

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

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**

Respondents
(Respondents/Cross-Applicants)

**APPEAL BOOK AND COMPENDIUM OF THE APPELLANT/INTERVENER,
ATTORNEY GENERAL OF ONTARIO**

VOLUME II

August 7, 2026

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TAB 28

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

AFFIDAVIT OF DOUGLAS JOHN SPOONER

I, **Douglas John Spooner**, of the City of Waterloo, in the Regional Municipality of Waterloo, **AFFIRM AND SAY:**

1. I am the Director, Transit Services and the Acting Commissioner, Transportation at the Region of Waterloo (the “**Region**”). I have held these positions since February 2023 and April 2024 respectively.

2. As such, I have personal knowledge of the matters set out in this affidavit. Where I do not have personal knowledge of a matter, I state the source of my information and believe it to be true.

A. Overview

3. The Region is undertaking the design and construction of a new transportation centre, the Kitchener Central Transit Hub (“**KCTH**”), to be located at the corner of King and Victoria Streets in Kitchener. The KCTH will combine numerous services to act as

possession of the Property by December 1, 2025 to ensure it delivers the Property to Metrolinx in an appropriate condition for Metrolinx's work.

B. My Role

8. I joined the Region in 2023. My previous work included roles at Metrolinx, the Invictus 2017 Games, and the Toronto 2015 Pan Am/Parapan Am Games.

9. In my roles as Director, Transit Services, and Acting Commissioner, Transportation, at the Region, I provide strategic leadership in the planning, operations, and maintenance of transit services, rapid transit service and transportation. This includes the oversight of 1100 staff, over 330 buses, 15 LRV sets, 1750 lane kilometres of roadway and the associated systems and infrastructure.

10. One of the strategic priorities for the Region and of which I am in charge is to build a connected rural and urban community and an integrated transportation network that includes active transportation, bus, train and rapid transit. Another priority is to expand higher-frequency train connections from the Kitchener-Waterloo region to major Ontario communities including the Greater Toronto Area ("**GTA**") and other regions in southwestern Ontario. These priorities are laid out in the recently updated Grand River Transit Business Plan and the 2018 Transportation Master Plan which is currently in the planning stages for an update. A copy of the Transit Business Plan is attached to this affidavit as **Exhibit "A"**. A copy of the 2018 Transportation Master Plan is attached to this affidavit as **Exhibit "B"**.

11. In addition to the KCTH (which is outlined in detail below), the Region is actively engaged in multiple infrastructure and transit-related projects. These include the Victoria

Street modification project, which seeks to connect Victoria Street, King Street West, and Weber Street West in Kitchener in an improved manner (the “**Victoria Street Reconstruction**” discussed in detail below), a dedicated bus lane and multi-use trail that will facilitate access to KCTH, the planning and development of Stage Two of the Light Rail Transit system, collaboration with the Province of Ontario regarding a proposed GO Transit connection between Cambridge and Guelph, and the finalization of a new business plan for Grand River Transit.

C. The Property

12. The Region is the registered owner of the Property. The Property is located at the corner of Victoria Street and Weber Street. It is approximately one-half acre in size and consists of a gravel parking lot. The Property was acquired in November of 2012 for the purposes of constructing a project known as the Weber Street Grade Separation. The Region acquired the land for the sum of \$2,535,000 in market value. A copy of the parcel register for the Property showing the Region as the registered owner is attached to this affidavit as **Exhibit “C”**.

13. The Property is surrounded:

- (a) To the east (across Weber Street West), by the VIA Rail Train Station (which also provides service to GO trains, and which land also includes a GO Bus transfer station, and a Region owned parking lot for transit customers);
- (b) To the west, by a commercial plaza municipally known as 70-84 Victoria Street North and which includes businesses such as a bakery and cake shop, a jewelry store, and a dancewear store;

- (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;
- (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.

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

E. The Property is Needed by December 1, 2025

1. Metrolinx Requires Use of the Property for Laydown Work

37. As noted above, Metrolinx has notified the Region that it requires the Property for its use as a construction staging and laydown area by March 2026.

38. Staging involves organizing the sequence of construction tasks and determining how equipment, materials, and crews will move and operate safely and efficiently on-site. Laydown areas are designated spaces, which are necessarily adjacent to or as proximate as possible to the construction site, where materials, tools, machinery, and temporary structures are stored before being used.

39. In my experience, an adequately chosen laydown site is essential for ensuring worker safety, maintaining workflow, minimizing delays, and ensuring that the job site remains organized and accessible. Proximity is key in determining what site to use as a laydown area. Often, large construction equipment and materials are stored on the laydown site and transported to or from the construction site. A laydown site that is even a short distance away from the work being conducted can increase the chance of worker injury by increasing the distance materials or equipment have to travel, and can, on aggregate, add significant additional time to a project. The Property is the most proximate site that is owned by the land and is adjacent to the lands on which the Metrolinx work will be taking place.

40. The grade of a site is also important. The Property was designed to be on-grade with the rail corridor and other adjacent areas where work is taking place. I have seen

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.

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

4. Health and Safety Risks to the residents of the Encampment

52. Given that construction work will be taking place on all sides of the Property, including rail work, road work and most critically demolition work, I am concerned with the health and safety risks to anyone residing nearby while construction work is ongoing.

53. People living near a construction site may face several physical hazards that can threaten their health and safety. Continuous construction activity near occupied areas, especially where heavy construction machinery is anticipated to be used, increases the potential for accidents, both minor and major, and possibly fatal, to occur. Debris and materials from the site may occasionally fall or be carried into nearby spaces, creating potential risks of injury or property damage. The risks of heavy machinery or other fatal accidents must be taken seriously.

54. There is also the likelihood for significant noise and light pollution to occur. Proximity to a construction site expose people to noise, dust, bright lights used for nighttime work, noxious fumes, and other hazards.

55. Additionally, despite fencing and signage, accidental trespassing into the construction site could expose people to dangerous areas, open pits, and heavy machinery. This is especially true for pedestrians who may be unfamiliar with the area or unaware at a given moment of the dangers. A secure perimeter around the entire construction site is therefore optimal and warranted.

G. The Proposed Bylaw

56. I am aware that on April 23, 2025, the Region passed Bylaw 25-021 which will allow for vacant possession of the Property by December 1, 2025.

TAB 29

Court File No. CV-25-00000750-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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*

This is the Cross-Examination of **Doug Spooner** on his affidavit dated June 6, 2025, taken via Zoom videoconference on consent of the parties on March 6, 2026.

APPEARANCES:

KARTIGA THAVARAJ, Ms. Counsel for the Applicant

ASHLEY SCHIUTEMA, Ms. Counsel for the Respondents
SHANNON DOWN, Ms.
JOANNA MULLEN, Ms.

MERCEDES PEREZ, Ms. Amicus Curiae

D. Spooner - (Cr-Ex) - 42

1 through community services. There's two-ride cards
2 which are completely free provided to residents of the
3 region. There's the affordable transit program that
4 makes every fare 50 percent off.

5 So there are a number of programs. I do not
6 administer them. They're administered by the
7 Community Services Department. But I know we offer
8 those products.

9 119. Q. Okay, but if someone wasn't eligible
10 for it, they would have to pay the regular fare, is
11 that correct?

12 A. Yeah, as with any transit system, yeah.

13 120. Q. Okay. And that those programs are not
14 unlimited programs. They have a specific budget
15 attached to them and so that they serve -- like, for
16 example, there might be x-number of passes that are
17 provided. Once those have been provided, that program
18 is full for the year. Is that correct?

19 A. I am not as familiar with the two-ride
20 card program. I know on the portable transit program,
21 that's the 50 percent discount, there is no cap on
22 that. That is a -- the number of people who apply,
23 receive the product so I don't know if that is
24 mimicked in the two-ride card program.

25 121. Q. Okay. At Paragraph 19, you state that

D. Spooner - (Cr-Ex) - 43

1 this project is going to dramatically improve transit
2 access. Is that something that's been modelled? Does
3 the region have empirical data to support that?

4 A. Not -- not that I've reviewed. I would
5 imagine that at the business stage we would have done
6 some work around travel times and reducing travel
7 times. I haven't reviewed that to date because I came
8 in to an approved project.

9 122. Q. Okay, so what -- I guess what I am
10 asking you is when you're saying this then, what are
11 you basing that statement on then?

12 A. Yeah, my experience in my time working
13 in transit. So, you know, you could imagine the walk
14 today from the ION Central Station to Kitchener
15 Central GO, you know, five to seven minutes, it's an
16 inconvenience for folks, it would limit the number of
17 people who chose that option.

18 So what I do know is that time-savings
19 through transit is a considerable contributor to
20 upticks in ridership.

21 123. Q. Okay, but in terms of saying like
22 "dramatically improve," that's just -- that's based on
23 your -- that's your gut instinct? Is that fair to
24 say?

25 A. No, I've worked on and designed

D. Spooner - (Cr-Ex) - 44

1 multiple GO Stations. I didn't do the design, as I
2 said, for Kitchener Central. But in other projects,
3 I've seen this for sure.

4 124. Q. Okay, seen it in terms of data that
5 shows the times are dramatically reduced?

6 A. Absolutely, yeah. We work on this
7 everyday. If I find a time-savings of one or two
8 minutes per second of a trip, I would say that's a
9 dramatic change that would result in four minutes for
10 that individual or the number of people who ride it,
11 you get into pretty significant time-savings for the
12 community very quickly.

13 125. Q. Okay, so you're saying a four-minute
14 time-savings would constitute a dramatically ---

15 A. Yeah, if you applied that across, you
16 know, 20,000 people who used it over a week or a
17 month, yes, absolutely it would be dramatic.

18 126. Q. Okay. So you're not basing this though
19 on this specific -- like any specific modeling or
20 empirical data that's been projected for this project?

21 A. Correct.

22 127. Q. Okay. If we look down at Paragraph 22,
23 you're talking about the potential to boost the
24 economic health of the surrounding Region of Waterloo
25 community significantly, including more businesses,

D. Spooner - (Cr-Ex) - 52

1 sufficient time to assess the remediation needs and
2 obviously complete it before handing over possession
3 to Metrolinx.

4 143. Q. Okay, and do you have a sense of what
5 is required for the remediation of the site?

6 A. Not at this point, no, we haven't been
7 able to do an assessment of the requirements of
8 remediation, so ...

9 144. Q. Okay, do you have sort of like minimum
10 and maximum estimates of what the Region thinks how
11 long it's going to take?

