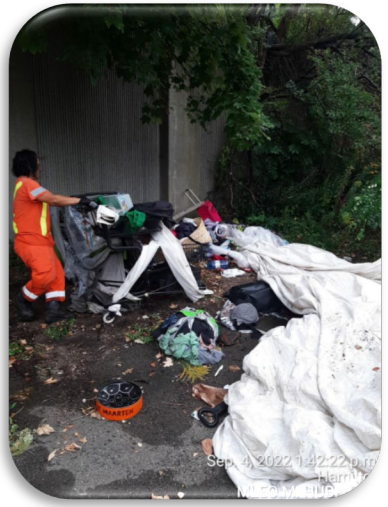
Acceptance

- **Formally sanction encampment sites**

- Encampments permitted on public or private property
- May have regulations to govern the size, location or duration of encampments
- May have infrastructure or public services on site
- Storage options available on site
- Services come to the encampment site

THE ENCAMPMENT PROTOCOL

- Housing and Outreach lead; person-centred approach
- Permitted individuals to reside in public parks and other greenspaces for 14 days
- Conditions:
  - No more than 5 individuals in an encampment
  - No encampments on sidewalks, roadways, or boulevards
  - Encampments were to be 50m from a playground, school or childcare centre

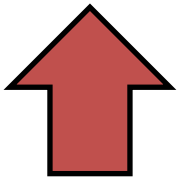




The Problem & Challenges → Enforcement Approaches → A "Made in Hamilton Approach' → Legal Context → Lessons Learned → Next Steps

IMPACTS ON EMERGENCY SERVICES

86%





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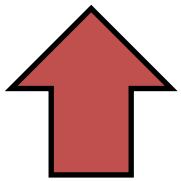
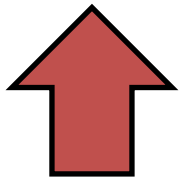




30%





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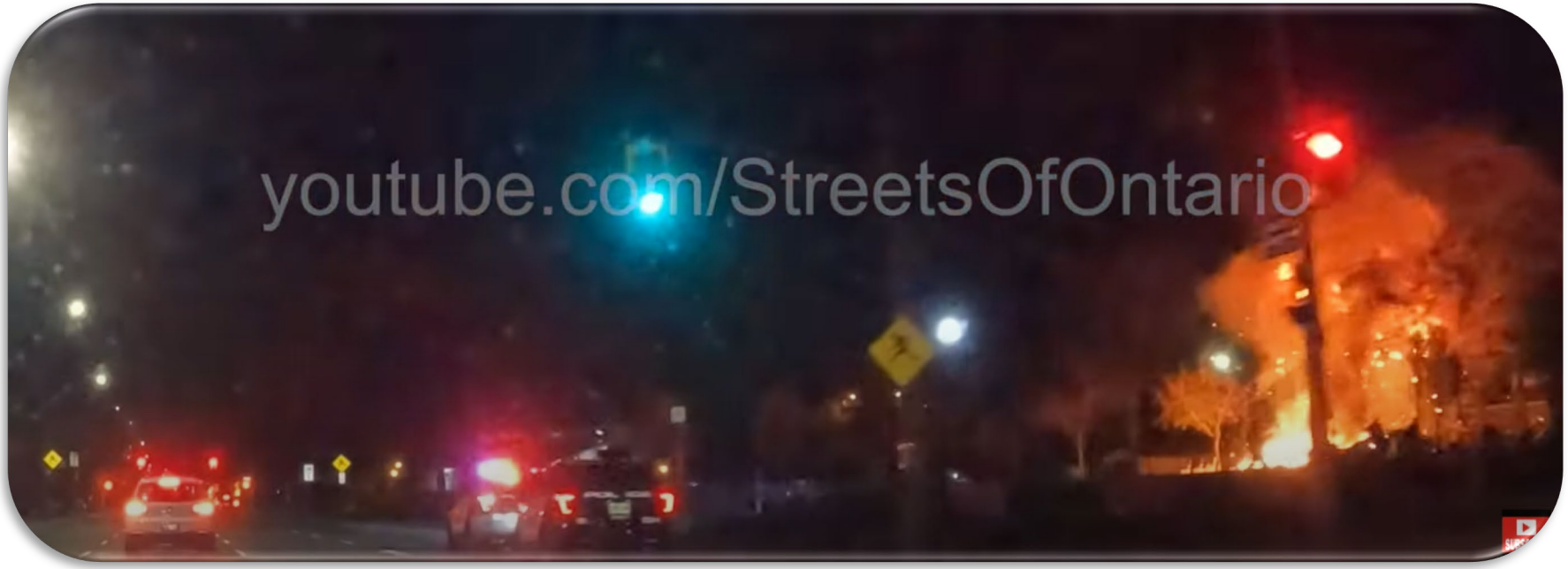
EXPLOSION



