

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Applicant  
(Appellant)

and

**JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE,  
JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES  
DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER,  
JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY  
COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES  
KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN**

Respondents  
(Respondents in Appeal)

**APPEAL BOOK AND COMPENDIUM**

August 7, 2026

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# TAB 1

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Superior Court of Justice Court File No.: CV-25-00000750-0000  
CV-25-00001341-0000

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant  
(Appellant)

and

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE,  
JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES  
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KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN

Respondents  
(Respondents in Appeal)

NOTICE OF APPEAL

**THE APPELLANT**, The Regional Municipality of Waterloo ("**Region**"), appeals to  
the Court of Appeal for Ontario from the Judgment of Justice Michael R. Gibson (the  
"**Application Judge**") dated May 21, 2026 (the "**Judgment**"), made in Kitchener, Ontario.

**THE APPELLANT ASKS** that the Judgment be set aside and orders be granted  
as follows:

- (a) a declaration that By-law Number 25-021 of the Region, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by The Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development* (the "**Site Specific By-law**"),

as amended January 9, 2026 by By-law Number 26-001 (the “**Amended By-law**”), complies with the *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**”);

- (b) an order (“Injunction Order”), on such terms as this Court may deem just, that any persons having notice of the Injunction Order are restrained and enjoined from breaching the Amended By-law by remaining on and/or re-entering the property municipally known as 100 Victoria Street North, City of Kitchener (the “**Property**”) except as in accordance with the Amended By-law;
- (c) in the alternative, directions from this Court as to what steps must be taken by the Region to close the Encampment, as defined below, in a manner consistent with the *Charter*; and
- (d) Such further and other relief as counsel may advise and this Court deems just.

**THE GROUNDS OF APPEAL are as follows:**

1. On May 21, 2026, the Superior Court rendered the Judgment, issuing declarations that:
  - (a) The Site-Specific and the Amended By-Laws violate s.7 of the Canadian Charter of Rights and Freedoms, and are not justified under s.1 of the Charter;

- (b) The Site-Specific and the Amended By-Laws violate s.15(1) of the Canadian Charter of Rights and Freedoms, and are not justified under s.1 of the Charter; and,
  - (c) Pursuant to s.52(1) of the *Constitution Act, 1982*, the Site-Specific and the Amended By-Law are of no force and effect.
2. The Court further ordered that:
- (a) The application of the Region is dismissed;
  - (b) The cross-application of the Respondents is allowed in part;
  - (c) The Region is enjoined from enforcing or acting on any part of the Site-Specific By-Law or Amended By-Law;
  - (d) The Court shall remain seized of the matter; and
  - (e) Following its implementation of either a Safe Tenting Protocol, or the provision by the Region of an alternative Encampment site reasonably proximate to 100 Victoria Street, or both, the Region may seek further direction from the Court regarding its plan to clear the 100 Victoria Site for the purposes of the Kitchener Central Transit Hub.
3. The Site-Specific By-law and Amended By-law (collectively, the “**By-laws**”):
- (a) Provide for a phased closing of an encampment (the “**Encampment**”) located at 100 Victoria Street North, Kitchener (“**100 Vic**” or the “**Property**”) by preventing newcomers from residing at the Property following April 16,

2025 (“**Public Notice Date**”) and allowing those who were residing on the Property as of the Public Notice Date (“**Existing Residents**”) to remain onsite until April 1, 2026 (“**Closing Date**”);

- (b) Have the stated purpose of obtaining vacant possession of the Property by April 1, 2026, given the Region’s need to use the Property to facilitate the construction of the Kitchener Central Transit Hub (“**KCTH**”);
- (c) Was accompanied by a transition plan “**Transition Plan**” under which additional resources were allocated to provide capacity in indoor settings equivalent to the capacity that would be lost with the closing of the Encampment;
- (d) Establish the following in respect of Existing Residents, including through the Transition Protocol incorporated through the Amended By-law:
  - (i) Existing Residents cannot be removed from the Property before the Closing Date unless they have an offer in writing for alternative accommodation (with limited health and safety related exceptions). These “**Alternative Accommodations**” as defined in the Amended By-law include emergency shelters, transitional housing, affordable/supportive housing, motels, and other options;
  - (ii) In the event that an Existing Resident loses their Alternative Accommodation due to non-compliance with applicable rules, the Amended By-law provides that the Existing Resident will be referred

back to the Region's team of unsheltered support workers ("**USWs**") (who are all licenced professionals) and best efforts will be made to find a substitute option;

(iii) Existing Residents are guaranteed offers of social service supports of the same nature as provided at 100 Vic once they move into these Alternative Accommodations;

(iv) The Region will offer an Existing Resident transportation for themselves and their belongings, and coverage for up to 6 months of storage for additional belongings, at no cost to them.

(e) Further provide that the Region will offer to bring individuals who are not Existing Residents but are onsite at 100 Vic into the housing stability system and make efforts, subject to availability and cooperation, to provide those individuals with appropriate housing options.

4. In considering the Site-Specific and Amended By-laws, the Application Judge held that:

(a) He was bound by the doctrine of horizontal *stare decisis* to follow the Court's prior decision in *Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 ("**Persons Unknown**") with respect to his analysis under s. 7 of the *Charter*, but not his analysis under s. 15;

(b) the Site-Specific and Amended By-laws infringed s. 7 of the *Charter* by depriving the respondents of their protected interests in life, liberty, and

security of the person in a manner that is grossly disproportionate to the Amended By-law's object;

(c) the Site-Specific and Amended By-laws infringed s. 15 of the Charter because:

(i) Homelessness should be recognized as an analogous ground of discrimination, and the Site-Specific and Amended By-laws discriminate against homeless individuals because they disproportionately impact homeless individuals in a manner that reinforces, perpetuates, and exacerbates disadvantage;

(ii) The Site-Specific and Amended By-laws disproportionately impact and discriminate against women and gender diverse persons, individuals with physical, mental health, and addiction disabilities, and Indigenous people, because they disproportionately impact these groups in a manner that reinforces, perpetuates, and exacerbates disadvantage.

(d) The infringements of ss. 7 and 15 could not be justified under s. 1 because the Site-Specific and Amended By-laws do not minimally impair the infringed *Charter* rights and because their deleterious effects are disproportionate to their salutary effects.

5. The Application Judge exceeded the court's proper constitutional role and made multiple errors of law and mixed fact and law, as set out below.

**The Application Judge erred in finding that the By-laws infringe s. 7 of the Charter**

6. The Application Judge erred in law, or mixed fact and law, as follows:

- (a) In concluding that he was bound by *stare decisis* to follow *Persons Unknown* with respect to s. 7 of the *Charter*. The Site Specific and Amended Bylaws had a different scope, purpose, and effects than the general Bylaw, applicable throughout the regional municipality, at issue in *Persons Unknown*;
- (b) In disregarding the different factual matrix, including the additional indoor sheltering capacity created through the Transition Plan, and the protections set out in the Transition Protocol;
- (c) In finding that the By-laws deprived individuals of their s.7 rights to life and security of the person, given the Transition Plan and Transition Protocol;
- (d) in finding that their s.7 right to liberty protected an individual's choice to reside on a specific property of which they are not an owner or tenant;
- (e) in finding that the By-laws failed to accord with the principles of fundamental justice, including in particular by finding gross disproportionality despite the narrow scope of this principle which applies only to extreme cases;
- (f) in concluding that s.7 incorporates a right to adequate housing, based upon non-binding commentaries on the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social, and Cultural Rights*;

- (g) in holding that the federal *National Housing Strategy Act*, SC 2019, c 29, s 313, necessarily strengthens the force that Canada's international obligations should play in interpreting the scope and content of section 7;
- (h) in finding that the Region's policy aspirations to end chronic homelessness in the long term, which are expressly contingent on receiving sufficient resources from other levels of government, as set out in the Region's *Plan to End Chronic Homelessness*, expands the interpretation of s.7;

**The Application Judge erred in finding that the By-laws infringe s. 15(1) of the Charter**

7. The Application Judge erred in law, or mixed fact and law, as follows:

- (a) in concluding, despite his holding on *stare decisis* with respect to s.7, that he was not bound by *Persons Unknown* with respect to s. 15 because *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7 ("**Kanyinda**"), was a subsequent decision that affected the validity of *Persons Unknown*'s analysis on that issue. This was an error, as *Kanyinda* does not alter the applicable test under s. 15;
- (b) in concluding that the By-laws infringe 15(1) on the basis of sex, race, and disability, when he did not identify a specific burden caused by the By-laws that particularly affects members of the affected groups;
- (c) in failing to consider the Region's evidence regarding the harms that members of affected groups experience when residing in encampments;

- (d) in that he incorrectly conflated overrepresentation of various protected groups in the homeless population with a distinction caused by the By-laws;
- (e) in finding that homelessness is a new analogous ground under s.15, ignoring precedent of the Superior Court that has rejected homelessness as an analogous ground;
- (f) in failing to apply the correct approach to establishing a new analogous ground as set out in *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 (“**Corbiere**”);
- (g) in relying on the concurring decision of the Chief Justice of the Supreme Court of Canada in *Kanyinda* applying a modified approach to the recognition of analogous grounds under s. 15(1), despite the express rejection of the modified approach by two justices;

**The Application Judge erred by finding that any violations of the *Charter* are not justified as “reasonable limits” under s. 1.**

8. The Application Judge erred in law, or mixed fact as law, as follows:

- (a) in finding that the By-laws did not minimally impair the rights in issue. The Application Judge failed to apply deference to the Region’s policy choices in respect of complex issues of social policy;
- (b) in his balancing of the deleterious and salutary effects of the By-laws. In particular, the Application Judge erred in characterizing the anticipated benefits of the KCTH as “speculative”;

- (c) in going beyond the proper role of the court in his assessment of the policy options available to the Region; and
- (d) such further grounds as counsel may advise and this Court deems just

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

- (a) Sections 6(1)(b) of the *Courts of Justice Act*, RSO 1990, c C.43.
- (b) Rule 61 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
- (c) The appeal is from a final order of a judge of the Superior Court of Justice from which no appeal lies to the Divisional Court.
- (d) Leave to Appeal is therefore not required for this appeal.

Dated this June 22, 2026

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*Amicus Curiae*

**021**

Court of Appeal Court File No.:  
Superior Court of Justice Court File No.: CV-25-00000750-0000  
CV-25-00001341-0000

THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant (Appellant)

-and- JOSEPHINA DUGAS et al.  
Respondents (Respondents in Appeal)

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPEAL**

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# TAB 2

**Court of Appeal File No.:**  
Superior Court File No.: CV-25-00000750-0000

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**THE ATTORNEY GENERAL OF ONTARIO**

Appellant  
(Intervener)

-AND-

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Appellant  
(Applicant)

-AND-

**JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT,  
AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES  
HAMMOND, JAKOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH  
HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE YOUNG,  
KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY  
COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER,  
CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, and  
PERSONS UNKNOWN AND TO BE ASCERTAINED**

Respondent  
(Respondents/Cross-Applicants)

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

**NOTICE OF APPEAL**

**THE APPELLANT**, the Attorney General of Ontario, **APPEALS** to the Court of  
Appeal for Ontario from the order of the Superior Court of Justice dated May 21, 2026 made at  
Kitchener, Ontario.

**THE APPELLANT ASKS THAT** the order be set aside and an order be granted as follows:

- a) That the appeal be allowed, the Region's Application be granted, and the Respondents' Cross-Application be dismissed in its entirety; and
- b) Such further and other relief as counsel may advise and this Court deems just.

**THE GROUNDS OF APPEAL are as follows:**

1. The Appellant, the Attorney General of Ontario, was an intervening party before the Superior Court pursuant to s. 109(4) of the *Courts of Justice Act* and has the statutory mandate under the *Ministry of the Attorney General Act* to see that the administration of public affairs is in accordance with the law and to superintend all matters connected with the administration of justice in Ontario.
2. Subsection 109(5) of the *Courts of Justice Act* deems the Attorney General of Ontario to be a party to the proceeding for the purpose of any appeal where the Attorney General has made submissions on the constitutional questions. The Attorney General of Ontario intervened and made submissions on the constitutional questions before the Superior Court of Justice.
3. The Applicant Region of Waterloo commenced the Application in Superior Court seeking a declaration that its By-law Number 25-021, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by the Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development* ("site-specific by-law") and the amendments to that by-law ("amended by-law"), comply with the *Charter* and seeking an order to enforce those by-laws.

4. The Respondents commenced the Cross-Application seeking a declaration that the site-specific by-law and the amended by-law violate *Charter* s. 7 and s. 15 in a manner that cannot be justified under s. 1, and orders that the by-laws are invalid under s. 52 of the *Constitution Act, 1982* and cannot be enforced against the Respondents under s. 24(1) of the *Charter*.
5. On May 21, 2026, the Superior Court made an order issuing declarations that the site-specific by-law and the amended by-law infringed *Charter* ss. 7 and 15 in a manner that cannot be justified under s. 1 and are therefore of no force or effect.
6. The Court also made an order restraining the Region from enforcing or acting on any part the site-specific by-law or amended by-law.
7. The municipal property that is the subject of the site-specific by-law and amended by-law, 100 Victoria Street North in Kitchener, has been the site of an encampment of unhoused individuals since December 2021. The property is located near the planned site for the new Kitchener Central Transit Hub. The Region needs the property for use as a lay-down site for construction equipment and supplies.
8. In 2023, the Court dismissed an application brought by the Region seeking an order to remove the encampment under its general by-law prohibiting unauthorized structures on municipal property. The Court held that the general by-law violated *Charter* s. 7 in a manner that could not be justified under s. 1 and was invalid insofar as it applied to prevent unhoused persons from living in the encampment when the number of unhoused persons in the Region exceeded the number of available and accessible shelter beds. The Court held that the general by-law did not infringe *Charter* s. 15.

9. In 2025, the Region enacted the site-specific by-law that specifically prohibited persons from remaining on the property past the date that vacant possession was needed for construction purposes. It was subsequently amended in January 2026. The by-laws were accompanied by a plan and additional funding to assist persons who were living at the encampment as of April 16, 2025 to find and transition to suitable alternative living arrangements.
10. The Region then brought this Application to the Superior Court requesting a declaration that the site-specific by-law and amended by-law complied with the *Charter*. The persons living on the encampment brought the Cross-Application arguing that the newly enacted by-laws also infringed *Charter* ss. 7 and 15 and requested that they be declared invalid.
11. The Court dismissed the Region's Application and allowed the Respondents' Cross-Application in part.
12. The Court found that it was bound by the doctrine of horizontal *stare decisis* to follow its earlier decision in 2023 ("*Persons Unknown 2023*") that evicting persons from the encampment violated *Charter* s. 7.
13. The Court found that the site-specific by-law and amended by-law violated the Respondents' rights to life, liberty, and security of the person. The Court found that the deprivation was grossly disproportionate to the objective of closing the site so that it could be used as a lay-down site to construct a transit hub.
14. The Court also held that the site-specific and amended by-laws infringed *Charter* s. 15(1) on the basis of race, sex, and disability.
15. The Court recognized homelessness as an analogous ground and found that the site-specific and amended by-laws infringed *Charter* s. 15(1) on that basis.

16. The Court held that the *Charter* ss. 7 and 15(1) violations could not be saved under s. 1.

The s. 7 violation could not be saved by s. 1 due to the fundamental nature of the interests protected by s. 7. Furthermore, the Court found that the benefits of the transit hub were speculative and did not outweigh the *Charter* infringements.

17. In so holding, the Court made multiple errors of law, as set out below.

**I. The Court Erred in Following *Persons Unknown 2023***

- a. The Court erred in law in finding that it was bound by the doctrine of horizontal *stare decisis* to follow *Persons Unknown 2023* with respect to *Charter* s. 7 and s. 1. The Court disregarded material differences in the scope and purpose of the general by-law and the site-specific and amended by-laws which impact the *Charter* s. 7 analysis.
- b. The Court also disregarded evidence that was not before the Court in *Persons Unknown 2023* of the Region's efforts to provide adequate, accessible housing to the individuals that resided on the encampment as of a specified date.
- c. In the alternative, having found that *Persons Unknown 2023* was binding, the Court erred in finding that it was only binding in terms of the *Charter* s. 7 and s. 1 analysis and not the *Charter* s. 15 analysis.

**II. The Court Erred in Finding a Violation of s. 7 of the *Charter***

- d. The Court erred in law or mixed fact and law in finding that the site-specific and amended by-laws violated the Respondents' *Charter* s. 7 rights to life and security of the person despite the Region offering alternative indoor accommodations to all encampment residents who were present at the encampment on a specified date.

- e. The Court erred in law in finding that the by-laws infringed the right to liberty.  
The finding was premised on an erroneous and unsupported interpretation of the right that equates the right to make “private” or “autonomous” choices with the right to live on property owned by someone else.
- f. The Court erred in law or mixed fact and law in finding a deprivation of the right to liberty on the basis that the by-laws permit the encampment residents to be arrested without warrant if they shelter on the property. The by-laws did not create any offences and did not provide for any arrest powers. There was no evidence that any person had been arrested at the encampment.
- g. The Court erred in law in relying on federal commitments and international instruments that have not been incorporated into Ontario law to ground its finding of a *Charter* s. 7 infringement.
- h. The Court also made errors of law or mixed fact and law in finding that the by-laws failed to accord with the principles of fundamental justice. In particular, the Court disregarded the narrow scope of the by-law in finding that the effects of the by-laws were grossly disproportionate.
- i. These findings are not subject to deference as findings of mixed fact and law in connection with a constitutional question are to be reviewed on a correctness standard.

### **III. The Court Erred in Finding a Violation of *Charter* s. 15**

- j. The Court erred in law in finding that the by-laws infringed *Charter* section 15. In particular, the Court departed from established jurisprudence in recognizing homelessness as a new analogous ground. The Court erred in adopting the non-

binding concurring reasons of Wagner C.J. in the Supreme Court of Canada's decision in *Kanyinda*, which failed to command the support of any of the other eight Justices on that appeal, to fashion an expansive interpretation of constructive immutability.

- k. The Court also erred in law or mixed fact and law in finding that the by-laws had a disproportionately adverse impact on the basis of sex, physical and mental disability, addiction, and Indigeneity. The Court erred in finding that the overrepresentation of certain protected groups in the homeless population and/or the historical disadvantage of those groups was sufficient to ground a finding that the by-laws had caused a disproportionate adverse impact on these protected groups. The Court further erred in finding that the by-laws reinforced, perpetuated and exacerbated disadvantage.
- l. The Court further erred in law in relying on international instruments that have not been incorporated into Ontario law to ground its finding of a *Charter* s. 15 infringement.

**IV. The Court Erred in Finding the *Charter* Violations Could Not Be Justified Under s. 1 of the *Charter***

- m. The Court erred in law in holding that the *Charter* ss. 7 and 15 violations were not justified under s. 1. The Court erred in relying on caselaw that has been superseded by the Supreme Court of Canada's decision in *Bedford*, which recognized that s. 7 violations can be justified in contexts outside of natural disasters, wars, and epidemics.

- n. The Court also failed to give due deference under the minimal impairment and proportionality steps of the s. 1 analysis. The Court, in effect, imposed the burden on the Region to demonstrate why it could not impose measures that were different than the by-laws, contrary to jurisprudence holding that the government need only show that the by-laws fall within a reasonable range of solutions.
- o. The Court made an error of law or mixed fact and law in finding that the benefits of the transit hub did not outweigh the deleterious effects on the basis that those benefits were speculative, contrary to jurisprudence holding that governments are not required to show that the benefits of the impugned law will in fact be realized, only that reason and the evidence suggest the law will be beneficial.
- p. The Court failed to extend the necessary deference to elected governments on complex social issues related to homelessness and instead prescribed its own views on how those issues should be addressed. In so doing, the Court exceeded its jurisdiction and proper constitutional role.

## **V. Other Grounds**

- 18. *Courts of Justice Act*, RSO 1990, c C.43, ss. 6(1)(b) and 109(5).
- 19. *Rules of Civil Procedure*, Rule 61.04.
- 20. *Ministry of the Attorney General Act*, RSO, c M.17, ss. 5(b) and (c).
- 21. Such further and other grounds as counsel may advise and this Court deems just.

## **THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

- 1. Section 6(1)(b) of the *Courts of Justice Act*, RSO 1990, c C.43.
- 2. The appeal is from a final order of a judge of the Superior Court of Justice from which no appeal lies to the Divisional Court.

3. Leave to appeal is therefore not required for this appeal.

Dated this 22<sup>nd</sup> day of June, 2026.

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**THE REGIONAL MUNICIPALITY OF**  
**WATERLOO**

**Appellants**

**Respondents**

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <b>COURT OF APPEAL FOR ONTARIO</b><br><br><b>Proceedings commenced at Toronto</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|  | <b>NOTICE OF APPEAL</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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# TAB 3

Court File No. CV-25-00000750-0000  
CV-25-00001341-0000



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE GIBSON

)  
)  
)

THURSDAY, THE  
21<sup>ST</sup> DAY OF May, 2026

BETWEEN:

(Court Seal)

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Applicant

and

**JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE,  
JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES  
DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER,  
JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY  
COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES  
KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN**

Respondents/Cross-Applicants

**JUDGMENT**

**THE APPLICATION** by the Regional Municipality of Waterloo ("**Region**") and the cross-application of certain of the Respondents ("**Cross-Applicants**") were heard on April 16, 17, 20 at 85 Frederick Street, Kitchener, Ontario, N2H 0A7, with the lawyers for all parties in attendance either virtually or in person, and judgment was reserved to this day.

**ON HEARING AND READING** the submissions of the parties:

1. **THE COURT ORDERS** that the Application is dismissed, and the cross-application is allowed in part.
2. **THE COURT DECLARES** that Bylaw No. 25-021 of the Region, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by the Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development* (the "**Site-Specific By-law**"), as amended by By-law 26-001, *A By-law to Amend By-Law 25-021* (the "**Amended By-law**") (collectively, the "**Bylaws**") violate s. 7 and s. 15(1) of the *Canadian Charter of Rights and Freedoms* ("**Charter**"), and are not justified under s. 1 of the *Charter*.
3. **AND THIS COURT DECLARES** that the Bylaws are of no force and effect pursuant to s. 52(1) of the *Constitution Act, 1982*.
4. **AND THIS COURT ORDERS** there shall be an injunction restraining the Applicant, its servants, employees, agents, assigns, officers, directors and anyone else acting on its behalf from enforcing or acting on any part of the By-laws, including but not limited to:
  - (a) directly or indirectly evicting the Named Respondents or other persons from the encampment at 100 Victoria Street North, Kitchener (the "**Encampment**");
  - (b) preventing the Named Respondents or other persons' entry to or use of the Encampment site, directly or indirectly, including without limitation the use of fences or other barriers;

- (c) preventing the Named Respondents or other persons from relocating their temporary shelters to another part of the Encampment site;
- (d) prohibiting entry onto the premises of non-residents, including prohibiting vehicle access to the premises; and
- (e) disposing of or removing any personal belongings, real or personal property belonging to the Named Respondents or other persons and located at the Encampment.

5. **AND THIS COURT ORDERS** that following its implementation of either a Safe Tenting Protocol, or the provision by the Region of an alternative Encampment site reasonably proximate to 100 Victoria Street, or both, the Region may seek further direction from the Court regarding its plan to clear the 100 Victoria Site for the purposes of the Kitchener Central Transit Hub.

Date of issuance JULY 27TH, 2026  
(to be completed by registrar)

**ALEX NOBLE**

Digitally signed by ALEX  
NOBLE  
Date: 2026.07.27  
14:31:56 -04'00'

(Signature of judge, officer or registrar)

THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant

-and- JOSEPHINA DUGAS et al.  
Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
WATERLOO REGION

**JUDGMENT**

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# TAB 4

**CITATION:** The Regional Municipality of Waterloo v. Named  
Respondents and Persons Unknown, 2026 ONSC 2971  
**COURT FILE NO.:** CV-25-00000750-0000 and CV-25-00001341-0000  
**DATE:** 2026/05/21

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

THE REGIONAL MUNICIPALITY  
OF WATERLOO

Applicant

Gordon Capern, Andrew Lokan, Kartiga  
Thavaraj and Greta Hoaken, for the Applicant

– and –

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WEBER, AVERY AMENT, AARON  
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NICHOL, JAMES HAMMOND, JAKOB  
STUBBS, JAMES DAVIS, JASON PAUL,  
NOAH HELSBY, JOSEPH BRADLEY,  
JOSEPH SADLER, JULIE YOUNG, KYLE  
YORK, MEGAN LOPES, STEPHANIE  
MCMILLAN, JEFFREY COUTO,  
JORDAN CAMM, TERRANCE COLE,  
XANDER HARKER, CHARLES  
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JEFFERY, AND PERSONS UNKNOWN

Respondents/Cross-Applicants

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- ) Christa Big Canoe and Riley Hanson for the
- ) intervener, Aboriginal Legal Services
- )
- ) Professor *emerita* Martha Jackman, for the
- ) intervener, The Charter Committee on
- ) Poverty Issues / The National Right to
- ) Housing Network
- )
- )
- ) **HEARD:** April 16, 17 and 20, 2026

**GIBSON J.**

**REASONS FOR DECISION**

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### **Overview**

[1] There is a homelessness crisis in Ontario. The number of unhoused people has risen sharply since the COVID-19 Pandemic. Province-wide, it is projected that the homeless population will more than double by 2035.

[2] While no one measure of homelessness is fully reliable, municipal governments are mandated to conduct periodic “point in time” counts (“PiT Counts”). In a September 2021 PiT Count, 1,085 people were counted as experiencing homelessness in Waterloo Region, with 75% classified as experiencing chronic homeless. By October 2024, those numbers had increased to 2,371 and 78% respectively.

[3] The growth in Waterloo Region (“the Region”) is consistent with provincial trends, which show significant growth in unhoused populations attributed to a complicated confluence of both national and international factors, but the situation in the Region is even more acute than elsewhere in the province. Between 2021 and 2025, the overall homeless count in the province increased by 49.1%; in Waterloo Region, the PiT Count increased by 118% over the same period. The unhoused population in the Region continues to grow, and significantly exceeds the number of available shelter beds and other housing options.

[4] As I observed in my earlier decision regarding an injunction in this matter, homelessness poses significant challenges to our contemporary society. It is an extraordinarily difficult problem

to grapple with. It presents a complex multi-faceted phenomenon of diverse origins not susceptible to easy resolution. There is no prevailing academic or policy consensus about the best way to address it. It highlights chronic public policy tensions between unhoused individuals who are amongst the most disadvantaged in society (and their advocates), and other citizens who tire of the violence, drug use, squalor and derogation from public order that often attends homeless encampments, the disruption to neighboring residents and businesses, the significant expenditure of public funds in attempting to mitigate these, as well as the impediments to projects of significant public importance and benefit which may arise from them.

[5] It requires a compassionate, empathetic and respectful response, one worthy of the aspirations and values of our Canadian society and duly attentive to the dignity and rights of the unhoused, but also one that is clear-eyed in attempting to achieve the appropriate balance between rights of individuals and the broader public interest. This litigation throws this tension into sharp relief.

[6] Homelessness is a fact on the ground. It is not going away in the proximate future. An ostrich approach will not suffice. Solutions to the homelessness crisis will require increased resources from all levels of government and other stakeholders, time to implement the required strategies, and a clear recognition of and focus upon the constitutional rights involved.

[7] What is clear is that all levels of government, and other actors in the public and private sectors, including healthcare, mental health and addiction supports, the justice system, charitable and religious organizations, and others, are required to work together to address this challenge.

[8] There are sharply diverging views about how best to tackle the issue of homelessness, and the optimal way ahead having regard to practical constraints on resources and the myriad competing alternative demands for the expenditure of public funds, as well as competing interests in advancing public infrastructure projects. The polarization of this debate at times seems to resemble a “dialogue of the deaf”, frequently characterized by the caricaturing of, and unwillingness to listen to, opposing viewpoints. This is not helpful.

[9] Developing solutions to address the growing homelessness issue involves policy and legislative choices that are within the primary purview of government, not the courts. Courts must be mindful of the limits of their institutional competence. However, in *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, at para. 107, the Supreme Court of Canada has emphasized that constitutional oversight is the court’s duty even when faced with complex or contentious issues:

The fact that the matter is complex, contentious or laden with social values does not mean that the courts can abdicate the responsibility vested in them by our Constitution to review legislation for *Charter* compliance when citizens challenge it. As this Court had said on a number of occasions, “it is the high duty of this Court to ensure that Legislatures do not transgress the limits of their constitutional mandate and engage in illegal exercises of power...”

[10] As I noted in the previous injunction decision in this matter, *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2025 ONSC 4774, I am alive to the inherent public-interest function of the Regional Council as a democratically-elected body and the need to respect decisions made by those bodies in the appropriate balance of the Legislative, Executive and Judicial arms of government in our democratic society in Canada. Each has its proper role, and appropriate ambit of jurisdiction: in popular parlance, its “own lane.” Questions of the constitutionality of municipal enactments are clearly within the proper ambit of the Court’s jurisdiction to assess. Moreover, it must be noted that in the present case, it was the decision of the Region to proactively seek guidance and a declaration from the Court as to the constitutionality of the Site-Specific By-Law. It initiated the Application that is before the Court.

[11] Homelessness is a public policy issue that engages practical, moral and legal dimensions. The prevalence of encampments reflects Canada’s challenges in meeting its human rights obligation to ensure that all individuals have access to adequate housing - housing that is secure, affordable, habitable, accessible, culturally appropriate, and in a suitable location with access to services -, while faced with the practical constraints of available resources and the challenges in resource allocation, as well as planning for projects that aim to advance the public good.

[12] Assessing the issue of homeless encampments from a *Charter* perspective requires consideration of contending factors that often seem to pull in different directions. It is a complex

and contentious task, often fraught with emotion, with no simple solution. But it ultimately needs to be informed by one primary thought: The homeless are not Other. They are Us. They are rights bearers no less entitled than any other Canadian citizens to the full benefit and protection of the *Charter*.

### *Background*

[13] Waterloo Region, along with many other municipalities in Ontario, has experienced the manifestation of these issues on the ground with increasing acuteness. The severity of the problem here may well have come in tandem with the rapid population growth which the Region has experienced in recent years. This has particularly crystallized around the property at 100 Victoria Street West in Kitchener (“100 Victoria” or “the Property”), which has become a flashpoint of controversy. There has been an encampment of unhoused persons on this location since 2021 (“the Encampment”), and it has already been the subject of significant public interest litigation in *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 (“*Persons Unknown 2023*”).

[14] In addition to *Persons Unknown 2023*, there have been several other significant cases in Ontario in recent years which have also dealt with the question of homeless encampments: *The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662; *Poff v. City of Hamilton*, 2021 ONSC 7224; *Heegsma v. Hamilton (City)*, 2024 ONSC 7154; *Church of St. Stephen et al. v. Toronto*, 2023 ONSC 6566; and *Black et al. v. City of Toronto*, 2020 ONSC 6398. The decision on the appeal from the trial decision in *Heegsma*, in which Ramsay J. dismissed an application by 14 homeless individuals who applied for a declaration that the City of Hamilton’s enforcement of its parks by-law breached their s.7 and s.15 *Charter* rights, is currently under reserve at the Court of Appeal for Ontario.

[15] There have been cases engaging similar issues in other provinces as well, including *Matsqui-Abbotsford Impact Society v. Abbotsford (City)*, 2024 BCSC 1902, and *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec*, 2025 QCCS 2087.

[16] Since *Persons Unknown 2023* was argued in 2022, the Region has more than doubled its operating budget for homelessness programs and services, from \$30.9 million to \$65.5 million, with corresponding increases in capacity. The Region has made significant efforts to address the needs of people experiencing homelessness. Despite this, the challenges have continued to grow. In a September 2021 point-in-time count (“PiT Count”), 1,085 people were counted as experiencing homelessness in the Region, with 75% classified as experiencing chronic homelessness. By October 2024, those numbers had increased to 2,371 and 78% respectively.

[17] The Region has a long-term plan to address chronic homelessness by 2030, together with community partners and other levels of government. This plan, adopted in April 2024, is known as the Plan to End Chronic Homelessness (“PECH”). The PECH was developed in consultation with stakeholders, calls for action from the other key partners in the fight against homelessness, and has the Region’s full support.

[18] The present case, however, is more limited in scope than *Persons Unknown 2023*, in which the Region sought the approval of the Court for a By-Law which the Region intended to be of general application to all its property in Waterloo Region. The Region and its contractual partner Metrolinx require 100 Victoria Street North for the specific purpose of constructing the Kitchener Central Transit Hub (“KCTH”) for the benefit of the entire population of the Region. The schedule for site remediation has evolved. It is now scheduled for October 2026, to prepare for construction commencing later, although this timeline is not fixed.

[19] Accordingly, on April 23, 2025, the Region passed a site-specific by-law (“the Site-Specific By-law”) to provide for vacant possession of 100 Victoria by December 1, 2025, accompanied by a plan (“Plan”) to provide alternative accommodation for those residing at 100 Victoria as of the date notice of the By-law was given (“Existing Residents”). Unlike all previous encampment cases, the present case considers a site-specific by-law with a specific purpose, rather than a general by-law.

[20] Under the Region’s Plan, the approximately 40 Existing Residents will be offered alternative accommodation by the Region’s team of licensed professional unsheltered support workers (“USWs”), who will work with the residents to develop individual housing plans (“IHPs”)

for them, tailored to their specific needs. The Region has allocated additional funding to try to ensure that they have a place to go. The Region indicates that it is confident that they can be transitioned to alternative accommodations. Some of the original 40 Existing Residents have made this transition, and some have left the Encampment of their own accord.

### *The Region's Application*

[21] The Applicant in the present case, the Regional Municipality of Waterloo (the “Region”), initiated an application on June 9, 2025 pursuant to Rule 14.05 of the *Rules of Civil Procedure* seeking various forms of relief, including a declaration that its By-law Number 25-021, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by the Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development* (the “Site-Specific By-law”) complies with the *Canadian Charter of Rights and Freedoms* (“*Charter*”). The By-law contains prohibitions respecting 100 Victoria Street, a vacant lot that is the site of an outdoor encampment of vulnerable unhoused individuals. Prohibitions include a ban on erecting temporary structures (such as tents). Contravening the By-law constituted an offence with a penalty upon conviction of fines up to \$5,000.00. The By-law permits immediate enforcement of its provisions by police upon “Non-Residents” of the Encampment, defined as individuals who are assumed to have started residing on the property after April 16, 2025, the Public Notice date of the By-law, regardless of whether such individuals have alternative housing available to them. “Existing Residents” of the Encampment (those persons assumed to have already been residing on the property as of April 16, 2025) could not be removed until December 1, 2025, the date that the prohibition against all persons from entering onto, residing on or occupying 100 Victoria, was to take effect.

[22] The parties requested an adjournment of the dates originally scheduled for the hearing in November 2025, in order to engage in an attempt at mediation. When this proved unsuccessful, on January 9, 2026, Regional Council passed amendments to the Site-Specific By-Law (“the Amended By-Law”) to address some of the concerns that had been identified with the April 2025 version of the By-Law. The Amended By-Law seeks to defer the vacant possession date, remove the offence provision and to codify a transition policy.

[23] In its Further Amended Notice of Application, dated March 10, 2026, the Region makes application for a declaration that By-Law Number 25-021 of the Regional Municipality of Waterloo, *A By-Law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by the Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development*, as amended January 9, 2026 by By-Law Number 26-001 (“the Amended By-Law”), complies with the *Charter of Rights and Freedoms*, as well as an interim and final order (“Injunction Order”) that any persons having notice of the Injunction Order are restrained and enjoined from breaching the Amended By-Law by remaining on and/or re-entering the property municipally known as 100 Victoria Street North in the City of Kitchener except as in accordance with the Amended By-Law.

[24] Alternatively, if the Court determines that it does not comply with the *Charter*, or is otherwise deficient, the Region seeks this Court’s direction as to the steps that it needs to take to close the Encampment at 100 Victoria Street North, so it can proceed with construction activities relating to the KCTH.

#### *The Respondents’ Cross-Application*

[25] The Respondents resist the Region’s application and have initiated a Responding Application and Notice of Constitutional Question seeking, *inter alia*, a declaration that the Site-Specific By-law, as Amended, violates their s. 7 and 15(1) *Charter* rights.

[26] The Respondent’s Notice of Constitutional Question is filed with respect to a Cross-Application, Court File No. CV-25-00001341-0000, which was heard together with the Application, CV-2500000750-0000, commenced by the Regional Municipality of Waterloo (the “Region”). The Cross-Applicants in Application CV-25-00001341-0000 are among the Respondents in CV-25-00000750-0000.

[27] The Cross-Applicants are chronically homeless individuals who shelter at an encampment located at 100 Victoria Street, Kitchener during periods when they lack accessible indoor shelter. They are facing eviction from the Encampment as a result of the Site-Specific By-law and the Amended By-law (collectively, the “By-laws”) enacted by the Respondent Regional Municipality

of Waterloo. The Cross-Applicants ask the Court to determine whether, in the absence of sufficient accessible shelter beds for the Region's homeless, the Region's efforts to address the individual needs of some of the Cross-Applicants is sufficient to ensure that the By-laws are compliant with the requirements of ss. 7 and 15 of the *Charter*. The material facts giving rise to the constitutional question are set out in the Applicant's Amended Notice of Application, issued on October 22, 2025.

[28] The following are the legal bases for the constitutional question as framed by the Cross-Applicants. They submit that the By-Laws violate the s. 7 right to life, liberty, and security of the person of the Cross-Applicants, and that these violations are not in accordance with the principles of fundamental justice. The Cross-Applicants submit that the By-Laws violate their rights in a multitude of ways that cause deprivations of life, liberty, security of the person, including by:

- a. Preventing the Cross-Applicants from sheltering themselves at the Encampment site when the number of homeless in the Region outnumbers the Region's available and accessible shelter spaces. This leaves the Cross-Applicants unable to protect themselves from the elements in a context where the Region's Code of Use By-law (By-Law Number 13-050 of the Regional Municipality of Waterloo) and the *Trespass to Property Act*, R.S.O. 1990, c. T2, prohibit sheltering in areas not subject to the By-Laws;
- b. Failing to include rights-based measures to ensure access to longer-term adequate housing and supports in accordance with the Region's Plan to End Chronic Homelessness;
- c. Increasing the Cross-Applicants' risk of hypothermia, sunburn, heatstroke, dehydration, and fatigue;
- d. Depriving the Cross-Applicants of the privacy afforded by a tent or tarp, which they require for dignity, autonomy, and the ability to attend to personal hygiene or medical needs without fear of intrusion;
- e. Causing or contributing to the loss of the Cross-Applicants' belongings during and after their eviction, including important survival supplies;
- f. Requiring the Cross-Applicants to move to remote locations to avoid detection, where they are inaccessible to health and social services, and without assistance if they experience a crisis;

- g. Disrupting the Cross-Applicants' connections to food supplies, health care, addiction, housing supports, and other services available at the Encampment;
- h. Disrupting the emotional and physical support provided by the Cross-Applicants' community;
- i. Increasing the risk that the Cross-Applicants with substance use disabilities will be forced to use substances in isolated circumstances away from community supports, leaving them more vulnerable to fatal overdoses;
- j. Increasing the Cross-Applicants' social marginalization and causing them to experience loss of trust in authorities;
- k. Increasing the risk that the Cross-Applicants will be subjected to harms such as intimate partner violence, assault, sexual assault, and human trafficking by forcing them into circumstances where those harms are more likely;
- l. Increasing the risk that the Cross-Applicants will experience significant stress, destabilization, and trauma, in some cases exacerbating existing mental health conditions; and,
- m. In a context where trespass to property is an offence, increasing the risk that the Cross-Applicants will face charges, fines, arrest, or incarceration if they resist eviction under the By-laws.

[29] The Cross-Applicants submit that these deprivations of their rights to life, liberty and security of the person are arbitrary, overbroad, and grossly disproportionate to the purpose of the By-laws and do not accord with the principles of fundamental justice.

[30] The Cross-Applicants also submit that the By-Laws infringe s. 15(1) of the *Charter* by creating a distinction on enumerated grounds (disability, sex, marital status, Indigeneity / race) and/or analogous grounds (receipt of social assistance and homelessness), and imposing a burden or denying a benefit in a manner that reinforces, perpetuates or exacerbates disadvantage. Encampment residents, including the Cross-Applicants, belong to multiple enumerated and analogous groups and struggle with intersecting disadvantages. The By-laws cause disproportionate impact and fail to ensure reasonable accommodation of needs based on enumerated and analogous grounds, both individually and as they intersect. The Respondents say that this is for reasons including that:

- a. Women and persons who are gender diverse are less likely than men to be able to access indoor shelter that meets their needs when they are prevented from sheltering outdoors; and they experience unique safety risks arising from being unable to protect themselves by erecting even rudimentary shelter;
- b. Persons with disabilities disproportionately experience homelessness and are therefore disproportionately impacted by the By-laws to the extent that the By-laws cause or contribute to disadvantage for persons who are homeless;
- c. Persons with physical and mental disabilities are less likely to be able to access indoor shelter if they must leave the Encampment site due to physical barriers and lack of accessibility at emergency shelters, as well as service restrictions, rules and prohibitions on substance use, and barriers to complete intake procedures, and are therefore more likely to face the risks of unsheltered outdoor homelessness if they are prevented from sheltering outdoors;
- d. Persons with disabilities are disproportionately impacted by forced relocation, and by relocation to remote locations, to the extent that their disabilities impact their abilities to carry their belongings with them, disassemble shelters, and travel distances to access the food supplies, health care, and other supports and services located at or around the Encampment site;
- e. Persons with mental disabilities, such as mental illness and substance use disabilities experience disproportionate effects as described above, including increased psychological stress, exacerbation of existing mental illness, sleep deprivation, risk of starvation, risk of fatal overdose, increased risk of arrest, and loss of the protective effects of community and emotional support;
- f. Indigenous persons are disproportionately homeless and therefore disproportionately impacted by the By-laws to the extent that the By-laws cause or contribute to disadvantage for persons who are homeless;
- g. Indigenous persons are less able to access indoor shelter and face particular disadvantage from outdoor sheltering prohibitions due to: (1) the lack of culturally appropriate shelter supports, (2) past experiences of racism resulting in mistrust of authorities;
- h. Persons who are homeless constitute a socially marginalized and historically disadvantaged group subject to persistent stigmatization, stereotyping, political marginalization and social exclusion on the basis of a personal characteristic analogous to the enumerated grounds of discrimination under s. 15(1). Homelessness is also extremely difficult to change due to the lack of access to affordable housing, inadequacy of social assistance, as well as the stigma attached to being unhoused. The By-laws directly perpetuate and exacerbate the discrimination and disadvantage of homeless individuals and fails to accommodate the distinctive needs of persons

experiencing homelessness for access to accessible shelter, housing, and related supports necessary to the protection of life, security and substantive equality;

i. Persons who are in receipt of social assistance (as an analogous ground) face discrimination and disadvantage. Receipt of social assistance is extremely difficult to change due to a stigma associated with receiving social assistance and the inadequacy of social assistance. The inadequacy of social assistance and stigma attached to receipt of social assistance create barriers to finding affordable housing and employment. The By-laws exacerbate the discrimination and disadvantage of individuals receiving social assistance. The By-laws have the effect of reinforcing, perpetuating or exacerbating disadvantage of members of the above referenced groups.

[31] The Cross-Applicants submit that violations of ss. 7 and 15 cannot be justified by s. 1 of the *Charter*.

[32] They also submit that ss. 7 and 15 must be interpreted in accordance with the presumption of conformity with Canada's international human rights obligations, including under the *International Covenant on Civil and Political Rights*, *International Covenant of Economic, Social and Cultural Rights*, *Convention on the Elimination of All Forms of Discrimination Against Women*, *Convention on the Rights of the Child*, *International Convention on the Elimination of All Forms of Racial Discrimination*, and the *United Nations Convention on the Rights of Persons with Disabilities*. They contend that the Site-Specific By-law and the Amended Bylaw are inconsistent with ss. 7 and 15 interpreted in conformity with these obligations.

[33] The Cross-Applicants seek a declaration that the By-laws violate ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* and that they are not saved by s. 1. The Cross-Applicants ask:

a) that the By-laws be declared of no force and effect under s. 52(1) of the *Constitution Act, 1982*, in whole or in part; and,

b) any appropriate remedies pursuant to s. 24(1) of the *Charter* to prevent infringements.

[34] These countervailing applications raise significant issues of public importance relating to municipal encampment responses and the rights of some of the most vulnerable members of

society under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”).

*Injunction and the hearing of the applications*

[35] The Respondents successfully applied for an interlocutory injunction restraining the Region from enforcing or acting on any part of the Site-Specific By-law until their *Charter* claims are finally determined by the Court. This decision, *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2025 ONSC 4774 (“*Injunction Decision*”) was released in August 2025. Since that time, the parties engaged in an unsuccessful attempt at mediation in December 2025, and the Region amended its By-Law on Jan 9, 2026 (“the Amended By-Law”). The hearing of the contending applications took place over three days in April 2026. The outcome of this hearing is the subject of these Reasons for Decision.

[36] Persons have been sheltering at this location since 2021. In 2023, the Region applied to the Superior Court of Justice for permission to clear the site pursuant to a by-law prohibiting temporary structures on Region-owned lands (the “Code of Use By-Law”). In *Persons Unknown 2023*, Valente J. declined this request. Justice Valente declared that By-Law constitutionally inoperable in relation to the site, “insofar, and only insofar, as it applies to prevent the residents of the encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceeds the number of available accessible shelter beds in the Region”.

[37] Since then, the Region has provided basic services to the encampment such as waste disposal and portable toilets. Chronically homeless residents could count on it being available for no-barrier shelter of last resort. However, the Region has now enacted a new by-law with the specific objective of clearing this site, so that it can be converted for use as a “lay-down” site for the equipment needed to construct a transit hub (the “Site Specific By-Law”). That construction is tentatively scheduled to begin in late 2026, though the date is subject to change.

[38] The Region does not propose to permit outdoor sheltering anywhere else after the encampment is closed. The Respondents contend that they will be left with nowhere to go when they cannot access indoor shelter that meets their needs. In the compelling words of one

encampment resident: “[we] are at the bottom and now [they] are just taking away the bottom.”

[39] The conditions that led Justice Valente to declare the Code of Use By-Law constitutionally inoperable in relation to this site have only worsened since 2023. The Region is candid that its homeless population continues to exceed its shelter spaces.

[40] The Region says it will offer alternative accommodation to those persons who were physically present at the encampment on April 16, 2025, referred to by the Region as the “Existing Residents”. It is unclear how many of the persons remaining at the Encampment are “Existing Residents”. The By-Law does not make the eviction of Existing Residents contingent on alternative accommodation being achieved, and even they will be left with no shelter of last resort to return to if accommodation offered by the Region is only temporary. The Region has not made any formal commitments to the remaining persons that provided affidavits, who will, they assert, have nowhere to go if evicted.

*Participants in the hearing*

[41] An *Amicus Curiae*, counsel for the Mental Health Legal Committee, has also been appointed to represent the interests of “those persons living in the encampment whose capacity may be in issue and who have not retained counsel”. The *Amicus*’ position on the Applications is generally aligned with that of the Respondents.

[42] The Attorney General of Ontario intervenes as of right pursuant to s.109(4) of the *Courts of Justice Act* to make submissions to the Court in respect of the constitutional questions.

[43] Leave was granted to the Canadian Civil Liberties Association (“CCLA”), Aboriginal Legal Services (“ALS”) and the Charter Committee on Poverty Issues/ National Right to Housing Network (“CCPI/NRHN”) to provide factums and make oral submissions as interveners.

[44] These Reasons for Decision explain why the Region’s application will be dismissed, and the Respondents’ application will be granted in part.

### **Background Facts**

#### *The Regional Municipality of Waterloo*

[45] The Region is an upper-tier municipality under the *Municipal Act, 2001*. The total population of Waterloo Region is estimated at 678,170 as of year-end 2024. The territory over which the Region has jurisdiction includes the cities of Cambridge, Kitchener, and Waterloo, and adjacent rural townships. The Kitchener-Waterloo-Cambridge metropolitan area is projected to have a population of 600,000 in 2025. The Region's responsibilities include public health, community services, public transit, and waste management. The Region does not have jurisdiction beyond its territory, or over the overall provision of healthcare services, education, social assistance, interest rates and monetary policies, or many other key policy areas which affect homelessness.

#### *The 100 Victoria Property*

[46] The Encampment site is a gravel parking lot located at 100 Victoria Street in the City of Kitchener. The Region owns the Property at 100 Victoria, which is on the corner of Victoria and Weber Streets in downtown Kitchener. VIA Rail/GO Transit and bus stations are to its east, with a commercial plaza to the west, a Metrolinx-owned rail corridor to the north, and a variety of businesses and a church to the south. The property is not a public park, nor a site that is normally open for public use. Despite this, however, since approximately December 2021, it has been the site of the Encampment, comprised of unhoused individuals and the tents and other temporary structures they have erected.

#### *The Kitchener Central Transit Hub*

[47] 100 Victoria is also the site of activities to be undertaken as part of the construction of the Kitchener Central Transit Hub ("KCTH"), a significant public transportation project. The Region said that Metrolinx requires the Property for construction set to begin in March 2026, and the Region requires vacant possession of the site by December 1, 2025, to carry out preparatory work, including site remediation. These timelines have shifted.

[48] The Regions says that the KCTH is a landmark project that will create significant economic

and social growth for residents of the Waterloo region. Once completed, the KCTH will act as a gateway to the Waterloo area, serving current and future residents, as well as visitors, and will redefine how people connect, commute, and experience the Waterloo community. The Region says that the KCTH is vital to the economic and social growth of the Region, and a key part of the Region's strategic priorities. It will combine numerous services, including ION light rail transit, Grand River Transit, expanded rail and bus GO Transit, VIA Rail, inter-city bus service, passenger vehicles and car shares, and cyclists and pedestrians, into one central and convenient transit hub in the heart of the region. A reduction in commuter times across the region will constitute a significant service to its residents. This is especially true for those who rely on public transit daily, including those who commute for work, seniors, students, lower-income residents, and people with disabilities.

[49] Metrolinx has advised the Region that it requires use of the Property for construction staging and laydown purposes. The Property will not be the location of the KCTH, which will be nearby, but rather is intended to be used in the construction phase. Staging and laydown are critical preparation activities for the construction of a physical project. They involve positioning and organizing construction materials (such as steel, concrete, bricks, wood), equipment and tools (including large construction machines and vehicles) and other items such as temporary structures for access during a project, to ensure worker safety and maintain workflow. The proximity, size and grade of a staging and laydown site are important factors to consider in choosing such a site. Since large construction equipment and materials are transported from the laydown site to or from the construction site, a laydown site that is even a short distance away can increase the chance of worker injury by increasing the distance materials or equipment needed to travel. On similar rail construction projects, workers have been injured by equipment falling over while traversing a grade raising or on shaky ground. This can also, on aggregate, add significant additional time to a project.

