Chapter 1.4

The Toronto Shelter Zoning By-law: Municipal Limits in Addressing Homelessness

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> If you are allowed to put a shelter anywhere you want in the city, it takes away a fundamental right of the public to have meaningful input into what occurs in their city... [Public input] is fundamental to local democracy. Paul Sutherland, Toronto City Councillor, April 2002 (quoted in Lakey, 2002b, p. B5).

The 1990s witnessed a dramatic rise in the number of homeless people in many North American cities, including Toronto. Their presence and visibility was so pronounced that it garnered attention among the public, which in turn provoked strong, and rather divergent, responses from both sides of the political spectrum.

One type of response to the problem of homelessness was the right-wing, law-and-order, ban them from "our" city type approach. Ontario Premier Mike Harris's *Safe Streets Act*, 1999, which banned aggressive panhandling and squeegeeing, was one notorious example (see, for example, Graser, 2000; Hermer & Mosher, 2002). On the opposite end of the political spectrum, responses were equally strong. In Toronto, the death of three homeless men in January 1996 prompted outrage not only about the deaths but also about the cuts in welfare and housing subsidies, which had, it was felt, indirectly led to these tragedies. The forma-

Prashan Ranasinghe & Mariana Valverde. The Toronto Shelter Zoning By-law: Municipal Limits in Addressing Homelessness. In: Hulchanski, J. David; Campsie, Philippa; Chau, Shirley; Hwang, Stephen; Paradis, Emily (eds.) *Finding Home: Policy Options for Addressing Homelessness in Canada* (e-book), Chapter 1.4. Toronto: Cities Centre, University of Toronto. www.homelesshub.ca/FindingHome

ISBN 978-0-7727-1475-6

tion of the Toronto Disaster Relief Committee led by anti-poverty activists Cathy Crowe and Michael Shapcott, with a strong emphasis on housing policy and homelessness, was one response to the crisis.

In this paper, we focus on the City of Toronto's efforts in the late 1990s to address the problem of homelessness by building more homeless shelters and spreading them across the city. We argue that attempts by municipal governments to address homelessness—and more broadly, matters of social justice—are likely to be thwarted, significantly delayed or deviate drastically from their original intentions on the one hand, or at worst, fail miserably. When municipalities are left to their own devices to battle the problem of homelessness, the result, our case study shows, fails to provide meaningful solutions in a timely and systematic way.

Municipalities are ill-equipped to address homelessness for two main reasons. First, cities are fundamentally limited in the means they command to deal with social problems. Given the subordinate status of municipalities in Canadian law and politics, cities have very few legal tools to attend to local matters—this is still the case, despite the highly touted "new deal for cities" in Canada (see, for example, Valverde & Levi, 2005). Municipalities therefore rely heavily on zoning, one of the few legal tools they have at their disposal. This means that matters that might be better suited to other types of legal solutions, if brought before municipalities, end up funnelled into zoning and planning mechanisms.

Land use law (of which zoning is the most important component) has never been about substantive democracy, equality or social justice (see, for example, Blomley, 2004; Fischler, 1998; Frug, 1999; Gerecke, 1976; Gunton, 1979). Rather, land use law, since its inception, has worked primarily to protect property values, segregate certain "undesirable" uses of land, and generally, to constitute an urban space that is highly differentiated not only by class, but also along other lines as well (for example, single versus multi-family dwellings). In other words, land-use law, and in particular, zoning, allows the segregation and compartmentalization of spaces according to uses. It governs spaces and uses, not persons; this, by extension, also means that land uses, in and of themselves, have no rights. Thus land uses that provide solace to the very poor—for example, shelters or supportive housing—have no rights. Moreover, since homeless people have no (immobile) property to call

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their own, they are excluded from relying strictly on a rights-based approach (for example, the right to shelter), because rights, in land use law, are tied to uses and not to persons. Thus, land-use law in particular, and municipal politics by extension, can do very little to provide meaningful solutions for many homeless people.

Second, municipalities must follow procedures for public participation in local policy formation, especially in cases of land use and (re)zoning matters. Here, a problem arises, because land-use law resists democratization. We do not mean that municipal politics does not facilitate a forum for interested parties to voice their opinions and concerns; nor that particular groups are excluded from participation in local policy formation—indeed, both those who opposed the spreading of shelters and those who favoured it relied on their right to participate in the debates surrounding the by-law so as to influence and shape its content.