Dashcam footage of explosion at JC Beemer Park in Hamilton, 2021.

EXPLOSION





Tents engulfed in flames, damage to private property, health and safety concerns.

COUNCIL PIVOTS

"Take an addict and put it in your backyard in a tent"

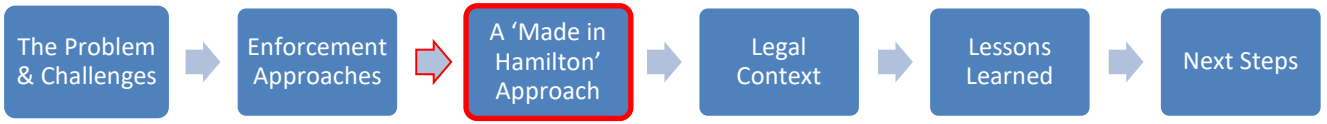


"The decision to move quickly on encampments is essential to bring Hamilton in line with other cities and prevent it from becoming a destination for people looking to camp in parks."



A ‘MADE IN HAMILTON’ APPROACH

- Continuum of Enforcement Approaches
- Parks By-law
- 6 Step Enforcement Process
- MOU with Police



CONTINUUM OF APPROACHES



Active Enforcement

Passive Enforcement

Continuum of Approaches
Law and Order: • **Clearing an Encampment with No Support**
Enforcement with Supports: • **Clearing an Encampment with Support**
Acceptance: • **Formally Sanction Encampment Site**

Hamilton's NEW Approach

Hamilton's Initial Approach

The Problem & Challenges → Enforcement Approaches → A 'Made in Hamilton' Approach → Legal Context → Lessons Learned → Next Steps

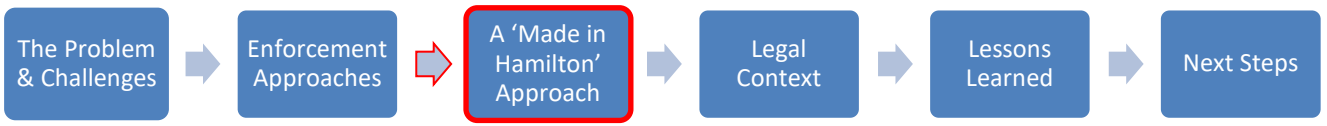
PARKS BYLAW

Definition:

"park" means any land …that is or hereafter may be established, dedicated, set apart or made available for use as a public open space in the City…

