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**Community
Legal Clinic**
of York Region

August 17, 2023

To York Regional Council

Hello,

I wanted to pass along an open letter, sent this week by legal clinics from across Ontario, including ours, responding to apparent increased frustration and animosity by some Ontario municipalities against their unhoused residents. The anti-homeless by-law proposed in Barrie was one example. Orillia, for instance, recently passed an anti-homeless bylaw and Timmins is considering moving their homeless shelter into the bush. Many communities continue to evict residents from homeless encampments.

<https://www.orilliamatters.com/local-news/atherley-road-homeless-encampment-cleared-away-by-city-7140618>

<https://www.barrietoday.com/local-news/cheap-shot-new-orillia-bylaw-bans-tents-shelters-on-city-land-7298566>

<https://www.timminspress.com/news/local-news/city-confident-in-new-protocols-for-removing-encampments>

<https://www.timminspress.com/news/local-news/council-passes-motion-calling-for-relocation-of-living-space>

The open letter was sent to all Ontario municipalities and urges them to follow the legal requirements set out by the Superior Court in the case of *The Regional Municipality of Waterloo v. persons Unknown and to be Ascertained*, 2023 ONSC 670. These dictate that encampment evictions only occur once a municipality has provided accommodation alternatives that genuinely meet the needs of diverse encampment populations.

Although we are happy to support the province-wide effort, we are also pleased to report that, so far as we can tell, York Region is taking a compassionate, progressive approach to its unhoused residents and is doing about all it can to support them. We don't hear about encampment evictions. You may recall that CEO Emmerson spearheaded, and you unanimously supported, the Region allocating an additional \$14M to homelessness relief this year. We believe that his approach has informed the work of the Region.

The homelessness crisis is serious and continues to grow in York Region - in considerable part because the federal and Ontario governments have not made serious commitments to getting back in the business of building rent-g geared-to-income housing, as it used to do before downloading this to municipalities in the '90s (and it underbuilt in York Region before that).

But while much more work is needed, we believe that York Region is working in good faith to do all it can to fight the homelessness crisis, and want to express our appreciation on behalf of our client community.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Jeff Schlemmer', with a long horizontal flourish extending to the right.

Jeff Schlemmer
Executive Director

Full Disclosure: York Region, as part of its homelessness reduction efforts, provides CLCYR with \$280,000/yr. for an Eviction Prevention Program.

To all Municipal Councils in Ontario

Community Legal Clinics provide poverty law services for vulnerable and marginalized people throughout Ontario. One of our clinics recently represented unhoused residents of Waterloo Region in the municipality's lawsuit to evict residents living at an encampment. Other clinics are representing unhoused residents against the municipalities of Hamilton and Kingston who are attempting to do the same.

We are writing to you to express our concerns regarding the approach taken by some municipalities in Ontario towards encampment evictions despite the recent ruling of the Ontario Superior Court in [The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained, 2023 ONSC 670](#) (the *Waterloo* decision), which held that the proposed encampment evictions were unconstitutional because they violated the *Charter*.

No one wants to see our neighbours living in encampments. However, the *Charter* dictates that unless and until encampment residents are provided with truly accessible accommodation, evictions should not occur. Moreover, encampment residents deserve to be consulted and involved when municipalities are attempting to find solutions for them.

An alarming and increasing number of Ontarians, most of whom are living with disabilities, are now forced to live outdoors in dire poverty. They are forced to live outside because of many systemic factors, including:

1. Deplorably low social assistance rates (shelter rates are stuck at monthly rates of \$556 for Ontario Disability Support Program recipients and \$390 for Ontario Works recipients);
2. A federal government that stopped supporting public and market affordable housing for almost three decades;
3. A [Landlord and Tenant Board](#) that prioritizes hearing landlord's rights applications over tenant applications; and,
4. A provincial government that has made rent [less affordable](#) by not only maintaining the absence of rent control for vacant units, but also introducing new rent control exemptions.

As the Association of Municipalities of Ontario has [noted](#), the homelessness crisis in this province is a "made in Ontario crisis" brought about by the policy decisions and choices of successive provincial governments over the past three decades.

