

MUNICIPAL REGULATION OF PUBLIC SPACES:

EFFECTS ON SECTION 7 CHARTER RIGHTS*

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Introduction

On October 26, 2005, the City of Victoria obtained an interlocutory injunction to enforce one of its by-laws¹ and remove an assembly of campers from Cridge Park. The group of campers consisted of homeless municipal residents who could not or would not take refuge in the local shelters. There were also municipal residents protesting the lack of adequate services for the poor, and those that travelled from outside the municipality to support the group. The homeless campers were forced to leave the park because they were breaching a

* This paper developed from a conversation with Professor Benjamin Berger, University of Victoria, Faculty of Law, and from some of his suggested arguments for the Cridge Park injunction hearing.

¹ City of Victoria, By-law No. 91-19, *Parks Bylaw* (1991), s. 28. The section reads:

(a) No person may conduct himself in a disorderly or offensive manner, or molest or injure any other person, or loiter or take up a temporary abode over night on any portion of the park, or obstruct the free use and enjoyment of any park by any other person, or violate any bylaw, rule, regulation or notice concerning any park.

(b) Any person conducting himself as aforesaid may be removed from the park and is deemed to be guilty of an infraction of this bylaw.

municipal bylaw and the question they asked the city council was simple: Where can we go?

The morning following the injunction decision, the mayor of Victoria made a statement to the press about the case. He stated that “we cannot give up public parks or spaces” and that if the group moved to another city park, the by-law would be immediately enforced.² His comment reinforced the campers’ point. Public spaces consist of parks and streets, and both have by-laws that regulate their use. If the campers are not able to stay in public places because of these by-laws,³ if the shelters are full, and if they have no access to private property, then there is nowhere in Victoria where they can legally stay. This situation is not isolated to Victoria. It is common for a municipal by-law regime to regulate the use of public spaces.⁴ These by-laws usually prohibit obstruction of the streets and loitering in the parks. Such regulations create a regime in which those who lack permission to be on private property and have no access to shelters are left with no choice but to breach the by-laws if they desire to reside in that municipality.

The examination of this situation raises several questions. For example, from where does the authority to create a municipal regime of this nature flow? Is this type of regime contrary to s. 7 of the *Canadian Charter of Rights and Freedoms*⁵ (“*Charter*”)? If this type of regulation does breach the *Charter*, what is the impact on municipal governments? The exploration of these questions may at first seem

² See Alan Lowe’s interview with CBC BC On the Island (11 November, 2005), online: CBC <<http://www.cbc.ca/ontheisland/interviews.html>>.

³ See *supra* note 1; City of Victoria, By-law No. 92-84, *Street & Traffic Bylaw* (1992), s. 75. The section reads in part:

“... [N]o person shall damage, encumber, obstruct or foul any street or portion of a street or other public place or do anything that is likely to damage, encumber, obstruct or foul any street or public place...”

⁴ See *e.g.*, City of Vancouver Board of Parks and Recreation, *Parks Control Bylaw* (2003); City of Vancouver, By-law No. 2849, *Street & Traffic Bylaw* (2005).

⁵ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].

like a purely academic exercise; however, with approximately 26 percent of the households in Victoria at risk of becoming homeless,⁶ the implications of the exercise become rapidly evident.

Constitutionality of the By-law Regime

The regulation of public spaces by municipalities is within their delegated power. The provincial government authorizes such regulations through legislation. In BC, s. 8(3)(b) of the *Community Charter*⁷ grants BC municipalities the express authority to regulate with respect to public places. Local governments that choose to enact a by-law regime similar to Victoria's act under that authority, as well as under s. 46(1) and s. 62 of the *Community Charter*. Section 46(1) grants municipalities the authority to establish penalties for people who "cause a nuisance on, obstruct, foul or damage any part of a highway or other public place", and s. 62 authorizes municipalities to regulate "in relation to persons, property, things and activities that are in, on or near public places". There is little question that a regime regulating public spaces is *intra vires* a municipality, but a larger question still remains. Does this type of regime violate the *Charter*?

The first issue to address when examining the constitutional validity of a municipal by-law regime is to determine whether or not the *Charter* applies to municipal government action. Prior to a Supreme Court of Canada (SCC) case addressing the issue, BC lower courts assumed that the *Charter* applies. In 1993, the SCC applied the *Charter* to a municipality.⁸ The Court did not specifically address why the *Charter* applies to municipalities; they simply proceeded with a *Charter* analysis. After this case, lower courts continued to assume that since

⁶ In 1996, 26 percent of households in Victoria used more than 50 percent of their income for housing. See British Columbia, Ministry of Municipal Affairs and Ministry of Social Development and Economic Security, *Local Responses to Homelessness: A Planning Guide for B.C. Communities* (2000) at 92.