[50] The Region submits that 100 Victoria is the only space owned by the Region that is proximate to the construction work to be conducted by Metrolinx, of an adequate size, and on-grade with the construction site. The Region must provide the Property to Metrolinx in a condition fit for use, which means the Region will require time to engage in remediation and preparation of

the Property prior to turnover to Metrolinx. This may include clean up, investigations, geotechnical testing, soil testing and scraping, removal of hazardous materials, and/or groundwater monitoring. It will take the Region up to three months to complete this work.

[51] The Region says that it has considered whether it could provide Metrolinx with an alternative site but says that it has determined that no other site can be used. All other properties owned by the Region within 1 kilometer of the work are either properties that are already being used for the KCTH site or the Region's other works, have active ongoing uses, or are not on-grade or large or proximate enough for Metrolinx's purposes. The option of purchasing additional land is considered impractical because the cost of acquiring suitable land that is proximate to the construction site is prohibitively high and the types of land available in close proximity are not suitable for construction purposes. Further, the time required to identify, purchase, and prepare new land would delay the project timeline. Given that construction work will be taking place on all sides of the Property, including rail work, road work, and (most critically) demolition work, the Region is also concerned with the health and safety risks to anyone residing nearby while construction work is ongoing. The risks of heavy machinery or other fatal accidents must be taken into account.

#### *Encampment and its residents*

[52] Homeless persons began erecting tents on the site in or around December 2021. However, the number of persons sheltering at the encampment varies, as chronically homeless persons gain and lose other forms of shelter. Encampment residents rely on essential services near the encampment site. There is a drop-in space across the street where residents can access coffee, water, showers, and laundry. There is also a soup kitchen nearby where residents can have a daily meal and use the telephone. Health and harm reduction services are provided on-site by Sanguen Health Centre. Community volunteers attend regularly to provide clothing, firewood, blankets, food, and water.

[53] The Respondents' backgrounds reflect those of the Region's homeless. All of the Named Respondent affiants have disabilities - mental health or cognitive disabilities, substance use disabilities, or mobility impairments. Four of the affiants are Indigenous. A further four identify

as LGBTQ2S+. Seven of the affiants affirm to having survived childhood physical and sexual abuse, domestic violence, and/or sexual assault. Three shelter together with their partners. Six are women or identify as gender-diverse.

[54] The Respondents live in extreme poverty – some have no income at all, and others receive social assistance. Circumstances that cause the Respondents to rely on the encampment vary.

*Court refused Region's previous application to clear the Encampment*

[55] This Encampment was the subject of an earlier application in *Persons Unknown 2023*. In January of 2023, Valente J. dismissed the Region's application to evict encampment residents under By-law number 13-050 (the "Code of Use By-law"), which prohibited persons from erecting temporary shelters on Region-owned property without a permit. At that time, the Region advised that it ultimately intended to use the 100 Victoria site as a "laydown" area for equipment during the construction of a transit hub nearby. Justice Valente found that prohibiting sheltering deprived encampment residents of their life, liberty, and security of the person when insufficient sheltering options left them "with no alternative but to sleep outside". At that time, available shelter spaces fell short "by some 50% of what was required to shelter the Region's homeless". In arriving at that count, Valente J. found it was not appropriate to include motel spaces in the count, in part "because their availability is at the discretion of the motel operators". He also held that it was "simply not a matter of counting the number of spaces". Options needed to meet the "diverse needs" of the encampment residents to be accessible to them. Justice Valente directly rejected the Region's argument that it need only establish sufficient capacity to shelter current encampment residents in order to establish it would be constitutional to prohibit sheltering on Region property:

[94] Finally, I reject the Region's submission that, at the end of the day, in order to grant the relief it seeks, I need only be satisfied that there is sufficient capacity in the system to accommodate the Encampment residents. I reject this proposition because of the fluctuating and variable capacity of the system based on the Region's own numbers. Furthermore, were I to be guided by this principle, and satisfied that there is a sufficient bed capacity for the Encampment residents on any given day, how does this approach respond to the many other vulnerable

homeless individuals in the Region? It does not. The approach is particularly problematic in my view because the Region intends to be guided by this decision in its treatment of other encampments. Were I to accede to the Region's submission, it seems to me I would be helping to create an immediate disadvantage for those who are homeless and living outside encampments. I am not prepared to do that. [...]

[56] Justice Valente held that these deprivations of the s.7 *Charter* rights to life, liberty, and security of the person were not in accordance with the principles of fundamental justice because enforcement of the Code of Use By-Law against residents of this encampment site was overbroad and grossly disproportionate in relation to the By-Law's objectives. Those objectives included preventing disruption to the Region's operations and promoting use and enjoyment of Region premises. Justice Valente declared the By-law constitutionally inoperative insofar as it applied to prevent encampment residents from living on and erecting temporary shelters at the site, under circumstances where the number of people experiencing homelessness exceeded the available and accessible shelter beds in the Region. However, he directed that the Region could apply for an order to terminate the declaration upon it being in a position to satisfy the Court that the Code of Use By-law no longer violated the s. 7 *Charter* rights of the encampment residents. The Region has not done so, nor did the Region appeal the decision.

[57] The Encampment remains in place while other sheltering sites have been cleared. Following that decision, the Region has continued to provide basic services to the encampment, including waste disposal and portable toilets. Meanwhile other encampment sites in the Region have been closed, including sites on Regional land and land owned by lower-tier municipalities. An encampment at 150 Main Street in Cambridge was closed by the Region in August 2023. An additional site at Soper Park in Cambridge was cleared by the City of Cambridge in September of 2023. An encampment at Roos Island in Kitchener was closed by the City of Kitchener in spring of 2023.

#### *Homelessness and accessible shelter in the Region*

[58] Homelessness has more than doubled in the Region since the decision in *Persons Unknown*

2023 was released, and the Region’s shelter system has not kept pace. One measure of homelessness in a municipality is the “Point in Time Count”, which is a count of persons experiencing homelessness on a single night. The September 2021 Point in Time Count that the Court relied on in *Persons Unknown 2023* recorded 1,085 persons experiencing homelessness, including 412 who were “living rough”, and 191 who were accessing emergency shelters. However, by October of 2024, the Region recorded 2,371 homeless, 1,009 of whom were “living rough”, 446 in emergency shelters, and 153 in Region-funded motels.

[59] Effective June 6, 2025, the Region’s Commissioner of Community Services affirmed the Region’s emergency shelter capacity was 377. Taking the 2,371 homeless in the Region and the 377-shelter capacity effective June 6, 2025, this only covers 15% of the Region’s homeless population, falling short by 85% of what is required. Accordingly, the Region has acknowledged that it cannot ensure that the number of homeless persons will not exceed the number of shelter spaces in 2025, even leaving aside whether available spaces meet the needs of encampment residents.

[60] The majority of the Region’s homeless move in and out of homelessness. Of the 2,371 homeless persons captured by the 2024 Point in Time Count, 78% were “chronically homeless”, which the Ontario Association of Municipalities defines to include persons in “prolonged or repeated periods of homelessness”. This accords with the experience of the Named Respondents, who have moved in and out of the encampment as they lose and gain shelter alternatives.

#### *Region’s Plan to End Chronic Homelessness (“PECH”)*

[61] Approximately 15 months following the decision in *Persons Unknown 2023*, the Waterloo Regional Council passed a Plan to End Chronic Homelessness (“PECH”). Region staff had developed this document over more than a year, in collaboration with a Lived Expertise Prototyping Cohort and a group of “cocreators” consisting of system leaders and service staff. The Report is co-authored by the Region and the Social Development Centre Waterloo Region (“Social Development Centre”), an organization that facilitates inclusion of lived experience in policy development. The contributions of the Social Development Centre were facilitated by David Alton. The PECH prescribes a “human rights approach” to homelessness, where “people

experiencing homelessness are treated as rights holders” and “the Region has a duty of care for their housing needs”. It requires the Region to ensure that national and international human rights law are “appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy and liability”. This “human rights approach” is set out in detail through the principles articulated in the UN Special Rapporteur on the Right to Adequate Housing’s “National Protocol for Homeless Encampments in Canada”, including Principle 2: Meaningful engagement and effective participation of homeless encampment residents, which provides that residents are entitled to meaningful participation in the design and implementation of policies, programs, and practices that affect them. Ensuring meaningful participation is central to respecting residents’ autonomy, dignity, agency, and self-determination. Engagement should begin early, be ongoing, and proceed under the principle that residents are experts in their own lives. The views expressed by residents of homeless encampments must be afforded adequate and due consideration in all decision-making processes. The right to participate requires that all residents be provided with information, resources, and opportunities to directly influence decisions that affect them.

#### *Region passes Site-Specific By-Law*

[62] On April 16, 2025, the Region provided public notice of the Site-Specific By-Law by posting a copy on its website. It did not post notice of the By-Law at the encampment site. The Site-Specific By-Law states that it is intended to “specifically regulate and govern 100 Victoria Street and to obtain vacant possession as of December 1, 2025.” A Report to Council upon the introduction of the By-Law specified the By-Law would “facilitate remediation of the property commencing December 1, 2025, and Metrolinx’s use of the property by March 2026” for the purpose of constructing the Kitchener Central Transit Hub. Council passed the Site-Specific By-Law on April 23, 2025. Effective upon its April 23, 2025 adoption by Council, the By-Law prohibits anyone who does not meet the definition of “resident” from sheltering at the encampment. It defines “resident” to mean persons “residing at 100 Victoria Street as of the date that notice of this bylaw is provided through the posting of the agenda for the Council meeting at which this By-law will be considered”. It further provides that “[c]ommencing on December 1, 2025, no person shall enter onto, reside on, or occupy 100 Victoria Street or any part thereof”. Persons contravening that provision would be guilty of an offence and liable for a fine of up to \$5,000.

[63] The By-Law authorizes the Region to, among other actions, erect fencing around the site to prevent entry, remove persons' personal property from the site, and take steps under the *Trespass to Property Act* to enforce the By-Law. The Region's Commissioner of Community Services affirms that the Region recognizes "approximately 40" persons as having resided in the encampment on April 16, 2025, ("the Existing Residents") that being the date "notice" of the By-Law was given. This count includes only four of the Named Respondents that provided affidavits.

[64] Council also directed staff to add \$814,333 to the regional housing budget in order to "implement a plan for alternative accommodation" for "current residents" of the encampment. Of this new funding, \$466,083 would go to "motels with social supports", \$77,000 to "site remediation", and \$271,250 to new supportive housing units. The funding for "motels with social supports" would be "temporary" and its continuation beyond 2026 is not specified. The Report to Council summarized a "transition plan" for the encampment, entailing Region staff providing "enhanced site support by focusing efforts and resources on current residents for available housing and shelter options and ongoing site management". This "operational effort" will "wind down before November 30th".

[65] Enforcement of the By-Law is not conditional on any encampment resident being offered alternative accommodation. The By-Law may be enforced whether or not residents are housed.

#### *The Amended By-Law*

[66] The Region passed an Amended By-Law on January 9, 2026. This adjusted the vacant possession date, removed the offence provision, and provided for a Transition Plan for the Existing Residents.

#### *Current status of the Encampment*

[67] The population of the Encampment varies, and the parties differ as to the number of individuals currently staying there. It has varied from the approximately 40 individuals thought to be there in April 2025, and the Region's most recent estimate of 10-12 occupants as of February 2026. The most recent estimate of the Respondents is that 15-20 people stay at the Encampment, and about 10-15 more people visit the Encampment each day. On April 8, 2026, 20 structures were

counted on the site. Smoke was coming from three structures. None of the original 40 Existing Residents remain on site, and the USWs have supported the transition of at least 22 more recent arrivals to alternative housing since May 2025. The parties are agreed that there are seasonal variations in the population of the Encampment, and that there are likely to be more people present with warmer weather in the spring, summer and fall, than in the winter.

### **Issues**

[68] The Applicant Region's application, and the Respondents' Cross-Application and Notice of Constitutional Question requires the Court to consider:

- (i) The admissibility of contested expert evidence provided by both parties.
- (ii) Is this Court bound by horizontal *stare decisis* arising from Justice Valente's decision in *Persons Unknown 2023*?
- (iii) How do Canada's obligations under International Law bear on these questions?
- (iv) Does the Amended By-Law infringe s.7 of the *Charter*?
- (v) Should homelessness be considered an analogous ground for the purpose of s.15 of the *Charter*?
- (vi) Does the Amended By-Law infringe s.15 of the *Charter*?
- (vii) If the answer to issues (iv) or (vi) is yes, is the infringement saved by s.1 of the *Charter*?
- (viii) Should the Amended By-Law be quashed under s.273 of the *Municipal Act*?
- (ix) Should the Region be granted an injunction under s.440 of the *Municipal Act*?
- (x) If there is a breach that is not saved under s.1, what should the remedy be?
- (xi) Should the current interlocutory injunction be maintained?

### **Positions of the Parties**

#### *Position of the Applicant Region*

[69] The Region submits that the Site-Specific By-law is fundamentally different in its purpose, scope, and context from the Code of Use By-law before Justice Valente in *Persons Unknown 2023*. In particular: (a) The Code of Use By-law applies to all Region-owned property throughout the Waterloo region. The By-law in this case applies only to 100 Victoria. (b) The Region took the position in *Persons Unknown 2023* that it would use the court's order as a precedent for other encampments across the Waterloo region, and relied upon the generic purpose of the Code of Use By-law for the s.7 analysis. In this case, the s.7 analysis turns on the specific purpose of the Site-Specific By-law. (c) The Region had not taken any specific steps to provide for the encampment residents in *Persons Unknown 2023*. The USW team did not yet exist (having been created in 2023), and there were no IHPs for the residents. In the present case, the Region says it is confident that it will be able to transition the willing Existing Residents successfully to alternative accommodation. (d) In *Persons Unknown 2023*, the court found that the existing emergency shelter capacity was likely less than the number of encampment residents (53) at the time. In the present case, the Region has provided net new funding to create additional capacity to accommodate the 40 Existing Residents as part of its Plan. (e) At the time that *Persons Unknown 2023* was argued, it was anticipated that the Region would require possession of 100 Victoria at some future point for KCTH construction, but there was no firm date. In the present case, there is a fixed date by which the Region requires possession of the Property, in order to conduct site remediation and hand over the Property to Metrolinx for construction commencing in March 2026. (f) At the time *Persons Unknown 2023* was argued, the Region had taken some significant steps to address homelessness, but not on the scale of its recent efforts. Between 2022 and 2025, the Region's operating budget for homelessness programs and services more than doubled, from \$30.9 to \$65.5 million. From the Encampment's establishment in 2021, it has almost tripled (from \$23.1 million).

[70] The Region enacted the Site-Specific By-law on April 23, 2025. Public Notice of the By-law was given on April 16, 2025. The By-law only purports to regulate activity on 100 Victoria, unlike the Code of Use By-law at issue in *Persons Unknown 2023*. The Region proactively seeks the guidance of this Court on its plan to close the encampment. It is unusual, if not unprecedented,

the Region says, for a government to seek a declaration that a duly enacted law complies with the *Charter*.

[71] In broad outline, the By-law, in the context of the Region's Plan, has these features: (a) The date by which the approximately 40 Existing Residents must leave was set for December 1, 2025, more than 7 months after the By-law was enacted, giving the Region time to work with them to transition them to alternative accommodation. (b) In the interim, the Region's team of USWs (licensed professionals comprising social workers, social support workers, and a registered nurse) has been attending the site to meet with encampment residents and develop IHPs with them, to tailor their housing solutions to their specific needs. (c) The Region has budgeted an additional \$814,333 in net new funding in 2025 alone, to ensure that there are additional resources for housing solutions for the residents who will need to transition to other accommodations because of the anticipated closure. This is intended to ensure that other unhoused people in the Waterloo region are not negatively affected (e.g., displaced or moved further down waiting lists) by the closure. (d) While the \$814,333 is nominally allocated specifically among additional rent supplements, motel rooms, and supportive housing, Region staff have the discretion to move funds between these categories to meet the specific needs of residents. The Region recognizes that the needs of residents are diverse, and some may be more suited to one form of accommodation rather than another.

[72] The By-law prohibits the carrying out of defined "Prohibited Activities" on the Property, including residing on the Property. However, the By-law makes two key distinctions which affect its application: first, between Existing Residents and those who are not Existing Residents and, second, between the transitional period of April 16, 2025 to November 30, 2025 (the "Transitional Period") and from December 1, 2025 onwards. The By-law defines an individual who was residing at the Property as of the date of Public Notice of the By-law (April 16, 2025) as a "Resident". Only Residents (also referred to as "Existing Residents") are entitled to remain at the Property during the Transitional Period. The Transitional Period and the By-law's prohibition on new individuals joining the Encampment are motivated by the need to assist Existing Residents, who are already at the Property, to find alternative shelter for when the Property is no longer available.

[73] The Encampment has existed on the Property since approximately December 2021. Given

the inherent dangers of Encampment living, the Region has taken significant steps to ameliorate the living conditions on the site. This includes hiring on-site security and pest control, arranging for regular cleaning of the Property and waste-bins onsite to address the significant garbage that accumulates at the Encampment, and installing and servicing onsite portable toilets. Despite the Region's significant efforts, the evidence before this court, the Region submits – including that of the Respondents themselves – demonstrates that the Encampment continues to be a site of widespread public drug use, potentially volatile self-policing and physical violence, and fires.

[74] There have been five reported deaths at the Encampment since January 2022. This likely underreports the true number of deaths related to the Encampment because it does not include cases where an individual is found at the Encampment but pronounced dead in hospital, or where long-term health effects that contribute to a death are related to the Encampment, but the deceased passes away off-site. Deaths also occur in the shelter system, but it appears that they may occur at a lower rate.

[75] The Region has documented the following risks to residents and the broader public arising from the Encampment environment: (a) overcrowding and congestion on the site; (b) evidence of drug paraphernalia that has not been properly disposed of, including syringes and needles; (c) barbecues, propane tanks, and the presence of significant debris on the site, which create significant fire risks; (d) security incidents on the site, including violent altercations between residents of the Encampment; (e) significant clutter and garbage on the Property; (f) evidence of rodent activity on the site, including rodent feces; (g) the presence of human urine and feces; and (h) construction of semi-permanent structures out of sandbags, with no building permits and no apparent adherence to any building standards.

[76] While the Region has devoted significant resources to improve health outcomes at the Encampment in the interim, its public position has always been that the Encampment will not be permitted to exist in perpetuity. This is consistent, the Region submits, with guidance from the National Working Group on Homeless Encampments, that encampments “should not be understood as a solution to homelessness and should not be permanent”, and with the PECH. This has been underscored by the Region's publicized need to use the Property for KCTH construction,

a fact that has been publicly advertised for years. However, as set out above, the Region only received confirmation from Metrolinx in December 2024 of the date by which it required vacant possession of the site.

[77] The Region contends that given the specific purpose of obtaining possession of 100 Victoria for construction of the KCTH, the By-law (in light of the Plan for residents) is neither overbroad nor grossly disproportionate to the substantial public benefit that the KCTH will bring to the entire region. The By-law does not contravene any principle of fundamental justice under s.7. It also cannot be bad faith, the Region submits, for the Region to enact a By-law that it promptly brings to the court for guidance as to its constitutionality.

[78] In its submissions on the hearing of the applications, the Region emphasized that the issues raised by the Amended By-Law are more limited and discrete than those before Valente J. in *Persons Unknown 2023*. From the outset, it says, the Region has taken a “light touch” approach to enforcement. In oral submissions, counsel for the Region submitted that the Region can be trusted to take a “responsible” approach to clearing the Encampment. The Region submits that the Amended By-Law strikes an acceptable balance on the issues that arise from the need to use 100 Victoria for construction purposes. It does not need to be perfect, or reflect the optimal approach, as long as it is *Charter*-compliant.

[79] The Region emphasizes that the Encampment poses significant health and safety risks. These include overcrowding, improperly disposed of drug paraphernalia, fire hazards, violence between residents, significant garbage accumulation, rodent activity, the presence of human urine and feces, and construction of semi-permanent structures with no apparent adherence to building standards. Surrounding residents and businesses have experienced significant disruption to the enjoyment of their property, including theft and a pervasive sense of insecurity. There have been several major fires. There have been reports of weapons, including one person waving a machete at a passerby. There are also significant costs. The Region currently spends approximately \$66,200 per month maintaining the Encampment, exclusive of staffing costs for social supports, outreach facilities, or bylaw staff who regularly attend the property.

[80] The Region contends that the original and Amended By-Law were developed in the broader context of years of engagement and consultation with stakeholders, advocates and experts on the issue of addressing homelessness.

[81] The Region submits that the By-Laws do not infringe s.7 of the *Charter*, as there is no deprivation of life, liberty or security of the person, and that the Bylaw does not contravene the principles of fundamental justice, as it is not overbroad nor grossly disproportionate. It also submits that the By-Law does not contravene s.15 of the *Charter*, as it does not create a distinction, and any distinction does not reinforce, perpetuate or exacerbate disadvantage.

[82] The Region further submits that if an infringement of either s.7 or s.15 is found, that it is demonstrably justified under s.1 of the *Charter*. The limit is prescribed by law that has a pressing and substantial objective, and there is proportionality between the law's objectives and its means, minimally impairing the Respondents' rights, and that the salutary effects of the Bylaw outweigh its deleterious effects.

[83] The Applicant Region insists that the Bylaw was passed in good faith and should not be quashed under s.273 of the *Municipal Act*.

[84] The Region also submits that it should be granted a statutory injunction under s.440 of the *Municipal Act* permitting it to enforce the Bylaw as required.

[85] The Region seeks a Declaration that the Amended Bylaw complies with the *Charter*, the dismissal of the Respondents' Cross-Application to declare the Bylaw invalid under the *Charter* and quash the Amended Bylaw under s.273 of the *Municipal Act*, and a grant to the Region of an injunction under s.440 of the *Municipal Act*.

*Position of Respondents (Cross-Applicants)*

[86] Even leaving aside the issue of s. 15, the Respondents contend, in *Persons Unknown 2023* Valente J. has already held that application of a municipal By-Law to restrict sheltering at this very site deprived encampment residents of their life, liberty, and security of the person in a manner

that was overbroad and grossly disproportionate, and therefore not in accordance with the principles of fundamental justice, and that he further found that the resulting infringement of s. 7 of the *Charter* was not justified by s. 1 of the *Charter*. Since that time, the conditions that led the Court to find a deprivation of life, liberty, and security of the person have only worsened. It is true, they note, that the principles of fundamental justice at issue - overbreadth and gross disproportionality - turn on assessing the infringement to life, liberty, or security of the person against the objectives of the By-Law. The Respondents recognize that the Region's new By-Law has a differently stated objective. It specifies that it is enacted "to specifically regulate and govern 100 Victoria Street and to obtain vacant possession as of December 1, 2025", whereas the Code of Use By-Law was intended to "prevent disruption to the Region's operations", among other purposes. But the Respondents insist that the objective is only superficially different. At issue in the *Persons Unknown 2023* decision was whether the Code of Use By-Law permitted the Region to obtain vacant possession of the site so that it could ultimately be used as an equipment lay-down site for construction of the transit hub. This is the very use that is before this Court in the underlying application. The Region should not be permitted, the Moving Parties insist, to use an unconstitutional By-Law to remove vulnerable persons from their shelter of last resort.

[87] The Respondents also contend that there is a serious issue in relation to the By-Laws' illegality under s. 273 of the *Municipal Act, 2001*. A by-law is "illegal" for the purpose of s. 273 if it is passed in "bad faith", which will be indicated where the by-law is enacted "without the degree of fairness, openness, and impartiality required of a municipal government". Indicia of bad faith may include a failure to consult on the by-law, and a failure to provide meaningful notice to affected stakeholders. The Respondents assert that these indicia are established here based on, among other factors, the Region's failure to advise encampment residents of the By-Law in a manner sufficient for them to provide meaningful input, and the Region's failure to comply with the consultation processes approved by Council.

#### *Evidence*

[88] A very substantial Application Record has been provided by both parties, including many affidavits and transcripts of cross-examinations. The parties have each tendered expert evidence. At a high level, the parties' medical experts agree that being unhoused, including in encampments,

is associated with significant risks and negative health outcomes as compared to being housed, but they differ on the preferability of the Encampment as compared to indoor shelter options such as emergency shelters and motels. The Region put forward Dr. Sharon Koivu. The Respondents put forward Dr. Hwang, Dr. Gupta, and Bernadette Pauly, a registered nurse with a PhD in nursing. The Region submitted that she should not be qualified as an expert witness and, if she is so qualified, that her evidence be given little weight by the Court. The Respondents also lead affidavit evidence from persons outside the medical sphere, the Federal Housing Advocate Marie Josee Houle, and Drs. Laura Pin, Kaitlin Schwan and Gaetz. The Region objects to their evidence, saying that it is unbalanced and unreliable. The Region says that the Respondents' other witnesses, Sara Escobar, Jacara Droog, David Alton and Angela Alt speak to the difficulties in providing services and options to the unhoused population, but that while their evidence is sympathetic, it is tainted by advocacy and strays into impermissible argument or opinion. The Respondents also provided affidavits from current or former residents of the Encampment.

### **Analysis**

#### *First Preliminary Issue: Expert Evidence*

[89] There are two preliminary issues that should be addressed prior to turning to a more fulsome consideration of the s.7 and s.15 issues at the heart of this litigation. The first preliminary issue is the admissibility of the parties' expert evidence. The Named Respondents challenge the admissibility of Dr. Koivu's evidence. The Region challenges the admissibility of the evidence of Dr. Pauly, Dr. Pin, and Canada's Federal Housing Advocate Marie Josee Houle. They also describe the evidence of Drs. Schwan and Gaetz as "purportedly 'expert'".

[90] To be admissible, expert evidence must be (a) relevant; (b) necessary; (c) not subject to an exclusionary rule; and (d) proffered by a properly qualified expert. Where these threshold criteria are met, judges retain a discretionary gatekeeping role to ensure that the probative value of the expert evidence does not outweigh its risks. The necessity of expert evidence is not to be judged by too strict a standard; what is required is that the opinion is necessary because it provides information "which is likely to be outside the experience and knowledge of a judge or jury" and allows them to form an independent judgment. Expert witnesses provide the trier of fact with

ready-made inferences and opinions typically based on second-hand evidence. The most significant risks in admitting expert evidence are the danger that a jury will be unable to make an effective and critical assessment of the evidence and/or that experts might usurp the function of the trier of fact. These concerns are lessened in judge-alone trials.

[91] Expert evidence is often especially necessary in *Charter* litigation to ensure that courts avoid deciding important systemic issues in a factual vacuum. The Supreme Court of Canada has been vigilant to ensure that a proper factual foundation exists before measuring legislation against the provisions of the *Charter*, particularly where the effects of impugned legislation are the subject of the attack.

[92] There are two categories of facts in *Charter* litigation: “adjudicative facts” which are specific (“who did what, where, when, how and with what motive”); and “legislative facts” which establish the purpose and background of legislation, including the social, economic, cultural, political, and legal context in which legislation was enacted; the latter are more general in nature and therefore subject to less stringent admissibility requirements. “Social facts” are “cousins” of “legislative facts, and are defined as social science research that is used to construct a frame of reference or background context for deciding factual issues; both social and legislative facts may involve policy considerations. Legislative and social fact evidence is best presented through expert witnesses so that it can be tested through cross-examination.

[93] In *Charter* challenges seeking remedies under s. 52(1) of the *Constitution Act, 1982*, legislative facts are often the most relevant, as illustrated by the Supreme Court’s acceptance that reasonable hypotheticals or reasonable foreseeability can establish a *Charter* claim. Legislative and social facts are likely to be dispositive in some cases, even where these facts are of a general nature or cannot be demonstrated with greater precision than the subject matter permits. At its core, the present application implicates systemic challenges rather than the circumstances of any one claimant. Expert evidence on legislative and social facts is therefore indispensable to ensure that the court has a complete record.

[94] I conclude that the evidence of all of these witnesses is of assistance to the Court, and

should be admitted, subject to weight.

[95] Dr. Pauly's expert opinion evidence should be admitted because it meets each of the four *Mohan* factors (relevance, necessity, absence of an exclusionary rule and a properly qualified expert): *R. v. Mohan*, 1994 CanLII 80 (SCC), [1994] 2 S.C.R. 9; See also: *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23. Dr. Pauly is a registered nurse and public health researcher with more than a decade of experience in the field of homelessness. She has published extensively in this area and been part of numerous publicly funded research teams defining and enumerating homelessness and evaluating responses to homelessness. Her evidence on the demographics of encampments provides relevant and necessary context for this Court's analysis under both ss. 7 and 15 of the *Charter*, and her evidence on the impact of encampment evictions and displacements is relevant and necessary to the assessment of whether there is a deprivation of s. 7. While parts of one of her previous affidavits were found not to comply with British Columbia's Civil Rules in *Brett*, there is no indication that her affidavit in this case has similar defects, and she has provided expert evidence in nine other cases. In any event, Dr. Pauly has signed an acknowledgment of her duty to the Court, which "will generally be sufficient" to establish "independence and impartiality".

[96] This Court should also admit the evidence of Canada's Federal Housing Advocate, Marie Josée Houle. The Region's objection to her evidence is that she is an advocate on encampment issues. However, courts have been clear that advocacy alone does not undermine the admissibility of expert evidence because many experts are advocates and, particularly in public interest litigation, it would be surprising not to have experts who have expressed points of view and advocated for particular outcomes. That Ms. Houle had previously written publicly to the Region to express the same view she now expresses in her affidavit – that its Site-Specific By-Law is inconsistent with the human rights approach – merely reinforces that this is her opinion. Ms. Houle, too, has signed the acknowledgement of her duty of "independence and impartiality" to this Court.

[97] The Region's objection that Dr. Pin lacks qualification is unfounded. Dr. Pin has engaged in research and published extensively on the issues with respect to which she offers her opinions. The Region itself has deemed her expertise on these topics sufficient to hire her as its consultant.

The Region also objects that whether the By-Law is consistent with the “human rights approach” is not proper subject for opinion evidence. Regardless of whether this is the case, this Court may admit evidence as to what the “human rights approach” requires, just as in negligence cases, an expert may opine on what the standard of care requires.

[98] The Region’s objections to the evidence of Drs. Schwan and Gaetz is equally unfounded on the record. Both have published extensively on the issues for which they give evidence and Dr. Schwan was lead researcher on the largest ever Canadian study “examining women and gender diverse people’s distinct housing experiences, challenges, and service needs”. The evidence of Dr. Schwan provides relevant and necessary context for the Named Respondents’ sex-based s. 15 argument. The evidence of Dr. Gaetz regarding the definition and causes of homelessness is also relevant and necessary to this Court’s s. 15 analysis, having regard to the Supreme Court’s instructions in *Kanyinda*, described below, that courts must consider such context in assessing disadvantage.

[99] I also consider that the evidence of Dr. Koivu is of assistance to the Court.

*Second Preliminary Issue: Horizontal Stare Decisis*

[100] The second issue concerns the application of the doctrine of horizontal *stare decisis*. The conditions under which a legal determination is binding on courts of coordinate jurisdiction were addressed by a unanimous Supreme Court in *R. v. Sullivan*, 2022 SCC 19. Horizontal *stare decisis* dictates that a Superior Court decision is binding on coordinate judges, who may only depart from it if an exception from *Re Hansard Spruce Mills*, 1954 CanLII 253 (BC SC), [1954] 4 D.L.R. 590 (B.C.S.C.) applies. These are:

- a. subsequent decisions have affected the validity of the impugned judgment;
- b. it is demonstrated that some binding authority in case law, or some relevant statute was not considered (*in percuriam*);
- c. the judgment was unconsidered, a *nisi prius* judgment given in circumstances familiar to all trial Judges, where the exigencies of the trial require an immediate decision without opportunity to fully consult authority.

[101] None of these exceptions apply here with regard to the s. 7 issues. Nor can the Region's current application be distinguished on its facts. To the contrary, the conditions that led Justice Valente to find a deprivation of life, liberty, and security of the persons have only worsened since *Persons Unknown*. The Region's provision of IHPs for 40 persons, most of whom are not Named Respondents, does not change that its chronically homeless have no place but this site to shelter when they lose other options. As the Region has conceded, it is not in a position to ask the Court to lift its declaration pursuant to the terms set by *Persons Unknown*. The By-Laws are new in form but not in substance. It is the substance - the purpose and effect of legislation - that determines whether *stare decisis* applies. Horizontal *stare decisis* binds this Court to follow Justice Valente's previous determination that it is unconstitutional to prohibit sheltering on this site when "the number of homeless persons exceeds the number of available and accessible shelter beds in the Region." The fact that the By-Laws are different in name from the Code of Use By-Law does not prevent the application of *stare decisis*. This is because the By-Laws' object and impact are substantively identical as those already considered by this Court. There is no meaningful distinction between prohibiting loitering and sheltering in order to "prevent [...] the disruption of the Region's operations on the Designated Premises" and restricting sheltering to "specifically regulate and govern 100 Victoria Street and to obtain vacant possession" where the purpose of vacant possession in either case is the same - supporting construction of the Region's transit hub.

[102] In any event, if I am wrong in this assessment and horizontal *stare decisis* does not apply, it is of little practical consequence in this instance because Justice Valente's decision in *Persons Unknown 2023* is persuasive authority, and I agree with his conclusions regarding the law concerning the application of s.7 of the *Charter* in this context.

[103] While this Court is bound by *Persons Unknown 2023*'s legal determinations with respect to s. 7, it is not so bound with respect to s. 15. This is because the Supreme Court's March 6, 2026, decision in *Kanyinda* has rendered the *Persons Unknown 2023* s. 15 analysis invalid, such that, if *stare decisis* does apply, the first *Hansard Spruce Mills stare decisis* exception permits this Court to determine the issue for itself. In *Persons Unknown 2023*, Justice Valente rejected the s. 15 claim of homeless persons who were women, gender diverse, and/or disabled on the basis that "homelessness" itself was not an enumerated or analogous ground. However, the majority reasons

in *Kanyinda* now make clear that a s. 15 violation may be established in relation to an enumerated/analogous subset of a broader group that is not, in itself, identified by an enumerated or analogous ground. Justice Valente's basis for finding no breach of s. 15 is therefore invalid after *Kanyinda*.

*Proper approach to Charter Interpretation*

[104] *Charter* rights must be interpreted in a generous, purposive, and contextual manner to secure the full benefit of the *Charter's* protections: *Quebec (Attorney General) v. 9147-0732 Quebec Inc.*, 2020 SCC 32, at para. 7. This means that the right at issue must be informed by the specific purposes of that right, the larger purposes that animate the *Charter* as a whole, and the social realities in which the alleged *Charter* breaches occurred. Further, courts are required to presume that the *Charter* provides protections at least as broad as those afforded by similar international human rights documents ratified by Canada; that is, they provide a constitutional floor, not a ceiling: *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, at paras. 76 - 85. Federal, provincial, territorial, and municipal governments are all equally bound by international human rights instruments ratified by Canada: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, at para 303.

[105] The presumption of conformity is an established interpretive principle in *Charter* litigation. The text of binding international instruments reflect Canada's international human rights obligations and are an important indicia of the meaning of the full benefit of the *Charter's* protection. The presumption of conformity is an interpretive tool in delineating the "breadth and scope of *Charter* rights" and defining the principles of fundamental justice: "[o]ur *Charter* is the primary vehicle through which international human rights achieve domestic effect" and that in particular, ss. 7 and 15 "embody the notion of respect of human dignity and integrity": *R v. Ewanchuk*, [1999] 1 S.C.R. 330, at para. 73.

[106] Canada has voted in favour or ratified several international instruments that recognize adequate housing as a fundamental human right that is inextricably linked to other rights, including the rights to life, security of the person, and equality. In addition to the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights*, Canada has ratified the *Convention on the Elimination of All Forms of Discrimination Against Women*, the

*International Convention on the Elimination of All Forms of Racial Discrimination*, and the *Convention on the Rights of Persons with Disabilities*, all of which recognize housing as a fundamental human right. The UN has further recognized that all individuals should possess “a degree of security of housing tenure that guarantees legal protection against forced eviction”, that security of tenure can include informal settlements such as occupations of land, and further that “forced eviction constitutes a gross violation of human rights”: *Victoria (City) v Adams*, 2008 BCSC 1363, at para. 89, aff’d 2009 BCCA 563.

### *The Application of International Law*

[107] Canada uses a dualist system for the reception of international law, meaning that treaties ratified by the Executive require legislative implementation to be binding domestically. Ratified treaties do not automatically become part of Canadian law. They must be implemented by federal or provincial legislation to be enforceable in domestic courts. Customary International Law (laws recognized through state practice and *opinion juris*) is automatically adopted into Canadian law unless it conflicts with existing legislation. Canadian courts interpret domestic laws in a manner that conforms with international obligations, often utilizing international law to interpret the *Charter*. This means that when a statute or enactment is ambiguous, courts prefer the interpretation that aligns with Canada’s international obligations.

[108] Canadian courts possess a robust ability to rely upon international legal instruments to interpret the content or scope of any *Charter* right or principle: *Quebec (Attorney General) c 9147-0732*, 2020 SCC 32, at para. 37 (“*Quebec*”). While courts must pay attention to whether a source of international law is binding or non-binding, both sources may be relevant and persuasive in *Charter* interpretation. Binding sources refer to international human rights obligations that Canada has ratified. They carry more interpretative weight. Non-binding sources include non-ratified declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals and customary norms. Non-binding sources may be treated as “relevant and persuasive, but not determinative, interpretive tools”: *Quebec*, at paras. 30 - 38.

[109] These applications raise significant issues of public importance relating to municipal encampment responses and the rights of some of the most vulnerable members of society under

sections 7 and 15 of the *Charter*. Section 7 must be interpreted in a manner that fully recognizes the inherent dignity and autonomy of those experiencing homelessness. Such an approach is consistent with the *Charter*'s foundational values and Canada's international human rights obligations which have been adopted into domestic law through the *National Housing Strategy Act*, SC 2019, c29 ("*NHSA*").

[110] Canada's international obligations, as adopted through the *NHSA*, establish a basic human right to adequate shelter centered in human dignity. These obligations require state actors to treat those experiencing homelessness as right-holders entitled to effective remedies, due process, and genuine and meaningful consultation in any encampment response. The By-laws' failure to afford these rights to all who rely on the encampment as a shelter of last resort is relevant to assessing (i) the severity of the liberty infringement; and (ii) whether the By-Laws accord with the principles of fundamental justice.

[111] Adopting a dignity-centric approach to section 7 requires evaluating whether alternative shelter space is truly "adequate", "accessible", or "safe" based on the needs of each individual. This requires engaging with their personal history, lived experience, and identification with one or multiple intersecting grounds. The Supreme Court of Canada in *Kanyinda* affirmed that an intersectional approach must be adopted in interpreting equality rights under section 15(1) of the *Charter*. The Court should recognize the acute effects that flow from the interaction between the protected grounds and the social and economic realities of chronic homelessness.

[112] Canada's international and domestic obligations relating to the right to adequate housing and protections against forced evictions are persuasive and relevant considerations in interpreting the scope and content of section 7 of the *Charter*.

[113] The most powerful interpretive tool relating to international human rights obligations is the presumption of conformity. The presumption of conformity provides that *Charter* rights should be interpreted to provide at least as broad protection as that afforded by Canada's binding international legal obligations: *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, at para. 82. The international instruments that Canada chooses to ratify are therefore important interpretive

tools in understanding what the *Charter* protects.

[114] Canada has ratified several binding international instruments that give rise to obligations where a state action deprives shelter, including the *International Covenant on Economic, Social and Cultural Rights* (“ICESCR”) and the *Universal Declaration of Human Rights* (“UDHR”). As Canada’s ratification of the ICESCR and UDHR pre-date the *Charter*, these obligations are also part of the *Charter*’s historical context and therefore may carry additional interpretive weight: *Quebec*, at para. 41-42.

*The Right to Adequate Housing in International Law*

[115] Canada signed the UDHR when it was adopted by the United Nations General Assembly in 1948. The UDHR provides that Member States shall commit to progressive measures to help secure the universal and effective observance of its rights for all peoples under their jurisdiction. Article 25(1) of UDHR provides that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including... housing”.

[116] Canada acceded to the ICESCR in 1976. Article 11(1) of the ICESCR also recognizes the right to adequate housing as a necessary component of an adequate standard of living. The rights contained in the ICESCR are subject to interpretation by the UN Committee on Economic, Social and Cultural Rights (CESCR), which is a body of independent experts tasked with monitoring implementation of the ICESCR by State Parties. In 1991, the CESCR issued *General Comment #4: The Right to Adequate Housing* to identify the principal issues important to the realization of the right to adequate housing under Article 11(1) of the ICESCR. The *General Comments* are considered sources of non-binding international law, which should be treated as relevant and persuasive authority to the issues addressed in this case.

[117] *General Comment #4* articulates an enriched concept of the right to adequate housing, recognizing it “is of central importance for the enjoyment of all economic, social and cultural rights.” The CESCR instructs that the right to adequate housing should not be narrowly construed as a right to a roof over one’s head, but rather as “the right to live somewhere in security, peace and dignity.” It is a right afforded to all persons “irrespective of income or access to economic

resources”.

[118] *General Comment #4* sets out several factors relevant to the actualization of the right to adequate housing under Article 11(1). These factors include, amongst others: (i) legal security of tenure (which encompasses legal protection against forced evictions from informal settlements), (ii) access to services and facilities (e.g. healthcare, schools, food and water), (iii) habitability (e.g. adequate protection from cold, heat, rain, disease), and (iv) accessibility and cultural adequacy.

[119] In 1991, the CESCR released *General Comment #7: The Right to Adequate Housing: Forced Evictions*. *General Comment #7* provides guidance on why forced evictions violate international human rights obligations and outlines the very narrow circumstances in which a state-initiated eviction may be consistent with international human rights obligations.

[120] The concept of ‘forced evictions’ articulated in *General Comment #7* is broad, applying to evictions from temporary informal settlements on public land, even where the individual being subject to eviction does not have a legal right to occupy the land. Like *General Comment #4*, *General Comment #7* unequivocally establishes that forced evictions are *prima facie* inconsistent with the rights contained in the ICESCR, including Article 11(1), and will only be justified in the most exceptional circumstances where “all legal resources and remedies are available to those affected.” *General Comment #7* recognizes that forced evictions can compound other sources of inequality and particularly have a disproportionate impact on marginalized groups, like women:

10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.

[121] *General Comment #7* provides that at a minimum, prior to carrying out any eviction, State Parties are required to explore all feasible alternatives in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. An eviction cannot comply

with the ICESCR without appropriate due process and procedural protections being provided to the affected persons, including an opportunity for genuine and meaningful consultation, a process for recourse, and the provision of remedies to those being evicted. *General Comment #7* explicitly prohibits evictions that render those affected homeless or vulnerable to other human rights violations. *General Comment #7* at para. 3 defines the term “forced evictions” as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”

[122] On April 30, 2020, the UN Special Rapporteur on the Right to Housing released a National Protocol for Homeless Encampments in Canada (the “Protocol”). The Protocol summarizes the ICESCR obligations relating to forced evictions as follows:

International human rights law does not permit governments to destroy peoples’ homes, even if those homes are made of improvised materials and established without legal authority. Governments may not remove residents from encampments without meaningfully engaging with them and identifying alternative places to live that are acceptable to them. Any such removal from their homes or from the land which they occupy, without the provision of appropriate forms of legal protection, is defined as a ‘forced eviction’ and is considered a gross violation of human rights...

[123] The Protocol outlines eight principles to guide Canadian governments on how to take a human rights-based approach to encampment responses. The human-rights based approach articulated in the Protocol is anchored in Canada’s international obligations relating to housing under the ICESCR, as interpreted through *General Comment #4* and *#7*. The first principle requires treating those living in an encampment as rights-holders. Per the UN Special Rapporteur, this means shifting away from an approach of “criminalizing, penalizing, or obstructing homeless encampments” to “an approach rooted in rights-based participation and accountability.”

[124] Principle 4 requires state actors to explore all viable alternatives prior to eviction from an encampment, ensuring meaningful and effective participation of residents in discussions regarding the future of an encampment and their needs in sheltering alternatives. The Protocol centers meaningful engagement and effective participation of encampment residents as key to respecting

dignity, agency and self-determination. In terms of what constitutes meaningful engagement, the Protocol provides:

... Engagement should begin early, be ongoing, and proceed under the principle that residents are experts in their own lives. The views expressed by residents of homeless encampments must be afforded adequate and due consideration in all decision-making processes. The right to participate requires that all residents be provided with information, resources, and opportunities to directly influence decisions that affect them...

[125] Principle 5 specifically addresses relocation from an encampment. It provides that meaningful, robust, and ongoing engagement with encampment residents is required for relocation decision-making. Relocation must not result in the continuation or exacerbation of homelessness or fracture families or partnerships. Adequate alternative housing, with all necessary amenities, must be provided to all residents prior to any eviction.

*International Obligations Adopted by Canada and the Region*

[126] Canada's decision to enact the *NHSA* in 2019 necessarily strengthens the force that Canada's international obligations should play in interpreting the scope and content of section 7. The *NHSA* codifies Canada's commitment to housing as a fundamental human right and recommitted Canada to the progressive realization of the right to adequate housing as defined in the ICESCR.

[127] Section 4 of the *NHSA* explicitly recognizes that housing is essential to the inherent dignity and well-being of the person. It provides:

4. It is declared to be the housing policy of the Government of Canada to
  - (a) Recognize that the right to adequate housing is a fundamental human right affirmed in international law;
  - (b) Recognize that housing is essential to the inherent dignity and well-being of the person and to build sustainable and inclusive communities;
  - (c) Support improved housing outcomes for the people of Canada; and

- (d) Further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.

[128] Section 13 of the *NHSA* establishes the Federal Housing Advocate as the housing rights accountability mechanism in Canada.

[129] The Federal Housing Advocate's 2024 Final Report called on all levels of government to commit to end forced evictions of encampments on public lands. As explained by the Federal Housing Advocate in her Affidavit in these applications, some of the specific recommendations made to municipal stakeholders in the Final Report include (i) adopting human rights-based solutions to addressing the needs of encampment residents, (ii) ensuring the development of bylaws include meaningful engagement with people with lived experiences, and (iii) allowing encampment residents to play a meaningful role in decision-making processes that affect them.

[130] In June 2025, the Federal Housing Advocate released a *Guide to Meaningful Engagement and Integrating a Human Rights-Based Approach to Encampment Responses* (the "Guide"), which "articulates eight key principles that are necessary to guide municipal decision-makers and staff in ensuring meaningful engagement is carried out and to implement a human-rights based approach to encampment responses." Each principle is accompanied by required actions. The Guide explains the human-rights based approach to encampment response as follows:

As the name suggests, a human rights-based approach requires a commitment to upholding and being accountable for all human rights for all people, without discrimination. It is also founded on the principles of participation, empowerment and accountability and requires the investment of time and resources in ensuring meaningful engagement with people living in encampments...

A human rights-based approach does not criminalize people experiencing homelessness. It takes care to ensure that responses do not inflict additional harm on people living in encampments. It respects autonomy and choice and attempts to meet people where they are and to support them in accessing adequate housing while respecting their dignity, autonomy and human rights.

[131] The Guide affirms that excluding people living in encampments from decision-making

about encampment responses perpetuates their marginalization and undermines autonomy and trust. A human rights-based approach requires meaningful consultation that begins before a decision is already made by the municipality. It requires a process which provides people with real choices and an opportunity to make informed decisions. In other words, engaging with affected groups only after decisions have been made does not constitute meaningful consultation, as it denies those groups a genuine opportunity to influence outcomes.

[132] The Region's Plan to End Chronic Homeless ("PECH") states that the Region "will be compliant with national and international human rights law and ensure it is appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy, and liability." The PECH embraces many of the concepts set out in the *General Comments* as described by the UN Special Rapporteur and Federal Housing Advocate. Most fundamentally, the PECH explicitly commits to take a human-rights based approach, including by treating people experiencing homelessness as rights holders with agency. The Lived Experience Prototyping Report, which was also adopted by Region Council along with the PECH, highlights many of same principles as *General Comment #4* and *#7* including security of tenure.

[133] The international human rights commitments that Canada has made should inform the assessment of the principles of fundamental justice under s.7 which are applicable to these applications. Section 7 of the *Charter* requires that laws that interfere with life, liberty and security of the person conform with the principles of fundamental justice, the basic principles that underlie our legal system. These principles can be both procedural and substantive.

[134] The standards used by the UN Rapporteur and the Federal Housing Advocate to develop principles underlying a human rights-based approach to encampment responses, including robust and meaningful involvement of the chronically homeless in any decision-making around relocation, are relevant and persuasive criteria in assessing any mitigation of harm in the s. 7 gross disproportionality analysis. An individualized approach recognizes that those experiencing homelessness are not a homogeneous group. Many marginalized and vulnerable groups are disproportionately represented in the unhoused population, including indigenous peoples, racialized individuals, women, and people with disabilities.

*Section 7*

[135] I turn now to a more detailed examination of the s. 7 issues in this litigation.

[136] The Region is an “occupier” for the purpose of the *Trespass to Property Act* and it accordingly has the power to exclude persons from its properties. However, because the Region is a branch of “government”, it must exercise that power in accordance with the *Charter*. This means it may not require persons to leave its property if doing so would violate the *Charter*.

[137] The Named Respondents are clear that they do not assert property rights. It is important to appreciate this distinction. This is not a case about property rights. The Named Respondents do not claim a right to control this particular piece of land. They have not acquired “squatter’s rights” in any sense. Rather, they seek not to be deprived of the ability to erect the shelters they need to protect their own health and safety when they lack indoor alternatives. There is no unconstrained right to live wherever one pleases (just as there is no unconstrained right to be free from arrest or detention); it only means that the liberty interest, a component of the s. 7 inquiry, is engaged.

[138] Enforcement of a negative right may require a government to take positive steps. In this sense, the distinction between positive and negative rights can be a “false dichotomy” because “no right can exist without some form of corresponding obligation ... to do or not do something”: *La Rose v. Canada*, 2023 FCA 241 at para. 103. The Named Respondents are not seeking to impose free-standing positive obligations on the Region. However, similar to the Ontario Court of Appeal’s finding in *Mathur*, the Region has committed itself to the obligations set out in its PECH, which include taking a human rights-based approach to decision-making regarding homelessness. The question is whether, through the lens of that voluntarily imposed obligation, the By-Laws are *Charter* compliant and will not lead to a deprivation of rights. The Named Respondents seek for the Region to follow the standards it has set for itself through its PECH. The By-Laws might not result in a deprivation of s. 7 interests if the Region were to use the PECH consultation processes it committed itself to develop a “safe tenting protocol” to permit and regulate outdoor sheltering at other locations.

