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**Community
Legal Clinic**
of York Region

Mayor and Council
City of Guelph
1 Carden Street
Guelph, ON N1H 3A1

Dear Mayor Guthrie and Councillors,

Re: Proposed “Public Space Use” Bylaw

We are writing with respect to your proposed “public space use” bylaw. We support the delegation by our sister clinic, the Legal Clinic of Guelph and Wellington County, in opposition to the bylaw. Similar bylaws have been tested and found to be unconstitutional in a number of Canadian courts, and are still before the courts in Kingston and Hamilton (See Appendix A).

Many hundreds of thousands of tax dollars have been spent by Ontario municipalities in court - which could have been spent to provide alternative accommodation that encampment dwellers regard as better than tents – such as designated encampment sites (see London) and tiny cabins (see Waterloo, Peterborough, etc.) (see Appendix B). This is the only durable way to reduce increasingly prevalent homeless encampments.

We are one of Ontario’s 71 Legal Aid Ontario legal clinics and part of our mandate is providing legal help to vulnerable and impoverished Ontarians. Recently sister LAO legal clinics have represented unhoused Ontarians in encampment litigation in Waterloo Region, Hamilton and Kingston (including the pending appeal). We monitor developments respecting encampment evictions across the province.

Justice Valente, in the *Waterloo* case, held that municipalities could not evict encampment dwellers until they have provided truly accessible low-barrier alternative accommodation. If such accommodation is offered, in fact, then there is every reason to expect that encampment dwellers will choose it voluntarily – and evictions will not be required.

We urge Council to focus on ensuring that the County is providing the various types of truly accessible accommodation referred to below. Urging encampment dwellers out of their tents by providing accommodation which they regard as better should come first. If

it doesn't work, then a bylaw such as the one you propose may be necessary. But try the carrot before the stick.

It may also be fiscally prudent to await the outcome of the bylaw litigation in Kingston and Hamilton before wading into the controversy by passing your proposed bylaw and inviting costly litigation to assess its constitutionality.

We would be pleased to provide any additional information which may assist you in your deliberations, or to discuss this further with you or your staff.

Sincerely,



Jeff Schlemmer
Executive Director



Sharon Crowe
Director of Legal Services

cc. Anthea Millikin, Legal Clinic of Guelph and Wellington County

Appendix A: Current Ontario Law respecting Homeless Encampment Evictions

Waterloo:

The leading case on encampment evictions in Ontario is *Waterloo v. Persons Unknown*, 2023 ONSC 670.

<https://www.canlii.org/en/on/on/onsc/doc/2023/2023onsc670/2023onsc670.html?resultIndex=1>

Justice Valente held that bylaws permitting municipalities to remove encampments from municipally-owned property could not be enforced until the municipality had provided truly accessible accommodation which genuinely meets the individual needs of the encampment's residents.

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

*[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:

The *Waterloo* decision related to municipally-owned property but not park land. For park land a balancing of rights to use is required, however the constitutional right for unhoused occupants to be sheltered on the land takes precedence over leisure use by citizens: *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.*

Kingston:

We note that your draft bylaw does attempt to conform to *Kingston v. Doe*, 2023 ONSC 6662 in that it permits overnight camping.

<https://www.canlii.org/en/on/onsc/doc/2023/2023onsc6662/2023onsc6662.html?autocompleteStr=kingston%20doe&autocompletePos=1&resultId=3923d3739691473cb3b8f4ca80cb685c&searchId=0e731f0b8d8548d9bfebb824b09593e4>

Please be aware that Justice Carter did not hold that eviction during the day was permitted as a matter of law, but rather that on the facts of that case there was insufficient evidence that daytime warming centres were not available for him to find that they were not. Upon evidence of inadequacy of daytime sheltering options a daytime prohibition on camping would, on his reasoning, also be held to contravene the Charter.

[112] *However, the onus is on the Respondents to establish the Charter breach. It is not simply a matter of extending the “right to shelter” to daytime hours. In the absence of any meaningful evidence with respect to daytime sheltering options, they have failed to establish that a prohibition on camping in public parks during the daytime is unconstitutional.*

[113] *That is not to say that a breach could not be established on the proper evidence.*

Other Cases:

Other recent Caselaw which may bear on the constitutionality of your proposed bylaw includes:

Church of Saint Stephen-in-the-Fields v. Toronto (City), 2023 ONSC 6566

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

Appendix B: Reasons Why People May Choose Not to Stay at a Shelter or Motel

There are many reasons why an encampment dweller may reasonably decide not to stay at a group shelter or motel. The *Waterloo* decision stands for the principle that these must be addressed before a municipality may be said to offer truly low-barrier accommodation. These may include:

1. Generally shelters require occupants to leave during the day. They have no place to go or 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 other's' possessions and help others when they need it.