

# Exploring the Right to Protest: The Occupy Movement

**August 29, 2012**

**OJEN Summer Law Institute**

Ursel Phillips Fellows Hopkinson **LLP**

**JUSTICE AT WORK**

30 St. Clair Avenue West, 10<sup>th</sup> Floor  
Toronto, ON M4V 3A1

**Karen Ensslen**

**Tel: (416) 969-3518 ▪ Fax: (416) 968-0325**

**Email: [kensslen@upfhlaw.ca](mailto:kensslen@upfhlaw.ca)**

# The Occupy Movement

---

Who?

What?

When?

Where?

So What?

# Who?

---

- A leaderless movement
- The General Assembly
- 5 individual applicants: Bryan Batty, Mari Reeve-Newson, Lana Goldberg, Ann Crooke and Dave Vasey

# What?

## Section 2 of the *Charter*:

Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

# What?

## Lana Goldberg:

... We stand in unity with the rest of the world to seek and work towards drastic changes to economic systems that are destroying our business, social liberties, and environment. We are, through entirely non-violent means, sending a message to the financial sector worldwide that banks exist to serve us, not the other way around, that the practice of speculation and fractional reserve lending have created a massive inequality and are no longer valid systems.

... Our target is to change these systems to help the 99% of the population, instead of just the elite 1% that they currently benefit. Everyone is encouraged to join the movement, this movement affects us all.

# What?

---

“The medium is the message”

- 300 tents
- 3 Yurts
- 10 larger tent structures
- 25 port-a-potty facilities

# What?

“The medium is the message”

- *Weisfeld v. Canada*, 1994 CanLII 9276 (FCA)
  - Peace Camp on Parliament Hill
- *Vancouver (City) v. Zhang*, 2010 BCCA 450 (CanLII)
  - Meditation Hut across from Chinese Embassy

# What?

Bryan Batty:

... direct, public conversation accessible to all is one of the only ways to achieve solidarity and open and transparent consensus.

The encampment ... serves as a model of transparency and respect that government, corporations and corporate media should strive for. The encampment is a demonstration of social action that provides solutions to our local, national and international problems.



# What?

Lana Goldberg:

In conveying these messages through my activities at the encampment I am also exercising my conscience and political beliefs. My desire for a radically different society requires that I am able to learn through experience a new economic and social model. If we are to move forward as a country and world, citizens must have the opportunity to practice an alternative form of living and working, preparing for a more participatory, horizontal model of democracy.

# When?

Bryan Batty:

The physical encampment is itself a demonstration of our commitment to these issues and a message that we will not relent until change occurs;

The encampment is emblematic of the fact that the people in it are distraught and motivated for change so fundamentally that they are willing to give up the comforts of their homes in an effort to have their voices heard;

# When?

- When is long enough?
  - *Weisfeld*: 2 years
  - *Zhang*: 5 years
  - Occupy: 1 month
- Who gets to decide?
  - City
  - Police
  - Protesters
  - Dog Walkers

# Where?

- *Montreal (City) v. 2952-1366 Quebec Inc.*, [2005] 3 S.C.R. 141 at para.61:

The public square and the speakers' corner have by tradition become places of protected expression.

# Where?

- *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827 at para. 20 (*per* McLachlin C.J. dissenting):

The ability to speak in one's own home or on a remote street corner does not fulfill the objective of the guarantee of freedom of expression, which is that each citizen be afforded the opportunity to present her views for public consumption and attempt to persuade her fellow citizens.

# Where?

- City of Toronto By-Law

**§ 608-11. Organized gatherings, special events, festivals and picnics.**

While in a park, no person shall:

A. Unless authorized by permit, hold a picnic, organized gathering or special event for more than 25 persons;

# So What?

---

The Court recognised that the occupiers were peacefully exercising their constitutional rights

# So What?

---

Breaking a by-law doesn't necessarily mean  
breaking the law



# So What?

---

## Section 1 of the *Charter*:

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

# So What?

---

The Court held that the City's eviction was necessary and proportionate to “balance, in a fair way, the different uses we wish to make of our public parks so, at the end of the day, we all get to enjoy them.”

# So What?

---

What other balances might have been possible?

In exchange for the removal of tents, Calgary offered:

- To set up and pay for a series of public forums for a dialogue on issues identified by Occupy Calgary
- Occupy Calgary could maintain a presence in Olympic Plaza during normal operational hours.