12 A. So, yeah, the timeline that my team
13 felt comfortable with is in and around three months.

14 145. Q. And that's an estimate, that could be
15 -- it could take less, it could take longer?

16 A. Correct.

17 146. Q. Okay. Subject to any redirect, those
18 are my questions.

19 MS. THAVARAJ: Mercedes?

20 MS. PEREZ: Yeah, thank you. I don't have
21 any questions for Mr. Spooner.

22 MS. THAVARAJ: All right, no redirect from
23 me.

24
25 --- ADJOURNED

TAB 30

This is Exhibit "A" referred to in the Affidavit of Dilupneet Kang affirmed by Dilupneet Kang before me at the City of Toronto, in the Province of Ontario, on January 9, 2026



Commissioner for Taking Affidavits (or as may be)

GRETA HOAKEN (LSO # 87903I)

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 3rd (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 11th (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 9th day of January, A.D., 2026.

Signed by:

28C93659EA85420...

Regional Clerk

Signed by:

E732ACEE5B224A9...

Regional Chair

TAB 31

**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

AFFIDAVIT OF CALVIN SHARPE

I, Calvin Sharpe, of the City of Kitchener, in the Province of Ontario, AFFIRM AND SAY:

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.
2. I am a 59 year old male.
3. I am Status First Nation from The Chippewas of Rama First Nations. I've been experiencing racism all my life.
4. I receive Ontario Disability Support Program benefits of \$800 per month, I do not receive the housing allowance because I do not have a residence. If I had a place to rent I could

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 32

**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 JULIE YOUNG

I, Julie Young, of the City of Kitchener, in the Province of Ontario, AFFIRM AND SAY:

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.
2. I am a 47 year old female.
3. I ran away from home when I was thirteen years old. I became pregnant at fifteen years old and left home for good.
4. I receive Ontario Works benefits.
5. I am illiterate.

28. I don't experience food insecurity at the encampment because of the donations brought here daily. If people were restricted from dropping off food and water donations, or deterred from visiting because of fencing or more security I would struggle.

29. The security is doing their best, but it would be helpful to have someone who knows what it is like to be homeless. They would understand better how to effectively help people.

30. There is no in between for support. It is either you are an addict or you are not, no one helps you when you think you might begin using again. Same for housing. There are no supports for people on the edge of homelessness.

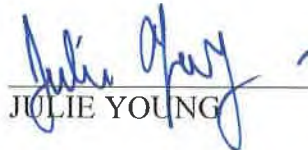
31. The Region needs to clean the porta-potty's and empty the dumpsters more often to keep the site clean. *The Region also needs to deal with the rat problem here*

32. If I were to be fined \$5,000, I would not be able to pay it.

AFFIRMED BEFORE ME in the)
City of Kitchener, this 13 day of)
June, 2025)
In the Regional Municipality of Waterloo)



ANNIKA MARIE STANTON,
a Commissioner etc.,
Province of Ontario,
while a licensed Paralegal.
LSO #P17289



JULIE YOUNG

TAB 33

**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 TERRANCE JOSEPH PATRICK COLE

I, Terrance Joseph Patrick Cole, of the City of Kitchener, in the Province of Ontario, AFFIRM

AND SAY:

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.
2. I am a 57 year old male.
3. I had five children, three biological and two step-children. I lost two of my children to mental health struggles and addiction.
4. I am in a relationship with Kari Kuntz.

19. For a period of time I lived at Kari's mom's house, but Kari and her mom butt heads and Kari was asked to leave. I left at that time and moved into a tent at the encampment.
20. The encampment at 100 Victoria is located close to services I access for food and treatment. I go across the street for coffee and to the soup kitchen. I also access the hospital, the probation office and the RAAM clinic, which are all nearby.
21. I rely on the donations and harm reduction supplies brought to the 100 Victoria encampment.
22. I do not feel particularly safe at the encampment, even with the security provided, but I have no other options or anywhere else to go. The security would watch you die and not help you. I have been assaulted with bear mace and beaten with a bat and the security has not intervened. My arm is broken in two spots and is not healing properly.
23. My income makes it impossible for me to find affordable housing. You need at least first and last month's rent to get an apartment and I cannot afford it.
24. I have spoken to the Region's unsheltered workers but have been told there is nothing available for me. I believe I am on a waitlist for subsidized housing.
25. I need a shelter option that is available to couples so I can continue to live with Kari.
26. I would stay at a motel if it was offered to me.

TAB 34

Court File No. CV-25-00000750-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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*

This is the Cross-Examination of **Sara Escobar** on her affidavits dated June 23, 2025, and July 7, 2025, taken via Zoom videoconference on consent of the parties on July 11, 2025.

APPEARANCES:

ANDREW LOKAN, Mr. Counsel for the Applicant
GRETA HOAKEN, Ms.

ASHLEY SCHIUTEMA, Ms. Counsel for the Respondents
JOANNA MULLEN, Ms.
SHANNON DOWN, Ms.

MERCEDES PEREZ, Ms. Amicus Curiae

We would like to live in a Canada in which everyone is safely and adequately housed.

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.

BASIC PRINCIPLES

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.

TAB 35

Court File No. CV-25-00000750-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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*

This is the Cross-Examination of **Angela Allt** on her affidavit dated June 20, 2025, taken via Zoom videoconference on consent of the parties on July 14, 2025.

APPEARANCES:

ANDREW LOKAN, Mr. Counsel for the Applicant
GRETA HOAKEN, Ms.

ASHLEY SCHIUTEMA, Ms. Counsel for the Respondents
JOANNA MULLEN, Ms.
SHANNON DOWN, Ms.

MERCEDES PEREZ, Ms. Amicus Curiae

A. Allt (Cr.-Ex.) - 13

1 what's going on with somebody.

2 46. Q. Right.

3 A. They're familiar.

4 47. Q. Right. But when you first see somebody
5 exhibiting strange behaviours or unusual behaviours,
6 you wouldn't necessarily jump to the conclusion that
7 they're psychotic? So for example, someone talking
8 to themselves, you wouldn't think, "Oh, that person's
9 psychotic?"

10 A. It would depend on what way they're
11 talking to themselves, I would think. If they're
12 doing so loudly in the middle of the street, you know,
13 that might be your first go to. If they're off in a
14 corner, kind of you know, what appeared to be mumbling
15 to themselves, no that might not be your first go to.

16 48. Q. Right. But you wouldn't expect a
17 layperson without any mental health training to be
18 able to make those (inaudible), would you?

19 A. Probably not.

20 49. Q. Okay. And so if someone's acting
21 emotionally dysregulated, could be psychosis, or it
22 could be nothing to do with psychosis?

23 A. Exactly.

24 50. Q. Okay, thank you. And if you have someone
25 who is experiencing psychosis, like you say, for a

A. Allt (Cr.-Ex.) - 14

1 community member, really the best that you can hope
2 for is that they'll get in touch with appropriate
3 authorities, and that that directs that person into
4 getting the help that they need, is that fair?

5 A. Well, that's certainly preferable to
6 them trying to intervene, yes.

7 51. Q. Okay. And that might the police, or it
8 might be calling an ambulance, or it might be
9 contacting another person with a medical background?

10 A. Yes.

11 52. Q. Okay, thank you. And one advantage of the
12 psychiatric hospital is that, I mean, you've talked
13 about the tools that you'd have such as a seclusion
14 room. You also have people around who are able to
15 respond quickly to a psychotic episode, such as for
16 example, you'd typically have registered nurses or
17 licensed practical nurses on duty, correct?

18 A. (Inaudible).

19 53. Q. And you'd have access to psychiatrists? I'm
20 not saying that they're available 24/7, but if there's
21 someone in crisis, then hopefully, sooner or later
22 they can see a psychiatrist?

23 A. Yes. If somebody's on a psychiatric
24 unit, I mean you know, like everything else 9-5,
25 right? There's somebody there. But again, like

A. Allt (Cr.-Ex.) - 15

1 almost every other medical service, you know, there's
2 somebody on call after hours.

3 54. Q. Right, okay. But none of those supports are
4 available in an encampment, are they?

5 A. They're not available in an encampment,
6 and not available in the wider community.

7 55. Q. Right. So at best what you can hope for is
8 that someone will recognize that there's a person who
9 may need treatment and contact the appropriate person,
10 whether police, or ambulance, or other mental health
11 professional?

12 A. Yes.

13 56. Q. Okay. You say that drug use can lead to
14 psychosis?

15 A. Yes.

16 57. Q. In your experience? Thank you. You also
17 say that at 100 -- sorry, that you have a caseload in
18 the Region of Waterloo?

19 A. Yes. So just to clarify the
20 understanding around this, my role covers both
21 Waterloo and Wellington counties.

22 58. Q. Right.

23 A. Because it's a, you know, bigger
24 population, I generally do have more people from
25 Waterloo County as a whole, which takes in Kitchener,

A. Allt (Cr.-Ex.) - 24

1 hierarchy of needs situation here. And hierarchy of
2 needs is a concept in mental health where you've got a
3 pyramid and at one level there's your most basic
4 needs, like shelter, warmth, food, right?

5 A. Maslow.

6 96. Q. Yeah, exactly. And you go through the
7 hierarchy and then once those are taken care of, there
8 are other needs that are less basic, but nevertheless
9 real, such as social interaction, community, whatever,
10 fair?

11 A. Yes, absolutely.

12 97. Q. That's the way that model works, but in
13 terms of the hierarchy of needs, in winter there's
14 really a need for people, so that they're not on the
15 street, to be somewhere where it's warm and they're
16 not exposed to the elements?

17 A. Correct.

18 98. Q. And so you will refer people to motels for
19 the winter months?

20 A. I do quite regularly.

21 99. Q. Right. And what you'd hope though, is that
22 the risks can be mitigated, if they're going to a
23 motel with appropriate supports?

24 A. Yes. The request for motels, again,
25 comes from various organizations.

TAB 36

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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

FACTUM OF THE NAMED RESPONDENTS/CROSS-APPLICANTS

April 2, 2026

Waterloo Region Community Legal Services
450 Frederick Street, Unit 101
Kitchener, ON N2H 2P5

Ashley Schuitema (LSO# 68257G)
Tel: 519-743-0254 x. 17
Email: ashley.schuitema@wrcls.clcj.ca

Joanna Mullen (LSO# 64535V)
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Shannon K. Down (LSO# 43894D)
Email: shannonkdown@gmail.com

**Lawyers for the Named Respondents/Cross
Applicants**

needed to meet the “diverse needs” of the Encampment residents to be accessible.⁵³

21. **It 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.⁵⁴ In response, this Court 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. [...]

