Association of Municipalities of Ontario

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Homeless Encampments in Ontario:

A Municipal Perspective

Introduction

As homelessness escalates in its scope, visibility, and complexity, communities in Ontario are seeing a rise in homeless encampments. In 2023, at least 1400 homeless encampments existed in Ontario's communities.[1] Their existence is not unique to large urban centres and can now be found in all types of communities including urban, small town, rural, and northern Ontario.

Encampments are the latest expression of a homelessness crisis decades in the making. These encampments are a tragic result of cracks in the foundations of our housing, health, and social systems and are a public policy failure by successive provincial and federal governments. A lack of intergovernmental cooperation and integration of effort, and insufficient supply of affordable housing have compounded matters.

While municipalities did not create the homelessness crisis, they are being forced to manage it without the resources or tools to sufficiently respond. Municipalities are often caught balancing the important needs of unsheltered people living in encampments, who deserve to be treated with empathy and respect, and a responsibility to ensure our communities are safe and vibrant places for all residents.

Concrete solutions to this crisis are needed now. Provincial and federal governments need to take responsibility for the policy decisions that have led to this crisis and take a leadership role in finding solutions. This must include substantial new investments and policy changes to address the root causes of homelessness, stave off the growth in encampments, and connect people already living in encampments with the supports they need right now.

This abdication of leadership has meant that municipalities and citizen groups are increasingly looking to the courts for guidance. This leads to adversarial approaches and increases complexity in a way that puts us farther behind. Municipalities need clear guidance from the provincial government regarding how to address encampments when resource realities and the rights of groups and individuals appear to be at odds.

In a province as prosperous as Ontario, homeless encampments cannot be the best we can do for our residents, communities, and businesses. We know we have the capacity to solve this problem. All that we need is the resolve.

[1] AMO Survey of Municipal Service Managers and DSSABs, December 2023

Ontario Municipalities Are Committed to Meeting Rights Obligations

Municipalities have long understood the critical importance of housing in the health, safety, and well-being of individuals and families.

Ontario's municipalities are also fully committed to meeting all their obligations under the *Charter* and the *Ontario Human Rights Code*. But in the context of substantial growth in needs and declining resources, interpretations of what these obligations are, and how to meet them are increasingly at odds.

In responding to homeless encampments, many municipalities are following guidelines provided by experts in rights-based approaches[2], including the importance of:

- Meaningfully engaging with individuals living in encampments, including ongoing good faith discussions with as many encampment residents as possible to understand concerns and provide supports;
- Exploring viable alternatives to encampment evictions or removals, such as offering alternative housing solutions – like tiny homes, shelters, rent supplements or re-locating encampments from dangerous or inappropriate sites;
- Supporting encampment residents' access to essential services, such as drinking water, waste management, and sanitation facilities;
- Respecting encampments residents' belongings; and
- Working with encampment residents and police forces to develop and implement encampment safety protocols.

Many municipalities across Ontario have implemented innovative approaches to encampments that have improved circumstances for both encampment residents and the broader community.

[2] The Shift Municipal Engagement Guidance, Homeless Encampments – The Shift, 2023

Case Study 1:

Municipality A – a regional municipality – found an alternative to a large encampment on municipal land. There were health and safety risks resulting from fires, pests, unsanitary conditions and serious criminal activity and unsanitary conditions. To protect the residents and to prevent further damage to the property, the upper tier municipality worked with a lower tier municipality and participating community partners to find an interim housing solution. A supervised transitional housing site was established on municipal land with 50 cabins to provide temporary shelter. On-site services help residents meet basic needs, connect to services and permanent housing options. These efforts are complemented by a new Council-approved and funded plan to end chronic homelessness.

Case Study 2:

Municipality B – a northern municipality with a large Indigenous population – implemented a protocol to manage encampments on public property with an explicit commitment to a rights-based approach. It requires that the municipality exhaust options for engaging with and moving each individual to a safer indoor space before encampment removal is considered. Respect for and protection of Indigenous rights is a key commitment. The protocol outlines the roles and responsibilities of various municipal players, centering the provision of services around the principles of housing first and the safety of encampment and broader community residents. The local District Social Services Administration Board collaborates to provide support services such as outreach, emergency shelter and housing help assistance.