⁷ *Community Charter*, R.S.B.C. 2003, c. 26.

⁸ *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084.

municipalities derive their power from provinces, they fall under the *Charter*.⁹

The SCC expressed its reasoning in *Godbout v. Longueuil (City)*¹⁰ (“*Godbout*”) after one of the parties questioned the *Charter*’s application to municipalities in their appeal. Before proceeding with a *Charter* analysis, La Forest J. took the time to expressly state why s. 32¹¹ of the *Charter* includes municipalities:

[S]uch entities are, in reality, ‘governmental’ in nature ... they cannot escape *Charter* scrutiny. In other words, the ambit of s. 32 is wide enough to include all entities that are essentially governmental in nature and is not restricted merely to those that are formally part of the structure of the federal or provincial governments.¹²

La Forest J., writing for part of the Court, found that municipalities fall under the *Charter* for three reasons. Municipalities are democratically elected and accountable in a similar manner to Parliament and provincial legislatures; they possess a general taxing power that is indistinguishable from that exercised by the Parliament or the provincial legislatures; and municipalities derive their existence and law-making power from the provincial government.¹³ *Godbout* cemented the Court’s position, which many had expected: the *Charter* applies to municipal governments.

⁹ Felix Hoehn, *Municipalities and Canadian Law* (Saskatoon: Purich Pub., 1996) at 324.

¹⁰ *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844 [*Godbout*].

¹¹ *Charter*, *supra* note 5 at s. 32. The section states:

- (a) to the Parliament and government of Canada in respect of all members within the authority of Parliament including all matters relating to the Yukon and Northwest Territories; and
- (b) to the legislatures and government of each province in respect of all matters within the authority of the legislature of each province.

¹² *Supra* note 10 at para. 47.

¹³ *Ibid.* at para. 51.

Development of the Section 7 Analysis

Section 7 states:

7. 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.

The SCC has repeatedly stated the proper approach to interpreting and applying all of the rights protected under the *Charter*. In *R. v. Big M Drug Mart Ltd.*,¹⁴ the SCC expressed that when applying the *Charter*, a purposive and non-legalistic approach should be taken; the Court also noted that even if the state action has a valid purpose, the effects of the action are sufficient to violate *Charter* rights.¹⁵ The Court has also expressed the appropriate approach for interpreting s. 7 specifically. In *Re B.C. Motor Vehicle Act*¹⁶ (“*Re MVA*”), the SCC stated that s. 7 guarantees three separate rights—life, liberty and security of the person—and that only one of the three need be engaged in order to trigger s. 7.¹⁷ These rights are qualified by the second part of the section; s. 7 will not be breached if the right is deprived in accordance with the principles of fundamental justice. There is an argument that s. 7 confers two separate rights:¹⁸ the first is the right to life, liberty and security of the person (a positive right), and the second is the right not to be deprived of those unless the deprivation is in accordance with the principles of fundamental justice (a negative right). In more recent cases, the “two rights theory” of s. 7 has received less mention, although the Court has explicitly left open the possibility.¹⁹ The Court has also repeatedly made it clear that they do

¹⁴ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295.

¹⁵ *Ibid.* at 344 and 296.

¹⁶ *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486 [*Re MVA*].

¹⁷ *Ibid.* at para. 23; Hoehn, *Municipalities*, *supra* note 9 at 50.

¹⁸ *Re MVA*, *ibid.* at paras. 23, 104-105; *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84, [2002] 4 S.C.R. 429, at paras. 83, 336-31 [*Gosselin* cited to S.C.R.].

¹⁹ *Gosselin*, *ibid.* at 83.

not feel obligated to determine the scope of s. 7. As case law develops, the Court will decide the appropriate extent of the section.²⁰

To summarize, the judicial analysis under s. 7 has two components. First, the claimant must establish that his or her life, liberty or security of the person was deprived by a state action. Second, the claimant must prove that the deprivation was contrary to a principle of fundamental justice.²¹ With respect to the first component, the right to life has not really been engaged in jurisprudence,²² although that may change with future judgments. Most of the successful claims have been based on a deprivation of the claimant's liberty or security of the person.