22. 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.⁵⁵ It also found that closing the Encampment amounted to a deprivation of liberty,⁵⁶ 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”.⁵⁷ 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.⁵⁸

23. The Named Respondents also asserted that applying the By-Law to clear the Encampment would violate their equality rights, contrary to s. 15 of the *Charter*. However, the Court rejected that argument on the basis that “homelessness” was not an analogous ground of discrimination for the

⁵³ *Persons Unknown*, para.93.

⁵⁴ *Ibid.*, para.64.

⁵⁵ *Ibid.*, paras.95-7.

⁵⁶ *Ibid.*, para.101.

⁵⁷ *Ibid.*, para.104.

⁵⁸ *Ibid.*, paras.9, 109-19.

- *Michaud*.³⁵³ This high standard is appropriate due to the fundamental nature of the interests s. 7 protects. As the Supreme Court put it in *Carter*, it is “hard to justify a law that runs afoul of the principles of fundamental justice and is thus inherently flawed”.³⁵⁴

137. 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.³⁵⁵ 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.

138. In any event, the By-Laws do not satisfy the *Oakes* test, failing the second and third step of the proportionality analysis.³⁵⁶

139. The second step asks if the provision “impair[s] ‘as little as possible’ the right or freedom in question”³⁵⁷ 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.³⁵⁸ 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,³⁵⁹ 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]”³⁶⁰ 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

³⁵³ *R. v. Michaud*, [2015 ONCA 585](#) (“*Michaud*”); Region’s Factum, p. 44 (pdf 50), para.97.

³⁵⁴ *Carter*, para.95.

³⁵⁵ Region’s Factum, pp.43-4 (pdf 49-50), paras.93, 96-7.

³⁵⁶ *Taylor v. Newfoundland and Labrador*, [2026 SCC 5](#) (CanLII) (“*Taylor*”), paras.188-93, 194-95.

³⁵⁷ *R. v. Big M Drug Mart Ltd.*, [1985 CanLII 69](#) (SCC), [1985] 1 SCR 295, para.139; *Oakes*, para.70.

³⁵⁸ See, for example: *Canada (Attorney General) v. Chambre des notaires du Québec*, [2016 SCC 20](#), paras.62-8, 91.

³⁵⁹ Region’s Factum, pp.43-44 (pdf 49-50), para.96.

³⁶⁰ *Ibid.*, p.45 (pdf 51), para.99.

TAB 37

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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

FACTUM OF *AMICUS CURIAE*

(Application Hearing Returnable April 16, 17 and 20, 2026)

April 8, 2026

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Amicus Curiae for Persons Unknown, The
Mental Health Legal Committee

overwhelmingly belong to marginalized groups, it cannot be said that there is any rational connection between obtaining vacant possession of the property in a human rights-compliant manner and the effects of the By-Law.¹⁵⁵

72. The human rights approach in PECH requires treating homeless individuals as rights holders whose agency is to be respected. Intersectionality is described as a core tenet of the Region's approach, recognizing that everyone's situation is unique and must be accommodated. The Housing First approach adopted in PECH is to be implemented within a human rights framework. This means prioritizing permanent and supportive housing solutions, flexible wrap-around supports, and integration of health supports, that is centred on the principle that homeless individuals are experts about themselves and whose choices must be respected.¹⁵⁶

73. The By-Laws' purpose bears no relation to its effect for the following reasons:

- a. the By-Laws can result in forced encampment evictions, which are gross violations of human rights and prohibited under international law. If governments fail to provide housing options that are suitable, residents must be permitted to remain or be provided with a satisfactory alternative location while adequate permanent housing is negotiated and put in place.¹⁵⁷
- b. 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. It is an assault on dignity, which is at the heart of human rights.
- c. 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

¹⁵⁵ *Amicus* also adopts the submissions of the Respondents that the Transition Protocol is not compliant with a human rights-based approach in PECH: Respondents Factum, paras 107-110, **B-1-11134 to B-1-11135**

¹⁵⁶ PECH, Ex B to Alton Aff, RARV.2, pp 63, 120, **B-1-8099, B-1-8156**

¹⁵⁷ National Protocol, Ex D to Alton Aff, RARV.2, pp 189-192, **B-1-8225 to B-1-8228**

be accessible and adequate.¹⁵⁸ 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.

- d. If an Existing Resident fails to respond to or rejects a written offer of Alternative Accommodation for any reason by March 31, 2026, they can be immediately evicted pursuant to the By-Laws; this is in direct opposition to the respect for individual choices and the duty to accommodate under PECH, as well as the *Human Rights Code* and the CPRD¹⁵⁹.
- e. Standards contained in the By-Laws such as “best efforts”, “offering”, and “endeavouring” to find indoor shelter are not sufficient to be considered human rights compliant. Rather, under human rights law, there is a duty to accommodate people with protected grounds such as sex, gender, race, disability, and family status to the point of undue hardship.¹⁶⁰
- f. The By-Law can be enforced with the TPA. Under the TPA, trespassers are guilty of an offence and liable to a fine up to \$10,000; an exorbitant and punitive amount for unhoused persons (which was raised as a concern about the By-Law during a public input session on January 7, 2026).¹⁶¹ Penalizing already oppressed individuals is not consistent with PECH and exacerbates marginalization and stigmatization.
- g. The distinction between an Existing Resident and Non-Existing Residents/Other Homeless in the Region is arbitrary. The nature of encampments is fluid and they are a refuge of last resort for all the homeless of the Region. The distinction is a self-serving fiction and ignores the reality of the Encampment and the needs of other equally marginalized people. The practical effect is that a person who resided at the Encampment on April 17, 2025 is accorded less access to the Region’s housing resources than a person who happened to reside there just one day earlier. The By-Law itself recognizes that the Encampment is not static and that people will

¹⁵⁸ “Adequate” housing is defined in PECH as “[h]ousing 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”: PECH Ex B to Alton Aff., RARV.2, p 61, **B-1-8097**. Also see, Houle Aff, Sup RARV.3, p 466, para 43, **B-1-10036**

¹⁵⁹ *Human Rights Code*, [ss 1, 2\(1\)](#); CPRD, [Art 19](#) requires states to take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of the right to live in the community, with choices equal to others, by ensuring that they have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement

¹⁶⁰ *Human Rights Code*, [ss 1, 2\(1\)](#)

¹⁶¹ *Trespass to Property Act*, [RSO 1990, c T21, s 2\(b\)](#); Region Report PDL-LEG-26-001, Ex B to 4th Sweeney Aff, SupAR, pp 119-120, **A2459-A2460**

TAB 38

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

-and-

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondent

FACTUM OF THE INTERVENER, ABORIGINAL LEGAL SERVICES

DATE: April 9, 2026

FALCONERS LLP
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**Counsel for the Intervener,
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their eviction, the Indigenous residents would experience those effects more severely due to their distinctive circumstances.

42. Indigenous people also face distinct and unique barriers in accessing emergency and transitional housing. Emergency shelters in the Region are operated by mainstream organizations which results in limited to a complete lack of Indigenous-specific supports or services.⁷¹ Shelters also tend to lack Indigenous staff and volunteers, which can lead to racist actions or prejudice behaviour toward Indigenous shelter users.⁷² When Indigenous people find themselves not welcome in the shelter system, they have few options but to return to the street, or encampments such as the Encampment at 100 Vic.⁷³

43. Calvin Sharpe (“Mr. Sharpe”), an Indigenous person who has spent some time staying in the Encampment, has provided insight to the ways the eviction could exacerbate existing disadvantages for unhoused Indigenous peoples. Mr. Sharpe is a Status First Nation from The Chippewas of Rama First Nations who has been homeless on and off for most of his life.⁷⁴ Until April 1, 2025, he was being housed by the KWUNWP’s transitional housing program.⁷⁵ The UNTH Program was cancelled in November 2024.⁷⁶ As of May 30, 2025, he stated that he mostly walks around at nighttime and sleeps when he can during the day.⁷⁷ He has experienced racism from police and shelter workers because of his race, and has been robbed, attacked, and kicked out of a shelter for standing up to these racist acts.⁷⁸ Mr. Sharpe remains

⁷¹ Hundt Aff, [Supp RAR V.1 p. 12-13, para. 13.](#)

⁷² Hundt Aff, [Supp RAR V.1 pp. 12-13, para. 13](#); Sharpe Aff, [RAR V.1, p. 21, para. 10.](#)

⁷³ Hundt Aff, [Supp RAR V.1 p.17, para 27.](#)

⁷⁴ Sharpe Aff, [RAR V.1, pp. 19-20, paras. 3 and 8.](#)

⁷⁵ *Ibid*, [RAR V.1, p. 20, para 8.](#)

⁷⁶ *Ibid*, [Supp RAR V.1, p. 15, para. 20.](#)

⁷⁷ *Ibid*, [RAR V.1, p. 21, para 12.](#)

⁷⁸ *Ibid*, [RAR V.1, p. 21, para 10.](#)

TAB 39

Constitutional Law of Canada, 5th Ed. § 55:26

Constitutional Law of Canada, 5th Edition

Peter W. Hogg, Wade Wright

Part III. Civil Liberties

Chapter 55. Equality

VIII. Requirements of the s. 15 Test

C. Enumerated and Analogous Grounds

§ 55:26. Addition of analogous grounds

The *Andrews* case, as noted in the previous section, left room for the courts to recognize additional “analogous” grounds of discrimination. What are analogous grounds? Obviously, they are grounds that are similar in some important way to the grounds enumerated in s. 15, which are “race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”.

The Supreme Court of Canada's early s. 15 cases suggested that the common feature (or features) of the personal characteristics in the enumerated grounds – and thus the defining feature (or features) to be used in identifying new analogous grounds – might be one or more of the following:¹

- That they involve personal characteristics that are actually immutable, in the sense of being unchangeable;²
- That they involve personal characteristics that are constructively immutable, in the (narrow) sense that they can be changed only at great personal difficulty or cost,³ or in the (perhaps broader) sense that the government has no legitimate interest in asking people to change them;⁴
- That they denote personal characteristics that distinguish groups (sometimes called “discrete and insular minorities”) ⁵ that are politically powerless or vulnerable, in the sense that their interests are likely to be ignored in the political process;⁶
- That they denote personal characteristics that distinguish groups that have otherwise been historically disadvantaged, legally, economically or socially;⁷
- That they involve personal characteristics that have formed the basis of prejudicial and stereotypical decisions;⁸ and/or
- That they involve personal characteristics that have been recognized by courts and/or legislators as common grounds of discrimination.⁹

The Court's early s. 15 cases suggested that some combination of these factors should be considered in identifying new analogous grounds, but they did not provide a clear sense of which factors should be considered, and how much weight should be attached to them. Different judges seemed to emphasize different factors from this list, sometimes in the same case.

