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ADDRESSING PROBLEMATIC LANDS: ENCAMPMENTS AND BEYOND

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Local governments are increasingly called upon to address problematic properties, ranging from those that are merely unsightly to those that give rise to persistent and obtrusive nuisance conditions. The challenge becomes more complex when municipalities seek to enforce their bylaws against encampments and other conditions that, while giving rise to legitimate nuisance concerns, also engage fundamental human rights and *Charter* considerations.

This paper will firstly discuss the nature of some of the authorities municipalities have to deal with unsightly or nuisance conditions on a property and how one might go about implementing them. Secondly, it will delve into some of the deeper issues associated with encampments and the *Charter of Rights and Freedoms*[1] concerns related to bylaw drafting and enforcement for that subject matter.

I. UNSIGHTLY PREMISES BYLAW POWERS

A. Statutory Authority

Section 8(3) of the *Community Charter*[2] provides the "fundamental power" for municipalities to regulate objectionable conditions by bylaw:

> **8** (3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:
>
> …
>
> (h) the protection and enhancement of the well-being of its community in relation to the matters referred to in section 64 [*nuisances, disturbances and other objectionable situations*]

Section 64 identifies specific matters that council may regulate under this authority, including:

- Nuisances;
- Noise, vibration, odour, dust, illumination or any other matter that is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public;
- The emission of smoke, dust, gas, sparks, ash, soot, cinders, fumes or other effluvia that is liable to foul or contaminate the atmosphere;

[1] *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act,* 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].
[2] *Community Charter, [SBC 2003],* chapter 26 [*Community Charter*], section 8(3).

- Refuse, garbage or other material that is noxious, offensive or unwholesome;
- The use of waste disposal and recycling services;
- The accumulation of water on property;
- Unsanitary conditions on property;
- Drains, cesspools, septic tanks and outhouses;
- Trees, weeds or other growths that council considers should be removed, cut down or trimmed;
- The carrying on of a noxious or offensive business activity;
- Graffiti and unsightly conditions on property; and
- Indecency and profane, blasphemous or grossly insulting language.

Each of the above is a matter in the sphere of "objectionable situations" that the legislature has expressly authorized municipalities to regulate. As examples, the powers to regulate, prohibit and impose requirements include the power to prohibit persons from doing things with their property, and to require persons to do things with their property, to do things at their expense and to provide security for fulfilling a requirement.[3]

The authority to impose requirements is particularly important in the context of unsightly premises bylaws. It allows a municipality not merely to prohibit unsightly conditions, but also to require a property owner to take affirmative steps to remedy such conditions.

Where council has the authority to impose requirements, section 17 of the *Community Charter* establishes that this includes the authority to direct that, if a person subject to the requirement fails to take the required action, the municipality may:

- Fulfill the requirement at the expense of the person; and
- Recover the costs incurred from that person as a debt.

In certain situations, this includes the ability to recover such costs by way of adding them to the property tax roll as taxes in arrears, where they are unpaid by December 31 of the year in which they are imposed.[4] Section 16(6)(b) permits a municipality to enter private property to take action in default under section 17.

[3] *Community Charter*, section 8(8).
[4] *Community Charter*, section 17(2).

B. Direct Enforcement by Bylaw Officers

Self-help or "direct enforcement" under a type of bylaw commonly known as an unsightly premises bylaw or good neighbour bylaw can be one of the most effective tools available to municipal bylaw enforcement. These powers should be exercised with strict attention to all procedural and statutory requirements in order to ensure the direct action is lawfully authorized and does not constitute a trespass or expose the municipality to damages claims.

In 2019 BCCA 271, the Court of Appeal considered an argument that an order issued by a bylaw enforcement officer under a property maintenance bylaw was effectively a remedial action requirement that the officer lacked authority to impose.[5] The Court rejected that argument, distinguishing the general power to impose requirements under sections 8, 16, and 17 from the separate statutory remedial action regime. The Court concluded:

> [30] I am left in no doubt that s. 8, supplemented by ss. 16 and 17 of the *Community Charter*, provided authority for the bylaw enforcement officer to issue the order on behalf of Chase to "require that something be done"…[6]

Direct enforcement under a bylaw offers several advantages. It is relatively quick and procedurally straightforward. Many bylaws establish specific procedural requirements to be followed before direct enforcement can be carried out, which generally include a requirement to provide written notice to the owner and a reasonable opportunity and period of time to remedy the condition. Where a bylaw does not establish express procedural requirements, the common law of procedural fairness still dictates that such steps must be taken. Generally, erring on the side of more inclusive notice and reasonable time periods and extensions, where appropriate, will assist in ensuring that any procedural fairness requirements are satisfied. Unlike a remedial action requirement under the *Community Charter* (discussed below), the process does not require a report to council and a council resolution; nor does it require a court application, as would be necessary for enforcement of a bylaw under section 274 of the *Community Charter* (also discussed below).