[139] On the evidentiary record, the Respondent’s s. 7 *Charter* rights are clearly engaged in ways

that are not in keeping with the principles of fundamental justice. Section 7 protects foundational and fundamental human rights. I agree with the submission of *Amicus* that the *Charter* accords rights which can only be fully enjoyed by people who are fed, are clothed, are sheltered, have access to necessary health care, to education, and to a minimum level of income.

[140] Section 7 of the *Charter* provides:

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.

[141] The s. 7 right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly. Liberty is engaged when state compulsions or prohibitions affect fundamental life choices and extends beyond mere freedom from physical restraint. It includes the right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference and relates to matters that are fundamentally or inherently personal such that they implicate basic choices going to the core of what it means to enjoy individual dignity and independence. The right to security of the person protects both the physical and psychological integrity of the individual. This right is infringed by “serious state-imposed psychological stress”, objectively measured, that need not rise to the level of nervous shock or psychiatric illness.

[142] Prohibiting homeless persons from taking measures to shelter themselves by erecting temporary structures in circumstances where there are no practical housing alternatives has been found to engage the right to life (due to exposure to risks of serious harm including death); the right to liberty (due to a significant interference with dignity and independence); and with security of the person (triggering or exacerbating anxiety, physical and psychological distress, and endangering health).

[143] In the present case, I agree with *Amicus* that the expert evidence of Dr. Stephen Hwang, an expert on the health impacts of homelessness and interventions to improve the health of unhoused individuals, raises a serious prospect that life, liberty, and security of the person are engaged: (a)

homeless individuals who are prohibited from erecting rudimentary shelter from the elements will suffer clear and direct adverse impacts on their health, such as a risk of hyperthermia (which can lead to death), serious skin and foot diseases, respiratory diseases, severe sunburn and heatstroke, and severe disturbed and fragmented sleep; (b) forced evictions from encampments contribute to the declining health of homeless individuals by leaving them with little choice but to seek outdoor shelter in more remote public spaces. This makes it difficult for them to access pharmacies, attend medical appointments or methadone clinics, and obtain food; (c) forced removal can lead to the loss of critical survival items, such as medical supplies, food, and clothing; (d) additionally, negative interactions with law enforcement cause emotional distress and build distrust, which exacerbates social exclusion and increases reluctance to seek health and social supports; and (e) moving people against their will from encampments, even with notice and engagement (such as preparing individual housing plans) can have adverse impacts. Forced evictions, or even the prospect of forced eviction, are traumatizing.

[144] A comparison of Point in Time counts from September 2021 (1,085 persons experiencing homelessness including 412 “living rough”) and October 2024 (2,371 experiencing homelessness, with 1,009 “living rough”) demonstrates that the problem of homelessness, including unsheltered chronic homelessness, has significantly exacerbated over the past three years.

[145] As of June 6, 2025, the Region’s overall emergency shelter capacity was 377 beds, a number that falls well short of the unhoused population’s needs. The capacity of 377 also needs to be contextualized since not all shelter beds are available to every individual, some for example may only be accessible to youth or women. It was acknowledged by one of the Region’s witnesses that very few of the 1,009 people “living rough” would be able to readily access a shelter bed, interim housing, or motels because these shelter options are already at high capacity. Emergency shelters are not always appropriate or available for people who lack capacity, have serious mental health, and/or substance use issues. Shelters can be destabilizing (by requiring people to move their belongings every morning) and overwhelming or overstimulating (by causing people with delusions to feel frightened or threatened). Risks in shelters include transmission of pathogens like tuberculosis and COVID-19, bed bugs, sleep deprivation, and violence. Further, if someone has previously been barred from a shelter (i.e. for behavioural issues or drug use) it is extremely

difficult for them to regain access. Similarly, motels are not suitable nor safe for some people, particularly those who lack capacity, have serious cognitive, mental health, and/or substance use issues. Motels do not provide the levels of support required for high-needs individuals; behavioural issues frequently lead to eviction and unsupervised drug use can lead to overdose with no one nearby to notice or assist (a risk that may be mitigated by the “buddy system” in the Encampment). Risks at motels include sex trafficking, drugs, and violence.

[146] The evidence supports the proposition that the By-laws deprive the Respondents’ rights to life, liberty, and security of the person in ways that are not in accordance with the principles of fundamental justice, specifically in a manner that is grossly disproportionate to the By-law’s object. The s. 7 analysis is only concerned with the question of whether the impugned law or State action infringes – or risks infringing – the *Charter* claimant’s rights. As stated by the Supreme Court, “[t]he question of justification on the basis of an overarching public goal is at the heart of s.1 but it plays no part in the s. 7 analysis”: *Canada (Attorney General) v. Bedford*, 2013 SCC 72, at para. 125. Further, gross disproportionality is not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportionate effect on just one individual is sufficient to violate the norm: *Bedford*, at para. 122. The inquiry into the purpose of the law therefore focuses on the nature of the object, not on its efficacy.

[147] The primary purpose of the Region’s By-law is to obtain vacant possession of the Property where Existing Residents of the Encampment, vulnerable homeless individuals, have erected temporary shelters in circumstances where housing options are unavailable and/or inaccessible to them. Another purpose of the By-law is to prohibit Non-Residents, who are also vulnerable homeless individuals, from erecting temporary shelters at the property after April 16, 2025. As noted above, the risks to the Encampment residents include lack of stability, difficulty accessing services, increased health problems, exacerbation of mental health challenges, and risk of death. *Amicus* submits, and Justice Valente in *Persons Unknown 2023* accepted, and I agree, that these consequences are more severe for Encampment residents who suffer from mental illness or substance abuse to the extent that they may lack capacity to understand the legal consequences of the By-law’s enforcement.

[148] Justice Valente’s ruling included an order that the Region could apply to terminate the declaration “upon it being in a position to satisfy this Court that the By-law no longer violates the section 7 rights of the Encampment residents.” The Region has not applied to terminate the previous declaration of inoperability in the *Persons Unknown 2023* decision. It acknowledges that the number of homeless individuals continues to significantly exceed available and accessible housing and related supports and that this in turn has fueled an increase in encampments since the decision was rendered.

[149] The encampment at 100 Victoria Street North in Kitchener serves as a shelter of last resort for chronically homeless residents of the Regional Municipality of Waterloo. They rely on it when they cannot access indoor shelter. They must do so because the Region has insufficient indoor shelter to accommodate its homeless, but its Code of Use By-Law prohibits outdoor sheltering on all other Region-owned lands. However, two new By-Laws, the “Site-Specific” and “Amended Site-Specific” By-Laws, together “the By-Laws”) now provide for the Encampment to be closed so that it can be used as a “lay-down” site during construction of a transit hub. The Region is not prepared to allow its homeless to shelter anywhere else after the Encampment is closed. The Respondents pose an apt question: where are the Region’s chronically homeless expected to go when they cannot access indoor shelter?

[150] The Region has given assurances of alternate shelter to only those Cross-Applicants/Named Respondents (“Named Respondents”) who are among 40 persons it counted as present at the Encampment on April 16, 2025. However, this shelter is, for the most part, temporary motel or emergency shelter space, and the Region has made no provision for where persons may go if/when they lose these spaces. It has offered nothing to most of the Named Respondents, who are not among the counted 40, other than to “bring them within the Region’s housing stability system” - effectively, adding them to the waitlists they are already on.

[151] The Respondents assert, and I agree, that the Court has heard the Region’s arguments for closing this Encampment before. In *Persons Unknown 2023*, Justice Valente refused permission to clear this very site for the same proposed use. Then, as now, the Region asserted it would find temporary shelter for those then at the Encampment. Then, as now, the Region asserted

construction on the transit hub was to commence imminently. Then, as now, the Region asserted the Encampment posed health and safety risks. Nonetheless, Justice Valente declared that closing the Encampment would be contrary to s. 7 of the *Charter*, inviting the Region to apply for that declaration to be lifted upon “being in a position to satisfy this Court that the By-Law no longer violates the section 7 rights of the Encampment residents”. This has not been done.

[152] The Respondents insist that they do not assert an “unfettered right to seek shelter on publicly owned land.” Rather, they seek to hold the Region to the declaration the Court has already made. So long as insufficient indoor shelter requires the Region’s homeless to shelter outdoors, and so long as the Region maintains that they may not do so anywhere else, the Region cannot gain possession of the site.

[153] Closing the Region’s sheltering location of last resort continues to pose serious risk to the lives and health of the chronically homeless Named Respondents and Persons Unknown, who will have no sheltering location of last resort to catch them when they fall. This deprivation continues to be grossly disproportionate to the objective of closing the site so that it can be used for equipment lay-down. Enforcement of the By-Laws continues to violate s. 7 of the *Charter* where the conditions for this Court’s previous declaration continue to exist.

[154] There are also new issues before the Court. The first is how the Supreme Court’s decision in *Quebec (Attorney General) v Kanyinda*, 2026 SCC 7 (“*Kanyinda*”), issued March 6, 2026, impacts s. 15 equality rights arguments that Valente J. rejected in *Persons Unknown 2023*. The impacts of the By-Laws are particularly severe for those homeless who are women, gender diverse, disabled and/or Indigenous because persons from these *Charter*-protected groups are less likely to be able to access indoor shelter that meets their needs. In *Persons Unknown 2023*, Valente J. found no s. 15 infringement for those groups because homelessness itself was not a *Charter*-protected ground of discrimination. Following *Kanyinda*, it is now clear that homelessness need not be a *Charter*-protected ground for the Court to find a discriminatory impact on *Charter*-protected subsets of the homeless. In light of this fresh guidance, it is now apparent that removing shelter of last resort from the Region’s chronically homeless violates the s. 15 equality rights of those homeless who are least likely to be able to access indoor shelter - women, gender diverse, disabled

and/or Indigenous persons. Moreover, as discussed in detail below, I consider that the time has now come for homelessness to be recognized as an analogous ground for the purposes of s.15 of the *Charter*.

[155] Persons who rely on the Encampment for last resort shelter are citizens who may have made some bad decisions or experienced bad luck. Their backgrounds reflect those of the Region's homeless. All have disabilities - 18 have mental health or cognitive disabilities, 17 have substance use disabilities, and at least 4 have mobility impairments. Six are Indigenous. A further four identify as LGBTQ2S+. Nine affirm to having survived childhood physical and sexual abuse, domestic violence, and/or sexual assault. Six shelter together with their partners. Seven are women or identify as gender-diverse. They all live in extreme poverty – some have no income at all, and others receive social assistance. Circumstances that have caused the Named Respondents to rely on the Encampment vary.

[156] This Encampment was the subject of an earlier application to the Court in *Persons Unknown 2023*. In January of 2023, the Court dismissed the Region's application to close the Encampment under its "Code of Use By-Law", which prohibits persons from loitering on Region-owned property or erecting temporary shelters without a permit. Justice Valente found a purpose of the By-Law was to "prevent the disruption of the Region's operations on the Designated Premises". The Regional "operation" then at issue was transit construction. Then, as now, the Region advised that it intended to use the site initially as a "laydown" area for equipment during the construction of a transit hub, and later as a parking lot for the hub. Just as the Region now advises that construction is to commence imminently, the Region then advised that construction would commence in the spring of 2023. Just as the Court found there was no firm construction start date during litigation in 2022, here too the timelines for the project are continually shifting and it remains unclear when vacant possession is actually required, notwithstanding the latest information provided by the Applicant Region from Metrolinx. At the commencement of litigation, the date was December 1, 2025, then it shifted to April 1, 2026, then to the end of October 2026, but correspondence from Metrolinx indicates this "might be subject to further change". Having regard to that purpose, Justice Valente found that prohibiting sheltering deprived the Region's homeless of their life, liberty, and security of the person in a context where insufficient indoor sheltering options left them "with no alternative but to sleep outside". At that

time, available shelter spaces fell short “by some 50% of what was required to shelter the Region’s homeless”.

[157] The Region had also entered into contracts with motel operators to permit motels to be used for shelter, but Valente J. found it was not appropriate to include motel spaces in the count, in part “because their availability is at the discretion of the motel operators”.

[158] Then, as now, the Region asserted public health and safety concerns arising from the Encampment. It asserted that, in the months leading up to the hearing, there had been a significant increase in incidents involving police at the site. It cited rodent infestations, feces and urine on the site, fire hazards, physical altercations, and consumption of alcohol and drugs. Justice Valente accepted that these issues created risk, but questioned: “does not closing the Encampment simply move[...] all of these risks elsewhere. Furthermore, does not the Region have some responsibility to take further steps to mitigate these risks?” The Court held that in assessing whether persons sheltering at the Encampment had indoor sheltering alternatives, it was “simply not a matter of counting the number of spaces”.

[159] Justice Valente also directly rejected the Region’s argument that it need only find space for the persons then at the Encampment in order to establish it would be constitutional to clear the Encampment. Then, as now, the Region had offered assurances that it would find shelter space for each person then sheltering at the Encampment. In response, Valente J. held:

[94] Finally, I reject the Region’s submission that, at the end of the day, in order to grant the relief it seeks, I need only be satisfied that there is sufficient capacity in the system to accommodate the Encampment residents. I reject this proposition because of the fluctuating and variable capacity of the system based on the Region’s own numbers. Furthermore, were I to be guided by this principle, and satisfied that there is a sufficient bed capacity for the Encampment residents on any given day, how does this approach respond to the many other vulnerable homeless individuals in the Region? It does not. The approach is particularly problematic in my view because the Region intends to be guided by this decision in its treatment of other encampments. Were I to accede to the Region’s submission, it seems to me I would be helping to create an immediate disadvantage for those who are homeless and living outside encampments. I am not prepared to do that. [...]

[160] The Court found that closing the Encampment would put the lives of the Region’s homeless at risk, constituting a “deprivation” of life for the purpose of s. 7 because exposure to the elements without shelter could create serious harm, inducing death. It also found that closing the Encampment amounted to a deprivation of liberty, and of security of the person because it would “expose[...] the homeless of the Region to risk of significant health problems, both physical and psychological in nature”. These deprivations were not in accordance with the principles of fundamental justice, in part because they were grossly disproportionate to the By-Law’s objectives, which included preventing disruption to Regional operations.

[161] Rather than declaring the Code of Use By-Law generally inapplicable to homeless residents of the Region, Justice Valente issued a narrow declaration that it was inapplicable “only insofar[...] as it applies to prevent the residents of the Encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceed the number of available accessible shelter beds in the Region”. This left the Encampment as the only space in the Region where sheltering is not prohibited under the Code of Use By-Law. Justice Valente ordered “that the Region may apply to terminate” the declaration upon being in a position to satisfy the Court that the By-Law no longer violated the s. 7 rights of Encampment residents. The Region has not done so, nor did it appeal the decision, which remains in effect.

[162] The Code of Use By-Law continues to apply outside of the Encampment. The Region chose not to amend its Code of Use By-Law after *Persons Unknown*. Due to the Encampment-specific scope of Justice Valente’s declaration, the Code of Use By-Law therefore continues to restrict sheltering by the homeless on all other Region-owned land. Therefore, while the Encampment is not the only location in the Region where persons do shelter outside, it is the only location where they may do so lawfully without the risk of eviction. The Region’s Commissioner of Community Services has been clear that the Region is not prepared to permit sheltering anywhere else on its lands if the Encampment is cleared.

[163] Since *Persons Unknown 2023*, other encampment sites in the Region have been cleared, including sites on Region-owned land and land owned by lower-tier municipalities. For instance, an encampment at 150 Main Street in Cambridge was closed by the Region in August 2023. An

additional site at Soper Park in Cambridge was cleared by the City of Cambridge in September of 2023. An encampment at Roos Island in Kitchener was closed by the City of Kitchener in spring of 2023.

[164] Homelessness has more than doubled in the Region since *Persons Unknown* was released. The Region's housing stability system has not kept pace with this increase. In *Persons Unknown 2023*, Valente J. found the Region's shelter system could accommodate only 50% of the Region's homeless population. However, the Region's shelter capacity can now accommodate only 15% of the Region's total homeless. Another way of looking at this is that 43% of the Region's homeless live outdoors. Accordingly, the Region has acknowledged that it is not in a position to ask the Court to lift its declaration of invalidity – it cannot ensure that the number of homeless persons will not exceed the number of shelter spaces in 2026, even leaving aside whether available spaces are accessible to persons who depend on the Encampment site.

[165] The PiT Count is a count of persons experiencing homelessness on a single night. The Association of Ontario Municipalities describes this as an “undercount”. The September 2021 PiT Count that Valente J. referred to in *Persons Unknown 2023* recorded 1,085 homeless, including 412 “living rough”, and 191 accessing emergency shelters. By October of 2024, the PiT Count recorded 2,371 homeless, 1,009 of whom were “living rough”, 446 in emergency shelters, and 153 in motels. The majority of the Region's homeless move in and out of homelessness. Of the 2,371 homeless captured by the 2024 PiT, 78% were “chronically homeless”, defined as persons in “prolonged or repeated periods of homelessness”. This accords with the experience of the Named Respondents, who move in and out of the Encampment as they lose and gain indoor shelter.

[166] The Region's emergency shelter system has not kept pace with this increase in homelessness. As the Region's Commissioner for Community Services put it: this complex situation where the number of homeless individuals vastly exceeds the housing supports that the region can provide, has in turn caused an increase in encampments over the last few years. The Region's shelters can accommodate only 15% of Region's homeless. The Region's emergency shelter system consists of shelters and the motel spaces that Valente J. previously excluded from its shelter space count because availability was “at the discretion of motel operators”. Effective

February 27, 2026, the Region had 356 spaces in the emergency shelter system, across eight shelters. These spaces regularly operate at or near capacity. The Region's Commissioner of Community Services has been candid that the system has "capacity challenges". For instance, Region shelters turned persons away 171 times between October and December 2025, either due to being at capacity or due to service restrictions. Of the 356 spaces:

- a. 50 at Erb's Road shelter, are "tiny house" spaces. These spaces are "generally full". A person must meet criteria and complete a referral process to qualify for a space.
- b. 20 at YWCA Cambridge, are reserved for women and persons who are gender diverse. These operate 24 hours a day. In December, January, and February they operated over capacity.
- c. 22 at SHIP 84 Frederick Street, are reserved for women and persons who are gender diverse, but operate only overnight.
- d. 24 at oneROOF, are reserved for youth. These operate only overnight, though there is also a daytime drop-in program.
- e. 80 at Cambridge Shelter Corporation Bridges shelter, operate 24 hours per day, but are reserved for men.
- f. 10 at Safe Haven, are reserved for youth ages 12 - 17.
- g. 20 at Bridgecare shelter, are "primarily" for persons with complex medical needs. This shelter stopped accepting intakes as of September 2025.
- h. The remaining spaces, at ShelterCare ("House of Friendship") (100 spaces) and SHIP Edith MacIntosh (30 spaces), are for men only. SHIP Edith MacIntosh operates only overnight.

[167] The Region also offers 60 "winter warming" spaces between December and March. Of these, 30 are reserved for men, and 30 are for all genders. These are congregate spaces open overnight, with no beds. They operate over capacity. A third warming space had 100 co-ed warming spaces between January 26 and March 31, 2026, but it does not receive operational

funding from the Region. It, too, is a congregate space with no beds and has operated over-capacity.

[168] The Region also operates transitional housing that is not available on an emergency basis. Persons must qualify for transitional housing, and it is subject to waitlists. It is therefore not an option for a person who requires immediate shelter at a given moment.

[169] While many Named Respondents are on a waitlist for affordable housing, the anticipated wait is 8 to 10 years, with 11,421 households on the list as of November 6, 2025. The average wait for supportive housing units is 13.5 months.

[170] The existing shelter spaces are not accessible to all homeless persons. Some are inaccessible for obvious reasons: women cannot access spaces reserved for men; adults cannot access spaces reserved for youth; opposite sex couples cannot access single sex shelters without forced separation. However, there are also more nuanced access barriers relating to disability. Dr. Sahil Gupta, a physician whose clinical practice and research focuses on people experiencing homelessness, identified the following disability-related barriers to shelter access:

- Crowded congregate settings can destabilize persons with some mental health disabilities;
- Some persons' mental health impairments prevent them from complying with shelter rules;
- Many shelters cannot meet specific accessibility needs, such as accessibility for people with physical disabilities, allowance for pets, or proximity to an individual's usual pharmacy (for persons who require daily dispensed medications) or social supports.

[171] In addition to emergency shelter spaces, the Region funds motel stays for some persons. However, as Valente J. found in *Persons Unknown 2023*, these are subject to operator discretion. They are also typically funded for finite periods. Because motel spaces are subject to operator discretion, they are not reliable shelter for persons with mental health disabilities that cause

challenging behaviours.

[172] Approximately 15 months after Persons Unknown, the Region passed a new Plan to End Chronic Homelessness (“PECH”). The PECH mandates four “interventions” for Region housing and homelessness services: (1) Broadening our Current Housing/Prevention support continuum; (2) Community-Driven System Leadership; (3) Centering Lived Expertise and Equity-Owed Groups; and (4) Defining and Combining Housing First and Human Rights Approaches.

[173] The second of these, “Community-driven system leadership, sets out a leadership model revolving around a “Whole Community Leadership Table”, or “Co-Creator’s Table”, with “decision-making power over the implementation of the PECH”: “[t]he role of the Region as the Service System Manager remains, but would move from singularly driving these decisions to collaborating and supporting - working alongside the new leadership tables to guide PECH implementation”. The Table’s decision-making responsibility extends to decisions regarding “Unsheltered Homelessness & Encampments”. The Table is comprised of over 60 community organizations and individuals. It meets once a month.

[174] The third PECH intervention of “centring lived expertise and equity-owed groups” commits the Region to working together with a “Lived Expert Prototyping Cohort”. That Cohort consists of “Lived Experts” and representatives from mutual aid groups, advocacy groups, and agencies, along with some Region and City staff.

[175] The fourth PECH intervention requires the Region to take a “human rights approach” to ending homelessness. It defines this as an approach where: [p]eople experiencing homelessness are treated as rights holders, where their agency is respected, and where the Region has a duty of care for their housing needs. The Region will be compliant with national and international human rights law and ensure it is appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy, and liability.

[176] This approach is set out more fully through the 8 principles of the United Nations Special Rapporteur on the Right to Adequate Housing’s “National Protocol for Homeless Encampments

in Canada: A Human Rights Approach”.

[177] On April 16, 2025, the Region posted notice of the Site-Specific By-Law on its website. It did not post notice at the Encampment site. Council passed the By-Law on April 23, 2025. Effective upon its adoption, the By-Law prohibited anyone who did not meet the definition of “Resident” from sheltering at the Encampment. It defined “Resident” to mean persons “residing at 100 Victoria Street” as of the April 16, 2025 notice date. It further provided that “[c]ommencing on December 1, 2025, no person shall enter onto, reside on, or occupy 100 Victoria Street”. Persons contravening either provision would be guilty of an offence and liable for a fine of up to \$5,000, but the By-Law also specified that the Region could take enforcement steps under the *Trespass to Property Act*. The By-Law further authorized the Region to, among other actions, erect fencing around the site to prevent entry, and remove persons’ personal property from the site.

[178] The Region’s Commissioner of Community Services affirms that the Region recognizes “approximately 40” persons as “residents”. The Region has not advised how many of the Named Respondents are included in this count, but at least 12 are not. On the same day that Council passed the By-Law, it directed staff to add \$814,333 to its housing stability budget. The new funding was made up of \$466,083 for “motels with social supports” and \$271,250 for new supportive housing units, with the remaining funds designated for site remediation. The funding for “motels with social supports” is only “temporary”. It “will not extend beyond 2026”.

[179] On August 20, 2025, this Court issued an interim injunction restraining the Region from acting on any part of the By-Law until the conclusion of this hearing. On December 18, 2025, the Region posted notice on its website that it intended to amend the By-Law, with a meeting scheduled for January 7, 2026. It passed the Amended By-Law on January 9, 2026. The Amended By-Law called for the Encampment to be closed on April 1, 2026.

[180] The Amendments included a new “Transition Protocol” outlining steps the Region would take prior to removing those persons it deemed “Residents”. Under that Protocol, “Residents” would be offered “alternative accommodation” as set out in Individual Housing Plans (“IHPs”), which the Region would make “best efforts” to develop.

[181] The Region characterizes these IHPs as “personalized plans designed to match individuals with housing options reflecting their specific needs and preferences”. However, the three IHPs on the record do not support this contention. Two offer emergency shelter spaces, one of which the recipient could not accept because the spaces did not accommodate couples. The third offered a motel space. All three are undated, consist of only a few lines, and offer no information as to what the unnamed recipient’s “specific needs and preferences” are.

[182] The Protocol further provides that USWs will make “best efforts” to find “Alternative Accommodation” where a resident loses “Alternative Accommodation due to non-compliance with the rules”. However, there is no provision for how such situations would come to the Region’s attention, nor how the Region would find “Alternative Accommodation” where its shelter system is consistently at capacity and the wait list for subsidized housing is eight to ten years.

*Section 7 analysis framework*

[183] A claim that a state action breaches s. 7 proceeds in two steps. First, a claimant must establish that the impugned law or state action deprives them of life, liberty, or security of the person. This requires showing a “sufficient causal connection” between the law or action and the alleged interference with the s. 7 interest. A risk of such a deprivation suffices: *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17, at para. 56 (“CCR”); *Carter v. Canada (Attorney General)*, 2015 SCC 5, at para. 62. A court “may consider ‘reasonable hypotheticals’ to determine whether a law is consistent with the *Charter*”: *R. v. Kloubakov*, 2025 SCC 25, at para. 143.

[184] Second, the claimant must show that this deprivation is not in accordance with the principles of fundamental justice. To establish a “sufficient causal connection” between a state action and a deprivation of life, liberty, or security of the person, the impugned law or state action need not be the only or the dominant cause of the prejudice suffered by the claimant. That other factors also have a causal connection to the harms alleged does not prevent a finding of causation. This means that even where risks faced by the Named Respondents are also caused by homelessness, poverty, violence, weather, and discrimination, state interference with their ability to protect themselves from those risks will still give rise to a sufficient causal connection.

Similarly, a “sufficient causal connection” between an impugned law and harm will exist even where the impugned law interacts with other laws to contribute to risk or harm: *CCR.*, at para. 64.

[185] The court must interpret the impact of an impugned law in the context of the legal scheme as a whole. This means that this Court must interpret the impact of the By-Laws in context with the restrictions arising from the Code of Use By-Law. While the By-Laws do not directly restrict the Named Respondents from sheltering elsewhere in the Region, they do when applied in context with the Code of Use By-Law. Here, the By-Laws contribute to the harms described below because they prevent the chronically homeless Named Respondents from taking steps to protect themselves from the dangers of unsheltered homelessness. When those persons that the By-Laws do not deem to be “Residents” are evicted from the Encampment with no place to go, when the temporary spaces the Region has offered to those it does deem “Residents” end, when chronically homeless Persons Unknown who are currently sheltering elsewhere face eviction and cannot access indoor shelter, they will be left with no space of last resort to catch their fall.

[186] The right to life is engaged where a law or state action creates an increased risk of death, either directly or indirectly. Just as Valente J. held in *Persons Unknown 2023* that preventing persons from sheltering at this site engaged their “life” interest, Canadian courts have repeatedly held that outdoor sheltering engages the s. 7 “life” interest of homeless persons when they lack accessible indoor alternatives. As this Court recognized in its earlier injunction decision, at para. 88, this is because “[p]rohibiting homeless persons from taking measures to shelter themselves by erecting temporary structures in circumstances where there are no practical housing alternatives has been found to engage the right to life (due to exposure to risks of serious harm including death).” This finding is supported on the record in this hearing. Dr. Hwang’s evidence is that “[t]here is no question that the lack of shelter for people living outside causes severe adverse effects on their health”. This is because “[h]omeless people who are prohibited from erecting even rudimentary shelter from the elements — such as tents, tarps, or cardboard barriers — will suffer clear and direct adverse impacts on their health”. While there is no question that outdoor homelessness is dangerous, with or without a tent, particular risks of unsheltered outdoor homelessness, or “sleeping rough” without any shelter, include:

- A lack of protection from wind and rain increases the wind chill effect, greatly increasing the risk of hypothermia.
- Prolonged exposure to wet and cold can lead to serious skin and foot diseases as well as respiratory diseases.
- The lack of protection from the sun greatly increases homeless people's risk of severe sunburn and heatstroke during the summer months.
- Lack of shelter leads to disturbed and fragmented sleep, causing serious health conditions.

[187] The right to liberty is engaged when state compulsions or prohibitions affect fundamental life choices. The right to liberty “protects an irreducible, core sphere of personal autonomy wherein individuals may make fundamental and inherently private choices free from state interference”: *Drover v. Canada (Attorney General)*, 2025 ONCA 4868, at para. 129. It protects an individual's choice of residence because the right to decide where to live is “essential to maintain personal autonomy and dignity”: *Drover*, at para. 131. The By-Laws engage the Named Respondents' liberty interests because they permit them to be arrested without warrant if they shelter on the property. However, multiple courts have also held that restricting the homeless from sheltering themselves engages the right to liberty because shelter is a matter “critical to any individual's dignity and independence”: *Persons Unknown 2023*, at para. 101. These determinations are consistent with the evidence in this case. Dr. Gupta explains how, for some residents, encampments provide a sense of “autonomy and self-determination”: “Encampments offer a sense of control over one's life and decisions, which is critical for psychological well-being”.

[188] The right to security of the person protects individuals' physical and psychological integrity. It is infringed by serious state-imposed psychological stress: *Carter*, at para. 64. As this Court has already found in relation to this very Encampment, “security of the person” is engaged by both by-laws restricting the homeless from sheltering, and forced encampment evictions.

[189] The Region's Transition Protocol does not follow the obligations of a human rights-based approach in PECH and does not adequately mitigate the s.7 deprivations. The Transition Protocol is underinclusive, does not address systemic issues and is time limited. The Transition Protocol applies only to a minority of the Named Respondents and encampment residents, those arbitrarily

deemed by the Region to be “Residents”.

[190] It leaves the remaining encampment residents with few if any options of alternative shelter once the Encampment is closed. A human rights-based approach requires that all residents be provided with resources. Second, it does not address the systemic issues related to rising homelessness. It does not address the underlying issues of insufficient shelter space and the lack of affordable housing. Transitioning Encampment residents into existing emergency shelter spaces means that other chronically homeless residents of the Region will be unable to access those same spaces, leading those persons to require a space where they can lawfully shelter outdoors. The Region’s addition of an imprecise number of motel rooms to its system until 2026 does not resolve this issue. As Valente J. put it in *Persons Unknown 2023*: “Were I to accede to the Region’s submission, it seems to me I would be helping to create an immediate disadvantage for those who are homeless and living outside encampments. I am not prepared to do that.”

[191] Third, even for the minority of Named Respondents included in the Protocol, supports are only temporary. The Protocol provides for storage of belongings for up to six months, but the waitlist for subsidized housing is 8 to 10 years. A human rights-based approach requires that relocation must not result in the continuation or exacerbation of homelessness.

[192] These deprivations are not in accordance with the principles of fundamental justice. The second branch of s. 7 requires a claimant to establish that an impugned provision conflicts with basic constitutional values, including that the impact of a law must not be grossly disproportionate to its objects. Gross disproportionality balances the negative effect on the individual against the purpose of the law, not against societal benefit that might flow from the law. It is “not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportionate effect on one person is sufficient to violate the norm.”: *Bedford*, at para. 122. In *Persons Unknown 2023*, Justice Valente found that closing the Encampment was grossly disproportionate to the Region’s objectives, which included preventing disruptions to Regional operations. The operation at issue was the same proposed new transit hub that remains at issue. The Region’s intent, then, as now, was to use the site for equipment lay-down in the short-term, though it also advised that it would use it for parking in the longer term. The Region then advised

that construction on the transit hub would commence in the spring of 2023, just months after *Persons Unknown 2023* was released.

[193] The Court’s previous determination continues to apply. Contrary to the Region’s submission, the gross disproportionality analysis is not now “fundamentally different from *Persons Unknown*” on the basis that in that case, “the Region did not put any plan for the occupants of 100 Vic before Valente J.”. The Region did put such a plan before Justice Valente in *Persons Unknown 2023*. In the months leading up to that decision, Council had moved to develop a “plan to establish interim housing solutions for the regional residents experiencing homelessness including those currently residing in the encampment”. Pursuant to that plan, the Region advised the Court that it was implementing multiple “interim housing solutions”, including expanded transitional housing, homebased supports, emergency shelter, and a managed hybrid/outdoor shelter model. Justice Valente accepted the Region’s assurance that the Region was “committed to reserving spots for the Encampment residents at its emergency shelter locations”: *Persons Unknown 2023*, at para. 64. While the Region is now using a new term for these assurances – IHPs – the substance of its assurances are the same. There being no fundamental difference between either the By-Laws’ object or their “multiple and severe negative consequences” for the Named Respondents, the By-Laws remain grossly disproportionate to their goal in a context where the Region has chosen not to permit outdoor sheltering anywhere else.

[194] I find that the s.7 *Charter* rights of the Respondents are infringed by the By-Laws. It remains to consider whether the infringement is saved under s. 1.

### **Section 15**

[195] Section 15(1) of the *Charter* provides:

15(1) Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[196] In *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7, the Supreme Court of Canada

recently considered whether exclusion of refugee claimants from eligibility for subsidized daycare infringed their s.15 *Charter* right to equality. The majority of the Court found that the regulation at issue infringed s.15(1) of the *Charter* because it discriminates against women refugee claimants based on sex.

[197] Writing for a majority of the Court, Karakatsanis J. discussed the framework of s.15 analysis with a particular emphasis on intersectionality. Section 15(1) of the *Charter* protects individuals not only from laws which directly discriminate but also from adverse effects of discrimination. People in the same protected group may have very different experiences and face unique challenges based on their intersecting identities and realities. An intersectional approach is not novel in the s. 15(1) analysis. Intersecting group membership tends to amplify discriminatory effects or can create unique discriminatory effects not visited upon any group viewed in isolation. Consideration of a claimant group's intersecting identities is relevant at both stages of the s. 15(1) analysis.

[198] In the first step, which focuses on identifying a distinction based on an enumerated or analogous ground, consideration of a claimant group's intersecting identities and realities may assist in understanding how a government decision disproportionately impacts a particular claimant group. Differential treatment can occur on the basis of an enumerated or analogous ground despite the fact that not all persons belonging to the relevant group are equally mistreated.

[199] Claimants can satisfy step one of the s. 15(1) analysis even if they only make up a subgroup experiencing adverse effects.

[200] Consideration of a claimant group's intersecting identities and realities is similarly relevant under the second step of the s. 15(1) analysis, where courts must assess whether the distinction has the effect of reinforcing, perpetuating or exacerbating a claimant's disadvantage. Disadvantage can be intimately related to, if not rooted in, the specific identities and realities shared by a particular group.

[201] To prove an infringement of s. 15(1), a claimant must show the challenged law or state

action: (1) on its face or in its impact, creates a distinction based on listed or analogous grounds; and (2) imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.

[202] At the first step of the test, where a measure does not explicitly distinguish based on a protected ground, the claimant can still show that the law creates a distinction in effect because of the law's disproportionate impact on the protected group. While the claim must be clearly anchored in a recognized ground of discrimination, the claimant may also point to additional characteristics that contribute to establishing a disproportionate effect on the claimant group. Where discrimination affects only a subgroup, the failure to account for intersecting identities in step one of the s. 15(1) inquiry could effectively obscure the specific adverse effects experienced by that subgroup. Two types of evidence can help a claimant establish these impacts: (a) evidence about the claimant group's situation, including physical, social, cultural, or other barriers faced by the claimant group; and (b) evidence about the results produced by the challenged law in practice. However, no specific form of evidence is required.

[203] In some cases, a court may reasonably infer an adverse effect on a claimant group, or the disproportionate impact on a claimant group may be apparent and immediate and judicial notice can be taken when appropriate. While the evidentiary burden at the first step should not be undue, it must be fulfilled. The second step focuses on the protection of groups that have experienced exclusionary disadvantage based on group characteristics. Even if a law treats people differently based on a protected ground, it does not necessarily follow that the law increases or reinforces a disadvantage. The broader legislative context may also be relevant to the analysis at step two, but the emphasis on context must not conflate an analysis of the discriminatory impact of a measure on a disadvantaged group with a consideration of whether the distinction is justified based on legislative objectives. Courts should not ignore infringements of s. 15(1) merely because the law is ameliorative, non-arbitrary, or only perpetuates the disadvantage of some members of the protected group.

*Homelessness as an analogous ground under s.15 of the Charter*

[204] In my view, the time has come that homelessness should be recognized as an analogous

ground for the purposes of s.15 of the *Charter*. I draw support for this conclusion from the concurring reasons of Wagner CJC at paras. 216-228 in *Kanyinda*:

[216] In my view, s. 15 of the Charter protects refugee claimant status as an analogous ground. This status is “of a kind similar” to the enumerated grounds, in that it shares “many similarities” with them (*Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at p. 195, per La Forest J.). It is a ground that “s. 15 of the Charter is designed to protect” (*R. v. Turpin*, [1989] 1 S.C.R. 1296, at p. 1333). This conclusion flows from a generous approach to the right to equality that reflects “the ‘continuing framework’ of the constitution and the need for ‘the unremitting protection’ of equality rights” (*Miron v. Trudel*, [1995] 2 S.C.R. 418, at para. 145, per McLachlin J., as she then was, quoting *Andrews*, at p. 175, per McIntyre J., dissenting in part, but not on this point). This inquiry takes into account the dual purpose assured by s. 15, that is, protecting human dignity and building a society in which everyone is recognized as being worthy of respect and consideration (*Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, at para. 5). Recognizing every person’s right to dignity and freedom to lead the life they want, in keeping with their full potential and in a manner respectful of collective interests, implies a duty to counter the disadvantages imposed on certain members of society on the basis of stereotyping and prejudice (*ibid.*; *Miron*, at paras. 145-46).

[217] Over time, this Court has developed a number of criteria and indicators that can be used to identify an analogous ground and screen out claims “having nothing to do with substantive equality”, in order to “keep the focus on equality for groups that are disadvantaged in the larger social and economic context” (*Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30, [2015] 2 S.C.R. 548, at para. 19, and *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10, at para. 193, both quoting L. Smith and W. Black, “The Equality Rights” (2013), 62 S.C.L.R. (2d) 301, at p. 336). On this non-exhaustive list, the violation of human dignity and freedom resulting from a distinction based on a stereotype, rather than on individual capacity, worth or circumstances, is a first indicator (*Miron*, at para. 148). Next, the fact that a group has suffered historical disadvantage (*ibid.*; *Andrews*, at p. 152; *Turpin*, at pp. 1331-32) or that it represents a “discrete and insular minority” (*Miron*, at para. 148, quoting *Andrews*, at p. 152, per Wilson J., and at p. 183, per McIntyre J.) may also be a relevant factor. The vulnerability and marginalization of a group within society are other indicators. In addition, the “immutable” nature of an individual’s personal characteristics, including those that are “constructively immutable”, that is, changeable only at an unacceptable cost to personal identity, such as religion or citizenship (*Corbiere*, at para. 13; *Dickson*, at para. 193), is generally a common denominator for all analogous grounds. Lastly, recognition by legislators and jurists that a ground is discriminatory is another helpful indicator for determining whether it is analogous to the enumerated grounds.

[218] Côté J. notes in her reasons that some of the indicators set out and adopted in our jurisprudence are not relevant to the analysis, notably because they are unrelated to the central criterion of immutability (paras. 355-58). With respect, **I am of the view that consideration of all of these factors not only assists in identifying the groups that the Charter is meant to protect but also favours a more flexible and progressive approach in the application of s. 15, one that is capable of recognizing contemporary forms of discrimination, beyond only its historical manifestations** (*Miron*, at para. 149; D. Gibson, “Analogous Grounds of Discrimination Under the Canadian Charter: Too Much Ado About Next to Nothing” (1991), 29 Alta. L. Rev. 772, at p. 788; J. Sealy Harrington, “Assessing Analogous Grounds: The Doctrinal and Normative Superiority of a Multi-Variable Approach” (2013), 10 J.L. & Equality 37, at pp. 52-55). 2026 SCC 7 (CanLII)

[219] In the present case, an analysis of these criteria leads to the conclusion that refugee claimant status is an analogous ground.

[220] First, a distinction based on refugee claimant status **may violate the dignity of the members of this group, because this migration status is apt to give rise to “stereotypical reasoning” and “distinctions which violate the dignity and freedom of the individual, on the basis of some preconceived perception about the attributed characteristics of a group rather than the true capacity, worth or circumstances of the individual”** (*Miron*, at para. 149). **This is a first indicator, even the “unifying principle”, for identifying an analogous ground** (*ibid.*). I must acknowledge that there is a great deal of prejudice against people who enter Canada in the hope of finding refuge here from persecution. Refugee claimants are accused of being cheats and queue-jumpers and of trying to take advantage of the generosity of Canadians by making fraudulent claims (*Canadian Doctors for Refugee Care v. Canada (Attorney General)*, 2014 FC 651, [2015] 2 F.C.R. 267, at paras. 13 and 837; Dr. J. Hanley, The labour implications of the exclusion of refugee claimants from Quebec’s subsidized childcare program (2020) (reproduced in A.R., vol. II, at pp. 68-90), at para. 54). Refugee claimant status thus **shares this common denominator; it may “serve as a basis for unequal treatment based on stereotypical attributes ascribed to the group, rather than on the true worth and ability or circumstances of the individual”** (*Miron*, at para. 147; see also *Corbiere*, at para. 13.

[221] I emphasize the similarity that can be observed between, on the one hand, the ground of refugee claimant status and, on the other, the grounds of non-citizenship, race and national or ethnic origin. Like discrimination on the basis of non-citizenship, discrimination on the basis of refugee claimant status is a “companion of discrimination on the basis of race and national or ethnic origin, which are listed in s. 15” (*Andrews*, at p. 195, per La Forest J.; see T. Rahimian, “Parental Undocumented Status as an Analogous Ground of Discrimination” (2020), 16 J.L. & Equality 93, at pp. 125-26). The application of a distinction

based on refugee claimant status — for example to deny a person a right or benefit — may lead the person to have a sense of inferiority regarding their place in the community. Judging a person on the basis of an administrative or migration status, rather than according to their merit or attributes, could well negate the person’s dignity and worth. **A distinction based on refugee claimant status may therefore be incompatible with the respect owed to all human beings for who they are and may violate the fundamental principles of individual recognition and equality that every democratic society must guarantee.** These points confirm the similarity between refugee claimant status and the grounds currently protected by s. 15.

[222] Second, another characteristic associated with analogous grounds is the *immutability of the group members’ personal characteristics*. In this case, I am of the view that refugee claimant status **is an immutable characteristic because it is a situation that, like citizenship, is “not within the control of the individual”, as it is “not alterable by conscious action” by the individual** (*Andrews*, at p. 195, per La Forest J.). In *Miron*, McLachlin J., as she then was, found that the ground of marital status is an immutable characteristic because it “often lies beyond the individual’s effective control” and because the individual “exercises limited but not exclusive control over the designation” (para. 153). Here, a refugee claimant does not have exclusive control over the status of their claim (*Hogg and Wright*, at § 55:26). **They cannot alter this status on their own initiative by conscious unilateral action.** The exercise of state power is what can change a refugee claimant’s situation. Moreover, it is important to note that a refugee claimant’s decision to flee their country of origin is, in principle, not a choice made by that person, but rather a constraint imposed upon them (see, by analogy, *Taypotat*, at para. 26). A person waiting for refugee status exercises no control over the potential risk to their life or freedom in their country of origin. The person is also in limbo from the time their claim for refugee protection is filed (R.F., at paras. 100-103; I.F., *Association québécoise des avocats et avocates en droit de l’immigration*, at paras. 36-39; I.F., *FCJ Refugee Centre and Madhu Verma Migrant Justice Centre*, at para. 23). **Finally, the transitory nature of migration status does not prevent this status from being considered an immutable characteristic for the purposes of analysis, just like the ground of discrimination on the basis of age. It is one of those characteristics that, “while they last”, are “considered beyond the individual’s conscious control”** (*Gibson*, at p. 786; see also *Sealy-Harrington*, at pp. 54-55).

[223] My colleague Côté J. notes that the mere fact that a status depends on a government decision does not suffice to make it immutable. In her view, this logic could lead to the recognition of analogous protection for anyone who has submitted an application to the state, regardless of the nature of the application. However, the proposed analogy seems to stray from the realities faced by refugee claimants. **These realities can be better grasped by considering a set of contextual factors when identifying a new analogous group.** Rejecting a

formalistic analysis in fact helps to prevent the discrimination inquiry from resting on artificial distinctions.

[224] Third, refugee claimants **are a historically disadvantaged group. They have experienced considerable historical disadvantage, stereotyping, marginalization and stigmatization in Canadian society** (R.F., at paras. 98 and 117; I.F., *Canadian Association of Black Lawyers and Black Legal Action Centre*, at paras. 21-25; I.F., *FCJ Refugee Centre and Madhu Verma Migrant Justice Centre*, at paras. 17-21; see also L. Taylor, “Designated Inhospitability: The Treatment of Asylum Seekers Who Arrive by Boat in Canada and Australia” (2015), 60 McGill L.J. 333, at pp. 361-64; Rahimian, at pp. 125-26; Sealy-Harrington, at pp. 55-56; A. Neve and T. Russell, “Hysteria and Discrimination: Canada’s harsh response to refugees and migrants who arrive by sea” (2011), 62 U.N.B.L.J. 37). Similarly, refugee claimants form a “‘discrete and insular minority’ who come within the protection of s. 15” (*Andrews*, at p. 183, per McIntyre J., quoting *Graham v. Richardson*, 403 U.S. 365 (1971), at p. 372; see pp. 151-53, per Wilson J.; R.F., at para. 98). They are **“a group lacking in political power and as such vulnerable to having their interests overlooked and their rights to equal concern and respect violated”** (*Andrews*, at p. 152, per Wilson J.; see also p. 195, per La Forest J.; R.F., at para. 98; see also *Rahimian*, at p. 119).

[225] Fourth, refugee claimants **are a vulnerable and marginalized group in society** (R.F., at paras. 98-99 and 117; I.F., *Canadian Civil Liberties Association*, at para. 8; see also *Rahimian*, at pp. 120-24; Sealy-Harrington, at p. 56). **A number of factors contribute to increasing their vulnerability, including: the situation of poverty or economic precarity in which they find themselves; mental and physical health issues** related to exile, to integration difficulties or to uncertainty around their migration status and their future; the language barrier; **isolation and the lack of a family or support network; and difficulty accessing the labour market and social services** (see N. Dolan and C. Sherlock, “Family Support through Childcare Services: Meeting the Needs of Asylum-seeking and Refugee Families” (2010), 16 *Child Care in Practice* 147; G. Morantz et al., “Resettlement challenges faced by refugee claimant families in Montreal: lack of access to child care” (2013), 18 *Child & Family Social Work* 318). All of these factors act as barriers to their integration into Canadian society.

[226] Fifth, **international instruments and international organizations support the conclusion that refugee claimant status should be identified as an analogous ground**. For example, the United Nations Committee on Economic, Social and Cultural Rights expressly noted in its General Comment No. 20 that “[t]he Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers . . . , regardless of legal status and documentation” (General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/20, July 2, 2009, at para. 30). Similarly,

the United Nations Committee on the Elimination of Racial 2026 SCC 7 (CanLII) Discrimination stated, in its General recommendation XXX, that “differential treatment based on citizenship or immigration status will constitute discrimination” and that states parties must “[e]nsure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status” (General recommendation XXX on discrimination against non-citizens, U.N. Doc. CERD/C/64/Misc.11/rev.3, August 5, 2004, Articles 4 and 7).

[227] As my colleague Côté J. rightly points out, **these international instruments are, of course, not binding in themselves, but they may play a persuasive role in the interpretation of Charter rights. The Charter’s provisions and principles often bear similarities to those of international human rights instruments, which makes such instruments relevant interpretive tools for clarifying the meaning to be given to our own norms, drafted in general language** (Reference re Public Service Employee Relations Act (Alta.), [1987] 1 S.C.R. 313, at pp. 348-49, per Dickson C.J., dissenting). **As this Court recently reaffirmed, the use of non-binding international sources remains legitimate and instructive** (Quebec (Attorney General) v. 9147-0732 Québec inc., 2020 SCC 32, [2020] 3 S.C.R. 426, at paras. 35-38). **Here, without being determinative, these sources provide support for my analysis on the existence of a new analogous ground, in light of the other factors examined.**

[228] **All of these considerations, taken cumulatively, confirm that refugee claimant status should be recognized as an analogous ground.** It is among the “jurisprudential markers for suspect distinctions” and “constant markers of suspect 2026 SCC 7 (CanLII) decision making or potential discrimination” (*Corbiere*, at paras. 8 and 11). Refugee claimants are a group that is “disadvantaged in the larger social and economic context” (*Taypotat*, at para. 19, quoting Smith and Black, at p. 336; see also *Corbiere*, at para. 8). This conclusion takes into account the “context of the law which is subject to challenge” as well as the arguments made and evidence adduced concerning “the place of the group [of refugee claimants] in the entire social, political and legal fabric of our society” (*Andrews*, at p. 152; see also p. 154; *Turpin*, at pp. 1331-33; *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, at paras. 29 and 93). **Recognizing refugee claimant status as an analogous ground therefore serves “to advance the fundamental purpose of s. 15(1)”** (*Law*, at para. 93). (Emphasis added).

[205] Homelessness clearly shares many of the attributes identified by Wagner CJC. The following considerations, taken cumulatively, confirm that homelessness should be recognized as an analogous ground.

[206] First, a distinction based on homeless status may violate the dignity of members of the

group, because this status is apt to give rise to stereotypical reasoning. Judging a person on the basis of this status, rather than according to their merit or attributes, could well negate a person's dignity and worth.

[207] Second, homelessness is a constructively immutable characteristic, because it is not a situation that is within the individual's control; it is not readily alterable by conscious action by the individual. The constellation of factors that may result in a person becoming and remaining homeless are many, but it can be extraordinarily difficult to extricate oneself from that situation, and it is not amenable to mere aspiration or simple choices: as the ancient folk aphorism succinctly observes, "if wishes were horses, beggars would ride." The transitory nature of homelessness does not prevent this status from being considered an immutable characteristic. It is one of those characteristics that, while they last, are considered beyond an individual's conscious control.

[208] Third, the homeless are a historically disadvantaged group, in addition to being a discrete and insular minority. They lack political power, which makes them vulnerable to having their interests overlooked and their rights to equal concern and respect violated.