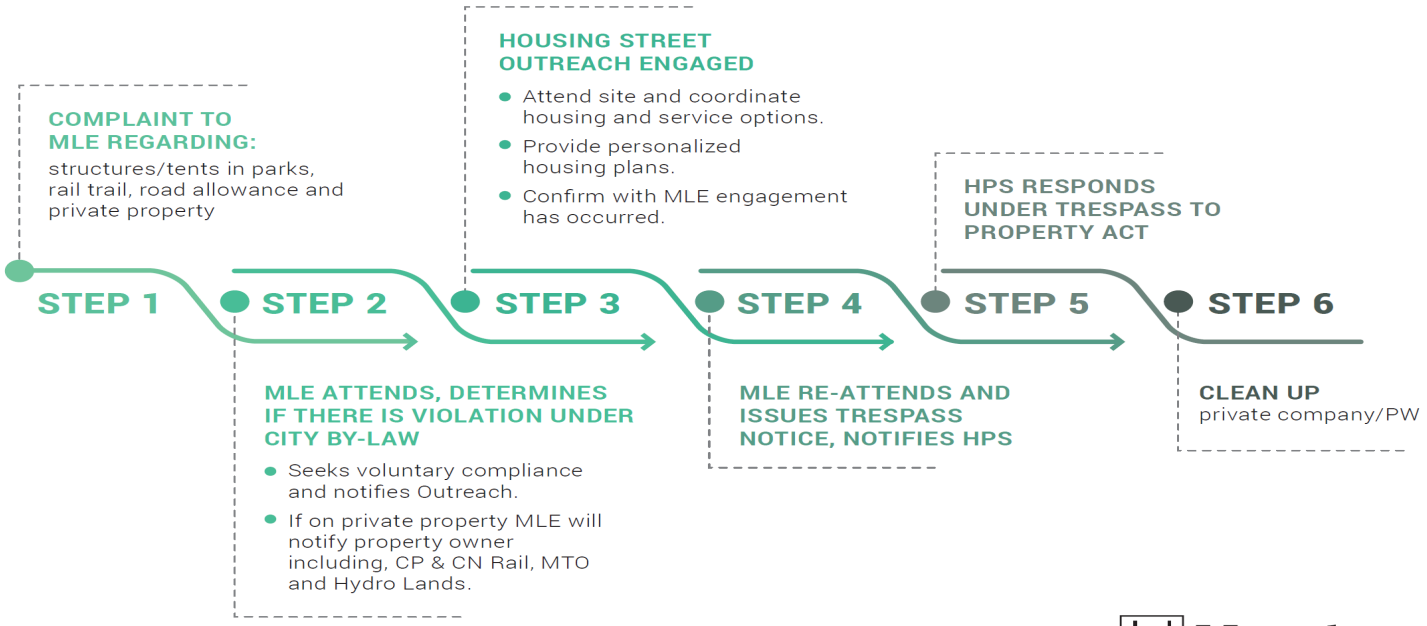
Park Violations:

- S.3 No person shall be in a park between 11pm-6am
- S. 12 No person shall take possession of any park by placing a structure, dumping or storage
- S.17 Unless authorized by a permit, no person shall dwell, camp or lodge in any park
- S.18 unless authorized by a permit, no person shall place, install or erect any temporary or permanent tent or structure in any park



6 STEP ENFORCEMENT PROCESS

Encampment
PROCESS MAP

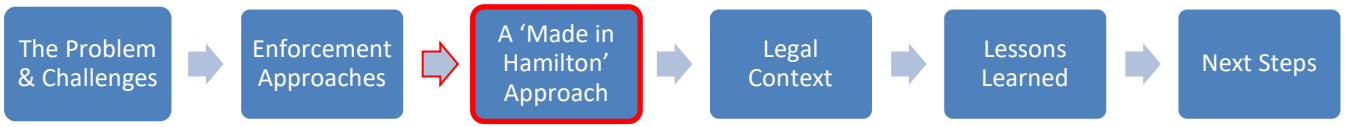


Hamilton

The Problem & Challenges → Enforcement Approaches → **A 'Made in Hamilton' Approach** → Legal Context → Lessons Learned → Next Steps

MOU BETWEEN CITY AND POLICE

- Signed by the Chief of Police, City Solicitor and City Manager
- Operational plan, key messaging, duties
- City Manager provides the police the authority to remove anyone from a City park that is in violation of the Parks Bylaw



ENFORCEMENT



Protestors clash with Hamilton Police at encampment site.