Whether a property qualifies as "unsightly" will depend on the wording of the applicable bylaw. If the bylaw does not define the term, the question will generally be whether a reasonable person would consider the property to be unsightly.

Direct enforcement is most appropriate when the contraventions are relatively simple and straightforward to establish, and where the cost to carry out the steps as well as the value of the items being dealt with is relatively low. For example, cutting overgrown grass or foliage, removal of snow from sidewalks, and disposal of accumulated garbage.

Going beyond the scope of the action authorized by the bylaw and the order to comply or erroneously removing and disposing of items that have significant value, may expose the

[5] *Chase Discount Auto Sales Ltd. v Waugh*, 2019 BCCA 271.
[6] *Chase Discount Auto Sales Ltd. v Waugh*, 2019 BCCA 271 at para 30.

municipality to legal challenges. Before undertaking substantial and expensive clean-up work under an unsightly premises bylaw, particularly where valuable property may be removed, the municipality should consider whether direct action is most appropriate or if the better course is to seek an injunction or pursue a remedial action requirement through council.

C. Enforcement Through Court

An unsightly premises bylaw is also enforceable in court through section 274 of the *Community Charter*, which provides:

> **274** (1) A municipality may, by a proceeding brought in Supreme Court, enforce, or prevent or restrain the contravention of,
>
> (a) a bylaw or resolution of the council under this Act or any other Act…

Where a municipality believes that a property is in breach of its unsightly premises bylaw, it may apply to the Supreme Court of British Columbia for an order enforcing the bylaw. The municipality would need to establish the alleged contravention through evidence, which might include photos of the property or observations from a bylaw officer.

If the court is satisfied that the bylaw has been contravened, and there are no exceptional circumstances justifying refusal of relief, the municipality is generally entitled to an injunctive order requiring the owner or other responsible party to bring the property into compliance. Depending on the circumstances, the order could require the removal of specified items by a particular date. Failure to comply with that court order could result in further applications to have the responsible person found to be in contempt of court, or for the municipality to be authorized to carry out the actions required in the court order itself.

A section 274 proceeding may be particularly appropriate where the alleged contravention is disputed, the proposed remediation is substantial, and the municipality wishes to limit its risk by having a court confirm the respondent's obligations before undertaking work on private property.

The section 274 proceeding may also address breaches of other municipal bylaws arising from the same circumstances. For example, a property may contain accumulated materials that create an unsightly condition, while also constituting land that is "used" contrary to a zoning bylaw (e.g. a junkyard in a zone where that is not a permitted use). In such a case, the municipality may seek relief addressing both the unsightly condition and the unlawful land use.

II. REMEDIAL ACTION REQUIREMENTS FOR "NUISANCE" CONDITIONS

A. Statutory Authority

Another tool available to municipalities to address nuisance conditions is the remedial action regime under sections 72-80 of the *Community Charter*. Although these powers are perhaps more commonly associated with unsafe buildings or structures, section 74 expressly authorizes

council to declare certain specific other "things" a nuisance and impose a remedial action requirement in relation to them:

> **74** (1) A council may declare that any of the following is a nuisance and may impose a remedial action requirement in relation to the declared nuisance:
> (a) a building or other structure, an erection of any kind, or a similar matter or thing;
> (b) a natural or artificial opening in the ground, or a similar matter or thing;
> (c) a drain, ditch, watercourse, pond, surface water, or similar matter or thing;
> (d) a matter or thing that is in or about any matter or thing referred to in paragraphs (a) to (c).
> (2) Subsection (1) also applies in relation to a thing that council considers is so dilapidated or unclean as to be offensive to the community.