Municipalities are responding to the needs of their residents differently. Some are taking a tacit acceptance approach to encampments, where bylaws are not being enforced and policies are being enacted focusing on a [human rights based approach](#). This approach often involves bringing residents into the decision making table and treating them as rights holders to determine the best way that they can be supported. Unfortunately, other municipalities are taking the opposite approach and focusing on clearing and forcibly removing residents, resulting in people being displaced with nowhere else to go.

Forcibly removing encampment residents without judicial oversight in this way is both unethical and unconstitutional, as set out in *Waterloo*. Where disputes over encampments arise, municipalities must first consider whether their bylaws and policies comply with this decision. *Waterloo* held that Bylaws permitting municipalities to remove encampments and their residents from municipally-owned property could not be enforced unless and until the municipality had provided truly accessible accommodation which genuinely meets the individual needs of the encampment's residents.

There are many legitimate reasons why an individual may be unable to access a shelter bed, many of which were summarized in *Waterloo*. The *Charter* requires that a municipality not only demonstrate that it has enough shelter beds to serve the number of people experiencing homelessness, but also that those beds meet the needs of the people they are intended to serve. Enforcing encampment evictions in the absence of suitable indoor alternatives is unconstitutional.

Waterloo also endorsed the process of a municipality bringing the issue to the Court for a determination of at what point the legal standard is met, and invited the Region of Waterloo to return when it believes that it has satisfied the Charter's requirements. Kingston City Council is following this same approach. Notwithstanding this, litigation is never the best use of taxpayers' dollars. It expends limited funding that could be used for providing shelter. It expends the limited resources of community legal clinics and non-profit organizations. Lastly, it creates new trauma and uncertainty for individuals who are unhoused. Instead, we urge you to follow the recommendations found in the [National Protocol for Homeless Encampments in Canada](#), including consulting with residents of encampments and community stakeholders.

We urge municipal leaders to lead with a human rights based approach and respect and follow the *Waterloo* decision and the [Bamberger](#) decision from British Columbia. Enforcement and displacement should be used as a last resort. Any enforcement ought to be guided by the Superior Court as sought by applications by the Regional Municipality of Waterloo and the City of Kingston.

We are happy to provide further information or to discuss this with you or your legal representatives at your convenience.

Yours truly,





- c.c. Hon. Nina Tangri
Associate Minister of Housing
- c.c. Hon. Sean Fraser
Minister of Housing, Infrastructure and Communities
- c.c. Colin Best
President, Association of Municipalities of Ontario

Appendixes to Open Letter to all Municipal Councils in Ontario

Appendix A: Reasons Encampment Dwellers May Not Stay in Shelters

There are many reasons why an encampment dweller may not wish to stay at a group shelter. *The Regional Municipality of Waterloo v. persons Unknown and to be Ascertained*, 2023 ONSC 670 decision stands for the principle that these must all be addressed before a municipality may be said to offer truly low-barrier accommodation.

These include:

1. Generally shelters require occupants to leave during the day. They have no place to go or a way to get there. If the shelter is full upon their return they might not get in for the night. Ironically, encampments may be less transient. Shelter stays are inherently unpredictable and precarious. Many people can find themselves abruptly evicted onto the street at any time of day and with any weather conditions. People who have routinely experienced shelter evictions may opt to remain in an encampment because they know it has the ability to provide more day-to-day stability.
2. Shelters generally don't permit family or couples. Separation causes stress, anxiety and panic in partners who can no longer protect each other. If separated, one partner may not find shelter space. Often the other will stay with them in encampments in order to avoid this. Many unhoused citizens do not have cell phones that would otherwise assist with reconnecting.
3. Shelters generally don't permit pets. Pets can be the biggest source of emotional support for unhoused citizens. The loss of their pets (including the risk of their being put down) can be traumatizing for them and can lead to dysregulation.
4. Shelter spaces are often abstinence-based, refusing to adopt a harm reduction approach to provide increased safety and support. These structural barriers lead people to prioritize their safety by staying outside where they can access the support of peers and harm reduction services to stay well and stay safe. Many shelters do not allow substances to be stored onsite. Some shelters do not allow harm reduction materials. Despite these restrictions, drug use can be rampant in shelters. People who are attempting to maintain sobriety are at risk of compromising their sobriety if they are at a shelter where drug use is high and it is trafficked. Sobriety is also threatened when people cannot bring harm reduction materials into shelter.