The SCC has interpreted "liberty" in a broad sense.²³ The right to liberty is always engaged if the threat of imprisonment is present, but La Forest J. recognized in *Godbout* that liberty can extend much further:

[T]he right to liberty enshrined in s. 7 of the *Charter* protects within its ambit the right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference.

[...]

[T]he autonomy protected by the s. 7 right to liberty encompasses only those matters that can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence.²⁴

In that case, an employee was fired for not meeting a municipal residency requirement for employment. La Forest J. felt the right to

²⁰ *Re MVA*, *supra* note 16 at paras. 66-67; *R. v. Morgentaler*, [1988] 1 S.C.R. 30 at 51 [*Morgentaler*]; *Gosselin*, *ibid.* at para. 79.

²¹ *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519 at 584 [*Rodriguez*].

²² Robert J. Sharpe and Kent Roach, *The Charter of Rights and Freedoms*, 3rd ed. (Toronto: Irwin Law, 2005) at 203.

²³ *Godbout*, *supra* note 10 at para. 66.

²⁴ *Godbout*, *supra* note 10 at para. 66.

liberty was invoked when choosing where to live. This interpretation of “liberty” has been accepted by the Court in later decisions.²⁵ In accepting that liberty covers autonomous personal decisions, the SCC was careful to limit the scope of the application. In *R. v. Malmö-Levine*²⁶ (“*Malmö*”), the Court clarified that the s. 7 right to liberty does not protect lifestyle choices since they do not engage the most basic values of human dignity and autonomy that underlie the *Charter*.²⁷

The SCC has also carefully analyzed the scope of “security of the person”. In *Morgentaler*,²⁸ the Court recognized that “security of the person” extends beyond physical harm and includes psychological and emotional stress.²⁹ The Court later confirmed this interpretation in *Rodriguez*.³⁰

There is no question, then, that personal autonomy, at least with respect to the right to make choices concerning one's own body, control over one's physical and psychological integrity, and basic human dignity are encompassed within security of the person, at least to the extent of freedom from criminal prohibitions which interfere with these.³¹

The scope was, again, expanded by the SCC in *New Brunswick (Minister of Health and Community Services) v. G. (J.)*³² (“*New Brunswick*”). The Court stated that “the protection accorded by this right extends beyond the criminal law”³³ and that the psychological harm does not

²⁵ *R. v. Malmö-Levine*; *R. v. Caine*, 2003 SCC 74, [2003] 3 S.C.R. 571, at para. 85 [*Malmö* cited to S.C.R.].

²⁶ *Ibid.*

²⁷ *Ibid.* at para. 86.

²⁸ *Morgentaler*, *supra* note 20.

²⁹ *Ibid.* at 56.

³⁰ *Rodriguez*, *supra* note 21.

³¹ *Ibid.* at 588.

³² *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 [*New Brunswick*].

³³ *Ibid.* at para. 58.

need to amount to nervous shock, but that it must be objectively determined to be “greater than ordinary stress or anxiety”.³⁴ Although the Court has left economic rights out of the scope of protection that s. 7 affords,³⁵ the Court has left open whether economic rights fundamental to human survival are covered under “security of the person”.³⁶

One must always remember that, even if life, liberty and security of the person are clearly engaged, s. 7 may not be violated. A right must be deprived *and* the deprivation must be contrary to the principles of fundamental justice. The “principles of fundamental justice” requirement qualifies the right to life, liberty and security of the person.³⁷ The interpretation of “principles of fundamental justice” was uncertain for some time. The first case to tackle the issue was *Re MVA*, and the SCC stated that fundamental justice is more than natural justice³⁸ or a procedural guarantee.³⁹ Lamer J. wrote, “the principles of fundamental justice are to be found in the basic tenets and principles, not only of our judicial process, but also of the other components of our legal system”.⁴⁰

The SCC has now developed a three-step test for the Court to recognize new principles of fundamental justice.⁴¹ First, the principle must be a legal principle. Second, the principle must be fundamental

³⁴ *Ibid.* at para. 60.

³⁵ *Irvin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at 1003 [*Irvin Toy*].

³⁶ Don Stuart, *Charter Justice in Canadian Criminal Law*, 3rd ed. (Toronto: Carswell, 2001) at 52; *Irvin Toy*, *ibid.* at 1003; *Gosselin*, *supra* note 18 at para. 81.