The Supreme Court of Canada considered the proper approach to the addition of analogous grounds in *Corbiere v. Canada* (1999).¹⁰ In *Corbiere*, McLachlin and Bastarache JJ., writing jointly for the majority of the Court, indicated that what the enumerated grounds “have in common is that they often serve as the basis for ... decisions made ... on the basis of a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity”, and thus “that the thrust of the identification of analogous grounds ... is to reveal grounds based on characteristics that we cannot change or that the government has no legitimate interest in expecting us to change to receive equal treatment under the law”.¹¹ They emphasized that the

other factors identified in the cases (factors like historical disadvantage and political vulnerability, which are outlined in the previous paragraph) “may be seen to flow from” the “central concept[s]” identified in these passages – and thus, by implication, are secondary to them.¹²

The *Corbiere* case remains the Court's most comprehensive assessment of analogous grounds. It suggests that the common feature of the personal characteristics identified in the enumerated grounds (and thus the defining feature to be used in identifying analogous grounds) is immutability. It also suggests that, for a personal characteristic to be immutable (and therefore recognized as an analogous ground) it must be either actually immutable or constructively immutable. A personal characteristic will be *actually immutable* for this purpose if it cannot be changed. A personal characteristic will be *constructively immutable* for this purpose if, although changeable, the personal characteristic is changeable only at an unacceptable cost to personal identity, and therefore the government has no legitimate interest in expecting people to change it.¹³

In *Corbiere*, McLachlin and Bastarache JJ. did not provide a detailed explanation of what is objectionable about laws that discriminate against people on the basis of personal characteristics that are unchangeable (or immutable), or at least unchangeable except with great difficulty or cost. The primary reason that discrimination on these bases is objectionable is that it is generally morally wrong to disadvantage a person by reason of a personal characteristic that is outside the person's control (as with immutable personal characteristics) or that is central to their personal identity, and therefore changeable only with great personal cost or difficulty (as with constructively immutable personal characteristics). What is objectionable about using such personal characteristics as the basis for legal distinctions is that consequences should normally follow what people do, not who they are.

In *Corbiere*, McLachlin and Bastarache JJ. also made another important point about the analogous grounds – namely that, once a personal characteristic is recognized by the courts (presumably particularly by the Supreme Court) as an analogous ground, it will serve as an analogous ground in all contexts.¹⁴ This point was made in response to L'Heureux-Dubé J., who seemed to suggest, in a separate concurring opinion in *Corbiere*, that whether a personal characteristic will be an analogous ground will vary with the context. This point has been reiterated by the Court in subsequent decisions.¹⁵

The Supreme Court of Canada has recognized four analogous grounds to date.

The first analogous ground to be recognized by the Court was *citizenship*.¹⁶ That occurred in *Andrews* itself. Although the Court in that case was unanimous that citizenship was an analogous ground, there were three separate opinions in the case. All three opinions described non-citizens as a group lacking in political power, and therefore vulnerable to having their interests ignored and their rights violated in the political process.¹⁷ La Forest J. also emphasized that citizenship was a personal characteristic that is “typically not within the control of the individual and, in this sense, is immutable”.¹⁸ The conclusion that citizenship is an analogous ground of discrimination was affirmed in *Lavoie v. Canada* (2002),¹⁹ where the issue was the validity of a statutory hiring preference for citizens in the federal public service. The Court divided on s. 15 and s. 1, but a majority of the Court upheld the preference, and all members of the Court agreed that citizenship was an analogous ground.

The second analogous ground to be recognized by the Court was *marital status*.²⁰ The recognition started in *Miron v. Trudel* (1995),²¹ which concerned the statutory provision of accident benefits to a “spouse”, a term that was defined as a person legally married to the victim. Although the claimant common law spouse succeeded in striking down the requirement of legal marriage, only four judges actually held that marital status was an analogous ground. Four judges held that it was not. The fifth member of the majority (L'Heureux-Dubé J.) held that it did not matter. This was less than a ringing endorsement of marital status as an analogous ground, but in *Nova Scotia v. Walsh* (2002),²² the Court (which included two of the judges who had dissented in *Miron v. Trudel*) was unanimous that marital status was an analogous ground. However, the majority of the Court held that the matrimonial property regime of Nova Scotia, which was restricted to persons who were legally married, did not breach s. 15, because it did not impair the human dignity of the common law spouses who were excluded by reason of their marital status.²³

It is worth noting here that neither citizenship nor marital status is immutable in the strong sense of being unchangeable. Each is a status that can often be chosen by the individual, although (as the Court has rightly emphasized) that choice is sometimes blocked by legal requirements or disadvantage or (in the case of marital status) by the contrary wish of another person. The element of choice in citizenship and marital status has been important in persuading the Court to find ways to uphold legal distinctions based on citizenship²⁴ and marital status.²⁵

The third analogous ground to be recognized by the Court was *sexual orientation*.²⁶ In *Egan v. Canada* (1995),²⁷ eight of nine judges decided that sexual orientation was an analogous ground. La Forest J., writing for himself and three others, described sexual orientation as “a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs”.²⁸ Cory J., writing for himself and three others, emphasized the relationship between sexual orientation and historical disadvantage, stereotyping and political vulnerability.²⁹ For complicated reasons, the claimants, a same-sex couple who were seeking a spousal allowance under the federal Old Age Security program, did not actually succeed.³⁰ But the ruling on analogous grounds was clear enough, and it paved the way for a series of cases that upheld the equality rights of LGBTQ claimants. In *Vriend v. Alberta* (1998),³¹ the Court held that Alberta's human rights code violated s. 15 by failing to include sexual orientation as a prohibited ground of discrimination. In *M. v. H.* (1999),³² the Court held that Ontario's family law legislation violated s. 15 by excluding same-sex couples from its spousal support obligations. In *Little Sisters Book and Art Emporium v. Canada* (2000),³³ the Court held that the practices of customs officials in obstructing the importation of books by a bookstore catering to the LGBTQ communities was a breach of s. 15. The Courts of Appeal of British Columbia and Ontario and other provincial lower courts held that the opposite-sex requirement for marriage was contrary to s. 15, legalizing same-sex marriage in several provinces.³⁴ These decisions also helped the Supreme Court to decide that the federal power over “marriage” extended to same-sex marriage,³⁵ a ruling that was followed by legislation enacting a new national definition of marriage that no longer requires the members of the couple to be of the opposite sex.³⁶

The fourth analogous ground to be recognized by the Court was the off-reserve band member status of Indigenous Peoples. In several cases, the Court has declined to recognize place of residence as an analogous ground.³⁷ However, in *Corbiere*,³⁸ which has already been discussed earlier in this section, the Court held unanimously that the off-reserve band member status of Indigenous Peoples – described in the decision as “Aboriginality-residence (off-reserve band member status)”³⁹ – is an analogous ground. The Court said that the off-reserve band member status of Indigenous Peoples “goes to a personal characteristic essential to a band member's personal identity, which is no less constructively immutable than religion or citizenship”.⁴⁰ In reaching its conclusion, the Court was careful to note that the decision should not be read to suggest that place of residence is now an analogous ground for the non-Indigenous as well, and in doing so, it emphasized the “unique and complex” and “profound decisions Aboriginal band members make to live on or off their reserves”.^{40.10} The Court has interpreted the analogous ground recognized in *Corbiere* narrowly in subsequent cases. In *Kahkewistahaw First Nation v. Taypotat* (2015),^{40.20} the Court held that the *Corbiere* analogous ground extended only to the off-reserve residence of Indigenous Peoples, and it declined to decide whether the on-reserve residence of Indigenous Peoples is also an analogous ground. In addition, in *Dickson v. Vuntut Gwitchin First Nation* (2024),^{40.30} the majority of the Court held that the *Corbiere* analogous ground extended only to the off-reserve band member status of Indigenous Peoples under the federal *Indian Act*,^{40.40} and recognized a new analogous ground of “non-resident status in a self-governing Indigenous community”, invoking the reasoning in *Corbiere* in support of the new analogous ground.^{40.50}

So far, these grounds are the only ones that have been recognized by the Court.⁴¹ As noted in the previous paragraph, *place of residence*⁴² has not been accepted as an analogous ground, except in the unique case of off-reserve residence for Indigenous Peoples.⁴³ Nor is *occupation*⁴⁴ an analogous ground, so that, for example, a law denying collective bargaining rights to police officers cannot be challenged under s. 15.⁴⁵ Nor is “*substance orientation*” an analogous ground, so that a law prohibiting

the use of marihuana cannot be challenged under s. 15.⁴⁶ Nor is *having committed a war crime or a crime against humanity outside of Canada* an analogous ground.⁴⁷ Every change in the law creates a distinction between those who were governed by the law before the change and those who are governed by the new law, but this is not discrimination under s. 15, because a *temporal* distinction is not an analogous ground.⁴⁸ And privileges for the Crown and other public authorities in litigation cannot be challenged under s. 15, because the existence of a claim against government is not an analogous ground.⁴⁹

Where there is no distinction based on an enumerated or analogous ground, there is no remedy under s. 15. The Supreme Court, which of course created this restriction, has chafed against it in some cases where the Court wanted to grant a remedy. Malapportioned voting districts, which give rural votes more weight than urban votes, have been held to be unconstitutional under the right to vote in s. 3 of the Charter.⁵⁰ This decision allows place of residence to be a ground of unconstitutional discrimination where voting rights are involved. The exclusion of agricultural workers from Ontario's labour relations legislation has been held to be unconstitutional under the right to freedom of association in s. 2(d) of the Charter.⁵¹ This decision allows occupation to be a ground of unconstitutional discrimination where freedom of association is involved. When the Court imports equality values into other Charter rights,⁵² it leaves out the restriction to enumerated and analogous grounds. (And it also leaves out the requirement of discrimination as well.⁵³) The takeaway here is that the absence of an enumerated or analogous ground will not necessarily doom a discrimination claim, if the claim can be dealt with under another Charter provision.