Case Study 3:

Municipality C – a large municipality – focused on a human rights-based outreach to meet the basic needs of high acuity unsheltered homeless individuals through an innovative service hub and mobile depot model. This approach was implemented within the context of a Whole of Community System Response, building upon a robust existing emergency shelter and housing supports system and provision of new mental health and addictions services plus 600 highly supportive housing units. Encampment health and safety review protocols are in place to guide municipal staff and community partners when supporting and managing encampments in a way that balances the public and private interests of public spaces while allowing for temporary shelter. This includes identifying situations where encampments are able to remain with supports and situations where they are restricted or significant interventions including removal are required. It also sets out rules for inhabitants of encampments to ensure health and safety (e.g. limiting the size and not allowing open fires or combustibles). These protocols also allow for identification of any challenges, unmet needs and/or resources required to respond to and support social and health service care planning.

But almost five years out from the beginning of the pandemic, many municipalities with long-term encampments are experiencing an erosion of community will, trust and buy-in for solutions. Tensions arise between individual and community obligations when municipalities respond to encampments. There is often a lack of consensus between what encampment residents need, what community members want, what human rights advocates are calling for, and what municipalities believe they must do to fulfill their roles and responsibilities to all residents.

Some people living in encampments refuse offers of shelter or housing options, opting to continue living in an outdoor encampment for various reasons. There are situations when it is necessary to re-locate and/or remove encampments and find other alternative options.

It is not a sustainable, long-term solution for municipalities to allow the normalization of encampments. Municipalities need to act in the best interests of the homeless and their communities to find other solutions.

Municipalities Need Flexibility to Respond to Complexity

Municipalities recognize the challenging circumstances that lead people to end up in encampments. These community members have complex needs that municipalities do their best to meet, with the same respect, dignity, and compassion afforded to all municipal residents.

But municipal responsibilities go beyond supporting encampment residents. Municipal governments are responsible for ensuring community health and safety through public health, by-law enforcement, paramedicine, fire, and policing services.

Homeless encampments are mostly unplanned environments without the infrastructure and amenities to make them healthy and safe places for the inhabitants residing there. As a result, the proliferation of homeless encampments can result in substantial risks to both encampment residents and the broader community.

This is why municipalities have by-laws to prohibit certain activities on properties that may cause personal injury or damage to the lands. This often includes bans on camping and erecting unauthorized structures. Municipalities are also obligated to exercise powers under the *Fire Protection and Prevention Act* to remove or reduce an immediate threat to life. Municipally-led public health agencies work to prevent transmission of infectious diseases, while municipal police forces must enforce the Criminal Code to ensure public safety.

Meeting all these obligations in a way that respects everyone's rights and needs is not always straight forward, and frequently requires significant judgement as situations can quickly become complex:

Case Study 1:

Municipality X – a mid-sized city with a significant student population – had a significant encampment in a major public park for over two years. At its largest, the site housed over 100 residents and included many unsafe structures. Violence and illegal activity, including fentanyl trafficking, became common place as policing became dangerous and ineffective. Numerous serious fires created threats to life and inflicted major damage. Outreach workers continued to provide health and support services and repeatedly offered alternative housing options to all individuals in the encampment. While many residents were successfully transitioned into housing, a number refused to leave unsafe structures.

Case Study 2:

Municipality Y – a large upper tier municipality – experienced an encampment of approximately 50 people established on municipal land used to support public transit. The municipality quickly mobilized intensive community social service resources and incurred significant costs to provide security and regular site clean-up. Despite efforts to meet the needs of residents, it was determined that the conditions at the encampment, including fires, pests, unsanitary conditions, and serious criminal activity posed a risk to health and safety as well as damage to the land, so removal was sought. Alternative shelter and housing solutions to the encampment were provided, including 50 new transitional housing units.

Case Study 3:

Municipality Z – a northern urban community – had many encampments in parks, roads and private property. After an encampment resident tragically died after creating a fire inside their tent, municipal fire services educated residents about how to stay warm in a safe manner, but the risks remained. Municipal law enforcement officers work together with social services staff first to connect with the residents to seek a resolution. The approach is open, transparent, and outlined publicly in a municipal protocol. In addition, a guidance document was developed by a third-party expert in homelessness service delivery planning. There is an emphasis on finding solutions through housing and other support services to resolve encampment situations. Council is going further to implement a plan to end chronic homlessness by 2030.