³⁷ *Re MVA*, *supra* note 16 at paras. 24, 62.

³⁸ *Ibid.* at para. 26.

³⁹ *Ibid.* at para. 65.

⁴⁰ *Ibid.* at para. 64.

⁴¹ *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, [2004] 1 S.C.R. 76, at para. 8 [*CFC* cited to S.C.R.]; *Malmo*, *supra* note 25 at para. 113.

to the societal notion of justice, illustrated by sufficient consensus. Third, the principle must be precise enough to be applied with predictable results. When applying this test to establish a new principle of fundamental justice, the Court may balance individual and societal interests.⁴² Principles of fundamental justice recognized by the Court include the requirement of a guilty mind,⁴³ the requirement for reasonably clear and unarbitrary laws,⁴⁴ and the right to a fair trial.⁴⁵ Principles of fundamental justice rejected by the Court include the best interests of the child,⁴⁶ human dignity and autonomy,⁴⁷ and the harm principle.⁴⁸

The Court has suggested the rights in ss. 8-14 of the *Charter* are a subset of those covered under s. 7, and that those rights are examples of deprivations of life, liberty or security of the person that are not in accordance with principles of fundamental justice.⁴⁹ If one can fit the proposed s. 7 deprivation under a right protected in ss. 8-14, the persuasive argument that the deprivation is automatically not in accordance with the principles of fundamental justice can be made.

The analysis the SCC has developed when applying s. 7 is set out above. It must be noted that, as with any right guaranteed under the *Charter*, once the violation of the right has been established, the state has the opportunity to justify the violation under s. 1 of the *Charter*. With respect to s. 7 in particular, the SCC has expressed that, because of the onus on the claimant to establish that the deprivation was not in accordance with the principles of fundamental justice, “a violation

⁴² *Malmo*, *ibid.* at para. 98.

⁴³ *R. v. Ruzic*, 2001 SCC 24, [2001] 1 S.C.R. 687 at para. 47 [*Ruzic* cited to S.C.R.].

⁴⁴ *CFC*, *supra* note 41 at para. 8.

⁴⁵ *New Brunswick*, *supra* note 32 at para. 91.

⁴⁶ *CFC*, *supra* note 41 at para. 7.

⁴⁷ *Rodriguez*, *supra* note 21 at 592.

⁴⁸ *Malmo*, *supra* note 25 at para. 111.

⁴⁹ *Re MVA*, *supra* note 16 at para. 28; *Morgentaler*, *supra* note 20 at 175.

of s. 7 will normally only be justified under s. 1 in the most exceptional of circumstances, if at all”.⁵⁰

Does the Municipal By-law Regime in Question Violate Section 7?

As Jeremy Waldron stated, all homeless people have “so far as freedom is concerned [are] the streets, parks, and public shelters, and the fact that those are collective resources made available openly to all”.⁵¹ When these resources are regulated by municipal governments in a way that deprives the homeless of this alleged freedom, is s. 7 of the *Charter* violated?

Municipal by-law regimes that prohibit using public spaces for sleeping and setting up shelters have not been formally challenged under s. 7 in BC. There have been several cases in BC similar to the Victoria Cridge Park case, where municipalities went to court to get an injunction to enforce their by-laws,⁵² but no instances where a full s. 7 claim has been made.

As previously mentioned, a common s. 7 claim relating to shelter is based on a notion of positive rights, or a claim that individuals have a right to reasonable access to shelter and the state has a duty to provide it. This argument is not required and will not be pursued here. The following arguments focus on the violation of s. 7 from the perspective of negative rights.

The effects of a by-law regime such as Victoria’s on the homeless can be framed in several ways. One view is that the regime prohibits homeless people from fulfilling basic needs required for survival. Another view is the regime leaves homeless people with no choice but to breach the by-laws if they live in the municipality. The final view is that the regime strips homeless persons of their choice of where to reside. Any of these options could be grounds for a s. 7 claim.

⁵⁰ *Godbout*, *supra* note 10 at para. 91; *Re MVA*, *ibid.* at para. 85.

⁵¹ Jeremy Waldron, “Homelessness and the Issue of Freedom” (1991) 39 *UCLA L. Rev.* 295 at 302.

⁵² *Vancouver (City) v. Maurice*, 2005 BCCA 37; *Vancouver Board of Parks and Recreation v. Sterritt*, 2003 BCSC 1421; *Vancouver Parks Board v. Mickelson*, 2003 BCSC 1271 [*Mickelson*].