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Footnotes

- 1 This list does not purport to be exhaustive. However, this list does capture the common features that were highlighted most often in the Court's early s. 15 cases, and therefore seemed to be most important.
- 2 See e.g. *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, 195 per La Forest J.; *Miron v. Trudel*, [1995] 2 S.C.R. 418, para. 148 per McLachlin J.; *Egan v. Can.*, [1995] 2 S.C.R. 513, para. 5 per La Forest J.
- 3 See e.g. *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, 195 per La Forest J.; *Miron v. Trudel*, [1995] 2 S.C.R. 418, para. 153 per McLachlin J.; *Egan v. Can.*, [1995] 2 S.C.R. 513, para. 5 per La Forest J.
- 4 *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, 196–197 per La Forest J.
- 5 The term “discrete and insular minority” is an obscure phrase drawn from the United States, where it has become a short form to describe groups that are politically powerless or vulnerable. The phrase comes from the opinion of Stone J. of the Supreme Court of the United States in *United States v. Carolene Products Co.* (1938), 304 U.S. 144.
- 6 *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, 152 per Wilson J., 183 per McIntyre J., 195 per La Forest J.; *R. v. Turpin*, [1989] 1 S.C.R. 1296, 1333 per Wilson J.; *Egan v. Can.*, [1995] 2 S.C.R. 513, para. 171 per Cory J.
- 7 *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, 152 per Wilson J.; *R. v. Turpin*, [1989] 1 S.C.R. 1296, 1333 per Wilson J.; *Miron v. Trudel*, [1995] 2 S.C.R. 418, paras. 148, 152 per McLachlin J.; *Egan v. Can.*, [1995] 2 S.C.R. 513, paras. 171–175 per Cory J.
- 8 *Miron v. Trudel*, [1995] 2 S.C.R. 418, paras. 148–149, 152, 159 per McLachlin J.; *Egan v. Can.*, [1995] 2 S.C.R. 513, paras. 171–175 per Cory J.
- 9 *Miron v. Trudel*, [1995] 2 S.C.R. 418, paras. 148, 155 per McLachlin J.; *Egan v. Can.*, [1995] 2 S.C.R. 513, paras. 176–178 per Cory J.
- 10 *Corbiere v. Can.*, [1999] 2 S.C.R. 203. McLachlin and Bastarache JJ. wrote a joint opinion for a five-judge majority of the Court. L'Heureux-Dubé J. wrote a concurring opinion, which was joined by three other judges.

- 11 [Corbiere v. Can.](#), [1999] 2 S.C.R. 203, para. 13.
- 12 [Corbiere v. Can.](#), [1999] 2 S.C.R. 203, para. 13.
- 13 For academic criticism of this approach, see e.g. J. Sealy Harrington, “Assessing Analogous Grounds: The Doctrinal and Normative Superiority of a Multi Variable Approach” (2013) 10 J.L. & Equality 37; J. Eisen, “[Grounding Equality in Social Relations: Suspect Classification, Analogous Grounds and Relational Theory](#)” (2017) 42 Queen's L.J. 41.
- 14 [Corbiere v. Can.](#), [1999] 2 S.C.R. 203, paras. 7–11.
- 15 See e.g. [Lavoie v. Can.](#), [2002] 1 S.C.R. 769, paras. 2, 41; [Que. v. A.](#), [2013] 1 S.C.R. 61, paras. 190, 335.
- 16 § 55:46, “Citizenship”.
- 17 [Andrews v. Law Society of British Columbia](#), [1989] 1 S.C.R. 143, 152, 157, 183, 195.
- 18 [Andrews v. Law Society of British Columbia](#), [1989] 1 S.C.R. 143, 195.
- 19 [Lavoie v. Can.](#), [2002] 1 S.C.R. 769.
- 20 § 55:47, “Marital status”.
- 21 [Miron v. Trudel](#), [1995] 2 S.C.R. 418.
- 22 [N.S. v. Walsh](#), [2002] 4 S.C.R. 325.
- 23 In [Que. v. A.](#), [2013] 1 S.C.R. 61, a case that raised similar issues to [Walsh](#), the Court affirmed unanimously that marital status is an analogous ground (although it otherwise splintered heavily as to the proper analysis and outcome).
- 24 [Lavoie v. Can.](#), [2002] 1 S.C.R. 769.
- 25 [N.S. v. Walsh](#), [2002] 4 S.C.R. 325; [Que. v. A.](#), [2013] 1 S.C.R. 61.
- 26 § 55:48, “Sexual orientation”.
- 27 [Egan v. Can.](#), [1995] 2 S.C.R. 513.
- 28 [Egan v. Can.](#), [1995] 2 S.C.R. 513, para. 5.
- 29 [Egan v. Can.](#), [1995] 2 S.C.R. 513, paras. 171–178. Only Iacobucci J. concurred with Cory J.'s opinion. However, in separate opinions, both Sopinka J. (para. 103) and McLachlin J. (para. 232) agreed with his [s. 15](#) analysis.
- 30 At that time, four members of the Court were insisting that a distinction had to be “irrelevant” to count as discrimination. These four held that the exclusion of same-sex couples from spousal allowances was not irrelevant, and a fifth judge held that the exclusion was justified under [s. 1](#).
- 31 [Vriend v. Alta.](#), [1998] 1 S.C.R. 493.
- 32 [M. v. H.](#), [1999] 2 S.C.R. 3.
- 33 [Little Sisters Book and Art Emporium v. Can.](#), [2000] 2 S.C.R. 1120.
- 34 [EGALE v. Can.](#) (2003), 225 D.L.R. (4th) 472 (B.C.C.A.); [Halpern v. Can.](#) (2003), 225 D.L.R. (4th) 529 (Ont. C.A.); [Hendricks v. Que.](#), [2002] R.J.Q. No. 2506 (Que. Sup. Ct.).
- 35 [Re Same-Sex Marriage](#), [2004] 3 S.C.R. 698.

- 36 [Civil Marriage Act](#), S.C. 2005, c. 33. See also ch. 27, The Family, under heading §§ 27:3 to 27:4, “Marriage”.
- 37 § 55:49, “Place of residence”.
- 38 [Corbiere v. Can.](#), [1999] 2 S.C.R. 203.
- 39 [Corbiere v. Can.](#), [1999] 2 S.C.R. 203, para. 6.
- 40 [Corbiere v. Can.](#), [1999] 2 S.C.R. 203, para. 14; see also para. 62 per L’Heureux-Dubé J.
- 40.10 [Corbiere v. Can.](#), [1999] 2 S.C.R. 203, para. 15; see also para. 62 per L’Heureux-Dubé J.
- 40.20 [Kahkewistahaw First Nation v. Taypotat](#), [2015] 2 S.C.R. 548, para. 26.
- 40.30 [Dickson v. Vuntut Gwitchin First Nation](#), 2024 SCC 10, paras. 191-198.
- 40.40 Because the [Indian Act](#) applies only to First Nations, not to Inuit or Métis, the *Corbiere* analogous ground would appear to apply only to First Nations.
- 40.50 [Martin and O’Bonsawin JJ.](#), dissenting in part, disagreed with the majority that the analogous ground recognized in *Corbiere* did not apply: see [Dickson v. Vuntut Gwitchin First Nation](#), 2024 SCC 10, paras. 353-363.
- 41 The following may also be analogous grounds:
- a) Language (or at least native language): see [Gosselin v. Que.](#), [2005] 1 S.C.R. 238, para. 12 (obiter dictum raising the possibility);
 - b) Family/parental status: see [Fraser v. Can.](#), 2020 SCC 28, paras. 114–123 per Abella J. for the majority, 182–183 per Brown and Rowe JJ. dissenting, but not on this point (leaving the possibility open); but see Côté J. dissenting, who appeared to reject the possibility (at para. 238). Contrast the caution in [Fraser with Thibaudeau v. Can.](#), [1995] 2 S.C.R. 627, in which McLachlin J., albeit only in dissent, said (at 722–25) that being a “separated or divorced custodial parent” should be recognized as an analogous ground; and
 - c) Gender identity: [Centre for Gender Advocacy v. Que.](#), 2021 QCCS 191, paras. 104, 106 (Que. S.C.), rev’d (but seemingly not on this point) in 2024 QCCA 348 (see paras. 121, 220); see also [Hansman v. Neufeld](#), 2023 SCC 14, para. 88 (citing the recognition of gender identity as an analogous ground in *Centre for Gender Advocacy* as an example of how “judicial recognition of the plight of transgender individuals in Canada is growing”).
- 42 § 55:49, “Place of residence”.
- 43 [Corbiere v. Can.](#), [1999] 2 S.C.R. 203; [Dickson v. Vuntut Gwitchin First Nation](#), 2024 SCC 10.
- 44 § 55:50, “Occupation”.
- 45 [Delisle v. Can.](#), [1999] 2 S.C.R. 989.
- 46 [R. v. Malmö-Levine](#), [2003] 3 S.C.R. 571, paras. 184–185, 267.
- 47 [R. v. Finta](#), [1994] 1 S.C.R. 701.
- 48 [Can. v. Hislop](#), [2007] 1 S.C.R. 429, para. 39.
- 49 [Rudolf Wolff & Co. v. Can.](#), [1990] 1 S.C.R. 695 (upholding exclusive jurisdiction of Federal Court over actions against the Crown in right of Canada); [Mirhadizadeh v. Ont.](#) (1989), 69 O.R. (2d) 422 (C.A.) (upholding limitation period on action against public authorities); [Filip v. Waterloo](#) (1992), 98 D.L.R. (4th) 534 (Ont. C.A.) (same decision).
- 50 [Re Prov. Electoral Boundaries \(Sask.\)](#), [1991] 2 S.C.R. 158.

51 [Dunmore v. Ont.](#), [2001] 3 S.C.R. 1016.

52 See P.W. Hogg, “Equality as a Charter Value in Constitutional Interpretation” (2003) 20 Supreme Court L.R. (2d) 113.

53 See § 55:29, “Evolution of the discrimination requirement”.

End of Document

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TAB 40

CITY OF GRANTS PASS, OREGON, Petitioner

v.

Gloria JOHNSON, et al., on behalf of themselves and all others similarly situated.

No. 23-175.

Supreme Court of United States.

Argued April 22, 2024.

Decided June 28, 2024.