What we mean is that, given that rights in land-uses are tied to property, it is usually the case that those groups who end up influencing particular land uses are those who have legal occupancy in relation to a particular property (that is, residents, ratepayers, and tenants). John Sewell, the former mayor of Toronto, in his book *The Shape of the City* (1993), shows that before the 1960s all planning issues were undertaken and put into practice by experts, without any public input (Sewell, 1993). All this changed however, in the 1960s, when citizens, particularly residents' groups, began opposing planners, often because they were deeply dissatisfied with the vision that planners had for their neighbourhoods (for more recent trends, see Hume, 2005b; for similar trends in the U.S., see for example, Arnstein, 2003). And although neighbourhood groups often failed to halt proposed developments, residents' and ratepayers' groups—that is, the propertied and those who have legal occupancy—were heavily embroiled in fights about development projects. While public input is, theoretically, open to all concerned citizens, it is often the propertied who have most to say about development proposals. Advocates for the homeless and for homeless shelters cannot construct an argument based solely on rights.

That is why we argue that land-use law resists democratization. While the process of public input is open to all concerned parties, the nature of municipal politics renders those without property unable to

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rely on the notion of rights to make a claim to shelters. Thus, even though the by-law eventually passed, it did so after considerable delay and haggles over its content, primarily because the input into its content came via property owners, and by extension, those who did not want shelters in their "backyards." The comment of councillor Paul Sutherland quoted at the beginning of this chapter is typical. While Sutherland lauds the idea of public input into local policy formation, he assumes that all concerned parties have equal status to voice their opinions.

The Mayor's Homelessness Action Task Force

In November 1998, when the mayors of Canada's major cities convened at the "Big City Mayor's Meetings" in Winnipeg, Manitoba, homelessness was labeled as a "national disaster" which was deemed to require immediate political attention (Layton, 2000).

Even before the meeting, in January 1998, the mayor of Toronto, MeI Lastman, had formed the Mayor's Homelessness Action Task Force in an effort to provide a systematic study of, and solutions to, the problem of homelessness.

The Task Force was made up of four members and chaired by Dr. Anne Golden, who, at that time, was President of the United Way of Greater Toronto. In July 1998 the Task Force released its interim report, *Breaking the Cycle of Homelessness* and in January 1999, the final report, *Taking Responsibility: An Action Plan for Toronto*.

Taking Responsibility outlined 105 recommendations for action.[1] Two key themes emerge from these recommendations: first, that prevention and long-term approaches ought to replace reactive and emergency-type responses to homelessness, and second, that all three levels of government must take responsibility for solving it. With respect to long-term solutions, the Task Force recommended a "housing first policy:" that is, the undertaking of long-term rather than short-term solutions which seek to house rather than merely shelter homeless people. *Taking Responsibility* clearly and repeatedly noted that homelessness was a problem of housing, or to be more precise, a lack of affordable housing.

With respect to housing, the Task Force recommended three distinct initiatives: affordable housing programs, supportive housing programs (that is, housing plus support services), and shelters. The first two were

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meant to be long-term solutions while the third was merely a short-term solution until the first two could be implemented. The Task Force recommended that more shelters be built and that they be spread equitably across the city to ensure that homeless people would be able to easily access services and in so doing, would maintain their ties with the community (this holds true especially for homeless children, who would otherwise have to be removed from their schools).[2]

Spreading homeless shelters across the city was much more difficult than originally anticipated. Under the zoning provisions then in force, shelters were allowed only in the municipalities of Toronto and North York; Scarborough had also facilitated the housing of homeless families in motels on Kingston Road to help families find a temporary roof over their heads. Homeless people in Etobicoke, East York, and York did not have access to shelters in their areas. As well, where shelters were permitted, they were regulated by spatial constraints. For example, zoning provisions prohibited the location of two "crisis care facilities" within 250 metres of each other (a homeless shelter was defined as a crisis care facility).

The Task Force, aware of these restrictions, recommended a process of inclusionary zoning, whereby the city would be permitted, as of right, to locate homeless shelters where it pleased, as long as the shelter met zoning criteria for height and density. This provision would also include rooming houses, affordable housing units, and supportive housing units. However, the Task Force clearly noted that this process must be opened up to the public for their input. The Toronto City Council accepted the recommendation of inclusionary zoning to locate shelters. However, before discussing how this process led to a protracted and heated debate, it is worth explaining the idea behind inclusionary zoning.

In the early 20th century, zoning was developed to demarcate land-uses within a particular geographical area; it operated under the principle of excluding "inappropriate" land-uses from a particular space. Part of the appeal of exclusionary zoning was that it boosted property values, but it had a negative consequence—exclusionary land use translated into the practice of excluding certain people from particular places:

> What was good for business was the right kind of people: the right customers downtown, the right neighbors in the new street car suburbs...

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> [F]ar from being a device to spread the transition of the immigrant poor from the tenements to the street car suburbs, zoning in practice became a way of keeping them where they were (Hall, 1989, p. 278).

In calling for a process of inclusionary zoning then, the Task Force understood the effects of exclusionary zoning, and was attempting to manoeuvre around legal and traditional planning mechanisms to facilitate the creation of shelters.

