



HAMILTON ENCAMPMENT LITIGATION UPDATE

In November 2021, the Applicants in *Heegsma et al.* commenced a *Charter* challenge to their eviction from encampments by the City of Hamilton. They have sought *Charter* damages as relief.

The Applicants have patiently waited for a resolution of this Application for over two years, and have experienced serious harms in the meantime. In light of the introduction of the Encampment Protocol, and the growing Ontario jurisprudence recognizing that it is a *Charter* violation to prevent individuals from erecting shelter when there is insufficient and/or inaccessible indoor shelter space available, **we served the City's legal counsel with a settlement offer last week.** We remain hopeful that the City will recognize the legal and moral justification for settlement, as well as the importance of redirecting tax-payer dollars from legal fees towards homelessness prevention.

The Applicants have experienced years of serious and life-altering harms as a result of encampment evictions. These harms include but are not limited to: multiple assaults, sexual assaults, frostbite, infections and amputations, loss of belongings, extreme sleep deprivation, and disconnection from community, medical and social supports. Aggravating these harms is the fact that many of our Applicants have been unable to access emergency shelters due to lack of system capacity, or inherent system limitations such as difficulties serving individuals with complex mental health and substance use disabilities.

There is also a long history of the City being made aware of the impact of encampment evictions on houseless residents – including the increased risk of death – by multiple experts, unhoused individuals, and community stakeholders. The City has also been repeatedly advised by these same groups that shelters are full and/or inaccessible. The City has *itself* publicly acknowledged the lack of shelter capacity, the inability of the shelter system to meet the needs of all unhoused individuals, and some of the harms from encampment evictions. These acknowledgements have been made through statements from elected officials, the City's own senior housing and homelessness staff, and in data collected and publicly reported by the City on its homelessness dashboard.

Hamilton's new Encampment Protocol – in place since August – is a step in the right direction because it authorizes the use of tents on public property throughout Hamilton. But it is not a

perfect and complete response. For example, there continues to be confusion about what locations are considered compliant, as well as concerns about the suitability and accessibility of compliant sites. We expect that the City will pay close attention to the [report](#) from the Office of the Federal Housing Report on encampments, which calls for all levels of government to immediately end **all** forced evictions from public land, and calls specifically on municipalities to ensure access to essential facilities and services such as drinking water and sanitation for encampment residents.

At this time, we hope the City will engage in discussions to provide a remedy for the harms that the Applicants have experienced. Should we be unsuccessful, we will be proceeding with litigation and will continue to update the community as the case progresses.

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