2204 *2204 ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Theane D. Evangelis, Los Angeles, CA, for Petitioner.

Edwin S. Kneeder, Deputy Solicitor General, for the United States, as amicus curiae, supporting neither party.

Kelsi B. Corkran for Respondents.

Jonathan C. Bond, Gibson, Dunn & Crutcher LLP, Washington, D.C., Lefteri J. Christos, Gibson, Dunn & Crutcher LLP, New York, NY, Aaron P. Hisel, Capitol Legal Services, Salem, OR, Theane D. Evangelis, Counsel of Record, Bradley J. Hamburger, Samuel Eckman, Daniel R. Adler, Patrick J. Fuster, Karl H. Kaellenius, Gibson, Dunn & Crutcher LLP, Los Angeles, CA, Counsel for Petitioner.

Edward Johnson, Oregon Law Center, Portland, OR, Walter Fonseca, Oregon Justice, Resource Center, Portland, OR, Kelsi Brown Corkran, Counsel of Record, Shelby Calambokidis, Alexandra Lichtenstein, Joseph W. Mead, William Powell, Institute for Constitutional Advocacy and Protection, Georgetown University Law Center, Washington, DC, Counsel for Respondents.

Syllabus^[*]

Grants Pass, Oregon, is home to roughly 38,000 people, about 600 of whom are estimated to experience homelessness on a given day. Like many local governments across the Nation, Grants Pass has public-camping laws that restrict encampments on public property. The Grants Pass Municipal Code prohibits activities such as camping on public property or parking overnight in the city's parks. See §§ 5.61.030, 6.46.090(A)-(B). Initial violations can trigger a fine, while multiple violations can result in imprisonment. In a prior decision, *Martin v. Boise*, the Ninth Circuit held that the Eighth Amendment's Cruel and Unusual Punishments Clause bars cities from enforcing public-camping ordinances like these against homeless individuals whenever the number of homeless individuals in a jurisdiction exceeds the number of "practically available" shelter beds. 920 F.3d 584, 617. After *Martin*, suits against Western cities like Grants Pass proliferated.

Plaintiffs (respondents here) filed a putative class action on behalf of homeless people living in Grants Pass, claiming that the city's ordinances against public camping violated the Eighth Amendment. The district court certified the class and entered a *Martin* injunction prohibiting Grants Pass from enforcing its laws against homeless individuals in the city. App. to Pet. for Cert. 182a-183a. Applying *Martin*'s reasoning, the district court found everyone without shelter in Grants Pass was "involuntarily homeless" because the city's total homeless population out-numbered its "practically available" shelter beds. App. to Pet. for Cert. 179a, 216a. The beds at Grants Pass's charity-run shelter did not qualify as "available" in part because that shelter has rules requiring residents to abstain from smoking and to attend religious services. App. to Pet. for Cert. 179a-180a. A divided panel of the Ninth Circuit affirmed the district court's *Martin* injunction in relevant part. 72 F.4th 868, 874-896. Grants Pass filed a petition for certiorari. Many States, cities, and counties from across the Ninth Circuit urged the Court to grant review to assess *Martin*.

Held: The enforcement of generally applicable laws regulating camping on public property does not constitute "cruel and unusual punishment" prohibited by the Eighth Amendment. Pp. 2215-2226.

post, at 2230. "Either stay awake," the dissent warns, "or be arrested." *Post*, at 2228. That is gravely mistaken. We hold nothing of the sort. As we have stressed, cities and States are not bound to adopt public-camping laws. They may also choose to narrow such laws (as Oregon itself has recently). Beyond all that, many substantive legal protections and provisions of the Constitution may have important roles to play when States and cities seek to enforce their laws against the homeless. See Parts II-A, II-C, *supra*. The only question we face is whether one specific provision of the Constitution—the Cruel and Unusual Punishments Clause of the Eighth Amendment—prohibits the enforcement of public-camping laws.

Nor does the dissent meaningfully engage with the reasons we have offered for our conclusion on that question. It claims that we "gratuitously" treat *Robinson* "as an outlier." *Post*, at 2234, and n. 2. But the dissent does not dispute that the law *Robinson* faced was an anomaly, punishing mere status. The dissent does not dispute that *Robinson's* decision to address that law under the rubric of the Eighth Amendment is itself hard to square with the Amendment's text and this Court's other
2225 precedents interpreting it. And the dissent *2225 all but ignores *Robinson's* own insistence that a different result would have obtained in that case if the law there had proscribed an act rather than status alone.

Tellingly, too, the dissent barely mentions Justice Marshall's opinion in *Powell*. There, reasoning exactly as we do today, Justice Marshall refused to extend *Robinson* to actions undertaken, "in some sense, 'involuntarily.'" 392 U.S., at 533, 88 S.Ct. 2145. Rather than confront any of this, the dissent brusquely calls *Powell* a "strawman" and seeks to distinguish it on the inscrutable ground that Grants Pass penalizes "status[-defining]" (rather than "involuntary") conduct. *Post*, at 2240. But whatever that might mean, it is no answer to the reasoning Justice Marshall offered, to its obvious relevance here, or to the fact this Court has since endorsed Justice Marshall's reasoning as correct in cases like *Kahler* and *Jones*, cases that go undiscussed in the dissent. See n. 6, *supra*. The only extraordinary result we might reach in this case is one that would defy *Powell*, ignore the historical reach of the Eighth Amendment, and transform *Robinson's* narrow holding addressing a peculiar law punishing status alone into a new rule that would bar the enforcement of laws that are, as the dissent puts it, "'pervasive'" throughout the country. *Post*, at 2236; Part I-A, *supra*.

To be sure, the dissent seeks to portray the new rule it advocates as a modest, "limited," and "narrow" one addressing only those who wish to fulfill a "biological necessity" and "keep warm outside with a blanket" when they have no other "adequate" place "to go." *Post*, at 2228, 2230, 2232-2233, 2239, 2240-2241. But that reply blinks the difficult questions that necessarily follow and the Ninth Circuit has been forced to confront: What does it mean to be "involuntarily" homeless with "no place to go"? What kind of "adequate" shelter must a city provide to avoid being forced to allow people to camp in its parks and on its sidewalks? And what are people entitled to do and use in public spaces to "keep warm" and fulfill other "biological necessities"?[8]

Those unavoidable questions have plunged courts and cities across the Ninth Circuit into waves of litigation. And without anything in the Eighth Amendment to guide them, any answers federal judges can offer (and have offered) come, as Justice
2226 Marshall foresaw, only by way of "fiat." *Powell*, 392 U.S., at 534, 88 S.Ct. *2226 2145. The dissent cannot escape that hard truth. Nor can it escape the fact that, far from narrowing *Martin*, it would expand its experiment from one circuit to the entire country—a development without any precedent in this Court's history. One that would authorize federal judges to freeze into place their own rules on matters long "thought to be the province" of state and local leaders, *id.*, at 536, 88 S.Ct. 2145, and one that would deny communities the "wide latitude" and "flexibility" even the dissent acknowledges they need to address the homelessness crisis, *post*, at 2228-2229, 2230.

III

Homelessness is complex. Its causes are many. So may be the public policy responses required to address it. At bottom, the question this case presents is whether the Eighth Amendment grants federal judges primary responsibility for assessing those causes and devising those responses. It does not. Almost 200 years ago, a visitor to this country remarked upon the "extreme skill with which the inhabitants of the United States succeed in proposing a common object to the exertions of a great many men, and in getting them voluntarily to pursue it." 2 A. de Tocqueville, *Democracy in America* 129 (H. Reeve transl. 1961). If the multitude of *amicus* briefs before us proves one thing, it is that the American people are still at it. Through their voluntary associations and charities, their elected representatives and appointed officials, their police officers and mental health professionals, they display that same energy and skill today in their efforts to address the complexities of the homelessness challenge facing the most vulnerable among us.

Yes, people will disagree over which policy responses are best; they may experiment with one set of approaches only to find later another set works better; they may find certain responses more appropriate for some communities than others. But in our democracy, that is their right. Nor can a handful of federal judges begin to "match" the collective wisdom the American people possess in deciding "how best to handle" a pressing social question like homelessness. Robinson, 370 U.S., at 689, 82 S.Ct. 1417 (White, J., dissenting). The Constitution's Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest those rights and responsibilities from the American people and in their place dictate this Nation's homelessness policy. The judgment below is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice THOMAS, concurring.

I join the Court's opinion in full because it correctly rejects the respondents' claims under the Cruel and Unusual Punishments Clause. As the Court observes, that Clause "focuses on the question what method or kind of punishment a government may impose after a criminal conviction." *Ante*, at 2216 (internal quotation marks omitted). The respondents, by contrast, ask whether Grants Pass "may criminalize particular behavior in the first place." *Ibid*. I write separately to make two additional observations about the respondents' claims.

2227 First, the precedent that the respondents primarily rely upon, Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962), was wrongly decided. In *Robinson*, the Court held that the Cruel and Unusual Punishments Clause prohibits the enforcement of laws criminalizing a person's status. *Id.*, at 666, 82 S.Ct. 1417. That holding conflicts with the plain text and history of the Cruel and Unusual Punishments Clause. See *ante*, at 2215-2216. *2227 That fact is unsurprising given that the *Robinson* Court made no attempt to analyze the Eighth Amendment's text or discern its original meaning. Instead, *Robinson's* holding rested almost entirely on the Court's understanding of public opinion: The *Robinson* Court observed that "in the light of contemporary human knowledge, a law which made a criminal offense of ... a disease [such as narcotics addiction] would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." 370 U.S., at 666, 82 S.Ct. 1417. Modern public opinion is not an appropriate metric for interpreting the Cruel and Unusual Punishments Clause—or any provision of the Constitution for that matter.

Much of the Court's other Eighth Amendment precedents make the same mistake. Rather than interpret our written Constitution, the Court has at times "proclaim[ed] itself sole arbiter of our Nation's moral standards," Roper v. Simmons, 543 U.S. 551, 608, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (Scalia, J., dissenting), and has set out to enforce "evolving standards of decency," Trop v. Dulles, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion). "In a system based upon constitutional and statutory text democratically adopted, the concept of 'law' ordinarily signifies that particular words have a fixed meaning." Roper, 543 U.S., at 629, 125 S.Ct. 1183 (opinion of Scalia, J.). I continue to believe that we should adhere to the Cruel and Unusual Punishments Clause's fixed meaning in resolving any challenge brought under it.