Municipal governments across Ontario experience challenges ensuring the health and wellness of inhabitants of encampments. First responders such as paramedics are often called in response to emergency situations or to provide community paramedicine services. Encampment inhabitants have had serious health conditions including life threatening ones. People have been hospitalized and, in a few cases, even died. Health risks come from extreme weather exposure, carbon monoxide poisoning, fires, and from smoke inhalation because of the use of heating and cooking devices within tents and other structures. Others have suffered from frostbite, resulting in amputations of fingers and toes.

In many of these circumstances, removal of encampments was deemed necessary to preserve the safety of both the residents of the encampments and the broader community.

Municipalities understand that alternative shelter options must be identified before removing encampments. They understand that in some circumstances, the ongoing existence of an encampment might be the best option – regardless of implications for others' access to parks, manageable safety concerns, or impacts on businesses and community quality of life. They understand the need to educate their staff, officials, and the broader public on the rights that all residents have.

However, a categorical ban on encampment removals under any circumstance or a sense that enforcement does not have a role in encampments management simply doesn't reflect the complex situation in which Ontario finds itself. Pretending otherwise does a disservice to the many dedicated municipal staff and officials who find themselves trying to rectify an untenable situation.

Federal and Provincial Government Leadership Is Needed Now

Municipalities have an important role to play contributing to solutions to homelessness and supporting those in encampments. But the scope of action and investment required to adequately address encampments far outstrips municipal fiscal capacity and jurisdiction.

Provincial Action Required

Progress on encampments depends primarily on action and leadership from provincial government to address the root causes of homelessness, namely:

- **Growing Income Insecurity:** Across the province, a growing number of Ontarians can no longer afford the basic necessities of life. In Ontario, 45% of tenant households spend 30% or more of their total income on shelter. This is the highest rate across the country. By 2025, approximately 160,000 households will spend more than 50% of their income on rent, putting their housing at risk and increasing the likelihood of them becoming homeless. Food bank use in Ontario has skyrocketed, increasing 42% over the past 3 years alone. One-third of these visitors were using food banks for the first time, including growing numbers of workers.[3] When people can't afford to pay rent and feed themselves and their families, they aren't able to work, take care of their kids, or contribute to the community. Despite recent increases to the Ontario Disability Support Program (ODSP) rates, in real terms ODSP and Ontario Works rates have never been lower, having not kept up with inflation for decades. Outdated and overly complicated rules keep people in poverty. Increasing social assistance rates and transforming social assistance to better help people to get back on their feet and fully participate in the economy will be a critical part of making progress on homeless encampments.

Social Assistance – Currently, because they do not have shelter costs, people who are homeless are not entitled to receive shelter benefits. This means that homeless people on ODSP/OW receive around $500/$400 less per month than the average monthly rates ($1308/$733). Amending OW and ODSP policies to provide the shelter allowance to homeless individuals is a key way that the province can make progress on homelessness.

[3] Feed Ontario – The Hunger Report (2022).

- **Insufficient supply of deeply affordable housing:** Deeply affordable housing includes a range of approaches – from government-owned buildings, to rent subsidies, to non-profit housing and co-operative developments — to provide housing for individuals who are unable to afford market rents. It is a smart way to invest tax dollars in community well-being and economic prosperity by providing people with dignity, opportunity, and a better quality of life. The wait list for government subsidized housing assistance in 2018 was 215,000 people. According to recent Canada Housing Renewal Association study, an additional 143,225 units of deeply affordable community housing is needed in Ontario by 2030 just to meet the OECD average.[4]

  Most social housing stock in Ontario has been made possible by past significant federal and provincial investments, primarily between the 1960s and 1990s. However, provincial commitment has been limited since downloading responsibility for social housing to municipalities in the 1990s. Ontario remains the only jurisdiction in Canada where social housing is a municipal responsibility. Each year, municipalities spend approximately $1 billion in connection with provincial housing programs.[5] During the pandemic, many municipalities invested in additional deeply affordable housing assistance to meet demand. Property taxpayers, including people on fixed incomes, cannot support the kinds of investments needed to keep up with demand.