The leading case authority is *Nanaimo (City) v. Rascal Trucking Ltd.* in which the Supreme Court of Canada held that a pile of soil could constitute a nuisance within the meaning of the phrase "building, structure or erection of any kind."[7] The municipality was therefore entitled to order its removal.

In the more recent decision of *Meade v. Armstrong*, the City declared storage sheds, derelict vehicles, and miscellaneous debris to be a nuisance.[8] The debris included personal property stored in and around a well-less, tarped shed, such as gardening tools, clothing, pipes, concrete blocks, and beekeeping equipment. The Court upheld this result, noting:

> [36] … the City's determination was reasonable. With great respect to Mr. Meade, the property had the appearance of a "junk" yard… City council knows the community best and was well informed and well positioned to determine that the appearance of the Kunze property was not in keeping with community standards and constituted a nuisance.

B. The Council Resolution

A remedial action requirement must be imposed by a resolution of council. The resolution should specify:

- The nature of the hazard, nuisance or harm to dike;
- With reasonable precision, what remedial action requirement is appropriate;
- Who must perform that requirement;
- The deadline for completion of the remedial action requirement; and

[7] *Nanaimo (City) v. Rascal Trucking Ltd.,* 2000 SCC 13.
[8] *Meade v. Armstrong (City)*, 2017 BCSC 2317,

- If applicable, the authorization for the municipality to take action in default at the owner's expense.

Section 76 requires the municipality to specify a deadline for completing the remedial action. The minimum time to be allowed is 30 days from the date notice is sent, though section 79 permits council to establish a shorter period if it considers that there is a significant risk to health or safety if action is not taken earlier.

Any deadline imposed by council should be justifiable, in that it is practically feasible for the person to complete the required work within the specified period, taking into account any permitting or other regulatory approvals the person may need to obtain.

Section 77 requires the municipality to give notice of the remedial action requirement by personal service or registered mail to the person subject to the requirement and the owner of the land on which the work must be carried out. Notice must also be provided to:

- All chargeholders whose names appear on the assessment roll, at the addresses listed in the roll or any subsequent address known to the corporate officer; and

- Any other person occupying the land.

The notice must specifically advise recipients of their right to request that council reconsider the remedial action requirement. In applicable circumstances, it must also explain that, if the required action is not completed, the municipality may undertake the work under section 17 at the expense of the person subject to the requirement.

The resolution should also specify the time period within which a person may request reconsideration. By default, a request must be made in writing within 14 days after the notice is sent, though council may extend this period by specifying a longer period in the resolution. If a person requests reconsideration, they must be given an opportunity to make representations to council before council makes its decision.

C. Council's Quasi-Adjudicative Function

Both the initial consideration of a remedial action requirement and any subsequent reconsideration hearing involve council exercising a quasi-adjudicative function. Council must assess the facts and determine whether the circumstances satisfy the applicable statutory requirements and justify the proposed action. This quasi-adjudicative role differs from council's regular legislative role and requires a corresponding degree of procedural fairness.

Accordingly, the staff report recommending the remedial action resolution should be detailed and robust, ensuring that all relevant information council will be asked to consider is included in the report and adequately explained, and attach evidence for council's direct consideration. The owner and any other person entitled to participate should be provided with the same information in advance of the council meeting.

III. ENCAMPMENTS

Homelessness is a public policy issue that engages practical, moral and legal dimensions. The prevalence of encampments reflects Canada's challenges in meeting its human rights obligation to ensure that all individuals have access to adequate housing - housing that is secure, affordable, habitable, accessible, culturally appropriate, and in a suitable location with access to services, while faced with the practical constraints of available resources and the challenges in resource allocation, as well as planning for projects that aim to advance the public good.[9]

The caselaw relating to encampments in Canada has evolved through the years. Two principal issues have emerged in these cases: (1) whether municipal bylaws restricting encampments violate the *Charter* rights of the unhoused individuals; and (2) whether municipal decisions to evict individuals from encampments are reasonable.

A. History

Victoria (City) v. Adams (BC), 2009 BCCA 563

This appeal dealt with *Charter* rights issues and addressed (1) the propriety of a bylaw under which unhoused individuals were prohibited from sleeping in public parks, in circumstances where the number of individuals requiring housing exceeded the number of shelter beds available in the region; and (2) whether prohibiting temporary structures violated the constitutional rights to life, liberty, and security of the person under section 7 of the *Charter.*

Section 7 of the *Charter* guarantees that: "Everyone has the 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."[10] Rights conferred by the *Charter* can only be limited where such as limit is reasonable and can be demonstrably justified in a free and democratic society.

