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BULLETIN

NEW LEGISLATIVE CHANGES REQUIRE LOCAL GOVERNMENTS TO HAVE REASONABLE ALTERNATIVE SHELTER AVAILABLE BEFORE ENFORCING BYLAW ON ENCAMPMENT RESIDENTS

A number of major legislative changes for local governments received royal assent on November 30th 2023. The most prominent changes are contained in the series of three Housing Statutes Amendment Acts set out in Bills 44, 46 and 47 (and discussed in our [previous bulletins](#)). Along with these changes, another major shift for local governments was made via Bill 45 [2023 *Miscellaneous Statutes Amendment Act (No. 4)*] which also received royal assent on November 30th.

Bill 45 introduces section 274.1 into the *Community Charter* (and equivalent language for the *Vancouver Charter* with the addition of section 334.1 to that Act). Section 274.1 acts as a caveat to section 274 of the *Community Charter*. Section 274 authorizes the enforcement of municipal bylaws by Supreme Court injunction proceedings. Section 274.1 narrows this broad ability to seek bylaw enforcement through the courts with regards to persons sheltering at an encampment and experiencing homelessness. Under section 274.1, a local government can only seek enforcement of a bylaw under section 274 if alternative shelter is reasonably available to the person experiencing homelessness, and that alternative shelter meets the person's basic need for shelter. In order for shelter to be considered reasonably available to and meeting the basic needs of the person, the following four conditions must be met:

- the person may stay overnight at the shelter;
- the person has access to a bathroom and shower at or near the shelter;
- the person is offered without charge one meal a day at or near the shelter; and
- the shelter is staffed when persons are sheltering at the shelter.

Section 274.1 is in part a codification of common law principles around encampments, and in part a potential increase in the standard set by the common law. Under the common law, the rights of a person experiencing homelessness (exercisable by sheltering overnight in a public space) are engaged when the number of people experiencing homelessness outnumbers the number of indoor sheltering spaces available. Determining the "availability" of shelter space is a contextual question, and the courts look to both quantitative and qualitative factors to determine whether space is truly "available" (e.g. if the available shelter space is for women only, the "available" space is inaccessible to some of the people experiencing homelessness).

Section 274.1 codifies the common law requirement that sufficient alternative shelter must be available before enforcement action is taken towards encampments. The section's inclusion of criteria for what constitutes "reasonably available" shelter that meets a person's basic need appears to both codify the analysis of whether shelter space is meaningfully available, and add new requirements on what makes for a sufficient shelter space. However, the extent to which this section adds a stricter requirement on the shelter space that must be available before enforcement action is taken remains to be seen. It is likely that subsequent court decisions will articulate the standard that is now set by section 274.1.

James Barth