Legal Considerations Related to Encampments

James Yardley
Lidstone & Company
Barristers and Solicitors

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Introduction

- Homelessness is a broad, multifaceted and challenging matter that involves numerous issues, interests and agendas.
- This presentation will briefly discuss:
  - Some significant legal decisions involving homeless encampments, and
  - Issues and potential approaches for local governments dealing with homeless encampments.

The Legal Context

- Factors shaping the current state of the law on homelessness involving local governments include:
- 1. limited affordable/available housing/shelter;
- 2. local governments generally own or otherwise manage significant areas of land;
- 3. land owned or managed by local governments is a limited resource and has competing demands;
- 4. people who are homeless are unable or unwilling to occupy available shelter;
- 5. the *Canadian Charter of Rights and Freedoms,* especially section 7*,* affects the laws and acts of local governments and is frequently raised in legal proceedings by the homeless and their advocates.

Significant Case Law on Homelessness

- As noted in *Kingston v. Doe*, 2023 ONSC 6662, most litigation on this subject has been in British Columbia.
- *Victoria v. Adams,* 2008 BCSC 1363, aff'd 2009 BCCA 563.
  - Leading case. Decision based on *Charter of Rights and Freedoms*.
  - Enforcement proceeding evolved into counterclaim by homeless.
  - Court held governments cannot prevent persons sleeping in a public place from using temporary shelter if no other place for the person to stay and the person faces harm without the shelter.
  - However, can limit use of public place so long as limit is not arbitrary, overbroad or grossly disproportionate (e.g., no shelter in environmentally sensitive areas probably okay).
  - If gov't limits challenged, onus to justify on government.
  - Resulted in camping allowed at night but not during day.

Case Law on Homelessness (cont'd)

- *Abbotsford v. Shantz,* 2015 BCSC 1909.
  - Local governments retain broad powers to regulate use of public land by homeless, including location, time, conditions of use, but not prohibit use unless sufficient "accessible" accommodation available.
  - In considering enforcement, an consider whether shelter is "suitable".
  - However, court rejected claim for declaration to "basic necessities of life".
  - Litigated contemporaneously with *Tanudjaja v. Canada*, 2013 ONSC 5410, 2014 ONCA 852

Johnston v. Victoria, 2011 BCCA 400

- Court confirmed that *Adams* did not create any "right" to shelter in public places.

Case Law on Homelessness (cont'd)

- *Bamberger v. Vancouver,* 2022 BCSC 49.
  - Change in direction. While Court considered *Charter* arguments, Court also found right to procedural fairness (i.e., notice and a right to be heard) and administrative law concepts of reasonableness applied to order by Park Board staff to not erect shelters. Decision applied to fire safety orders in *Vandenberg v. Vancouver*, 2023 BCSC 2104.
- BC decisions considered and applied in decisions in other jurisdictions including
  - *City of Kingston v. Doe*, 2023 ONSC 6662
  - *Regional Municipality of Waterloo v. Persons Unknown*, 2023 ONSC 670
  - *Poff v. Hamilton*, 21 ONSC 7224
  - *Black v. Toronto*, 2020 ONSC 6398

General Principles From Caselaw

- No enforceable “right” to housing
  - (UN Universal Declaration of Human Rights and National Housing Strategy Act do not count).
- Courts will likely allow homeless to occupy public spaces if purpose or effect of restriction breaches a *Charter* right.
- Main test has been availability of shelter, although the courts are increasingly inclined to consider suitability of shelter.
- While the courts will generally act on safety concerns, this is not automatic, and in some cases the courts have opined that the risks associated with an encampment will still exist if the encampment is ordered removed.

Issues Local Governments Typically Face from Encampments

- Protection of local government property.
- Whether, when and how to move occupants (e.g., self help, injunction)
- Extent to which steps can or should be taken by local government to maintain living standards (e.g. provide toilets, water).
- Extent to which local government has jurisdiction and resources to address the matter.

Issues for Local Governments Arising from Homelessness in Public Spaces (cont'd)

- Availability of suitable resources.
- Availability of external resources to assist, including health care providers and social service agencies.
- Extent to which the local government can facilitate access to the above.
- The extent to which service providers and the local government want to or are able to work with each other.

Local Government Responses

- Public space/Parks/Street bylaws
- “Soft enforcement” (i.e., moral suasion)
  - Use of “protocols”, and note procedural fairness issues
- “Direct enforcement” (i.e., removal of shelters)
- Judicial process
  - Typically by seeking injunction
  - Ticketing/prosecution less frequent or useful
  - New emphasis on “Dignity Villages” and provision/facilitation of shelter by governments.

Questions?

Thank You