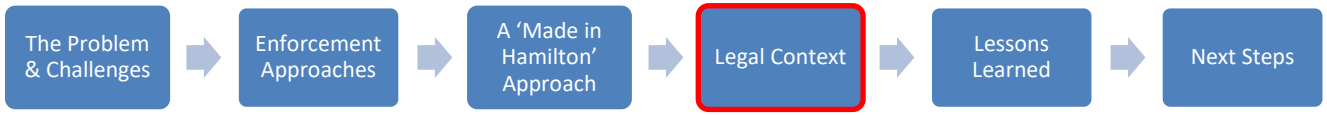
[Protestors Clash with Police in Hamilton on Encampments]

The Problem & Challenges → Enforcement Approaches → A 'Made in Hamilton' Approach → Legal Context → Lessons Learned → Next Steps

WE ARE OFF TO COURT

LEGAL CONTEXT

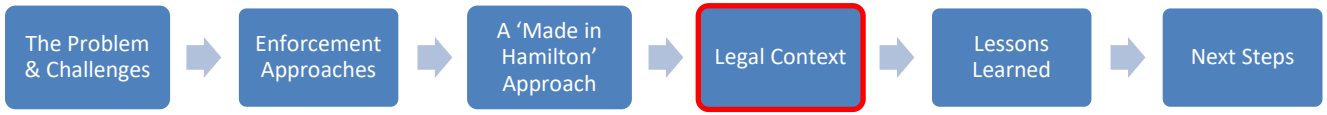
- Injunction filed against the City
- *Poff v City of Hamilton*
  - Prohibit the City from enforcing Parks By-law until a *Charter* challenge was decided
  - Sought to strike down the By-law as unconstitutional
  - Enforcement violates the rights of homeless persons pursuant to section 7 of the *Charter* (life, liberty and security of the person)



POSITION OF THE PARTIES

The Applicants

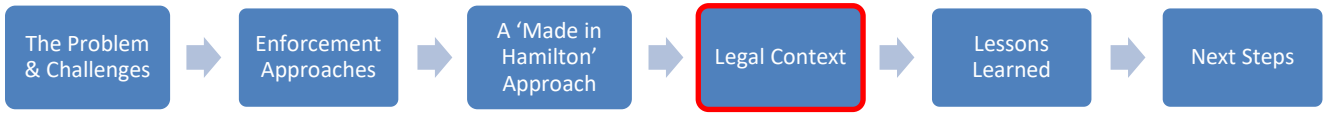
- Serious issue to be tried
- Homeless individuals will suffer irreparable harm if removed without adequate accommodation measures
- Homeless individuals face a risk of substantial harm in the form of destabilization; psychological trauma; exacerbated mental stress and addiction relapse



POSITION OF THE PARTIES

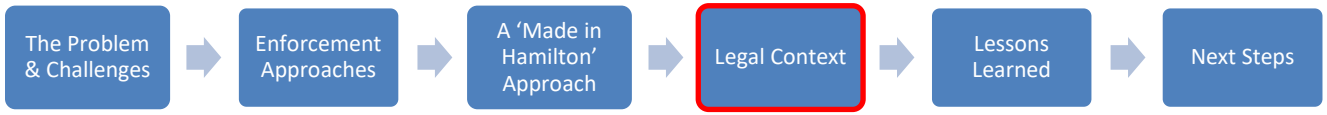
The City

- s.7 does of the *Charter* does not confer a general freestanding right to adequate housing
- No evidence that the City's shelter system does not have capacity to accommodate those who wish to seek shelter
- Parks are a valuable public resource, intended to be available and used by everyone



RJR-MACDONALD INC. V. CANADA (ATTORNEY GENERAL)

- An injunction is an extraordinary remedy only to be used to restrain a clear breach of a legal obligation
- Applicant must demonstrate:
  - 1) that there is a serious issue to be tried;
  - 2) that the moving party will suffer irreparable harm if the injunction is not granted; and
  - 3) that the balance of convenience favours the granting of the injunction.



