
MEMORANDUM

COM-C 16-2023

Subject: Preliminary Analysis of Ontario Superior Court of Justice Judgment on Homeless Encampments in the Region of Waterloo

Date: February 14, 2023

To: Public Health and Social Services Committee

From: Adrienne Jugley, Commissioner, Community Services

On January 27, 2023, the Ontario Superior Court of Justice released their ruling on the case pertaining to the Regional Municipality of Waterloo and local community members regarding the dismantling of a homeless person's encampment on public property.

The ruling has the potential for a number of broader implications to the municipal service managers of homelessness in Ontario. Niagara Region is in the process of reviewing the ruling and the implications for a Niagara encampment strategy that remains under development but has also, in its draft form, helped to support Niagara's approach over the last 2 years. Meetings to discuss the legal implications are underway, including senior and legal staff from the Region, the City of St. Catharines and City of Niagara Falls, as these are the cities with the largest exposures to this ruling.

Staff have done an initial review of the document noting the following key considerations:

- In a precedent setting superior court ruling, the judge decided that the municipality would be in violation of encampment residents' charter rights if it cleared an encampment while failing to offer everyone staying there an emergency shelter space, that was both "available and accessible" to them.
- To be of any real value to the homeless population, the shelter space must meet the diverse needs of encampment residents, or in other words, the spaces must be truly "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 considered to be low barrier and accessible to the individuals they are meant to serve.

- The ruling spoke to the negative impact of displacing people into “forced transience” by clearing an encampment without offering a shelter space but did not speak to the risks to health and safety within encampments such as vermin, assault, sexual assault, drug trafficking or fires.
- It should also be noted that the ruling was about an encampment on an unused municipal parking lot. Given the legal obligation of a municipality to maintain safety for all community members in public spaces it is unclear how the ruling impacts encampments in shared public spaces such as public parks.
- The ruling focuses on shelter capacity and adequacy, but does not speak to the preferred solution of housing, nor the complexity of clients’ needs, such that supportive housing is necessary for many residents of encampments to provide the intensity of supports required.

Local challenges that may exasperate the number and size of encampments in Niagara:

- Encampments have been increasing in Niagara and across Ontario as a result of the pandemic, high housing prices and low vacancy rates, the opioid crisis and a lack of sufficient access to support services for mental health and substance use.
- Like many other municipalities across Ontario, Niagara does not have adequate funding for a shelter system that is large enough to house every person experiencing all forms of homelessness, particularly as implied by this court ruling. The financial implication for homelessness systems, which are primarily funded by the province, is significant.
- Niagara’s proximity to other large urban centres creates an added challenge for expanding the local shelter system in isolation of our neighbours, as there is a risk of an influx of clients from other service manager areas, as all municipalities are struggling to accommodate clients.

Niagara’s approach to encampments:

- The recent Superior Court ruling is not entirely dissimilar to rulings on this issue in the province of British Columbia. Niagara’s approach to the encampment challenge has been informed by those rulings in an attempt to provide the best possible support to the homeless in our community and ensure that we are respecting the rights and needs of the homeless and the community in which they reside.
- The Niagara encampment strategy involves staff from Niagara Region Homelessness Services, local municipalities, Niagara Assertive Street Outreach

(NASO), Niagara Region Police CORE Unit and Positive Living Niagara working collaboratively to assess encampments, understand who is there and their needs, and when and if the encampment can be cleared.

- Niagara currently does not clear homeless encampments until they are abandoned, or accommodations are found for all clients willing to access the shelter system that are residing there. Niagara's outreach team works seven days a week to engage those at encampments on an ongoing basis to help those who are willing to find permanent housing or move to shelter.
- NASO frequently supports clients to move directly to housing from encampments, without the step of accessing shelter. In 2022, 184 clients living in encampments moved directly into housing with the support of NASO, and a further 273 were supported to access shelter spaces.
- Encampment cleanup planning and response occurs through collaboration with staff from the cities, Niagara Regional Police Service, NASO, and the Region.
- Although emergency shelter can be inappropriate or traumatizing for some people, Niagara shelters provide a low-barrier (allow for those using substances), trauma-informed, person centred environment in alignment with recognized best practices. Some barriers may remain for some couples, those with pets, or those for whom shelter is re-traumatizing.
- In Niagara the police are present to support efforts by outreach staff and not to enforce closures.
- Although emergency shelters are a key component of a homeless serving system, they can not support an end to homelessness for people at encampments without an adequate investment in supportive housing options, such as Niagara's recent investment in two supportive housing facilities. (It should be noted that the recent opening of the Bridge facility has provided another option for some chronically homeless with high needs who wish to leave encampments. The first admissions to Bridge were comprised of 10 from encampments, 2 from the shelter system and one client who was living in their car.)

Community Services has engaged Orgcode Inc. to support staff in a capacity review of the shelter system, to better understand the adequacy of the number of shelter spaces available currently, as well as the demographics they serve. This review will now also take into consideration the Waterloo ruling. Orgcode will also support in a review of the

local encampment strategy to prepare for the upcoming summer, to ensure that Niagara's approach aligns with best practices and supports cities and the Region with encampment management.

There is the potential that the outcome of the shelter system capacity review, encampment strategy and recognition of the overall shelter system pressures across Ontario, will indicate that further investment will be required to operationalize the recommendations and/or to allow encampment clearing under the Waterloo ruling.

Funding for homeless services is largely the mandate of the Province, and is funded through the Homelessness Prevention Program (HPP). Niagara Region received its 2023/24 planning allocation for HPP on February 3, 2023. The allocation did not increase over the prior year and does not include a cost of living adjustment. Contracts with current homelessness service providers include a cost of living component and as such services will need to be adjusted/reduced as provincial funding has been frozen at this time.

Community Services will bring forward the outcomes of the shelter system capacity review and the encampment strategy along with recommendations to council when available.

Respectfully submitted and signed by

Adrienne Jugley, MSW, RSW, CHE
Commissioner