Drafting an enacting by-law

Immediately following the release of *Taking Responsibility* in January 1999, Toronto City Council authorized various sub-committees to advise Council on the implementation of the Task Force's recommendations. On February 17, 1999, the Chief Administrative Officer's Office released its *Response to the Mayor's Homelessness Action Task Force Final Report*. Based on the conclusions of this report, City Council, on March 2, 1999, endorsed, in principle, the 105 recommendations made by the Task Force, including the recommendation to locate homeless shelters in various parts of Toronto. To this end, the report noted:

> The City of Toronto is charged [with] taking the lead with planning and managing local homeless programs. In addition, the City is called upon to use the existing urban planning tools at its disposal and to seek additional powers to provide a framework for the development and preservation of affordable housing.

The "urban planning tools" were the zoning provisions then in force. A report prepared by the Commissioner of Urban Planning and Development Services, April 15, 1999, defined inclusionary zoning in this way:

> Inclusionary zoning for affordable housing is a land development control measure, enacted by way of municipal by-law, which generally requires a certain portion of the units within any new residential development to be set aside for low and/or moderate income households at below market prices or rents.

A similar principle was to govern the spreading of homeless shelters: in other words, homeless shelters were to be included in, rather than excluded from, residential and industrial sites.

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Council drafted a by-law which would allow homeless shelters to be located in any part of the city, as of right. On May 11, 1999, Councillors Joe Pantalone and Chris Korwin-Kuczynski moved that council "adopt policies necessary to override existing zoning by-laws ... across the amalgamated city ... to ensure that new emergency shelter[s] can be opened as needed." It appeared that the stage was set for the creation of homeless shelters throughout the city.

This however, was not to be the case; at least not for another five years. Between this time and the actual passing of the by-law, efforts to open shelters in various parts of the city brought negative attention to Council's actions; the attention turned into a powerful force that delayed the passing of the by-law. Two examples warrant discussion because they illustrate why the proposed by-law took so long to pass, and the particular concerns and issues that had to be dealt with.

Resistance in Scarborough

In summer 1999, there was a proposal to build a senior men's hostel at 1673 Kingston Road in Scarborough. When the proposal was put forward, councillors Gerry Altobello and Brian Ashton raised the concerns of their constituents and asked that council not authorize the proposal for the following reasons:

> [The] use of an emergency shelter or an hostel is not permitted use under the Zoning by-law for this property; and our office has been inundated with calls from local residents against this proposal; and the community and the Principal from the Birch Cliff Public School located across the street are concerned about the impact on the safety of the children.

Even though the motion failed, both Councillors gave notice that they would request permission to consider this matter in subsequent Council meetings. A public meeting scheduled for October 6, 1999, concerning the proposed shelter would, according to the Councillors, give sufficient grounds to halt the proposal. During the City Council debates on October 26, 1999, Altobello and Ashton introduced several pieces of evidence against the proposed shelter, including petitions signed by 1,350 concerned residents as well as numerous letters they had received. While they were unsuccessful in halting the building of the proposed

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shelter, they were successful in implementing several restrictions. The number of beds would be capped at 60, rather than the proposed 70 spaces. Potential clients would be "screened" and occupants would be well known to staff before taking up occupancy. The Commissioner of Community Services had to report, by the end of 1999, on the effects of the hostel on the community. Finally, a Community Reference Board of 12-15 persons, made up of local residents, local business persons, local schools, the Toronto Police Services, and community organizations, would "review profiles of individuals as they come to the building."

These add-ons were no doubt an effort to appease the residents of the Scarborough community and it appears that they did just that. A staff report released on May 30, 2000, gives a preliminary status of the hostel, which was named Birchmount Residence, by noting that "the community has become actively engaged in the day to day life of the residence" and that "to date, there have been no complaints."

A proposed shelter on the Danforth

In July 2001, the Thunder Night Club located on Danforth Avenue and Dawes Road in Toronto was slated to be demolished and turned into a homeless shelter. Concerned citizens of the area took to the streets in protest saying that the shelter was "sprung on them unannounced and [that] the community should have been involved in the decision making process" (Royce-Roll, 2001). The citizens feared that they would find no solution to the violent and raucous behaviour that often "spilled" into the streets after the nightclub closed for the night, and believed they would find little reprieve once the homeless shelter opened; in particular, they felt that the early (7 a.m.) discharge protocols of homeless shelters would result in many homeless people lying around the streets near their residences.