[209] Fourth, the homeless are a vulnerable and marginalized group in society. A number of factors contribute to increasing their vulnerability, including a situation of poverty or economic precarity in which they find themselves as well as difficulty accessing the labour market and social services.

[210] Fifth, international instruments and international organizations support the conclusion that homeless status should be identified as an analogous ground.

[211] The first step of the test is satisfied. The Amended By-Law, on its face, creates a distinction based on the analogous ground of homeless status. At the second step of the s. 15 test, the claimant must demonstrate that the impugned provision imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating a disadvantage suffered by the members of the protected group (*Taypotat*, at para. 20; *Sharma*, at paras. 28 and 51; *R. v. C.P.*, 2021 SCC 19, [2021] 1 S.C.R. 679, at para. 141, per Wagner C.J., concurring). This step itself has

two parts. First, the claimant must establish that the distinction imposes a burden or denies a benefit. Second, the claimant must prove that the burden is imposed, or the benefit denied, in a discriminatory manner, that is, in a manner that has the effect of reinforcing, perpetuating or exacerbating a disadvantage. The second step is satisfied in this case. It has been shown (1) that the distinction created the Amended By-Law denies a benefit, and (2) that this benefit is denied in a discriminatory manner.

### *Application of Kanyinda*

[212] In *Kanyinda*, the Supreme Court of Canada found that Quebec's daycare subsidy scheme discriminated on the basis of sex by excluding refugee claimants. In coming to this determination, the majority emphasized that courts must take an intersectional approach to the discrimination analysis, having regard to a claimant's full context, including factors that are not enumerated or analogous grounds in and of themselves. *Kanyinda* did not alter the two-step test for discrimination under s. 15(1). The test continues to require a claimant to show that a challenged law or state action: (1) on its face or in its impact, creates a distinction based on listed or analogous grounds; and (2) imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. However, *Kanyinda* clarified how these steps apply where a claimant's disadvantage is caused by multiple factors, not all of which are *Charter*-protected.

[213] Ms. Kanyinda asserted discrimination as a female refugee claimant. The fact that refugee claimant status itself was not an enumerated or analogous ground did not defeat her claim of sex-based discrimination. Rather, it shifted the framework to the specific context of refugee claimants, and it required the Court to consider the pre-existing disadvantage Ms. Kanyinda faced both as a refugee claimant and as a woman. While the impugned law caused disadvantage to both male and female refugee claimants, the question for the Court was whether this disadvantage was disproportionately experienced by female refugee claimants. It was not necessary for Ms. Kanyinda to establish that the impugned law disproportionately disadvantaged all women, or that its adverse impact was only felt by refugee claimants who were women, or that refugee status itself was *Charter* protected.

[214] Having regard to the majority’s analytical framework in *Kanyinda*, the s. 15 claim here does not hinge on whether homelessness itself is an enumerated or analogous ground (although I consider that it now should be recognized as such, as I have explained). Rather, the question is whether the By-Laws disproportionately impact those homeless who are women, gender-diverse, disabled, and Indigenous.

[215] The first branch of the s. 15 test is intended “to exclude claims that have ‘nothing to do with substantive equality’”: *Kanyinda*, para. 60. It is not meant to be “an onerous hurdle designed to weed out claims on technical bases”. Similar to s. 7, a claimant must only establish that the impugned law is one factor that contributes to an adverse impact to establish a sufficient causal connection. The first branch of the s. 15(1) test may be satisfied either where the impugned law gives rise to “built-in headwinds” for members of protected groups, or where it fails to accommodate members of protected groups: *Fraser v. Canada (Attorney General)*, 2020 SCC 28, at paras. 53 - 54. Instead of asking whether a law explicitly targets a protected group for differential treatment, a court must explore whether it does so indirectly through its impact on members of that group. While no specific form of evidence is required, a disproportionate impact amounting to a “distinction” for the purpose of step one may be established through (a) evidence about the claimant group’s situation, including barriers it faces; and (b) evidence about the results produced by the challenged law in practice: *Kanyinda*, para. 52.

#### *Disproportionate impact upon women*

[216] The By-Laws contribute to a sex-based disproportionate impact because they result in particular “built-in headwinds” for homeless persons who are women or gender-diverse. This is because: (a) homeless women and persons who are gender-diverse are less likely than homeless men to be able to access indoor shelter that meets their needs; and (b) restrictions on outdoor sheltering pose unique safety risks for homeless persons who are women and gender-diverse when they cannot access indoor shelter.

[217] Pursuant to the November 2024 PiT Count, 35% of the Region’s then 2,371 persons experiencing homelessness were women or gender-diverse. However, within the adult emergency shelter system, only 20 of the shelter spaces operating 24/7 (at YWCA Cambridge shelter) were

set aside for women/gender-diverse, whereas 180 were for men. Of the Region's single sex overnight shelters, 30 spaces are designated for men, whereas 22 are for women/gender-diverse. It is therefore common that all spaces designated for women/gender-diverse are full on a given night.

[218] This means that if the Encampment is closed, women and gender diverse persons will disproportionately need to find other ways to shelter outside of the municipal shelter system. These strategies, including sleeping rough in remote locations to avoid detection, resuming “unsafe and exploitative relationships”, and “exchanging sex for shelter” pose particular safety concerns for women and gender-diverse Encampment Residents. Violence from intimate partners or within families is a key pathway into homelessness for women and girls. A 2020 report by the YWCA of Kitchener-Waterloo found that 83% of women and gender-diverse persons experiencing homelessness in the Region had previously stayed in abusive or violent situations to avoid homelessness. This reflects the experience of homeless women nation-wide. The 2020 “Pan-Canadian Women’s Housing and Homelessness Survey”, co-authored by Dr. Schwan, is a mixed method survey of 500 women and gender diverse persons experiencing homelessness across the country. It found that women who were turned away from shelters used “alternative strategies such as survival sex, going back to their abuser, or navigating systems like healthcare or criminal justice to seek immediate shelter”, and that women were likely to rely on “relational, precarious, and dangerous supports to survive housing instability”.

[219] There is no doubt that homeless women and persons who are gender diverse may also face safety risks in encampments. However, Dr. Schwan’s research found that encampment living provided relative safety in comparison to the other available options. Her research demonstrates that “encampments can buffer women from exposure to violence, harassment, or abuse that they might otherwise experience when residing outdoors alone, or within situations of hidden homelessness. This was because female encampment residents could “‘look out for each other,’ warn each other of dangerous or exploitative men, watch over each other’s tents and possessions, and remain with partners or pets (e.g., dogs) who provided physical safety”.

[220] It is true that, between December to March, women may access the 30-co-ed congregate

winter warming spaces in addition to the shelter spaces reserved for women/gender diverse occupants. However, the evidence demonstrates that these are not safe for women. In the YWCA of Kitchener-Waterloo report, 73% of those surveyed had avoided using co-ed spaces because of safety concerns.

[221] The evidence also demonstrates particular safety risks for women in motels. For instance, the Region no longer places women or gender-diverse people at one of the four motels used for overflow shelter due to reports of sexual coercion and exploitation by motel staff under threat of eviction.

[222] The key question under step two is whether the law worsens or reinforces the disadvantage experienced by the protected group. The majority in *Kanyinda* emphasized that assessment of whether a distinction perpetuates disadvantage for the purpose of step two must “recognize that discrimination cannot be neatly packaged into a single ground and a person will often live with other circumstances, realities, or identities that may enhance or exacerbate their disadvantage”: *Kanyinda*, at para. 63. An impugned law need not be based on stereotypical assumptions to satisfy step two. The Court was emphatic about this in *Kanyinda*: “at the second step of the s. 15(1) test, there is no need to show that the challenged measure stereotypes or causes prejudice towards the protected group” because “such an approach incorrectly focuses the inquiry on whether a discriminatory attitude exists as opposed to a discriminatory impact [...]”: *Kanyinda*, at para. 67.

[223] The By-Laws impose burdens and denies benefits in a way that reinforces, perpetuates, and exacerbates disadvantage. Here, the By-Laws’ disproportionate impact on those homeless who are women and gender diverse is that it requires them to seek out particularly unsafe forms of shelter due to the disproportionate lack of municipal shelter spaces for these groups. This deepens the pre-existing disadvantage these groups already face. As the Supreme Court of Canada has recognized in *R. v. Barton*, 2019 SCC 33, at para. 1: “[w]e live in a time where myths, stereotypes, and sexual violence against women [...]are tragically common”. Women also experience disproportionate rates of deep poverty in comparison to men, due to what the Supreme Court has recognized as a multiplicity of economic barriers”: *Moge v. Moge*, [1992] 3 SCR 813.

*Physical, Mental Health and Addiction Disabilities*

[224] People struggling with mental health and addiction issues are vastly overrepresented in the Region's homeless population. According to the 2024 Point in Time (PIT) count, 72% of homeless people reported substance abuse, 70% reported mental health issues, and 27% reported acquired brain injuries. This is consistent with the reports of the nearly 80% of the Named Respondents who identified as having mental health or cognitive challenges. In addition, it is recognized that some persons who reside at the Encampment may lack capacity to instruct counsel. (This was one of the reasons why *Amicus* was appointed).

[225] The By-Laws have a disproportionately adverse impact on homeless individuals who also struggle with physical, mental health, cognitive and addiction-related disabilities.

[226] The duty to accommodate drives the obligation state actors have when interacting with and providing services to, people with disabilities. The Supreme Court of Canada noted in *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28, at para. 33, that "[t]he Charter is not a magic wand that can eliminate physical or mental impairments" but what s.15(1) does is "address the way in which the state responds to people with disabilities" ensuring that governments "may not, intentionally or through a failure of appropriate accommodation" stigmatize or attribute functional limitations to the disability "or fail to recognize the added burdens which persons with disabilities may encounter in achieving self-fulfilment in a world relentlessly oriented to the able-bodied."

[227] I accept the submission of *Amicus* that the Region has failed to recognize the heightened burdens that clearing the Encampment will impose on homeless persons with disabilities and has not implemented adequate accommodations to address the disproportionate impact of the By-Laws on this subgroup of Encampment residents.

[228] The protection of disadvantaged individuals and groups is at the heart of s. 15. This requires the court to recognize that people living in encampments are some of the most marginalized in society and who frequently face prejudice linked to colonialism, racism, sexism, ableism, and other forms of discrimination, particularly when analysing the effects of a law.

[229] This equality-based analysis was utilized in *Persons Unknown 2023* as illustrated by the following findings: a. to be of any real value, shelter spaces must be truly accessible to accommodate the varied needs of homeless people in the Region (para. 93); b. that the law at issue impacted marginalized people in the Region who were not named parties and that their rights deserved *Charter* protection (para. 94; para 104); c. arguments about personal “choice” cannot negate a breach of s. 7 where choices are constrained by poverty, drug addiction, disability, and insufficient shelter alternatives (para. 106); and d. people with mental illness, substance abuse, or capacity issues may feel the negative effects of a law more strongly (para. 117).

[230] What matters is not discriminatory attitude or intention, but impact. In order for the Court to appreciate how the By-Laws impose burdens and perpetuates disadvantage, the lived intersectional realities of claimants in the subgroup must be recognized: people experience discrimination as whole persons, not as an aggregate of separate characteristics. Lack of stability, difficulty accessing services, increased health problems, and risk of death are all burdens experienced disproportionately by people with serious mental health, cognitive, addiction, physical and other disabilities that are made worse by forced eviction. Enforcement of the By-Laws also undermines the community some Encampment residents have built, increasing isolation. These are all impacts that deepen pre-existing disadvantages.

[231] I agree with the submission of *Amicus* that the Transition Protocol only applies to a minority of arbitrarily selected homeless people in the Encampment who happened to reside there on April 16, 2025. Rather than provide a systemic response to homelessness, the effect of the By-Law is to push an already marginalized population away from vital sources of health and community support and access to basic forms of outdoor shelter crucial to survival given that there are no lawful outdoor tenting alternatives. By doing so, it increases segregation, exclusion, and stigmatization and puts the claimants at risk of serious harm or death. Rather than promoting intersectionality, accommodation and respect for people’s choice to know what’s best for them, there is no requirement that the Alternative Accommodation offered be accessible and adequate. Many of the shelter options included as Alternate Accommodation options are fundamentally unsuitable for people with mental health/addiction disabilities who comprise the vast majority of homeless in the Region. In fact, in some cases the Alternative Accommodation may be less safe

than the Encampment.

[232] I also agree with *Amicus* that dignity is at the heart of human rights. An accommodation plan that fulfils the Region's s.15(1) obligations would have to be developed in consultation with individuals who are chronically homeless and have disabilities.

### *Indigenous Identity*

[233] The Amended By-Law will have a disproportionate impact on the Encampment's Indigenous residents and exacerbate ongoing harms and existing disadvantages.

[234] Homelessness among Indigenous people is not simply a matter of individual misfortune. For Indigenous people, it is well established that homelessness is a consequence of colonization which dispossessed Indigenous people of their land and resources, propelling and inflicting generations of systemic racism and ongoing trauma. Homelessness is a consequence of systemic and societal barriers, a lack of affordable and appropriate housing, and the individual person's specific history and challenges.

[235] Indigenous people in Canada are disproportionately under-housed, unhoused, and experience barriers to access affordable, permanent, stable, and supportive housing. In Waterloo Region, only 1.7% of the total population identify as Indigenous. However, 17% of the surveyed unhoused people in the 2024 PiT Count were Indigenous.

[236] Following the Supreme Court of Canada's analysis in *Kanyinda*, even if homelessness is not recognized as an analogous ground under s. 15(1), the Encampment's Indigenous residents will satisfy the first part of the s.15(1) test as a subgroup of the affected homeless population. The adverse effects of the By-Law arise in the nexus between homeless and race. The second part of the test is satisfied because the impacts of the By-Law are particularly severe for Indigenous people who are already unhoused and overrepresented in the homeless population. Upon eviction, Indigenous residents will be denied the benefit of culturally safe housing options and will face additional barriers due to shelter eligibility rules that disproportionately exclude them because of their Indigenous identities.

[237] Indigenous racial identity is a protected ground under s.15(1), and the By-Law creates a distinction based on its disproportionate impact on the Indigenous people living in the Encampment. The purpose of the By-Law is to evict the residents of the Encampment to facilitate the construction of the KCTH. Although the stated purpose of the By-Law is facially neutral, its effects disproportionately burden Indigenous residents of the Encampment and therefore amount to adverse effects discrimination.

*Are the infringements to s.7 and s.15 Charter rights saved under s.1?*

[238] Section 1 of the *Charter* provides:

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.

[239] In order to justify the infringements under s. 1, the Region must show that the By-Laws have a pressing and substantial object and that the means chosen are proportionate to that object. A law is proportionate if: (1) the means are rationally connected to the objective; (2) it is minimally impairing of the rights; and (3) there is proportionality between the deleterious and salutary effects of the law: *Carter*, para. 94; *R. v. Oakes*, [1986] 1 S.C.R. 103.

[240] It is difficult to justify a s. 7 violation. As Justice Valente recognized at para. 129 in *Persons Unknown 2023*, “[a] section 7 breach will rarely be justifiable under section 1 except ‘in cases arising out of exceptional conditions, such as disasters, the outbreak of war, epidemics and the like.’”

[241] This high standard is appropriate due to the fundamental nature of the interests s. 7 protects. As the Supreme Court of Canada put it in at para. 95 in *Carter*, it is “hard to justify a law that runs afoul of the principles of fundamental justice and is thus inherently flawed”.

[242] The Region asserts that this Court should take a deferential approach at s. 1 because the By-Laws are a “complex regulatory response” to the social problem of homelessness. However, the By-Laws are far from a “complex regulatory response”. They do not seek to balance competing

objectives or regulate Encampment conditions in the public interest. Rather, effective April 1, 2026, they are simply a bare sheltering prohibition. In any event, the By-Laws do not satisfy the *Oakes* test, failing the second and third step of the proportionality analysis. The second step asks if the provision “impair[s] ‘as little as possible’ the right or freedom in question”. A bare prohibition on sheltering at the only lawful sheltering site in the Region is not minimally impairing because the Region has not taken adequate steps to mitigate the impact of closing the Encampment on its chronically homeless. It is open to the Region to consider a safe tenting protocol or to designate other sites for sheltering. Either could permit the Region to obtain vacant possession while mitigating the harm caused by closure of the site. Contrary to the Region’s assertion, offering no sheltering location of last resort to the 43% of the Region’s homeless population living outdoors is not within a range of reasonable alternatives. Similarly, the Court is not “micro-manag[ing]” resources in finding that there are alternative, less harmful means of achieving the government’s objective. Rather, that is the precise purpose of this portion of the analysis.

[243] Finally, the third step of the test asks if there is a “proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of ‘sufficient importance’”. Only the third branch takes full account of the ‘severity of the deleterious effects of a measure on individuals or groups’”. If the lack of access to a benefit has a severe effect on the affected group, this will weigh especially heavily in the balancing exercise. I agree with the submission of the Named Respondents that in this case the cost of achieving the objective is simply too great; the deleterious effects outweigh the salutary effects described by the Region. The deleterious impacts are severe – the risk of deprivation to lives, liberty, and security of the person of the Region’s chronically homeless are significant. On the other hand, the Region has not actually demonstrated the salutary effects that will result from the transit hub. The anticipated benefits of the transit hub (greater connectivity, reduced transfer times, more efficient transit connections) are speculative. In cross-examination, the Region’s Acting Commissioner, Transportation admitted that his statements that the transit hub would dramatically improve transit access were not based on any specific modeling or empirical data that was projected for this project. In these circumstances, the *Charter* infringement is too high a price to pay for the benefit that actually results from the law. As Justice Carter stated at para. 87 in *Kingston*: “To borrow the language from *Bedford*, a law that prevents the homeless from avoiding

a serious risk of injury or death by erecting shelter overnight when there is nowhere else to go is a law that has lost sight of its purpose [...]

[244] I find that the infringements of the Respondents' s.7 and s.15 *Charter* rights are not saved under s.1. Accordingly, they constitute violations of these *Charter* rights.

*Illegality under s.273 Municipal Act*

[245] Pursuant to s. 273 of the *Municipal Act, 2001*, a court may quash a municipal bylaw, in whole or in part, for illegality. A by-law is "illegal" for the purpose of s. 273 if it is passed in "bad faith", which will be indicated where the by-law is enacted without the degree of fairness, openness, and impartiality required of a municipal government. Indicia of bad faith include a failure to consult on the by-law, and a failure to provide meaningful notice to affected stakeholders. They may also include: "questionable timing; [...] lack of notice; the usual practices and procedures are set aside; the parties most affected are kept in the dark; or the law singles out one individual or property": *Bertrand v. Ramara (Township)*, 2024 ONSC 7291, at para. 170.

[246] I do not assess that these indicia are engaged here. While the consultation engaged in and the notice provided by the Region with regard to the first By-Law were imperfect, these shortcomings were remedied by the Region's efforts surrounding the Amended By-Law. This portion of the Respondent's application will be dismissed.

**Conclusion**

[247] The issues before the Court on these applications are complex, difficult and of vital significance to the lives of many of the people involved. The situation is fluid. The pressures which drive the issue of homelessness in Waterloo Region, and at the Encampment in particular, are not static. There are inevitably some sharply differing views about the best way ahead. What is apparent to me at this stage however is that all parties should resist any temptation to caricature the positions or the motives of those with opposing views.

[248] The Region has engaged in a significant effort to move forward with the KCTH while respecting the *Charter* rights of the Respondents. I have, however, found that the Amended By-

Law is not constitutionally compliant with the *Charter*, as it infringes both s.7 and s.15(1), and is not saved under s.1. Accordingly, there will be a Declaration pursuant to s.52 of the *Constitution Act, 1982*, that the By-Law is unconstitutional and is of no force and effect.

[249] The potential benefit to the Region's general population of the proposed KCTH constitutes a genuine public interest. There are ways that this can still be accomplished while respecting the rights of Encampment residents.

[250] The Encampment is currently the only place in the Region where it is not illegal for homeless people to set up a tent or structure. The Region has clearly stated that if the Encampment is cleared, it is not prepared to allow homeless people to shelter outdoors anywhere on Region property. The extremity of this position is what ultimately drives the findings that the infringements are not saved by s.1. No one should romanticize or be starry-eyed about the Encampment. It is a miserable and desperate place. But it represents the only remaining safety valve for the Region's homeless as a refuge of last resort.

[251] To address disproportionate impact and individualized accessibility needs, an accommodation plan that fulfills the Region's s. 7 and s.15(1) obligations would need to include an alternative lawful encampment site of last resort, or a tenting protocol that facilitates access to essential services and healthcare on par with the current encampment. The Region could look by way of inspiration to the City of London or the City of Thunder Bay, both of which have created lawful designated encampment zones. For example, the City of London has promulgated a Community Encampment Plan which seeks to better balance the relevant contending considerations.

### **Remedy**

[252] Courts must be careful not to engage in 'judicially legislating' beyond their sphere of competence and appropriate exercise of jurisdiction. However, in the present matter, the Applicant Region has specifically asked for direction from the Court in the event of a Declaration that the Amended By-Law is not *Charter* compliant.

[253] The observations of Iacobucci and Arbour JJ for the majority at paras. 55 - 59 in *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62, at paras. 55 - 59, are apt:

First, an appropriate and just remedy in the circumstances of a Charter claim is one that meaningfully vindicates the rights and freedoms of the claimants. Naturally, this will take account of the nature of the right that has been violated and the situation of the claimant. A meaningful remedy must be relevant to the experience of the claimant and must address the circumstances in which the right was infringed or denied. An ineffective remedy, or one which was “smothered in procedural delays and difficulties”, is not a meaningful vindication of the right and therefore not appropriate and just (see *Dunedin*, supra, at para. 20, McLachlin C.J. citing *Mills*, supra, at p. 882, per Lamer J. (as he then was)).

Second, an appropriate and just remedy must employ means that are legitimate within the framework of our constitutional democracy. As discussed above, a court ordering a Charter remedy must strive to respect the relationships with and separation of functions among the legislature, the executive and the judiciary. This is not to say that there is a bright line separating these functions in all cases. A remedy may be appropriate and just notwithstanding that it might touch on functions that are principally assigned to the executive. The essential point is that the courts must not, in making orders under s. 24(1), depart unduly or unnecessarily from their role of adjudicating disputes and granting remedies that address the matter of those disputes.

Third, an appropriate and just remedy is a judicial one which vindicates the right while invoking the function and powers of a court. It will not be appropriate for a court to leap into the kinds of decisions and functions for which its design and expertise are manifestly unsuited. The capacities and competence of courts can be inferred, in part, from the tasks with which they are normally charged and for which they have developed procedures and precedent.

Fourth, an appropriate and just remedy is one that, after ensuring that the right of the claimant is fully vindicated, is also fair to the party against whom the order is made. The remedy should not impose substantial hardships that are unrelated to securing the right.

Finally, it must be remembered that s. 24 is part of a constitutional scheme for the vindication of fundamental rights and freedoms enshrined in the Charter. As such, s. 24, because of its broad language and the myriad of roles it may play in cases, should be allowed to evolve to meet the challenges and circumstances of those cases. That evolution may require novel and creative features when compared to traditional and historical remedial practice because tradition and history cannot be barriers to what reasoned and compelling notions of appropriate and just remedies demand. In short, the judicial approach to remedies must remain flexible and responsive to the needs of a given case.

At para. 87, they concluded:

Section 24(1) of the Charter requires that courts issue effective, responsive remedies that guarantee full and meaningful protection of Charter rights and freedoms. The meaningful protection of Charter rights, and in particular the enforcement of s. 23 rights, may in some cases require the introduction of novel remedies. A superior court may craft any remedy that it considers appropriate and just in the circumstances. In doing so, courts should be mindful of their roles as constitutional arbiters and the limits of their institutional capacities. Reviewing courts, for their part, must show considerable deference to trial judges' choice of remedy, and should refrain from using hindsight to perfect a remedy. A reviewing court should only interfere where the trial judge has committed an error of law or principle.

[254] In his recent (as-yet) unpublished paper, “A New Constitutional Remedy: The Declaration Plus”, Professor Kent Roach of the University of Toronto, an eminent authority on constitutional remedies in Canada, has advanced a useful proposal for what he describes as a “Declaration Plus”. This draft paper was shared with the Court on consent of all counsel, with the kind agreement of Professor Roach. At page 29 of his paper, Professor Roach states:

There is a need for an intermediate remedy that is stronger than a simple declaration but that is not so detailed that it can be immediately enforced by coercive sanctions of contempt of court. Courts should learn from failure of simple declarations in *Little Sisters* and *Khadr* to produce effective remedies for long-standing violations of constitutional rights in complex and dynamic situations.

In 2024, Canadian courts recognized the need for an intermediate remedy stronger than a bare declaration but not as strong as an enforceable mandatory order...

At page 30, he continues:

The Court in both *Restoule* and *Pekuakamiulnuatsh Takuhikan* stressed the breadth of the court's remedial powers and the need for creativity in remedial decision-making. It would be a mistake to limit this invitation to the Indigenous rights context or to view retention of jurisdiction as either an unfair penalty imposed on government or an extravagant expenditure of limited judicial resources. As suggested by my re-analysis of the important remedial precedents of *Little Sisters*, *Khadr* and *Doucet-Boudreau*, courts can and have used the declaration plus, including the retention of jurisdiction, in a way that would have

produced effective remedies while treating the government fairly and respecting the respective role of the courts and government.

[255] This proposal seems to me to be apt in the context of the present matter.

[256] As I have indicated, the Court declares that the Amended By-Law is not constitutionally compliant with the *Charter*, and is of no force and effect. As a ‘Declaration Plus’, I will retain jurisdiction in this matter such that the Region may request to return before the Court once it has promulgated either a Safe Tenting Protocol or provided an alternative site for an encampment somewhere reasonably proximate to 100 Victoria, or both, in order to request a review or further direction from the Court.

[257] I wish to express my appreciation to all counsel for their valuable assistance and the high quality of their written and oral submissions. It has been a privilege to benefit from the submissions of advocates of such caliber on all sides.

### **Order**

[258] The Court Declares that:

1. The Site-Specific and the Amended By-Laws violate s.7 of the *Canadian Charter of Rights and Freedoms*, and are not justified under s.1 of the *Charter*;
2. The Site-Specific and the Amended By-Laws violate s.15(1) of the *Canadian Charter of Rights and Freedoms*, and are not justified under s.1 of the *Charter*; and,
3. Pursuant to s.52(1) of the *Constitution Act, 1982*, the Site-Specific and the Amended By-Law are of no force and effect.

[259] The Court Orders that:

1. The application of the Region is dismissed;
2. The cross-application of the Respondents is allowed in part;

3. There shall be an injunction restraining the Applicant, its servants, employees, agents, assigns, officers, directors and anyone else acting on its behalf from enforcing or acting on any part of the Site-Specific By-Law or Amended By-Law, including but not limited to:
  - i) directly or indirectly evicting the Named Respondents or other persons from the Encampment;
  - ii) preventing the Named Respondents or other persons' entry to or use of the Encampment site, directly or indirectly, including without limitation the use of fences or other barriers;
  - iii) preventing the Named Respondents or other persons from relocating their temporary shelters to another part of the Encampment site;
  - iv) prohibiting entry onto the premises of non-residents, including prohibiting vehicle access to the premises; and
  - v) disposing of or removing any personal belongings, real or personal property belonging to the Named Respondents or other persons and located at the Encampment.
4. Following its implementation of either a Safe Tenting Protocol, or the provision by the Region of an alternative Encampment site reasonably proximate to 100 Victoria Street, or both, the Region may seek further direction from the Court regarding its plan to clear the 100 Victoria Site for the purposes of the Kitchener Central Transit Hub.

### **Costs**

[260] The parties are encouraged to agree upon appropriate costs. If the parties are not able to agree on costs, they may make brief written submissions to me (maximum three pages double-spaced, plus a bill of costs) by email to my judicial assistant at [mona.goodwin@ontario.ca](mailto:mona.goodwin@ontario.ca) and to [Kitchener.SCJJA@ontario.ca](mailto:Kitchener.SCJJA@ontario.ca). The Named Respondents may have 14 days from the release of this decision to provide their submissions, with a copy to the Region; the Region a further 14

days to respond, with a copy to the Named Respondents; and the Named Respondents a further 7 days for a reply, if any. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs as between themselves. If I have not received any response or reply submissions within the specified timeframes after the Named Respondents' initial submissions, I will consider that the parties do not wish to make any further submissions and will decide on the basis of the material that I have received. There shall be no costs ordered against or in favour of *Amicus* or the Interveners the Attorney General of Ontario, CCLA, ALS or CCPI/NRHN.

A handwritten signature in blue ink, reading "M R Gibson". The signature is written in a cursive, flowing style.

---

M.R. Gibson J.

**Date:** May 21, 2026

**CITATION:** The Regional Municipality of Waterloo v. Named  
Respondents and Persons Unknown, 2026 ONSC 2971  
**COURT FILE NO.:** CV-25-00000750-0000 and CV-25-00001341-0000  
**DATE:** 2026/05/21

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

THE REGIONAL MUNICIPALITY  
OF WATERLOO

Applicant

– and –

JOSEPHINA DUGAS, TERRA-LYNN WEBER,  
AVERY AMENT, AARON PRICE, JEREMY  
LINTON, JEREMY NICHOL, JAMES HAMMOND,  
JAKOB STUBBS, JAMES DAVIS, JASON PAUL,  
NOAH HELSBY, JOSEPH BRADLEY, JOSEPH  
SADLER, JULIE YOUNG, KYLE YORK, MEGAN  
LOPES, STEPHANIE MCMILLAN, JEFFREY  
COUTO, JORDAN CAMM, TERRANCE COLE,  
XANDER HARKER, CHARLES KOCHER, ALINE  
JEFFERY, MICHAEL JEFFERY, AND PERSONS  
UNKNOWN

Respondents/Cross-Applicants

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**REASONS FOR DECISION**

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M.R. Gibson J.

# TAB 5

Court File No. CV-25-00000750-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:



**THE REGIONAL MUNICIPALITY OF WATERLOO**

Applicant

and

**PERSONS UNKNOWN AND TO BE ASCERTAINED**

Respondents

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

**FURTHER AMENDED NOTICE OF APPLICATION**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- ☐ In writing
- ☒ In person
- ☐ By telephone conference
- ☒ By video conference

at the following location:

85 Frederick Street, Kitchener, ON N2H 0A7

on ~~May 15, 2025. November 19, 20, 21, 2025.~~ April 16, 17, 20, 2026.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of

appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date May 1, 2025 Issued by Ingrid Peters  
Local Registrar

Digitally signed by Ingrid Peters  
DN: cn=Ingrid Peters, o=Ministry of  
Attorney General, ou=Civil  
Department,  
email=ingrid.m.peters@ontario.ca,  
c=CA  
Date: 2025.05.02 10:15:59 -04'00'

Address of Superior Court of Justice  
court office: 85 Frederick Street  
Kitchener, ON N2H 0A7

TO: PERSONS UNKNOWN AND TO BE ASCERTAINED

## APPLICATION

1. The Applicant, the Regional Municipality of Waterloo (the “**Region**”) makes application for:

- (a) a declaration that By-law Number 25-021 of the Regional Municipality of Waterloo, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by The Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development, as amended January 9, 2026 by By-law Number 26-001* (the “**Amended By-law**”), complies with the *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*”);
- (b) if requested, an interim and final order (“Injunction Order”) that any persons having notice of the Injunction Order are restrained and enjoined from breaching the Amended By-law by remaining on and/or re-entering the property municipally known as 100 Victoria Street North, City of Kitchener (the “**Property**”) except as in accordance with the Amended By-law;
- (c) an Order that service and notice of this Application is hereby dispensed with, provided that:
  - (i) a copy of this Notice of Application is posted in a prominent location on the Property; and

- (ii) a copy of this Notice of Application is served on the Waterloo Region Community Legal Services; and
  - (d) such further and other Relief as this Honourable Court may grant.
2. The grounds for the application are:

### **The Parties and the Encampment**

- (a) The Region is the owner of the Property;
- (b) Since in or around December 2021, certain persons have been residing on the Property in tents and other makeshift dwellings (the “**Encampment**”);
- (c) The Region has been providing supports to those residing in the Encampment (the “**Residents**”) since shortly after the Encampment was established;
- (d) These supports include immediate measures to improve the health and safety of the Residents (through providing bathroom access, facilitating the cleaning of the Property, and other measures) and to provide more long-term stability to the Residents (such as assisting these individuals with accessing the shelter system or finding affordable long-term housing);

### **The Persons Unknown Decision**

- (e) On January 27, 2023 Justice Valente of the Ontario Superior Court of Justice dismissed an application brought by the Region to enforce the Region’s By-Law number 13-050, *A By-Law Respecting the Conduct of*

*Persons Entering Upon Buildings, Grounds and Public Transportation Vehicles Owned or Occupied by the Region* (“**General Code of Use By-Law**”) against the residents of the Encampment;

- (f) In his decision (the “**Persons Unknown Decision**”), His Honour declared that the General Code of Use By-Law is inoperative insofar as it applies to prevent the Residents of the Encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceeds the number of available accessible shelter beds in the Region;
- (g) His Honour further provided that the Region may apply to terminate his declaration upon it being in a position to satisfy the Court that the General Code of Use By-Law no longer violates the section 7 *Charter* rights of the Residents of the Encampment;
- (h) The Amended By-Law at issue in this Application is not the same as the General Code of Use By-Law previously at issue in the Persons Unknown Decision. Rather, it is a site-specific By-Law that:
  - (i) Has the specific purpose of providing for vacant possession of the Property by April ~~December~~ 1, 2026~~5~~, when such possession is required by the Region to facilitate construction of the Kitchener Central Transit Hub (“**KCTH**”);

- (ii) Is intended to respect the *Charter* rights of those persons who were residing at the Encampment as of the date that public notice of the By-Law was provided (“**Existing Residents**”); and
- (iii) Is accompanied by a plan to provide accessible shelter facilities to the Existing Residents, in a manner consistent with the Region’s Plan to End Chronic Homelessness;
- (i) Although not required under the Persons Unknown Decision, the Region seeks guidance and a ruling from this Honourable Court that the site-specific Amended By-Law complies with the *Charter*;

#### **The Kitchener Central Transit Hub**

- (j) The Region is undertaking the design and construction of the KCTH, which is a new transportation centre to be located at the corner of King and Victoria Streets in Kitchener. The KCTH will be constructed by the Region in conjunction with Metrolinx;
- (k) The KCTH is a milestone infrastructure development for the Region and a strategic priority for the Region. Once completed, it will connect ION light rail, Grand River Transit, GO Transit (rail and bus service), VIA rail service, pedestrians, and cyclists in one location;
- (l) The KCTH will provide a critical public good to the Region, including providing more affordable and reliable transportation options and greater

connectivity for all residents of the Region to access jobs, schools, and essential services, both within and outside the Region;

- (m) The KCTH will also bring significant economic opportunity to the Region, by creating connections with surrounding communities, and acting as an anchor for economic development;
- (n) Metrolinx requires the Property in connection with the construction of the KCTH construction by March of 2026, subject to extension;
- (o) The Region requires vacant possession of the Property by April~~December~~ 1, 2026~~5~~ to prepare the site for Metrolinx's use;

### **The By-law**

- (p) The Region enacted the By-law on April 23, 2025. The By-law came into force the following day;
- (q) Notice of the By-law was provided through the public release of the agenda of the Council meeting at which this By-law was considered (the “**Public Notice Date**”), being April 16, 2025;
- (r) The By-law was enacted pursuant to the Region's authority under the *Municipal Act, 2001*, S.P. 2001, c. 25;
- (s) The By-law was amended by By-law Number 26-001 on January 9, 2026, to defer the vacant possession date, remove the offence provision and to codify a transition policy;

- (t) The Amended By-law:
  - (i) prohibits certain activities from being carried out on the Property;
  - (ii) prior to ~~April~~December 1, ~~2026~~2025, prohibits persons other than Existing Residents from erecting a shelter or residing on the Property; and
  - (iii) as of ~~April~~December 1, ~~2026~~2025, prohibits all persons from entering, residing on, or occupying the Property unless that person is authorized by the Region to do so.
- (u) To facilitate the best possible outcomes for Existing Residents, the Region will continue to assist them in finding and transitioning to suitable alternative living arrangements;

#### **Other Grounds for Relief**

- (v) Sections 11 and 440 of the Municipal Act, 2001, S.O. 2001, c. 25
  - (w) S. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - (x) Rules 2.03, 3.02, 14.05, 16.04, 16.08, 38 and 40 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
  - (y) Such further and other grounds as the lawyers may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) Affidavit of Peter Sweeney, to be sworn;

- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

~~(Date of issue)~~  
~~June 16, 2025~~  
March 9, 2026

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Lawyers for the Applicant,  
The Regional Municipality of Waterloo

THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant

-and- Court File No.  
PERSONS UNKNOWN AND TO BE ASCERTAINED  
Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
WATERLOO REGION

**FURTHER AMENDED NOTICE OF APPLICATION**

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Lawyers for the Applicant,  
The Regional Municipality of Waterloo

# TAB 6

AMENDED THIS 22 DAY OF October, 2025MODIFIÉ-CE EndorsementPURSUANT TO THE ORDER OF Honourable Justice Gibson

CONFORMÉMENT À L'ORDONNANCE DE

DATED THE 5 DAY OF August, 2025

FAIT LE

LOCAL REGISTRAR, SUPERIOR COURT OF JUSTICE  
GREFFIER LOCAL, COUR SUPÉRIEURE DE JUSTICECourt File No. CV-25- 00001341-0000ONTARIO  
SUPERIOR COURT OF JUSTICES. Chornak, a Commissioner, etc.,  
Province of Ontario, for the Government of  
Ontario, Minister of the Attorney General  
BETWEEN:JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE,  
JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES  
DAVIS, JASON PAUL, MATTHEW STEFANAC, NOAH HELSBY, JOSEPH BRADLEY,  
JOSEPH SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, AND STEPHANIE  
MCMILLAN

Applicants

and

THE REGIONAL MUNICIPALITY OF WATERLOO

Respondents

APPLICATION UNDER Rule 14.05 OF THE RULES OF CIVIL PROCEDURE

**AMENDED NOTICE OF APPLICATION**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing

☒ In person☐ By telephone conference☐ By video conferenceat the following location, Waterloo Region Courthouse, 85 Frederick Street, Kitchener, ON N2H 0A7 on February 5, 6, and 27, 2026 ~~November 24 and 25, 2025.~~

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IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must prepare a Notice of Appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicants' lawyer or, where the Applicant does not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date July 14, 2025July 29, 2025

Issued by

Local Registrar

Address of 85 Frederick Street  
court office: Kitchener ON N2H 0A7

**Shelley Chornaby**

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**APPLICATION**

1. This Application is being filed in the context of a related Application, CV-25-00000750-0000, commenced by the Regional Municipality of Waterloo. The Applicants in the current Application are Respondents in CV-25-00000750-0000. The two Applications will be heard together. The Applicants makes application for:

- (a) An order to quash the By-Law respecting the Use of 100 Victoria Street North, Kitchener (the "Site Specific By-Law") enacted by Council of the Regional Municipality of Waterloo (the "Region") on Wednesday, April 23, 2025, pursuant to sections 272 and 273 of the *Municipal Act, S.O. 2001, c. 25* (the "*MA 2001*"), including a declaration pursuant to section 273 of the *MA 2001* that the Site Specific By-Law is illegal or in the alternative enacted in bad faith.
- (b) A declaration pursuant to section 52 of the *Constitution Act, 1982*, that the Site-Specific By-Law violates section 7 and 15 of the *Charter of Rights and Freedoms* (the "*Charter*") in a manner that cannot be justified under section 1, and is of no force or effect and is inoperative insofar as the Site Specific By-Law is relied upon as lawful authority to evict the Applicants from the encampment located at 100 Victoria Street North, Kitchener (the "Victoria Street Encampment") under circumstances where the Applicants have no available and accessible alternative housing or accommodation;

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- (c) A declaration pursuant to section 24(1) of the *Charter* that the Regional Municipality of Waterloo and/or its agents, pursuant to any purported legal authority, including but not limited to the Site-Specific By-law, violated the *Charter* rights of the Applicants, including section 7 and/or section 15 by preventing them from erecting tents as a temporary form of shelter and/or giving notice to homeless individuals (including the Applicants) to dismantle or move their tents and/or evicting homeless individuals (including the Applicants) from the Victoria Street Encampment and that such violations cannot be demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*.
- (d) An interlocutory, interim and permanent injunction Order restraining the Respondent, and its servants, employees, agents, assigns, officers, directors and anyone else acting on its behalf from:
  - (i) directly or indirectly evicting the Applicants from the Victoria Street Encampment;
  - (ii) preventing the Applicants entry to or use of the Victoria Street Encampment site;
  - (iii) disposing of or removing any personal belongings, real or personal property belonging to the Applicants and located at the Victoria Street Encampment; and
  - (iv) engaging in any harassing behaviour towards the Applicants;

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- (e) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (f) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) the costs of this proceeding and all motions payable on a substantial indemnity basis together with applicable taxes and disbursements; and
- (h) such further and other relief as to this Honourable Court may seem just.

**2. The grounds for the application are:**

**The Parties**

- (a) The Applicants are individuals experiencing homelessness and living in tents in the Victoria Street Encampment. There are men and women who range in age from 27-66. Some of the Applicants are Indigenous, some are racialized, and some are members of the LGBTQ+ community. Many have disabilities. Some of the Applicants receive income from social assistance in the form of either Ontario Works benefits or Ontario Disability Support Program benefits. Some of the Applicants have no income at all.
- (b) Many of the Applicants have been chronically homeless. Aaron Price has been homeless on and off since 2017. Terra-Lynn Weber has been living at the Victoria Street Encampment for four years. James Hammond has

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been homeless for over 10 years and has been on the housing waitlist for 8 years.

- (c) Many of the applicants have tried accessing shelters. Some have been unable to access shelter because the shelter was full or because the shelter was not accessible for them. Noah Helsby has a partner and a dog and hasn't been able to access shelter because he requires a co-ed shelter that allows pets. Terra-Lynn Weber was turned away from a shelter because it was for males only. At the 84 Frederick Street Shelter, Terra-Lynn had difficulty walking around using her cane because the beds were placed too close together.
- (d) The Applicants have experienced violence while living unsheltered. Terra-Lynn Weber was urinated upon while sleeping unsheltered in front of McCabes restaurant. Josephina Dugas has been robbed and raped while living on the streets and while living in a shelter in Brampton.
- (e) In addition to the Applicants, there are people living at the encampment whose capacity to engage or instruct counsel is in question, who have not retained counsel, and who have no other identified way to participate in these proceedings.
- (f) The Respondent, The Regional Municipality of Waterloo (the "Region"), is an upper tier municipality and is the owner of the land upon which the Victoria Street Encampment is located. The Region is responsible for

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providing social services within the Region of Waterloo including services for low income people experiencing homelessness.

### **Background**

- (g) The Victoria Street Encampment has existed since 2021. The Region previously brought an application before the Ontario Superior Court of Justice in 2022 to seek orders from the Court to evict the residents of the Encampment. The Region claimed in the Application that the land that the Victoria Street Encampment was located upon was urgently needed for the construction of a transit hub being built in partnership with Metrolinx.
- (h) *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670, (the "2023 Decision") was heard on the merits in November 2022 and in January of 2023 the decision of Justice Valente was released.
- (i) The 2023 Decision held that the Region's Code of Use By-law was unconstitutional as it breached the s. 7 Charter rights of the residents of the encampment.
- (j) Since the 2023 Decision, the rate of people experiencing homelessness in Waterloo Region has increased by 129%. The number of shelter spaces in Waterloo Region has not kept pace with this increase.

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- (k) According to a point in time count done in Waterloo Region in the fall of 2024, there are approximately 2,371 people without permanent housing in Waterloo Region. This number has more than doubled since the previous count which was done in 2021.
- (l) The Victoria Street Encampment has continued to have a significant number of residents as of the date of this application and is the largest encampment in the Region.
- (m) Since the 2023 Decision, the Region has engaged in a consultation with the community including a wide range of people from local social service agencies, housing providers, non-profit partners, people with lived experience and local homelessness advocates to develop a comprehensive Plan to End Chronic Homelessness ("PECH"). The PECH is an ambitious plan that includes:
  - (i) the goal of eliminating chronic homelessness in Waterloo Region;
  - (ii) a shift away from emergency based and reactive approaches to homelessness and a move towards more permanent solutions;
  - (iii) adopting a human rights based approach to homelessness in addition to a continued commitment to housing first principles;
  - (iv) A focus on consultation with people with lived expertise as an integral component of broad systems changes.

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- (n) Regional Council approved the PECH on April 25, 2024 as the Region's official plan to prevent, address, and end chronic homelessness in Waterloo Region.
- (o) On April 16, 2025, the Region moved additional dumpsters and a trailer onto the Victoria Street Encampment site. This was to the surprise of the residents at the site and to community partners and Co-Creators in PECH. On the same day the Region posted the Agenda online for the upcoming Regional Council meeting dated April 23, 2025, which included a report and draft bylaw to be considered.
- (p) Regional Staff developed a report, PDL-LEG-25-017, which outlined a plan to clear the Encampment, through the use of the Site-Specific By-law, which was attached to the staff report. The Site-Specific By-law's purpose was to provide vacant possession of 100 Victoria Street North by December 1, 2025.
- (q) The Site-Specific By-law provides that no persons who were not residents on the date public notice of the By-law was provided (April 16, 2025) may erect shelters or other structures or reside at 100 Victoria Street North.
- (r) The staff report also outlined a plan for additional financial resources for moving the existing residents into housing or shelter options in a manner that is consistent with the PECH.
- (s) Regional council approved the Site-Specific By-law on April 23, 2025.

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**Municipal Act s. 273 Issue**

- (t) The Site-Specific By-law is illegal pursuant to s. 273 of the *Municipal Act* and ought to be quashed on that basis.
- (u) The Region failed to engage in consultation with community or residents of the Victoria Street Encampment regarding its plan to close the Victoria Street Encampment as required by its own policies. The Region breached its own Plan to End Chronic Homelessness (PECH) in developing the Site-Specific By-Law and in failing to engage in a human rights-based approach to encampments.
- (v) The Site-Specific By-Law was enacted in bad faith with the collateral purpose of avoiding the consequences of the 2023 Decision.
- (w) In the 2023 Decision dated January 27, 2023, Justice Valente declined the Region's request for injunctive relief and declared By-Law Number 13-050, A By-Law Respecting the Conduct of Persons Entering Upon Buildings, Grounds and Public Transportation Vehicles Owned or Occupied by the Region (the "Code of Use By-Law"):

[I]noperative insofar, and only insofar, as it applies to prevent the residents of the Encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceeds the number of available accessible shelter beds in the Region.

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- (x) The Site Specific By-Law is contrary to the 2023 Decision. It attempts to regulate and control the movement of residents on the Victoria Street Encampment, as well as visitors to the site. It prohibits residents from relocating their shelter to another part of the premises at the Victoria Street Encampment. It restricts any new residents from erecting a shelter on the site. It defines a Resident retroactively as someone who was living in the Encampment on the date that the agenda for the council meeting to consider the Site Specific By-Law was posted (April 16, 2025), not when it was passed (April 23, 2025) despite there being no notice to residents of the Site Specific By-law in advance of April 16, 2025.
- (y) At paragraph 159 of the 2023 Decision, Justice Valente ordered "that the Region may apply to terminate my declaration upon it being in a position to satisfy this Court that the By-Law no longer violates the section 7 rights of the Encampment residents." The Region commenced an application before the Ontario Superior Court to seek directions as to the validity of the Site-Specific By-law after Regional Council had already passed the Site-Specific By-Law.

### **Constitutional Issues**

- (z) The Site-Specific By-law is unconstitutional. It violates the Applicants' right to life, liberty and security of the person under s. 7 of the *Charter* rights of

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the Applicants. The violations are not in accordance with the principles of fundamental justice and cannot be justified under section 1 of the *Charter*.

- (aa) The Region's proposed plan does not provide the Applicants with accessible, safe and stable housing upon the closing of the Victoria Street Encampment. Motel spaces, interim housing and shelters do not have any security of tenure.
- (bb) The Region's plan is not consistent with a human rights based approach to homelessness as outlined in PECH.
- (cc) The enforcement of the Site-Specific By-law put the Applicants at significant risk of physical and/or psychological harm.
- (dd) The options proposed in the Region's plan to move individuals out of the Victoria Street encampment include congregate shelters and motel rooms. These options are violations of the s. 7 *Charter* rights of the Applicants.
- (ee) Motels spaces are not an appropriate shelter or housing option for a number of reasons:
  - (i) There is no security of tenure;
  - (ii) Sex trafficking, drugs and violence may be present and vulnerable individuals may be at risk of serious harm;

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- (iii) Residents can be kicked out for a variety of reasons and the rules are set by the motel owners. Residents have no recourse if they are evicted on an unjustified basis;
  - (iv) Homeless individuals can be banned from motels at the discretion of the motel owner;
  - (v) Access to food may be limited as the motel spaces do not have cooking facilities and residents may not have easy access to food banks, soup kitchens or community food donations;
  - (vi) Motel space lack supports needed by individuals with mental health disorders and/or substance abuse disorders.
- (ff) Shelter spaces are not an appropriate solution for homeless individuals for a number of reasons including but not limited to:
- (i) Demand for shelter spaces is frequently high or beyond the capacity of the system. In any event, the available supply of beds may not be accessible for particular individuals (e.g. couples, gender diverse individuals, women, people with pets, etc.)
  - (ii) Shelters are not designed for long term accommodation and the rules encourage short term stays. Residents are limited in the amount of personal belongings they can bring into shelter and must abide by

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shelter schedules including being out of the shelter for specific hours during the day and meeting curfews at night.

- (iii) Disability-related behaviours can conflict with shelter rules and policies. Some shelters do not allow people with substance use disorders to use on the shelter property or have access to harm reduction supplies on site.
  - (iv) The nature of congregate living in a shelter can be very difficult for individuals with mental health disorders due to the lack of privacy and close contact with other individuals at the shelter.
  - (v) Shelters are not always able to accommodate the needs of people with physical disabilities.
  - (vi) Thefts and violence are common occurrences in shelter settings.
- (gg) For individuals who are homeless, tent encampments offer safety and benefits over shelters, motels rooms or living in the open alone with or without a tent;
- (i) Encampment residents can gather survival supplies and have a place to store them;
  - (ii) Encampment residents are able to shelter themselves during the daytime and are not subject to rigid schedules that exist in the shelter system;

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- (iii) There is an element of community and mutual support;
  - (iv) Drug users have peers who can watch out for them and ensure that they receive care and support to prevent overdoses;
  - (v) Encampment residents can be found more easily by service providers and have a great ability to stay connected to services.
- (hh) When homeless individuals are displaced from an encampment without available and accessible housing or shelter options, they are at risk of among other things, hypothermia, sunburn, heatstroke, dehydration, and fatigue.
- (ii) Encampments enable their residents to live with greater dignity compared to living in the open:
- (i) They provide a modicum of privacy and solitude, essential for many basic functions including sleep.
  - (ii) They enable couples to live together in the same tent.
  - (iii) They enable residents to have pets that provide them with emotional support and meet their accommodation needs.
  - (iv) They enable residents to keep personal possessions beyond their immediate personal effects.

