



Ontario: Lessons from one city's attempt to regulate homelessness

Can evicting homeless people deny them their Constitutional rights?



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In July of 2007, the City of Ontario decided to set aside a 2.5 acre site near Ontario International Airport where homeless people could camp without fear of police encounters, fines or warrants. Ontario officials estimated that approximately 500 Ontario residents were homeless, and the site was meant to temporarily address the needs of the 140 people among them whom officials counted as “chronically homeless.” These were people whose needs were not met by Ontario’s homeless shelters and transitional housing services.

“The site began as a response to community concerns about homeless people sleeping in the doorways of business establishments, parks, freeway overpasses and near residential areas,” said Brent Shultz, Ontario’s Director of Housing and Neighborhood Revitalization. “We wanted to balance the needs of the homeless with the needs of Ontario residents and business owners.”

At first, approximately 15 to 20 residents moved to the site, which became known as “Tent City.” Over the next few months, the population grew steadily to 140. In November, it suddenly mushroomed. “By that time, there had been media attention from the *L.A. Times* and other newspapers. Some stories included maps to the site’s location,” said Shultz. “And there was word of mouth: homeless people have their own networks, and they have cell phones.”

By February, 2008, Tent City’s population had grown to more than 400 residents. “Churches and

nonprofits providing services there became concerned about fighting, about dog bites, and about conditions at the site – it had grown so large it was difficult to keep clean,” said Shultz. “We don’t want to shy away from our responsibility to our own homeless population, but we didn’t have the resources to handle the entire region’s homeless population.”

Residency for the homeless

When Ontario officials decided to limit Tent City to Ontario residents, they contacted the American Civil Liberties Union for advice. Ontario police then gave Tent City residents notice that the site would be temporarily closed at the end of March, and that only Ontario residents would be permitted to return.

To receive a 90-day permit to stay, Tent City residents had to prove they had ties to Ontario in one of four ways: 1) school records confirming attendance at Ontario primary or secondary schools; 2) if they were known to Ontario’s police and code enforcement officers; 3) if they had a family member who lived in Ontario; or 4) if they could prove they had rented or owned a home in Ontario via a rental lease or through real estate records.

“City workers set up tables for two weeks at the site to help people find records, and to help those who were not from Ontario return to their city of origin,” said Shultz. Out-of-town residents were offered free bus and train fare.

“We had a few success stories. We found a man’s prior employer and told him ‘Your boss wants you back,’ and he agreed to return to Texas,” said Shultz.



“We located the daughter and granddaughter of a woman from Milwaukee, and they were happy to welcome her home.”

On March 17, Ontario police and code enforcement officers arrived at Tent City to offer residents wristbands, color-coded to indicate their status. Those who could prove Ontario ties received blue wristbands, those who claimed but had not yet proven their ties received orange wristbands, and the rest received white wristbands and a warning that they would have to leave within a week. They were warned that camping is not permitted at any other site within Ontario, and that the City’s shelter beds were already full.

By the time Ontario police arrived on March 24, 2008, to clear the site, most Tent City residents were already gone. Those who remained left peacefully, and no arrests were made. The City plans to improve the site and enclose it with a fence.

“Only people with permits will be allowed to remain in Tent City from 10 p.m. to 6 a.m.,” said Schultz, who explained the fence was necessary to protect Tent City residents from drug dealers and others who prey on the homeless. No one under the age of 18 will be permitted to live in Tent City, and animals will be barred, Schultz added.

Asked if people with disabilities would be allowed to bring in service and companion animals, Schultz replied, “We’ll have to look at that issue – I haven’t heard of anyone with service animals.”

As for children, Schultz said that Ontario staff would “work with the County of San Bernardino so we can place them with the County.”

Discrimination questions

Ontario’s Tent City experiment raises concerns for northern California attorneys who work with homeless people. Bettina Neufeind, a fair housing attorney with Bay Area Legal Aid’s Oakland office, warned that bans on animals

and children may run afoul of state and federal fair housing laws which bar discrimination on the basis of disability and familial status.

