

Claim Case Study:

Homeless Encampments Case Comparison

Municipalities have witnessed the significant uptick in homeless encampments, presenting complex challenges and diverse impacts on local governance and community welfare. This case study explores three unique court cases concerning homeless encampments, focusing on the municipalities' bylaws and the Canadian Charter of Rights and Freedoms ("Charter") obligations. By comparing these cases and their outcomes, we aim to identify the key factors that determine the success of various strategies in managing and mitigating the impacts of homeless encampments through the application of municipal bylaws.

The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained, 2023 ONSC 670

The Municipality sought an injunction to evict people from an encampment on a gravel parking lot surrounded by transit stations, businesses, a church, and a soup kitchen offering free meals and services. Established in December 2021, the encampment grew to over 70 shelters with 50 residents within six months. The Municipality hired a security firm to manage interactions between encampment residents, the public, and nearby businesses, costing around \$80,000 monthly for security, garbage, and cleaning.

A 2013 bylaw prohibits erecting structures and bringing illegal items onto municipal land. In 2021, the Municipality's Encampment Policy was introduced, emphasizing support and services over eviction, with enforcement as a last resort. The policy mandates a coordinated approach with community agencies, prioritizing communication and individual needs, though bylaw enforcement can proceed if help is declined.

The Supreme Court Justice outlined a two-step process from the Encampment Policy. The Municipality must exhaust all reasonable efforts to assist homeless residents, and only then enforce the bylaw if necessary. The Municipality engaged a community health center and Ontario Works caseworkers who visited the encampment three times a week for six weeks and held four service fairs to connect

residents with local services. In 2022, they also explored housing solutions, including a managed outdoor shelter.

The Municipality conducted two risk assessments to evaluate whether enforcing the bylaw was feasible. Although most risk categories were rated as low to medium, the presence of over 20 tents and numerous individuals led the Municipality to classify the encampment as high risk. However, the Court found insufficient justification for this classification, noting that out of 136 complaints, only 33 were significant, and that the Municipality did not interview encampment residents or assess the potential risks eviction posed to them.

The key issue in this case is whether the Charter applies when a Municipality seeks to enforce a bylaw. Section 7 of the Charter states: "Everyone has the right to life, liberty and security of the person and has the right not to be deprived thereof except in accordance with the principles of fundamental justice."

The Supreme Court relied on the *BC Supreme Court decision in Victoria City v. Adams* (2008 BCSC 1363), which established that public property benefits all members of the public, including unhoused individuals. That case affirmed a right to shelter when the number of unhoused people surpasses available shelter beds. However, since this case involved an encampment on unused municipal property—not a public park—the Court did not weigh the rights of encampment residents against potential public users.

Both cases (Waterloo and Adams) highlight the importance of determining true shelter availability. For shelter beds to be accessible, they must meet various needs, such as restrictions on gender, age, family status, addiction, and mental or physical disabilities. The Court found that while the Municipality had shelter beds, they were not truly accessible to all encampment residents, concluding that individuals experiencing homelessness were protected under Section 7 of the Charter.

In conclusion, the Court determined that the Municipality's efforts to enforce the bylaw against the encampment were insufficiently justified, particularly given the lack of truly

accessible shelter options for all residents. The ruling emphasized that the availability of shelter beds must consider various accessibility factors, such as gender, age, family status, and health conditions. Consequently, the Court found that the homeless individuals' rights under Section 7 of the Charter were infringed, as the Municipality failed to provide adequate and accessible alternatives before resorting to eviction. This case underscores the necessity for municipalities to exhaust all reasonable means of assistance and ensure that shelter options are genuinely accessible to uphold the rights of the homeless.

Church of Saint Stephen et al v. Toronto, 2023 ONSC 6566

The residents of the encampment brought an injunction application, seeking to prohibit the City from evicting residents from a homeless encampment. The encampment, located in front of a church that provided meals and social services, sat at the end of a busy residential street near a school and daycare. With 2-14 residents on site at any time, the location saw significant material buildup and experienced three fires within a year.

The City offered hotel shelter accommodations with private, lockable rooms for an indefinite period. In addition, Streets to Homes, which aims to secure permanent housing for the homeless, visited the site around 260 times in 2023, referring 86 individuals to indoor shelters. The City kept hotel rooms reserved for those who had not yet accepted or declined the offer.

The residents of the encampment submitted that clearing the encampment was in breach of Section 7 of the Charter and sought the right to reside at the encampment. The important issue to consider here lay in the balance of convenience. This principle involves weighing the potential benefits and harms to both parties involved in the legal dispute. The danger to public safety is a component of the balance of convenience analysis.

