

Can Homelessness Be Solved?

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Introduction

- Homelessness is a broad, multifaceted and challenging matter to address that involves numerous issues, interests and agendas.
- While significant efforts and resources are expended by government to address homelessness, it is unclear whether anything is being achieved.

Introduction (cont'd)

- This presentation will discuss :
 - Some background on homelessness in BC.
 - Significant aspects of the law involving homelessness and local governments.
 - Issues and potential approaches available to local governments when dealing with homelessness.

What is homelessness?

- No universally accepted definition.
- Sometimes called “unhoused”.
- Some definitions used include:
 - “the situation of an individual, family or community without stable, safe, permanent, appropriate housing, or the immediate prospect, means and ability of acquiring it”;
 - persons who “did not have a place of their own where they could expect to stay for more than 30 days and if they did not pay rent”;
 - “a person who has neither a fixed address nor a predictable safe residence to return to on a daily basis”.

How many people are homeless in BC?

- Measurement is challenging and controversial.
- BC Housing said 8,665 in BC in 2020/2021.
- While counts between 2014 and 2017 showed an increase, this was not seen in 2020:
 - Metro Vancouver 2017: 3,605
 - Metro Vancouver 2020: 3,634
 - City of Vancouver 2018: 2,181
 - City of Vancouver 2020: 2,095
 - City of Victoria 2018: 158/1,525
 - City of Victoria 2020: 1,523

How many people are homeless in the AKBLG area?

- Nelson reported in 2022 to have 88 homeless, stated to be highest per capita rate in BC at 8 out of 1000 people
- BC Housing 2020 count only provided numbers for Cranbrook
 - 63 in 2020 (compared with 29 in 2018)
 - 48% identify as indigenous
 - 35% homeless for more than one year
 - 64% reported addiction concerns
 - 53% reported mental health issues

The Legal Context

- Main factors shaping the current state of the law on homelessness involving local governments:
 - 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 unable or unwilling to occupy available shelter;
 - 5. the *Canadian Charter of Rights and Freedoms* affects the laws and actions of local governments.

Potential Sources of Local Government Powers to Address Homelessness Issues

- *Community Charter*
 - s. 8
 - provision of services,
 - regulation of public spaces through bylaws such as Parks bylaws)
 - s. 46 (no nuisance on, obstruction or occupation of highway)

- *Local Government Act*
 - Part 10 general service powers
 - s. 296 powers by LGIC regulation

- Both
 - Grants of assistance (*LGA* s. 272, *CC* s. 24).

- Common law rights as owner of land.

Potential Limits on Local Government Powers

- Limits within enabling legislation and bylaws.
 - e.g., process for removing abandoned materials.
 - Direct provision of housing.
- The *Canadian Charter of Rights and Freedoms*:
 - The *Charter* enumerates specific rights:
 - s. 2(b); freedom of expression (“protests”);
 - s. 2(c); freedom of peaceful assembly;
 - s. 2(d); freedom of association;
 - s. 7; 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;
 - s. 15; equality before and under the law.

The Charter of Rights and Freedoms

- As part of Canada's Constitution, the *Charter of Rights and Freedoms* places limits and checks on what governments, including local governments, can and cannot do.
- Laws that are inconsistent with the *Charter* are of no force or effect to the extent of the inconsistency.
- This plays a major part in caselaw concerning homelessness and local governments.

Significant Case Law on Homelessness

- *Tanudjaja v. Canada* (2014 ONCA); no obligation (yet) under *Charter of Rights and Freedoms* for government to provide adequate housing.
- *Victoria v. Adams* (2009 BCCA):
 - Decision based on *Charter of Rights and Freedoms*.
 - Governments cannot prevent a person from sleeping in public place from creating temporary shelter if there is no other place for the person to stay and the person faces harm without the shelter;
 - However, can limit use of park so long as the 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 bylaw allowing camping at night but not during day.

Case Law on Homelessness (cont'd)

- *Abbotsford v. Shantz* (2015 BCSC); “homeless” can use parks and public places for shelter within reasonable and justifiable limits (“*Adams* plus 2 hours”).
 - Local governments retain broad powers to regulate such use, including location, time, conditions of use but probably cannot prohibit use unless sufficient “accessible” accommodation or permitting available.
 - Can consider whether shelter is “suitable”.
 - Prohibition of occupation of “highways” by homeless upheld by Court.
 - Court rejected claim for declaration to “basic necessities of life”.

Case Law on Homelessness (cont'd)

- *BC v. Adamson*, (2016 BCSC); when seeking injunction against homeless, court may look to impact of homeless camp on community as a whole.
 - However, may find impact on public lands not significant compared to impact on community as a whole so as to justify removal order.
- *Nanaimo v. Courtoreille* (2018 BCSC) and *Saanich re Brett* (2018 BCSC); existence of location(s) other than encampments at issue helped persuade court to grant injunctions.