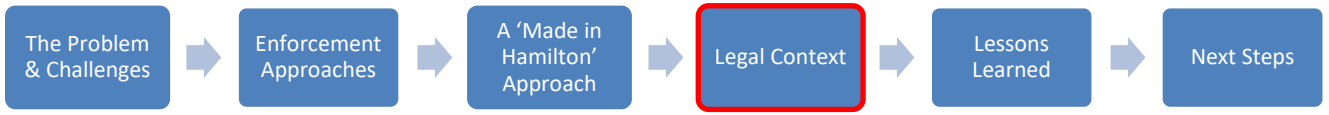
SERIOUS ISSUE TO BE TRIED

- In a *Charter* case, the threshold is low

- Section 7: 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

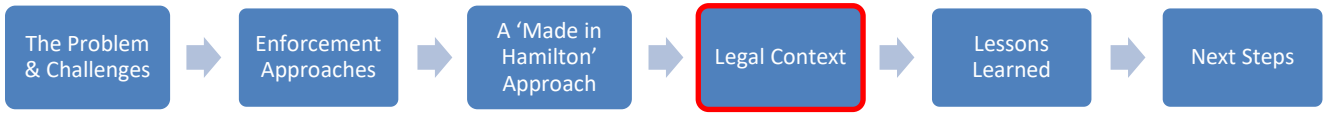
- In *Victoria (City) v. Adams*, 2008 BCSC
  - "the ability to provide oneself with adequate shelter is a necessity of life that falls within the ambit of the s.7 provision 'life'." [para.145]
  - "[T]he decision did not grant the homeless a freestanding constitutional right to erect shelter in public parks. The finding of unconstitutionality is expressly linked to the factual finding that the number of homeless people exceeds the number of available beds."[para.74]

- Court held that the applicants met the burden for the first step



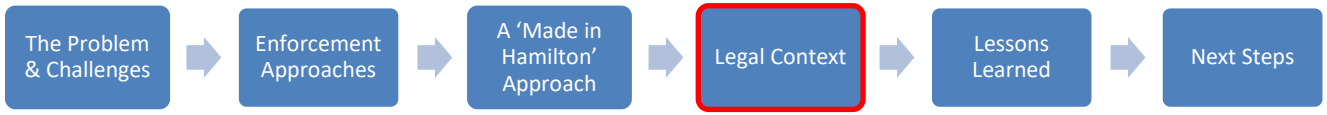
IRREPARABLE HARM

- “irreparable” refers to the nature of the harm suffered rather than its magnitude
- “All the named applicants have either received shelter or have been otherwise offered supports, accommodated or declined such overtures.” [para.123]
- Broadening the scope to all homeless individuals in Hamilton prohibited
- Court held that applicants failed to meet the burden for the second step



BALANCE OF CONVENIENCE

- If an injunction is not granted, the applicants will suffer profound and devastating adverse harm
- City provided ample evidence from staff, police, residents:
  - Additional costs
  - Additional workload
  - Health and Safety concerns
  - Residents reluctant to use City park
- The Court was satisfied that there was a nexus between encampments and a residents reluctance to use the City park

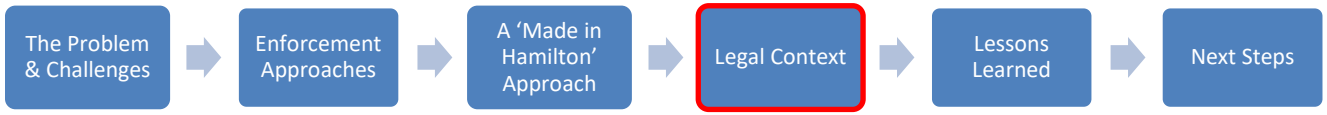


BALANCE OF CONVENIENCE

- "The jurisprudence does not grant the homeless a freestanding constitutional right to erect homeless encampments or to reside in public parks. City parks are not intended for this type of activity." [para.218]
- "[…] it is evident that some homeless persons, for their own reasons, have a personal preference and do not want to be subjected to being in a shelter and what they perceive are paternalistic rules. However, this does not, give rise to live in encampments in City parks, contrary to a valid By-law." [para.246]
- The balance of convenience favours the City.