Encampment residents argued they would suffer irreparable harm, including respiratory diseases, frostbite, trench foot, and hypothermia, if evicted, due to exposure to cold and lack of continuous medical care. The Court acknowledged these risks, however, further noted that residents of the encampment faced sub-zero temperatures while residing in tents, and three fires had occurred at the encampment within a year, one of which destroyed the site. The Court emphasized that the City had offered hotel accommodations for all residents. It concluded that the harm they would face

in hotel shelters was far less than the risks associated with remaining in the encampment, especially during winter.

The City cited its bylaw which prohibits objects or camping/lodging on streets, raising safety concerns about fire, sanitation, aesthetics, and hazardous materials. The Court supported the City's concerns, especially regarding fire risk, noting that the encampment posed danger not only to residents but also to church occupants and the public due to its high-traffic location. A fire in unfavorable conditions could be catastrophic.

The encampment residents referenced *Waterloo v. Persons Unknown et al* (2023), where risks were deemed low, and shelter spaces were insufficient. However, in this case, the Court found the fire risk high, with multiple fires already reported, and noted that the City offered genuinely available hotel accommodations for all encampment residents. Referring to *Victoria City v. Adams* (2008), the Court added that while inadequate shelter options may infringe on Charter rights, requiring residents to choose safe, available shelter does not necessarily violate Section 7.

In conclusion, the Court found that the City had made sufficient efforts to provide accessible and safe shelter alternatives for the residents of the encampment. The availability of hotel accommodations, which offered significantly less harm than living in the encampment, particularly during winter, was a key factor in the Court's decision. The City's bylaw, aimed at addressing safety, sanitary, and fire concerns, was deemed legitimate. The Court emphasized the high risk of fire posed by the encampment's location and the potential catastrophic consequences. While the residents' concerns about irreparable harm were valid, the Court concluded that the City's actions did not breach Section 7 of the Charter, given the accessible shelter options provided. This case highlights the importance of municipalities ensuring truly accessible shelter alternatives before enforcing bylaws against homeless encampments.

Poff v. City of Hamilton, 2021 ONSC 7224

Similar to the Saint Stephen case, residents from various encampments in City parks brought an injunction application, seeking to prohibit the City from enforcing a bylaw which would prohibit camping and erection of structures in City parks.

The City's six-step bylaw enforcement process starts with a Municipal Law Enforcement (MLE) complaint and ends with police enforcement and site cleanup. Upon receiving

a complaint, MLE assesses the site for violations and first seeks voluntary compliance. If not achieved, Housing Focused Street Outreach offers support. Persistent violations result in MLE issuing a trespass notice, after which police may respond under the *Trespass to Property Act, R.S.O. 1990*.

Residents argued that insufficient shelter space in the City would force them to “sleep rough” if evicted, and suffer irreparable harm, risking worsening pre-existing conditions such as addiction and disabilities.

The Court noted that the concept of irreparable harm is challenging in constitutional cases, especially where Charter rights are involved. Legal precedent suggests that risk of significant injury, death, or psychological harm can establish irreparable harm. The Court must then consider the balance of convenience, a key factor in Charter cases, where the usual assumption that a law serves the public interest may be challenged, requiring proof that suspending the law, rather than enforcing it, benefits the public.

The Court clarified that housing is not a Charter-protected right, as property rights are excluded. However, it acknowledged that *Victoria City v. Adams* (2008) recognized Section 7 rights for homeless individuals facing eviction from encampments but only when accessible shelter spaces are unavailable. The *Adams* decision did not establish a standalone constitutional right for homeless individuals to set up shelters in public parks. The unconstitutionality was specifically linked to the lack of available shelter beds for the homeless population. If sufficient shelter spaces were available in Victoria, a complete ban on setting up shelters in public parks could potentially be constitutional, though this question remains unresolved (*Adams*).

The City presented evidence that all encampment residents applying for the injunction had previously received assistance or been offered housing or emergency shelter, some of which they declined, preferring to remain outdoors. The Court noted that it was limited to assessing harm to the applicants, not the broader homeless population, and expanding this focus would be a legal error.

The Court found no irreparable harm, as the applicants had access to or had been offered shelter and support. The City’s extensive shelter system provides connection to necessary services.

The Court also cited public safety concerns, including reports of public urination/defecation, overdoses, discarded

needles, fires, and criminal activity in parks. Affidavits from the public supported the City, with the public reporting safety fears and as a result, reduced park use. In its balance of convenience assessment, the Court noted that City parks are not intended for encampments and reaffirmed that there is no constitutional right for the homeless to set up camps in parks.