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- (v) They enable residents a sense of stability because they know where they will be sleeping at night.
- (jj) The Site-Specific By-law violates s. 7 of the *Charter* because it deprives homeless individuals of their liberty and/or security of the person in a manner that is not in accordance with the principles of fundamental justice.
- (kk) The violations of s. 7 cannot be justified under section 1 of the *Charter*.
- (ll) The Site-Specific By-law violates s. 15 of the *Charter*. The eviction of the Applicants from the encampment violates section 15 of the *Charter*, because those evictions discriminate against them on the basis of race and/or indigeneity, sex, disability, and marital status, either separately or in combination (i.e., intersectional discrimination). The eviction of the Applicants from the encampment also violates section 15 of the *Charter*, because those evictions discriminate against them on the analogous grounds of homelessness and receipt of social assistance. The violations of s. 15 cannot be justified under section 1 of the *Charter*.

#### **International human rights law**

- (mm) The Site-Specific By-law violates the Applicants' international human rights. Municipal governments are equally bound by international human rights instruments ratified by Canada. Binding international instruments reflect Canada's international human rights obligations and operate as an

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interpretive tool to assist courts in delineating the “breadth and scope of *Charter* rights”.

- (nn) Canada has voted in favour or ratified a number of international instruments that recognize adequate housing as a fundamental human right that is inextricably linked to other rights, including the rights to life, security of the person, and equality.
- (oo) Municipal governments have obligations to uphold the basic human rights and dignity of encampment residents while they wait for adequate, affordable housing solutions that meet their needs. An eviction from the Victoria Street Encampment would violate the Applicants’ international human rights.

**3. The Applicant relies on the following legal instruments:**

- (a) The Canadian Charter of Rights and Freedoms.
- (b) The Constitution Act, 1982.
- (c) Universal Declaration of Human Rights
- (d) International Covenant on Economic, Social and Cultural Rights
- (e) Convention on the Elimination of All Forms of Discrimination Against Women
- (f) Convention on the Rights of the Child

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- (g) International Convention on the Elimination of All Forms of Racial Discrimination
- (h) United Nations, Convention on the Rights of Persons with Disabilities
- (i) Regional Municipality of Waterloo By-Law PDL-LEG-25-017
- (j) *Municipal Act, S.O. 2001, c. 25*
- (k) Such further and other grounds as counsel may advise and this Honourable Court may permit.

4. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- a. Affidavit of Josephina Dugas, sworn May 7, 2025
- b. Affidavit of Terra-Lynn Weber, sworn May 6, 2025
- c. Affidavit of Aaron Price, sworn May 6, 2025
- d. Affidavit of Avery Ament, sworn June 23, 2025
- e. Affidavit of Jakob Stubbs, sworn June 23, 2025
- f. Affidavit of James Davis, sworn June 20, 2025
- g. Affidavit of James Hammond, sworn May 2, 2025
- h. Affidavit of Jason Paul, sworn June 16, 2025

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- i. Affidavit of Jeremy Linton, sworn May 6, 2025
- j. Affidavit of Jeremy Nichol, sworn May 8, 2025
- k. Affidavit of Matthew Stefanac, sworn May 6, 2025
- l. Affidavit of Noah Helsby, sworn May 15, 2025
- m. Affidavit of Joseph Bradley, sworn May 9, 2025
- n. Affidavit of Julie Young, sworn June 13, 2025
- o. Affidavit of Kyle York, sworn June 17, 2025
- p. Affidavit of Megan Lopes, sworn June 18, 2025
- q. Affidavit of Stephanie McMillan, sworn May 13, 2025
- r. Supplemental Affidavit of Stephanie McMillian, sworn June 17, 2025
- s. Affidavit of Calvin Sharpe, sworn May 30, 2025
- t. Affidavit of Warren Loppie, sworn July 9, 2025
- u. Affidavit of Julie Lukezic, sworn May 8, 2025
- v. Affidavit of Emily "Eddy" Grignon, sworn May 12, 2025
- w. 2<sup>nd</sup> Affidavit of Emily "Eddy" Grignon, sworn July 7, 2025
- x. Affidavit of Margaret Chee, sworn May 13, 2025

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- y. Affidavit of Jacara Droog, sworn June 4, 2025
- z. Affidavit of Aaron El Sabrout, sworn July 7, 2025 Affidavit of Angela Allt, sworn June 20, 2025
- aa. Affidavit of David Alton, sworn June 23, 2025
- bb. Affidavit of Laura Pin, sworn July 9, 2025
- cc. Affidavit of Sarah Magdalen Helwig, sworn July 2, 2025
- dd. Affidavit of Sara Escobar, sworn June 23, 2025
- ee. 2<sup>nd</sup> Affidavit of Sara Escobar, sworn July 7, 2025
- ff. Affidavit of Lynn Kubis, sworn July 7, 2025
- gg. Affidavit of Dr. Stephen Hwang, sworn May 6, 2025
- hh. The affidavits of others to be sworn;
- ii. The pleadings, as filed; and,
- jj. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

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July 14, 2025

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Committee (Intervener)

**DUGAS et al.**      **THE REGIONAL MUNICIPALITY OF**  
Applicants      and      **WATERLOO**  
Respondents

Court File No.: CV-25-\_\_\_\_\_

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at KITCHENER

**AMENDED NOTICE OF APPLICATION**

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Lawyers for the Applicants

# TAB 7

Court of Appeal File No.: COA-26-CV-0836  
COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant  
(Appellant)

and

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE,  
JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES  
DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER,  
JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY  
COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES  
KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN

Respondents  
(Respondents in Appeal)

NOTICE OF CONSTITUTIONAL QUESTION

The Applicant (Appellant), the Regional Municipality of Waterloo (the “**Region**”) has commenced an appeal concerning the constitutional validity of Bylaw No. 25-021 of the Regional Municipality of Waterloo, as amended on January 9, 2026 (the “**By-laws**”).

The question is to be argued at the Court of Appeal of Ontario at a time and place to be set by the Court.

The following are the material facts giving rise to the constitutional question:

1. The Region enacted the By-laws to obtain vacant possession of a parcel of land it owns in downtown Kitchener (the “**Property**”). There is an encampment of unhoused individuals currently present on the Property (the “**Encampment**”).
2. The Property is required to facilitate construction of the Kitchener Central Transit Hub, a significant public transit project that will benefit all current and future residents of the Waterloo region.
3. The Named Respondents are all individuals who have recently experienced homelessness in the Region. Many (but not all) have previously resided at the Property.

4. The By-laws distinguish between the approximately 40 individuals residing at the Encampment as of April 16, 2025, the date of public notice of the By-law (the “**Existing Residents**”), and those who have come to the Property more recently. The By-laws provide arrangements for both Existing Residents and newer arrivals, including the following:
  - a. Existing Residents cannot be removed without a written offer for Alternative Accommodation, defined as including emergency shelters, transitional housing, affordable/supportive housing, motels, and other options, recognizing that Existing Residents have diverse needs;
  - b. If an Existing Resident loses their Alternative Accommodation due to non-compliance with applicable rules, the Existing Resident will be referred back to the Region’s team of unsheltered support workers and best efforts will be made to find a substitute option;
  - c. Existing Residents are guaranteed offers of social service supports of the same nature as provided at the Property once they move to Alternative Accommodation;
  - d. The Region will offer Existing Residents transportation, and coverage for up to 6 months of storage for additional belongings, at no cost; and
  - e. For others onsite at the Property who are not Existing Residents, the Region will take them into the housing stability system and make efforts, subject to availability and cooperation, to provide them with appropriate housing options.
5. The Region also allocated new resources to create additional capacity for approximately 40 persons in its housing stability system (a combination of rent supplements, supportive housing, and motel rooms), to match the number of Existing Residents who would be displaced.

The following is the legal basis for the constitutional question:

1. Section 7 of the *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**”) provides: “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.”
2. The By-laws do not infringe s. 7 because they do not cause deprivations of life, liberty, and/or security of the person. Any deprivations thereof are also not arbitrary, overbroad, or grossly disproportionate. The By-laws provide protections for Existing Residents and other occupants of the Encampment that remove or limit any negative impacts on these populations.

3. S. 15(1) of the *Charter* provides: “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”.
4. The By-laws do not infringe s. 15(1) because they do not create distinctions (either on their face or in their impact) based on any protected ground, including sex, race, and/or disability. Homelessness is also not an analogous ground under s. 15(1). In the alternative, any distinction based on a protected group that is caused by the By-laws is not one that reinforces, perpetuates, or exacerbates disadvantage.
5. If the By-laws do infringe ss. 7 and/or 15(1) of the *Charter*, any infringements are justified under s. 1.
6. Accordingly, the Region seeks a declaration that the By-laws are constitutional.

August 6, 2026

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THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant (Appellant)

–and– JOSEPHINA DUGAS et al.  
Respondents (Respondents in Appeal)

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**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT TORONTO

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**NOTICE OF CONSTITUTIONAL QUESTION**

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# TAB 8

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant (Respondent in Cross Application)

and

PERSONS UNKNOWN AND TO BE ASCERTAINED, AARON PRICE, ALINE JEFFERY,  
AVERY AMENT, CALVIN SHARPE, CHARLES KOCHER, JAKOB STUBBS, JAMES  
DAVIS, JAMES HAMMOND, JASON PAUL, JEFF COUTO, JEREMY LINTON, JEREMY  
NICHOL, JORDAN CAMM, JOSEPH BRADLEY, JOSEPH SADLER, JOSEPHINA DUGAS,  
JULIE YOUNG, KYLE YORK, MEGAN LOPES, MICHAEL JEFFERY, NOAH HELSBY,  
STEPHANIE MCMILLAN, TERRA-LYNN WEBER, TERRANCE COLE, AND XANDER  
HARKER

Respondents (Named Respondents are  
Applicants in Cross Application)

**NOTICE OF CONSTITUTIONAL QUESTION**

The Cross-Applicants/Named Respondents intend to question the constitutional validity of: By-Law Number 25-021 of the Regional Municipality of Waterloo, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by the Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development*, as well as By-law Number 26-001 of the Regional Municipality of Waterloo, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by the Regional Municipality of Waterloo) to facilitate the Kitchener Transit Hub and other Transit Development*. The Cross-Applicants also seek remedies pursuant to ss. 24(1) and 52(1) of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK), 1982, c. 1.1*.

The question is to be argued on Thursday, April 16<sup>th</sup>, 2026; Friday, April 17<sup>th</sup>, 2026; and Monday, April 20<sup>th</sup>, 2026, at 10:00 a.m., at the Waterloo Region Courthouse for the Superior Court of Justice, located at 85 Frederick Street, Kitchener, Ontario N2H 0A7. Parties may also participate in the hearing by video conference.

The following are the material facts giving rise to the constitutional question:

1. This Notice of Constitutional Question is being filed with respect to a Cross-Application before the Ontario Superior Court of Justice, Court File No. CV-25-00001341-0000, which

will be heard together with the Application, CV-2500000750-0000, commenced by the Regional Municipality of Waterloo (the “Region”). The Cross-Applicants in Application CV-25-00001341-0000 are among the Respondents in CV-25-00000750-0000.

2. The Cross-Applicants are chronically homeless individuals who shelter at an encampment located at 100 Victoria Street, Kitchener (the “Encampment”) during periods when they lack accessible indoor shelter. They are facing eviction from the Encampment as a result of the Site-Specific By-law and the Amended By-law (collectively, the “By-laws”) enacted by the Respondent Regional Municipality of Waterloo (“the Region”).
3. The Court is asked to determine whether, in the absence of sufficient accessible shelter beds for the Region’s homeless, the Region’s efforts to address the individual needs of some of the Cross-Applicants is sufficient to ensure that the By-laws are compliant with the requirements of ss. 7 and 15 of the *Charter*.
4. The material facts giving rise to the constitutional question are set out in the Applicant’s Amended Notice of Application, attached as Schedule ‘A’, issued on October 22, 2025.
5. The following are the legal bases for the constitutional question:

**Section 7 of the Charter**

6. The By-Laws violate the s. 7 right to life, liberty, and security of the person of the Cross-Applicants. These violations are not in accordance with the principles of fundamental justice.
7. The By-laws affect the Cross-Applicants in a multitude of ways that cause deprivations of life, liberty, security of the person, including by:

- a. Preventing the Cross-Applicants from sheltering themselves at the Encampment site when the number of homeless in the Region outnumbers the Region's available and accessible shelter spaces. This leaves the Cross-Applicants unable to protect themselves from the elements in a context where the Region's Code of Use By-law (By-Law Number 13-050 of the Regional Municipality of Waterloo) and the *Trespass to Property Act*, R.S.O. 1990, c. T21 prohibit sheltering in areas not subject to the By-Laws.
- b. Failing to include rights-based measures to ensure access to longer-term adequate housing and supports in accordance with the Region's Plan to End Chronic Homelessness.
- c. Increasing the Cross-Applicants' risk of hypothermia, sunburn, heatstroke, dehydration, and fatigue;
- d. Depriving the Cross-Applicants of the privacy afforded by a tent or tarp, which they require for dignity, autonomy, and the ability to attend to personal hygiene or medical needs without fear of intrusion;
- e. Causing or contributing to the loss of the Cross-Applicants' belongings during and after their eviction, including important survival supplies;
- f. Requiring the Cross-Applicants to move to remote locations to avoid detection, where they are inaccessible to health and social services, and without assistance if they experience a crisis;

- g. Disrupting the Cross-Applicants' connections to food supplies, health care, addiction, housing supports, and other services available at the Encampment;
- h. Disrupting the emotional and physical support provided by the Cross-Applicants' community;
- i. Increasing the risk that the Cross-Applicants with substance use disabilities will be forced to use substances in isolated circumstances away from community supports, leaving them more vulnerable to fatal overdoses;
- j. Increasing the Cross-Applicants' social marginalization and causing them to experience loss of trust in authorities;
- k. Increasing the risk that the Cross-Applicants will be subjected to harms such as intimate partner violence, assault, sexual assault, and human trafficking by forcing them into circumstances where those harms are more likely;
- l. Increasing the risk that the Cross-Applicants will experience significant stress, destabilization, and trauma, in some cases exacerbating existing mental health conditions;
- m. In a context where trespass to property is an offence, increasing the risk that the Cross-Applicants will face charges, fines, arrest, or incarceration if they resist eviction under the By-laws.

8. These deprivations of the Cross-Applicants' rights to life, liberty and security of the person are arbitrary, overbroad, and grossly disproportionate to the purpose of the By-laws and do not accord with the principles of fundamental justice.

**Section 15(1) of the Charter**

9. The By-Laws infringe s. 15 of the *Charter* by creating a distinction on enumerated grounds (disability, sex, marital status, Indigeneity / race) and/or analogous grounds (receipt of social assistance and homelessness), and imposing a burden or denying a benefit in a manner that reinforces, perpetuates or exacerbates disadvantage.
10. Encampment residents, including the Cross-Applicants, belong to multiple enumerated and analogous groups and struggle with intersecting disadvantages.
11. The By-laws cause disproportionate impact and fail to ensure reasonable accommodation of needs based on enumerated and analogous grounds, both individually and as they intersect. This is for reasons including that:
  - a. Women and persons who are gender diverse are less likely than men to be able to access indoor shelter that meets their needs when they are prevented from sheltering outdoors; and they experience unique safety risks arising from being unable to protect themselves by erecting even rudimentary shelter;
  - b. Persons with disabilities disproportionately experience homelessness and are therefore disproportionately impacted by the By-laws to the extent that the By-laws cause or contribute to disadvantage for persons who are homeless;

- c. Persons with physical and mental disabilities are less likely to be able to access indoor shelter if they must leave the Encampment site due to physical barriers and lack of accessibility at emergency shelters, as well as service restrictions, rules and prohibitions on substance use, and barriers to complete intake procedures, and are therefore more likely to face the risks of unsheltered outdoor homelessness if they are prevented from sheltering outdoors;
- d. Persons with disabilities are disproportionately impacted by forced relocation, and by relocation to remote locations, to the extent that their disabilities impact their abilities to carry their belongings with them, disassemble shelters, and travel distances to access the food supplies, health care, and other supports and services located at or around the Encampment site;
- e. Persons with mental disabilities, such as mental illness and substance use disabilities experience disproportionate effects as described above, including increased psychological stress, exacerbation of existing mental illness, sleep deprivation, risk of starvation, risk of fatal overdose, increased risk of arrest, and loss of the protective effects of community and emotional support;
- f. Indigenous persons are disproportionately homeless and therefore disproportionately impacted by the By-laws to the extent that the By-laws cause or contribute to disadvantage for persons who are homeless;
- g. Indigenous persons are less able to access indoor shelter and face particular disadvantage from outdoor sheltering prohibitions due to: (1) the lack of culturally-

appropriate shelter supports, (2) past experiences of racism resulting in mistrust of authorities;

- h. Persons who are homeless constitute a socially marginalized and historically disadvantaged group subject to persistent stigmatization, stereotyping, political marginalization and social exclusion on the basis of a personal characteristic analogous to the enumerated grounds of discrimination under s. 15(1). Homelessness is also extremely difficult to change due to the lack of access to affordable housing, inadequacy of social assistance, as well as the stigma attached to being unhoused. The By-laws directly perpetuate and exacerbate the discrimination and disadvantage of homeless individuals and fails to accommodate the distinctive needs of persons experiencing homelessness for access to accessible shelter, housing, and related supports necessary to the protection of life, security and substantive equality;
  - i. Persons who are in receipt of social assistance (as an analogous ground) face discrimination and disadvantage. Receipt of social assistance is extremely difficult to change due to a stigma associated with receiving social assistance and the inadequacy of social assistance. The inadequacy of social assistance and stigma attached to receipt of social assistance create barriers to finding affordable housing and employment. The By-laws exacerbate the discrimination and disadvantage of individuals receiving social assistance.
12. The By-laws have the effect of reinforcing, perpetuating or exacerbating disadvantage of members of the above referenced groups.

**Section 1 of the Charter**

13. The violations of ss. 7 and 15 cannot be justified by s. 1 of the *Charter*.

**Charter interpreted in accordance with international law**

14. Ss. 7 and 15 must be interpreted in accordance with the presumption of conformity with Canada's international human rights obligations, including under the *International Covenant on Civil and Political Rights*, *International Covenant of Economic, Social and Cultural Rights*, *Convention on the Elimination of All Forms of Discrimination Against Women*, *Convention on the Rights of the Child*, *International Convention on the Elimination of All Forms of Racial Discrimination*, and the *United Nations Convention on the Rights of Persons with Disabilities*. The Site-Specific By-law and the Amended By-law are inconsistent with ss. 7 and 15 interpreted in conformity with these obligations.

**Remedy Sought**

15. The Cross-Applicants seek a declaration that the By-laws violate ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* and that they are not saved by s. 1. The Cross-Applicants ask:

- a) that the By-laws be declared of no force and effect under s. 52(1) of the *Constitution Act, 1982*, in whole or in part; and,
- b) any appropriate remedies pursuant to s. 24(1) of the *Charter* to prevent infringements; and,
- c) Any further remedy this Honourable Court considers appropriate and just in the circumstances.

February 26, 2026

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**THE REGIONAL MUNICIPALITY OF  
WATERLOO**  
Respondent

and

**PERSONS UNKNOWN/TO BE  
ASCERTAINED**  
Applicants

Court File No.: CV-25-00000750-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at KITCHENER

**NOTICE OF CONSTITUTIONAL QUESTION**

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# TAB 9

D. Alton - 39

1 MS. SCHIUTEMA: It's an opinion that's  
2 beyond what is facts that are set out in his  
3 -- in their affidavit.

4 MR. LOKAN: Okay.

5  
6 BY MR. LOKAN:

7 103. Q. Can we go to Page 74? And just so I  
8 understand something in this report. There is a lot  
9 of sidebars on the left-hand side and as I understand  
10 it -- and David, I think this is consistent with what  
11 you were saying earlier -- the sidebars indicate  
12 points on which the Lived Expertise Prototyping Cohort  
13 has had input. Is that right?

14 A. Yeah, in kind of lieu in supporting the  
15 comparable, the co-equal document narrative that staff  
16 framed this as to me that these bars are to show where  
17 these two documents are aligned to help council  
18 understand how much -- how -- where it is -- how close  
19 they can get to what lived experts have put forward.

20 So this is the parts of the one appendix  
21 that are supported by the other appendix.

22 104. Q. Okay. Now you would then agree then  
23 with the -- in the middle of the page, the third  
24 bullet point that says:

25 "... Homelessness is a wicked problem meaning

1 that it is highly complex ..."

2 A. Yes, homelessness is highly complex.

3 105. Q. And it's "a wicked problem?"

4 A. Yes, it is.

5 106. Q. Very difficult to solve; isn't that the  
6 case?

7 A. Yes, it is. It is difficult to solve.

8 107. Q. Okay. You gave a presentation to the  
9 council on April 23<sup>rd</sup>, the day that the bylaw was  
10 passed?

11 A. Yes, I did.

12 108. Q. And I am just going to pull up the  
13 minutes from April 23<sup>rd</sup> and ask you to have a look at  
14 them. And what these minutes indicate is the  
15 deputations that were made to the council at that  
16 meeting. And if we can go to Page 4 ---

17 MS. SCHIUTEMA: Can you just clarify which  
18 exhibit you're on, Andrew, please?

19 MR. LOKAN: It's not an exhibit. This is a  
20 ---

21 MS. SCHIUTEMA: Okay.

22 MR. LOKAN: --- document otherwise in the  
23 record.

24 MS. SCHIUTEMA: Okay.

# TAB 10

P. Sweeney (Cr.-Ex.) - 40

1 knowing that it wouldn't be available to them as of  
2 December the 1<sup>st</sup>.

3 98. Q. Okay, but that money is not being used to  
4 build new housing, or is it?

5 A. No, we have a \$500,000,000 capital  
6 budget to add 2500 new affordable housing units over 5  
7 years. We've actually exceeded that target and we're  
8 now extending that. These dollars are not for capital  
9 builds of new affordable housing.

10 99. Q. Okay, so can you help me understand how this  
11 additional \$814,000 creates capacity within the entire  
12 system as a whole so that there's more opportunity for  
13 the encampment residents to get housing without  
14 bumping anyone else down a waitlist?

15 A. Certainly. The calculus on the  
16 \$814,000 was developed by adding net new resources for  
17 a suite of options that we knew would add capacity.  
18 Those could include additional funds for motel rooms  
19 for a transitional period of time. They include the  
20 option for additional, what we call, rent supplements,  
21 so these are for folks who, well, need a rent  
22 supplement. And additional resources for costs  
23 related to supportive housing beds. And so they are  
24 added to the overall system, which was intended to  
25 create an influx in capacity to be able to give us the

# TAB 11

**C. Unsheltered Support Workers and Individualized Housing Plans**

12. Included in the team I lead is a group of Unsheltered Support Workers (“**USW**”), all of whom are licensed professionals. This team of USWs assists unhoused individuals with accessing accessible short- and long-term housing.

13. The core work of the Region’s team of USWs is the development and implementation of individualized housing plans (“**IHP**”) for – and in collaboration with – unhoused individuals.

14. IHPs are personalized action plans that are designed to match individuals with housing options which reflect their specific needs and preferences, to the greatest extent possible. IHPs are an important recognition of the fact that housing needs can be idiosyncratic to individuals experiencing homelessness. In my experience, and the experience of the Region’s USWs, there is no “one size fits all” solution to homelessness.

15. In developing an IHP, the USW will consider how an individual initially became unhoused, the specific factors in that individual’s life which have prevented them from accessing housing, and the needs and preferences of that individual in accessing housing. Based on these considerations, USWs will work with unhoused individuals and housing providers to match the individual with appropriate housing to the greatest extent possible.

16. This approach recognizes and is rooted in the understanding that homelessness is a complex social problem. Homelessness is widely understood to be caused by a confluence of factors, including the (un)availability of economic opportunity/employment

# TAB 12

# Investment Strategy 2024-2030

To respond to the growing homelessness and affordable housing crisis, the Region of Waterloo is directing unprecedented investments towards programs, supports, and capital projects to meet the needs across the community. In 2024, the Region of Waterloo will invest more than \$245 million into Affordable Housing and Homelessness, including capital and operating investments, from all sources of funding. Of the approximately \$245 million invested across the housing continuum, 23% is directed towards homelessness and supportive housing programs.

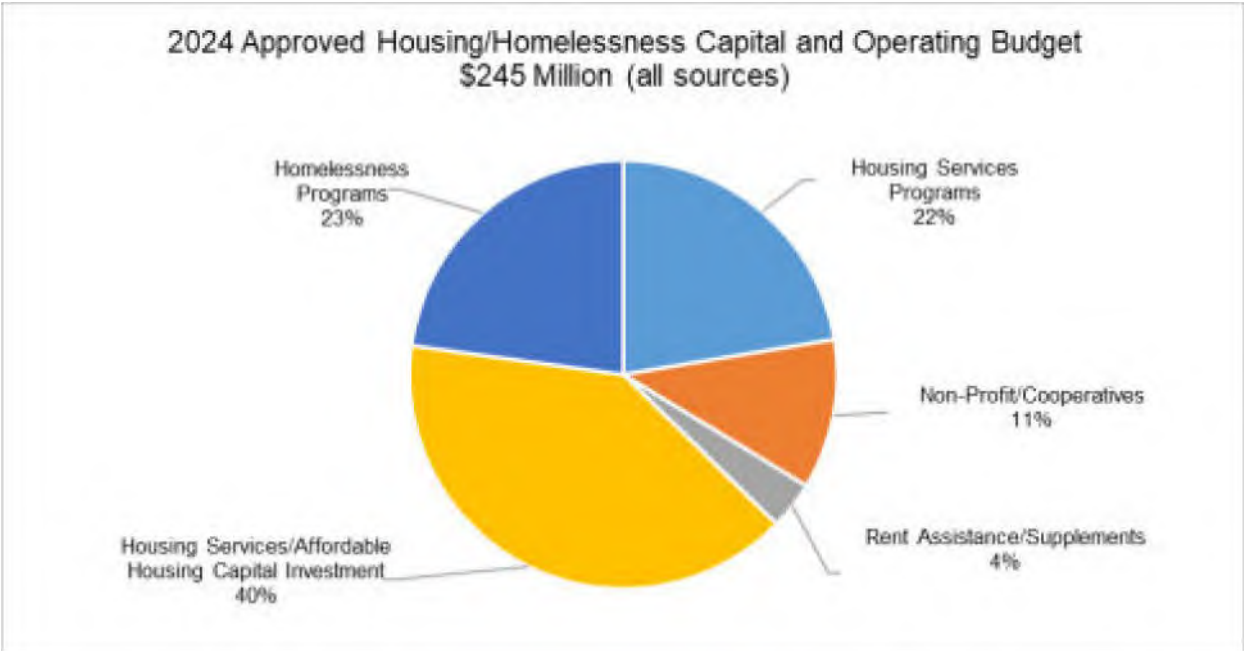


Figure 13. highlights the current investment by the Region of Waterloo, from all sources, in Housing and Homelessness. Of the \$245 million invested in 2024, 23% is directed towards Homelessness and Supportive Housing.

Between 2019 and 2024, the Region has increased municipal tax levy and reserve investment in this critical service area from \$42 million to approximately \$99 million, signalling a deep and historic commitment to achieving homes for all in Waterloo Region. This level of municipal commitment to homelessness and affordable housing is unique when compared to other Regional governments and System Service Managers in Ontario.

To reach a functional end of chronic homelessness in Waterloo Region, significant capital and operating investments are required from all levels of government. It is estimated that a total capital investment in emergency shelter, transitional housing and

supportive housing of \$110M will be required. Operating expenditure increases of approximately \$5M - \$8M annually for the next six years in order to fully implement the Plan can be expected. The range will depend on the extent and nature of capital financing costs required to meet the needs of the community at that time.

**The staggering investment needed to address this growing crisis is required from all sectors and levels of government.** To achieve an end to chronic homelessness in Waterloo Region, a deepening of commitment and engagement is needed from all levels of government, public and private sector, and key system partners (healthcare, mental health and addictions, justice, etc.). This shared community challenge is not to be owned or solved by one order of government in isolation.

The Investment Plan and Strategy address the immediate community needs and plans for a more stable and outcomes-focused future where every resident of Waterloo Region has a place to call home. This Investment Plan and Strategy shifts the collective focus from reactive emergency-based responses to upstream intervention and permanent solutions. We will shift our collective approach from managing homelessness to ending it.

### **Shifting the Collective Focus: Managing Homelessness to Ending It**

The significant investment into homelessness services and programs cannot be overstated. At approximately 23% of the total investment made by the Region of Waterloo into Affordable Housing and Homelessness, this level of commitment and investment is unprecedented. \$56 million will be invested into homelessness and supportive housing programs in 2024. Despite this significant and encouraging commitment and investment into the local Housing Stability System, currently the majority of funding is dedicated towards reactive and emergency-based responses as the local crisis of homelessness continues to rise at alarming rates. The Plan to End Chronic Homelessness sets out to shift the collective focus towards permanent housing outcomes and upstream interventions so the significant investments being made into the system have a greater return on investment and, most importantly, create permanent housing outcomes for the most vulnerable residents of Waterloo Region.

### **Current State: Managing Homelessness**

Inspiring homelessness prevention and supportive housing work happens on a day-to-day basis across the Housing Stability System and this work cannot be undervalued or overlooked. Since 2019, the Housing Stability System and related investments have been directed towards managing the growing homelessness crisis, including the development of hundreds of emergency shelter beds, increasing street outreach, and hybrid shelter models.

# TAB 13

01

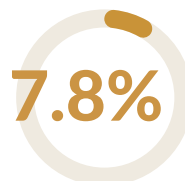
## Homelessness increased in 2025.

In 2025, an estimated 84,973 people experienced known homelessness in Ontario, a 7.8% increase (6,171 people) from 2024, an increase that followed several consecutive years of growth.<sup>1</sup>

While the rate of growth has moderated compared to the peak between 2021 and 2023, this past year's increase confirms that homelessness has not yet stabilized or decreased.

# 84,973

ONTARIANS EXPERIENCED  
KNOWN HOMELESSNESS



INCREASE  
FROM 2024

02

## Homelessness growth accelerated sharply after 2021 and has not been reversed.

Between 2016 and 2020, known homelessness in Ontario increased gradually, by approximately 6.3% over four years. From 2021 to 2025, known homelessness increased by approximately 49.1%.

This acceleration coincides with the COVID-19 pandemic period. Homelessness has not returned to pre-2020 levels, even as housing and homelessness funding increased and services expanded. This indicates that the availability of housing and supports has not kept pace with the scale or persistence of homelessness following the pandemic.

2016 - 2020



VS

2021 - 2025



03

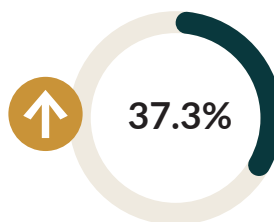
## Homelessness is growing fastest in northern communities.

Homelessness is increasing more rapidly in Northern Ontario than elsewhere in the province. From 2024 to 2025, known homelessness in Northern Ontario increased by 37.3%. Since 2021, homelessness in the north has increased by approximately 117.5%, compared to 49.1% provincially over the same period. Northern communities, which account for approximately 5% of Ontario's total population, now account for nearly 10% of all known homelessness.



2024 - 2025

KNOWN HOMELESSNESS IN  
NORTHERN ONTARIO



1. The 2024 figure in Municipalities Under Pressure (January 2025) was estimated using partial-year data. Updated data submitted by Service Managers have since been incorporated, resulting in a revised observed estimate for 2024.

# TAB 14

## Key implications and direction.

### **PUBLIC SPENDING HAS GROWN, YET HOMELESSNESS CONTINUES TO RISE, INDICATING THAT EXISTING APPROACHES ARE NOT CONSISTENTLY TRANSLATING INTO IMPROVED OUTCOMES AT THE SCALE REQUIRED.**

Much of the effort has focused on managing crises. This is necessary to address immediate harm, but it does not prevent or support timely access to affordable and appropriate housing. As a result, spending is often directed toward stabilizing conditions as needs arise, requiring increasing investment.

Homelessness does not occur within a single program, ministry, or level of government. It is shaped by how housing, healthcare, income supports, justice, child welfare, education, and other systems operate and interact over time. Outcomes depend on how these systems are designed, coordinated, sequenced, and governed across ministries and levels of government. Treating homelessness as an outcome produced across systems, rather than as a challenge to be managed within a single policy or program, is essential to reducing homelessness and limiting costs.

Because pressures move between systems, progress depends on a whole-of-government approach, rather than isolated action. Decisions made in one system can either increase or reduce homelessness pressures elsewhere. A coordinated, whole-of-government approach—operating horizontally across provincial services and mandates delivered through Service Managers, and vertically through federal, provincial, and municipal systems—helps ensure that effort in one area supports outcomes in another. This requires reconsidering how social spending is planned, targeted, and evaluated, based on outcomes across systems.

Yet, housing availability remains a central constraint. Increasing the supply of housing, particularly deeply affordable housing, is essential to reducing homelessness and requires an expanded federal role, alongside provincial and municipal action.

The previous *Municipalities Under Pressure* report modelled two investment approaches:

#### **a longer-term investment of approximately \$11 billion**

over 10 years to achieve functional zero chronic homelessness, including capital investment to substantially expand deeply affordable and supportive housing, alongside ongoing operating funding for prevention, housing stability, and supports; or

#### **a targeted near-term investment of approximately \$2 billion**

to reduce acute pressures such as encampments and stabilize conditions while longer-term housing supply is developed.<sup>2</sup>

### **THESE SOCIAL INFRASTRUCTURE INVESTMENTS REMAIN NEEDED TO IMPROVE STABILITY FOR INDIVIDUALS, FAMILIES, AND COMMUNITIES AND REDUCE HOMELESSNESS OVER THE MEDIUM AND LONG TERM.**

At the same time, given the projected growth in homelessness and the persistence of underlying drivers, housing investment alone will not be sufficient. To be effective, investments must be paired with better integration of policy, data, activities, outcomes, accountability, and decision-making across ministries, mandates, and levels of government.

2. Detailed estimates of the housing and support capacity required under the longer-term investment approach—including approximately 40,000 affordable housing units and 32,000 rent subsidies—are set out on page 100 of *Municipalities Under Pressure* (2025). Details of the targeted near-term investment to address acute pressures are set out on page 108

# TAB 15

|                                                                                                                                  |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |         |           |         |              |         |         |              |                                                                                                           |    |    |    |    |    |    |                                                                           |     |    |     |     |    |    |
|----------------------------------------------------------------------------------------------------------------------------------|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|-----------|---------|--------------|---------|---------|--------------|-----------------------------------------------------------------------------------------------------------|----|----|----|----|----|----|---------------------------------------------------------------------------|-----|----|-----|-----|----|----|
| permits to get up to occupancy of 40                                                                                             |           | Frederick is able to resume intakes and operate at full capacity, this can occur efficiently.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |         |           |         |              |         |         |              |                                                                                                           |    |    |    |    |    |    |                                                                           |     |    |     |     |    |    |
| 7. Undertake to confirm what time Porchlight closes each morning / Undertake to confirm what time Thresholds closes each morning | UT        | Porchlight and Thresholds overnight warming centres end their overnight services at 8am.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |         |           |         |              |         |         |              |                                                                                                           |    |    |    |    |    |    |                                                                           |     |    |     |     |    |    |
| 8. Undertake to look at the numbers and answer if The Working Centre has gone over capacity since January 2026                   | UT        | Yes, the Working Centre's overnight warming centre at St John's Kitchen has operated over capacity at times since January 2026.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |         |           |         |              |         |         |              |                                                                                                           |    |    |    |    |    |    |                                                                           |     |    |     |     |    |    |
| 9. Verify the actual number of reported homelessness in the Region as correction undertaking re Council minutes and report back  |           | The correct number is 366. Mr. Sweeney has also asked that this correction be made to the Council minutes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |         |           |         |              |         |         |              |                                                                                                           |    |    |    |    |    |    |                                                                           |     |    |     |     |    |    |
| 10. Provide number of known encampments across the region on a quarterly basis from Dec. 2024 forward"                           | UT        | <div>The following data reflects encampments on municipal, private, and provincial lands known to Regional staff:</div> <table><tr><td></td><td>Dec. 2024</td><td>Q1 2025</td><td>Q2 2025</td><td>Q3 2025</td><td>Q4 2025</td><td>Jan-Feb 2026</td></tr><tr><td>Approximately how many separate encampment sites exist in your Service Manager area on the reporting date</td><td>22</td><td>25</td><td>25</td><td>26</td><td>26</td><td>23</td></tr><tr><td>Approximately how many people are staying in total in all the encampments</td><td>119</td><td>86</td><td>101</td><td>115</td><td>78</td><td>57</td></tr></table> |         | Dec. 2024 | Q1 2025 | Q2 2025      | Q3 2025 | Q4 2025 | Jan-Feb 2026 | Approximately how many separate encampment sites exist in your Service Manager area on the reporting date | 22 | 25 | 25 | 26 | 26 | 23 | Approximately how many people are staying in total in all the encampments | 119 | 86 | 101 | 115 | 78 | 57 |
|                                                                                                                                  | Dec. 2024 | Q1 2025                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Q2 2025 | Q3 2025   | Q4 2025 | Jan-Feb 2026 |         |         |              |                                                                                                           |    |    |    |    |    |    |                                                                           |     |    |     |     |    |    |
| Approximately how many separate encampment sites exist in your Service Manager area on the reporting date                        | 22        | 25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 25      | 26        | 26      | 23           |         |         |              |                                                                                                           |    |    |    |    |    |    |                                                                           |     |    |     |     |    |    |
| Approximately how many people are staying in total in all the encampments                                                        | 119       | 86                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 101     | 115       | 78      | 57           |         |         |              |                                                                                                           |    |    |    |    |    |    |                                                                           |     |    |     |     |    |    |
| 11. Undertaking to confirm what was provided by the                                                                              | UT        | See answer to #2 from Peter Sweeney's answers to undertakings arising from this second cross examination. To Mr. Sweeney's knowledge, there                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |         |           |         |              |         |         |              |                                                                                                           |    |    |    |    |    |    |                                                                           |     |    |     |     |    |    |

# TAB 16

07

## Lack of housing is increasing the duration and chronicity of homelessness.

In 2025, an estimated 45,111 people were experiencing chronic homelessness, representing 53% of all known homelessness in Ontario. Growth in chronic homelessness in-part reflects the limited availability of appropriate and affordable housing, with many people cycling through shelters, temporary accommodations, and other emergency responses because there are few options to exit into stable housing.

Homelessness in Ontario is increasingly characterized by conditions consistent with high inflow into homelessness and limited exit capacity, particularly limited access to affordable housing options that support timely exits.

In 2025, the community housing (RGI) waitlist reached an estimated 301,340 households, with an average wait time of 65 months and some households waiting more than 16 years. While RGI serves a broader population beyond people experiencing homelessness, these wait times point to limited system capacity to support exits from homelessness. As a result, more people remain homeless for longer periods.

In 2025, an estimated 45,111 people were experiencing chronic homelessness, representing 53% of all known homelessness in Ontario. Growth in chronic homelessness is consistent with an imbalance between the number of people entering homelessness and the availability of affordable housing options to support exits, with many people cycling through shelters, temporary accommodations, and other emergency responses because there are few options to exit into stable housing.

# 45,111

ONTARIANS EXPERIENCED  
CHRONIC HOMELESSNESS



OF ALL KNOWN  
HOMELESSNESS

08

## Housing and homelessness funding has increased, but homelessness grows faster.

Public funding for housing and homelessness in Ontario has increased substantially while homelessness continues to rise. In 2025, combined housing and homelessness funding is estimated at just over \$4.0 billion, more than double the level reported in 2018. However, while the number of people experiencing homelessness increased by 49.1% between 2021 and 2025, total funding increased by 32.1% over the same period, with municipal funding increasing by 48.2%.

Over the same period, program expenditures increased by 75.4% overall—rising by 88.0% for homelessness programs and 66.1% for housing programs—indicating that municipalities are increasingly absorbing the cost of managing higher and more persistent levels of homelessness through local service delivery.

Emergency shelters have remained the largest area of homelessness-related expenditure, increasing by 51.6% since 2021. Community housing has remained the largest area of housing program expenditure, but spending declined by 0.6% over the same period, highlighting limited growth in deeply affordable housing despite rising need.

# TAB 17

Security, pest control, garbage removal, portable toilets, and ongoing servicing and maintenance. This figure does not include staffing costs for social supports, outreach, facilities, or by-law staff who attend the site regularly.

**J. *The Risks to Encampment Residents Arising from the Encampment Environment***

94. The Region has become increasingly concerned about potential risks to residents of the Encampment and the broader public. Some of the Region's concerns with respect to the Encampment include:

- (a) Overcrowding and congestion on the site;
- (b) Evidence of drug paraphernalia that has not been properly disposed of, including syringes and needles;
- (c) Barbecues, propane tanks, and the presence of significant debris on the site, which create significant fire risks;
- (d) Security incidents on the site, including violent altercations between residents of the Encampment;
- (e) Significant clutter and garbage on the Property;
- (f) Evidence of rodent activity on the site, including rodent feces;
- (g) The presence of human urine and feces; and

(h) Construction of semi-permanent structures out of sandbags, with no building permits and no apparent adherence to any building standards.

95. I have attended the Property many times as part of my responsibilities as Commissioner of Community Services for the Region. During my time there, I have witnessed every type of the concerns I articulate above.

96. Sadly, I am aware of at least five documented deaths at the Encampment since I joined the Region in June 2022. I attach a summary of related incident reports from the security portal for each of the deaths as **Exhibit G**. I have made redactions to these reports to remove information that could be used to identify the deceased individuals referenced therein, as well as to respect the privacy and confidentiality of Region staff responding to these incidents.

97. I am not in a position to say what caused these deaths, which is a matter for the coroner. I can say, however, that the Encampment environment appears to me to be far from ideal for those who are suffering major health challenges and the likelihood that these numbers are under-reported is high.

98. Based on my experiences at the Region and in prior roles, I believe this number does not include incidents where individuals were found non-responsive at the Encampment and later passed away at a hospital. This number also does not include situations where a death resulted from toxic drugs obtained at the Encampment, but where the individual died at a location other than the Encampment. The number of deaths recorded at the Encampment also does not reflect the overall negative health impacts of

encampment living, including a decrease in overall life expectancy for some individuals. I believe the true number of encampment-related deaths is likely higher than the reported figure.

99. There have also been several fires at the Encampment since it was established. Attached as **Exhibit H** is a series of major incident notification reports documenting these fires. Fires on the Property pose a threat to the safety of both those living at the Property and the neighbouring community. I have redacted these reports to protect the personal information and privacy of Region staff and the victims involved.

100. As noted above, there have also been several violent altercations between residents. I attach the incident reports relating to these altercations as **Exhibit I**. I have redacted these reports to protect the personal information and privacy of Region staff and the victims involved.

101. I am informed by the Region of Waterloo's Security Department ("**Region Security**") that while all incidents, such as fires and violent altercations, are reported through security dispatch, incident reports are not created or available for each incident. Region Security has advised me that from April 1, 2024 to the date of this affidavit, there have been a dispatch record of 37 minor fires reported for the Encampment in addition to the four major fires for which incident reports were created (see Exhibit H). I understand that a "major fire" is one that entails significant damage to or loss of structure or tent and/or involves a response from the Kitchener Fire Department Region. A "minor fire" falls short of that definition, but it can still involve damage to property or harm to an individual.

Crucially, the difference between a major and minor fire is often luck and early intervention.

102. Security also informed me that there were 19 major altercations reported at the Encampment since December 1, 2023, far more than the incident reports in Exhibit I suggest.

103. I also attach a photograph of a sandbag structure that has recently been built on the Property as **Exhibit J**. I am concerned about the structural soundness of this makeshift building.

104. It is my belief, based on the above, that many of the Existing Residents will be safer and have access to better supports once they transition to alternative accommodation arrangements under the Plan, as described above.

105. The above circumstances have also contributed to my view, which I hold strongly, that creating a new, Region-sanctioned encampment on a different piece of property is a poor choice for the Region, for Existing Residents and for those in the Region experiencing homelessness. In my view, we should be prioritizing the development and implementation of IHPs for Existing Residents and those experiencing homelessness across the Region with the resources available to us.

**K. *The Region's Need to Manage the Site and Need for the Powers Set Out in By-law 25-021***

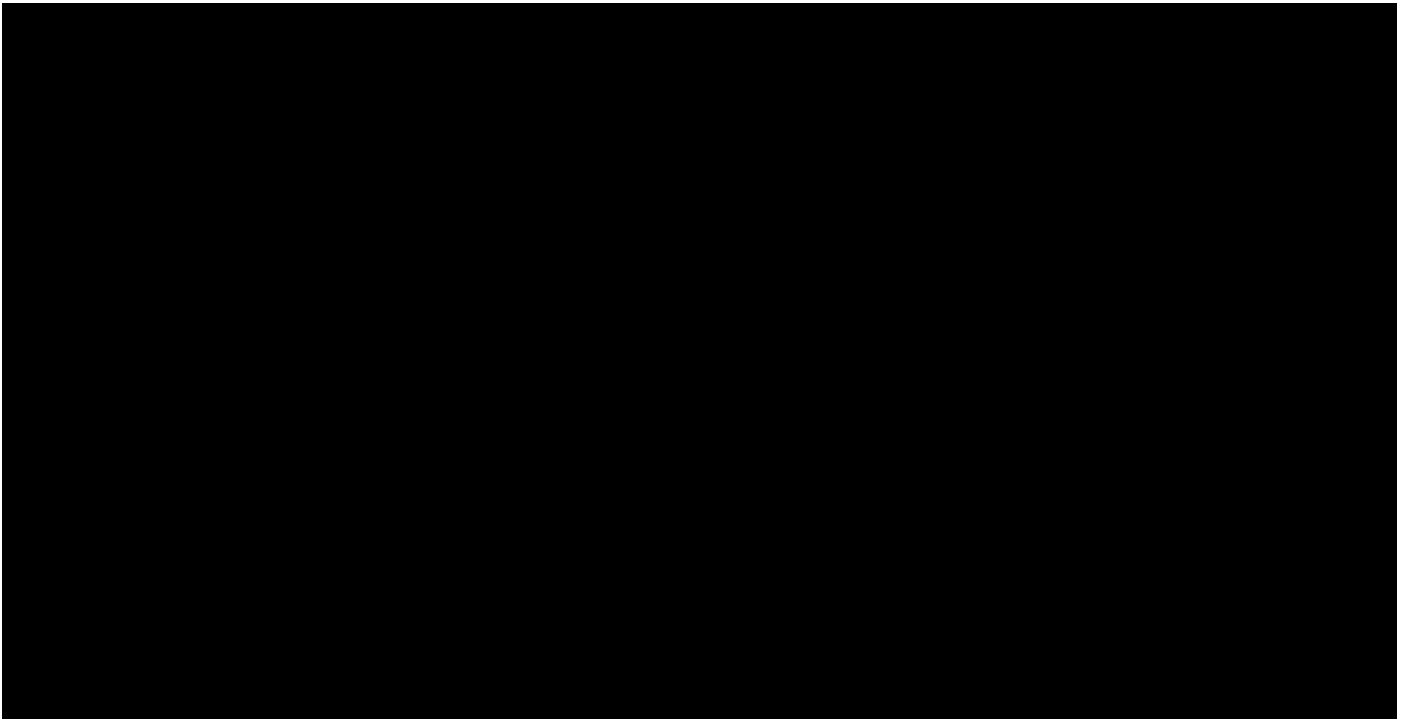
106. By-law 25-021 is intended to provide Existing Residents with the right to continue to reside at the Encampment until November 30, 2025, or such time as they agree to

# TAB 18

execution of pest control, garbage collection and clean-up, maintaining the toilet facilities onsite, and more. My team also coordinates lighting and snow removal at the Property.

9. Since I began my role at the Region, I have visited the Property on average once every two weeks (and sometimes more frequently). However, as I will explain below, more recently I have not attended the Property personally due to security concerns.

10. I also receive regular reports about the Property from various team members and contractors who report to me. Someone from my team or the third-party security we contract is typically onsite at the Property every day in some capacity. However, due to heightened security risks, as I will explain below, I have instructed members of my team (other than third-party security) as of December 9, 2025 to reduce their attendance at the Property to only once a week and only attend with police present. Previously, the portable toilets were cleaned daily, pest control attended the site weekly, and site cleanup (including emptying the garbage bins onsite) occurred every other week. As a result of security concerns, this has now been reduced.



27. I also attach **Exhibit “C”** a photo taken by a member of my team on January 6, 2026 which depicts tents in the same area which have fallen down as a result of heavy snow.

***E. Impacts of the Increasingly Violent and Volatile Situation at the Encampment***

28. While I am not responsible for the Region’s team of Unsheltered Support Workers (“**USW**”), my team regularly interacts with the USWs and others in the Community Services department (including Director of Housing Services at the Region, Ryan Pettipiere) given our shared responsibility for the Property/Encampment.