Part of the problem was that the scheduled shelter would be located within 250 metres of an existing shelter, in violation of zoning provisions. In response, the Director of the Toronto Hostel Services, John Jagt, argued that the new facility would not be considered a crisis care facility, and therefore, could lawfully operate. This plan was foiled in the courts however, when the Ontario Superior Court, in March 2002, ruled that the Danforth Night Club project could not proceed because the proposed

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shelter did fit the description of a crisis care facility and therefore, did violate existing zoning regulations (Lakey, 2002a).

The by-law battle

The fact that many citizens thought that the shelter proposal had been "sprung" on them without notice was of concern; this was the case with the proposed by-law as well, where many residents felt that their voices were being excluded during the drafting of the by-law. The right to voice one's concerns and thereby shape public policy was relied on by both those who wished to see the by-law pass, and those who vehemently opposed it, though in different ways.

On the one hand, politicians such as Paul Sutherland used the right of the public to participate in policy formation as a way to forestall the enactment of the shelter by-law. Other politicians who were keen on seeing the by-law pass, wanted to circumvent the public's right to participate in policy formation to ensure that homeless people were provided with some sort of reprieve. For example, Councillor Jack Layton realized that community concerns would simply translate into free-for-all NIMBYism, was quoted as saying, "Zoning, by definition, is an exclusionary process... we can't be exclusionary when it comes to services of the homeless, in my view" (Lakey, 2002b). Similar sentiments were proclaimed by councillor Joe Pantalone, who said:

> Regretfully, a lot of people disguise their feelings that somehow the homeless people have only themselves to blame by bringing in extraneous arguments or simply succumb to constituents who are afraid. The problem is, we have to do what's right and not play to the fears of our constituents (Lakey, 2002b).

The manoeuvring around democratic participation captures the complexities involved in the passage of a contentious piece of legislation. On the one hand, politicians had to, and indeed wanted to, find meaningful ways to tackle the problem of homelessness. On the other hand, they also had a duty to listen to what the public had to say. MeI Lastman was well aware of the pressures in the situation:

> Look, I want this [the problems over the by-law] like I want a second head. I know people don't want it in their backyard, but you can't just

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> have them in downtown Toronto... I would rather have voted and ended it, one way or another. But I felt it was going to create a major problem. I like the idea of building a consensus across the city because I know what we're in for, in the future. I know the people are going to come yelling and screaming that we know nothing about this and you're putting a homeless shelter in my backyard (Lakey, 2002c).

These political complications delayed the passing of the by-law for three years. It was not until April 17, 2002 that council finally began debates concerning the by-law. The very next day, council voted 27-16 to refer the bylaw to Mayor Lastman's office for further study and public consultation, and following this, to proceed to the Department of Planning and Transportation Committee for further debate. On April 18, 2002, council set a date for October 2002 for all reviews, consultations and studies to be completed, so that council could vote. In September 2002, the six municipalities that make up the "megacity" of Toronto held public consultation meetings on the by-law (Gillespie et al., 2002). Public concerns were studied by the Planning and Transportation Committee between September and December 2002. On January 28, 2003, the matter came back to Council for final debates.

Particular councillors made concerted efforts to voice the opinions of their constituents, and impose restrictions on the by-law. For example, Councillor David Soknacki moved that Council develop appropriate ways to select shelters. That is, Council was to consider community safety especially where public schools are concerned. Soknacki also wanted a system of notification for community members who would be kept abreast of what was taking place with respect to locating shelters.

Three issues came to dominate the last efforts to impose some restrictions on the by-law. First, the minimum distance of 250 metres separate one crisis care facility from another was proposed to be maintained. However, even this distance did not satisfy all councillors; Councillor Sutherland argued for a minimum distance of 1,000 metres. Second, some councillors called for locating shelters only on arterial roads, rather than on residential streets. Third, there were proposals to limit the number of shelter beds per facility.

On February 11, 2003, the municipal shelter by-law 138-2003 passed, with several modifications, apparently the result of last-minute efforts on

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the part of Councillors to impose some restrictions. The by-law allowed the city, as-of-right, to locate homeless shelters anywhere in the city, as long as it complied with applicable zoning provisions of the zone or district (that is, height and density requirements). However, the by-law required that shelters be located only on major or minor arterial roads (the "arterial road requirement"); that a minimum distance of 250 metres separate one shelter from another (the "separation distance requirement"); and that council approve each and every location of a homeless shelter. What began as an effort to allow shelters as of right in any part of the city resulted in a by-law fraught with restrictions, making it difficult and expensive to create shelters even on existing city properties.

The last hurdle: The ruling of the OMB

The by-law was subsequently appealed to the Ontario Municipal Board (OMB).[3] Initially, the appeals concerned certain site-specific exemptions; that is, the appeals were geared towards ensuring that particular locations were "outside" the requirements of the by-law: there were 15 such appeals. Fourteen related to a site at 101 Ontario Street, home to Sojourn House, an emergency shelter (OMB Decision No. 0923, p. 1). The other was brought by a concerned resident whose property abutted a seniors' residence, at 717 Broadview Avenue; this site, which the city had purchased, was slated to be turned into an emergency shelter in the near future. The resident wanted to ensure that the property be subject to, not exempt from, the requirements of the by-law[4] (OMB Decision No. 0923; OMB Decision Number 0569).