To be sure, we need not reconsider *Robinson* to resolve this case. As the Court explains, the challenged ordinances regulate conduct, not status, and thus do not implicate *Robinson*. *Ante*, at 2218-2219. Moreover, it is unclear what, if any, weight *Robinson* carries. The Court has not once applied *Robinson's* interpretation of the Cruel and Unusual Punishments Clause. And, today the Court rightly questions the decision's "persuasive force." *Ante*, at 2218. Still, rather than let *Robinson's* erroneous holding linger in the background of our Eighth Amendment jurisprudence, we should dispose of it once and for all. In an appropriate case, the Court should certainly correct this error.

Second, the respondents have not established that their claims implicate the Cruel and Unusual Punishments Clause in the first place. The challenged ordinances are enforced through the imposition of civil fines and civil park exclusion orders, as well as through criminal trespass charges. But, "[a]t the time the Eighth Amendment was ratified, the word 'punishment' referred to the penalty imposed for the commission of a crime." Helling v. McKinney, 509 U.S. 25, 38, 113 S.Ct. 2475, 125 L.Ed.2d 22 (1993) (THOMAS, J., dissenting); see *ante*, at 2215-2216. The respondents have yet to explain how the civil fines and park exclusion orders constitute a "penalty imposed for the commission of a crime." Helling, 509 U.S., at 38, 113 S.Ct. 2475.

For its part, the Court of Appeals concluded that the Cruel and Unusual Punishments Clause governs these civil penalties because they can "later ... become criminal offenses." 72 F.4th 868, 890 (CA9 2023). But, that theory rests on layer upon layer of speculation. It requires reasoning that because violating one of the ordinances "could result in civil citations and fines, [and] repeat violators could be excluded from specified City property, and... violating an exclusion order could subject

TAB 41

Revisiting the Analytical Distinction Between Section 7 and Section 1 of the Charter: Legislative Objectives, Policy Goals and Public Interests

The Supreme Court Law Review

Debra M. Haak*

(2023), 112 S.C.L.R. (2d) 115 - 148

2023

Part II: Limiting Rights: What's "Reasonable"?

Supreme Court Law Review > 2023 > Vol. 112 > Part II Limiting Rights What's "Reasonable"?

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ABSTRACT/RÉSUMÉ:

In the Supreme Court's 2013 decision in *Bedford*, then Chief Justice McLachlin described section 7 and section 1 of the Charter as analytically distinct. While the Court clarified the analytical approach to section 7 in that case, they did not clarify how, if at all, the analytical approach to section 1 in section 7 cases might need to shift in response. Courts have generally been reluctant to find a law that violates a section 7 right to life, liberty, or security of the person to be demonstrably justified under section 1. Indeed, the Supreme Court has never done so. However, the now highly individualized and decontextualized approach to section 7 means that any individual or societal interests, rights, or values in tension with those of the rights' claimant and relevant to Parliament in enacting impugned laws can only ever be considered at the section 1 stage. How might section 1 more meaningfully attend to those interests, rights, and values? Adapting the language used by McLachlin C.J.C. in her invitation to revisit the analytical distinction between section 7 and section 1, this article suggests that courts identify and clearly articulate each of: (a) an impugned law's purpose; (b) the goals of the law in its policy context; and (c) the interests, rights and values that lay behind that purpose and those goals. Locating the full range of individual and societal interests, rights, and values relevant to the government's law and policy choice would allow the Court to clarify the analytical approach to section 1 in section 7 cases to directly address whether and how competing interests, rights and values relevant to Parliament in making legislative choices in areas of complex and highly contested public and social policy could ever justify a criminal law found to violate section 7. I draw on recent reported decisions in constitutional challenges to new criminal laws enacted in 2014 targeting the commercial exchange of sex to demonstrate how each of law's purpose and policy goals, and interests, rights and values have been or might be articulated in one such highly contested policy space.

Section 7 and s. 1 ask different questions. The question under s. 7 is whether the law's negative effect on life, liberty, or security of the person is in accordance with the principles of fundamental justice. With respect to the principles of arbitrariness, overbreadth, and gross disproportionality, the specific questions are whether the law's purpose, taken at face value, is connected to its effects and whether the negative effect is grossly disproportionate to the law's purpose. Under s. 1, the question is different -- whether the negative impact of a law on the rights of individuals is proportionate to the pressing and substantial goal of the law in furthering the public interest. The 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, which is concerned with the narrower question of whether the impugned law violates individual rights.

* * *

Revisiting the Analytical Distinction Between Section 7 and Section 1 of the Charter: Legislative Objectives, Policy Goals and Public Interests

intermittent importance but because they often inform, and are informed by, other similarly deserving rights or values at play in particular circumstances.⁶⁹

26 Section 1 jurisprudence also contemplates consideration of values in tension. In *R. v. Keegstra*, the Court identified that a contextual approach to section 1 brings into sharp relief values in tension.⁷⁰ In *Carter*, the Court pointed to the fact that competing moral claims are appropriately considered at the section 1 stage (rather than the section 7 stage).⁷¹ In his comment on the Ontario Court of Appeal's decision in *Sullivan*, where that court found that a preference for other values over constitutionally entrenched values could be a pressing and substantial reason for denying constitutional rights, Steve Coughlan said, "[t]he answer to that, it seems, is yes it can": that is exactly the reason section 1 weighs the deleterious effects (to the individual) against the salutary effects (to society). It would need to be a particularly strong competing value, perhaps one itself entrenched in constitutional values, but it is not correct to say there is no scope at all for such a preference."⁷² As the Court clearly said in *Oakes*: "The underlying values and principles of a free and democratic society are the genesis of the rights and freedoms guaranteed by the *Charter* and the ultimate standard against which a limit on a right or freedom must be shown, despite its effect, to be reasonable and demonstrably justified."⁷³ Chief Justice Dickson stated that these values and principles "embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society".⁷⁴

2. The Importance of Considering Section 1 in Section 7 Cases

27 It is important for courts to meaningfully consider these factors in section 7 cases, particularly in those cases where impugned laws are enacted in areas of highly contested social and public policy. These factors help to delineate the legitimate scope of the state's use of criminal laws. A failure to meaningfully consider both societal and individual interests, rights, or values other than those of the rights' claimant (especially where they were relevant to Parliament in enacting impugned laws) suggests that concern for the public good, including balancing rights, interests and values in tension, "may be pushed out of the Court's conception of what justice means in Canadian society".⁷⁵ Of the now decontextualized approach to section 7 and the balancing that occurs there, Kathryn Costain observed: "By dividing social interests from the determination of fundamental justice, the Court places individual and societal interests in an increasingly antagonistic relationship to one another", positing that such a division may not be sustainable.⁷⁶ However, unless a meaningful section 1 analysis is undertaken in a section 7 case, the individual claimant's rights are set *above* any potentially competing societal or individual rights, interests, or values.

28 In many section 7 cases, courts do not engage in a detailed analysis of section 1, in part because state respondents do not seriously argue that the section 7 violation could be justified.⁷⁷ In *Bedford*, for example, the Court found it unnecessary to engage in a full section 1 analysis because "[t]he appellant Attorneys General have not seriously argued that the laws, if found to violate s. 7, can be justified under s. 1 of the *Charter*."⁷⁸ In *Canada (Attorney General) v. PHS Community Services Society*, in a single conclusory paragraph consisting of four sentences, the Court reasoned that while no section 1 argument was made in the case before them, a section 1 argument could not possibly succeed.⁷⁹ Failing to make a section 1 argument in section 7 cases could prevent courts from hearing evidence about or considering any interests, rights, or values other than those of the rights' claimant, including those public and/or individual interests, rights, or values in tension with those of the rights claimant and directly in the contemplation of Parliament in enacting the impugned laws. Without considering the factors relevant to potential justification of a section 7 violation, and available evidence about them, it is more likely section 1 arguments will be doomed to fail and courts be given no opportunity to clarify the analytical distinction between section 7 and section 1 in the circumstances of complex policy choices and legislative schemes. Mark Carter suggests that the Court in *Bedford* indirectly encouraged Attorneys General to make serious section 1 arguments, which he argues "speaks to the intrinsic significance of this final stage of *Charter* inquiry and the democratic principles that are served by respecting the structure of the Constitution in this regard, and the benefits of publically [*sic*] presenting arguments of justification".⁸⁰

V. AN EXAMPLE: CRIMINAL LAWS AND COMMERCIAL SEX

TAB 42

BEDFORD AND THE STRUCTURE OF SECTION 7

*Hamish Stewart**

In *Canada (A.G.) v. Bedford*, the Supreme Court of Canada invalidated three prostitution-related provisions of the *Criminal Code* on grounds of overbreadth and gross disproportionality. The implications of *Bedford* go well beyond the particular context of sex work and even of criminal law. First, the Court held that the three constitutional norms against overbreadth, arbitrariness, and gross disproportionality are distinct from each other rather than aspects of a single norm against overbreadth. Second, the Court held that a *Charter* applicant could establish a violation of section 7 by showing that a law is overbroad, arbitrary, or grossly disproportionate in its impact on the life, liberty, or security of only one person and that the effectiveness of the law in achieving its policy objectives was not relevant to these norms. There are some difficulties in understanding this highly individualistic approach to section 7, and those difficulties lead to the third implication. By deferring any consideration of the effectiveness of the law to the question of whether it is a proportional limit on a section 7 right, the Court may be indicating a willingness to do something it has never done before: recognize an infringement of a section 7 right as a justified limit under section 1. The Court's clarification of the relationship between the norms against overbreadth, arbitrariness, and gross disproportionality is welcome, but its individualistic articulation of those norms is difficult to understand and its suggestion that section 7 violations may now be easier to save under section 1 is troubling.