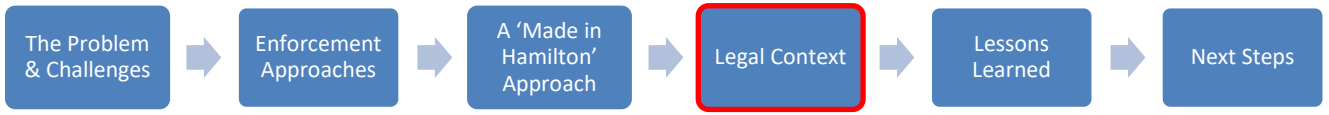
DECISION

"No reasonable person in Canada would disagree with the proposition that homelessness, wherever and however it occurs, is a tragedy in Canada. However, the narrow issue before me is whether the City's enforcement of the By-Law should be restrained by court order. It is not a wide-sweeping review of the underlying issue of whether more should be done to help the homeless" [para. 249]



DECISION

"The relief sought would unjustifiably tie the City's hands in dealing with encampments that raise serious health and safety concerns for an indefinite duration, and would unduly prevent the use of parks by others." [para.247]

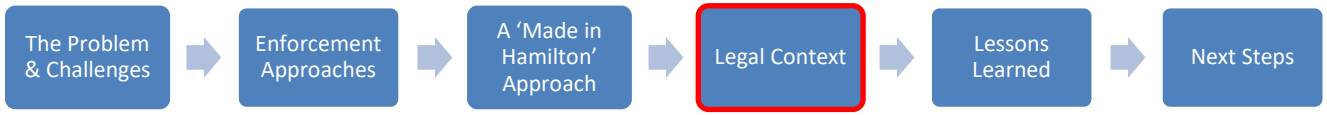


POST INJUNCTION

That staff be directed to:

(i) Complete their activities under the Encampment Process, including notifying Hamilton Police Service that a Trespass Notice has been issued, within 12 to 72 hours after staff receive the first complaint regarding unauthorized camping in a City Park or public place; and

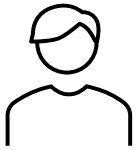
(ii) Enforce the encampment process 7 days a week.



LESSONS LEARNED

"There are no policy solutions, there are only trade-offs"

– Thomas Sowell



The Problem & Challenges → Enforcement Approaches → Legal Context → A 'Made in Hamilton' Approach → **Lessons Learned** → Next Steps

TRADEOFFS

Hamilton's Original Approach		Hamilton's New Approach	
✓ Less stress on emergency shelter system	x Limited resources	✓ More resources	x Protests from advocacy groups
✓ Enforcement resources focus on traditional work	x Many encampments	✓ Collaboration across Dept's	x Increased cost to taxpayers for enforcement
✓ Sense of stability	x Increased cost to taxpayers on services & care	✓ Enjoyment of park space by all	x Threats to staff
	x Safety concerns	✓ Less encampments	

NEW APPROACH: IMPACTS

- Threats to staff
- Phone and email “zaps”
- Blocking City services
- Coffin delivered to the Mayors home