During the pre-hearings (hearings held to determine if sufficient evidence exists for a formal hearing) on July 8 and 9, 2003, the Advocacy Centre for Tenants Ontario (ACTO) and the Confederation of Residents and Ratepayers Association (CRRA) sought party status in the proceedings to voice particular concerns outside these specific issues related to site exemption. The ACTO (and Sojourn House as well) argued that the restrictions imposed on the by-law "had no legitimate planning basis." In addition, the ACTO argued that the requirements of the by-law violated section 15 of the Charter of Rights and Freedoms, and hence, ought to be ruled as unconstitutional[5] (OMB Decision No. 0569; see also Gillespie, 2003). The CRRA wanted more stringent requirements and sought

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relief to argue for a minimum separation distance of 1,000 metres between shelters; the CRRA also sought to have the size of these shelters capped at fifty beds (Gillespie, 2003). Both the ACTO and the CRRA were granted party status by the OMB[6] (OMB Decision No. 0923).

The hearings, which began on September 29, 2003, occupied 21 days spread over two and a half months; considerably more than the 15 days that were originally set aside (OMB Decision No. 0569). The Board began by noting that the municipal shelter by-law "represents a compromise of various community and business positions" (OMB Decision No. 0923) and that it is an "interesting aspect to this matter that all parties wish ... to see the by-law approved, albeit in different forms" (OMB Decision No. 0569).

In reaching its decision, the Board acted more as a mediator than an arbitrator, seeking to appease all parties concerned. The Board began by acknowledging the fact that the intention of the by-law was to ensure that an adequate supply of homeless shelters in various parts of the city would become a reality, so that homeless people in various parts of the city would not be denied a temporary roof over their heads (OMB Decision No. 0569, p. 17-19).

The Board ruled that the "separation distance requirement" was based on sound planning principles, because it would ensure that shelters were not concentrated in one particular area. Hence, the Board upheld this requirement of the by-law (OMB Decision No. 0569, p. 22-23).

The Board also ruled that the "arterial road requirement" was based on sound planning principles and dismissed the view that the purpose of the "arterial road requirement" was to ensure that shelters would not be located in residential neighbourhoods. The Board rather disingenuously noted that both major and minor arterial roads abut and even cut across residential neighbourhoods, so that this requirement was not geared towards keeping shelters away from residential neighbourhoods, but was an attempt to locate them within particular communities, with the specific purpose of ensuring that homeless persons do not lose ties with their communities (OMB Decision No. 0569, p. 22, 20).

This creative interpretation allowed the Board to replace the "arterial road requirement" with the "arterial road corridor requirement." This new requirement allowed a shelter to be located either on an arterial

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road, or within 80 metres of a flanking street which abutted an arterial road: "The Board finds that the arterial road corridor location should include any lot, the whole or part of which, is located on a flanking street to an arterial road to a distance of 80-metres from the corner of the arterial road and flanking street" (OMB Decision No. 0569, p. 25-26). This modified approach, the Board concluded, "makes ... shelters] more accessible for the users... improves accessibility to the required services by the users, and... encourages the distribution of the shelters on a wider basis across the City" OMB Decision No. 0569, p. 21). It is not entirely clear what led to the modification of the "arterial road requirement." However, it seems quite plausible that this was a concerted effort on the part of the Board to appease both sides concerned; and this modified approach seems to have done just that.

The Board removed the requirement that Council approve every location, because the section "compromises the integrity of the by-law as a zoning mechanism, is redundant, and without any land use purpose, creates uncertainty, and should not be included in the by-law" (OMB Decision No. 0569, p. 29). The Board concluded thus that:

> By-law 138-2003, as modified by this Board, conforms to the principles of good planning, and all applicable planning policy documents, and is supported by sound planning rationale... [T]he by-law will facilitate the achievement of the City's program and service delivery objectives with respect to homelessness. The by-law will increase the number of sites across the City available for use as an emergency shelter, and properly directs the emergency shelter use to locations, which will meet the needs of the users, while minimizing the possible impacts of the use on neighbourhoods (OMB Decision No. 0569, p. 8).

This approach served to preserve, to a small degree, Council's original intentions of making shelters more accessible and at the same time, appease concerned parties to the appeal. With these modifications, Toronto's municipal shelter by-law finally passed.