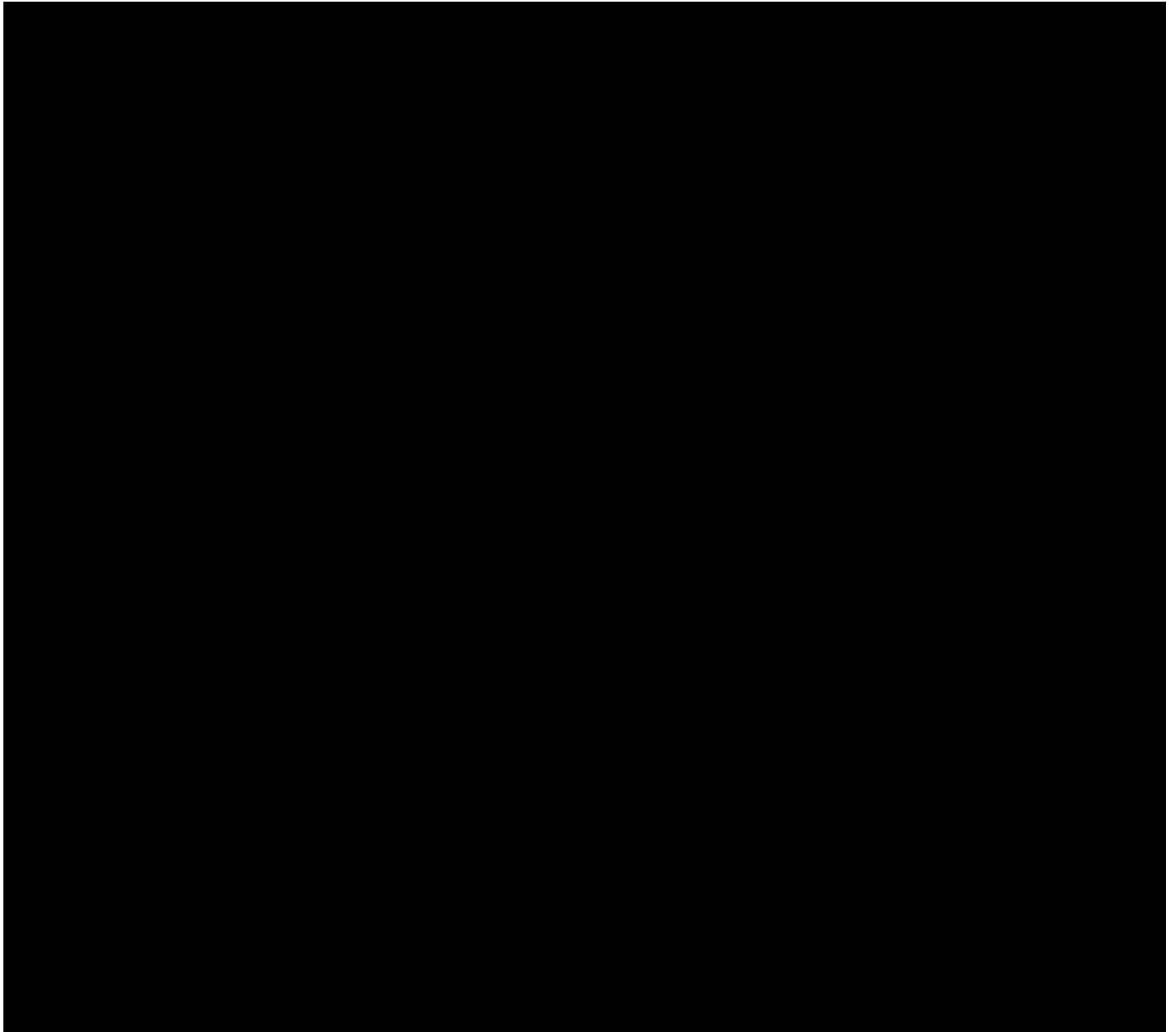
29. I am informed by Mr. Pettipiere and believe that, as a result of the escalating violence at the Encampment which I have described above, the USW team is no longer onsite at 100 Vic every day. Instead, as of December 17, 2025 USWs only attend the Property on Wednesdays.

30. I am also informed by Mr. Pettipiere that the USW team continues to be available to residents daily at the St. John’s Kitchen, a drop-in site for individuals experiencing homelessness that is located across the street from 100 Vic.

31. I have also been informed by Mr. Pettipiere that Sanguen Health Centre (“**Sanguen**”), which has been a third-party provider of healthcare services to those living at the Encampment, has also withdrawn from providing services at the Property due to safety concerns as of on or around December 16, 2025, with no return date provided.

32. Sanguen operates a mobile community health van which it has used to provide health services to those at the Encampment. However, due to escalating violence at the

Encampment, Sanguen has informed the Region that it will no longer be providing services at the Encampment directly.



***F. Updated numbers at the Encampment***

37. As of the date of this affidavit, I understand from Mr. Pettipiere that one individual who is an Existing Resident within the meaning of the By-law remains onsite at the Encampment. The other 39 individuals who were Existing Residents have left the

# TAB 19

Court File No. CV-25-00000750-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Applicant

and

**PERSONS UNKNOWN AND TO BE ASCERTAINED**

Respondents

**5<sup>TH</sup> AFFIDAVIT OF PETER SWEENEY**

I, Peter Sweeney, of the City of Cambridge, in the Regional Municipality of Waterloo, AFFIRM:

1. I am the Commissioner of Community Services for the Applicant, the Regional Municipality of Waterloo (the “**Region**”). As such, I have knowledge of the matters to which I depose below. Where my knowledge is based on information and belief, I indicate the source, and believe it to be true.

2. In this affidavit I use terms as defined in the affidavits I have previously affirmed in support of the Region’s Application, being the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Sweeney Affidavits and in other affidavits tendered by the Region in this proceeding.

**A. An Update on Fires at the Encampment in February 2026**

3. As I explained in the 1<sup>st</sup> Sweeney Affidavit (including at paragraphs 94 and 99), fires are an issue at the Encampment.

4. In mid-February 2026, there were three major fires for which the Region has maintained related incident reports.

5. The first such fire took place on Thursday, February 12, 2026 ("**Fire #1**"), at approximately 9:30 am. I attach the incident report documenting Fire #1 as **Exhibit "A"**, which I obtained from Regional staff. I also attach various photos I understand were taken by security personnel and/or Regional staff associated with the incident report as **Exhibit "B"**. As the incident report indicates, Fire #1 took place in the middle of the Encampment, it involved at least one tent, and it was possibly caused by a propane tank. Two individuals are documented as suffering injuries from Fire #1.

6. The second fire occurred later that same day, at 11:40 am on Thursday, February 12, 2026 ("**Fire #2**"). The associated incident report is attached as **Exhibit "C"**. The incident report indicates that Fire #2 occurred in a tent located behind the garbage bins onsite.

7. The third fire occurred on February 14, 2026 at approximately 4:00 pm ("**Fire #3**"). The associated incident report is attached as **Exhibit "D"** and indicates that Fire #3 took place inside a sand structure at the Encampment. I attach various photos associated with the incident report as **Exhibit "E"**, demonstrating the post-Fire #3 state of that structure.

**B. Reply to the 3<sup>rd</sup> Escobar and Nind Affidavits**

8. I have reviewed the 2<sup>nd</sup> Supplementary Responding Application Record dated February 20, 2026.

# TAB 20

This is Exhibit "A" referred to in the 5<sup>th</sup> Affidavit of Peter Sweeney affirmed by Peter Sweeney of the City of Cambridge, in the Regional Municipality of Waterloo, before me at the City of Toronto, in the Province of Ontario, on February 27, 2026, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Signed by:

*Greta Hoaken*

65F69FB6EFF940B...

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*Commissioner for Taking Affidavits (or as may be)*

**GRETA HOAKEN (LSO #87903I)**

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Date and Time:</b>                | Thursday February 12, 2026 at ~0931hrs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Call Type:</b>                    | Fire                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Location:</b>                     | 100 Victoria Street North- Echo 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Reported by:</b>                  | O/S Guard                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Involved/Responding Security:</b> | O/S Guard                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Involved Subject:</b>             | UNKNOWN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Injuries:</b>                     | 1 Male - Burns on face<br>1 Female- [REDACTED] - Unknown injuries                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Description of Event:</b>         | <p><b>UPDATE 1:</b></p> <ul style="list-style-type: none"> <li>• Large tent fire in the middle of the encampment O/S Guard contact 911. Possible cause due to propane tank.</li> <li>• <b>0935hrs</b>- KFD #P12 #A12, #T13 and #R11 on site.</li> <li>• <b>0940hrs</b>- 2 WRPS cruisers on site.</li> <li>• <b>0950hrs</b>- EMS #2180 and #2516 on site.</li> </ul> <p><b>UPDATE 2:</b></p> <ul style="list-style-type: none"> <li>• <b>1006hrs</b>- Fire extinguished. Male in EMS care.</li> <li>• <b>1020hrs</b>- All emergency services off site. Male was not transported and female was last seen at the soup kitchen.</li> </ul> <p><b>CCTV Review:</b> Large fire in middle of the encampment.</p> <p><b>**END OF INCIDENT**</b></p> |
| <b>Date and time event closed:</b>   | Thursday February 12, 2026 at ~1020hrs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Report to Follow:</b>             | Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

This is Exhibit "B" referred to in the 5<sup>th</sup> Affidavit of Peter Sweeney affirmed by Peter Sweeney of the City of Cambridge, in the Regional Municipality of Waterloo, before me at the City of Toronto, in the Province of Ontario, on February 27, 2026, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Signed by:  
  
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*Commissioner for Taking Affidavits (or as may be)*

**GRETA HOAKEN (LSO #87903I)**











This is Exhibit "C" referred to in the 5<sup>th</sup> Affidavit of Peter Sweeney affirmed by Peter Sweeney of the City of Cambridge, in the Regional Municipality of Waterloo, before me at the City of Toronto, in the Province of Ontario, on February 27, 2026, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Signed by:

*Greta Hoaken*

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*Commissioner for Taking Affidavits (or as may be)*

**GRETA HOAKEN (LSO #87903I)**

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|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Date and Time:</b>                | Thursday February 12, 2026 at ~1140hrs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Call Type:</b>                    | Fire                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Location:</b>                     | 100 Victoria Street North- Echo 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Reported by:</b>                  | O/S Guard                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Involved/Responding Security:</b> | O/S Guard                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Involved Subject:</b>             | UNKNOWN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Injuries:</b>                     | Not reported                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Description of Event:</b>         | <p><b>UPDATE 1:</b></p> <ul style="list-style-type: none"> <li>O/S Guard report tent fire behind the garbage bins. WRPS drove by and extinguished the fire. KFD will be attending.</li> <li><b>1139hrs-</b> KFD #P12 on site.</li> </ul> <p><b>UPDATE 2:</b></p> <ul style="list-style-type: none"> <li><b>1208hrs-</b> KFD off site.</li> <li><b>1215hrs-</b> E1 report Police will remain on site and waiting for additional units to investigate arson.</li> </ul> <p><b>UPDATE 3:</b></p> <ul style="list-style-type: none"> <li><b>1255hrs-</b> WRPS still on site investigating.</li> </ul> <p><b>UPDATE 4:</b></p> <ul style="list-style-type: none"> <li><b>1307hrs-</b> Forensics identification Unit on site.</li> </ul> <p><b>UPDATE 5:</b></p> <ul style="list-style-type: none"> <li><b>1308hrs-</b> Detectives on site.</li> <li><b>1407hrs-</b> Detectives off site.</li> <li><b>1412hrs-</b> All WRPS off site and facilities on site.</li> </ul> <p><b>CCTV Review:</b> Large amount of smoke behind garbage bins.</p> <p><b>WA-26-021160</b><br/> <b>**END OF INCIDENT **</b></p> |
| <b>Date and time event closed:</b>   | Thursday February 12, 2026 at ~1412hrs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Report to Follow:</b>             | No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

This is Exhibit "D" referred to in the 5<sup>th</sup> Affidavit of Peter Sweeney affirmed by Peter Sweeney of the City of Cambridge, in the Regional Municipality of Waterloo, before me at the City of Toronto, in the Province of Ontario, on February 27, 2026, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Signed by:

*Greta Hoaken*

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*Commissioner for Taking Affidavits (or as may be)*

**GRETA HOAKEN (LSO #87903I)**

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|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Date and Time:</b>                | Saturday, February 14, 2026, at 1554hrs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Call Type:</b>                    | Fire                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Location:</b>                     | Echo 1 – 100 Victoria St. N, Kitchener, ON                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Reported by:</b>                  | On site SECURITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Involved/Responding Security:</b> | On site SECURITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Involved Subject:</b>             | NA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Injuries:</b>                     | NA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Description of Event:</b>         | <p><b>UPDATE 1:</b></p> <p>On site Security contacting fire department for fire inside the sand structure<br/> 1558hrs: Fire truck # P12 on site<br/> 1559hrs: Fire truck # A12 on site<br/> 1604hrs: Fire department has extinguished the fire<br/> Onsite SECURITY reported that there are no injuries and there does not appear to be any damage<br/> Onsite SECURITY informed that it was a pile of wood that was on fire and the fire was getting big very quickly. Residents tried extinguishing the fire with snow, but it was not working<br/> 1620hrs: Detectives/Forensics on site to investigate the fire</p> <p><b>UPDATE 2:</b></p> <p>1627hrs: Fire captain off site<br/> 1633hrs: Fire truck # A12 off site<br/> 1634hrs: Fire truck # P12 off site<br/> 1708hrs: Detectives/Forensics off site</p> <p><b>Occurrence #: WA26-022287</b></p> |
| <b>Date and time event closed:</b>   | Saturday, February 14, 2026, at 1708hrs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Report to Follow:</b>             | Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

This is Exhibit “E” referred to in the 5<sup>th</sup> Affidavit of Peter Sweeney affirmed by Peter Sweeney of the City of Cambridge, in the Regional Municipality of Waterloo, before me at the City of Toronto, in the Province of Ontario, on February 27, 2026, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Signed by:  
  
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*Commissioner for Taking Affidavits (or as may be)*

**GRETA HOAKEN (LSO #87903I)**







# TAB 21

Court File No. CV-25-00000750-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Applicant

and

**PERSONS UNKNOWN AND TO BE ASCERTAINED**

Respondents

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

**AFFIDAVIT OF SHARON KOIVU**

I, Sharon Koivu, of the City of Port Stanley, in the Province of Ontario, AFFIRM:

1. I am a physician practicing in Ontario. I have been retained by Paliare Roland Rosenberg Rothstein LLP on behalf of the Regional Municipality of Waterloo ("Region") to provide an expert opinion in this matter on the health risks of encampments, and to comment on affidavits filed by the Respondents. This Affidavit contains matters that are within my personal knowledge and professional expertise. Where my knowledge is based on information and belief, the source of that knowledge is identified and I believe it to be true.

2. I have been a physician practicing in Ontario for 40 years. I have been an Addiction Physician for 13 years. I have my Certificate of Added Competency in Addiction Medicine from the College of Family Physicians of Canada.

# TAB 22

17. Encampments pose extensive health and safety risks to the people living in the encampments as well as public health and safety risks to the community.<sup>6,8,9,17,18,19,27,35</sup>

18. When studied it was found that unsheltered people experiencing homelessness have a 2.7-fold increased risk of mortality compared to those who are sheltered.<sup>27</sup> Encampments are not a safe alternative to housing or to a shelter.<sup>5, 16</sup>

19. There are significant health risks to all people experiencing homelessness. There are some particularly serious risks associated with living in encampments. Below I will address risks that I have witnessed as a physician, risks that I am aware of from the literature and the media, and risks that I have observed living near encampments.

20. In his affidavit Dr. Hwang stated, “Having a tent or other temporary structure provides some relief from the elements.”

21. In fact, tents are largely ineffective at preventing significant injury from exposure, and should not be regarded as a safe alternative to indoor shelters.

22. There are significant health risks to those living in encampments due to exposure to the elements. While extreme cold increases the risk, injury and death can occur in moderately cold temperatures.<sup>4, 42, 43, 44</sup>

23. I have seen numerous patients who developed serious frostbite while living in a tent in an encampment. At times this has led to the loss of fingers, toes, or feet. I have had patients who have required bilateral leg amputations due to injury from frostbite. This form of tissue damage is extremely painful. These physical injuries are life-altering and

# TAB 23

shelters or camps. *S. sonnei* cases decreased to expected frequencies after these interventions.<sup>87</sup>

118. Again, while Dr. Gupta may feel that tents provide satisfactory protection from the elements, I do not agree that they are safe or humane alternatives to shelters. 4, 12, 13, 14, 42, 43, 44, 45, 46, 52, 53, 54

119. Ms. Jacara Droog, in her affidavit, identified that theft within encampments is a concern. “Some people are also understandably reluctant to leave their tents or belongings unattended for extended periods due to the risk of theft.”

120. I have often heard from patients living in encampments that they experience theft even when they are in their tents. This is particularly common if they have used sedating drugs such as opioids or benzodiazepines. I have heard that drugs are, at times, intentionally laced with sedating drugs such as xylazine to facilitate theft. I have heard of descriptions of extortion and sexual exploitation to have “protection” from theft. Encampments are not safe places for people living in them.<sup>70, 71, 72, 73, 74, 75, 76, 79, 80</sup>

121. Ms. Droog also identified concerns regarding oral health: “untreated dental issues, including tooth loss, decay, oral pain or infection. These oral health challenges can make it extremely difficult or painful to chew, which limits what foods people are able to consume and can contribute to further malnutrition and exacerbate food insecurity. In my experience, these oral health challenges are especially prevalent among encampment residents, who often lack access to dental care and are navigating multiple layers of poverty, trauma, and systemic exclusion.”<sup>7</sup>

122. Additionally, she stated that; “A 2022 report on oral health in Waterloo Region found that nearly one in five people experiencing severe food insecurity reported it was uncomfortable to eat due to mouth problems, five times higher than those who are food secure.”<sup>37</sup>

123. I agree that oral health is a challenge for people experiencing homelessness. Shelters provide access to sinks to be able to brush teeth.

124. The affidavit provided by Ms. Allt demonstrated significant compassion for the population she serves. She indicated that “while many clients with a mental health or addiction issue are considered mentally capable to make their own decisions, that does not address their lack of insight into their struggles. This can lead to poor decision-making.”

125. I agree with a lack of insight and poor decision making. In my experience many patients that I have seen did not understand and appreciate the risks of living in an encampment. They were very vulnerable to suggestion and being taken advantage of. They often had poor skills to mitigate the risks of living in an encampment. Many did not have skills to make decisions that would promote their best interest.<sup>67, 69</sup>

### **C. Final Comments**

126. My overarching concern is that there is a developing false and even dangerous narrative, as demonstrated in some of the Affidavits with which I have been provided, that encampments are safe and even desirable places to live. From speaking to patients this narrative has been a factor in people choosing to leave safer environments. Encampments are extremely dangerous places to live, and these dangers can result in

poor outcomes and death. When removing people from an encampment they should be treated with dignity and respect. However, in my opinion, encampments pose extensive health and safety risks to the people living in the encampments as well as public health and safety risks to the community. They are not a safe alternative to housing or to a shelter.

127. I make this affidavit for the purpose of introducing my opinion as evidence in this application and for no other or improper purpose.

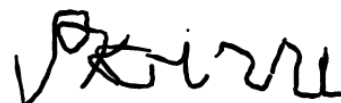
AFFIRMED by Sharon Koivu of the City of Port Stanley in the Province of Ontario before me at the City of Toronto, in the Province of Ontario, on September 11, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.




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Commissioner for Taking Affidavits  
(or as may be)

**Greta Hoaken (LSO # 87903I)**




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Sharon Koivu

# TAB 24

1 feeling sexually-exploited or having experienced  
2 gender-based violence within an encampment, from my  
3 role as a physician and having them speak to me about  
4 it at the hospital.

5 218. Q. Do you provide care to patients after  
6 they've experienced sexual assaults?

7 A. I do not now. That was one of my roles  
8 in St. Thomas previously. I am not involved in the  
9 sexual assault center in London.

10 219. Q. Okay. Are you familiar -- so you said  
11 you read Dr. Dr. Kaitlin Schwan's affidavit. Are you  
12 familiar with the project Willow Report which is based  
13 out of Waterloo Region?

14 A. I saw it for the first time when it was  
15 provided for me to -- yes, well I saw it yesterday. I  
16 did not have the opportunity to read it in detail.

17 220. Q. Okay. It is a Waterloo Region-based  
18 study about women and gender-diverse people using  
19 emergency shelter.

20 So I think -- and this is in the record. I  
21 don't know if we need to make it an exhibit. I think  
22 you've already -- you've already answered this around  
23 feeling safe. But would you agree that women staying  
24 in an encampment may be safer than staying in a  
25 shelter if there are sexual violence and rapes that

1 can occur in shelters?

2 A. I don't know of any time when I was --  
3 I would say that shelters can have their limitations.  
4 And certainly if you've experienced a bad experience  
5 within a shelter, that that would make it difficult to  
6 go back to a shelter. But I might -- I believe that  
7 the risk of an assault is greater in an environment  
8 such as an encampment than it is within a shelter.

9 There's also one line in this that I thought  
10 was interesting of a woman saying that I don't tell  
11 other women. And I can't remember how it was worded  
12 but it was certainly -- they weren't necessarily  
13 helpful which I thought was really interesting and  
14 tragic. But there are risks in shelters and I don't  
15 want to downplay that there are risks that can happen  
16 in shelters.

17 But I think overall there are significant,  
18 better systems in place to support women in a shelter.  
19 I think there are risks in encampments. And those  
20 risks in a shelter are mitigated by staff, they're  
21 mitigated by hopefully having people in appropriate  
22 shelters based on gender. So there are ways to  
23 mitigate risks in a shelter.

24 In an encampment, is still an environment  
25 which you can be using, you can be using -- you can be

1 in your tent alone, you could have used a sedating  
2 medication during the day or night and be in your tent  
3 and being vulnerable.

4 The presence of some volunteers and some -- and  
5 security, I am glad of that, that will decrease some  
6 of the risks. But I cannot say that I have enough  
7 information to make a comparison of the risks of a  
8 sexual assault in a gender-diverse community in an  
9 encampment in which sedating drugs are likely to be  
10 used ---

11 221. Q. Okay.

12 A. --- and security is not on-site. So I  
13 can't make a comparison between whether ---

14 222. Q. Sure.

15 A. --- it's safer in a shelter versus an  
16 encampment. If anything, my experience would still  
17 say an encampment is less safe than a shelter.

18 223. Q. Okay, and so I guess my question wasn't  
19 about sedating drugs. But I want to put this  
20 hypothetical to you. And it's based on our own  
21 clients' experience. So there's a client named  
22 Josephina Dugas. She has attested that she was raped  
23 while living in a shelter. If you pair that with the  
24 context where we don't have enough beds in our  
25 community for women, like women-only, isn't it fair to

1 say that she may feel safer staying in an encampment  
2 than having to go to a co-ed shelter, if that space  
3 existed?

4 A. She may feel safer in an encampment but  
5 I want to point out that there's a significant  
6 difference between feeling safe and being safe. If  
7 she is then later sexually assaulted within the  
8 encampment, she will not feel safe there.

9 So her experience right now is driving her  
10 -- her decision-making. But that does not mean  
11 overall an encampment is a safer environment. So  
12 going from an environment that has risks to an  
13 environment that has more risks because you haven't  
14 had the negative outcome at that more risky  
15 environment, doesn't make it safer.

16 It doesn't mean that some people will choose  
17 things that are high risky. It can but again, I think  
18 it's really important to recognize the difference  
19 between "feeling safe" and "being safe."

20 224. Q. And are you aware of any sexual  
21 assaults taking place at 100 Vic?

22 A. I am not.

23 225. Q. Okay. In terms of motels, are you  
24 aware of concerns that people have around sexual  
25 coercion and exploitation at some of the local motels

1 in the Region?

2 A. As compared to being in an -- my  
3 experience with people being in a -- in an encampment,  
4 for example, is that some of the sexual exploitation  
5 has been around providing claims that they will be  
6 provided with safety, safety from others. And ---

7 226. Q. Okay, so ---

8 A. So, no, I am not aware of -- so no, I'm  
9 not aware. And cannot make -- I am not aware of  
10 sexual exploitation of people who have been sheltered  
11 in motels in Kitchener-Waterloo area as opposed to  
12 brought to a motel to be sexually exploited. So, no,  
13 I don't have that kind of information, no.

14 227. Q. Okay. So there is some evidence in the  
15 record, and Andrew, this is at Sara Escobar's  
16 affidavit, Paragraph 23. I believe it's her first  
17 affidavit, but I will confirm, where she talks about  
18 some of the owners and staff at some of the local  
19 motels in her experience that they are not safe for  
20 vulnerable individuals to be around.

21 And so, you know, given some of these  
22 concerns, would you agree that some women staying at  
23 the encampment may be safer than a motel where they  
24 could be exploited?

25 MR. LOKAN: Once again, with the Escobar

1 affidavit, I am not sure that we have  
2 anything connecting those motels to any  
3 current work that the Region is doing in  
4 terms of out-placement.

5 MS. SCHIUTEMA: Okay, so ---

6 MR. LOKAN: If you want to put it as a  
7 hypothetical, that's fine.

8 MS. SCHIUTEMA: Yeah. It is a hypothetical.

9  
10 BY MS. SCHIUTEMA:

11 228. Q. If there are risks of women being  
12 sexually exploited in a motel, wouldn't you agree that  
13 for some women, when they don't have access to  
14 shelter, where their options are going to be exploited  
15 in a motel by the workers there, are going -- and not  
16 accessing a co-ed shelter -- or sorry, a women's-only  
17 shelter -- wouldn't you agree that for some women  
18 staying at the encampment may be a safer alternative?

19 A. I am going to keep saying that being in  
20 an encampment is not safe. What you're asking me is  
21 going to the motel safe? And I think that if people  
22 are -- and absolutely, we are -- you know, there are  
23 cases where women have been taken to motels to be  
24 sexually exploited. And I can't speak for staff at a  
25 motel.

1 But what I can say is that I think that  
2 there's a lot of assumptions in what you're saying.  
3 And that most people who are working within a  
4 business, including a motel, you know, if sexual  
5 assaults are being identified at the motel, I hope  
6 that that has been taken to the police. I hope that  
7 those people are no longer working at the motel and --  
8 in question -- and I hope that the workers involved in  
9 placing people who are vulnerable which could include  
10 going to motels, would be aware of this information.  
11 And that the motels that they would be working with,  
12 would not include hotels where this has occurred.

13 Is gender-based violence a problem in our  
14 society? Absolutely. I would absolutely say that  
15 gender-based violence is a problem in our society.  
16 But to be able to say that overall, motels as a  
17 business are a less safe environment for a woman than  
18 an encampment, I don't have any information to be able  
19 to say that.

20 And I have much more information to say an  
21 encampment is not a safe place. And that most  
22 businesses are not going to be -- the owners are not  
23 going to be exploiting people that are coming to the  
24 hotels. That's ---

25 229. Q. Okay, so that's your overall picture

S. Koivu (Cr.-Ex.) - 95

1 but let's assume for this hypothetical that you --  
2 that the person living at the encampment knows that  
3 there is exploitation taking place at this motel.  
4 Would you agree ---

5 A. I would hope -- I would hope that when  
6 she is working with a individual plan, housing plan,  
7 with her worker, that that would -- information would  
8 be made available to the worker. And that that motel  
9 would not be considered an option for that woman. So  
10 absolutely, if somebody has experienced that, that  
11 needs to be -- first of all, that needs to be  
12 reported.

13 And hopefully -- I understand the difficulty  
14 that that can be but I think it certainly needs to be  
15 reported at a high enough level that other women  
16 aren't put at risk. Because holding that information  
17 alone could be putting other women at risk.

18 But in this individual case dealing with an  
19 individual housing plan, then that motel and perhaps  
20 even motels themselves might not be the right option.  
21 And that needs to be worked with the support worker to  
22 have a better option for someone who has had that  
23 experience. That does not mean I'd want to keep them  
24 in an environment that I know is dangerous.

25 230.

Q. Okay.

1           A. Especially when we're looking at  
2 winter, the risk of having, you know, a cold event.  
3 You know, the frost bite that I have seen leading to  
4 loss of limbs and like fingers, toes and legs are in  
5 people that stayed in an encampment.

6           And I have cases of people who were  
7 vulnerable but didn't understand the risks of staying  
8 in an encampment, certainly didn't understand the  
9 risks of frost bite. And believed that because they  
10 were being supported by professional workers that were  
11 coming and giving care, that encampments were safe.

12           And they lost -- had life -- you know, some  
13 of them it can be more serious and just life-altering  
14 suffering. But the people that I've seen that had,  
15 you know, severe repercussions from cold-related  
16 injuries, particularly frost bite leading to  
17 amputations, retrospectively would take the shelter.

18           And I think that just the comparison of one  
19 thing or another, being in a -- being in a warm  
20 environment has its own set of being safe that you  
21 will not get when it's minus 10 in a shelter. So it's  
22 -- it's -- it's -- hypothetical takes away context and  
23 it takes away nuances, and takes away the overall  
24 picture that, in general, being sheltered is safer  
25 physically than being unsheltered including in an

1           encampment.

2       231.                   Q.   No matter what the context of that  
3           shelter is?

4                   A.   I do not know of anytime that there is  
5           -- that I can think of -- I am sure there is -- this  
6           is where being in a shelter is not safer from a  
7           physical perspective particularly regarding the  
8           elements which is what I was just talking about, than  
9           being outdoors including in an encampment.

10       232.                   Q.   Even if you're at risk of sexual  
11           assault?

12                   A.   If you're at risk of sexual assault,  
13           that does not change your risk of getting frost bite.  
14           So the risks of being in an encampment are high,  
15           including the risk of exposure. Going to a motel that  
16           you are at risk of sexual assault is not what I'd be  
17           recommending, obviously.

18                   That when people are having a care plan,  
19           that needs to be part of the individual housing plan  
20           and looking at what is an appropriate motel. What is  
21           appropriate as far as any individual person. What  
22           they need to do as far as, you know, locking doors or  
23           having someone that they can call right away,  
24           partnering up with people, what they can do to  
25           mitigate this, the environment, to make it safer

1       wherever they are, that would be something that would  
2       be something that should be worked with their  
3       individual housing plan.

4               But being in a shelter, the people that I  
5       saw that had the most horrific injuries from cold --  
6       and one I can think of that a tent fire severely  
7       damaged her face. The option of being,  
8       retrospectively, they would have taken the motel if  
9       they had -- or gone to -- I've seen people that had  
10      options but did not understand the risks of being in a  
11      -- sorry, the risk of being in an encampment and the  
12      risks of being outdoors.

13             And would have taken a shelter recognizing  
14      there can be some hypothetical risks to that shelter  
15      compared to the actual risks of being outdoors. So  
16      for the people that I've seen that have lost a limb,  
17      if I ask them the same question, I don't think they  
18      would necessarily give me the answer that this person  
19      is giving you.

20   233.           Q.     Okay.

21             A.     Because she hasn't experienced the loss  
22      of limbs yet. But absolutely, if there is a shelter  
23      -- if there is a place where people are exploiting  
24      women, that needs to be exposed and it needs to be off  
25      the table as far as some place that woman would be

1 sent. And that should be known by the outreach  
2 workers.

3 234. Q. Okay, those are all my questions.  
4 Thank you very much.

5 A. Thank you. Thank you for the  
6 opportunity to answer your questions.

7 235. Q. Okay, thank you. Barbara or Mercedes,  
8 I wouldn't mind a bio-break, I think.

9 THE WITNESS: I think a break would be  
10 great.

11 MS. SCHIUTEMA: Yeah.

12 MS. PEREZ: Yeah, I mean, it's 12:12, so  
13 maybe if we can just have a short  
14 conversation. I mean, I need to eat  
15 something, too. I can't -- I can't proceed  
16 without least like maybe half-hour break to  
17 eat something or a 20-minute break to eat  
18 something. And go through the questions  
19 because I notice that Ashley did ask some of  
20 my questions. But, Andrew, I am just  
21 mindful of your email from yesterday where  
22 we asked you what Dr. Koivu's availability  
23 is today and you said she can stay a little  
24 bit past 1:00 but not too much.

25 MR. LOKAN: Okay, so we're good until 2:00.

# TAB 25

municipality of London installed a porta-potty to support an encampment near my home. It was set on fire shortly after the installation which created additional safety risk.

57. People experiencing homelessness are more at risk of developing other serious communicable diseases than the general population. Additionally, they have a higher mortality rate from these diseases than someone in the general population who acquires the same disease.<sup>18, 27, 29, 34, 36, 40</sup> Reportedly, a Typhus outbreak has been associated with an encampment.<sup>18</sup>

58. Other illnesses people experiencing homelessness are at risk of include respiratory illnesses such as TB, Coronavirus, and influenza. Additionally, they are at risk of skin infections such as scabies and lice. Many of these conditions can occur in both encampments and in homeless shelters.<sup>18, 27, 36, 39.</sup>

59. However, homeless shelters can put safeguards in place to mitigate the risks, including social distancing, masks, and using clean linen, providing directly observed therapy (DOT) for TB, and medical support which are not available in encampments.<sup>15, 23</sup>

60. During 2001-2002, a large shelter-based Tuberculosis outbreak occurred among homeless persons in Toronto. This led to a coroner's inquest resulting in the creation of a public health team dedicated to case management, contact follow-up, advocacy, education, health promotion, and active case finding among the city's homeless and underhoused population. Primary prevention efforts focus on shelter-based control measures, which have proven effective at reducing person-to-person spread of drug-resistant TB in other urban centers Improved ventilation systems at shelters will help reduce the spread of TB during an outbreak. Additionally, the recommendation was for

the expansion of sustainable housing programs for homeless and marginally housed populations to help reduce the number of persons needing to use.<sup>23</sup>

61. Furthermore, a study of Pandemic Planning in Homeless Shelters in Hamilton showed that they were effectively able to prevent outbreaks of coronavirus within shelters. This included screening, rapid assessment and treatment, restructuring of physical spaces to accommodate isolation of residents with confirmed COVID-19 and those awaiting test results; and rapid turnaround of test results through collaboration with regional laboratory program allowing triage of individuals into isolation spaces without exceeding available capacity. Such strategies are not available in encampments.<sup>5</sup>

***B. Some Comments on Respondents' Affidavits***

62. I value the knowledge and compassion expressed in the Affidavits that have been provided to me, which include the Affidavits of Dr. Hwang, Dr. Gupta, Jacara Droog and Angela Allt. I set out some comments on them, including points on which I disagree with them, below.

63. I agree with Dr. Hwang that people experiencing homelessness have a higher incidence of many chronic diseases than the general population.<sup>27</sup> However, in my opinion his affidavit does not support a conclusion that encampments pose lower health risks than shelters or other alternative accommodation.

64. A study referenced by Dr. Hwang, "Cardiovascular Disease and Homelessness" illustrated the risk of Cardiovascular disease among the homeless population.<sup>2</sup>

# TAB 26

68. Additionally, when even the most vulnerable are provided with supportive housing with wrap-around services, outcomes are shown to be greatly improved.

69. Twenty-five highly supportive housing units opened in London with support from London Cares, the City and the London Health Sciences Centre (LHSC). While social, financial, and personal challenges begin to lessen, an impact was also seen on both the health of individuals, and on the healthcare system. "We've seen a reduction in emergency visits by 74 per cent," said Deborah Wiseman, the president of Victoria Hospital, of the first three months for people living in the building. "That extends itself because about 15 per cent of those emergency visits convert to inpatient admission." <sup>41</sup>

70. People who experience homelessness are often victims of physical violence, intimidation and threats of physical violence. While violence can happen in shelters, in my experience people living in encampments have a higher risk of violence, and the violence is more severe.<sup>51, 73, 74, 75, 76, 88</sup>

71. Studies have also found that shelters have also provide protection from violent crimes when compared to unsheltered.<sup>86</sup>

72. I have seen many patients who have been victims of stabbings and beatings. I have had many patients, particularly women and those with physical disabilities tell me that they are threatened with violence if they do not relinquish much of their prescribed opioids, "Safe Supply". I have had patients tell me that they would rather risk having an overdose death from smoking illicit fentanyl than risk getting an infection, such as a spine infection, from injecting regulated drugs such as Hydromorphone (Dilaudid), as having a disabling infection makes them vulnerable. I have had patients who have developed a

severe disabling infection such as a spine infection causes a gait disturbance or have lost a fingers or feet to frostbite express who expressed fear of being discharged back into the encampment because the new physical disability changed their position in the (hierarchy of the) community and made them vulnerable to violence.

73. Many patients that I saw suffered from traumatic brain injury (TBI). The assaults that I was aware of happened outside of a supervised setting, such as a shelter.

74. A Canadian study showed that alcohol-related head trauma is more likely to predispose the subject to subsequent TBI than is the severity of the index trauma itself.<sup>20</sup>

75. The authors concluded that “Mental health support and addressing residential instability and problematic substance use may reduce further risk of TBI and its associated poor health and social outcomes in this population.”<sup>20</sup>

76. Another study referenced by Dr. Hwang found that “Homeless and vulnerably housed individuals with a lifetime history of TBI are more likely to be ED users, arrested or incarcerated, and victims of physical assault over a 1-year follow-up period even after adjustment for health status and other confounders. These findings have public health and criminal justice implications and highlight the need for effective screening, treatment, and rehabilitation for TBI in this population.”<sup>30</sup>

77. This study did not compare people in shelter to those in encampments. In my experience the unsupervised environment within an encampment, as well as alcohol and drug use, put people at risk of having a traumatic brain injury by assault or other trauma

such as a fall. Encampment do not provide the screening, treatment or rehabilitation which can be available at or through a shelter.

78. In addition to violence that my patients have experienced, I am aware that encampments in other areas such as Hamilton have been the sites of violence including stabbings, beatings, shootings, theft and a tent being set on fire.<sup>51, 73, 74</sup> It has also been reported that at an encampment in Barrie, one resident allegedly murdered and dismembered two other residents.<sup>89</sup>

79. Sexual violence, sexual exploitation and sexual traffic are real concerns in encampments. I have had a patient inform me that they were sexually exploited and /or trafficked.

80. The CEO for Oneroof, an agency that has offered youth services in Kitchener, has publicly expressed concerns that girls as young as 12 are being groomed for sexual trafficking at a local encampment.<sup>70, 71, 72, 73</sup>

81. One of the negative consequences of this sexual abuse is sexually transmitted illnesses (STIs). STIs are more common in people who experience homelessness than the general population. Among the homeless population the rates of all STIs are higher in in women and girls than among men and boys, including HIV, syphilis, chlamydia, and gonorrhea providing supporting data that women and girls are vulnerable to sexual exploitation.<sup>18</sup>

82. While sexual violence can happen within a shelter, shelters generally are often age and gender specific and have staff available to safeguard against such occurrences.

# TAB 27

# HOMELESS ENCAMPMENTS:

Municipal Engagement Guidance

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National Working Group on Homeless Encampments

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# A NOTE TO THE READER

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The National Working Group on Homeless Encampments (NWG-HE) – convened by The Shift since January 2023 – presents a Municipal Engagement Guidance. This Guidance is intended to support municipalities in engaging homeless encampments in a constructive and peaceful manner. The Guidance is not a road map to solving homelessness. It is an effort to establish national standards, based in human rights, for municipal government engagement with encampments across the country. It is intended to help ensure the best outcomes for those living in encampments and their communities in the short term, while establishing a foundation for longer-term solutions.

The Municipal Guidance was drafted through discussions and with the input of the NWG-HE whose members include the Chair and Vice-Chair of the Big City Mayors caucus – Mayor Savage (Halifax) and Mayor Clark (Saskatoon), respectively – as well as Indigenous representatives, people with lived expertise, social medicine doctors, front line harm reduction workers, academics, and advocates. Representatives of federal and city governments and human rights institutions also participated as observers. The list of formal participants is at the close of the document. The Municipal Guidance was shared at the Big City Mayors Caucus in May 2023. It was also shared with the Federal Housing Advocate to inform her review of homeless encampments, expected to be concluded in early 2024.

**THE SH/FT**  
#RIGHT2HOUSING



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We would like to live in a Canada in which everyone is safely and adequately housed.

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Homeless encampments are increasingly appearing in communities across Canada, whereby individuals erect tents or informal structures on public or private lands, including unceded territory, to provide themselves with shelter. Those residing in encampments live in very difficult circumstances and are often there because shelter spaces and appropriate long-term supportive housing options are either unavailable and/or do not provide adequate protections and supports for their specific needs.

This Guidance note is intended as a high-level road map to assist municipal governments in addressing homeless encampments by first advocating for appropriate long term supportive housing and in the absence of that, ensuring encampments support the human rights and dignity of those in them, in a manner that respects human rights and promotes human well-being and safe communities. It acknowledges that responsibility for addressing homelessness rests with the three orders of government which must act collaboratively and with a shared sense of urgency in the interest of those who are unhoused or at risk of becoming unhoused.

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## BASIC PRINCIPLES

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The following basic principles should inform the approach:

- Homeless encampments will rarely satisfy the requirements of the human right to housing, and thus should not be understood as a solution to homelessness and should not be permanent.
- Residents of homeless encampments must be treated in a dignified, empathetic and culturally appropriate manner and are entitled to the necessities of life, including affordable, secure, and dignified housing.
- Municipalities do not always have the jurisdiction, capacity, and resources to ensure unhoused people have affordable, secure, and dignified housing. Significant support and intervention from other orders of government is required.
- Indigenous Peoples are dramatically overrepresented in homeless populations in many cities across the country, including in many encampments. Policies and approaches on encampments must be consistent with Truth and Reconciliation and the National Inquiry on Missing and Murdered Indigenous Women Calls to Action and Justice.
- Many encampment residents have complex mental and/or physical health needs that require an integrated approach with healthcare supports.
- Residents who neighbour encampments have legitimate experiences and concerns that require consideration.

# WAYS FOR MUNICIPALITIES TO PREVENT HOMELESSNESS, ADDRESS ENCAMPMENTS AND SUPPORT PEOPLE WHO LIVE IN THEM

## 1. Solicit Provincial and Federal Government Support

Coordinated, long-term financial and policy supports of federal and provincial governments are required for homeless encampments to be resolved. Municipalities should collectively escalate the issue on provincial and national political agendas as an urgent matter of fundamental human rights, for example by calling for an inter-governmental action-table on homelessness that includes Indigenous, civil society and lived-expertise participation. The focus should be twofold: preventing homelessness and addressing homeless encampments.

## 2. Meaningfully Engage with those Living in Encampments

Better, more peaceful outcomes will be achieved if people living in homeless encampments and the individuals and organizations they choose to support them, are meaningfully engaged and have the capacity to shape and co-create solutions with the aim of closing the encampment. Successful meaningful engagement can be a long process often taking months and requires consistency and patience.

Municipal governments, working with Indigenous partners, must consult with Indigenous residents of encampments and their representatives where appropriate, securing their free, prior, and informed consent with respect to any decision or measure that will impact them.

All engagement must be culturally appropriate.

**See Appendix for the elements of successful meaningful engagement.**

## 3. Explore all viable alternatives to encampment eviction or removal

While homeless encampments should not be permanent, every effort should be taken to avoid forced removal of encampments, recognizing court rulings in British Columbia and Ontario indicating that in some circumstances to do so violates the Charter of Rights and Freedoms.

Meaningful engagement with encampment residents (see below), good faith dialogue, and the offer of reasonable alternative housing options (eg: rent supplements; tiny homes; hotel rooms; modular units) will dramatically reduce the need to remove people involuntarily from encampments.

Issuing trespass notices, enforcing prohibitive bylaws, or otherwise coercing people in encampments into housing should be considered a last resort after all viable alternatives are exhausted.

Where an encampment is erected in a dangerous (eg: construction site) or inappropriate (eg: cemetery, playground, school, daycare) location, the municipality should engage those in the encampment to relocate to a more suitable site, even if it is an alternate tenting site.

#### **4. Essential Services for Encampment Residents**

Homeless encampments do not satisfy the requirements of the right to housing. However, where they exist, municipalities, working with their government and community partners, should ensure that to the greatest extent possible encampments meet the basic needs for survival of those living there. This will make encampments safer for those residing therein, as well as for neighbouring homes and businesses.

**See Appendix for examples of essential services.**

#### **5. Encampments and Safety**

People who reside in encampments must always be safe as must those living near encampments. Safety within an encampment is more likely if trusting relationships are built between residents (alongside those they rely upon for support), and municipal officials (including fire departments, emergency responders and police) healthcare providers, outreach workers and others supporting the encampment. Indigenous-led supports are critical to the safety of Indigenous persons living in encampments, and foundational to trust-building.

Municipalities should work with the above and other actors as appropriate to develop an encampment safety protocol, taking into consideration relevant power imbalances. This protocol should outline under what circumstances police and security personnel should be called into the encampment community and by whom. It should also include measures to address sexual assault, physical assault, and exploitation of vulnerable groups, such as women, gender-diverse populations, minors, and racialized populations.

People living in encampments should be provided training in safety procedures including with respect to potentially hazardous equipment and materials.

Personal belongings of encampment residents should always be treated with care, regardless of the security issue at hand, except in the case of an emergency, i.e. fire, extreme weather event.

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# APPENDIX

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## MUNICIPAL ENGAGEMENT WITH THOSE LIVING IN ENCAMPMENTS WILL BE MOST SUCCESSFUL IF IT:

I. INCLUDES TRAINING FOR ENCAMPMENT RESIDENTS WITH RESPECT TO THEIR HUMAN RIGHTS, AND SAFETY PROTOCOLS AND REQUIREMENTS;

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II. INCLUDES THE INDIVIDUALS AND ORGANIZATIONS ENCAMPMENT RESIDENTS RELY UPON FOR SUPPORT IF SO REQUESTED;

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III. IS IMMEDIATE, REGULAR AND ONGOING;

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IV. IS PRACTICED IN GOOD FAITH;

---

V. IS INCLUSIVE, CULTURALLY APPROPRIATE AND NON-DISCRIMINATORY;

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VI. OCCURS AT APPROPRIATE AND ACCESSIBLE TIMES AND LOCATIONS;

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VII. PROVIDES AN OPPORTUNITY FOR ENCAMPMENT RESIDENTS TO RAISE CONCERNS AND ISSUES AND TO RECEIVE IMMEDIATE FEEDBACK AND/OR A COMMITMENT TO RETURN WITH INFORMATION AT A SPECIFIED TIME; AND

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VIII. IS BASED ON THE UNDERSTANDING THAT ENCAMPMENT RESIDENTS ARE NOT HOMOGENOUS AND WILL ACCEPT AND REQUIRE DIFFERENT SOLUTIONS.

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# ESSENTIAL SERVICES

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In consultation with those living in encampments, municipalities, working with other orders of government and community partners, should ensure the following are available on-site or within reasonable proximity to encampments:

- Durable tents or building code compliant structures that are fire retardant + can withstand inclement weather, that provide privacy, cots to sleep on, and bedding
- Access to safe and clean drinking water
- Access to warming/cooling areas
- Access to sufficient and appropriate quality clothing
- Resources and supports to ensure fire safety (eg: training on fire safety for those living on site)
- Assistance for those living in encampments to develop social protocols. For example: zero-violence policy; anti-racism and harassment policy for encampment residents as well as other users and abutters of public spaces where encampments exist.
- Access to hygiene and sanitation facilities
- Waste management systems including for drug-use related waste (needles, pipes).
- Power sources
- Facilities and resources that support access to healthy food supply and its storage
- Garbage facilities
- Proximate safe and secure storage facilities for personal belongings
- Rodent and pest deterrence
- Resources to support harm reduction
- Creation of safe areas where women, LGBTQ2S+ and others at risk of violence and exploitation may reside

# NATIONAL WORKING GROUP ON HOMELESS ENCAMPMENT PARTICIPANT LIST

|                                     |                                                                                                |
|-------------------------------------|------------------------------------------------------------------------------------------------|
| Dr. Alexandra Flynn                 | Associate Professor, Peter A.<br>Allard School of Law, The University of British<br>Columbia   |
| Dr. Andrew Bond                     | Medical<br>Director at Inner City Health Associates (ICHA)                                     |
| Dr. Andrew Boozary                  | Executive Director, Population<br>Health & Social Medicine at UHN                              |
| BC Human Rights Commission Observer | Office of the BC Human Rights Commissioner                                                     |
| Caroline Leblanc                    | Professor and PhD Candidate,<br>Sherbrooke University                                          |
| Celeste Hayward                     | Director, Operations, Aboriginal Housing<br>Management Association (AHMA)                      |
| Charlene Lee                        | Lived Expert, Kitchener                                                                        |
| Mayor Charlie Clark                 | Mayor, Saskatoon                                                                               |
| Infrastructure Canada Observer      | Infrastructure Canada                                                                          |
| Derek Cook                          | Director, Canadian Poverty Institute                                                           |
| Diana Chan McNally                  | Community & Crisis Worker,<br>All Saints Toronto Sessional Instructor, George<br>Brown College |
| Jaimee Gaunce                       | Director of Policy, Ontario Aboriginal Housing<br>Services (OAHS)                              |
| Justin Marchand                     | Chief Executive Officer, Ontario<br>Aboriginal Housing Services (OAHS)                         |
| Dr. Kaitlin Schwan                  | Executive Director, Women's National Housing &<br>Homelessness Network (WNHHN)                 |
| Leilani Farha                       | Global Director of The Shift                                                                   |
| City of Kitchener Observer          | City of Kitchener                                                                              |
| Mayor Michael Savage                | Mayor, Halifax Regional Municipality                                                           |
| Stephanie Lowe                      | Senior Housing Policy Analyst, Aboriginal Housing<br>Management Association (AHMA)             |

# TAB 28

37. The Region has also been responsive to the need to be flexible in the alternatives it presents to Encampment Residents. To that end, the Region has allocated additional funding to help resettle Existing Residents but has not been prescriptive about how these funds must be used in each individual case. This means that individuals are not funnelled into a “one size fits all” approach – something that various affidavits in the RMR warn against, and a concern of which the Region is well aware through its work directly with unhoused individuals and consultations with their advocates.

38. On the issue of the closure of the Encampment, the Region gave notice when it was able to do so once a plan had been developed. The Region has been consistent in advising that the Property would be needed by Metrolinx as part of the construction of the KCTH, and that the Region would not enable the Encampment to continue forever.

39. My view is that the Region did not need to undertake specific consultations with community to members to know that there would be opposition to the closure of the Encampment. That there is community opposition to the Encampment’s closure is something that is well known to the Region through its interactions with community members in the various mediums of consultation I set out above. The Region is well aware that there is a difference of opinion about the relative benefits and dangers of encampments, and the best policy responses to encampments. It has been engaging the community on these issues for years.

40. In reviewing the RMR, I further noted that some of the affiants express the view that the Region should simply allocate a new piece of land for the Encampment to relocate

# TAB 29

the Region's residents. This is especially true for those who rely on public transit daily, including those who commute for work, seniors, students, lower-income residents, and people with disabilities.

18. The KCTH will make it easier for residents of the Region to reach jobs, schools, employment centers, shelter, hospitals, and essential services. The KCTH will connect multiple transportation services including the following modes in one location:

- (a) ION light rail transit;
- (b) Grand River Transit, including bus service;
- (c) Expanded GO Transit (including both rail and bus service);
- (d) VIA Rail service;
- (e) Inter-city bus service;
- (f) Passenger vehicles and car shares;
- (g) Neuron scooters, cyclists and pedestrians, including a connection to the Waterloo Region Trail network; and
- (h) Regular service to the Region of Waterloo International Airport (YKF).

19. By consolidating multiple transit systems—buses, inter-city, local and light rail, and passenger vehicles—into one location, the KCTH will dramatically improve public transit access throughout the Region by reducing transfer times and making connections more convenient.