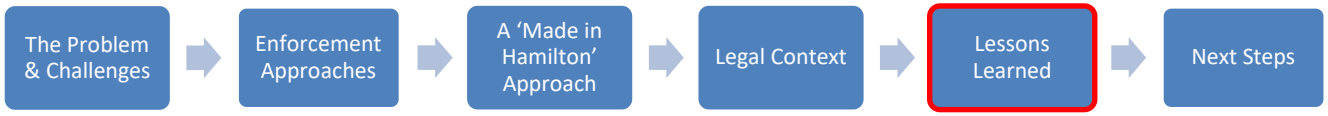




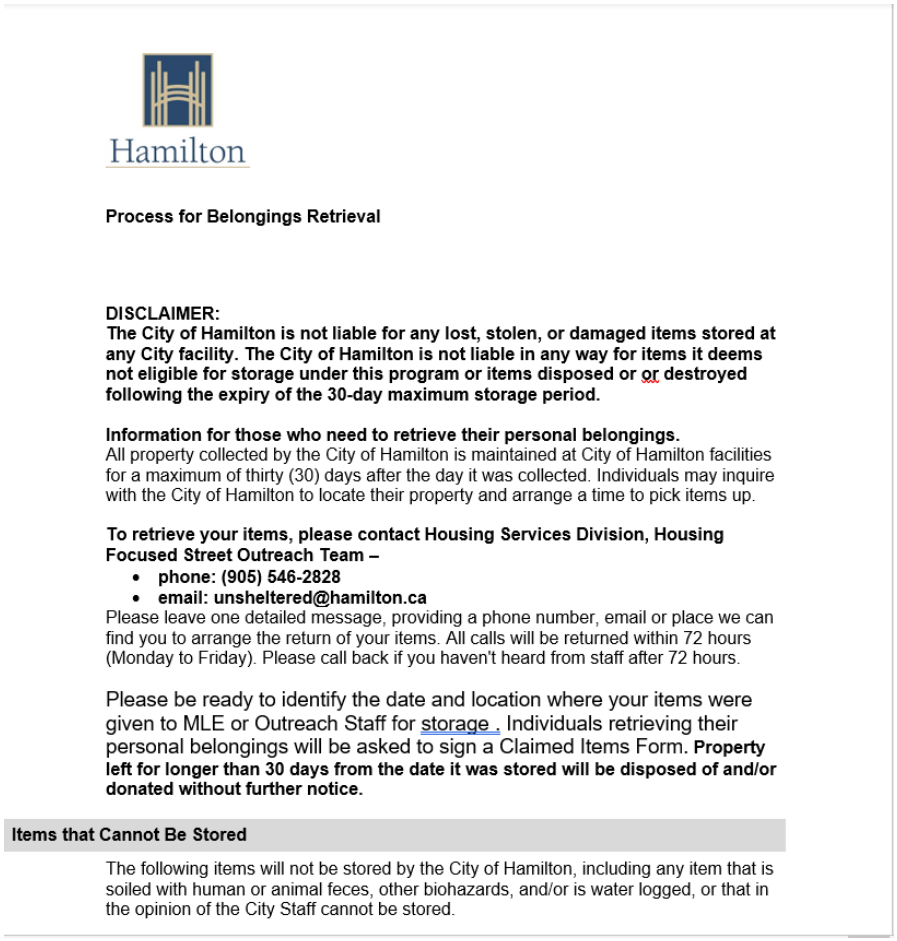


SUCCESSES

- Transparency with Council
- Collaboration
- Storage Policy
- Animal Services Policy



STORAGE POLICY



Hamilton

Process for Belongings Retrieval

DISCLAIMER:
The City of Hamilton is not liable for any lost, stolen, or damaged items stored at any City facility. The City of Hamilton is not liable in any way for items it deems not eligible for storage under this program or items disposed or or destroyed following the expiry of the 30-day maximum storage period.

Information for those who need to retrieve their personal belongings.
All property collected by the City of Hamilton is maintained at City of Hamilton facilities for a maximum of thirty (30) days after the day it was collected. Individuals may inquire with the City of Hamilton to locate their property and arrange a time to pick items up.

To retrieve your items, please contact Housing Services Division, Housing Focused Street Outreach Team –

- **phone: (905) 546-2828**
- **email: unsheltered@hamilton.ca**

Please leave one detailed message, providing a phone number, email or place we can find you to arrange the return of your items. All calls will be returned within 72 hours (Monday to Friday). Please call back if you haven't heard from staff after 72 hours.

Please be ready to identify the date and location where your items were given to MLE or Outreach Staff for storage . Individuals retrieving their personal belongings will be asked to sign a Claimed Items Form. **Property left for longer than 30 days from the date it was stored will be disposed of and/or donated without further notice.**

Items that Cannot Be Stored

The following items will not be stored by the City of Hamilton, including any item that is soiled with human or animal feces, other biohazards, and/or is water logged, or that in the opinion of the City Staff cannot be stored.