While *Adams* is not binding here, the Court found it distinguishable, as in that case, the Municipality was the plaintiff seeking an injunction, whereas here, the City was the respondent to the application.

In conclusion, the Court determined that the City had made sufficient efforts to provide accessible and safe shelter alternatives for the residents of the encampments. The evidence showed that the City had offered housing and emergency shelter options, which some residents declined. The Court found that the City’s extensive shelter system and support programs were adequate to meet the needs of the homeless population. Additionally, the Court emphasized the safety concerns posed by the encampments, including public health risks and fire hazards. The balance of convenience favored the City, as public parks are not intended for long-term encampments, and the jurisprudence does not grant a freestanding constitutional right to erect shelters in these spaces. Therefore, the Court concluded that the City’s actions did not breach Section 7 of the Charter, given the accessible shelter options provided.

Key Takeaways

1. Application of Section 7 Rights:

- **Waterloo v. Persons Unknown:** The Court found that Section 7 of the Charter was infringed due to the lack of accessible shelter options for all residents. Despite available shelter beds, accessibility issues (such as restrictions on gender, age, and health conditions) meant shelters weren’t suitable for everyone in the encampment.
- **Saint Stephen v. Toronto:** The Court determined that Section 7 rights were not breached as the City provided accessible hotel accommodations that mitigated health and safety risks more effectively than the encampment.
- **Poff v. Hamilton:** Similar to Saint Stephen, the Court ruled that Section 7 rights were not violated, as the City had made adequate efforts to provide shelter and services, and encampment residents had declined these options.

2. Balance of Convenience:

- **Waterloo:** This case emphasized an *exhaustive* support approach, following an encampment policy focused on providing services before considering eviction. Here, the balance favored residents due to the insufficiency of accessible shelter. In addition, the Municipality was the applicant in this case and had the onus to meet the test.
- **Saint Stephen:** The Court found the balance of convenience favored the City, citing severe fire risks and available hotel accommodations that provided a safer alternative to the encampment.
- **Poff:** The balance of convenience again favored the City, with public safety concerns (overdoses, crime, fires) cited as significant reasons for enforcement against encampments in public parks.

3. Interpretation of Adams Case:

- **Waterloo:** *Adams* was cited in support of recognizing Section 7 rights for encampment residents when shelter availability was inadequate. This case extended the *Adams* rationale to unused municipal land, focusing on shelter accessibility rather than public park usage.
- **Saint Stephen & Poff:** Both Courts referenced *Adams* but noted that it does not grant a standalone right to set up encampments in public spaces. In these cases, the availability of accessible shelters made eviction permissible under the Charter. In these cases, encampments were on publicly used lands.

4. Public Safety Concerns:

- **Waterloo:** Safety concerns were deemed lower than in *Saint Stephen*, with the encampment classified as “medium risk.” The Court emphasized the need for individualized risk assessments before eviction.
- **Saint Stephen:** The Court underscored high fire risks, previous incidents, and the encampment’s proximity to public areas as substantial safety issues. These concerns contributed to the Court’s decision to deny the injunction.

- **Poff:** Public health and safety risks, including drug use, unsanitary conditions, and crime, were significant factors in the decision, affirming that encampments in public parks were incompatible with public use.

5. Municipal Obligation to Offer Accessible Shelter:

- **Waterloo:** The Court ruled that enforcement of bylaws against encampments requires municipalities to ensure shelters are truly accessible to the individuals involved, considering personal needs.
- **Saint Stephen & Poff:** Both Courts held that the municipalities had fulfilled their obligations by offering shelter options and outreach, even if residents declined these options, differentiating from *Waterloo* based on the proactive offers of accessible shelter.

6. Trespass to Property Act

- When addressing homeless encampments, Municipalities often face an obligation to not only ensure the safety of the encampment residents, but to also uphold a duty of care to the public.
- It appears that Courts generally expect Municipalities to take reasonable steps to provide support services and safe shelter alternatives before issuing trespass notices. However, this duty to encampment residents appears to end when residents refuse the offered accommodations and continue occupying the public space, ultimately becoming trespassers.

The decisions collectively emphasise that municipalities must offer accessible, safe shelter alternatives before enforcing bylaws against encampments. However, if suitable accommodations are available and declined, the municipality’s duty to provide for Section 7 rights may be considered met, permitting eviction, especially where public safety risks are high.