# TAB 30

- (c) To the north, by a Metrolinx owned rail corridor; and
- (d) To the south (across Victoria street), by among other businesses, a church which includes St. John's Kitchen which provides free meals to persons in need including to persons residing at the Encampment.

14. An aerial map of the Property and surrounding uses is attached to this affidavit as **Exhibit "D"**.

***D. The Kitchener Central Transit Hub***

**1. The KCTH is a cornerstone of the Region's strategic priorities**

15. As the Waterloo Region's population quickly grows to one million residents, the community is on the cusp of significant change. To help shape future growth, the Region, along with its partners, is leading transformational projects intended to positively impact residents and visitors for generations to come.

16. The KCTH is one of these projects. It has been in development for nearly a decade and is a landmark endeavour for the Region. The Region's belief is that the KCTH is vital to the economic and social growth and wellbeing of the residents of the Region, and that it has the potential to stimulate growth and development well into the future. Once completed, the KCTH will act as a gateway to the Region, serving current and future residents, as well as visitors from around the world. It will redefine how people connect, commute, and experience the Region of Waterloo community.

17. Reliable public transit is a critical public good. A reduction in commuter times and improvement in overall mobility across the Region will constitute a significant service to

the Region's residents. This is especially true for those who rely on public transit daily, including those who commute for work, seniors, students, lower-income residents, and people with disabilities.

18. The KCTH will make it easier for residents of the Region to reach jobs, schools, employment centers, shelter, hospitals, and essential services. The KCTH will connect multiple transportation services including the following modes in one location:

- (a) ION light rail transit;
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- (d) VIA Rail service;
- (e) Inter-city bus service;
- (f) Passenger vehicles and car shares;
- (g) Neuron scooters, cyclists and pedestrians, including a connection to the Waterloo Region Trail network; and
- (h) Regular service to the Region of Waterloo International Airport (YKF).

19. By consolidating multiple transit systems—buses, inter-city, local and light rail, and passenger vehicles—into one location, the KCTH will dramatically improve public transit access throughout the Region by reducing transfer times and making connections more convenient.

20. The KCTH will also help connect the Region to other major urban areas including the GTA and southwestern Ontario, and improve access to and better integrate the communities surrounding Kitchener-Waterloo. For residents in outlying areas who currently face long or fragmented travel times, the KCTH will offer an opportunity to commute in a more direct and efficient manner, and to commute to and from communities that would have previously been less accessible.

21. Eventually, the goal of the KCTH is to allow, for example, a resident of Kitchener-Waterloo to commute to job opportunities in Toronto without needing to relocate, and vice versa. This flexibility will help address affordability challenges in Kitchener-Waterloo and the surrounding communities.

22. The KCTH also has the potential to boost the economic health of the surrounding Region of Waterloo community significantly. In my experience, companies are likely to expand or relocate to areas with strong transit access. For the immediate Kitchener area surrounding the KCTH, the influx of daily commuters will support local businesses, attract investment, and raise the appeal for retail, commercial, and residential development, ultimately providing job opportunities. For residents across the Region, better access to jobs and education translates into greater economic mobility and opportunity.

23. One example of how I anticipate this will work in practice is that the KCTH will serve as the Region's connection to the "Toronto-Waterloo Innovation Corridor"—one of North America's fastest-growing technology and business ecosystems. The Toronto-Waterloo Corridor is the third largest 'tech' cluster in North America and home to more than approximately 15,000 tech companies, including over 5,200 startups and more than

343,000 employees in high-tech industries. Workers and firms will all benefit from the faster, more predictable access to regional partners, clients, and labor markets the KCTH will provide. A copy of the Waterloo EDC's website containing a description of the Toronto-Waterloo Innovation Corridor is attached to this affidavit as **Exhibit "E"**.

24. The KCTH will also support the Homes for All, Equitable Services and Opportunities and Climate Aligned Growth focus areas within the Region's 2023 – 2027 Strategic Plan (the "**Strategic Plan**"). A copy of the Strategic Plan is attached to this affidavit as **Exhibit "F"**.

## **2. The Region's Contractual Obligations with respect to the KCTH**

25. On May 7, 2018, the Region and the Province of Ontario, through the Ministry of Transportation, entered into a Transfer Payment Agreement for the partial funding of the first phase ("**Phase 1**") of the KCTH in an amount of approximately \$43,000,000. A copy of the May 7, 2018 Transfer Payment Agreement is attached to this affidavit as **Exhibit "G"**.

26. On November 25, 2024, the Region and the Province of Ontario, through the Ministry of Transportation, entered into an amending agreement ("**Amending Agreement No. 1**") with respect to the May 7, 2018 Transfer Payment Agreement. Amending Agreement No. 1 outlines, among other things, that Metrolinx would be taking on some of the off-corridor work that was contemplated as part of the May 7, 2018 Transfer Payment Agreement. Amending Agreement No. 1 also provides that the completion date for the project (as defined in the May 7, 2018 Transfer Payment Agreement) is December

# TAB 31

contractor that would construct the Metrolinx scope of the KCTH. Metrolinx also advised that the indicated possession date may be subject to change, and it committed to working with the Region to confirm the actual possession date and to advise of any relevant changes to the project timelines that could impact the indicated possession date.

31. As of the date of swearing of this affidavit, Metrolinx has not advised that the March 2026 date has changed.

32. In May of 2025, Metrolinx and the Region finalized a Cost Sharing Agreement (the “**Memorandum of Understanding**” or **MOU**). Pursuant to the MOU, Phase 1 of the KCTH will achieve design completion by July 2025, and proceed to tender in October of 2025.

33. Phase 1 is also anticipated to include the following construction by the Region:

- (a) A pedestrian bridge over King Street connecting the multi-use path directly to the station;
- (b) A bus loop that has capacity for up to 8 buses, including Grand River Transit, GO Transit and third party bus carriers;
- (c) A large pedestrian ramp to provide accessible access to the station platform and to the multi-use path;
- (d) A pickup and drop-off area;
- (e) Construction of the off-site parking lot;

# TAB 32

similar rail construction projects where workers have been injured by equipment falling over while traversing a grade raising or on shaky ground.

## **2. Alternative Sites are not Available**

41. The Region has considered whether the Region could provide another property that it owns to Metrolinx as an alternative to the Property.

42. To undertake this analysis, my office made a list of other properties owned by the Region and located within one kilometer of 50 Victoria Street. We have determined that no other site can be used for Metrolinx's purposes, for the following reasons:

(a) The following sites are not adjacent to the sites where Metrolinx will be performing its work, and are already being used for the Project, such that they cannot be used for staging and laydown purposes:

(i) 16 Victoria Street North, 510 King Street West, 520 King Street West: these properties comprise the future site of the KCTH itself, and will need to remain vacant for other construction work required to be performed in respect of the KCTH construction;

(ii) 60 Victoria Street North: this property is the site of the Rumpel Felt Co. building, and on which other Region work will take place in the near term, including demolition of part of the Rumpel Felt building; and

(iii) 123 Breithaupt Street: this site is above grade, there is private land between this site and Duke Street West, and this land is already

intended to be used and occupied by Metrolinx for other work related to its corridor works.

(b) The following sites have other active ongoing uses: 70 Victoria Street North (commercial complex where buildings are already leased out); 84 Victoria Street North (a leased parking lot); 100 Weber Street West (which operates currently as a paramedic services building); and 225-227 Weber Street West (which operates as a bus terminal and is a paved surface on a corner lot).

(c) The following sites are not appropriate for staging and laydown purposes, because they are not proximate to the construction sites, and are small plots of grass that do not contain enough space: 237 Weber Street West; 249 Weber Street West; 253 Weber Street West; 281 Weber Street West; 341 Weber Street West; 345 Weber Street West; and 349 Weber Street West.

43. A copy of a chart prepared by my office showing the alternative land uses is attached to this affidavit as **Exhibit "K"**.

44. Finally, the option of purchasing additional land for laydown is impractical for several key reasons. The cost of acquiring suitable land that is proximate to the construction site is prohibitively high and the types of land available in close proximity are not suitable for construction purposes. Finally, the time required to identify, purchase, and prepare new land would delay the project timeline.

# TAB 33

**3. The Region needs to commence remediation work by December 2025**

45. Metrolinx requires the Property by March 2026. The Region will be obligated to provide the Property to Metrolinx in a condition fit for Metrolinx's use. Prior to providing the Property to Metrolinx for its use, the Region will require time to engage in remediation and preparation of the Property.

46. Remediation work will include site clean up, site investigations and geotechnical testing. It could also include soil testing and scraping, removal of hazardous materials, groundwater monitoring, site clean up, investigations and geotechnical testing, and other remediation to ensure the land meets safety standards and will not pose risks to workers or future users. Estimates from the Region's Design and Construction team (responsible for all construction and construction oversight at the Region) indicate that it will take the Region up to three months to complete the remediation work on the Property, allowing for contingencies for unfavourable weather.

**F. Other Work to be done Adjacent to the Property**

47. In addition to requiring the Property itself for construction, construction work will be ongoing in the neighbourhood surrounding the Property and on all sides of the Property.

**1. Metrolinx's Track and Platform Works**

48. Metrolinx's construction within the rail corridor, including, as noted above, at 123 Breithaupt Street, will take place directly to the north of the Property. Part of the rail corridor works will include a new rail platform that will extend from King Street to adjacent to the Property. The initial components of Metrolinx's work will involve building up the

# TAB 34

necessary and appropriate and consistent with those set out in other by-laws enacted by the Region.

114. In keeping with the foregoing, to date, the Region has not taken steps to enforce the By-law. This is particularly so with respect to the Region's powers under the By-law to limit access to the site to Existing Residents.

115. As a result of the Region not enforcing the By-law, approximately fifteen new individuals have joined the Encampment since April 16, 2025, meaning that the Encampment now has a population of approximately forty-five individuals.

116. This demonstrates that, if the By-law cannot be enforced, the population present at the Encampment may increase beyond the Existing Residents, making it increasingly challenging to provide vacant possession of the Property by December 1, 2025.

117. As I explained above, as more individuals join the Encampment closer to December 1, it will be increasingly difficult for my team to assist these individuals properly through creating and implementing tailored IHPs. Just as keeping a closing shelter at full capacity until the date of its closure is undesirable and inconsistent with the Region's usual practice, allowing the Encampment to grow will also pose significant challenges to the USWs working at the Encampment, and will be harmful for the community at the Encampment.

118. For this reason, enforcement of the By-law prior to December 1 is crucial for ensuring that my team can adequately support Existing Residents.

# TAB 35

40. In the longer term, options include placement in supportive housing units and scattered site rent supplements with social supports.

41. To allow for the Plan to be implemented successfully, allocated resources were needed for the Region's existing system to ensure that the Existing Residents have a place to go and are offered suitable options for their specific needs. To that end, the Region has made an additional \$814,333 in net new funding available to provide additional accommodation options, such as those I have noted above.

42. New resources allocated by Regional Council can be used for supportive housing units, affordable housing units, and/or motels with social supports for a transitional period. The additional resources allocated to this work will augment the existing resources in the housing stability system.

43. Regional staff will work across that system to create opportunities for Existing Residents in the Encampment. To be clear, this could mean that resources may be used to move an individual currently residing in transitional housing (i.e., not an Existing Resident of the Encampment) into affordable housing, which would then free up a space for an Existing Resident to be taken up in a manner consistent with their IHP.

44. I am pleased to report that from April 16, 2025 to June 5, 2025, eleven Existing Residents were supported in accessing alternative accommodations and have not returned to the Property. My team is working hard to provide similar supports to other Existing Residents. There are currently 29 Existing Residents (i.e., individuals present prior to April 16, 2025) on the Property.

# TAB 36

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# TAB 37

1 best chance to support individuals who are currently  
2 residing at 100 Victoria to take up alternative  
3 locations options by December the 1<sup>st</sup>.

4 100. Q. Okay, so if I understand your answer,  
5 the money can be used to fund additional motel rooms  
6 and add capacity to the system that way?

7 A. Motel rooms, rent supplements, and  
8 supportive housing specifically.

9 101. Q. Yeah.

10 A. However ---

11 102. Q. I was asking just about the motel  
12 rooms. So that's one thing, one area where you can  
13 build capacity. You can actually get more rooms, is  
14 that what you're saying?

15 A. That's correct.

16 103. Q. And then you also said, the third thing  
17 you said was additional resources for supportive  
18 housing beds. Does that mean additional beds  
19 somewhere in supportive housing?

20 A. So the idea is -- maybe I'll just take  
21 a step back. The net new resources are not tied  
22 specifically to X number of motel rooms, X number of  
23 rent supplements, or X number of supportive housing.  
24 We communicated to council that those three tools  
25 offer -- are very helpful in a situation like this,

1 for short-term transitions and this bucket of  
2 resources will likely be used for one of those three  
3 things, or a combination of those three things. They  
4 are not prescribed on how they will fully be utilized.  
5 Once we are -- once we've, you know, expended those  
6 resources, we will communicate back to council how  
7 they were actually used.

8 104. Q. And it says that the funding -- and you  
9 mentioned this in your evidence a few minutes ago,  
10 that the funding is for a transitional period; what's  
11 the transitional period? Is it April 16<sup>th</sup> to November  
12 30<sup>th</sup>?

13 A. So I don't have the numbers right in  
14 front of me, unfortunately, but I can tell you the --  
15 a portion of the net new resources will be fully  
16 annualized into our following budget, so they will  
17 carry on in perpetuity, and a portion will need to be  
18 re-allocated within an existing envelope by the end of  
19 2027. Sorry, by the beginning of 2027.

20 So a year -- a portion of them -- I'd have  
21 to go look to tell you the exact amount.

22 105. Q. Okay.

23 A. A portion will be annualized fully in  
24 perpetuity, and a portion we will need to re-allocate  
25 within the system after -- yeah, in 2027.

1 106. Q. Okay, so sorry, this is just my own  
2 ignorance with the language you're using.

3 A. Sure.

4 107. Q. So when you say, "Fully annualized,"  
5 that means that a portion of the \$814,000, some  
6 portion of that will continue to be part of the  
7 budget? In other words, let's say it's \$400,000, you  
8 have \$400,000 for this fiscal period, but you're for  
9 sure getting another \$400,000 in the next fiscal  
10 period?

11 A. That's correct.

12 108. Q. Is that what you mean?

13 A. That's correct.

14 109. Q. Okay. This amount of housing though,  
15 sorry, this amount of funds -- just so I understand it  
16 in a practical way, are you able to say -- I mean how  
17 many motel rooms does that fund for how long?

18 A. So as I previously answered, this is  
19 not tied to a binary of we only have X number of motel  
20 rooms for Y period of time. We have articulated to  
21 council that these are the areas that we know through  
22 experience can be helpful, and given that we now had a  
23 deadline, which we had communicated broadly and widely  
24 across the community, that at some point these lands  
25 were going to be used for another purpose, now that we

# TAB 38

colleagues on the USW team that, as of July 29, 2025, the number has now grown to 33 new individuals (although, as I explain below, 3 of these individuals have been supported into alternative arrangements, so only 30 of these new individuals remain onsite).

9. At paragraph 9 of the 2<sup>nd</sup> Sweeney Affidavit, I also explained that, as of the date of that affidavit, 13 of the 40 Existing Residents had been supported into alternative living arrangements. As of the date of this affidavit, 20 Existing Residents have been assisted in accessing alternative living arrangements. Three other individuals who arrived at the Encampment after April 16, 2025 have also been placed in such arrangements, meaning that a total of 23 individuals who were residing at the Encampment have been assisted by the Region in accessing alternate arrangements.

10. These alternate arrangements I reference above are not time limited, in that there is no "expiry date" by which these individuals need to find other arrangements or otherwise leave. The Region has made a commitment to annualize some of the additional resources allocated to support Existing Residents so that there will be further funds available for this purpose in 2026. (Budgeting beyond 2026 will take place in due course.) To be clear, this does not mean the Region believes that motels and other transitional housing options are a long-term solution to homelessness, and we remain committed to continue working with unhoused individuals in the Region to assist them in accessing permanent housing.

11. Individuals residing at the Encampment are also obviously free to leave the Encampment if they so choose. There have been 7 individuals who were Existing

# TAB 39

By-Law Number 26-001

of

The Regional Municipality of Waterloo

A By-law to Amend By-Law 25-021, A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by The Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development

WHEREAS The Regional Municipality of Waterloo (the “Region”) owns the property municipally known as 100 Victoria Street North, in the City of Kitchener (“100 Victoria Street”);

AND WHEREAS 100 Victoria Street is required for the construction of the Kitchener Central Transit Hub (the “KCTH”) by the Region and Metrolinx commencing in 2026;

AND WHEREAS the Region requires vacant possession of 100 Victoria Street by April 1, 2026 to facilitate the construction of the KCTH;

AND WHEREAS the KCTH, once constructed, will bring significant economic opportunity to the Region, including providing more affordable transportation options and greater connectivity for all residents of the Region to access jobs, schools, and essential services both within and outside the Region;

AND WHEREAS the commencement of construction of the KCTH entails a significant investment in the Region;

AND WHEREAS there are currently persons, without permanent residences, who are occupying parts of 100 Victoria Street including through the erection of temporary shelters and the placement of personal property (the “Encampment”);

AND WHEREAS the Region enacted By-Law 25-021, A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by The Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development respecting the conduct of persons entering upon 100 Victoria Street to ensure that a safer and more orderly environment is maintained and to obtain vacant possession (the “100 Victoria Street Code of Use By-law”);

AND WHEREAS the Region wishes to amend the 100 Victoria Street Code of Use By-law to defer the vacant possession date, remove the offence provision and to codify a transition policy;

NOW THEREFORE, the Council of the Regional Municipality of Waterloo enacts as follows:

- 1. That the 3<sup>rd</sup> (third) preamble of the 100 Victoria Street Code of Use By-law is hereby deleted and replaced with the following:

“AND WHEREAS the Region requires vacant possession of 100 Victoria Street by April 1, 2026 to facilitate the construction of the KCTH;”

2. That the 11<sup>th</sup> (eleventh) preamble of the 100 Victoria Street Code of Use By-law is hereby deleted and replaced with the following:

“AND WHEREAS the Region is enacting this By-law to specifically regulate and govern 100 Victoria Street and to obtain vacant possession as of April 1, 2026;”

3. That section 1 of the 100 Victoria Street Code of Use By-law is hereby amended by adding the following subsection (1.a):

“(1.a) “**Alternative Accommodation**” means the forms of accommodation as listed in Schedule “C”, paragraph 2, of this By-law;”

4. That subsection 1(7) of the 100 Victoria Street Code of Use By-law is hereby deleted and replaced with the following:

“(7) “**Resident**” means anyone residing at 100 Victoria Street as of April 16, 2025 being the date that notice of this bylaw is provided through the posting of the agenda for the Council meeting at which this By-law will be considered on the Region’s website (“Public Notice Date”).”

5. That subsection 3(1) of the 100 Victoria Street Code of Use By-law is hereby deleted and replaced with the following:

“(1) Commencing on April 1, 2026, no person shall enter onto, reside on, or occupy 100 Victoria Street or any part thereof.”

6. That section 4 of the 100 Victoria Street Code of Use By-law is hereby deleted.

7. That section 6 of the 100 Victoria Street Code of Use By-law is hereby deleted and replaced with the following:

“(1) From the date of passage of this By-law until April 1, 2026, no Resident will be removed involuntarily from or prohibited from entering their temporary shelter at 100 Victoria Street as a result of engaging in a Prohibited Activity or as a result of section 3 of this By-law, unless:

- (a) the Prohibited Activity creates or contributes to a serious risk to their own health or safety or the health or safety of another person, or
- (b) the Region, in writing, offers Alternative Accommodation to the Resident in accordance with the Transition Protocol set out in Schedule “C” to this By-law and the Resident has either declined or fails to accept the offer by March 31, 2026.

(2) For greater certainty, subsection (1)(b) of this section shall not apply to any person present at 100 Victoria Street who is not a Resident. Notwithstanding, and without constituting a pre-condition for the enforcement of this By-law, the Region will offer to bring such person who is not a Resident into the Region’s housing stability system and endeavour to provide the person with

appropriate housing options, subject to resources being available and such person cooperating with the Region’s outreach staff.”

8. That the 100 Victoria Street Code of Use By-law is hereby amended by adding the following Schedule “C”, Transition Protocol:

“SCHEDULE "C"  
TRANSITION PROTOCOL

The Region seeks to minimize the possible negative impacts of transitioning Residents from the Encampment to Alternative Accommodation. Accordingly, the Region will take the steps set out below.

Prior to the enforcement of this By-law to require the removal of any Resident pursuant to subsection 6(1)(b) of this By-law, the Region shall:

- 1. Make best efforts to offer development of an Individual Housing Plan (“IHP”) to Residents who accept such offer and engage with a Region Unsheltered Support Worker (“USW”) or other Street Outreach / Housing Support Worker in the development of their IHP;
- 2. Offer a Resident Alternative Accommodation as set out in their IHP. For clarity, Alternative Accommodations can include:
  - a. Emergency Shelter: temporary, short-term accommodation for individuals and families who are homeless, at risk of homelessness, or fleeing violence;
  - b. Transitional Housing: temporary, supportive housing for individuals and families experiencing homelessness that provides a structured environment and life skills training to help them move into permanent housing;
  - c. Affordable/Supportive Housing: permanent tenancy with a local housing provider, either through purpose built affordable housing (e.g., not for profit, co-op, or Waterloo Region Housing) or a rental supplement program to make a market unit affordable. Supportive Housing offers additional staff and housing stability support to the tenant to ensure the stability of tenancy;
  - d. Motel Program: temporary, short-term accommodation for individuals and couples who are experiencing homelessness and can’t access the emergency shelter/transitional housing system, supported by USW and community partner social/health services staff; or
  - e. Other agreed upon accommodation not listed above as set out in the IHP

For clarity, for a Resident who accepts an offer and is placed in a motel or emergency shelter, it is expected that they will be able to remain in such temporary shelter until a space becomes available in transitional housing or affordable/supportive housing;

For further clarity, the Region shall refer a Resident back to USW’s to make best efforts to resolve any issues or find

different Alternative Accommodation in the event a Resident loses Alternative Accommodation due to non-compliance with rules;

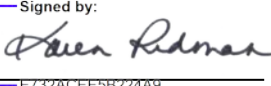
- 3. Offer social service supports, in the same nature as provided at 100 Victoria Street, to a Resident once moved to Alternative Accommodation; and
- 4. Offer a Resident transportation, including personal belongings, to Alternative Accommodation and coverage for up to 6 months' storage of any additional personal belongings that cannot be taken to the Alternative Accommodation at the same time, all at no cost to the Resident."

9. This By-law shall come into force and effect on February 1, 2026.

By-law read a first, second and third time and finally passed in the Council Chamber in the Regional Municipality of Waterloo this 9<sup>th</sup> day of January, A.D., 2026.

Signed by:  
  
28C93659EA85420...

Regional Clerk

Signed by:  
  
E732ACEE5B224A9...

Regional Chair

# TAB 40

- (m) carrying any goods, without authorization, which are offensive, dangerous, toxic, corrosive, flammable or explosive in nature that are likely to alarm, inconvenience, cause discomfort or injure any person, or cause damage to property, whether or not such good are contained in an approved container□
  - (n) bringing any large animal onto the Designated Premises, without authorization, other than during an emergency or for use as a service or guide animal□
  - (o) entering, without authorization, onto the Designated Premises without a shirt or footwear□
  - (p) bringing a small animal or bird, without authorization, that is not in a cage or carrying device designed for secure and safe transport unless the small animal or bird is required for use as a service or guide animal□
  - (q) acts which are perceived as threatening, intimidating or sexual harassment□
  - (r) entering, without authorization, any area that is designated or used as a work area for an employee□
  - (s) interfering with an operator of a public transportation vehicle or obstructing his or her vision□
  - (t) erecting, without authorization, any structure, tent or temporary shelter□
  - (u) consuming alcohol without authorization□
  - (v) riding or standing on any exterior portion of a public transportation vehicle or leaning out of or projecting any body part through any window of a public transportation vehicle□
  - (w) projecting a body beyond the edge of any platform for a public transportation vehicle, except to enter or leave the vehicle□
  - (x) riding a bicycle on any platform for a public transportation vehicle□and
  - (y) any activity contrary to the *Criminal Code of Canada*, R.S. 1985, c. C-46, as amended, other federal statutes, provincial statutes or municipal by-laws□
- (3) Acts which are contrary to any specific rules or terms of use for the Designated Premises provided that the specific rules or terms of use have been posted in a conspicuous location at the Designated Premises□
  - (4) Entering Designated Premises without paying the required fee or fare or having proof of payment for the required fee or fare for admission to the Designated Premises□
  - (5) Failing to comply with the terms and conditions of any pass, transfer or other instrument that is required for the entrance or use of Designated Premises□and
  - (6) Entering a public transportation vehicle at other than a designated passenger entrance.

# TAB 41

12. If this site was no longer available, it would be impossible for me to obtain housing in the private rental market, I would not be able to afford rent and would have to talk to friends to find a place to stay or find another campsite.
13. I will not stay in a shelter because of thieves. At the Encampment, nothing gets stolen, everyone watches out for each other and I feel safe.
14. I have been assaulted while experiencing homelessness.
15. I have not stayed in a motel since experiencing homelessness, but I would if it was offered. I do not have any transportation and I cannot walk long distances due to my knee and other disabilities. A motel or any housing option would need to be close to food and other support services so I could access those supports.
16. I was approached once recently by Region staff to talk about housing. I am open to talking to them, but I never heard anything further.
17. I rely on donations and food drop-offs made to the 100 Victoria Street encampment as well as St. Johns Kitchen. People from the community come regularly to drop off food and water. I would be impacted if these donations stopped or people were not able to continue to drop by.

# TAB 42

10. I don't want to stay in the encampment at 100 Victoria Street ("100 Vic encampment") because there are too many drugs. I stayed there a few weeks ago to sleep but I don't have a tent there. I have also found in encampments I get targeted by police because I'm First Nations. The police will push me around. I have also found racism when staying in shelters. I've been robbed and attacked, then kicked out of the shelter for fighting back.

Q. and charged

11. Three or four years ago I stayed in a motel through the community agency Lutherwood. My ODSP benefits helped pay for me to stay there. But the funding for that program ended and I had to leave. I can't stay in a motel anymore because the drugs are worse there than anywhere else. People come in from out of town to drink and use. I've saved many peoples' lives from overdosing at motels.
12. Right now I mostly just walk around at night time and sleep when I can during the day. I have a few friends who let me come to their places to sleep and clean up. I sleep wherever I can.
13. I don't have any belongings. Everything I had has been lost, stolen or thrown out. I can't carry a bag at all because of my back pain.
14. While homeless I've been robbed. A few years ago I was beaten with a bat.

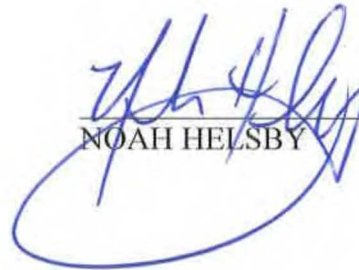
# TAB 43

13. It is important for me to live near the downtown area because this is where our community and resources are. I use the soup kitchen for food and to use the phone. I also go to 87 Victoria St. for food and washrooms, and go to the Tiny Home Takeout for food. My physical disabilities prevent me from walking long distances.
14. I have noticed that there is a lack of people dropping off donations and supplies since the By-Law was introduced, and since it has been in the media. I worry that people think the encampment is closed or that they are not allowed to visit the site. I rely on the community food and water donations that are dropped off at the site. Without these donations it makes it harder to survive
15. I feel safe at the encampment. Right now I have people here that would watch my stuff and my tent. If I wasn't at the encampment I would be more vulnerable. There would be no sense of safety.
16. If I were to leave the encampment, I would have to look for another place to put up my tent with my girlfriend.
17. I have spoken to outreach workers, they have talked to me about housing, but I feel they are making promises that they might not be able to keep. So far nothing has been offered to me.
18. I would stay in a motel if offered, it would be nice to have a washroom, shower, sink and address. The only reason I wouldn't accept a motel is if it would affect permanent housing

options. I don't want a temporary solution. I want something permanent. I want to get back into an actual apartment, living life again, not just floating by.

19. If I were to be fined for being at the encampment, I wouldn't be able to pay it right away, it would take me a long time to pay it off. I worry that a fine would prevent me getting housing.

AFFIRMED BEFORE ME in the )  
 City of Kitchener, this 15 day of )  
 May, 2025 )  
 In the Regional Municipality of Waterloo )

NOAH HELSBY

**ANNIKA MARIE STANTON,**  
 a Commissioner etc.,  
 Province of Ontario,  
 while a licensed Paralegal.  
 LSO #P17289

# TAB 44

22. I would accept a motel if it were offered to me by the Region. However, I would prefer the motel to be close to the supportive resources I am familiar with and frequently access. For example, I would not want to be set up in Cambridge.

23. I do not need a motel to transition back into housing but would accept a motel for a place to stay. I can take care of myself but it is just too expensive.

24. I find the security at the encampment is unnecessary. They do not actually help anyone here. They often just get involved in disputes among tenants that do not even need involvement from security. I also find them to be quite coercive. When dealing with disputes, they do not take input from people and do not seem to have the interest of the residents in mind. They are more concerned with justifying their authority rather than actually helping.

25. When my volunteer organization was setting up a tent, the security was trying to prevent us and cited the by-law. At this time, the by-law was not even passed yet.

26. I have witnessed security many times cite the by-law to try to prevent people from moving their tents and/or setting up new tents.

27. There is a cleaning company that comes by the Encampment periodically. It is helpful that they clean up some garbage and needles. However, security often has the cleaning company remove resident's tents and belongings if they have not seen the resident for a few days. Just because security had not seen them for a few days, does not mean they are no longer living there. I have witnessed too many residents lose their tents and belongings due to this.

# TAB 45

| Cross Examination of Aaron Moss – February 13, 2026                                                                                                                                                                                                  |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Question                                                                                                                                                                                                                                             | UT/UA | Answer                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 1. Confirm it was the Region that contacted Sanguen regarding the security threat at the Encampment                                                                                                                                                  | UT    | An employee of the Region contacted Sanguen in December 2025 to make the organization aware of reports of weapons at the Encampment. The Region took this step to ensure that its partner organization was aware of the potential for increased risk of violence, so that the partner organization could determine what steps to take in response.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 2. Ask Ryan Pettipiere/Peter Sweeney to provide any information they have on the whereabouts of the 40 Existing Residents who have left the Encampment and the twenty something individuals the Region has assisted in finding alternate arrangement | UT    | <ul style="list-style-type: none"> <li>• 0 Existing Residents are currently residing on the site</li> <li>• 29 Existing Residents were supported offsite to alternate accommodations.               <ul style="list-style-type: none"> <li>○ 6 of these individuals have been supported to permanent housing</li> <li>○ 23 of these individuals have been supported offsite to alternate accommodations (with the majority of these 23 placed in motels)</li> </ul> </li> <li>• 11 core individuals have left the site (whereabouts unknown, incarceration)</li> <li>• Between April 2025 and March 2026, 22 non-core individuals have been supported offsite to alternate accommodations               <ul style="list-style-type: none"> <li>○ 3 of these individuals have been supported into permanent housing</li> </ul> </li> </ul> <p><i>Data note: Alternate accommodations include emergency shelter, transitional housing, shelter overflow in motels, supportive housing</i></p> |

# TAB 46

P. Sweeney (Cr.-Ex.) - 53

1 affidavit or the third affidavit. I can't remember  
2 which one. About the -- not being time-limited.

3 A. Time-limited?

4 150. Q. Yeah. So I just want to clarify  
5 because my understanding was that when the -- this  
6 budget was produced, that the amount for the motels  
7 was only for 2026. Has that changed?

8 A. No, for this specific allocation, like  
9 new hotel funding, the proposal to Council was just  
10 for 2026 and not itemized in the 2027 at the time of  
11 consideration.

12 151. Q. Okay, so is that -- does that suggest  
13 then that the 23 people who had been placed in  
14 alternative accommodations, none of them were placed  
15 in motels then? Because you made the statement that  
16 none of that was time-limited.

17 A. Yeah, so I understand why you're asking  
18 this question so I will do my best to clarify for you.

19 The individuals -- any individual who  
20 receives an offer of a motel and accepts, will not, on  
21 an individual level, be removed from that motel by the  
22 Region with no other place to go. So that's -- that  
23 is a true statement.

24 The budget here considers that at the time,  
25 if you recall in April, we were considering that there

1       were 40 people, roughly, on the site, the budget  
2       considers supporting 40 individuals. And considers  
3       that motels are designed to be a first step in some  
4       cases to different levels of transitional housing.

5               And knowing that we have transitional and  
6       supportive housing units coming online, the plan would  
7       be that those individuals would not -- we would be  
8       able to be in a place to offer those individuals  
9       something next on their journey before the end of  
10      2026. So that's the -- that was the logic behind.

11   152.           Q.    Okay. So the new transitional housing  
12      in its -- people from motels would be transitioned  
13      into them?

14               A.    That's ---

15   153.           Q.    The ---

16               A.    That's the logic behind the budget,  
17      yes.

18   154.           Q.    Okay, but is that for sure like they  
19      will get those beds in the transitional housing?

20               A.    No, I think what's important to  
21      consider here is that we're talking from a system  
22      perspective. And so we allocate the resources on a  
23      system-wide basis. And from a budgeting perspective,  
24      we have to think about it from a systems perspective.

25               So that's the logic behind this.

1 155. Q. Okay.

2 A. But at an individual level,  
3 hypothetically, if there's somebody from 100 Vic who  
4 is offered and takes a place in a motel with the  
5 social supports, if at the end of 2026 they don't have  
6 another alternative, we will not be -- the Region  
7 would not move them into homelessness.

8 156. Q. I mean, in -- so like in that  
9 hypothetical situation, if shelters were full at that  
10 time, and these transitional housing units aren't  
11 available, what would happen?

12 Like is there going to be more money that's  
13 going to be allocated for motels at that time then?

14 A. So I don't have the actual number but  
15 this -- this is not the full motel allocation across  
16 the Region's housing and homelessness budget. This is  
17 an addition to that budget.

18 157. Q. Okay. But my understanding -- and you  
19 can correct me if I am wrong -- is that that overall  
20 motel budget is based on like estimates. And there  
21 have been times where the Region has run out of  
22 funding under those -- that allocation for motels  
23 during -- like during the fiscal year.

24 Is that -- has that happened?

25 A. So it's not uncommon in our work or in

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1           that might follow that.

2                       I just want you to tell us, not in that  
3           situation, but somebody is in a motel for a while.  
4           Are there other kinds of housing that people move onto  
5           after a motel stay?

6                       A.    Yes, certainly.   So a motel could be a  
7           stop in the continuum.   There are -- there are other  
8           options including transitional congregate settings,  
9           traditional -- or not congregate but like multiple  
10          units in a building, transitional supportive housing  
11          and permanent housing.

12                      And so, yeah, there are options when there  
13          is availability.

14   413.               Q.    And are those time-limited?

15                      A.    They are not.

16   414.               Q.    Okay.   You were being asked a number of  
17          questions about where people could go.   And I think  
18          you started saying something about the Working Centre?  
19          I wonder if you could just explain that reference?

20                      A.    Oh, there's a number of new initiatives  
21          coming online across the continuum.   And the Working  
22          Centre is a 44-bed supportive and transitional housing  
23          program that is actually located right across the  
24          street from 100 Victoria.   It's at 97 Victoria.

25   415.               Q.    Okay, you were asked about the Council

1 report that accompanied the site-specific by-law and  
2 about the additional funding that was set aside under  
3 that Council report, together with the site-specific  
4 by-law.

5 What did that funding do in terms of  
6 capacity?

7 A. That funding unlocked additional  
8 capacity mostly in the -- in the provision of  
9 additional motel spaces as they were available. And  
10 allowed us to proceed with supporting specific  
11 individuals residing at 100 Vic as of April 16<sup>th</sup> of  
12 which there are only three or four people left.

13 416. Q. And in terms of the number of people or  
14 capacity of the number of people that could be  
15 supported?

16 A. That was based on 40.

17 417. Q. So the budget allocation was a plan to  
18 provide accommodation for about 40 people?

19 A. That's correct.

20 418. Q. And how many people were there at the  
21 encampment as of the date of the by-law? Roughly. I  
22 think we have that.

23 A. I think it's roughly 40.

24 419. Q. Okay. Thanks, so those are my  
25 questions in re-exam. You're done.

# TAB 47

34. From my perspective, the challenge is not so much in understanding what solutions would be optimal if resources were unlimited, but rather in determining how best to achieve outcomes for people experiencing homelessness in a world of limited resources and the multitudinous competing demands that the Region faces.

35. As it currently stands, the Region receives sporadic, one-time funding contributions from the federal government. The Region also receives funding from the Reaching Home program of the federal government, which assists local governments with addressing the housing crisis. In 2025, the Region received \$5.5 million from the federal government, which represents less than 8.4% of the Region's \$65.5 million budget for housing and homelessness initiatives in 2025.

36. Finally, I am aware that the federal government has recently announced a new federal affordable housing agency. While further, Region-specific details are not yet available, the Region looks forward to working with this agency in the future.

***D. Comment on Manitoba's proposed protocol***

37. The Gaetz Affidavit discusses, at paragraph 23 and following, an approach to encampments being implemented by the Province of Manitoba whereby an encampment will only be shut down after housing has been secured for each encampment resident.

38. In my experience, this poses several practical difficulties, particularly where the Region is unable to prevent newcomers from arriving at an encampment while the Region is working to re-house existing residents of the encampment. As is evident from the current population of the Encampment at 100 Vic, the Region's attempts to find alternative housing for those living at the site have not resulted in a material decrease in the

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4. Advance Equitable Housing
5. Focus on Preventing Homelessness
6. Change the Narrative on Housing and Homelessness
7. Advocate and Collaborate for Broader Change

The Focus Areas and Actions emphasize collaborative, integrative, and preventative strategies in addressing homelessness and housing stability. In addition, the centering of lived and living expertise is critical in the work of developing the Final Report and will be the focus in the implementation work to follow.

One of the key Actions outlined in the Final Report is the development and implementation of an All of Community Approach, which will enhance and emphasize the role of community organizations, leaders, and lived experts in decision-making. The focus of this approach is to create an integrated, inclusive, adaptive, responsive and sustainable ecosystem across the Housing Stability System and community as a whole.

The Lived Expertise Working Group worked alongside the co-creator group to review Focus Areas and Actions and provide invaluable feedback and reflections to the broader work of the Plan to End Chronic Homelessness. In addition to providing feedback to the Final Report, the Lived Expertise Working Group developed a standalone For Information Report, which is included as Appendix C. This Final Prototyping Report brings forward the voices of Lived and Living Expertise. An important note to consider when reviewing the Lived Expertise Final Prototyping Report is that this standalone For Information document is to be viewed as complimentary to the Final Report but, Council is not being asked to adopt the Actions outlined in Appendix C.

Recognizing homelessness is an equity issue, the PECH Actions and implementation work will prioritize and centre the voices of communities and individuals who are not reflected currently in the Housing Stability System. Homelessness is experienced differently by equity-deserving groups and as such strategies, programs, and housing options must reflect the unique needs identified by these groups themselves.

Critical in this new model, is increasing data-driven decision-making and creating a quality data strategy that focuses on KPIs, predictive modeling and system outcomes. This includes intentional work related to disaggregated data to better understand homelessness trends related to equity-owed populations and strengthening advocacy efforts when collaborating with key system partners (healthcare, mental health and addictions, etc.).

### **The Plan to End Chronic Homelessness Investment Plan and Strategy**

To respond to the growing homelessness and affordable housing crisis, the Region of

# TAB 49

1 Navigating Complexity and the other document is the  
2 Lived Expertise Report.

3 38. Q. Okay. And just to sort of confirm that  
4 in terms of what council was told, can we go to Page 5  
5 on the screen share. And there is a paragraph that  
6 starts:

7 "... The Lived Expertise Working Group worked  
8 alongside the co-creator group to create  
9 focus areas, etcetera, etcetera ..."

10 And I am going to take this from the second  
11 sentence and, Madam Reporter, we will provide copies  
12 of these if you don't have them after this to assist  
13 you with the transcript. Second sentence:

14 "... In addition to providing feedback to the  
15 Final Report, the Lived Expertise Working  
16 Group developed a stand-alone For  
17 Information Report which is included as  
18 Appendix C ..."

19 And that's your Exhibit C, right? Same  
20 document?

21 A. Yes.

22 39. Q. And it goes on to say:

23 "... This Final Prototyping Report brings  
24 forward the voices of lived and living  
25 expertise ..."

1 A. Yeah.

2 40. Q. But then it continues to say:  
3 "... An important note to consider when  
4 reviewing the lived expertise Final  
5 Prototyping Report is that this stand-alone  
6 For Information document is to be viewed as  
7 complementary to the Final Report. But  
8 council is not being asked to adopt the  
9 actions outlined in Appendix C ..."

10 Do you see that?

11 A. Yeah, the ---

12 41. Q. But you'd agree with me that council  
13 was not asked to adopt the Calls to Action and the  
14 Lived Expertise Working Group document that you have  
15 as Exhibit C?

16 A. At no point in my affidavit did I say  
17 that council was expected to adopt the actions but  
18 they were expected to read and understand those  
19 actions. And know that those actions were the  
20 priority actions of the Lived Expertise Prototyping  
21 Group as they spoke into the plan to end chronic  
22 homelessness.

23 So they might not be having to adopt those  
24 actions but they have to view them as part of the plan  
25 to end chronic homelessness. In terms of, they are --

1 they are the actions demanded from the Lived Expertise  
2 Prototyping Group and that is our understanding of how  
3 they presented to my staff and how council understands  
4 them.

5 Yes, you don't have to do those -- you're  
6 not -- staff is not telling you to do these actions.  
7 What staff is saying is that these calls to actions  
8 are things that you need to consider, and are being  
9 treated as part of the -- part of the plan. They are  
10 complementary to the plan; they are not separate from  
11 the plan; they are part of it.

12 42. Q. Well, I think the document speaks for  
13 itself.

14 A. Yes, they've used the word  
15 "complementary."

16 43. Q. It does use the word "complementary,"  
17 it's just, like I said at the beginning, I really just  
18 wanted to clarify.

19 A. Okay. Thank you.

20 44. Q. But it isn't quite accurate to say as  
21 you do in Paragraph 5 that:

22 "... Both Navigating Complexity and the Lived  
23 Expertise Working Group Calls to Action that  
24 both were approved by council ..."

25 Because the Calls to Action were not

1 approved by council, were they?

2 A. Well, as you can see from what you just  
3 shared with me, they represented to council as key  
4 information they need to consider that was treated as  
5 complementary and they did it through that context.  
6 So for my mind, they did approve it.

7 45. Q. Okay. Your mind?

8 A. They just did not commit themselves to  
9 the actions which they were never were required to  
10 commit themselves to those actions. But they were  
11 committing themselves to understand those calls to  
12 actions.

13 46. Q. Okay. And if we can just now go to the  
14 Lived Expertise Prototyping Report, that's Exhibit C  
15 to your affidavit. I see from this Page 3 of this  
16 report, that there is a list of acknowledgments. And  
17 the Lived Expertise Prototyping Cohort, I take it that  
18 this list of names are the people who added input into  
19 the writing of the Calls to Action?

20 A. Yeah.

21 47. Q. And you're ---

22 A. Yes.

23 48. Q. You're listed here as a member of the  
24 cohort. And then down below that, there's also a  
25 reference to:

# TAB 50

highly antagonistic and obstructionist way Fight Back has engaged with the Region and its representatives, including members of my team.

39. I would describe some activists including those associated with Fight Back as being at times highly obstructionist when the Region's staff – including USWs – have tried to assist unhoused individuals with housing and support plans. While shelters are not perfect solutions to homelessness, these activists' opposition to shelters has led them to encourage unhoused individuals to resist accepting shelter offers. For example, I remember being present at the site of the encampment that was located at 150 Main Street, Cambridge ("**150 Main Encampment**") when it was first established. I observed activists encouraging unhoused individuals to come to the site and set up tents there.

40. I have also been informed by my team that members of Fight Back have been encouraging individual unhoused people at 100 Vic to resist working with USWs to develop IHPs and have been encouraging them to remain at the Encampment.

41. Fight Back also regularly interferes with the provision of services to the Encampment. For example, as I describe in my Original Affidavit, the Region regularly services the Property to mitigate the various health and safety risks that the Encampment produces. On days where this occurs, members of Fight Back are often confrontational with the Region's staff and the Region's agents on the Property, which makes doing this work incredibly difficult.

42. Fight Back has also made disparaging personal comments about me and members of my team. I and leaders on my team, Regional by-law and facilities staff, contracted security guards, and USW staff who are consistently supporting the unhoused

community as part of their daily work have been called “Nazis”, “fascists”, and “murderers” in public settings on numerous occasions. For example, at the March 7, 2024 meeting described beginning at paragraph 11 of the Alton Affidavit, members of Fight Back referred to me and members of my team present as “Nazis”. I understand that everyone is entitled to their opinions, but those are heavy and threatening, and frankly, ridiculous accusations to make. My team members are just trying to do our jobs and support the Region’s unhoused population. The USW team in particular are dedicated professionals who have devoted themselves to helping vulnerable members of the community in incredibly challenging circumstances. They do not deserve this treatment.

43. Fight Back has also posted pictures of myself, my team, my colleagues, and even community leaders on social media platforms and on telephone polls around downtown Kitchener. I attach some examples as **Exhibit C**.

#### **8. Prior Encampments in the Region**

44. The Escobar Affidavit mentions two prior encampments in the Region, the 150 Main Encampment and an encampment at Soper Park in the City of Cambridge (“**Soper Park Encampment**”).

45. As I mention above, I was present at the 150 Main Encampment on the day it was started in September 2022. I recall observing activists encouraging unhoused individuals to set up tents at that location and representing to them that the Region could not remove them due to the litigation leading to the Persons Unknown Decision, which was then underway.

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26. Another example of the Region's consultation efforts is the Lived Experience Working Group (the "**LEWP**"), of which another affiant in the RAR – David Alton – is the current Facilitator (see the Affidavit of David Alton, affirmed June 23, 2025, the "**Alton Affidavit**"). As described in the Alton Affidavit at paragraph 2, the LEWP "engages with those with lived and living experiences of homelessness and integrates their experience and wisdom into operations in the Region of Waterloo" and is a "key partner in the Region's Plan to End Chronic Homelessness". The LEWP is another example of an information channel between community members and the Region's staff on issues of homelessness.

27. Regional staff also have representation as often as possible at the "Continuum of Care" group run by the Social Development Centre, which is comprised of lived experts, PECH staff, and front-line staff from community agencies. Engagement with this group provides Regional staff with the opportunity to hear from direct allies on a variety of topics, including encampments, as they emerge.

28. Additionally, following the May PECH Co-Creators meeting, there have been several specific consultations and meetings with PECH Co-Creators and coordinating team members and community partners who support the Encampment site. The goal of these engagements has been to increase communication and coordination amongst Regional departments and community partners when responding to and supporting people living in encampments. These meetings focusing specifically on the Encampment at 100 Victoria took place on June 19, July 10, and July 17.

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it is prime agricultural land and the land assembly will set a dangerous precedent for other farming areas. K. Straus encouraged Council to protect the countryside line.

#### **9.4 Sidney MacDonald, Kitchener**

K. Straus appeared before Council in support of farmers in Wilmot Township, noting that they are good stewards of the land and are Ontario businesses producing products for Ontario consumers. She stressed that it is prime agricultural land and the land assembly will set a dangerous precedent for other farming areas. K. Straus encouraged Council to protect the countryside land.

#### **9.5 Megan Walker, Kitchener**

M. Walker appeared before Council noting that people live at the 100 Victoria Street encampment because it is their only recourse. She expressed concerns with the plan to transfer people, further noting that there are not enough shelter spaces for people and a lack of transparency with the by-law.

#### **9.6 Andrew Reeves, Kitchener**

A. Reeves appeared in opposition to the site-specific by-law noting that people are using the encampment as a last resort. He highlighted that security staff on the site have already been working to enforce the by-law and it appears that decisions have already been made to bypass the Valente decision. He stressed that Council does not need to choose between human rights and transit.

#### **9.7 David Alton, Social Development Centre of Waterloo Region**

D. Alton appeared on behalf of the Social Development Centre of Waterloo Region and the Lived Expertise Program, noting that they were a key partner in the Plan to End Chronic Homelessness (PECH). D. Alton stated 100 Victoria Street was identified as a priority during the drafting of the Plan. They called on the Region to update the plans for the transit hub to ensure the site can stay as a sanctioned encampment, work with Metrolinx and the province to ensure that residents are provided with comparable land, and send it back to the PECH co-creators community.

#### **9.8 Jacara Droog, Kitchener**

J. Droog spoke in opposition to the by-law contending that it violates the Valente decision and the residents' human rights. She stressed that the

Region does not have enough shelters specifically for women, gender diverse, and disabled individuals. J. Droog encouraged Council to refer it back to the co-creators table.

#### **9.9 Heather Majaury, Kitchener**

H. Majaury spoke against the proposed by-law noting that it is not consistent with human rights or the Region's Plan to End Chronic Homelessness. She stressed that the by-law is scapegoating homeless individuals and criminalizes the most vulnerable members of the community.

#### **9.10 Laura Pin, Wilfrid Laurier University**

L. Pin appeared before Council as a researcher on municipal policy responses to encampments and a member of the co-creators table of the PECH. She raised specific concerns with the content and lack of input on the by-law from residents or organizations; and stressed that motels are a temporary solution and are difficult for some people to access. She encouraged Council to direct staff to work with the co-creators table to develop a plan that is consistent with the human rights principles of the PECH and will not harm people.

#### **9.11 John-Lee Bannister, Waterloo**

J. Bannister expressed support for unhoused individuals from the labour community. He told Council to handle this matter like their children's lives depend on it and either pay the price for housing people or decriminalize public camping.

#### **9.12 Héline Chow, Waterloo**

H. Chow spoke against the by-law noting that there are still insufficient shelter beds for unhoused individuals. She stressed that there is still a deficit of shelter beds for unhoused individuals and that motel beds are only temporary and will leave individuals without support when funding runs out. H. Chow encouraged the Region to decriminalize public camping on Regional land noting that there would be no need for people to use 100 Victoria Street if they could camp in other locations.

#### **9.13 Lili Berescu, Waterloo**

L. Berescu encouraged Council to have safe spaces for people to use drugs safely noting that twelve beds in an abstinence-based rehab are insufficient and that abstinence-based programs increase mortality. She

requested that Council support the motion to ask the provincial government to comply with the court decision.