Dans l'affaire *Canada (P.G.) c. Bedford*, la Cour suprême du Canada a invalidé trois dispositions du *Code criminel* liées à la prostitution, statuant qu'elles avaient une portée excessive et un effet préjudiciable totalement disproportionné. Les répercussions de *Bedford* se ressentent bien au-delà du seul contexte du travail du sexe ou même du droit criminel. Premièrement, la Cour a statué que la portée excessive, l'arbitraire, et la disproportion totale sont trois notions distinctes. Elles ne découlent donc pas toutes d'une norme unique s'opposant à ce qu'une loi ait une portée excessive. Deuxièmement, la Cour a statué qu'un demandeur pouvait établir une atteinte aux droits garantis par l'article 7 de la *Charte* en démontrant qu'une loi a un effet excessif, arbitraire, ou totalement disproportionné sur la vie, la liberté ou la sécurité d'une seule personne. La Cour a également affirmé que l'efficacité de la loi dans la réalisation de ses objectifs n'est pas pertinente à l'évaluation de sa conformité avec ces trois normes constitutionnelles. Cette approche hautement individualiste à l'analyse de l'article 7 soulève certaines difficultés qui mènent à la troisième conséquence majeure de l'arrêt *Bedford*. En déplaçant toute considération de l'efficacité de la loi sous l'analyse de la proportionnalité de la limite des droits protégés par l'article 7, la Cour semble indiquer une volonté de faire quelque chose qu'elle n'a jusqu'ici jamais fait, c'est-à-dire reconnaître qu'une atteinte de ces droits puisse être justifiée sous l'article premier de la *Charte*. La clarification de la Cour concernant la relation entre les normes de la portée excessive, de l'arbitraire et de la disproportion totale est bienvenue, mais son articulation individualiste de ces normes est difficile à comprendre. Par ailleurs, sa suggestion qu'une atteinte aux droits garantis par l'article 7 serait maintenant plus facile à justifier sous l'article premier est troublante.

* Hamish Stewart is a Professor of Law at the University of Toronto, where he teaches criminal law and evidence. His most recent book is *Fundamental Justice: Section 7 of the Canadian Charter of Rights and Freedoms* (Toronto: Irwin Law, 2012). He is very grateful to two anonymous reviewers, Kyle Kirkup, Carol Rogerson, Diana Berbec, and Andrew Martin for their helpful comments on a draft of this paper.

III. Revisiting the Relationship between Section 7 and Section 1

In the past, the Court has often said that the content of the principles of fundamental justice should be constructed with reference to both individual and societal interests. Although there is no principle of fundamental justice that requires legislation to strike the right balance between individual and collective interests, the Court has said that some of the principles of fundamental justice reflect “a spectrum of interests [including] societal concerns.”⁵⁷ The Court has also said that it is very difficult to justify infringements of section 7 under section 1 and has never done so (though it has never said that it would be impossible).⁵⁸ And there is a good reason why that should be so. A section 7 violation requires a *Charter* applicant to demonstrate both an impact on life, liberty, or security of the person and noncompliance with a principle of fundamental justice. The principles of fundamental justice are those principles of procedural fairness and substantive justice that are fundamentally important to our sense of how the justice system should operate. The interests protected by section 7 are among the most basic individual rights recognized by the legal order. When those interests are affected by a law that is not fundamentally just—for example, when individual liberty is taken away in a grossly disproportionate manner—then there is indeed a very serious departure from the values that the legal system is supposed to respect, whatever its other objectives might be. And, before *Bedford*, section 1 justification was particularly difficult if the section 7 infringement involved one of the three substantive principles at issue in that case. A law that violated one of these norms, it seemed, would necessarily fail one or more of the three elements of the *Oakes* test for a proportional limit on a *Charter* right because the elements of proportionality seem to mirror the norms themselves. An arbitrary law was not rationally connected to its objective; an overbroad law was not a minimal impairment of the section 7 right; and the deleterious effects of a grossly disproportionate law on the section 7 right would necessarily outweigh its salutary effects on the legislative objective.⁵⁹

Bedford casts doubt on this understanding of the relationship between section 7 and section 1, at least with regard to the norms against arbitrariness, overbreadth, and gross disproportionality. The highly individualistic focus of the section 7 analysis is complemented by an apparent willingness to consider societal interests at the section 1 stage, thus opening

⁵⁷ *R v Seaboyer*, [1991] 2 SCR 577 at 603, 83 DLR (4th) 193. See also *Malmo-Levine*, *supra* note 42 at para 98.

⁵⁸ See Stewart, *Fundamental Justice*, *supra* note 8 (discussion of relevant cases at 289–92).

⁵⁹ See *ibid* at 297–305.

up the possibility of justifying a violation of a principle of fundamental justice. Since the section 1 analysis concerning the provisions at issue in *Bedford* itself is quite brief, it is difficult to be sure how exactly this relationship between section 7 and section 1 is supposed to work, and in particular how it avoids the seemingly logical claim that the steps of the *Oakes* proportionality test simply mirror the substantive norms against arbitrariness, overbreadth, and gross disproportionality. But it could work if there were a difference between the factors to be considered under section 7 and under the *Oakes* test. And that is just what *Bedford* indicates: the questions under section 7 are “whether the law’s purpose, *taken at face value*, is connected to its effects and whether the negative effect is grossly disproportionate to the law’s purpose.”⁶⁰ Taking the law’s purpose at face value must mean, at least for section 7 purposes, that the law’s purpose is constitutionally permissible and that it is at least conceivable that the law is effective in achieving its objective. Then, to determine whether the relevant section 7 principle is violated, a *Charter* applicant would only need to show that one (possibly hypothetical) person’s life, liberty, or security of the person was affected in a way that was arbitrary, overbroad, or grossly disproportionate. The government would then have the opportunity to show that this effect was justified under section 1. The logical claim that a law violating one of these principles could not pass the *Oakes* test must be reconsidered because a different set of considerations comes into play under section 1: not just the effect of the law on (at least) one person’s section 7 interests, but the effect of the section 7 violation in achieving the law’s policy objectives.

This approach can be illustrated with respect to the norm against overbreadth. Whenever a law is conceived of as an instrument to achieve purposes that are defined independently of the law itself,⁶¹ as was the case in *Bedford*, there is likely to be some degree of overbreadth; there are likely to be some individual cases where the application of the law would not advance its purposes. The laws regulating highway traffic provide a simple example. These laws are supposed to provide a fairly clear set of rules that both facilitate the use of the roads and promote their safe use. But it is easy to think of cases where violating those rules would both facilitate the use of the roads and be perfectly safe: disobeying a stop sign or red light when there is no other traffic on the road, or driving above the speed limit on a clear, straight, dry, empty road. More serious offences

⁶⁰ *Bedford*, *supra* note 1 at para 125 [emphasis added].

⁶¹ Not all laws are of this kind. The law of homicide can be understood simply as prohibiting unlawful killings because they are wrong in themselves, not as aiming at some purpose that is independently desirable and is promoted by defining certain killings as wrongful and then prohibiting them.

TAB 43

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. 2nd Affidavit of Peter Sweeney, affirmed July 2, 2025
3. 3rd 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. 2nd Affidavit of Emily “Eddy” Grignon, sworn July 7, 2025
27. Affidavit of Jacara Droog, sworn May 15, 2025
28. 2nd 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. 2nd 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. 4th 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. 5th 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. 2nd 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. 3rd Affidavit of Sara Escobar, sworn February 20, 2026

Experts

12. 2nd Affidavit of Laura Pin, sworn February 20, 2026

G. Amended Affidavit of James Davis, sworn June 20, 2025

H. 2nd Affidavit of Aaron El Sabrout, sworn April 8, 2026

I. 2nd 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 2nd Cross-Examination of Peter Sweeney, held on December 11, 2025
16. Transcript of the Continued 2nd 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 2nd 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 2nd 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 3rd 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 2nd and 3rd 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

THE ATTORNEY GENERAL OF ONTARIO

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Constitutional Law Branch
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Amicus Curiae

**THE ATTORNEY GENERAL OF
ONTARIO and THE REGIONAL
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
	THE ATTORNEY GENERAL OF ONTARIO Civil Law Division / Constitutional Law Branch McMurtry-Scott Building, 720 Bay Street, 4th Floor Toronto, ON M7A 2S9 Fax: (416) 326-4015 S. Zachary Green (LSUC # 48066K) Tel.: 416 992.2327 Email: zachary.green@ontario.ca Andrea Bolieiro (LSO # 60034I) Tel: 437 551.6263 Email: andrea.bolieiro@ontario.ca Sara Badawi (LSO # 87480W) Tel: 647 825.2156 Email: sara.badawi@ontario.ca Counsel for the Appellant, The Attorney General of Ontario <u>503</u>

TAB 44

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, The Regional Municipality of Waterloo Appellant, Attorney General for Ontario	Contact information for Gordon Capern: gordon.capern@paliareroland.com Contact information for Andrea Boliero and Sara Badawi: andrea.bolieiro@ontario.ca sara.badawi@ontario.ca
Named Respondents Amicus Curiae	Contact information for Ashley Schuitema and Joanna Mullen: ashley.schuitema@wrcls.clcj.ca joanna.mullen@wrcls.clcj.ca Contact information for Karen Steward and Jen Danch: karenannesteward@yahoo.ca jdanch@swadron.com

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?	☒ YES ☐ NO ☐ OTHER (<i>explain</i>): Click here
Is the appeal ready to be scheduled?	☐ YES ☒ NO
Have you assigned the time allowed for oral argument?	☐ YES (<i>fill in below</i>) Time for Appellant: (HH:MM) Time for Respondent: (HH:MM) ☒ NO

TAB 45

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**

Respondents
(Respondents/Cross-Applicants)

APPLICATION UNDER RULE 14.05 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194
and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being
Schedule B of the *Canada Act 1982 (UK)*, 1982, c 11.

CERTIFICATE OF COMPLETENESS OF APPEAL BOOK AND COMPENDIUM

I, Sara Badawi, lawyer for the Appellant Attorney General of Ontario certify that the Appeal Book and Compendium in this appeal is complete and legible.

August 7, 2026



Sara Badawi (LSO # 87480W)
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Tel: 647-825-2156
Email: sara.badawi@ontario.ca

**THE ATTORNEY GENERAL OF ONTARIO AND
THE REGIONAL MUNICIPALITY OF
WATERLOO**

Appellants

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents

	COURT OF APPEAL FOR ONTARIO Proceedings commenced at Toronto
	APPEAL BOOK AND COMPENDIUM VOLUME II
	THE ATTORNEY GENERAL OF ONTARIO Civil Law Division / Constitutional Law Branch 720 Bay Street, 4th Floor Toronto, ON M7A 2S9 S. Zachary Green (LSUC # 48066K) Tel.: 416 992.2327 Email: zachary.green@ontario.ca Andrea Bolieiro (LSO # 60034I) Tel: 437 551.6263 Email: andrea.bolieiro@ontario.ca Sara Badawi (LSO # 87480W) Tel: 647 825.2156 Email: sara.badawi@ontario.ca Of Counsel for the Appellant, The Attorney General of Ontario