From a perspective purely based on survival, the by-law regime in Victoria creates a situation where homeless people cannot obtain shelter or rest, necessities for human survival. The Victoria regime makes it an infraction to erect a shelter or to sleep (“loiter” or “obstruct”) in public places. On a January day in Victoria, 84 percent of homeless people do not have access to a shelter for that evening.⁵³ No one disputes that there are not adequate shelter beds in Victoria for those that need them. Homeless people in Victoria are limited to finding or creating shelter in public places since they have no access to private property. Adequate shelter in the winter and sleep are requirements for survival. A by-law regime that prohibits these two activities in public places prohibits homeless people from meeting their required needs lawfully. This prohibition violates s. 7, specifically the right to “security of the person”. Physical security is engaged in an evident way. In *Morgentaler*, the SCC acknowledged that a violation of physical security was the most obvious application of “security of the person” and extended the scope from there.⁵⁴ This violation is not in accordance with principles of fundamental justice because, as the SCC has recognized, the protection of human life is fundamental to our society.⁵⁵ None of the rights protected in the *Charter* can be enjoyed without the right to life. The fact that life is protected under s. 7 and s. 12 illustrates that the protection of human life is already a fundamental principle in our society. This was the very reason the majority of the Court rejected the s. 7 argument in *Rodriguez*.⁵⁶ There is no need to argue a new principle.

The second view of the effects of the Victoria by-law regime is that it strips homeless people of very fundamental choices. If a homeless person decides to reside in a municipality with a by-law regime such

⁵³ Victoria Cool Aid Society, *Homeless Count – 2005 Victoria, BC* (2005). Also note that shelters often have a limited number of nights per month a person can stay in order to fairly distribute the beds that are available.

⁵⁴ *Morgentaler*, *supra* note 20 at 56.

⁵⁵ See *Rodriguez*, *supra* note 21.

⁵⁶ *Ibid.* at 585. The majority of the Court in this case found that the protection of human life restricted them from finding a violation of s. 7, while McLachlin J.’s dissent used the principle as a basis for finding a violation.

as Victoria's, then she will be involuntarily violating the by-laws whenever she rests or finds shelter. By-laws that regulate the use of public spaces presuppose that residents have access to somewhere other than public space. With no access to private property or shelter, a homeless person has no means of complying with the by-laws. The justice system has a clear distaste for penalizing citizens for actions not morally voluntary.⁵⁷ "Liberty" protects choices that are so fundamental and personal that they go to the very meaning of personal autonomy and dignity.⁵⁸ The SCC has said that choosing where to reside qualifies under "liberty",⁵⁹ so one would assume that losing the fundamental choice of whether to abide by the law or not would also qualify as a deprivation of liberty. The principle of moral voluntariness was also a recognized principle of fundamental justice in *Ruzic*:

It is a principle of fundamental justice that only voluntary conduct—behaviour that is the product of a free will and controlled body, unhindered by external constraints—should attract the penalty and stigma of criminal liability. Depriving a person of liberty and branding her with the stigma of criminal liability would infringe the principles of fundamental justice if the accused did not have any realistic choice.⁶⁰

Although in *Ruzic* the Court's statement was specific to criminal offences, when applying the three requirements of a principle of fundamental justice from *Malmo-Levine*, one only needs to argue that there is a societal consensus that a person should not be punished for acts or omissions she has no control over. The other two requirements, that the principle be sufficiently precise and that it is an existing legal principle, have already been established since the Court has recognized this principle in criminal matters. Establishing a consensus that it is inappropriate and unfair to penalize citizens for actions that they have no choice but to perform, even if the penalty and stigma are slightly lowered, should not be that difficult.

⁵⁷ See *Ruzic*, *supra* note 43; *Re MVA*, *supra* note 16.

⁵⁸ *Supra* note 24.

⁵⁹ *Supra* note 25.

⁶⁰ *Ruzic*, *supra* note 43 at para. 47.