Although the passage of the by-law, theoretically at least, represented a victory for homeless people and those who advocate on their behalf, the victory came with a large price tag, which included not only several modifications to the proposed bylaw, but more importantly, the five years required to resolve the matter.

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Canadian law does not have the strong protection against segregation and discrimination from zoning practices as afforded in the American *Fair Housing Act* (which has been successfully used by public housing and supportive housing providers, as well as by victims of racial segregation). However, it is nevertheless a principle of Canadian municipal law that zoning powers cannot be used to discriminate against disadvantaged groups; hence, what is commonly referred to as "people zoning," while not completely forbidden, is legally suspect and subject to constitutional challenge, given that municipalities are supposed to govern uses and not persons.

In Canadian law, the protection afforded to residents of group homes and other non-standard households from discriminatory zoning is weak. The leading case on this issue is *Re. Alcoholism Foundation of Manitoba et al. and City of Winnipeg* (1990) in which the Manitoba Court of Appeal struck down a Winnipeg by-law which named disabled and substance-dependent individuals in its zoning provisions for group and rehabilitation homes. Monin C.J.M. (the then-Chief Justice of the Manitoba Court of Appeal) even went as far as stating that, as far as he was concerned, the exclusionary logic of zoning was by no means problematic, as long as particular disadvantaged groups, such as the "disabled," were not explicitly named. In other words, for a by-law to meet constitutional muster, it ought not name specific groups. Monin noted:

> Ratepayers building $150,000 or 200,000 single-family homes are entitled to expect that only similar homes will be built in their vicinity, and that the integrity of that particular zoned area in the community will not be interfered with... That was and should still be an entirely legitimate concern of the city councillors. Likewise, they should be free to protect those of lesser means from infiltration in their areas by businesses, manufactures, or other commercial ventures not in conformity with their legitimate aspirations for a modest residential area (*Re. Alcoholism Foundation of Manitoba et al. and City of Winnipeg*, 1990, p. 709).

The efforts of the Toronto Task Force and City Council to rely on inclusionary zoning to circumvent the problems associated with exclusionary zoning, and thereby create a "space" from which to launch a campaign for shelters, were not only commendable but also rather ingenious, given that the Task Force was aware of the limited legal tools available to

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municipalities to address homelessness. And in that light, the ruling of the OMB was merely an extension of this vision.

Conclusion

The story of the municipal shelter by-law illustrates the point that attempts to implement programs to deal with homelessness are more cumbersome and daunting in practice than would appear at first glance. When compassionate approaches are promoted as the solution to a complex problem such as homelessness, they run into roadblocks which delay their implementation or lead to their demise.

It is useful to examine what has transpired since the by-law was upheld by the OMB. Since this time, only one emergency shelter has opened, despite the fact that homelessness was considered to be in a state of crisis. On December 22, 2004, a temporary emergency shelter was opened at 110 Edward Street, in downtown Toronto; the shelter includes both a 80-bed co-ed and couples shelter and an Assessment and Referral Centre which operates between 8 p.m. and 8 a.m. The shelter originally operated on private property that was leased to the government and was only scheduled to operate (that is, funding was only guaranteed) till May 31, 2005, when the original lease was scheduled to expire; thereafter however, the government negotiated a month-by-month leasing option with the owner of the property so that the shelter would remain open, at least, till the end of 2005 (City of Toronto, Community Services Committee, 2005, p. 3). More recently however, Council approved a proposal to purchase the land in question, in October 2005, so as to allow the shelter at 110 Edward Street continued operation (City of Toronto, 2005, p. 1). Yet, even after the purchase of the land in question, the shelter is only scheduled to be in operation until April 30, 2006; whether it will continue to operate is still uncertain.

Thus even after a protracted and heated debate regarding the location of (more) homeless shelters, very little has actually materialized, and even where a new shelter has been opened, how long it will continue to be in operation is not at all clear. As well, it is important to point out here that this new shelter is located in downtown Toronto amongst other shelters in the area, and therefore, does little to spread shelters across the

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city as originally intended, first by the Mayor's Task Force, and then by city council.

Our case study then, leads to two important conclusions. First, it appears that homelessness—and other matters of social justice more generally—cannot be meaningfully addressed and resolved by municipalities alone; it certainly requires the cooperation and active involvement of all three levels of government. Second, it seems that homeless persons bear the brunt of rather punitive sanctions from both the right and left of the political spectrum—though with respect to the latter, these effects are unintended to say the least. They are subjected to restrictions through various laws regulating their movements (for example, anti-panhandling or anti-squeegeeing laws). The many structural constraints evident in municipal politics renders the effectiveness of the left in trying to address homelessness in a compassionate way limited, so that these policies are often so diluted that they cease to be able to provide an effective alternative to conservative politics. Thus, the result, though in a different way, is the "annihilation of spaces" of homeless people (Mitchell, 1997).