“Fair housing laws are broadly written and meant to encompass all types of housing scenarios, including Ontario’s Tent City,” said Neufeind. “Families with children can’t be prevented from enjoying equal housing benefits, especially the improved benefits Ontario will provide once site improvements are completed.”

“Lawmakers amended fair housing laws to protect families with children because they were historically excluded from housing opportunities – sometimes by people who were well-meaning,” Neufeind explained.

Neufeind was also concerned about Ontario’s decision to keep animals out of Tent City. “People with disabilities sometimes rely on animals for health and well-being,” said Neufeind. “A categorical, blanket rule against animals would violate California’s Fair Employment and Housing Act [Gov. Code, §§12900-2996], as well as the federal Fair Housing Amendments Act [42 U.S.C. §§ 3601 *et seq.*].”

Neufeind said that if Tent Cities appear in her area, “the poverty law community in the Bay area is very well-established and aware of the affordable and accessible housing shortage here, and we would mobilize to protect the fair housing rights of our homeless population.”

Carlos Villarreal, Executive Director of the San Francisco chapter of the National Lawyers Guild, which boasts more than 1000 members from the Bay area, agrees. Villarreal said his chapter includes many advocates willing to provide pro bono representation to homeless people.

Villarreal said Ontario’s decision to exclude people who cannot prove they have ties to Ontario raised due process concerns. “In essence, Ontario banned outsiders from being homeless, because they told them there was no other site they could camp in, and that no shelter

beds were available, said Villarreal. “Even locals couldn’t stay if they were unable to find documents that proved their ties to Ontario.”

Michael Risher, an attorney with the ACLU’s Northern California office in San Francisco, said Ontario’s decision to evict people who can’t prove their local ties also raised Constitutional concerns. The right to travel is a fundamental Constitutional right, Risher said. When government impinges on that right, it triggers strict scrutiny review.

“Cities aren’t supposed to discriminate against people just because they’re not locals,” said Risher. As an example, Risher said that laws that require residency as a condition of receipt of welfare benefits have been struck down by the courts.

Shultz says Ontario has no wish to ban homeless people who are not local residents. “Homeless people have a right to be in the City, but they can’t break the law, and they cannot camp overnight,” Schultz said.

Ontario’s decision to evict homeless people without local ties from Tent City may also run afoul of *Jones v. City of Los Angeles* (9th Cir. 2006) 444 F.3d 1118. The 2-1 opinion held that a Los Angeles ordinance that banned sitting, lying, or sleeping on public streets and sidewalks at all times and in all places within the City’s borders violated the Eighth Amendment’s ban on cruel and unusual punishment.

Writing for the majority, Judge Kim McLane Wardlaw stated:

The City and the dissent apparently believe that Appellants can avoid sitting, lying, and sleeping for days, weeks, or months at a time to comply with the City’s ordinance, as if human beings could remain in perpetual motion. That being an impossibility, by criminalizing sitting, lying, and sleeping, the City is in fact criminalizing Appellants’ status as homeless individuals.

(*Id.* at pp. 1136-1137.)

Wardell concluded:



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... so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds, the City may not enforce section 41.18(d) at all times and places throughout the City against homeless individuals for involuntarily sitting, lying, and sleeping in public. Appellants are entitled at a minimum to a narrowly tailored injunction against the City's enforcement of section 41.18(d) at certain times and/or places. (*Id* at 1138.)

Brent Shultz hopes that concerns about Tent City will soon become moot. "Tents are not a long-term solution for our chronic homeless population," said

Schultz. He added that he is searching for funding to build both transitional and permanent supportive housing for Ontario's long-term homeless population, to eliminate the need for the City to maintain its Tent City.

Readers who want to help homeless people in their area should contact their local legal services office. The biggest agencies in northern California are Bay Area Legal Aid (www.baylegal.org), Legal Services of Northern California (www.lsn.net) and California Rural Legal Assistance (www.crla.org). To assist homeless people with disabilities, readers may also contact Protection & Advocacy, Inc. (www.pai-ca.org).

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