The last characterization of the effects of the regime is again founded on the deprivation of a fundamental choice. If a homeless person decides she does not want to involuntarily violate the by-law regime, she is forced to leave the municipality. She loses her right to choose where to live. As part of the SCC stated in *Godbout*, depriving people of the right to choose where they will reside violates their liberty. In addition, in a municipality like Victoria, forcing homeless people to leave the city has other costs to their liberty and security of the person. A city like Victoria has services such as psychological, substance abuse and employment counselling, as well as shelter beds (when they are not full), and access to food, health care, money and drugs for those addicted. Forcing people to leave the municipality in order to comply with the law deprives them of these services, since many are not available outside urban centres. This violates their liberty by depriving them of the fundamental choice to try to get out of the economic situation they are in by taking advantage of services available in the city. Outside of the city, a drug addict has less access to substance abuse counselling and someone unemployed and under-educated has less opportunity to develop job skills. Depriving people of their right to choose to live in a municipality also violates their security of the person by harming their physical and psychological well-being and health by limiting access to health care and counselling services.

When using this characterization of an engaged s. 7 interest, the principle of fundamental justice is not as apparent. In *Morgentaler*, the SCC stated,

[A] legislative scheme which limits the right of a person to deal with her body as she chooses may violate the principles of fundamental justice under s. 7 of the *Charter* if the limit is arbitrary. A particular limit will be arbitrary if it bears no relation to, or is inconsistent with, the objective that lies behind the legislation.⁶¹

One could argue that the regime at issue violates the liberty and security of the person of homeless people in Victoria in an arbitrary manner. The deprivation of their rights is due to their economic status. That deprivation has no relation to the presumed purpose of by-laws that regulate public spaces, which is to provide an equal opportunity for all residents to use the space in a safe and meaningful

⁶¹ *Rodriguez*, *supra* note 21 at 619-620.

manner. The effect of a by-law regime of this nature is inconsistent with this purpose since, due to their economic status, a group of residents (the homeless) cannot use the space in a manner that is meaningful to them. The deprivation of their liberty and security of the person is not in accordance with the principles of fundamental justice.

In the above ways, the municipal by-law regime in question likely violates s. 7 of the *Charter*. Only one characterization need be successful. The municipality would then have the onus of justifying the infringement under s. 1 but, as stated above, this would only be successful in exceptional circumstances.

Where Does This Leave Municipalities?

If the by-law regime violates s. 7 and cannot be justified under s. 1, then municipalities must change their regime or cease enforcement. It is not realistic or constructive for people to camp freely in public places; however, a *Charter* challenge may force governments to address the issue in a more efficient and effective manner if that is the only available alternative. The onus to deal with the issue certainly does not fall completely on municipal governments. The causes of homelessness are very broad and include mental health, addiction, lack of affordable housing and employment opportunity, abuse and many other factors.⁶² Some of these issues cannot and should not be dealt with at the municipal level. Municipal governments are in a good position to lobby the higher levels of government about the issue of homelessness if they are forced to do so. Because local government decisions affect people on a day-to-day basis and they are more accessible than other levels of government, municipal governments will always have a role in addressing important social issues like this one.

Municipal governments also have a number of tools they can use to encourage affordable housing and shelters. These include condominium conversion controls, housing reserve funds, density bonuses, comprehensive development zoning, fast tracking development approvals, provision of land, secondary suite policies

⁶² Toronto, Report of the Mayor's Homelessness Action Task Force, *Taking Responsibility for Homelessness: An Action Plan for Toronto* (1999).

and provision of tax breaks.⁶³ Not only can they lobby higher levels of government, but they can also use such tools to address homelessness at the local level.

Other jurisdictions outside of Canada have dealt with the issue of homelessness very differently. Scotland has enacted a landmark legislative regime that requires local governments to provide housing for the homeless and to produce a homelessness strategy.⁶⁴ Models such as this one may provide Canadian governments with direction on how to better address this issue.

Conclusion

The Cridge Park injunction granted to Victoria was a temporary injunction. In all prior BC injunction cases, permanent injunctions were granted.⁶⁵ Although Cridge Park was cleared and the campers moved on, in August 2006, the campers and protestors can return. The municipality may be forced to go through the injunction process again unless a solution is found. Perhaps the limit on the injunction granted to Victoria is an indication of the Court's decreasing patience with the situation, and a growing unwillingness to grant a permanent solution (a permanent injunction) to the municipality without forcing them to address the cause of the situation. A full s. 7 challenge of the Victoria by-laws may also take place in the future. It seems as though the Court, as well as the campers, are trying to put some pressure on the municipality to find a solution. Only time will tell if they are successful.

⁶³ *Supra* note 6 at 69.

⁶⁴ *Homelessness etc. (Scotland) Act*, A.S.P. 2001, c. 10; *Housing (Scotland) Act*, A.S.P. 2003, c. 10.

⁶⁵ *Supra* note 52.