Prashan Ranasinghe *worked on this paper while a Ph.D. candidate at the Centre of Criminology, University of Toronto. His doctoral dissertation examined the refashioning of vagrancy-type legislation and how this legal mechanism is used to (re)order public spaces and interactions within these spaces He is currently teaching at the University of Ottawa.* ***Mariana Valverde*** *is a Professor at the Centre of Criminology, University of Toronto, and is currently engaged in a socio-legal research project on urban/municipal law and bylaw enforcement.*

References

Arnstein, S. (2003). A ladder of citizen participation. In R. T. LeGates & F. Stout (Eds.) *The city reader* (3rd ed., pp. 244-255). New York: Routledge.

Blomley, N. (2004). *Unsettling the city: Urban land and the politics of property*. London: Routledge.

City of Toronto (2000, May 30). *Staff report from the Commissioner of Community and Neighbourhood Services to the Community Services Committee, regarding the status of the new hostel at 1673 Kingston Road: Birchmount residence*. Toronto: Author.

www.homelesshub.ca/FindingHome

ISBN 978-0-7727-1475-6

City of Toronto (2005, November 3). *Staff report from the General Manager, Shelter and Support and Housing Administration regarding 110 Edward Street: Extension of emergency shelter and referral centre programs*. Toronto: Author.

City of Toronto By-Law No. 138-2003 (2003). *Municipal shelter by-law*. Toronto: The City of Toronto.

City of Toronto By-Law 438-86 (1986). *The general zoning by-Law*. Toronto: The City of Toronto.

City of Toronto, Chief Administrative Officer's Office (1999, February 17). *Response to the Mayor's Homelessness Action Task Force final report*. Toronto: Author.

City of Toronto, Commissioner of Urban Planning and Development Services (1999, May 7). *Process for by-law amendments to permit affordable housing, emergency shelters and rooming houses across the city*. Toronto: Author.

City of Toronto, Community Services Committee (2005, April 27). *110 Edward Street: Extension of emergency shelter and referral centre programs*. Toronto: Author.

City of Toronto, Mayor's Homelessness Action Task Force (1998, July). *Breaking the cycle of homelessness: Interim report of the Mayor's Homelessness Action Task Force*. Toronto: Author.

City of Toronto, Mayor's Homelessness Action Task Force (1999, April 15). *Final report: Recommendations and policy directions related to housing policies of the Official Plan*. Toronto: The Commissioner of Urban Planning and Development Services.

City of Toronto, Mayor's Homelessness Action Task Force (1999, January). Taking responsibility for homelessness: An action plan for Toronto. Toronto: Author.

City of Toronto, Shelter Housing and Support (2002, June). *Multi-year shelter strategy for the City of Toronto*. Toronto: Author.

Chipman, J. G. (2002). *A law unto itself: How the Ontario Municipal Board has developed and applied land use planning policy*. Toronto: University of Toronto Press.

Dear, M. J., & Wolch, J. R. (1987). *Landscapes of despair: From deinstitutionalization to homelessness*. Cambridge: Polity Press.

Fischler, R. (1998). Toward a genealogy of planning: Zoning and the welfare state. *Planning Perspectives*, 13(4), 389-410.

Frug, G. (1999). *City making: Building communities without building walls*. Princeton, New Jersey: Princeton University Press.

Gerecke, K. (1976). The history of Canadian city planning. *The City Magazine*, 2(4), 12-23.

www.homelesshub.ca/FindingHome

ISBN 978-0-7727-1475-6

Gillespie, K., Demara, B., & Moloney, P. (2002, September 18). Shelter bylaw forums raise a tempest: Resident's fear homeless influx into neighbourhoods. *The Toronto Star*, p. B1.

Gillespie, K. (2003, October 14). Both sides oppose shelter bylaw: Too restrictive, tenant group says but ratepayers want more limits. *The Toronto Star*, p. B1.

Graser, D. (2000). Panhandling for change in Canadian law. *Journal of Law and Social Policy*, 15, 45-91.

Gunton, T. I. (1979). The ideas and policies of the Canadian planning profession, 1909-1931. In A. F. J Artibise & G. A. Stelter (Eds.) *The usable past: Planning and politics in the modem Canadian city* (pp. 177-195). Toronto: Macmillan.

Gunton, T. (1983). The origins of Canadian urban planning. *The City Magazine*, 6, 27-36.

Hall, P. (1989). The turbulent eighth decade: Challenges to American city planning. *Journal of the American Planning Association*, 55(3), 275-282.

Hermer, J., & Mosher J. (Eds.). (2002). *Disorderly people: Law and the politics of exclusion in Ontario*. Halifax: Fernwood Publishing.