The National Housing Strategy lays a good foundation for action. However, the recent temporary federal-provincial disagreement on the proposed Ontario provincial action plan put over $350 million in NHS funding at risk, highlighting a fundamental lack of intergovernmental alignment and the overall disconnect between community housing needs, targets, and resources. There is a need to fundamentally re-think the way that community housing is funded in Ontario. Collaboration and integration of effort to a shared commitment to end homelessness is absolutely required.

[4] Deloitte, Canadian Housing and Renewal Association and Housing Partnership Canada: The Impact of Community Housing on Productivity, 2023.

[5] Financial Accountability Office of Ontario – Ontario's Housing and Homelessness Programs (2021)

- **Inadequate Approach to Mental Health and Addictions:** Ontario is also experiencing a mental health and addictions crisis that intersects with and contributes to homelessness. People with poor mental health are more vulnerable; homelessness exacerbates mental illness – a tragic and costly cycle. Approximately 30-35% of those experiencing homelessness and up to 75% of women experiencing homelessness struggle with mental illnesses.[6] Ontario's Roadmap to Wellness program was a step forward in addressing mental health and addictions challenges in Ontario. But progress has been slow, waitlists for addictions treatment programs remain far too long, and government action has not focused enough on people with complex social needs and the importance of integrating health and social supports. Inconsistent access to mental health and addictions services across the province results in gaps for many rural and northern communities that prevent progress on homelessness.

Supportive Housing – Supportive Housing is deeply affordable housing with on-site supports that helps individuals achieve housing stability, preventing a return to homelessness, especially for people with mental health conditions and addictions. Significantly more supportive housing units are need urgently. Estimates of the shortfall of units in 2017 range from between 30,000 to 90,000.[7]

[6] www.homelesshub.ca/about-homelessness/topics/mental-health#:~:text=People%2520with%2520mental%2520illness%2520experience,experiencing%2520homelessness%252C%2520have%2520mental%2520illnesses

[7] Wellesley Institute – Supportive Housing in Ontario: Estimating the Need (2017)

It will take years to reverse the systemic issues created by decades of policy choices made by successive provincial governments. In the interim, provincial leadership and investment is required to:

- **Expand the emergency shelter system:** Emergency shelters already under strain are ill-equipped to respond to increasing demands driven by growing numbers of asylum-seekers and sky-rocketing rents.

- **Establish Homeless Encampment Guidance:** Provincial guidance is urgently needed to ensure an appropriate and consistent approach to encampments in a complex and evolving legal and policy landscape. The abdication of leadership by the provincial government and resulting adjudication by the courts is costly and slow, creating unclear and unrealistic expectations, and feeding divisions at the community level. Establishing and reinforcing principles and parameters at a provincial level, consistent with the statutory obligations, will allow municipalities to focus on what they do best – providing services to citizens aligned with local needs and circumstances – without the impossible task of reconciling provincial policy choices at odds with group or individual rights.

- **Cost-match federal encampment funding:** The 2024 Federal Budget announced an additional $250 million in dedicated funding to addressing encampments with a call out to provinces and territories to cost match this investment. The provincial government must heed this call and provide the matching funds.

Federal Government

AMO applauds important demonstrations of federal government leadership on non-market housing and homelessness, including the 2018 National Housing Strategy, the 2019 Reaching Home Initiative, and most recently elements of the 2024 Canada's Housing Plan, including the Affordable Housing Fund, the Rapid Housing Initiative and the Rental Protection Fund.

Sustained, concerted, significant action across all governments is needed, however, to truly make progress. The federal Parliamentary Budget Officer has determined that the funding is still insufficient to meet the target of reducing chronic homelessness by 50%. This will require additional investments of $3.5 billion a year across Canada. This is 7 times the current funding level. Recent federal-provincial disagreements in the context of the National Housing Strategy highlight the need for stronger inter-governmental collaboration on community housing and homelessness across all three orders of government.

AMO supports the federal Housing Advocate's call for a federally-led National Encampments Response Plan. This Plan must, however, preserve municipal flexibility and respect provincial (and in turn, municipal) heads of power, jurisdiction and rights. This is necessary to meet broader responsibilities and respond to specific circumstances

effectively. It cannot include recommendations from the federal Housing Advocate's report such as a ban on forced removals in any circumstances.