Hamilton

Encampment Item Inventory/Retrieval Form

CLIENT NAME: _____
CONTACT INFO: _____
TOTAL NUMBER OF BOXES/BAGS: _____
DATE TO BE RETRIEVED: _____

DISCLAIMER:

I, _____, AGREE TO STORE THE BELONGINGS LISTED BELOW WITH THE CITY OF HAMILTON FOR NO MORE THAN THIRTY (30) DAYS. I ACKNOWLEDGE THAT I WILL NOT BE ABLE TO ACCESS ANY OF THE LISTED ITEMS DURING THE STORAGE PERIOD. I ALSO ACKNOWLEDGE THAT THE CITY OF HAMILTON IS NOT LIABLE FOR ANY LOST, STOLEN, OR DAMAGED ITEMS STORED AT ANY CITY FACILITY. THE CITY OF HAMILTON IS NOT LIABLE IN ANY WAY FOR ITEMS IT DEEMS NOT ELIGIBLE FOR STORAGE UNDER THIS PROGRAM OR ITEMS DISPOSED, DESTROYED, OR DONATED FOLLOWING THE EXPIRY OF THE 30-DAY MAXIMUM STORAGE PERIOD.

CLIENT SIGNATURE: _____ **DATE:** _____
STAFF SIGNATURE: _____ **DATE:** _____

item description	container #__of__	date claimed:

ACKNLOWLEDGEMENT OF RECEIPT:
I, _____, ACKNOWLEDGE RECEIPT OF ITEMS LISTED ABOVE AND THAT THE CITY OF HAMILTON IS NOT LIABLE FOR ANY LOST, STOLEN OR DAMAGED ITEMS STORED AT ANY CITY FACILITY.

CLIENT SIGNATURE: _____ **DATE:** _____
STAFF SIGNATURE: _____ **DATE:** _____

DISPOSED		
Reason for disposal:	**Date of disposal:**	**Staff authorization:**

The Problem & Challenges → Enforcement Approaches → A 'Made in Hamilton' Approach → Legal Context → **Lessons Learned** → Next Steps

ANIMAL SERVICES POLICY



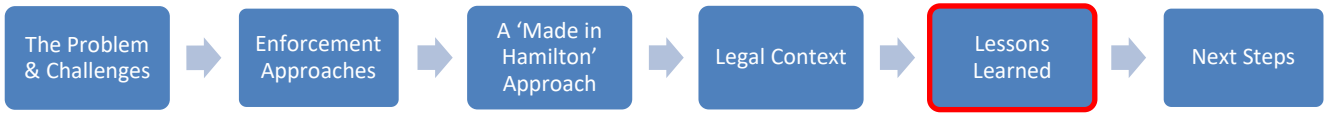


Another barrier to entering shelters:
common for individuals in encampments to
have pets.

The Problem & Challenges → Enforcement Approaches → A 'Made in Hamilton' Approach → Legal Context → **Lessons Learned** → Next Steps

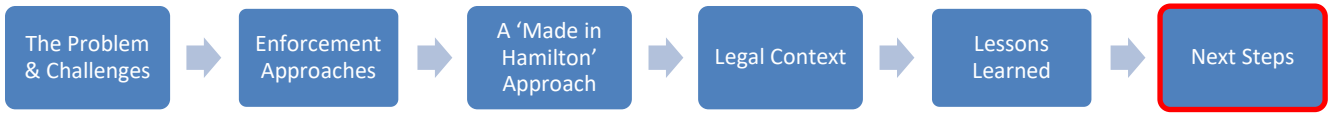
LOOKING BACK

Original Challenge	Current State
Lack of Experience	Dedicated team Front line staff, management and council have 2+ years of experience
Lack of Resources	New governance model Additional enforcement staff
Lack of Process	Made in Hamilton Approach 6-Step process MOU Storage Policy Animal Services Policy



NEXT STEPS

- Municipal Election Monday October 24



Hamilton

QUESTIONS?

Monica Ciriello
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905-546-2424 ext. 5809