The Court in *Adams* held that bylaws prohibiting the erection of overnight temporary shelters in parks violated section 7 of the *Charter,* where there were not enough accessible shelter beds in the region to satisfy the regional need.

Prince George (City) v. Stewart, 2021 BCSC 2089

The Court in this case determined that individuals experiencing homelessness were entitled to erect temporary overnight shelters in public parks in exercise of their section 7 *Charter* rights.

This matter related to a collection of encampments in the city. The City sought a final order for a statutory injunction pursuant to section 274 of the *Community Charter,* that the occupants of

[9] *The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown,* 2026 ONSC 2971, [*Waterloo*]at para 11.
[10] *Charter*, section 7.

the encampments be removed, and if not, that the City's employees and agents be authorized to dismantle and remove the structures and sell or destroy the removed items.

The City alleged the encampments in question were harmful to residents and neighbouring business; were areas of increased criminal activity; carried an increased risk of fire; and were home to a population that commonly suffered from substance dependency and mental health issues. The Court found that the evidence could not support all of these allegations, and that there was insufficient alternate low barrier accessible housing for the occupants of the encampments to permit dismantling of all the encampments.

Bamburger v. Vancouver (*Board of Parks and Recreation*), 2022 BCSC 49

In spring 2021 an encampment emerged in CRAB Park, a Vancouver public park on federal port land leased by the City. The General Manager of Parks and Recreation made two orders under the Parks Control Bylaw, ordering the individuals to leave the encampment. This case was a judicial review of those orders which challenged their procedural fairness and reasonableness.[11] The petitioners argued that the nature of the order provided them with a right to be notified and a subsequent right to be heard.

The Park Board conceded that procedural fairness was not accorded to the petitioners in respect of either order; accordingly, the Court ordered both orders be remitted back to the General Manager for reconsideration.[12]

Additionally, the Court found that the General Manager's decision could not be reasonably justified in light of the facts before her. The General Manager's assumptions were based on unverified advice from BC Housing Staff that there were "sufficient and appropriate indoor spaces" to shelter individuals if the encampment was closed.[13] The Court went into significant detail regarding the suitability of available spaces for individuals being removed for an encampment and stated that "given the demonstrated vulnerability of the persons who would be affected by the Orders and the particularly harsh consequences of the Orders…the General Manager had a 'heightened responsibility … to ensure that [her] reasons demonstrate that [she has] considered the consequences of a decision and that those consequences are justified in light of the facts and law'". [14]

The Court commented that the information provided to the General Manager may have been accurate, but it was incumbent on her to ensure that was the case. Having not pursued such confirmation, it was not reasonable for her to purport to have assessed the suitability of available sheltering spaces.

[11] *Bamburger v. Vancouver* (*Board of Parks and Recreation*), 2022 BCSC 49, [*Bamburger*] at para 40.
[12] *Bamburger*, at para 74.
[13] *Bamburger*, at para 149.
[14] *Bamburger,* at para 149; and *Canada (Minister of Citizenship and Immigration v. Vavilov,* 2019 SCC 65, at para 135.

Vandenberg v. Vancouver (City) Fire and Rescue Services, 2023 BCSC 2104

On a similar theme, the BC Supreme Court in this case emphasized that procedural fairness must be respected before encampment can be cleared. In particular, this decision confirmed that encampment residents must be provided notice and a chance to be heard when decisions may affect their *Charter* protected interests.

B. Recent Cases

The Regional Municipality of Waterloo v. Named Respondents, 2026 ONSC 2971

The Regional Municipality of Waterloo had previously sought to remove encampment residents using a general bylaw that prohibited people from erecting shelters on municipal land. A 2023 decision determined that this bylaw was inoperative insofar as it applied to prevent the residents of the encampment from living on the municipal property in question, when the number of unhoused individuals exceeded the number of available accessible shelter beds in the region.

In 2025, Waterloo created a new bylaw specific to that property, which outlined a time limit for how long residents of the encampment could remain (the "2025 Bylaw"). The 2025 Bylaw included a transition plan for individuals living on the property at the time the notice was provided, but did not extend to new occupants. Waterloo asked the Court to declare the 2025 Bylaw to be *Charter* compliant.