Hodge, G. (1985). The roots of Canadian planning. *Journal of the American Planning Association*, 51(1), 8-22.

Hume, C. (2005a, December 13). Are cities ready to grow up?. *The Toronto Star*, p. B1.

Hume, C. (2005b, December 17). OMB: Reviled Board losing some of its clout. *The Toronto Star*, p. B5.

Lakey, J. (2002a, March 12). Court sidelines shelter plan. *The Toronto Star,* p. B5.

Lakey, J. (2002b, April 15). Shelter bylaw raises strong reaction. *The Toronto Star*, p. B5.

Lakey, J. (2002c, April 19). Shelter bylaw pushed on to back burner: Issue must return to City Council before October. *The Toronto Star*, p. B3.

Layton, J. (2000). *Homelessness: The making and unmaking of a crisis*. Toronto: Penguin Books.

Lu, V. (2005, December 13). Mayors see hope in OMB reforms: Proposal hands power back to Council: Developers worry it's a license to say no. *The Toronto Star,* p. B2.

Mitchell, D. (1997). The annihilation of space by law: The roots and implications of anti-homeless laws in the United States. *Antipode*, 29(3), 303-335.

Ontario Municipal Board (2003, July 9). Decision No. 0923, Case No. PL030313.

Ontario Municipal Board (2004, March 15). Decision No. 0569, Case No. PL030313.

Perks, W. T., & Jamieson, W. (1991). Planning development in Canadian cities. In T. Bunting & Pierre F. (Eds.) *Canadian cities in transition* (pp. 487-518). Toronto: Oxford University Press.

www.homelesshub.ca/FindingHome

ISBN 978-0-7727-1475-6

Re Alcoholism Foundation of Manitoba et al. and City of Winnipeg (1990). 69 D.L.R. [4th], 697.

Royce-Roll, H. (2001, July 22). Danforth residents oppose homeless shelter. *The Toronto Star*, p. A4.

Sewell, J. (1993). *The shape of the city: Toronto struggles with modem planning*. Toronto: University of Toronto Press.

Smith, P. J. (1979). The principles of utility and the origins of planning legislation in Alberta, 1912-1975. In A. F. J. Artibise & G. A. Stelter (Eds.) *The usable past: Planning and politics in the modern Canadian city* (pp. 196-225). Toronto: Macmillan.

Valverde, M., & Levi, R. (2005). *Still the creatures of Provinces? Canadian cities' quest for governmental status* (report submitted under the LCC/SSHRC joint initiative on freedom of choice. Ottawa: The Law Commission of Canada.

Van Nus, W. (1979). Towards the city efficient: The theory and practice of zoning, 1919-1939. In A. F. J. Artibise & G. A. Stelter (Eds.) *The usable past: Planning and politics in the modern Canadian city* (pp. 226-246). Toronto: Macmillan.

Verma, S. (1999, July 22). Police target squeegee kids. *The Toronto Star*, pp. B1, B5.

Waldron, J. (2000). Homelessness and community. *University of Toronto Law Journal*, 50(4), 371-406.

Waldron, J. (1991). Homelessness and the issue of freedom. *U.C.LA Law Review*, 39(2), 295-324.

Notes

[1] These recommendations were wide-ranging and dealt with matters such as mental health issues, Aboriginal homelessness, homeless families and children; as well, the report focused not only on those who are homeless but also those at "risk" of becoming homeless.

[2] The Task Force however, was explicit in noting that the shelter system was only to be relied on as a short-term solution while long-term housing solutions (affordable and supportive housing programmes) were implemented. Hence, the Task Force actually called for a *reduction* in the number of shelter spaces by 10 percent each year until the overall number was reduced to half its base size; this however, was only to take place as long as, and only as long as, the number of affordable and supportive housing units was concomitantly increased.

[3] The Ontario Municipal Board (OMB) is an independent adjudicative tribunal that hears appeals and applications from concerned parties on land-use disputes.

[4] The Board ruled against the citizen in this matter arguing that because the city had already invested substantial money and time into the project, including this

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location as an exempted site made sense, because it ensured that if another shelter was to be located within 250 meters of the property in question prior to the property in question being turned into a shelter, the city would not lose the time and money it had already invested (OMB Decision No. 0569, p. 29-30).

[5] In an interesting twist, the Board (correctly) noted that it had no jurisdiction to rule on whether a particular by-law meets the test of constitutionality; however, the Board then went on to spend considerable time arguing that the requirements of the by-law did not violate the provisions of section 15 of the Charter (OMB Decision No. 0569, p. 34-52).

[6] In yet another interesting twist, the CRRA, at the outset of the hearings, had given notice of its withdrawal from the proceedings because it could not muster sufficient resources to allow for full attendance and/or participation in the hearings (OMB Decision No. 0569, , p. 3).

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