**9.14 Ashley Schuitema, Waterloo Region Community Legal Services**

A. Schuitema expressed concerns with the Region's approach to bypass the court order that is in place on the site and stated that it will be a by-law passed in bad faith. She stressed that the Region has a duty to return to the court and that if anyone is evicted from the site or if anyone turned away from the site it opens the Region up to Charter damages. She recommended mediation on the issue, noting that litigation is uncertain and quite costly; and further encouraged Council to reject the by-law, offer a suitable alternative sanctioned encampment and space for the people living at 100 Victoria Street and sending it back to the PECH co-creators to move the issue forward.

**9.15 Jason Paul, Kitchener**

J. Paul did not appear when called.

**9.16 Laura Mosher, Kitchener**

L. Mosher withdrew her delegation.

**9.17 Julian Ichim, Kitchener**

J. Ichim appeared on behalf of the Allen Ryan People's Community Defence Brigade, noting that people are dying from drug overdoses and freezing. He stressed that there is an attack on poor people, and shutting down the only place to test drugs and closing the encampment is part of that attack. He encouraged Council to be on the right side of history.

**9.18 Erin Dej, Cambridge**

E. Dej noted that the PECH is the best way forward for the community, but the proposed by-law does not adhere to the PECH and fails to address the process and outcomes for addressing homelessness. She stressed that there was no consultation or communication with the co-creators table or residents in advance, which erodes trust and undermines aspects of the by-law. She noted that encampment evictions increase health risks and violence for residents, and encouraged Council to direct staff to work with the community on a plan that works in the best interests of encampment residents and the community at large.

**9.19 Meagan Snyder, Unsheltered Campaign**

M. Snyder appeared before Council in opposition to the by-law, noting that it was created without consultation with the residents or the co-creators table. She asked the Region to not remove the encampment and explore other ways to meet the obligations to Metrolinx, including working with the residents to find an alternative site or developing an acceptable plan with the co-creators table.

#### **9.20 Tara Jones, Waterloo**

T. Jones stated that the proposed by-law will displace residents and limit their ability to access services. She stressed that informing residents is not the same as consultation, that motel funding is temporary, and the by-law will not provide permanence. T. Jones further contended that this approach undermines the Region's commitment to homes for all in the Strategic Plan.

#### **9.21 Martin Asling, Waterloo Region Yes in My Backyard**

M. Asling appeared before Council in opposition to the proposed by-law noting that it was not preceded by the type of engagement that is outlined in the PECH and was not informed by the input of the encampment residents. He stated that the process, including the appearance of police and construction equipment on site, has been top down and not reflective of the PECH. M. Asling encouraged the Region to develop a new proposal that follows the whole of community approach and collaborates with individuals with lived experience.

#### **9.22 Shannon Down, Waterloo**

S. Down spoke to Council about the importance of taking a human rights approach to homelessness noting that residents of the encampment need to have the ability to shelter themselves from the elements. She explained that people who may turn to an encampment include people who have been chronically homeless looking for some safety and stability, newly homeless individuals who cannot turn to a shelter, couples, people with pets, and drug users that need people around them. She contended that the Region's plan does not address the needs of the individuals, and that the by-law will only result in more scattered encampments with fewer supports rather than ensuring the safety of the most vulnerable residents of the Region.

#### **9.23 Pranav Seetharaman, Waterloo**

P. Seetharaman declined his delegation.

**9.24 Lynn Intini, Kitchener**

L. Intini noted that she has spoken to Regional staff of the need for a Regional renovation by-law and noted that while Regional staff have been supportive of the need, the process around the by-law for 100 Victoria Street is equivalent to a bad faith eviction. She encouraged Council to vote against the by-law and to allow people to stay until truly suitable alternative accommodations which provide security of tenure and address their needs are found.

**9.25 Aaron Price, Kitchener**

A. Price spoke against the proposed by-law noting that he is a resident of the encampment and that it is a vibrant community where people find a sense of belonging and a community where people understand each other's rights and struggles. He noted that closing tent city without providing adequate alternatives will be traumatic and push individuals further to the margins.

**9.26 Tanner Bergsma, Waterloo**

T. Bergsma appeared before Council in opposition to the proposed by-law and stated that it is not about transit but a direct attack on humanity and an effort to eliminate one of the last places that unhoused individuals can exist in peace. He encouraged Council to not put power ahead of people, listen to the voices of the people, and to not approve the by-law. A copy of his written remarks is attached to the minutes.

**9.27 Ashley Hynd, Kitchener**

A. Hynd noted that she has been an outreach worker supporting people across the entire region and the 100 Victoria Street encampment. She advocated for Council to reject the by-law because it goes against the commitment Council made with the PECH, wastes taxpayer dollars, and negatively impacts front line workers and unhoused community members.

**9.28 Chris Varga**

C. Varga appeared in opposition to the by-law and stated that individuals with the least are forced into long term homelessness. C. Varga stressed that there is a lack of housing and that people that are in need of support are forced further to the margins. She stressed that shelters and motels should not be considered adequate housing.

Council recessed at 9:14 p.m. and reconvened at 9:26 p.m.

# TAB 53

## **Appendix C: Public feedback summary regarding proposed changes to the 100 Victoria Street Code of Use By-law**

Two public feedback sessions were held during the week of January 5, 2026, to gather feedback regarding the proposed amendments to the 100 Victoria Street Code of Use By-law. One session was specifically for those currently living at the site. The second was a public input session for the general public. A summary of the two sessions is as below.

### **Drop-in session for individuals living at 100 Victoria Street North – January 5, 2026**

A drop-in engagement session was held on Monday, January 5, 2026, to hear feedback specifically from the individuals currently living at 100 Victoria Street North about the proposed changes to the 100 Victoria Street Code of Use Bylaw. The event was advertised through signage at the site, posted on December 22, 2025.

Attendees included three people who had experience of homelessness and living at 100 Victoria, as well as a representative of Waterloo Region Community Legal Services who attended to observe the process.

The drop-in session was informal and focused on listening and gaining feedback on the proposed by-law changes. At the beginning of the conversation, a plain language summary of the changes was verbally provided to the participants as well as printed copies of the proposed by-law (along with a version that showed both the original by-law along with the changes made). Participants then began to share their thoughts and input about the by-law. In addition, a paper comment card was made available along with an option to email comments directly to the Region. Participants were offered refreshments and a gift card in recognition of the sharing of their lived experiences and time.

This appendix provides a summary of the feedback captured by staff—it has been generalized to recognize anonymity. This list is not intended to suggest consensus amongst participants, but simply to share the range of feedback provided.

The feedback included:

- The importance of ensuring that funding allotted to support residents was being spent appropriately.
- Participants reflected that there were people living at 100 Victoria who didn't know about the by-law, the changes or how they could access supports.
- Sometimes there is confusion in the community about the process to access support and housing options, e.g. seeing others relocate to a 'Motel' but not being clear on how they achieved that.

- That information should be provided to those living at 100 Victoria (on the by-law and available supports) in multiple ways, including continued posted information and a “spokesperson” who can share information verbally and in-person. Participants felt that verbal/outreach information giving was most effective.
- The elimination of the \$5,000 ticket was supported and there was support for not re-introducing these. There was some desire to understand why the decision to eliminate this ticket had been made.
- The need to receive more information about what housing options are available for people arriving at the site after the April 16<sup>th</sup>, 2025, date and what the process is to access those supports. There were questions regarding what would happen to those living on the site, after the April 2026 deadline.
- That providing additional supports to those living at 100 Victoria the longest was ‘only fair’.

### **Public input session – January 7, 2026**

A public input session was held on Wednesday, January 7, 2026, at 6 p.m. Council Chambers at 150 Frederick Street in Kitchener. Twenty-four delegates spoke in-person or via the virtual option as part of the session. Two written submissions were provided as part of the agenda package. The meeting was live-streamed.

This is a qualitative summary of themes from the delegates’ remarks that were common topics. A recording of the full meeting can be viewed on the Region’s YouTube channel for further detail.

- **Human rights and compassion**
  - Concerns that the Region’s site-specific bylaw and approach to 100 Victoria are not compliant with human-rights principles.
  - Strong desire to support residents with dignity and care and to provide care for basic human needs.
- **Affordable housing, increased social supports, emergency shelter capacity**
  - The need to fund affordable housing, add social supports including mental health outreach workers.
  - Questions and concerns raised around number and availability of shelter spaces.
  - Concerns about the housing affordability and cost of living crisis.
  - Sentiment shared that the by-law does not address the root causes of homelessness or provide a long-term solution—that this is a systemic problem that needs to be addressed with permanent housing. Use of motels is not a permanent housing option.
  - Support for written offers of alternate accommodation.

- **Site replacements/safe tenting**

- Repeated calls for a replacement site for 100 Victoria and a safe tenting bylaw, providing a place of “last resort”. Reference to other municipalities who have instituted safe tenting zones.
- Suggestion for community-led solutions. Offers of expertise from community.

- **Definition of “Resident” under the by-law**

- Concerns about the April 16, 2025, date cut-off for who is defined as a resident under the by-law and who is not the creation of two classes of resident even though their needs for housing are the same. Questions if the April 1, 2026 deadline provided sufficient time to find housing for those remaining at the site and how residents will be removed after April 1, 2026.

- **Costs**

- Concerns raised regarding the continued high costs associated expenses at 100 Victoria, with limited success in solving the issue.
- Concerns raised over taxpayer impact and the need for clear public land use rules to prevent misuse and ensure responsible spending.
- Comments that money would be better invested into affordable housing.
- Questioning costs of the police budget and suggestion to reallocate funding to homelessness supports.
- Support for the removal of the \$5,000 fine. Concerns over fines related to the province’s *Trespass to Property Act*.

- **Reference to the ongoing legal proceedings**

- Questions of whether amendments to the by-law could be considered while the site is subject of ongoing legal proceedings. References were made to previous legal decisions including the Justice Valente decision in 2023 and the granting of the junction by Justice Gibson in August 2025.
- Suggestions to seek guidance from the court and follow their direction.

- **Communications with those living at the site**

- Questions about notice to residents at the site and their accessibility to the information about the January 5, 2026, input session for those living at 100 Victoria.
- Several deficiencies related to the posting were noted.

# TAB 54

1           available to them.

2           21.           Q.    And I understand that.  And I assume  
3           that when we say that includes any women that are  
4           living in an encampment, correct?

5           A.    Correct.

6           22.           Q.    And also any gender-diverse people that  
7           are living in an encampment?

8           A.    Correct.

9           23.           Q.    Thank you.  And you would agree with me  
10          that being able to control access to one's space is an  
11          important element of safety, generally.  Is that fair  
12          to say?

13          A.    Yes.  I would agree with that.

14          24.           Q.    Thank you.  And would you agree with me  
15          that having a door that can be locked might be one way  
16          to improve safety?

17          A.    Yes, I would agree with that.

18          25.           Q.    And that a locked door, for example,  
19          would mitigate the risk of an unwelcome entry into  
20          your space.  Is that a fair observation?

21          A.    Yes, in general for folks experiencing  
22          homelessness when gender-diverse people in particular  
23          who are experiencing intimate partner violence, in  
24          some cases, that's occurring behind closed doors or  
25          exploitation is occurring behind closed doors.

# TAB 55

1           available to them.

2       21.           Q.    And I understand that.  And I assume  
3           that when we say that includes any women that are  
4           living in an encampment, correct?

5           A.    Correct.

6       22.           Q.    And also any gender-diverse people that  
7           are living in an encampment?

8           A.    Correct.

9       23.           Q.    Thank you.  And you would agree with me  
10          that being able to control access to one's space is an  
11          important element of safety, generally.  Is that fair  
12          to say?

13          A.    Yes.  I would agree with that.

14       24.           Q.    Thank you.  And would you agree with me  
15          that having a door that can be locked might be one way  
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19          would mitigate the risk of an unwelcome entry into  
20          your space.  Is that a fair observation?

21          A.    Yes, in general for folks experiencing  
22          homelessness when gender-diverse people in particular  
23          who are experiencing intimate partner violence, in  
24          some cases, that's occurring behind closed doors or  
25          exploitation is occurring behind closed doors.

K. Schwan (Cr.-Ex.) - 10

1 But it remains the case that being able to  
2 close a door is critical to safety for all people.

3 26. Q. Okay. And thank you, that's helpful.  
4 And then just to go to a second thing that people  
5 living in encampments need to deal with is going to  
6 the washroom, for example. That having one's own  
7 washroom could also be part of an improved safety  
8 environment for a person living at an encampment. Is  
9 that fair?

10 A. Yes, access to water and sanitation and  
11 hygiene facilities are critical to the right to  
12 adequate housing and safety.

13 27. Q. And having access to one's own washroom  
14 would be part of that, in your view, is that fair?

15 A. Yes, that's fair.

16 28. Q. Good. And a part -- if I can just do a  
17 comparison, that then avoids -- in the case of an  
18 encampment resident, if they had their own washroom,  
19 that would avoid the need for them to leave their  
20 enclosure to go to the washroom. Is that a fair  
21 observation?

22 A. Correct, yeah.

23 29. Q. Thank you. I want to ask you just a  
24 few questions about your observations about  
25 encampments generally. One of the benefits I think --

# TAB 56

1 A. That's correct.

2 32. Q. And one of the other things I think  
3 that you say -- again, correct me if my paraphrasing  
4 is unfair or inappropriate -- but one of the other  
5 things I think you say is that encampments generally  
6 are not subject to the imposition of conditions that  
7 might apply -- entry conditions that might apply at  
8 shelters. Is that a fair observation?

9 A. Yes. That's correct.

10 33. Q. Thank you. And that means -- and the  
11 extension of that is, I take it that people who show  
12 up at an encampment can, provided there is space,  
13 pitch a tent or otherwise take shelter there?

14 A. Correct.

15 34. Q. And that includes, for example, couples  
16 who might show up at an encampment, correct?

17 A. Yes.

18 35. Q. And that includes couples who may  
19 indeed be in an intimate relationship with one  
20 another, is that fair?

21 A. Yes. Correct.

22 36. Q. And among that group, you'll agree with  
23 me that that group would include couples where there  
24 has been intimate partner violence. Is that fair?

25 A. Yes, it could.

1 37. Q. And for the person who has been subject  
2 to intimate partner violence, an aspect of escaping  
3 that violence is a physical separation from their  
4 partner, do you agree with that?

5 A. Yes.

6 38. Q. And so being able to access housing  
7 where their partner can be excluded, can be an  
8 important component of getting away from that  
9 violence. Is that fair?

10 A. Correct, yes.

11 39. Q. And if I can call it this, a women's-  
12 only shelter might assist in providing that  
13 separation?

14 A. Yes, in some cases, yes.

15 40. Q. Thank you. And so sometimes, you'll  
16 agree with me that it is a good thing for couples --  
17 you know, we'll focus on couples where there has been  
18 a history of intimate partner violence. It could be a  
19 good thing for those couples to be separated in  
20 shelters where -- in those circumstances, you'll agree  
21 with that?

22 A. I would agree with it generally. I  
23 would say that my experience in the research is such  
24 that women and gender-diverse people experiencing  
25 intimate partner violence have to choose amongst a

# TAB 57

1 homelessness.

2 43. Q. Yeah, understood. Thank you very much.  
3 And is it fair to say that in a shelter that --  
4 particularly in a women's-only shelter, that staff  
5 might be trained to watch out for abusive and coercive  
6 patterns of behaviour and to intervene where  
7 necessary. Is that fair?

8 A. I would say my experience is that many  
9 shelters have training in those areas, not all of them  
10 -- and not all staff may be trained -- in order to  
11 identify signs of abuse or to intervene.

12 But in general, I would say that is true.

13 44. Q. Okay. Thank you. And you'll agree  
14 with me that -- and I wasn't suggesting that all  
15 shelters, but certainly some of the shelters that that  
16 would be an issue in which staff would retain -- would  
17 receive training, right?

18 A. Correct.

19 45. Q. And you'll agree with me, I take it,  
20 that the flipside is that -- of that is typically  
21 people who are residents of encampments do not receive  
22 that type of training, is that fair?

23 A. Correct.

24 46. Q. Okay, thank you. I don't have any more  
25 questions, Dr. Schwan. And I wanted to say thank you

# TAB 58

space) and Healing of the Seven Generations (an organization offering supports for those suffering from the inter-generational legacy of the residential school system) for Indigenous focused housing and homelessness work.

8. Another way that the Region has sought to support this population and enable better access to housing is by supporting the K-W Urban Native Wigwam Project (“KWUNWP”), an Indigenous-led organization which Ms. Hundt details at paragraphs 16 and following of her affidavit.

9. KWUNWP is a not-for-profit organization that is independent from the Region. It is Indigenous led, and its mission is to provide culturally safe and affordable housing for the Indigenous community in Waterloo Region. The Region does not operate KWUNWP, nor does the Region administer KWUNWP’s programming. The Region is only involved with KWUNWP as a funder. KWUNWP’s board of directors (the “Board”) oversees the organization, and the organization’s staff is responsible for its day-to-day operations.

10. As she explains in her affidavit, Ms. Hundt previously served as the Executive Director of KWUNWP, so she is likely well aware of KWUNWP’s organizational structure and relationship with the Region.

11. The Region has provided substantial financial support to KWUNWP. For the 2024-2025 fiscal year, the Region provided a total of over \$2.5 million in funding to KWUNWP, for use across various projects and programs, including direct support for transitional and affordable housing, rental supplements for clients of KWUNWP, maintenance and repair costs, and an annual general operating subsidy.

12. For example, in fiscal year 2024-2025, the Region provided over \$153,000 in rent supplements for members of the Indigenous community to access market housing. KWUNWP manages and allocates the funds provided by the Region for this purpose.

13. The Region has also provided financial support to KWUNWP's housing programs and projects.

14. One of KWUNWP's ongoing housing projects is an affordable housing complex it owns and operates in Cambridge, Ontario ("**27 Cambridge**"), which the Hundt Affidavit mentions at paragraph 22. This site has 30 individual apartments.

15. As the Hundt Affidavit also notes, KWUNWP previously operated a transitional housing program located in Waterloo, the Urban Native Transitional Housing Program (the "**UNTHP**"). I understand that the UNTHP closed in early 2025 based on a decision made by KWUNWP's Board. The Region played no part in this decision.

16. The UNTHP was first opened with the support of the Region in 2023. However, the UNTHP was always independently operated and administered by KWUNWP, not by the Region.

17. Although the Region was not the operator of the UNTHP, the Region provided crucial financial support for the project. In fiscal year 2024/2025, the Region provided \$1,221,217 to KWUNWP for the operation of the UNTHP, and a further \$219,521 to lease the building that housed the transitional housing site.

18. Because the Region is not involved in the operations of KWUNWP, the decision to end the UNTHP was not a decision made by the Region or at the Region's urging. Instead,

I understand from conversations I have had with representatives of KWUNWP that the decision to close the UNTHP was made by that organization's Board for reasons unrelated to the Region.

19. To be clear, the decision to close the UNTHP was also not a decision that was taken because the Region changed its funding commitment to KWUNWP or because the Region indicated that it would be reducing the funding it provided to UNTHP in the future (neither of which occurred).

20. After the decision of the Board to close the UNTHP was communicated to the Region, the Board requested that the Region instead provide funding support to KWUNWP's operations at 27 Cambridge. The Region has agreed to do so and is currently working with KWUNWP's new leadership team and the Board to finalize an operating agreement reflecting this.

**C. The "Housing First" approach**

21. In reviewing the Gaetz Affidavit, I noted a discussion of the "Housing First" approach beginning at paragraph 15 of the affidavit, which is contrasted with a "Housing Readiness" model. I also noted a similar discussion beginning at paragraph 27 of the Pauly Affidavit.

22. A "Housing First" approach focuses on moving people experiencing homelessness into permanent housing as quickly as is reasonably possible. By contrast, "Housing Readiness" is instead focused on ensuring that individuals experiencing homelessness meet certain milestones or targets before they are offered permanent housing.

# TAB 59

# Definitions

We have included a definitions section as clear and consistent language is an important part of the process of finding common understanding as a community. And we acknowledge that language is ever evolving, different groups use different definitions and part of the work is to continually evolve these alongside communities.

- **Accessibility**—Specific features incorporated by design with the goal to reduce or remove barriers to participation or enjoyment by all people. (LE Prototyping Cohort, 2024)
- **Adequate Housing**—Housing that meets the legal standards for security of tenure, affordability, habitability, accessibility, availability of services, location and cultural appropriateness. In the absence of such, the right to housing is not met. (LE Prototyping Cohort, 2024)
- **Chronic Homelessness**—Refers to individuals who are currently experiencing visible and hidden homelessness AND who meet at least 1 of the following criteria:
  - they have a total of at least 6 months (180 days) of homelessness over the past year
  - they have recurrent experiences of homelessness over the past 3 years, with a cumulative duration of at least 18 months (546 days)

(*Reaching Home: Canada's Homelessness Strategy Directives*, 2023)
- **Deeply Therapeutic Housing**—is housing designed to provide support for people with the highest levels of acuity. This includes but is not limited to individuals with significant complex substance use, concurrent mental health needs or who are otherwise medically fragile and are homeless, at risk of becoming homeless, or who are considered inadequately housed. This type of supportive housing is a gap in our system identified through community engagement and by lived experts and co-creators. The gap is emerging as our current system is not adequately addressing the needs of people who are deeply unwell. ([Supportive Addiction & Mental Health Housing \(SAMH\)](#), n.d.)
- **Equity-owed groups**—These are groups that experience systemic oppression, marginalization, and discrimination often due to the legacies of colonization, slavery, and imperialism. These groups include but are not limited to those who are Black (African and Caribbean diaspora), Two-spirit and Indigenous Peoples

**costs are reducing access to housing for broad groups of our population.**  
(LE Prototyping Cohort, 2024)

- The prevalence of **mental health and substance addiction alongside the unprecedented crisis of drug poisonings** playing out in our community are intricately tied to the rise in and deepening complexity of experiences of homelessness
- There has been a long-standing issue of unequal access to services and support for individuals who are at risk of or experiencing homelessness in rural and township areas. To access the necessary support, individuals are often required to leave their rural communities and travel to urban centers, which can result in a loss of important community connections and **an increase in demand for urban-based services**. It is important to leverage the supports and services that exist in the rural areas to develop (co-create) a made-in-rural solution.
- **The face of homelessness is changing (diversity , intersectionality)—This mix of factors is broadening the percentage of our community that is precariously housed, hidden homelessness, and housed in non-market options. This is giving us a skewed perspective of the causes of homelessness and those experiencing it in our communities.** (LE Prototyping Cohort, 2024)
- **There is an increase in people living in encampments.** This trend highlights the growing rate of homelessness and—among many other factors—points to a shortfall in shelter capacity and accessibility, as well as barriers to securing permanent housing. (*Homeless Individuals and Families Information System (HIFIS)*, 2023) (Turner, 2023)

## Key Numbers to Quantify the Problem

Chronic homelessness in Waterloo Region has been increasing at an average growth rate of 28% year over year since 2020. Since January 2020, chronic homelessness in the region has increased by 129%.

- If the 28% annual increase in chronic homelessness continues, the community will have triple the number of residents experiencing chronic homelessness by 2028.
  - As of February 2024, there are 558 individuals on the Prioritized Access to Housing Supports (PATHS) List.
  - The average number of days individuals on the PATHS list have been without permanent and safe housing is 1,403 days (3 years 8 months).

# TAB 60

Court of Appeal Court File No.:  
Superior Court of Justice Court File No.: CV-25-00000750-0000  
CV-25-00001341-0000

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Applicant  
(Appellant)

and

**JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE,  
JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES  
DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER,  
JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY  
COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES  
KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN**

Respondents  
(Respondents in Appeal)

**APPELLANT’S CERTIFICATE**

The Appellant certifies that the following evidence is required for the Appeal, in the  
Appellant’s opinion:

1. Application Record dated June 16, 2025, containing:
  - (a) Amended Notice of Application, dated June 16, 2025
  - (b) Affidavit of Peter Sweeney, affirmed June 6, 2025
  - (c) Affidavit of Douglas John Spooner, affirmed June 6, 2025
2. Reply Application Record dated July 31, 2025, containing:
  - (a) Affidavit of Brent Wood, affirmed June 26, 2025

- (b) 2nd Affidavit of Peter Sweeney, affirmed July 2, 2025
- (c) 3rd Affidavit of Peter Sweeney, affirmed July 31, 2025
- 3. Supplementary Application Record dated March 10, 2026, containing:
  - (a) Further Amended Notice of Application, dated March 10, 2026
  - (b) Expert Affidavit of Dr. Sharon Koivu, affirmed September 11, 2025
  - (c) 4th Affidavit of Peter Sweeney, affirmed September 12, 2025
  - (d) Affidavit of Dilupneet Kang, affirmed January 9, 2026
  - (e) Affidavit of Aaron Moss, affirmed January 16, 2026
  - (f) 5th Affidavit of Peter Sweeney, affirmed February 27, 2026
- 4. Joint Transcript Brief dated March 13, 2026, containing:
  - (a) Transcript of the Cross-Examination of Aaron El Sabrout, held on July 14, 2025
  - (b) Transcript of the Cross-Examination of Angela Allt, held on July 14, 2025
  - (c) Transcript of the Cross-Examination of David Alton, held on July 10, 2025
  - (d) Transcript of the Cross-Examination of Eddy Grignon, held on July 10, 2025
  - (e) Transcript of the Cross-Examination of Jacara Droog, held on July 14, 2025
  - (f) Transcript of the Cross-Examination of Jakob Stubbs, held on July 10, 2025

- (g) Transcript of the Cross-Examination of Sara Escobar, held on July 11, 2025
- (h) Transcript of the Cross-Examination of Dr. Stephen Hwang, held on July 11, 2025
- (i) Transcript of the Cross-Examination of Peter Sweeney, held on July 11, 2025
- (j) Transcript of the Cross-Examination of Dr. Stephen Gaetz, held on December 2, 2025
- (k) Transcript of the Cross-Examination of Dr. Laura Pin, held on December 3, 2025
- (l) Transcript of the Cross-Examination of Maggie Helwig, held on December 3, 2025
- (m) Transcript of the Cross-Examination of Lee Ann Hundt, held on December 10, 2025
- (n) Transcript of the Cross-Examination of Dr. Sharon Koivu, held on December 11, 2025
- (o) Transcript of the 2nd Cross-Examination of Peter Sweeney, held on December 11, 2025
- (p) Transcript of the Continued 2nd Cross-Examination of Peter Sweeney, held on December 12, 2025

- (q) Transcript of the Cross-Examination of Dr. Bernie Pauly, held on December 15, 2025
- (r) Transcripts of the Cross-Examination of Dr. Sahil Gupta, held on January 7, 2026
- (s) Transcript of the Cross-Examination of Marie-Josée Houle, held on January 7, 2026
- (t) Transcript of the Cross-Examination of Dr. Kaitlin Schwan, held on January 9, 2026
- (u) Transcript of the Cross-Examination of Aaron Moss, held on February 13, 2026
- (v) Transcript of the 2nd Cross-Examination of Sara Escobar, held on March 2, 2026
- (w) Transcript of the Cross-Examination of Julie Kalbfleisch, held on March 3, 2026
- (x) Transcript of the 2nd Cross-Examination of Dr. Laura Pin, held on March 3, 2026
- (y) Transcript of the Cross-Examination of Doug Spooner, held on March 6, 2026
- (z) Transcript of the 3rd Cross-Examination of Peter Sweeney, held on March 6, 2026

5. Applicant's Brief of Answers to Undertakings dated March 31, 2026, containing:
  - (a) Answers to Undertakings from the Cross-Examination of Peter Sweeney on July 11, 2025
  - (b) Answers to Undertakings from the 2nd and 3rd Cross-Examinations of Peter Sweeney on December 11 and 12, 2025 and March 6, 2026
  - (c) Answers to Undertakings from the Cross-Examination of Dr. Sharon Koivu on December 11, 2025
  - (d) Answers to Undertakings from the Cross-Examination of Aaron Moss on February 13, 2026
  - (e) Answers to Undertakings from the Cross-Examination of Doug Spooner on March 6, 2026
6. Applicant's Supplementary Brief of Answers to Undertakings dated April 1, 2026, containing:
  - (a) Updated Answers to Undertakings from the Cross-Examination of Doug Spooner on March 6, 2026
7. Second Affidavit of Aaron Moss affirmed April 8, 2026
8. Responding Application Record dated July 9, 2025, containing:
  - (a) Affidavit of Aaron Price, sworn May 6, 2025
  - (b) Affidavit of Avery Ament, sworn June 23, 2025

- (c) Affidavit of Calvin Sharpe, sworn May 30, 2025
- (d) Affidavit of Jakob Stubbs, sworn June 23, 2025
- (e) Affidavit of James Davis, sworn June 20, 2025
- (f) Affidavit of James Hammond, sworn May 2, 2025
- (g) Affidavit of Jason Paul, sworn June 16, 2025
- (h) Affidavit of Jeremy Linton, sworn May 6, 2025
- (i) Affidavit of Jeremy Nichol, sworn May 8, 2025
- (j) Affidavit of Joseph Bradley, sworn May 9, 2025
- (k) Affidavit of Joseph Sadler, sworn July 9, 2025
- (l) Affidavit of Josephina Dugas, sworn May 7, 2025
- (m) Affidavit of Julie Young, sworn June 13, 2025
- (n) Affidavit of Kyle York, sworn June 17, 2025
- (o) Affidavit of Matthew Stefanc, sworn May 6, 2025
- (p) Affidavit of Megan Lopes, sworn June 18, 2025
- (q) Affidavit of Noah Helsby, sworn May 15, 2025
- (r) Affidavit of Stephanie McMillan, sworn May 13, 2025
- (s) Supplemental Affidavit of Stephanie McMillan, sworn June 17, 2025

- (t) Affidavit of Terra-Lynn Weber, sworn May 6, 2025
  - (u) Affidavit of Warren Loppie, sworn July 9, 2025
  - (v) Affidavit of Aaron El Sabrout, sworn July 7, 2025
  - (w) Affidavit of Angela Allt, sworn June 20, 2025
  - (x) Affidavit of David Alton, sworn June 23, 2025
  - (y) Affidavit of Emily “Eddy” Grignon, sworn May 12, 2025
  - (z) 2nd Affidavit of Emily “Eddy” Grignon, sworn July 7, 2025
  - (aa) Affidavit of Jacara Droog, sworn May 15, 2025
  - (bb) 2nd Affidavit of Jacara Droog, sworn June 4, 2025
  - (cc) Affidavit of Julie Lukezic, sworn May 8, 2025
  - (dd) Affidavit of Laura Pin, sworn July 9, 2025
  - (ee) Affidavit of Margaret Chee, sworn May 13, 2025
  - (ff) Affidavit of Sara Escobar, sworn June 23, 2025
  - (gg) 2nd Affidavit of Sara Escobar, sworn July 7, 2025
  - (hh) Affidavit of Sarah Magdalen Helwig, sworn July 2, 2025
  - (ii) Affidavit of Lynn Kubis, sworn July 7, 2025
9. Amended Affidavit of James Davis affirmed June 20, 2025

10. Supplemental Responding Application Record dated August 15, 2025, containing:
- (a) Affidavit of Lee Ann Hundt, sworn August 15, 2025
  - (b) Affidavit of Dr. Stephen Hwang, sworn May 6, 2025
  - (c) Acknowledgement of Expert's Duty of Dr. Stephen Hwang, dated June 4, 2025
  - (d) Affidavit of Dr. Laura Pin, sworn July 9, 2025
  - (e) Acknowledgement of Expert's Duty of Dr. Laura Pin, dated August 13, 2025
  - (f) Affidavit of Dr. Sahil Gupta, sworn August 15, 2025
  - (g) Acknowledgement of Expert's Duty of Dr. Sahil Gupta, dated August 15, 2025
  - (h) Affidavit of Dr. Stephen Gaetz, sworn August 15, 2025
  - (i) Acknowledgement of Expert's Duty of Dr. Stephen Gaetz, dated August 15, 2025
  - (j) Affidavit of Dr. Bernadette Pauly, sworn August 14, 2025
  - (k) Acknowledgement of Expert's Duty of Dr. Bernadette Pauly, dated August 14, 2025
  - (l) Affidavit of Dr. Kaitlin Schwan, sworn August 15, 2025

- (m) Acknowledgement of Expert's Duty of Dr. Kaitlin Schwan, dated August 15, 2025
- (n) Affidavit of Marie-Josée Houle, sworn August 15, 2025
- (o) Acknowledgement of Expert's Duty of Marie-Josée Houle, dated August 15, 2025

11. Second Supplemental Responding Application Record dated February 20, 2026, containing:

- (a) 2nd Affidavit of Megan Lopes, sworn October 10, 2025
- (b) Affidavit of Terrance Cole, sworn October 10, 2025
- (c) Affidavit of Jordan Camm, sworn October 15, 2025
- (d) Affidavit of Jeffrey Lima Couto, sworn October 15, 2025
- (e) Affidavit of Xander Harker, sworn October 15, 2025
- (f) Affidavit of Charles Kocher, sworn January 13, 2026
- (g) Affidavit of Aline Jeffery, sworn January 21, 2026
- (h) Affidavit of Michael Jeffery, sworn January 21, 2026
- (i) Affidavit of Julie Kalbfleisch, sworn February 12, 2026
- (j) Affidavit of Carine Lee Nind, sworn February 20, 2026

- (k) 3rd Affidavit of Sara Escobar, sworn February 20, 2026
- (l) 2nd Affidavit of Laura Pin, sworn February 20, 2026
- 12. Second Affidavit of Aaron El Sabrout, affirmed April 8, 2026
- 13. Respondents' Brief of Answers to Undertakings dated March 31, 2026, containing:
  - (a) Answers to Undertakings from the Cross-Examination of Jacara Droog on July 14, 2025
  - (b) Answers to Undertakings from the Cross-Examination of Aaron El Sabrout on July 14, 2025
  - (c) Answers to Undertakings from the Cross-Examination of Dr. Laura Pin on December 3, 2025
  - (d) Answers to Undertakings from the Cross-Examination of Lee Ann Hundt on December 10, 2025
  - (e) Answers to Undertakings from the Cross-Examination of Dr. Sahil Gupta on January 7, 2026
  - (f) Answers to Undertakings from the Cross-Examination of Marie-Josée Houle on January 7, 2026
  - (g) Answers to Undertakings from the Cross-Examination of Julie Kalbfleisch on March 4, 2026

14. Respondents' Amended Notice of Application dated October 22, 2025 (Court file no. CV-25-00001341-0000)

15. Respondents' Notice of Constitutional Question dated February 26, 2026

June 22, 2026.

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*Amicus Curiae*

THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant (Appellant)

-and- JOSEPHINA DUGAS et al.  
Respondents (Respondents in Appeal)

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT TORONTO

**APPELLANT'S CERTIFICATE RESPECTING  
EVIDENCE**

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Lawyers for the Applicant (Appellant),  
The Regional Municipality of Waterloo

# TAB 61

Court of Appeal File No.:  
Superior Court File No.: CV-25-00000750-0000

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE ATTORNEY GENERAL OF ONTARIO

Appellant (Intervener)

- and -

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant (Applicant)

- and -

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, and PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondent  
(Respondents/Cross-Applicants)

---

CERTIFICATE RESPECTING EVIDENCE

---

THE APPELLANT, the Attorney General of Ontario, CERTIFIES that the following evidence is required for the appeal, in the Appellant’s opinion:

- A. Application Record of the Applicant, the Regional Municipality of Waterloo, containing:
1. Amended Notice of Application, dated June 16, 2025
  2. Affidavit of Peter Sweeney, affirmed June 6, 2025
  3. Affidavit of Douglas John Spooner, affirmed June 6, 2025
- B. Reply Application Record of the Applicant, the Regional Municipality of Waterloo, containing:
1. Affidavit of Brent Wood, affirmed June 26, 2025
  2. 2<sup>nd</sup> Affidavit of Peter Sweeney, affirmed July 2, 2025
  3. 3<sup>rd</sup> Affidavit of Peter Sweeney, affirmed July 31, 2025
- C. Responding Application Record of the Respondents (Cross-Applicants), Named Respondents and Persons Unknown and to be Ascertained, containing:
- Encampment residents
1. Affidavit of Aaron Price, sworn May 6, 2025
  2. Affidavit of Avery Ament, sworn June 23, 2025
  3. Affidavit of Calvin Sharpe, sworn May 30, 2025
  4. Affidavit of Jakob Stubbs, sworn June 23, 2025
  5. Affidavit of James Davis, sworn June 20, 2025
  6. Affidavit of James Hammond, sworn May 2, 2025
  7. Affidavit of Jason Paul, sworn June 16, 2025
  8. Affidavit of Jeremy Linton, sworn May 6, 2025
  9. Affidavit of Jeremy Nichol, sworn May 8, 2025

10. Affidavit of Joseph Bradley, sworn May 9, 2025
11. Affidavit of Joseph Sadler, sworn July 9, 2025
12. Affidavit of Josephina Dugas, sworn May 7, 2025
13. Affidavit of Julie Young, sworn June 13, 2025
14. Affidavit of Kyle York, sworn June 17, 2025
15. Affidavit of Matthew Stefanac, sworn May 6, 2025
16. Affidavit of Megan Lopes, sworn June 18, 2025
17. Affidavit of Noah Helsby, sworn May 15, 2025
18. Affidavit of Stephanie McMillan, sworn May 13, 2025
19. Supplemental Affidavit of Stephanie McMillan, sworn June 17, 2025
20. Affidavit of Terra-Lynn Weber, sworn May 6, 2025
21. Affidavit of Warren Loppie, sworn July 9, 2025

Laypersons

22. Affidavit of Aaron El Sabrout, sworn July 7, 2025
23. Affidavit of Angela Allt, sworn June 20, 2025
24. Affidavit of David Alton, sworn June 23, 2025
25. Affidavit of Emily “Eddy” Grignon, sworn May 12, 2025
26. 2<sup>nd</sup> Affidavit of Emily “Eddy” Grignon, sworn July 7, 2025
27. Affidavit of Jacara Droog, sworn May 15, 2025
28. 2<sup>nd</sup> Affidavit of Jacara Droog, sworn June 4, 2025
29. Affidavit of Julie Lukezic, sworn May 8, 2025
30. Affidavit of Laura Pin, sworn July 9, 2025
31. Affidavit of Margaret Chee, sworn May 13, 2025

32. Affidavit of Sara Escobar, sworn June 23, 2025
33. 2<sup>nd</sup> Affidavit of Sara Escobar, sworn July 7, 2025
34. Affidavit of Sarah Magdalen Helwig, sworn July 2, 2025
35. Affidavit of Lynn Kubis, sworn July 7, 2025

D. Supplementary Application Record of the Applicant, The Regional Municipality of Waterloo, containing:

1. Further Amended Notice of Application, dated March 10, 2026
2. Expert Affidavit of Dr. Sharon Koivu, affirmed September 11, 2025
3. 4<sup>th</sup> Affidavit of Peter Sweeney, affirmed September 12, 2025
4. Affidavit of Dilupneet Kang, affirmed January 9, 2026
5. Affidavit of Aaron Moss, affirmed January 16, 2026
6. 5<sup>th</sup> Affidavit of Peter Sweeney, affirmed February 27, 2026

E. Supplementary Responding Application Record of the Respondents (Cross-Applicants), Named Respondents and Persons Unknown and to be Ascertained, containing:

Laypersons

1. Affidavit of Lee Ann Hundt, sworn August 15, 2025

Experts

2. Affidavit of Dr. Stephen Hwang, sworn May 6, 2025
3. Affidavit of Dr. Laura Pin, sworn July 9, 2025
4. Affidavit of Dr. Sahil Gupta, sworn August 15, 2025
5. Affidavit of Dr. Stephen Gaetz, sworn August 15, 2025

6. Affidavit of Dr. Bernadette Pauly, sworn August 14, 2025
7. Affidavit of Dr. Kaitlin Schwan, sworn August 15, 2025
8. Affidavit of Marie-Josée Houle, sworn August 15, 2025

F. Second Supplementary Responding Application Record of the Respondents (Cross-Applicants), Named Persons and Persons Unknown and to be Ascertained, containing:

Encampment residents

1. 2<sup>nd</sup> Affidavit of Megan Lopes, sworn October 10, 2025
2. Affidavit of Terrance Cole, sworn October 10, 2025
3. Affidavit of Jordan Camm, sworn October 15, 2025
4. Affidavit of Jeffrey Lima Couto, sworn October 15, 2025
5. Affidavit of Xander Harker, sworn October 15, 2025
6. Affidavit of Charles Kocher, sworn January 13, 2026
7. Affidavit of Aline Jeffery, sworn January 21, 2026
8. Affidavit of Michael Jeffery, sworn January 21, 2026

Laypersons

9. Affidavit of Julie Kalbfleisch, sworn February 12, 2026
10. Affidavit of Carine Lee Nind, sworn February 20, 2026
11. 3<sup>rd</sup> Affidavit of Sara Escobar, sworn February 20, 2026

Experts

12. 2<sup>nd</sup> Affidavit of Laura Pin, sworn February 20, 2026

G. Amended Affidavit of James Davis, sworn June 20, 2025

- H. 2<sup>nd</sup> Affidavit of Aaron El Sabrout, sworn April 8, 2026
- I. 2<sup>nd</sup> Affidavit of Aaron Moss, affirmed April 8, 2026
- J. Joint Cross-Examination Transcript Briefs, containing:
  - 1. Transcript of the Cross-Examination of Aaron El Sabrout, held on July 14, 2025
  - 2. Transcript of the Cross-Examination of Angela Allt, held on July 14, 2025
  - 3. Transcript of the Cross-Examination of David Alton, held on July 10, 2025
  - 4. Transcript of the Cross-Examination of Eddy Grignon, held on July 10, 2025
  - 5. Transcript of the Cross-Examination of Jacara Droog, held on July 14, 2025
  - 6. Transcript of the Cross-Examination of Jakob Stubbs, held on July 10, 2025
  - 7. Transcript of the Cross-Examination of Sara Escobar, held on July 11, 2025
  - 8. Transcript of the Cross-Examination of Dr. Stephen Hwang, held on July 11, 2025
  - 9. Transcript of the Cross-Examination of Peter Sweeney, held on July 11, 2025
  - 10. Transcript of the Cross-Examination of Dr. Stephen Gaetz, held on December 2, 2025
  - 11. Transcript of the Cross-Examination of Dr. Laura Pin, held on December 3, 2025
  - 12. Transcript of the Cross-Examination of Maggie Helwig, held on December 3, 2025
  - 13. Transcript of the Cross-Examination of Lee Ann Hundt, held on December 10, 2025

14. Transcript of the Cross-Examination of Dr. Sharon Koivu, held on December 11, 2025
15. Transcript of the 2<sup>nd</sup> Cross-Examination of Peter Sweeney, held on December 11, 2025
16. Transcript of the Continued 2<sup>nd</sup> Cross-Examination of Peter Sweeney, held on December 12, 2025
17. Transcript of the Cross-Examination of Dr. Bernie Pauly, held on December 15, 2025
18. Transcript of the Cross-Examination of Dr. Sahil Gupta, held on January 7, 2026
19. Transcript of the Cross-Examination of Marie-Josée Houle, held on January 7, 2026
20. Transcript of the Cross-Examination of Dr. Kaitlin Schwan, held on January 9, 2026
21. Transcript of the Cross-Examination of Aaron Moss, held on February 13, 2026
22. Transcript of the 2<sup>nd</sup> Cross-Examination of Sara Escobar, held on March 2, 2026
23. Transcript of the Cross-Examination of Julie Kalbfleisch, held on March 3, 2026
24. Transcript of the 2<sup>nd</sup> Cross-Examination of Dr. Laura Pin, held on March 3, 2026
25. Transcript of the Cross-Examination of Doug Spooner, held on March 6, 2026

26. Transcript of the 3<sup>rd</sup> Cross-Examination of Peter Sweeney, held on March 6, 2026

K. Brief of Answers to Undertakings of the Applicant, the Regional Municipality of Waterloo, containing:

1. Answers to Undertakings from the Cross-Examination of Peter Sweeney on July 11, 2025
2. Answers to Undertakings from the 2<sup>nd</sup> and 3<sup>rd</sup> Cross-Examinations of Peter Sweeney on December 11 and 12, 2025 and March 6, 2026
3. Answers to Undertakings from the Cross-Examination of Dr. Sharon Koivu on December 11, 2025
4. Answers to Undertakings from the Cross-Examination of Aaron Moss on February 13, 2026
5. Answers to Undertakings from the Cross-Examination of Doug Spooner on March 6, 2026

L. Brief of Answers to Undertakings of the Respondents (Cross-Applicants), Named Persons and Persons Unknown and to be Ascertained, containing:

1. Answers to Undertakings from the Cross-Examination of Jacara Droog on July 14, 2025
2. Answers to Undertakings from the Cross-Examination of Aaron El Sabrout on July 14, 2025
3. Answers to Undertakings from the Cross-Examination of Dr. Laura Pin on December 3, 2025

4. Answers to Undertakings from the Cross-Examination of Lee Ann Hundt on December 10, 2025
5. Answers to Undertakings from the Cross-Examination of Dr. Sahil Gupta on January 7, 2026
6. Answers to Undertakings from the Cross-Examination of Marie-Josée Houle on January 7, 2026
7. Answers to Undertakings from the Cross-Examination of Julie Kalbfleisch on March 4, 2026

M. Supplementary Brief of Answers to Undertakings of the Applicant, the Regional Municipality of Waterloo, containing:

1. Updated Answers to Undertakings from the Cross-Examination of Doug Spooner on March 6, 2026

June 22, 2026

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MUNICIPALITY OF WATERLOO**

-and-

**NAMED RESPONDENTS AND PERSONS  
UNKNOWN**

**Appellants**

**Respondents (Respondents/Cross-Applicants)**

**COURT OF APPEAL FOR ONTARIO**

**Proceedings commenced at Toronto**

**CERTIFICATE RESPECTING EVIDENCE**

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Counsel for the Appellant, The Attorney General of Ontario

# TAB 62

The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown  
COA-26-CV-0836

**Directions of Case Management Judge**

Meeting held on July 23, 2026

**Case Management Judge: Huscroft J.A.**

**Parties:**

| PARTY                                                                                                 | COUNSEL                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Appellant,<br>The Regional Municipality of Waterloo<br><br>Appellant,<br>Attorney General for Ontario | <b>Contact information for Gordon Capern:</b><br><a href="mailto:gordon.capern@paliareroland.com">gordon.capern@paliareroland.com</a><br><br><b>Contact information for Andrea Boliero and Sara Badawi:</b><br><a href="mailto:andrea.bolieiro@ontario.ca">andrea.bolieiro@ontario.ca</a><br><a href="mailto:sara.badawi@ontario.ca">sara.badawi@ontario.ca</a>                                                                                       |
| Named Respondents<br><br><br><br><br><br><br><br><br><br>Amicus Curiae                                | <b>Contact information for Ashley Schuitema and Joanna Mullen:</b><br><a href="mailto:ashley.schuitema@wrcls.clcj.ca">ashley.schuitema@wrcls.clcj.ca</a><br><a href="mailto:joanna.mullen@wrcls.clcj.ca">joanna.mullen@wrcls.clcj.ca</a><br><br><b>Contact information for Karen Steward and Jen Danch:</b><br><a href="mailto:karenannesteward@yahoo.ca">karenannesteward@yahoo.ca</a><br><a href="mailto:jdanch@swadron.com">jdanch@swadron.com</a> |

**DIRECTIONS:**

**The appeals are consolidated**

The Municipality and the Crown's appeals are hereby consolidated.

**Amicus curiae**

The application judge appointed Ms. Perez to intervene as a friend of the court to represent the interests of “unnamed persons living in the encampment whose capacity may be in issue and who have not retained counsel.” However, he broadened her participation to include the ability to cross examine and to participate in mediation as though she was intervening as a party, and ordered that her costs were to be paid by the Attorney General.

Ms. Perez seeks to continue her amicus role on the appeal. None of the parties objects, and the Crown informs that it is content to pay her costs on a legal aid tariff as it did below.

In these circumstances, her appointment as amicus is approved in accordance with the terms of the draft order provided. Factum length and time for oral submissions (para. 2 of the draft order) will be addressed by further direction.

**Schedule for exchange of materials**

The parties and amicus will prepare a draft schedule for the exchange of materials and a date for motions for leave to intervene to be filed. This will be submitted to Jessica Kowalczyk for my approval as soon as possible.

**Hearing date**

A hearing date and time allocations for oral submissions will be discussed at a case conference after the draft schedule has been approved.

**Interventions**

It is expected that several organizations, including those who participated on the application, may seek leave to intervene on the appeal.

I am designated by the Associate Chief Justice to determine the leave motions. I require that draft factums accompany each of the motions to intervene, up to 10 pages in length. I will deal with motions that are on consent or unopposed in writing. Zoom hearings will be arranged as appropriate.

**Factum Length**

The appellants may file factums up to 12,000 words in length each. Appendices will be kept brief. The appellants will cooperate so as to minimize overlap and repetition in their factums to the extent possible.

The appeals are scheduled to be perfected by August 4, 2026. If additional time is required in light of this direction, they may perfect by August 12, 2026.

The respondents may file a single factum up to 14,000 words in length. Amicus may file a single factum up to 9000 words in length. The respondents and amicus will cooperate to minimize overlap and repetition in their factums to the extent possible.

**Further case management**

Further case management will be scheduled once the draft schedule for the exchange of written materials has been approved.



| To be completed by appeal management judge:           |                                                                                                                                                                |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Is another appeal management meeting required?        | <input checked="" type="checkbox"/> YES<br><input type="checkbox"/> NO<br><input type="checkbox"/> OTHER ( <i>explain</i> ): <a href="#">Click here</a>        |
| Is the appeal ready to be scheduled?                  | <input type="checkbox"/> YES<br><input checked="" type="checkbox"/> NO                                                                                         |
| Have you assigned the time allowed for oral argument? | <input type="checkbox"/> YES ( <i>fill in below</i> )<br>Time for Appellant: (HH:MM)<br>Time for Respondent: (HH:MM)<br><input checked="" type="checkbox"/> NO |

# TAB 63

Court File Nos.: COA-26-CV-0836  
COA-26-CV-0897

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Applicant  
(Appellant)

and

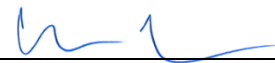
**JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN**

Respondents  
(Respondents in Appeal)

**CERTIFICATE OF COMPLETENESS**

I, Andrew Lokan, lawyer for the Appellant, certify that the Appeal Book and Compendium in this appeal is complete and legible.

August 7, 2026

  
\_\_\_\_\_  
Andrew Lokan

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THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant (Appellant)

–and– JOSEPHINA DUGAS et al.  
Respondents (Respondents in Appeal)

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT TORONTO

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THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant (Appellant)

–and– JOSEPHINA DUGAS et al.  
Respondents (Respondents in Appeal)

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT TORONTO

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