The respondents argued that the 2025 Bylaw infringed section 7 and section 15 of the *Charter* and could not be saved by section 1.

The section 7 arguments in this matter mirrored those in previous cases; i.e., that there were insufficient shelter spaces in the region to support the number of unhoused individuals. They also argued that the shelter spaces were not realistically accessible because they established requirements or limitations that could prevent access, such as serving only a particular gender; restrictions on substance use; limited ability to serve individuals with physical disabilities; no allowance for pets; no proximity to a pharmacy; and restrictions related to other mental health concerns where individuals could not abide by the shelter's established rules.[15] Accordingly, the Court found that the 2025 Bylaw deprived individuals of the right to life, liberty, and security of the person, through forced evictions that were not in accordance with the principles of fundamental justice. The Court went on to say that the provisions of the 2025 Bylaw were grossly disproportionate to its object, and that a grossly disproportionate effect on even one person was sufficient to violate the norm.[16]

Section 15 of the *Charter* states that: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in

[15] *Waterloo*, at para 170.

[16] *Waterloo*, at para 192; and *Canada (Attorney General) v. Bedford, 2013 SCC 72, at para 122.*

particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."[17] The section 15 analysis is comprised of two steps. First, a court determines whether there is a distinction created by the law (on its face or in its impact) based on an enumerated or analogous ground. Second, the court assesses whether the distinction has the effect of reinforcing, perpetuating or exacerbating a claimant's disadvantage.

In this case, the Ontario Superior Court recognized homelessness for the first time as a novel analogous ground under section 15 of the *Charter*, and also found that the 2025 Bylaw violated section 15 as a result of discrimination against women and gender diverse people, people with disabilities, and Indigenous people.

The Court determined that the encampment was the last location individuals could shelter outdoors. This ultimately led to the finding that the infringements in the 2025 Bylaw could not be considered a reasonable limit pursuant to section 1 of the *Charter.* The Court suggested that an alternative lawful encampment site of last resort, or a tenting protocol may facilitate access to essential services and healthcare that would satisfy the *Charter* rights in question.[18]

The analogous ground of homelessness in the *Waterloo* decision has not yet been recognized in BC, and the case has been appealed to the Court of Appeal for Ontario. Local governments across the country will be interested in the outcome of this appeal, which could also conceivably make its way to the Supreme Court of Canada.

C. Statutory Obligations and International Laws

Article 10 of United Nations Declaration on the Rights of Indigenous Peoples,[19] currently made effective in BC pursuant to the provincial *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), states that: "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous peoples concerned."[20] This could present an additional argument for those resisting the injunctive dismantling of encampments, i.e., that evicting First Nations individuals from an encampment on disputed land is contrary to DRIPA.

In 2019, Canada passed the *National Housing Strategy Act*, [21] which recognizes housing as a human right in accordance with international law and commits the federal government to further the progressive realization of the right to adequate housing. In the *Waterloo* decision, the Court emphasized that the human right to housing has been recognized domestically in this statute.[22] In addition to relying on reports created under the National Housing Strategy Act, the

[17] *Charter, section 15.*
[18] *Waterloo*, at paras 248to 251.
[19] United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, UN DOC A/Res/61/295 (2007).
[20] *Declaration on the Rights of Indigenous Peoples Act*, [SBC 2019], chapter 44, schedule 1, Article 10.
[21] *National Housing Strategy Act*, SC 2019, c 29, s 313.
[22] *Waterloo*, at para 110.

Court also stated that it "necessarily strengthens the force that Canada's international obligations should play in interpreting the scope and content of section 7" of the *Charter*.[23] The Court opined that international laws require governments to consult with affected unhoused individuals in encampments and explore all reasonable alternatives to forced evictions.[24]

IV. CONCLUSION

Local governments have a range of enforcement tools available under their enabling legislation to address problematic properties and protect the safety and well-being of the broader community. The challenges become more complex where enforcement involves encampments, as the conditions may give rise to legitimate nuisance concerns while also engaging fundamental human rights and *Charter* protections. Ultimately, to effectively enforce bylaws and address nuisances, a local government must exercise their statutory powers reasonably and proportionately, while remaining attentive to the rights and interests of those affected and the broader community.

[23] *Waterloo*, at para 126.
[24] *Waterloo*, at paras 129 and 143.

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