Case Law on Homelessness (cont'd)

- *Victoria v. Smith* (2020 BCSC); public interest in protecting environmentally and culturally sensitive areas outweighed impact to the occupants from having to move from areas where occupation was not permitted to areas where occupation was permitted. Reinforces benefit of designated areas for use by homeless.
- *Prince George v. Smith* (2021 BCSC) and *Prince George v. Johnny* (2022 BCSC);
 - *Smith* highlights importance of choosing correct court procedure and proceeding with suitable evidence; emphasis on “suitable” shelter
 - *Johnny* shows need to ensure have legal authority to dispose of encampment or possessions.

Potential New Problem Area

- *Bamberger v. Vancouver* (2022 BCSC)
 - Court 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.
 - This may make it more difficult to make decisions in the field.
- *Vandenberg v. Fire Chief of the City of Vancouver*
 - Pending case seeking to apply *Bamberger* principles to overturn orders of Fire Chief.

General Principles From Caselaw

- No “right” to housing in BC
 - (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.
- In practice, main test is availability of shelter, although the courts are increasingly inclined to consider suitability of shelter.

General Principles From Caselaw (cont'd)

- The courts recognize the interest of the community and local governments and will attempt to balance whatever use is permitted with other interests.
- While the courts will generally act on safety concerns, this is not automatic, and in some cases (e.g., *Adamson*, *Stewart/Johnny*), the courts have opined that the risks associated with an encampment will still exist if the encampment is ordered removed.

Issues for Local Governments Typically Face from Homelessness in Public Spaces

- 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.

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

- Availability of in-house resources to assist?
- Availability of external resources to assist, including health care providers, ACT teams, and social service agencies?
- The 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.

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

- How to communicate with the broader community, bearing in mind that the community may be divided on the issue.
- What resources are available from other governments and agencies (e.g., BC Housing).
- What other steps can be undertaken in the short, medium and longer term.

Traditional Local Government Enforcement Options

- “Soft enforcement” (i.e., moral suasion)
 - Consider use of “protocols”?
 - But note potential impacts of *Bamberger* case.
- “Direct enforcement” (i.e., removal of shelters)
- Enforcement by judicial process
 - Typically by seeking injunction in BCSC
 - Ticketing/prosecution less frequent or useful
- Park/Civic space bylaws
 - Permit use of parks by homeless under certain specified conditions such as limits on time, duration of use, location(s)
- Street bylaws
 - Generally total prohibition.

New Challenges - Entrenchment

- Shift in recent years from homeless dispersed throughout community to development of encampments
 - e.g., in Vancouver, Kelowna, Nanaimo, Victoria, Prince George and many other places
- challenging to maintain safety for residents and community
- Risks related to fire, hygiene, crime, public order
- Permanence issues

New Challenges - Drugs

- Surveys of homelessness tend to show that many residents have significant substance abuse problems
- Results in additional impacts to broader community, such as crime
- New challenges associated with recent decriminalization in BC of possession of small amounts of certain drugs

New Challenges - Fatigue

- Courts seem to be less responsive to local government concerns; implied acceptance that issue is long term, requires multipronged solution, and cannot be solved with enforcement.
- Local governments seem to be more interested in at least considering alternatives
 - However, note recent enforcement against encampments in Vancouver and Victoria

Is there a solution?

- Leaving aside enforcement, local government responses tend to include:
 - Zoning to allow shelters and recovery uses.
 - Extreme weather programs.
 - “HEAT shelter”.
 - Shelter support through provision of land and/or servicing.

Is there a solution (cont'd)?

- BC Housing
 - However, unclear how many homeless have been housed by BCH
- Province's "Homes For People" program
 - Homeless Encampment Action Response Team (HEART)
 - Homeless Encampment Action Response for Temporary Housing (HEARTH)
 - "Encampment Strategy Coordination"

Potential Local Government Responses

- Affordable housing strategy (capital/operation funding).
- Direct provision of housing.
- Working with service providers.
- “Dignity Village”/micro-housing.
- Using Federal Homeless Partnering Strategy funds.

What works?

- Encampments tend to have unacceptable impacts and risks.
- Enforcement by displacement results in “whack-a-mole”.
- Dignity village-type approaches arguably perpetuate semi-housed status.

- Empirical evidence supports use of housing with wraparound support for individuals
- However, best results seen where housing is dispersed, rather than centralized (At Home/Chez Soi).

Conclusion

- While local governments have potential options and responses available, they are subject to potential limitations under the *Community Charter/LGA*, the *Charter of Rights and Freedoms*, and various decisions of the courts.
- Responses by government also have to recognize challenges that are often inherent to the homeless, especially drug use and mental illness.

Questions?

Thank You