How Can Municipalities Navigate in the Interim?

While provincial and federal action is urgently required, municipal governments are responding to immediate needs in their community that cannot be delayed by insufficient support from other orders of government.

An evolving legal landscape and the proliferation of guidance from different sources about how municipalities should respond to homeless encampments can create challenges for municipalities and service partners trying to assess options.

Individuals do not have a right to camp anywhere they choose on public lands, at any time. Nor do those who decline appropriate alternative shelter options have a right to continue to reside in encampments.

Municipal governments must implement solutions that are effective, appropriate, feasible, practical, and in compliance with Ontario and Canadian law including but not limited to human rights legislation. For example, in contrast to some guidance, municipal police forces cannot be ordered by municipal councils to stop enforcing the Criminal Code by decriminalizing drug use in encampments. Municipal police forces also cannot abdicate their public safety responsibilities, which is incompatible with suggestions to fully de-centre policing as a municipal response.

Some guidance has stated categorically that municipalities must stop all removals on public lands, going beyond current legal obligations. The Shift's Homeless Encampments: Municipal Engagement Guidance was developed in collaboration with municipalities, housing and health experts and provides helpful and practical advice.

While each municipality faces unique facts and circumstances that require independent legal assessments and advice, considering these key factors as they make hard decisions about the best options for their communities can help municipalities to mitigate legal risks:

- **Alternative shelter options for individual encampment residents are critical:** Removing encampments from public lands when there is no alternative shelter space for encampment residents has been found to violate the *Charter* right to life, liberty and security of the person. Alternative shelter options include spaces in emergency shelters or alternative tenting locations, among others. It is not the case that municipalities must demonstrate capacity for all homeless individuals within a municipality to clear an encampment, but it is important that each individual in the encampment under consideration for removal have a specifically identified shelter option.

- **Location of alternative shelter options:** An important factor in whether alternative shelter locations are appropriate is their accessibility to services – such as food banks, health services, or sanitation facilities – that provide the basic necessities of life. Ways to enable access to these services – such as public transit or mobile service delivery options – should be considered.

- **Public use of occupied space:** How public lands where encampments have arisen are designated for use is an important factor. Encampments located in major parks that are heavily accessed by the public are different from encampments located on empty lots. The degree to which the presence of an encampment impedes public use of space may be a relevant factor, particularly from a public safety perspective.

- **Protected groups and homeless encampments:** *The Ontario Human Rights Code* prohibits actions that discriminate against people based on protected grounds like race, disability, and sex in social areas that include housing and services. Because of the over-representation of groups such as Indigenous people, people with mental health and substance use conditions, or gender-diverse individuals in homeless encampments, there is an elevated risk that actions related to homeless encampments can create or exacerbate disadvantage based on prohibited grounds.

Ultimately, municipalities should be:

- Assessing risk to the unsheltered homeless, community residents and the municipality and identify actions to mitigate them.
- Assessing compliance of planned actions with the *Charter* and the *Ontario Human Rights Code* by consulting legal counsel.
- Providing outreach to people living in homeless encampments and engaging them about solutions about their individual circumstances.
- Engaging and developing solutions with people with lived experience of homelessness to ensure the proposed approach is appropriate and responsive to the needs and experiences of people experiencing homelessness.
- Focusing on the needs of and appropriately engaging Indigenous People in the community, given their over-representation in the homeless population, must inform the response.

Conclusion

Homeless encampments are the most recent symptom of much deeper system failures that are compromising the foundations of our social and economic prosperity.

It's time for the provincial and federal governments to play a leadership role in solving this crisis and addressing the root causes of homelessness.

Ontario's municipalities are ready to work with provincial and federal partners to end both homeless encampments and chronic homelessness in Ontario.

Disclaimer: This document is not to be construed as the provision of specific legal advice for local situations. Municipalities and organizations should seek legal counsel's advice on questions regarding compliance with applicable laws. This document does not attempt to comprehensively cover every possible situation that may arise with encampments and is timely at the date of its publication. Municipal governments should endeavour to keep apprised of developments in law, and to learn from each other what works and what does not with the circumstances of their local situation.

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