5. Shelters generally have no place for belongings. Items like tents, cooking and warmth tools, and clothing can take significant effort to obtain. When people living unhoused have to leave their tents, or their encampments are cleared, they are at high risk of losing all of their hard-won possessions. Given that shelters are routinely full and residents do not often have phones, they must walk with their possessions from shelter to shelter. It is very physically taxing, especially for those with physical disabilities, to spend their days like this.

6. As a population that experiences exceptionally high rates of physical disability (according to one study conducted in Toronto, 43% of homeless respondents reported arthritis or rheumatism, 23% reported problems walking, a lost limb, or another physical handicap, 20% reported heart disease, and 17% reported high blood pressure, among others) encampments can provide reprieve from the need to constantly be moving and carrying belongings.

7. It can be very difficult for people with some mental illnesses, or personality or socialization disorders, to cope with other people. Many have been banned from shelters.

8. There is a risk of violence from unstable occupants in group shelters, along with exposure to drug dealers, sexual predators, etc. People with a history of trauma or abuse may be triggered by a group setting of strangers. People have a valid fear of being a victim of an assault or sexual assault in shelter, or may have a history of these incidents during their stay at a shelter that reasonably precludes them from returning to shelter due to this trauma.

9. Encampment residents describe finding a community or family of people they respect and can trust in encampments. They help to watch over each others' possessions and help others when they need it.

9. Some encampment dwellers suffer from disordered reasoning, making it difficult to persuade them to come indoors.

Appendix B: The *Waterloo* and *Bamberger* Decisions

Waterloo decision

The Court in the *Waterloo* decision held that the *Charter* requires municipalities to offer unhoused community residents accommodation that genuinely meets their needs rather than forcing them into accommodation that does not, and that they are constitutionally

entitled to shelter on municipal property until truly accessible accommodation is offered to them.

For reference some of the relevant passages of the *Waterloo* decision are:

[6] *The Region's position is that it does not require the Court's assistance in the determination of its legal rights. It maintains that it may assert its legal rights to evict any trespasser on Region-owned property who are in breach of the By-Law. Rather, the Region brings this application to seek the direction of the Court in how it might enforce its legal rights.*

[93] *To be of any real value to the homeless population, the [housing] space must meet their diverse needs, 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 low barrier and accessible to the individuals they are meant to serve.***

[101] *If evicted from the Encampment, the residents will likely be forced to live in the rough or set up camp somewhere else because there is an insufficient supply of **low-barrier** accessible beds in the Region. In these circumstances, creating shelter to protect oneself is, in my opinion, a matter critical to any individual's dignity and independence. The Region's attempt to prevent the homeless population from sheltering itself interferes with that population's choice to protect itself from the elements and is a deprivation of liberty within the scope of section 7.*

[149] *The By-Law does nonetheless violate the [section 7 Charter](#) rights of the Encampment residents because of complex economic, personal, and social circumstances, including the shortage of accessible shelter spaces in the Region for homeless persons. The homeless of the Region have no place to live, rest and sleep without severe risk to their health caused, in part, by the By-Law's prohibition to erecting any form of shelter on the Region's lands.*

Bamberger decision

The *Waterloo* decision related to municipally-owned property but not park land. With respect to park land a balancing of rights to use is required. Nevertheless, the constitutional right for unhoused occupants to be sheltered on the land takes

precedence over leisure use by citizens, as the British Columbia Supreme Court held in *Bamberger v. Vancouver (Board of Parks and Recreation)*, [2022 BCSC 49](#)

[62] *In my view, there is a “qualitative difference” between the impact of the Orders on those sheltering in the Park at the time the Orders were made and other persons living in the City of Vancouver. I am satisfied the Orders have a significant and important impact on those persons as individuals such that they are entitled to notice and right to be heard: Knight at p. 677.*

[63] *At stake for them is nothing less than their [s. 7 Charter](#) right to life, liberty, and security of the person. **This elevates their right to be heard above ordinary users of the Park, or even particular users of the Park, such as (to take counsel’s example) a soccer team whose game is cancelled when a field is closed for maintenance.***

[97] *A reasonable decision in these circumstances requires the General Manager to satisfy herself that she was truly protecting the constitutional rights of the Petitioners in seeking out a proportionate balance between their rights and the right of members of the public to use the Park.*